



section 21.5(1)(f)(2001) to deliberate its decision. The administrative law judge was directed to draft the Board's decision, in conformance with their deliberations. A motion approving the written decision was taken in open session.

#### **THE RECORD**

The record includes the Statements of Charges, Notices of Hearing, Motions for Continuance, Orders Granting Continuance and Order Denying Dismissal, Amendment to Statement of Charges filed against Kevin Neely, Order Granting Motion to Consolidate, the testimony of the witnesses, State Exhibits 1-40, and Respondent Exhibits A-D.

#### **FINDINGS OF FACT**

##### Probationary Requirements/Case Reports

1. On October 12, 2000, the Iowa Board of Mortuary Science Examiners (Board) entered into a Consent Agreement with Neptune Society, Inc. of Burbank, California (hereinafter, Neptune). Pursuant to the consent agreement, Neptune was issued license numbers 151-00588 and 151-00590 to operate a funeral establishment and a cremation establishment at 128 Shurfine Drive, Ankeny, Iowa, and license no. 151-00589 to operate a funeral establishment at 102 N.E. Trilein Drive, Ankeny, Iowa. All three licenses were placed on probation for eighteen months, subject to terms and conditions. The relevant terms and conditions of probation included:

a. That Neptune and its employees shall comply with all relevant state and federal statutes and administrative rules in the course of operating its funeral and cremation establishments in Iowa.

b. That Neptune shall designate to the Board the name and address of the employee who shall be responsible for the management and oversight of daily operations of each of its Iowa funeral and cremation establishments.

c. That Neptune shall only permit a licensed funeral director or person acting within the scope of a Board approved internship to perform those duties for which licensure as a funeral director is required.

d. That Neptune shall file monthly case reports with the Board by the tenth day of each month, for every funeral and cremation performed by any of its licensed Iowa establishments. The reports shall attest to the following information for each funeral and cremation since the

previous report was due: name of decedent; date of death; final disposition of decedent's remains; names, addresses and telephone numbers of the persons primarily responsible for coordinating and determining funeral arrangements; funeral director or other authorized person performing those services and duties which constitute the practice of mortuary science.

e. Upon request of the Board, a designated representative shall appear before the Board to report on the status of Neptune's operations or to answer questions concerning compliance.

According to the records of the Board, the probationary period for Neptune Society expired on April 12, 2002. Testimony of Phyllis Prall; State Exhibits 1-3)

2. Kevin Seely was issued funeral director license number 104-02269 by the Board on November 2, 1983. He has practiced mortuary science in the state of Iowa since that time. He has had no prior disciplinary action taken against his license.

a. In April 2000, Kevin Seely was hired as a full time employee/licensed funeral director by Neptune Society. At the time that he was hired, he was Neptune's only licensed funeral director. He was responsible for all duties required to be performed by a funeral director, including removal of bodies, preparation of bodies, making funeral arrangements, and disposition of bodies.

b. During the time period relevant to this decision, Neptune handled an average of seventeen deaths each month, and advertised state-wide coverage. If a death occurred outside of Neptune's driving range (approximately 75 miles), other funeral homes in the state agreed to assist Neptune in providing complete services. In addition, Neptune had three licensed funeral directors available locally on call. In August 2001, Mr. Seely became the location manager for Neptune. In September 2001, Neptune hired a second licensed funeral director for its Ankeny establishments.

c. Pursuant to Neptune's Consent Agreement with the Board, Kevin Seely was designated as one of three persons responsible for signing and filing monthly case reports. (State Exhibit 4) Prior to August 2001, Kevin Seely shared responsibility for preparing the reports, but he was the person who signed the reports and hand delivered them to the receptionist at Professional Licensure. Kevin Seely

testified that the reports were computer generated in triplicate; he signed only the copy that was given to the Board and did not retain signed copies in Neptune's files.

(Testimony of Kevin Seely; Phyllis Prall; State Exhibits 4-6)

3. Department of Public Health Professional Licensure Bureau (Professional Licensure) Clerk Specialist Phyllis Prall was assigned to compare the local published obituaries which named Neptune as the responsible funeral or cremation establishment to the actual monthly case reports filed by Neptune. The Board had fourteen (14) case reports from Neptune for December, 2000. Ms. Prall identified five additional cases (hereinafter H, K, P, W, JB) where Neptune was listed in a December 2000 obituary, but no case report was filed with the Board. On March 6, 2001, Professional Licensure asked Neptune to provide it with all records and documents for these five decedents. (Testimony of Phyllis Prall; State Exhibits 7, 8)

a. On March 26, 2001, Kevin Seely responded to the records request with case reports for three of the five decedents. (H, K, and P) At the hearing, Mr. Seely testified that he thought he had filed signed originals of these three reports in a timely manner, but now believes that he inadvertently failed to file one of them. According to Mr. Seely, when the Board requested the records, he had the unsigned copies of these three reports in Neptune's files and a signed receipt indicating that he submitted a total of sixteen (16) case reports to the Board for December 2000. However, he did not submit the receipt into the record. Since the Board only had fourteen reports, Mr. Seely assumes he submitted only two of the three reports. Since no names are attached to the receipt, he is not sure which two he submitted. He cannot explain what happened to the third original missing case report. (Testimony of Kevin Seely; State Exhibits 9-12)

b. Mr. Seely further responded on March 26<sup>th</sup> that Neptune was not involved in any way with the funeral or cremation of W. It was an out of area obituary, and the arrangements were handled by a California Neptune Society. The Board accepted this explanation. (Testimony of Kevin Seely; State Exhibit 9)

c. Kevin Seely did not provide a case report for decedent JB on March 26<sup>th</sup> but later explained that since a trade service in Rochester, MN handled the removal and the cremation, he did not believe a report was required. He submitted a case report on May 14, 2001. (State Exhibits 4, 17)

