

STATE OF IOWA
BEFORE THE BOARD OF MORTUARY SCIENCE EXAMINERS

_____)
IN THE MATTER OF)
) NO: MS-01-011
NEPTUNE SOCIETY,)
ANKENY, IOWA)
License Nos. 151-00588)
151-00589)
151-00590)
) **STATEMENT OF CHARGES**
RESPONDENT)
_____)

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Ankeny, IA 50021

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TO THE ABOVE NAMED RESPONDENT:

1. Pursuant to a consent agreement entered between the Iowa Board of Mortuary Science Examiners (Board) and the Neptune Society, Inc., of Burbank, California, (Respondent), the Board, on October 12, 2000, issued to the Respondent license numbers 151-00588 and 151-00590 to operate a funeral establishment and a cremation establishment located at 128 Shurfine Drive, Ankeny, Iowa, and license number 151-00589 to operate a funeral establishment located at 102 N.E. Trilein Drive, Ankeny, Iowa, subject to probationary terms. (See Attached Exhibit 1, Consent

Agreement). License numbers 151-00588, 151-00589, and 151-00590 are active and current through June 30, 2003.

2. Licenses issued by the Board are subject to the laws of the State of Iowa and the administrative rules promulgated by the Board. Additionally, at all times relevant to the conduct alleged in this Statement of Charges, Respondent's funeral and cremation establishment licenses were subject to the probationary terms and conditions detailed in the Consent Agreement. (See Exhibit 1).

3. The penalties authorized under Iowa law which the Board may impose against any licensed funeral or cremation establishment found to have engaged in prohibited conduct include imposition of a civil money penalty up to \$10,000 and/or revocation of the licensee's establishment license. See Iowa Code § 156.15(2) (2001), 645 Iowa Admin. Code § 101.9(1).

4. Pursuant to Iowa Code Chapters 17A, 156, and 272C (2001) the Iowa Board of Mortuary Science Examiners (Board) has jurisdiction of this matter.

COUNT I

Respondent is charged with failing to ensure that within its funeral and cremation establishments the practice of mortuary science was conducted by a licensed funeral director consistent with the laws of the State of Iowa and the rules promulgated by the Board. See Iowa Code §§ 156.1, 156.15(2) (2001); 645 Iowa Admin. Code § 101.9(2).

COUNT II

Respondent is charged with employing persons who, while acting within the scope of their employment at the Respondent's cremation and funeral establishments, violated provisions of Iowa Code chapter 156 and/or the rules promulgated by the Board. See Iowa Code § 156.15(2)(b) (2001); 645 Iowa Admin. Code § 101.9(2)c; see also Iowa Code § 156.9(2) (2001); Iowa Admin. Code §§ 100.6(2), 101.8(1), 101.8(2), 101.8(6), & 101.8(8).

CIRCUMSTANCES

5. Employee "1" provided at-need funeral arrangement services at the home of the family of "S" on June 21, 2001. No other representative of the Respondent was present at the June 21, 2001 arrangement conference between Employee "1" and the family of "S".

6. Board records indicate that at no time in 2001 was Employee "1" a licensed funeral director in the State of Iowa, nor was Employee "1" acting within the scope of a Board approved internship.

7. The practice of mortuary science includes making funeral arrangements and providing funeral services in connection with the sale of caskets, vaults, or other burial receptacles. Iowa Code § 156.1(7) (2001). Mortuary science may only be practiced in the State of Iowa by a licensed funeral director. Iowa Code § 156.4(2) (2001).

8. Entities that operate funeral and/or cremation establishments are responsible for ensuring that all mortuary science services are provided by a licensed funeral director.

Iowa Code §§ 156.1, 156.4 (2001).

9. While acting within the scope of his employment with the Respondent, licensed funeral director Employee “2”, on June 21, 2001, knowingly permitted Employee “1”, an unlicensed co-worker, to practice mortuary science by conducting funeral arrangements for “S”, date of death June 20, 2001. Employee “1” finalized arrangements and conducted a private viewing for the family of “S” on June 21, 2001.

10. Employee “1”’s actions in arranging and conducting the private viewing for the family of “S” were contrary to accepted professional standards within the funeral and cremation industries.

11. Employee “2”’s delegation of duties to and supervision of Employee “1” were negligent and contrary to the rules promulgated by the Board. See 645 Iowa Admin. Code § 101.8(6).

