

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
CORPORATIONS, SECURITIES & COMMERCIAL LICENSING BUREAU
BOARD OF MORTUARY SCIENCE EXAMINERS

DEPARTMENT OF LICENSING AND
REGULATORY AFFAIRS,
CORPORATIONS, SECURITIES &
COMMERCIAL LICENSING BUREAU¹

Complainant,

v

SWANSON'S FUNERAL HOME, INC.²
Mortuary Science Establishment
License No. 45-02-003189

Complaint Nos. 327820, 330325, &
332545
(Consolidated with Complaint Nos.
327855, 327569, 329299, 330673,
331260, & 331735)

and

O'NEIL D. SWANSON, II
Mortuary Science
License No. 45-01-006287

Complaint Nos. 327821, 330326,
& 332882
(Consolidated with Complaint Nos.
327856, 327570, 329301, 330674,
331261, & 331740)

Respondents.

FIRST SUPERSEDING FORMAL COMPLAINT

Attorney General Bill Schuette, through Assistant Attorney General Eric M.

St. Onge, on behalf of Complainant Department of Licensing and Regulatory

¹ The Department of Licensing and Regulatory Affairs, Bureau of Professional Licensing, issued the original formal complaints in Complaint Nos. 327569 & 327570 and Complaint Nos. 327820, and 327821 (consolidated with Complaint Nos. 327855 and 327856), but the regulatory authority over persons licensed under Article 18 of the Occupational Code, MCL 339.1801 to 339.1812, was transferred from the Bureau of Professional Licensing to the Corporations, Securities & Commercial Licensing Bureau, effective March 1, 2017.

² Swanson's Funeral Home, Inc. is an expired assumed name of Swanson Group (Flint), Inc. The assumed name on file with the Department's Corporations Division expired on July 15, 1999.

Affairs, Corporations, Securities & Commercial Licensing Bureau, files this First Superseding Formal Complaint against Respondents Swanson's Funeral Home, Inc. and O'Neil D. Swanson, II, alleging upon information and belief as follows:

1. The Board of Mortuary Science Examiners is an administrative agency established under Article 18 of the Occupational Code, MCL 339.1801 to 339.1812.

2. Swanson's Funeral Home, Inc. is currently licensed as a mortuary science establishment pursuant to the Code. It has, at no time relevant to this Complaint, been registered under the Prepaid Funeral and Cemetery Sales Act, MCL 328.211 to 328.235 (Prepaid Act). Attached as Exhibit 1 are Certifications of Non-Licensure for Swanson Group (Flint), Inc. and Swanson's Funeral Home, Inc.

3. Respondent O'Neil D. Swanson, II, has, at all times relevant to this Complaint, been licensed as a mortuary science practitioner and is the designated manager of Swanson's Funeral Home, Inc. under Article 18 of the Occupational Code. Attached as Exhibit 2 is a Certification of Licensure for Swanson's Funeral Home, Inc.

4. Swanson's Funeral Home, Inc. has, at no time relevant to this Complaint, been registered as a "producing facility" that generates, stores, decontaminates, or incinerates medical waste, under the Medical Waste Regulatory Act, Part 138 of the Michigan Public Health Code, MCL 333.13801 to 333.13832. Attached as Exhibit 3 is a printout of Swanson's current registration status.

5. Several complaints against the mortuary science establishment license of Respondent, Swanson's Funeral Home, Inc., conforming to the requirements of

MCL 339.501, alleging violations of the Occupational Code and Prepaid Act were filed with the Department from August 2015 to May 2017, prompting three unsatisfactory inspections of the mortuary science establishment and one audit of its books and records.

6. At least eight complaints were filed against Swanson's Funeral Home, Inc. with the Michigan Occupational Health and Safety Administration (MIOSHA) between March 2012 and September 2016 alleging repeated and serious violations of employee health and safety rules administered by MIOSHA and its federal counterpart, prompting multiple inspections of the establishment by MIOSHA staff and the issuance of four citations with proposed penalties totaling approximately \$34,100.00. The cited rules affect the handling, custody, care or transportation of a dead human body, within the meaning of section 1810(1)(h) of the Code, MCL 339.1810(1)(h).