4. On May 2, 2001 the Board Administrator wrote to Kevin Seely, pointing out various deficiencies in the records he had provided, including the fact that the case reports for H, K, and P were not signed. On May 14, 2001, Mr. Seely responded and explained that he did not retain a signed copy of the case reports in his files, so when he sent the reports for H, K, and P he just sent the unsigned copies that he had in his file. He then signed copies of the three reports and attached them to his letter. (Testimony of Phyllis Prall; Kevin Seely; State Exhibits 16-21)

5. Neptune, through its authorized agent Kevin Seely, failed to timely file monthly case reports for services it performed at its cremation and funeral establishments for H (date of death: 12/2/00); K (date of death: 12/21/00); and P (date of death 12/21/00). Kevin Seely's testimony that two of the three reports had been filed with the Board in a timely manner was not convincing. Phyllis Prall testified that the Board did not receive any case reports for H, K, or P until March 29, 2001 and did not receive signed copies until May 14, 2001. Since the case reports were hand delivered directly to the Bureau's receptionist and they were closely monitored for comparison to the published obituaries, the Board believes it is unlikely that they were lost after being filed. (Testimony of Phyllis Prall; Kevin Seely; State Exhibits 8-12; 16-20)

6. On February 28, 2001, Kevin Seely signed a case report for B (date of death February 20, 2001). The case report, which was filed with the Board, states that Kevin Seely was the licensed funeral director who provided arrangements for services, cremation, and transportation of the deceased. No other licensed funeral director was listed on the report. The Board discovered, through a case report filed by another licensee, that a second licensed funeral director directed and supervised the funeral service and furnished funeral services for B. Neptune failed to identify the second funeral director in its report, although it was required to do so. (Testimony of Phyllis Prall; Kevin Seely; State Exhibits 14, 15)

Allowing Unlicensed Persons To Practice Mortuary Science

7. At 10:00 a.m. on June 20, 2001, L.A. "Vern" Smith received a call from the chaplain at Iowa Methodist Medical Center in Des Moines, notifying him to come to the hospital immediately. His wife, who had no previous history of heart problems, had suffered a heart attack. Upon his arrival, Mr. Smith was informed that her condition was terminal and she was not expected to survive. He was told that he should start making final arrangements.

In previous discussions, Mr. and Mrs. Smith had agreed that they wished to be cremated and wanted private services with immediate

family only. After being told that his wife was not expected to survive, Mr. Smith called three funeral and cremation establishments, including Neptune Society, to obtain basic information concerning their services. Mr. Smith spoke to Scott Kuhl, an employee of Neptune, explained his situation, and asked for information. Mr. Kuhl is not a licensed funeral director; he is a pre-need sales counselor.

After his wife passed away on June 20, 2001 at 1:10 p.m., Mr. Smith decided to use Neptune's services. He called Neptune and again spoke to Mr. Kuhl. Mr. Smith told him that his wife had passed away, and he now needed Neptune's services. He explained that his two adult daughters were both out of town, and he could not make arrangements until he knew when they would be arriving. Scott Kuhl told Vern Smith that Neptune would pick up his wife's body, but that a personal meeting was required to take care of the paper work. Scott Kuhl made an appointment to meet Vern Smith at his house the following morning, June 21, 2001. Kevin Seely removed the body from the hospital at 3:15 p.m. on June 20, 2001. (Testimony of L.A. "Vern" Smith; Kevin Seely; State Exhibits 23, 24)

8. On June 21, 2001 at approximately 10:00 a.m., Scott Kuhl met with Vern Smith and his daughter, Merrie Lyn Webb, at the Smith home. The second daughter was scheduled to arrive in Des Moines from Texas at noon. Mr. Kuhl presented Vern Smith and Merrie Webb with his business card, which identified him as a "family counselor." (State Exhibit 25). Vern Smith gave Scott Kuhl his wife's social security number and information for her obituary. Scott Kuhl explained the cost of cremation service and the extra fees for death certificates and medical examiner permits. He brought a Retail Installment Contract Agreement for Pre-Arranged Funeral Services with him, which had already been signed by Kevin Seely. (Testimony of L.A. "Vern" Smith; Merrie Lyn Webb; State Exhibit 28; Respondent Exhibit D)

Vern Smith explained to Mr. Kuhl that he and his daughters wanted an opportunity for a dignified and private family service where they could say their final good-bye. Mr. Kuhl explained the option for a "private viewing" to them. While Mr. Smith and his daughter have slightly different recollections of the exact words used by Mr. Kuhl to describe the viewing, both came to believe that the body of Mrs. Smith would be on a couch and covered with a nice quilt. She would be "fixed up" or "made up," would be wearing her glasses, and would appear to be sleeping. Mr. Kuhl explained that the price of a "family viewing" would be \$195.00, and it would be held at 2:00 p.m. that day at Neptune's facility on Shurfine Drive in Ankeny. They were never offered the opportunity to have the private viewing in the chapel at Neptune's funeral establishment on Trilein Drive. Mr. Smith signed the contract and paid in full using his credit card. He

credibly testified that he was never shown a general price list during this meeting. (Testimony L.A. Verne Smith; Merrie Lyn Webb; State Exhibits 21, 22, 27)

9. Mr. Smith, his daughters, son-in-law, and grandson arrived at Neptune Society's funeral and cremation establishment at 128 Shurfine Drive in Ankeny at 2:00 p.m. on June 21, 2001. There was no one in the reception area when they entered. The reception area contained a table, a computer, and just two chairs. The five of them waited for at least twenty minutes. Although employees passed through the room, no one offered to help them. Finally Scott Kuhl came out and told them it would take a few more minutes to get ready for the private viewing. A few minutes later, Scott Kuhl came out and led them down a long hall and through a door marked "Restricted." They were shocked to find themselves in a big, warehouse type room with a cement floor. They immediately saw the cremation furnace on one wall. Mrs. Smith was lying on a gurney or cot against another wall and was covered with a quilt, which they described as "old" and "tacky." Mr. Smith was unprepared for her appearance and was upset that she had no makeup. They were left alone in the cremation room to say their goodbyes.