12. While acting within his employment with the Respondent, Employee “2” was the funeral director responsible for making funeral arrangements for “H”, date of death December 2, 2000. An undated funeral purchase contract dated was prepared for “H” on or about December 3, 2000. The funeral purchase contract was not signed by the authorized representative of “H” as required by Board rules. See 645 Iowa Admin. Code § 100.6(2).

13. While acting within his employment with the Respondent, Employee “2” was the funeral director responsible for making funeral arrangements for “B”, date of death February 20, 2001. A funeral purchase contract dated February 23, 2001, was

prepared for “B”. The funeral purchase contract was not signed by the authorized representative of “B” as required by Board rules. See 645 Iowa Admin. Code § 100.6(2)

14. While acting within his employment with the Respondent, Employee “2” was the funeral director responsible for making funeral arrangements for “P”, date of death December 21, 2000. A funeral arrangement conference was held with members of the family of “P” on or about December 21, 2000. No written funeral purchase contract was prepared for the signature of the authorized representative of “P” or the Respondent as required by Board rules. See 645 Iowa Admin. Code § 100.6(2).

15. While acting within his employment with the Respondent, Employee “2” made misleading, deceptive, untrue or fraudulent representations in the practice of mortuary science and/or falsified business records when he signed the cremation authorization form for “S” falsely attesting to the validity of the signature of the authorized person. Employee “2” did not witness the signing of the cremation authorization for “S” as he was not present when written consent for cremation was given by the authorized person for “S”.

16. While acting within his employment with the Respondent, Employee “2” made misleading, deceptive, untrue or fraudulent representations in the practice of mortuary science and/or falsified business records when he attested on a case report form submitted to the Board for its review, that he had conducted the funeral arrangements for “S” on June 20, 2001. Funeral arrangements for “S” were actually made by Employee “1”, an unlicensed co-worker of Employee “2”, on June 21, 2001.

17. While acting within his employment with the Respondent, Employee “2” made making misleading, deceptive, untrue or fraudulent representations in the practice of mortuary science and/or falsified business records when he attested on a case report form submitted to the Board for its review, that he was the only person who had performed services and duties constituting the practice of mortuary science in relation to the disposition of the remains of “B”. A second undisclosed licensed funeral director also performed professional services comprising the practice of mortuary science in relation to the disposition of the remains of “B”.

18. It is a violation of Iowa law and the Board rules for a person licensed by the Board to knowingly make misleading, deceptive, untrue or fraudulent representations in the practice of mortuary science. See Iowa Code ' ' 147.55, 156.9, 272C.10 (2001); 645 Iowa Admin. Code §§ 101.8(1)c. It is also a violation of Iowa law and the Board rules if a person licensed by the Board engages in unethical business practices such as falsifying business records. See Iowa Code ' 156.9 (2001); 645 Iowa Admin. Code §§ 101.8(8)c.

19. Funeral establishment licenses issued by the Board are subject to discipline if licensees have knowingly aided or allowed someone to unlawfully practice mortuary science or if the owner or any employee of the funeral establishment has violated Iowa Code Chapter 156 or any rule promulgated by the Board. See Iowa Code §§ 156.15(2)(b) & (c) (2001); 645 Iowa Admin. Code § 101.9(2)c & d.

20. The Respondent has engaged in conduct that violates the laws and rules governing the practice of mortuary science in the State of Iowa and the Board has jurisdiction to initiate a disciplinary proceeding in this case.

COUNT III

Respondent has engaged in conduct or practices that are harmful or detrimental to the public by cremating human remains without first obtaining proper authorization from the deceased's authorizing person and/or a permit for cremation from a medical examiner as required by the rules promulgated by the Board. See Iowa Code §§ 147.55, 156.15(2)(b), 272C.10 (2001); 645 Iowa Admin. Code §§ 100.11(4), 101.9(2)c, & 101.9(2)g.

CIRCUMSTANCES

21. On or about December 2, 2000, the remains of "H" were cremated at Respondent's establishment prior to the procurement of proper written authorization for the cremation from the authorizing person for "H" as required by Board rules. See 645 Iowa Admin Code § 101.11(4).

22. On or about December 21, 2000, the remains of "K" were cremated at Respondent's establishment prior to proper written authorization being obtained for the cremation from the authorizing person for "K" as required by Board rules. See 645 Iowa Admin Code § 101.11(4).