7. Section 6(1) of the Prepaid Act, MCL 328.216(1), prohibits a person from selling, providing, or agreeing to provide merchandise or funeral or cemetery services pursuant to a prepaid contract if that person is not registered with the Department.

8. MCL 328.228(1)(c) prohibits a person from engaging in false, misleading, deceptive, or unfair advertising of merchandise or funeral or cemetery services before the death of a prospective contract beneficiary.

9. MCL 328.228(1)(g) prohibits a person from violating the Prepaid Act or rules promulgated under that Act.

10. MCL 328.231 provides that a violation of the Prepaid Act by a person who is licensed under Article 18 of the Occupational Code is considered a violation of Article 18 of the Occupational Code, and the violator is subject to penalties under section 602 of the Occupational Code, MCL 339.602.

11. Section 604(b) of the Code, MCL 339.604(b), prohibits a person licensed under the Code from engaging in conduct constituting fraud, deceit, or dishonesty in the practice of an occupation.

12. MCL 339.604(c), states that a person who “violates a rule of conduct of an occupation” is subject to the penalties prescribed in MCL 339.602.

13. MCL 339.604(e) states that a person who “commits an act of gross negligence in practicing an occupation” is subject to the penalties prescribed in MCL 339.602.

14. MCL 339.604(g) states that a person who “commits an act which demonstrates incompetence” is subject to the penalties prescribed in MCL 339.602.

15. MCL 339.604(h) states that a person who “violates any other provision of [the Code] or a rule promulgated under [the Code] for which a penalty is not otherwise prescribed” is subject to the penalties prescribed in MCL 339.602.

16. MCL 339.1806(4) prohibits the Department from issuing or renewing a mortuary establishment license, unless the applicant certifies that one of the following is met:

- a. The applicant, or a person that has a controlling interest in, or that is under common ownership with, the applicant, is registered with the Department under the Prepaid Act.
- b. The applicant has a contract with a registrant under which the registrant sells, provides, or agrees to sell or provide merchandise, funeral services, or cemetery services under a prepaid contract on behalf of the funeral establishment.

17. MCL 339.1810(1)(h) states that a person is subject to the penalties of article 6 of the Code if the person commits a violation of a state law or municipal or county ordinance or regulation affecting the handling, custody, care or transportation of a dead human body.

- a. Rule 325.47409 requires that every enclosed workplace shall be so constructed, equipped, and maintained, so far as reasonably practicable, as to prevent the entrance or harborage of rodents, insects, and other vermin. A continuing and effective extermination program shall be instituted where their presence is detected.
- b. Rule 325.51455(1) requires an employer to identify all employees who may be exposed [to formaldehyde] at or above the action level or at or about the [short-term exposure limit] and accurately determine the exposure of each employee so identified.
- c. Rule 325.51461(1) requires an employer to implement a respiratory protection program pursuant to Occupational Health Standard Part 451 'Respiratory Protection,' as referenced in R 325.5141a, that covers each employee required by these rules to use a respirator.

- d. Rule 325.51462(3) requires an employer to ensure all of the following:
- (a) All contact of the eyes and skin with liquids containing 1% or more formaldehyde is prevented by the use of chemical protective clothing made of material impervious to formaldehyde and the use of other personal protective equipment, such as goggles and face shields, as appropriate to the operation.
 - (b) Contact with irritating or sensitizing materials is prevented to the extent necessary to eliminate the hazard.
 - (c) Where a face shield is worn, chemical safety goggles are required if there is a danger of formaldehyde reaching the area of the eye.
 - (d) Full body protection is worn for entry into areas where concentrations exceed 100 ppm and for emergency reentry into areas of unknown concentration.
- e. Rule 325.51464(2) requires the employer to provide conveniently located quick drench showers and assure that affected employees use these facilities immediately . . . if the possibility of employee skin contact with solutions containing 1% or more formaldehyde exists, for example because of equipment failure or improper work practices.
- f. Rule 325.51464(3) requires the employer to provide acceptable facilities for flushing eyes within the immediate work area for emergency use . . . if there is any possibility that an employee's eyes may be splashed with solutions containing 0.1% or more formaldehyde.
- g. Rule 325.51467(1) requires an employer to "institute medical surveillance programs for all employees who are exposed to formaldehyde at concentrations exceeding the action level or exceeding the [short-term exposure limit.]"