Mr. Smith and his daughters were devastated by the undignified and demeaning circumstances of the private viewing provided by Neptune. Mr. Smith felt that his wife's body had not been prepared for the viewing in a manner consistent with Mr. Kuhl's representations to him. Both Mr. Smith and his daughter had expected her to be in a dignified room, lying on a couch or sofa. They felt unable to properly say goodbye or to read the eulogy that Mr. Smith had written. They left the establishment in shock. No one from Neptune spoke to them before they left. (Testimony L.A. Verne Smith; Merrie Lyn Webb; State Exhibits 21, 22, 26)

10. Kevin Seely conceded that as the responsible funeral director, he should have been directly involved in arranging the services for Patricia Smith. Kevin Seely was scheduled to go on vacation on June 21, 2001 at 6:00 a.m. Mr. Seely claims that he signed the pre-arrangement contract for Mr. Kuhl on June 20, 2001 before Mrs. Smith died, but did not date it. The Board did not believe this testimony. It is clear that Mr. Smith did not select Neptune to provide cremation arrangements for his wife until after her death. This was not a pre-arrangement contract; it was an at-need sales contract.

Mr. Seely testified that he removed Mrs. Smith's body from the hospital on June 20, 2001. He knew that Mr. Kuhl was meeting with the family the following morning to make "at-need" arrangements and review the contract. Mr. Seely testified that he knew that there would be a viewing with the family, so he

prepared the body for the viewing before leaving on vacation. Mr. Seely never spoke to Mr. Smith prior to the viewing or cremation.

Mr. Seely admitted that he would not have handled the private viewing in the same manner that it was handled by Scott Kuhl. He agreed that the viewing should not have been held in the cremation room. Neptune normally conducts private viewings at its facility on Trilein Drive, which has a chapel. Mr. Seely conceded that setting would have been consistent with the family's expectations and standards of practice. In addition, a conference room at the Shurfine facility is occasionally used for private viewings by removing the conference table and dimming the lights.

Mr. Seely testified that unless a casket is used, Neptune always places the body on a cot, covered with a quilt that drapes to the floor. He assumes that Mr. Smith must have misunderstood Mr. Kuhl when they thought he said the body would be on a "couch." It would be inappropriate to use a couch for a viewing; unless a casket is purchased or rented, Neptune always places the body on a cot for viewings. (Testimony of Kevin Seely)

11. Kevin Seely filed a case report with the Board, which falsely states that he was the licensed funeral director who made the arrangements for services with the Smith family on June 20, 2001. In addition, Kevin Seely signed the written Cremation Authorization indicating that he had witnessed the signature of the authorized representative, Mr. Smith. In fact, Mr. Seely was not present when Mr. Smith signed the Cremation Authorization. (Testimony of Kevin Seely; L.A."Vern" Smith; State Exhibits 23, 28, 29)

12. Mr. Smith and his daughter, Merrie Lyn Webb, each filed complaints against Neptune with the Board and with the consumer protection division of the Attorney General's office. Neptune Society eventually refunded Mr. Smith all payments made in connection with his wife's cremation arrangements. (Testimony of L.A."Vern" Smith; Merrie Lyn Webb; State Exhibits 21, 22, 30)

13. The state's expert witness, Carlton Peterson, is president of Hamilton's Funeral Homes, has been an Iowa licensed funeral director for thirty-five years, and has previously served on the Board of Mortuary Science. Hamilton's has establishment licenses for five funeral homes and also has a crematory license. Hamilton's employs 17-19 licensed funeral directors and handles arrangements for 1650-1700 deaths a year, including an average of 500 cremations. Kevin Seely was previously employed by Hamilton's as a licensed funeral director for at least ten years. He left their employment to pursue a better opportunity with another mortuary, owned by Mr. Peterson's cousin. Carlton

Peterson has no ill will toward Mr. Seely and had no concerns about the quality of his work while he was employed by Hamilton's. Mr. Peterson provided the following testimony and opinions:

a. A pre-need counselor does not have to be licensed funeral director and is permitted by law to make pre-need arrangements. However, a pre-need counselor who has instituted pre-need arrangements prior to death is not authorized to complete and finalize those arrangements after death. After death, the law requires that all arrangements with the family of the deceased must be handled by a licensed funeral director.

b. Public policy concerns for public health and welfare and consumer protection underlie this requirement. Licensed funeral directors have the required training and expertise to ensure that all required disclosures are made to the family and to ensure that the family is not coerced at a vulnerable time. Required disclosures include price lists and an itemized statement of goods and services signed by both the consumer and the licensed funeral director. In addition, a licensed funeral director has the necessary expertise to prepare the family and to properly handle the difficult issues facing survivors.

c. Scott Kuhl was inappropriately practicing mortuary science without a license when he met with the Smith family to discuss and make funeral and cremation arrangements. Conducting the private viewing in the cremation room was undignified, completely inappropriate, and harmful to the family, who were completely unprepared for the type of viewing that had been arranged. (Testimony of Carlton Peterson)

Failure To Obtain Signatures of Authorized Representatives On Funeral Purchase Contracts and Cremation Authorizations; Failure To Maintain True and Accurate Records (Delivery or Receiving Receipts)

14. For the protection of the consumer, the Federal Trade Commission (FTC) has promulgated rules governing the provision of funeral goods and services. These rules have been incorporated into the Board's rules at 645 IAC 100.6. The rules require the responsible funeral director to make disclosures to the consumer concerning the Federal Trade Commission price lists, the types of ceremonies or final disposition, the specific goods and services and their prices, and to prepare a written, itemized statement of the funeral goods and services.

