

**BEFORE THE BOARD OF MORTUARY SCIENCE
OF THE STATE OF IOWA**

IN THE MATTER OF)	NO. MS 07-015
)	
Andrew Joyce,)	
Lic. # 02665)	
)	
and)	
)	
Joyce Funeral Home, Inc.)	NOTICE OF HEARING
Lic. # 00592 (Emmetsburg))	
)	AND STATEMENT OF CHARGES
and)	
)	
Joyce-Alesch Funeral Home)	
Lic. # 00866 (Graettinger))	
)	
)	
RESPONDENTS.)	

COMES NOW the Iowa Board of Mortuary Science (Board) and files this Notice of Hearing and Statement of Charges pursuant to Iowa Code sections 17A.12(2), 17A.18(3), and 645 Iowa Administrative Code (IAC) 11.6.

A. TIME, PLACE AND NATURE OF HEARING

Hearing. A disciplinary contested case hearing shall be held on December 13, 2007, before the Board of Mortuary Science. The hearing shall begin at 9:00 a.m. and shall be located in the Lucas State Office Building, Fifth Floor Board Conference Room 526, Des Moines, Iowa.

Answer. Within twenty (20) days of the date you are served this Notice of Hearing and Statement of Charges you are required by 645 IAC 11.12 to file an Answer. The Answer should specifically admit, deny, or otherwise answer all allegations contained in sections C and D of this Notice of Hearing and Statement of Charges.

Pleadings shall be filed with the Board at the following address: Board of Mortuary Science, 5th Floor, Lucas State Office Building, Des Moines, Iowa, 50319.

Presiding Officer. The Board shall serve as presiding officer, but the Board may request an Administrative Law Judge make initial rulings on pre-hearing matters, and be present to assist and advise the board at hearing.

Hearing Procedures. The procedural rules governing the conduct of the hearing are found at 641 IAC chapter 11. At hearing, you may appear personally or be represented by legal counsel at your own expense. You will be allowed the opportunity to respond to the charges against you, to produce evidence on your behalf on issues of material fact, cross-examine witnesses present at the hearing, and examine and respond to any documents introduced at hearing. If you need to request an alternative time or date for hearing, you must comply with the requirements of 645 IAC 11.18. The hearing may be open to the public or closed to the public at your discretion.

Prehearing Conference. A prehearing conference will be held by telephone on the 7th day of December, 2007, at 1:30 p.m., before an Administrative Law Judge from the Iowa Department of Inspections and Appeals (“ALJ”). You are responsible for notifying the Board office of the telephone number at which you or your counsel can be reached. Board rules on prehearing conferences may be found at 645 Iowa Administrative Code 11.17.

Prosecution. The Office of the Attorney General is responsible for representing the public interest (the State) in this proceeding. Copies of pleadings should be provided to counsel for the State at the following address: Pam Griebel, Assistant Attorney General, Iowa Attorney General’s Office, 2nd Floor, Hoover State Office Building, Des Moines, Iowa 50319.

Communications. You may not contact board members in any manner, including by phone, letter, or e-mail, about this Notice of Hearing and Statement of Charges. Board members may only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve upon all parties in the case.

B. LEGAL AUTHORITY AND JURISDICTION

Jurisdiction. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 147, 156, and 272C.

Legal Authority. If any of the allegations against you are founded, the Board has authority to take disciplinary action against you under Iowa Code Chapters 17A, 147, 156, and 272C and 645 IAC chapter 103.

Default. If you fail to appear at the hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence, in accordance with Iowa Code Section 17A.12(3) and 645 IAC 11.21.

C. STATEMENT OF CHARGES AND FACTUAL CIRCUMSTANCES

Count I

1. Respondent Andrew Joyce (Joyce) was issued Iowa license 02665 on December 10, 1997. Respondent's license was not timely renewed and it expired on August 15, 2005. Respondent did not reactivate his license to active status until September 11, 2007. Respondent's license is now current and will next expire on August 15, 2009. Respondent's address as reported to the Board is 2302 23rd Street, Emmetsburg, IA 50536.

2. During the period in which Respondent's license was lapsed and inactive, he continued to practice mortuary science in the state of Iowa.

3. Respondent Joyce engaged in a practice harmful or detrimental to the public by repeatedly practicing mortuary science on a lapsed and inactive license, in violation of Iowa Code sections 147.55(3) and (8), 156.4(2), 156.9(1) and (2)(d), and 272C.10(3) and (8) (2005, 2007), and 645 Iowa Admin. Code 101.15(2), 101.16(1) (2005, 2006), and 645 Iowa Admin. Code 101.10(7) (7/5/06 to current).

Count II

4. Respondents Joyce Funeral Home and Joyce-Alesch Funeral Home are the names used by Joyce for funeral homes in two locations.

5. License No. 00592 for Emmetsburg, Iowa 50536 was issued on October 27, 2000. The Emmetsburg license expired on June 30, 2006, and was not reinstated until September 11, 2007. During the period in which the Emmetsburg license was inactive and lapsed, the establishment was used for performing mortuary science services.

6. License No. 00866 for Graettinger, IA 50536 was issued on September 11, 2007, but the Graettinger location had been used for the performance of mortuary science services for several months prior to the date of licensure.

7. Respondent Joyce is charged with practicing mortuary science services in one establishment with a lapsed and inactive license and in a second establishment prior to the date of initial licensure, in violation of Iowa Code section 156.4(1) (2005, 2007).

Count III

8. Respondent Joyce is charged with operating two funeral establishments in which mortuary science services were performed without proper licensure, in violation of Iowa Code sections 156.14 and 156.15 (2005, 2007).

Count IV

9. Respondents Joyce Funeral Home and Joyce-Alesch Funeral Home are charged with allowing a funeral director to perform mortuary science services while the funeral director's license was lapsed and inactive, and have otherwise operated as funeral establishments without proper licensure in violation of Iowa Code sections 156.14, 156, and specifically 156.15.2(b) and (c) (2005, 2007).

D. SETTLEMENT

This matter may be resolved by settlement agreement. The procedural rules governing the Board's settlement process are found at 645 IAC chapter 12. If you are interested in pursuing settlement of this matter, please contact Pam Griebel, Assistant Attorney General, at 515.281.6858.

E. PROBABLE CAUSE FINDING

On this 13th day of September, 2007, the Iowa Board of Mortuary Science found probable cause to file this Notice of Hearing and Statement of Charges.

This notice of hearing and statement of charges is approved by the board on September 13, 2007.