- h. Rule 325.51473(1) requires an employer to “ensure that all employees who are assigned to workplaces where there is exposure to formaldehyde at or about 0.1 ppm participate in a training program.”
- i. Rule 325.60003a(8)(c) requires an employer to evaluate an employee’s upgraded or personalized [personal protective equipment] to ensure that it complies with all of the following: (i) Adequate to protect from hazards present in the workplace. (ii) Properly maintained. (iii) Kept in a sanitary condition.
- j. Rule 325.60005(4) requires an employer to “verify that the required workplace hazard assessment has been performed through a written certification”
- k. Rule 325.60006(1) requires an employer to “provide training to each employee who is required by these rules to use personal protective equipment.”
- l. Rule 325.60052 adopts by reference the federal occupational safety and health administration’s regulations on respiratory protection promulgated by the U.S. Department of Labor, 29 CFR §1910.134.
- m. 29 CFR §1910.134(c)(1) requires that

in any workplace where respirators are necessary to protect the health of the employee or whenever respirators are required by the employer, the employer shall establish and implement a written respiratory protection program with worksite-specific procedures. The program shall be updated as necessary to reflect those changes in workplace conditions that affect respirator use.

- n. 29 CFR §1910.134(e)(1) requires an employer to

provide a medical evaluation to determine the employee's ability to use a respirator, before the employee is fit tested or required to use the respirator in the workplace.
- o. 29 CFR §1910.134(f)(1) requires an employer to “ensure that employees using a tight-fitting facepiece respirator pass an appropriate qualitative fit test (QLFT) or quantitative fit test (QNFT).”
- p. 29 CFR §1910.134(h)(2)(i) requires an employer to store and protect all respirators “from damage, contamination, dust, sunlight, extreme temperatures, excessive moisture, and damaging chemicals” and to pack or store them “to prevent deformation of the facepiece and exhalation valve.”
- q. 29 CFR §1910.134(k)(3) requires the employer to “provide training prior to requiring the employee to use a respirator in the workplace.”
- r. Rule 325.70003(1) requires an employer to

evaluate routine and reasonably anticipated tasks and procedures to determine whether there is actual or reasonably anticipated employee exposure to blood or other potentially infectious material.
- s. Rule 325.70004(a) requires an employer to

establish a written exposure control plan to minimize or eliminate employee exposure [to bloodborne infectious diseases] . . . if an employee is determined to be in category A [which ‘consists of occupations that require procedures or other occupation-related tasks that involve exposure or

reasonably anticipated exposure to blood or other potentially infectious material or that involve a likelihood for spills or splashes of blood or other potentially infectious material.']

- t. Rule 325.70008(a) requires an employer to provide, at no cost to the employee, and to assure that an employee uses

appropriate personal protective clothing and equipment . . . when there is occupational exposure. . . Personal protective equipment is appropriate only if it does not permit blood or other potentially infectious material to pass through to or reach the employee's work clothes, street clothes, undergarments, skin, eyes, mouth, or other mucous membranes under normal conditions of use and for the duration of time that the protective equipment is used.

- u. Rule 325.70008(d) requires an employer to "provide for the cleaning, laundering, or disposing of protective clothing and equipment required by this rule."

- v. Rule 325.70008(e) requires an employer to "repair or replace required protective clothing and equipment as needed to maintain their effectiveness."

- w. Rule 325.70009(2)(a) requires that

work surfaces shall be cleaned and appropriately decontaminated with an appropriate disinfectant in all of the following instances: (i) after completion of procedures. (ii) When surfaces are overtly contaminated. (iii) Immediately when blood or other potentially infectious material is spilled. (iv) At the end of the work shift if the surface may have become contaminated since the last cleaning.

- x. Rule 325.70010(1) requires that

all regulated waste that is being disposed of shall be placed in closable, leakproof containers or bags that are color-coded or labeled as required by the provisions of R 325.70014. If

outside contamination of the container or bag is likely to occur, then a second leakproof container or bag that is closable and labeled or color-coded shall be placed over the outside of the first and closed to prevent leakage during handling, storage, and transport.