At the conclusion of the arrangements, the itemized statement of funeral goods and services must be signed by the purchaser and the funeral director. This is true even if the arrangements were initially made as part of a pre-need contract. The funeral director can initiate arrangements with a verbal agreement if they cannot be physically present with the purchaser but must deliver the written statement of goods and services to the purchaser and obtain their signature at the earliest possible time. (Testimony of Carlton Peterson; State Exhibit 40)

15. The Board has rules requiring specific forms of record keeping when human remains are cremated. See 645 IAC 100.11. The required records include a delivery receipt, receiving receipt, and authorization to cremate.

Remains may not be cremated without the written consent of the authorizing person. Iowa law provides that a body must be cremated within forty-eight hours of death unless it is embalmed. If a funeral director is unable to obtain written authorization within the forty-eight hour time period, the body could be embalmed or the coroner could be asked to extend the 48 hour time period while authorization is obtained.

The purpose of these requirements is twofold: to have a written record of the chain of custody of the body from removal through delivery of the cremains to an authorized person and to maintain public confidence that cremains are those of the identified deceased. The delivery receipt is given by the crematory to the person delivering the human remains. The receiving receipt is given by the crematory to any person who received the cremated remains. The crematory is required to maintain copies of the delivery and receiving receipts in a permanent record at its place of business.

A delivery receipt is required by the rules every time a body is received by a crematory, regardless of whether the same establishment handles both the removal and delivery as well as receipt of the body for cremation. Hamilton's is both a funeral establishment and a cremation establishment. Delivery receipts are still signed and issued even if the same person is both delivering and receiving the body. (Testimony of Carlton Peterson; State Exhibit 40)

16. Kevin Seely was the funeral director responsible for making funeral arrangements for H (date of death December 2, 2000). An undated funeral purchase contract was prepared on or about December 3, 2000. The mother of H was the authorized representative to make arrangements. According to Kevin Seely, she did not want the body embalmed because she could not afford it. Mr. Seely spoke to H's mother over the phone to make all arrangements and mailed her a copy of the funeral purchase

contract and authorization to cremate with instructions to return signed copies to him. She did not returned them prior to the cremation. Although H's mother lived in Des Moines, Mr. Seely could not recall what further steps, if any, he took to obtain her signature on the funeral purchase contract or on the authorization to cremate. When the forty-eight hour time limit for keeping the body without embalming had nearly expired, Mr. Seely decided to proceed with the cremation without written authorization. Approximately three months after the cremation, H's mother returned a signed copy of a cremation authorization, in response to a reminder letter sent by Kevin Seely, but she did not return the signed funeral purchase contract. (Testimony of Kevin Seely; Phyllis Prall; State Exhibits 10; 18; Respondent Exhibits A, B)

17. Kevin Seely was the funeral director responsible for making funeral arrangements for B (date of death, February 20, 2001). A funeral purchase contract was prepared and dated February 23, 2001, but was not signed by an authorized representative.

Neptune had a pre-need contract with B, dated November 2, 2000. (State Exhibit 35). At the time of death, B's wife came to Neptune and requested additional services that were not part of the pre-need contract. The written funeral purchase contract was not prepared until after this meeting, and it was mailed to B's wife on March 2, 2001 so that she could submit an insurance claim. She never signed the contract. (Testimony of Kevin Seely; Phyllis Prall; State Exhibits 13, 35-38)

18. Kevin Seely was the funeral director responsible for making funeral arrangements for P (date of death December 21, 2000). A funeral arrangement conference was held with the sister 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.

Kevin Seely explained his failure to prepare and obtain a signature on a funeral purchase contract by stating that P's only family was a sister, who was not willing to assume financial responsibility for the arrangements, and who was only willing to authorize cremation. Neptune has an agreement with the Veterans Hospital that allows them to provide services and file for VA benefits for unclaimed bodies. Instead of a written purchase contract, Mr. Seely prepared a Statement of Cost for Veterans Burial Benefits, which he submitted to the VA. (Testimony of Kevin Seely; State Exhibits 12, 20; Respondent Exhibit C)

19. On or about December 21, 2000, the remains of K were cremated at Neptune Society prior to proper written authorization being obtained for the cremation. Kevin Seely only obtained

verbal permission for the cremation. (Testimony of Kevin Seely; State Exhibit 11, 19)

20. Neptune Society did not maintain delivery receipts regarding the disposition of the remains of H, K, P or B. It did not have a signed receiving receipt for H, but Kevin Seely explained that the family never picked up the cremains of H.

Kevin Seely thought that delivery receipts were only necessary when an establishment did not have an in-house crematorium. He testified that Neptune did not prepare delivery receipts because they did only their own cremations, and he was in charge of the body from removal through disposition. Under these circumstances, he did not think that a delivery receipt was required. Kevin Seely testified that Neptune does maintain a delivery log, but it was not produced at the hearing. (Testimony of Kevin Seely; State Exhibits 9-13; 18-20; 31-34)

#### **CONCLUSIONS OF LAW**

##### Neptune Society

#### **COUNT I**

The Board is authorized to impose a penalty, not to exceed ten thousand dollars, issue a reprimand, or revoke, restrict, cancel, or suspend a license, and may place a license on probation if the Board finds that a licensed funeral or cremation establishment has knowingly aided, assisted, procured, advised, or allowed a person to unlawfully practice mortuary science. Iowa Code section 156.15(2)(c)(2001). Accord, 645 IAC 101.9(2).