23. On or about February 20, 2001, the remains of "P" were cremated at Respondent's establishment prior to the issuance of a cremation permit by a medical

examiner as required by Board rules. See 645 Iowa Admin Code § 101.11(4).

24. A licensee is subject to discipline by the Board for engaging in practices that harmful or detrimental to the public regardless of whether actual injury occurred. See Iowa Code §§ 147.55, 272C.10 (2001); 645 Iowa Admin. Code § 101.9(2)g. A licensee is also subject to discipline if the licensee has violated Iowa Code Chapter 156 or any rule promulgated by the Board. See Iowa Code §§ 156.15(2)(b) (2001); 645 Iowa Admin. Code § 101.9(2)c. Performing cremations without the proper authorization from the authorizing person or a medical examiner is a practice potentially harmful or detrimental to the public.

25. The Respondent has engaged in conduct that violates the laws and rules governing the practice of mortuary science in the State of Iowa and the Board has jurisdiction to initiate a disciplinary proceeding in this case.

COUNT IV

Respondent is charged with failing to maintain true and accurate records as required by the Iowa Code and the rules promulgated pursuant to the Board's statutory authority. See Iowa Code § 156.15(3); 645 Iowa Admin. Code §§ 101.9(2)f.

CIRCUMSTANCES

26. On March 6, 2001, pursuant to paragraph 3(E) of the Consent Agreement, a designee of the Board requested copies of all records relating to services performed by the Respondent in relation to "H", date of death December 2, 2000; "K", date of death December 21, 2000; "P", date of death December 21, 2000; and "B", date of death

February 20, 2001.

27. The records supplied by the Respondent did not include copies of the delivery or receiving receipts regarding the disposition of the remains of “H”, “K”, “P”, and “B”.

28. The rules promulgated by the Board require that a cremation establishment maintain as part of its permanent records copies of both the delivery receipt and the receiving receipt for all cremation services performed by the establishment. See 645 Iowa Admin. Code § 100.11(1).

29. A licensee is subject to discipline by the Board for failing to maintain true and accurate records as required by the Iowa Code and the rules promulgated pursuant to the Board’s statutory authority. See Iowa Code § 156.15(3); 645 Iowa Admin. Code §§ 101.9(2)f.

30. The Respondent has engaged in conduct that violates the laws and rules governing the practice of mortuary science in the State of Iowa and the Board has jurisdiction to initiate a disciplinary proceeding in this case.

COUNT V

Respondent is charged with knowingly making misleading, deceptive, untrue or fraudulent representations in the operation of its cremation and funeral establishments and/or falsifying business records. See Iowa Code ' ' 147.55, 156.15, 272C.10 (2001); 645 Iowa Admin. Code §§ 101.9(2)g & 101.9(2)h.

31. On a case report form submitted to the Board for its review, Respondent attested that Employee “2”, a licensed funeral director, had conducted the funeral arrangements for “S” on June 20, 2001.

32. Funeral arrangements for “S” were actually made by Employee “1”, an unlicensed employee of the Respondent, on June 21, 2001.

33. On a case report submitted to the Board for its review, Respondent attested that only Employee “2” had performed those services and duties that constituted the practice of mortuary science in relation to the disposition of the remains of “B”.

34. A second undisclosed funeral director also performed professional services comprising the practice of mortuary science in relation to the disposition of the remains of “B”.

35. A funeral or cremation establishment licensee is subject to discipline by the Board if the establishment knowingly makes misleading, deceptive, untrue or fraudulent representations in its funeral or cremation operations. See Iowa Code §§ 147.55, 156.15(2)(b), 272C.10 (2001); 645 Iowa Admin. Code §§ 101.9(2)g. A funeral or cremation establishment licensee is also subject to discipline by the Board if the establishment engages in unethical business practices such as falsifying business records. See Iowa Code ' 156.15(2) (2001); 645 Iowa Admin. Code §§ 101.9(2)h.

36. The Respondent has engaged in conduct that violates the laws and rules governing the practice of mortuary science in the State of Iowa and the Board has jurisdiction to initiate a disciplinary proceeding in this case.

COUNT VI

Respondent is charged with violating the terms of probation imposed upon its funeral and cremation establishment licenses by the Consent Agreement entered between the Respondent and the Board. See Iowa Code § 272C.2(a); Exhibit 1.