- y. Rule 325.70013(4)(a) requires an employer “within 10 working days of the time of the initial assignment” and after the employee receives required training to make the following available to the employee: “A hepatitis B vaccination”
- z. Rule 325.70016(2) requires an employer to ensure that it provides [bloodborne pathogens] training during working hours to employees at no cost to them at the time of the initial assignment and “at least annually thereafter.”
- aa. Rule 325.77002(1)(a) adopts 20 CFR §1910.1200 “Hazard Communication,” a federal occupational safety and health administration regulation, by reference.
- bb. 29 CFR §1910.1200(e)(1) requires employers to develop, implement, and maintain at each workplace, a written hazard communication program which at least describes how the criteria specified in paragraphs (f), (g), and (h) of this section for labels and other forms of warning, safety data sheets, and employee information and training will be met, and which also includes . . . a list of hazardous chemicals known to be present using a product identifier . . . and, [t]he methods the employer will use to inform employees of the hazards of non-routine tasks

cc. Rule 408.10015(2) requires that “garbage capable of rotting or becoming putrid shall be placed in a covered container. Container contents shall be disposed of at frequent and regular intervals.”

dd. Rule 408.22356(1) states that

[i]f an inspection or investigation discloses that an employer failed to correct an alleged violation, for which a citation was issued, within the period permitted for correction, the department may notify the employer, by registered mail, of the failure and of any additional penalty . . . by reason of such failure.

18. MCL 339.1810(1)(k) states that a person is subject to penalties of article 6 of the Code if the person obtains possession or embalms a dead human body without first being expressly directed or authorized to do so by a relative of the deceased person or a person entitled to custody.

19. MCL 339.1810(1)(q) states that a person is subject to penalties of article 6 of the Code if a person fails to comply with the Medical Waste Regulatory Act, part 138 of the Michigan Public Health Code, MCL 333.13801 to 333.13831.

a. MCL 333.13813 requires each medical waste producing facility to register with the department of environmental quality and to have a medical waste management plan containing the information required in MCL 333.13817 on file on the premises within 90 days after registration.

20. Rule 339.18941(1) prohibits a licensee under Article 18 of the Occupational Code from using false, misleading, or deceptive advertising. It further states: “As used in this rule ‘false, misleading, or deceptive advertising’ includes

using any name other than the name under which the funeral establishment is licensed.”

21. Rule 339.18931(3) states that “the embalming room shall be kept in a clean and sanitary condition at all times. Instruments shall be cleaned and sterilized after each use.”

22. Rule 339.18931(4)(b) states that an embalming room shall have walls and ceilings made of or covered by washable and waterproof material.

23. Rule 339.18931(5) states that “an embalming room shall be equipped with . . . the instruments necessary to embalm a body, and a means of sterilizing equipment”

24. MCL 339.513 and 339.514 authorize the Board to make a determination of the penalties to be assessed under article 6 of the Code after receiving a hearing report submitted by the administrative law hearings examiner containing findings of fact and conclusions of law.

FACTUAL ALLEGATIONS

Complaint Nos. 327820, 327821, 327855, & 327856

25. On September 5, 2015, Funeral Director Darin Vickers presented to Swanson’s Funeral Home, Inc., located at 2210 Martin Luther King Ave., Flint, Michigan 48503, to conduct a removal. A copy of the Statement of Complaint filed by Mr. Vickers is attached as Exhibit 4. Upon entering Swanson’s he encountered the following:

- a. The building smelled of decomposing bodies.
- b. 40 sets of cremains sat on the lobby floor.

- c. Fly strips were hanging from the ceiling in the hall behind the chapel.
- d. Blood and fluid stained casket pillows were laying in the hallway.
- e. Two bodies stored in the accompanying garage which were leaking out of the cremation containers.
- f. Blood and fluids were covering the floor in the basement preparation room.

26. On October 8, 2015, Department Investigator Richard Whitacre presented to Swanson's to conduct an inspection along with Matthew Macomber, an inspector from the Michigan Occupational Safety and Health Administration.

27. During the inspection it was verified that two unrefrigerated human bodies were stored in the garage of the funeral home.