As provided by Iowa Code section 156.1(7)(2001) "Mortuary science" means engaging in any of the following:

...

b. Making funeral arrangements or furnishing any funeral services in connection with the disposition of dead human bodies or sale of any casket, vault, urn, or other burial receptacle.

The preponderance of the evidence established that the Respondent Neptune Society violated Iowa Code section 156.15(2)(c); 156.1(7) and 645 IAC 101.9(2) when it knowingly allowed employee Scott Kuhl, an unlicensed person, to make funeral arrangements and furnish funeral services to the family of "S."

#### **COUNT II**

The Board is authorized to impose a penalty, not to exceed ten thousand dollars, issue a reprimand, or revoke, restrict, cancel,

or suspend a license, and may place a license on probation if the Board finds that a licensed funeral or cremation establishment has violated this chapter or any rule adopted under this chapter or that any owner or employee of the establishment has violated this chapter or any rule adopted under this chapter. Iowa Code section 156.15(2)(b)(2001). Accord, 645 IAC 101.9(2)(c).

The preponderance of the evidence established that Neptune's employee, Kevin Seely, has violated Iowa Code section 156.9(2)(c)(2001) by knowingly aiding, assisting, procuring, advising, or allowing a person (Scott Kuhl) to unlawfully practice mortuary science. He has also violated 645 IAC 100.6(2) by failing to perform the duties of a licensed funeral director with respect to the cremation arrangements for S. Kevin Seely failed to present, discuss, or explain the price lists, the types of ceremony or final disposition, the specific goods and services or their price with the family of S. Neptune employee Kevin Seely also violated 645 IAC 100.6(2)"b"(4) when he failed to obtain the signatures of the authorized representatives of H and B on the written funeral purchase contracts and when he failed to prepare a written funeral purchase contract for P, or to make any written record of his rationale for failing to prepare a written contract.

The preponderance of the evidence further established that Neptune's employee, Kevin Seely, is guilty of negligence, by failing to exercise due care, including negligent delegation to or supervision of employees or other individuals, in violation of 645 IAC 101.8(6). Mr. Seely was negligent in his delegation of duties and his failure to supervise employee Scott Kuhl, when he permitted Mr. Kuhl to make at-need arrangements with the family of S and when the arrangements for the private viewing were made in a negligent manner.

The preponderance of the evidence also established that Neptune's employee, Kevin Seely, is guilty of unethical business practices, i.e. falsifying business records, in violation of 645 IAC 101.8(8). Kevin Seely falsely attested to the validity of the signature of the authorized representative for S on the cremation authorization form. He was not present when the authorized representative signed the form, contrary to his signed statement on the form itself. Kevin Seely falsely attested on the case report for S that he made the funeral arrangements on June 20, 2001. In fact, the funeral arrangements were made by Scott Kuhl, not Kevin Seely. Kevin Seely falsely attested on a case report for B that he was the only funeral director who performed mortuary science services and duties with respect to the disposition of the remains of B. In fact, a second undisclosed funeral director also performed professional services in relation to the disposition of the remains of B.

**COUNT III**

The Board is authorized to impose a penalty, not to exceed ten thousand dollars, issue a reprimand, or revoke, restrict, cancel, or suspend a license, and may place a license on probation if the Board finds that a licensed funeral or cremation establishment has violated this chapter or any rule adopted under this chapter or that any owner or employee of the establishment has violated this chapter or any rule adopted under this chapter. Iowa Code section 156.15(2)(b)(2001). Accord, 645 IAC 101.9(2)(c).

Iowa Code sections 147.55(3) and 272C.10(3) authorize the suspension or revocation of a license when the licensee engages in a practice harmful or detrimental to the public. Proof of actual injury need not be established. Accord, 645 IAC 101.9(2)"g."

645 IAC 100.11(4) requires a crematory to obtain authority to cremate human remains by acquiring a cremation authorization form signed by the authorizing person, a permit for cremation from a medical examiner, and any other documentation required by the state.

The preponderance of the evidence established that Neptune Society violated Iowa Code sections 156.15(2)(b), 147.55(3), 272C.10(3) and 645 IAC 100.11(4), and 101.9(2)"c" and "g" when the remains of H and K were cremated prior to procurement of proper written authorization for the cremation from the authorizing person. Performing cremations without the proper authorization is a practice potentially harmful or detrimental to the public.

**COUNT IV**

Iowa Code section 156.15(3) provides that the Board may discipline the license of a funeral or crematory establishment if the establishment fails to keep and maintain records as required by Iowa Code chapter 156 or the administrative rules. Accord, 645 IAC 101.9(2)"f."

The rules promulgated by the Board require a cremation establishment to maintain as part of its permanent record copies of both the delivery receipt and the receiving receipt for all cremation services performed by the establishment. The preponderance of the evidence established that Neptune Society failed to keep and maintain delivery receipts regarding the disposition of the remains of H, K, P, and B. Neptune Society did not have a receiving receipt for K.

**COUNT V**

Iowa Code sections 147.55(3) and 272C.10(3) authorize the Board to discipline a licensee for knowingly making misleading, deceptive, untrue or fraudulent representations in the operation of its cremation and funeral establishments. Accord, 645 IAC 101.9(2)"g." 645 IAC 101.9(2)"h" authorizes the Board to discipline licensed funeral and cremation establishments for engaging in unethical business practices, including falsifying business records.

The preponderance of the evidence established that Neptune Society violated Iowa Code sections 147.55(3), 272C.10(3) and 645 IAC 101.9(2)"g" and "h" when it filed case reports for S and B with the Board which contained false information. Neptune knew that Kevin Seely did not make the arrangements for S, as stated in the filed case report. Neptune knew that a second licensed funeral director provided professional services in connection with the disposition of the remains of B, but falsely stated in its filed case report that Kevin Seely was the only licensed funeral director who provided professional services.