CIRCUMSTANCES

37. The allegations stated in paragraphs 5-36 are hereby incorporated by reference.

38. The Consent Agreement between the Respondent and the Board provided that the Respondent's funeral and cremation establishment licenses would be issued subject to an 18 month probationary period. (Exhibit 1 at ¶¶ 2 & 3). According to records maintained by the Board, the Respondent's probationary period was to expire April 12, 2002.

39. The terms of probation imposed by the Consent Agreement required that the Respondent "and its employees shall comply with all relevant state and federal statutes and administrative rules, including Iowa's business corporations act, in the course of operating its funeral and cremation establishments in the State of Iowa." (Exhibit 1 at ¶ 3(A)).

40. The Respondent and its employees have engaged in conduct that violates the laws and rules governing cremation and funeral establishments and the practice of mortuary science in the State of Iowa in violation of the Consent Agreement. (See Exhibit 1 at ¶ 3(A)).

41. The terms of probation imposed by the Consent Agreement required that within its Iowa funeral and cremation establishments, the Respondent “shall only permit a licensed funeral director or a person acting within the scope of a Board approved internship to perform those activities for which licensure as a funeral director is required.” (Exhibit 1 at ¶ 3(C)).

42. While acting within his employment with the Respondent, Employee “1” on or about June 21, 2001, performed activities comprising the practice of mortuary science without being licensed by the Board in the State of Iowa as a funeral director. Respondent failed to ensure that its employees only performed those activities for which they possessed proper licensure in violation of the Consent Agreement. (See Exhibit 1 at ¶ 3(C)).

43. The terms of probation imposed by the Consent Agreement required that the Respondent “file monthly case reports with the Board for every funeral and cremation performed by any of the [Respondent’s] Iowa funeral or cremation establishments.” (Exhibit 1 at ¶ 3(E)).

44. Respondent failed to file timely monthly case reports for services it performed at its cremation and funeral establishments for: “H”, date of death December 2, 2000; “K”, date of death December 21, 2000; “P”, date of death December 21, 2000; and “B”, date of death February 2, 2001. Respondent’s failure to file timely case reports for all services provided constitutes a violation of the Consent Agreement. (See Exhibit 1 at ¶ 3(E)).

45. The terms of probation imposed by the Consent Agreement provides that the failure of the Respondent to “provide complete and truthful information in the monthly case reports shall constitute a violation of this Agreement.” (Exhibit 1 at ¶ 3(E)). Among the information to be provided on the monthly case reports was the name of the “[f]uneral director or other authorized person performing those services and duties which constitute the practice of mortuary science.” (Exhibit 1 at ¶ 3(E)).

46. On a monthly case report required under the consent agreement, Employee “2” was identified as the person performing funeral arrangements for “S” on June 20, 2001. Employee “1”, an unlicensed employee of the Respondent actually performed funeral arrangements for “S” on June 21, 2001.

47. On a monthly case report required under the consent agreement, Employee “2” was identified as the only person who had performed services and duties constituting the practice of mortuary science in relation to the disposition of the remains of “B”. A second undisclosed licensed funeral director also performed professional services comprising the practice of mortuary science in relation to the disposition of the remains of “B”. Respondent furthermore failed to disclosure on the case report submitted for “B” who embalmed the remains of “B” and when the embalming occurred.

48. Respondent’s failure to provide complete and truthful information on all case reports submitted to the Board pursuant to the terms of the Consent Agreement constitutes a violation of the Consent Agreement. (See Exhibit 1 at ¶ 3(E)).

49. The terms of probation imposed by the Consent Agreement required that the Respondent submit the monthly case reports on forms supplied by the Board and shall “attest” to the veracity of the required information. (Exhibit 1 at ¶ 3(E)).

50. In violation of the Consent Agreement, Respondent failed to timely file multiple case reports with the required attestation signed. (See Exhibit 1 at ¶ 3(E)).

51. Licenses issued by the Board are subject to discipline if the licensees violate the terms of probation imposed upon their license by an order of the Board. See Iowa Code § 272C.3(2)(a) (2001); Exhibit 1 at ¶ 5.

52. The Respondent has engaged in conduct that violates the laws and rules governing the practice of mortuary science in the State of Iowa and the Board has jurisdiction to initiate a disciplinary proceeding in this case.

FINDING OF PROBABLE CAUSE

On September 13, 2001, the Iowa Board of Mortuary Science Examiners found probable cause to file this Statement of Charges and to order a hearing set in this case.

This Statement of charges was approved by the Board on October 22, 2001.