28. The remains were in cardboard cremation containers, stacked against the back wall and on top of each other.

29. There was an odor of decomposition, and liquid staining was evident on the outside of one of the containers.

30. Respondent O'Neil D. Swanson, II, who was present during the inspection, verified to Investigator Whitacre that the remains had been stored in this manner since at least May of 2015.

31. The dates of death of the two deceased individuals were February 20, 2014, and November 24, 2014.

32. Swanson's conduct, as demonstrated above, shows a failure to act in a reasonably timely fashion to effectuate proper final disposition of the aforementioned remains and to prevent putrefaction and potentially infectious agents from coming in contact with air or with individuals.

33. A violation of part 138 of the public health code, MCL 333.13801 to 333.13831, by a person licensed under Article 18 of the Occupational Code is also a violation of the Occupational Code.

Complaint Nos. 330325 and 330326

34. On September 12, 2016, Department Occupational Code Manager Jon Campbell spoke with an anonymous caller who alleged that Swanson's was keeping approximately 40 decedents' bodies in its garage, which is infested with flies, maggots, and an unbearable stench. The caller further alleged that its preparation room contained no supplies necessary for embalming. A copy of the Statement of Complaint is attached as Exhibit 5.

35. On September 14, 2016, Department Investigators Brandon Wilson and Thea Hines made a field stop at Swanson's. Respondent O'Neil D. Swanson, II was present during the inspection.

36. Its preparation room was inspected. It was unsanitary and contained remnants from embalming that, according to Respondent O'Neil D. Swanson, II, occurred the prior day. The hand wash sink contained what appeared to be dried blood, hair, and pieces of tissue. In addition, the preparation room being used to store decedents did not contain walls constructed of washable or waterproof material.

37. The inspection further revealed that there were 10 bodies stored in cardboard cremation containers in an un-air-conditioned garage of the funeral home

in excess of 72 hours, including one decedent that had been in the garage, un-embalmed, for approximately six weeks. Only one of the 10 bodies was embalmed.

38. The temperature outside that day was 72 degrees, and the temperature inside the garage was estimated at 80 degrees. The stench of decomposition could be detected 30 feet away from the garage.

39. Investigators Wilson and Hines observed maggots crawling all over the floor of the garage, and one of the two garage doors did not close tightly against the concrete, rendering it possible for vermin to enter the garage.

40. Swanson's conduct as demonstrated above shows a failure to act in a reasonably timely fashion to effectuate proper final disposition of the aforementioned remains and to prevent putrefaction and potentially infectious agents from coming in contact with air or with individuals.

41. A violation of part 138 of the public health code, MCL 333.13801 to 333.13831, by a person licensed under Article 18 of the Occupational Code is also a violation of the Occupational Code.

42. The investigation also revealed five more decedents in the preparation room partially covered by newspaper and/or an autopsy smock. The investigators observed two more decedents on tables in an adjacent room or hallway covered in autopsy smocks. Respondent O'Neil D. Swanson, II represented that all were awaiting embalming.

43. There were no arterial and hardening fluids, equipment necessary for embalming, observed in the preparation room.

Complaint Nos. 332545 and 332882

44. Prompted by media reports that Swanson's mixed up the bodies of two deceased women, State Investigator Marshall Ogan conducted an unannounced inspection of Swanson's on Monday, May 15, 2017, beginning at approximately 11:30 AM. Respondent O'Neil D. Swanson, II was not present during the inspection.

45. The outdoor temperature was approximately 60 degrees.

46. Two Swanson's employees led Investigator Ogan to the garage for inspection. The facility itself had a strong odor of decomposition that intensified as he reached the garage. A funeral service was scheduled later that day at 2 PM.

47. In the un-air-conditioned garage of the funeral home were five cardboard cremation containers containing bodies stored at the funeral home in excess of 72 hours, including at least one body stored there since April 20, 2017. Some of the containers were stacked on top of each other with the weight of the body in the top container causing the cover of the bottom container to be crushed.

48. Only one of the five bodies was embalmed. One of the un-embalmed decedents died February 3, 2017.

49. The investigation further revealed dirty equipment and a dirty sink in the disorganized embalming room with the last embalming having occurred during the weekend, according to Swanson's employee Andre Pinson.