**COUNT VI**

Iowa Code section 272C.3(2)(a)(2001) authorizes the Board to discipline a licensee for failure to comply with a decision of the Board imposing licensee discipline. On October 12, 2000, Neptune Society was issued three funeral and cremation establishment licenses on probation, pursuant to the terms of a Consent Agreement. The Consent Agreement constitutes a decision of the Board imposing licensee discipline. Pursuant to the terms of the Consent Agreement, the three licenses issued to Neptune Society were placed on probation for eighteen months pursuant to specific terms and conditions.

During the term of probation, Neptune Society 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. Neptune Society failed to obtain signatures of authorized persons on all written funeral purchase contracts. On several occasions, Neptune Society did not have a written cremation authorization prior to cremating human remains. Neptune Society failed to maintain the required delivery receipts.

Neptune Society and its employee, Kevin Seely, have permitted an unlicensed person to perform activities for which a funeral

director license is required. Neptune Society failed to file all of the required case reports; case reports for three decedents were not filed until after the Board requested the records. Moreover, two case reports contained false information concerning who provided professional services. The preponderance of the evidence established that Neptune Society has repeatedly violated the terms of its probation.

Kevin Seely

**COUNT I**

Iowa Code sections 147.55(3) and 272C.10(3) authorize the suspension or revocation of a license when the licensee engages in a practice harmful or detrimental to the public. Proof of actual injury need not be established. Accord, 645 IAC 101.8(1)"c." Iowa Code section 156.9(2)(c) (2001) provides that the Board may restrict, suspend, or revoke a license to practice mortuary science or place a licensee on probation for knowingly aiding, assisting, procuring, advising, or allowing a person to unlawfully practice mortuary science. 645 IAC 101.8(7)"a" prohibits licensed funeral directors from permitting an unlicensed employee or person under the licensee's control to perform activities requiring a license.

The preponderance of the evidence established that Kevin Seely violated Iowa Code section 147.55(3), 272C.10(3), 156.9(2)"c" and 645 IAC 101.8(1)"c" and 101.8(7)"a" by engaging in a practice harmful or detrimental to the public when he knowingly allowed an unlicensed person meet with the family of a decedent and make arrangements for a private viewing and a cremation. Kevin Seely, as the only licensed funeral director employed by Neptune Society at the time of death, was responsible for making the arrangements or ensuring that another licensed funeral director was called in to make the arrangements. Kevin Seely removed the body of S and knew that Scott Kuhl was meeting with her family the following day to make arrangements.

**COUNT II**

A licensee is subject to discipline by the Board for willful or repeated violations of the rules promulgated by the Board. Iowa Code section 156.9(2)(d); 645 IAC 101.8(1)"h" and 101.8(2).

645 IAC 100.6(2)"b" requires the responsible funeral director to present, discuss and explain the mandated Federal Trade Commission price lists and assist or provide the consumer with:

- (1) The types of ceremony or final disposition.
- (2) The specific goods and services.
- (3) The prices of any goods or services.
- (4) The written, itemized statement of the funeral goods and services.

At the conclusion of the arrangements the itemized statement shall be signed by the purchaser and by the funeral director.

The preponderance of the evidence established that Kevin Seely violated Iowa Code sections 156.9(2)(d) and 645 IAC 101.8(1)"h" and 101.8(2) when he repeatedly failed to obtain the signature of the authorized representative on the funeral purchase contract as required by 645 IAC 100.6(2).

### COUNT III

Iowa Code sections 147.55(3) and 272C.10(3) authorize the Board to discipline a licensee for knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of mortuary science. Accord, 645 IAC 101.8(1)"c". The Board is also authorized to discipline licensees for unethical business practices in the practice of mortuary science, including falsifying business records. 645 IAC 101.8(8)"c".

The preponderance of the evidence established that Kevin Seely violated Iowa Code sections 147.55(3), 272C.10(3), and 645 IAC 101.8(1)"c" and 101.8(8)"c" when he signed the cremation authorization form for S falsely attesting to the validity of the signature of the authorized person. In fact, Kevin Seely did not witness the authorized person's signature and never met the authorized person prior to the cremation. In addition, in the case report for S filed with the Board, Kevin Seely attested that he was the person who conducted the funeral arrangements with the family on June 20, 2001. This was also untrue. An unlicensed person made the arrangements; Kevin Seely never met with the family prior to the cremation.

Kevin Seely also violated the above-cited statutes and rules when he filed a case report with the Board for B, which falsely stated that he was the only licensed funeral director who performed professional services constituting the practice of mortuary science in relation to the disposition of the remains of B.

### COUNT IV

645 IAC 101.8(6) provides that the Board may impose any of the disciplinary sanctions set forth in rule 645-13.1(272C), including civil penalties in an amount not to exceed \$1000, when the Board determines that the licensee is guilty of negligence in the practice of the profession. Negligence is defined as a failure to exercise due care including negligent delegation to or supervision of employees or other individuals, whether or not injury results.

The preponderance of the evidence established that Kevin Seely engaged in unethical conduct or conduct harmful or detrimental to the public, in violation of Iowa Code sections 147.55(3), 272C.10(3)(2001) and 645 IAC 101.8(1)"c" when he failed to exercise due care and negligently delegated duties which constituted the practice of mortuary science to Scott Kuhl, an unlicensed person. Moreover, the arrangements made by Scott Kuhl were not in conformance with industry standards and caused actual emotional harm to the family members of the decedent. Mr. Kuhl ineffectively and incompetently discussed options with the family of S, failed to gain an understanding of the family's expectations or preferences with respect to the private viewing, was not ready for the family when they arrived at the cremation establishment, and held the private viewing in an inappropriate room. Kevin Seely either should have made the arrangements himself or he should have arranged for another licensed funeral director to make the arrangements with the family and supervise the viewing.