50. The Michigan Occupational Safety and Health Administration (MIOSHA) inspected Swanson's six times between June 14, 2012, and September

21, 2016, verifying serious and repeated violations of standards and laws it enforces. Attached as Exhibit 6 is a summary of closed and pending MIOSHA cases, as of July 10, 2017, against Swanson's.

51. On March 23, 2012, MIOSHA received complaint #1 alleging "blood on the table and floor. [Formaldehyde] at 100 percent, no exhaust fan, trash can has blood on them, no bag in them This has been going on for three years there is no OSHA book to tell the employee of the chemical that they are being exposed to"

52. On April 12, 2012, MIOSHA received complaint #2 alleging "1. Blood or other potentially infectious materials are not cleaned appropriately. 2. No formaldehyde monitoring. 3. No hazard communication program."

53. On May 2, 2012, S.A. filed complaint #3 with MIOSHA alleging "people are working on bodies with no protective gear and have been exposed to all bodily fluids and contact with bodily fluids. Some of these bodies have been diagnosed with all kinds of diseases such as hepatitis. Plus the workplace is very unsanitary."

54. On June 14, 2012, MIOSHA received complaint #4 and opened inspection #308875954, which resulted in the issuance of a citation on September 28, 2012, and the payment of a \$4,000.00 fine for the following violations:

- a. Employer did not determine if exposure to formaldehyde was at or above the short-term exposure limit and action level during embalming operations, and there was no exposure monitoring, contrary to Rule 325.51455(1).

- b. Employer did not institute a medical surveillance program for all exposed employees, contrary to Rule 325.51467(1).
- c. All employees with occupational exposure to blood and other potentially infectious materials were not categorized into category A or B, contrary to Rule 325.70003(1).
- d. There is no written bloodborne pathogens exposure control plan, contrary to Rule 325.70004(a).
- e. The hepatitis B vaccination was not made available to category A employees, contrary to Rule 325.70013(4)(a).
- f. Training in bloodborne pathogens was not provided to category A employees, contrary to Rule 325.70016(2).
- g. A written respiratory protection program was not established or implemented for required respiratory use, contrary to 29 CFR §1910.134(c)(1).
- h. A medical evaluation of employees' ability to use a respirator before the employee was fit-tested or required to use the respirator was not provided, contrary to 29 CFR §1910.134(e)(1).
- i. Employees who were issued respirators were not fit-tested, contrary to 29 CFR §1910.134(f)(1).
- j. Training was not provided before requiring employees to use a respirator, contrary to 29 CFR §1910.134(k)(3).

- k. Respirators were not stored to protect them from damage or contamination. Instead, they were hung on hoods or on a shelf in a cabinet next to the embalming area, contrary to 29 CFR §1910.134(h)(2)(i).
- l. A respiratory protection program meeting the requirements of 29 CFR §1910.134(b)-(d) & (f) was not developed or implemented, contrary to Rule 325.51461(1).
- m. A written hazard communication program was not developed or implemented, contrary to Rule 325.77002(1)(a).
- n. Employees exposed to formaldehyde did not participate in a training program at the time of their initial assignment, contrary to Rule 325.51473(1).
- o. Chemical protective clothing and other personal protective equipment were not used to prevent an employee's eyes or skin from coming into contact with liquids containing 1% or greater formaldehyde, contrary to Rule 325.5162(3).
- p. Appropriate personal protective equipment was not used when there was reasonable anticipation for occupational exposure to blood or other infectious material. On August 14, 2012, an employee was observed embalming a body, the employee was not wearing safety glasses, and the Tyvek lab coat worn was contaminated with

blood or other potentially infectious materials, contrary to Rule 325.70008(a).

- q. Employer did not clean, launder, or dispose of protective clothing or equipment. Gloves used in the procedures were rinsed and returned to a drawer with other contaminated disposable gloves, contrary to Rule 325.70008(1)(e).
- r. Employer did not provide a written certification verifying that a workplace hazard assessment was performed, contrary to Rule 325.60005(4).
- s. Each employee required to use personal protective equipment was not trained in its use, contrary to Rule 325.60006(1).
- t. Employer did not provide quick drench showers in areas where 50% formaldehyde solution was used, contrary to Rule 325.51464(2).
- u. Employer did not provide eyewash facilities in areas where 50% formaldehyde solution is used, contrary to Rule 325.51464(3).