#### SANCTIONS

The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

1. The relative serious nature of the violation as it relates to assuring the citizens of this state a high standard of professional care.
2. The facts of the particular violation.
3. Any extenuating facts or other countervailing considerations.
4. The number of prior violations or complaints.
5. The seriousness of prior violations or complaints.
6. Whether remedial action has been taken.
7. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee.

645 IAC 13.2.

The Board has given serious consideration to all of these factors in determining what sanctions to impose on Neptune Society and Kevin Seely for their multiple violations of statutes and rules. The Respondents argued that while mistakes were made, there was no evidence that their actions were willful or intentional or that their actions adversely affected public safety or public confidence in licensed funeral or cremation establishments or licensed funeral directors. The Board disagrees.

At the time of these violations, Kevin Seely was the only licensed funeral director employed by Neptune Society for its licensed funeral and cremation establishments in Ankeny. Both Neptune and Kevin Seely were responsible for ensuring that only appropriate and competent services were provided to consumers. Mr. Seely knowingly allowed an unlicensed person to make funeral arrangements with the family of S and to supervise the private viewing. Mr. Seely could have met with the family of S on June 20, 2001, as he stated in his report to the Board or he could have arranged for one of his three on-call licensed funeral directors to meet with the family and make arrangements. Instead, Mr. Seely intentionally and willfully permitted Scott Kuhl to meet with the family and make arrangements. He failed to ensure the involvement of any licensed funeral director to provide services to this family. The result, a private viewing that clearly fell below industry standards and the standard of care for the practice of mortuary science, was devastating to this family. Incidents like this clearly do adversely affect public confidence in funeral and cremation establishments and in the practice of mortuary science.

In addition, record keeping requirements, such as obtaining signatures on the itemized statement of goods and services, signatures on cremation authorizations, and delivery receipts, all serve to protect both the consumer and the general public. The consumer must have confidence that the goods and services selected are properly described and explained by a licensed funeral director and that the goods and services are appropriately delivered. Signed cremation authorizations are essential for the obvious reason; to ensure that remains are not cremated by mistake or against the wishes of the authorized person(s). Delivery receipts are essential to provide a paper trail to verify the identity of the remains to be cremated. Failure to comply with these requirements are not minor or insignificant violations.

With respect to Neptune, the Board seriously considered the fact that Neptune has already been afforded a period of probation with monitoring, but has repeatedly violated the terms of that probation. Neptune is ultimately responsible for the acts of all of its employees and for the quality and competence of the

services that it provides to the public. The Board determined that serious sanctions, including a period of suspension, a substantial civil penalty, and ongoing probation, are appropriate in order to adequately punish the current violations and to ensure that they do not recur.

With respect to Kevin Seely, the Board considered the fact that this was his first disciplinary action in nineteen years as a licensed funeral director in the state of Iowa. If this had not been the case, the Board would have been inclined to impose more severe sanctions. Mr. Seely was the responsible licensed funeral director at the time of these violations. It was his personal responsibility to ensure that he delivered professional and competent mortuary science services and to comply with all statutes and rules, including record keeping requirements. If he was personally unable to meet the mortuary service needs of all of Neptune's clients, it was his responsibility to ensure that another licensed funeral director was retained or contacted to provide those services. For these reasons, the Board believes that Mr. Seely's violations are best addressed by a period of suspension, successful completion of the Mortuary Science Law Exam, a civil penalty, and a period of probation.

#### **DECISION AND ORDERS**

##### *Respondent Neptune Society*

IT IS THEREFORE ORDERED, pursuant to Iowa Code section 156.15(2) and 645 IAC 101.9, that License Nos. 151-00588, and 151-00590 issued to the Neptune Society to operate a funeral establishment and cremation establishment at 128 Shurfine Drive, Ankeny, Iowa and License No. 151-00589 to operate a funeral establishment at 102 N.E. Trilein Drive, Ankeny, Iowa are hereby SUSPENDED for a period of thirty (30) days, effective thirty (30) days after service of this Decision and Order. Upon suspension, the Respondent shall promptly deliver the three original licenses to the Board.

No funeral or cremation business may be conducted by the Respondent in the state of Iowa during the period of suspension. The Respondent shall immediately make arrangements with other licensed funeral and/or cremation establishment(s) to provide services to any consumer requesting or needing the services of Neptune Society during the period of suspension.

IT IS FURTHER ORDERED, that within thirty (30) days of receipt of this Order, the Respondent shall pay a civil penalty of \$7,500.00.

Immediately following the thirty day suspension, the Respondent Neptune Society's three licenses shall be placed on probation for a period of two (2) years, subject to the following terms and conditions:

1) The Respondent and its employees shall comply with all relevant state and federal statutes and administrative rules, including Iowa's business corporations act and all record keeping requirements, in the course of operating its funeral and cremation establishments in the state of Iowa.

2) The Respondent shall designate to the Board the name, address, and residence of the employee who will be responsible for the management and oversight of the daily operations of its Iowa funeral and cremation establishments. The Respondent shall advise the Board within fifteen days of any changes relating to the designation of the responsible manager for each of its funeral and cremation establishments.

3) Within its Iowa funeral and cremation establishments, the Respondent shall only permit a licensed funeral director to perform those activities for which licensure as a funeral director is required.

4) The Respondent shall ensure that its employees' actions in removing and transferring dead human remains in the state of Iowa are accomplished in conformance with all applicable statutes and administrative rules.

5) The Respondent shall create and maintain a complete chronological log listing every funeral and/or cremation in the state of Iowa performed by or involving any of the three licensed establishments subject to this order. The list must include all such funerals and cremations throughout the state of Iowa, even if the Respondent contracts with another funeral or cremation establishment to remove the body or provide some of the funeral services. The chronological log shall contain the following information:

- a. Name of decedent; place and time of death;
- b. Name of person making the removal; time of removal;
- c. Name of person making the arrangements; time and place arrangements were made; name of the authorizing person.

The chronological log for the previous month shall be delivered to the Board office by the tenth day of each month. Board staff will select cases at random from the chronological log to be reviewed by the Board for compliance with all relevant statutes and rules. Upon request of the Board staff, the Respondent shall deliver its complete records for the selected cases within five (5) working days of the date of the request. For each case, the Respondent's records must include the name, address, and telephone number of the persons primarily responsible for coordinating and determining funeral arrangements and the funeral director or other authorized person performing those services and duties which constitute the practice of mortuary science. The Board or the Board's designee may contact any person whose name is provided in these records.

6) The Respondent and all of its employees shall fully cooperate with random unannounced visits from the Board or the Board's designee to review records on site and/or determine the Respondent's compliance with all provisions of this Order.

7) Upon request of the Board, the Respondent's designated representative shall appear before the Board to report on the status of operations of Respondent's Iowa funeral and cremation establishments and to answer any questions about its compliance with this Order. The Board will provide the Respondent reasonable notice of the date, time, and place for any appearance.

8) The Respondent shall notify any other current or future licensing authorities in any other states in which the Respondent obtains a funeral establishment or crematory license of the existence of this disciplinary action and shall provide such other state licensing authorities a copy of the Board's Findings of Fact, Conclusions of Law, Decision and Order. The Respondent shall provide the Board with written confirmation of any notification given to any other state licensing authority within thirty (30) days after receipt of this decision, and thereafter within ten (10) days of providing the notification.

9) If the Respondent violates any provision of this Order, the Iowa Board of Mortuary Science may institute disciplinary proceedings pursuant to Iowa Code section 272C.3(2)"a"(2001). A probation violation would result in consideration by the Board of more serious sanctions, including revocation.

10) Successful completion of the probationary period shall constitute a final disposition of this matter.

Respondent Kevin Seely

IT IS THEREFORE ORDERED, pursuant to Iowa Code section 156.9 and 645 IAC 101.8, that the license to practice mortuary science issued to Kevin Seely, license number 104-02269, shall be suspended for a minimum period of thirty (30) days, effective thirty days after receipt of this Order. The Respondent is required to promptly mail his license in to the Board office.

IT IS FURTHER ORDERED, that within thirty (30) days of receipt of this Order, the Respondent shall pay a civil penalty of \$500.00.

IT IS FURTHER ORDERED, that Kevin Seely must successfully complete the Mortuary Science Law Exam before his license will be returned to him, on probation, and he will be allowed to resume practice.

Upon completion of the thirty day suspension AND successful completion of the Mortuary Science Law Exam, the Respondent's license to practice mortuary science shall be placed on probation for a period of one (1) year, subject to the following terms and conditions:

- 1) The Respondent's probationary license must be prominently displayed at his place of employment.
- 2) The Respondent shall comply with all relevant state and federal statutes and administrative rules, including all record keeping requirements, applicable to the practice of mortuary science in the state of Iowa.
- 3) The Respondent shall create and maintain a chronological log for every death for which he has any professional involvement. The chronological log shall contain the following information:
  - a. Name of decedent; place and time of death;
  - b. Name of person making the removal; time of removal;
  - c. Name of person making the arrangements; time and place arrangements were made; name of the authorizing person.

The chronological log for the previous month shall be delivered to the Board office by the tenth day of each month. Board staff will select cases at random from the

chronological log to be reviewed by the Board for compliance with all relevant statutes and rules governing the practice of mortuary science. Upon request of the Board staff, the Respondent shall deliver his complete records for the selected cases within five (5) working days of the date of the request. For each case, the Respondent's records must include the name, address, and telephone number of the persons primarily responsible for coordinating and determining funeral arrangements and the funeral director or other authorized person performing those services and duties which constitute the practice of mortuary science. The Board or the Board's designee may contact any person whose name is provided in these records.

Upon request of the Board, the Respondent shall appear before the Board to answer any questions about his compliance with this Order. The Board will provide the Respondent reasonable notice of the date, time, and place for any appearance.

4) The Respondent shall notify any current or future employer and any current or future licensing authorities in any other states in which the Respondent has or obtains a funeral director license or embalming license of the existence of this disciplinary action and shall provide them with copies of the Board's Findings of Fact, Conclusions of Law, Decision and Order. The Respondent shall provide the Board with written confirmation of any notification of a current or future employer or any other state licensing authority within thirty (30) days after receipt of this decision, and thereafter within ten (10) days of providing the notification.

5) If the Respondent violates any provision of this Order, the Iowa Board of Mortuary Science may institute disciplinary proceedings pursuant to Iowa Code section 272C.3(2)"a"(2001). A probation violation would result in consideration by the Board of more serious sanctions, including revocation.

6) Successful completion of the probationary period shall constitute a final disposition of this matter.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6, that Respondents Neptune Society and Kevin Seely shall, within thirty (30) days of receipt of this Order, pay \$75.00 for fees associated with conducting the disciplinary hearing.

Pursuant to Iowa Code section 17A.19 and 645 Iowa Administrative Code 11.29 any appeal to the district court from disciplinary

action of the board shall be taken within 30 days from the issuance of the decision by the board. It is not necessary to request a rehearing before the board to appeal to the district court. If an appeal is filed in district court, any costs incurred for the transcription of the record shall be paid by the Respondents. 645 IAC 11.23.

**This Findings of Fact, Conclusions of Law, Decision and Order (Consolidated) was approved by the Board on June 13, 2002.**