55. On January 16, 2013, MIOSHA received complaint #5

alleging:

Ventilation is nonexistent. Formaldehyde levels are not what is considered safe. Bodies are not handled in a sanitary fashion. No personal protective gear, bio-waste hazards are not handled correctly. No emergency water eye station available. No classes on safety and hazard prevention. This has been the pattern for 7 years now. 9 employees + general public.

56. On February 26, 2015, MIOSHA received complaint #6 alleging:

- 1. No eye-wash station in Embalming Room.

2. Toilet used for staff is non-functioning.
3. Improper storage facilities for human remains.
4. Painting and priming in close areas, while employees are working, with no ventilation.
5. No ventilation in Embalming Room.
- 6 Construction is taking place and there is dust everywhere.
7. Paper towels/drying machine is not supplied in bathrooms.

As a result, MIOSHA opened inspection #1044214, which resulted in the issuance of a citation on August 12, 2015, the citation of repeated and new violations, and a proposed penalty of a \$22,000.00 fine with the violations under contest, as of July 10, 2017:

- a. Work surfaces, including tables, countertops, and shelving were not clean and free from contamination. Tables used to transport corpses were constructed of plywood with laminate tops that were damaged, exposing the plywood below. The materials were porous and could not be disinfected easily, contrary to Rule 325.70009(2)(a).
- b. Previously cited violation: Formaldehyde monitoring was not conducted for employees who have a potential exposure during the embalming process, contrary to Rule 325.51455(1).
- c. Previously cited violation: Hepatitis B vaccination was not offered to category A employees, contrary to Rule 325.70013(4)(a).
- d. Previously cited violation: Initial bloodborne infectious pathogens training for category A employees was not provided, contrary to Rule 325.70016(2).

- e. Previously cited violation: A medical evaluation was not provided to employees who are required to wear tight-fitting elastomeric respirators, contrary to 29 CFR §1910.134(e)(1).
- f. Previously cited violation: A fit test was not provided to employees required to wear tight-fitting elastomeric respirators, contrary to 29 CFR §1910.134(f)(1).
- g. Previously cited violation: Training was not conducted for employees who are required to wear tight-fitting elastomeric respirators, contrary to 29 CFR §1910.134(k)(3).
- h. Previously cited violation: Training was not conducted for employees exposed to formaldehyde above 0.1 ppm, contrary to Rule 325.51473(1).
- i. Previously cited violation: Gloves, gowns, or eye protection were not provided or required for employees who handle human remains, contrary to Rule 325.70008(a).
- j. Previously cited violation: Personal protective equipment was not cleaned, laundered, or disposed of when it became contaminated with blood or other potentially infectious material. Gloves used in procedures were returned to a drawer with other contaminated, disposable gloves, there were gurneys used to move bodies that were contaminated with blood or other potentially infectious

material, and work surfaces were not cleaned, contrary to Rule 325.70008(d).

k. Previously cited violation: Each employee required to use personal protective equipment was not provided with appropriate training, contrary to Rule 325.60006(1).

l. Previously cited violation: A safety shower was not available within the facility, when the employer uses 25 percent formaldehyde embalming fluid in the embalming room, contrary to Rule 325.51464(2).

m. Previously cited violation: An eyewash was not available within the facility when the employer uses 25 percent formaldehyde embalming fluid in the embalming room, contrary to Rule 325.51464(3).

57. On September 25, 2015, MIOSHA received complaint #7, stating:

This establishment needs to be shut down immediately!!! The garage is consistently filled with human remains in varying stages of decomposition. These decomposing bodies emits foul odors into our community and is very unhealthy for us near by residents. Often the garage is left open you can see bodies everywhere on floor in boxes. You can see fluids and flies and maggots. They . . . recently put up a cheap tarp to shield view but odor can be smelled. Essential equipment is not provided for staff other than cheap latex often vinyl restaurant grade gloves. He runs scam on people that trust him offering [\$]495 cremation service requiring payment before removal then he[']s paid and loved ones are picked up then held at funeral home garage until they rot away. Then he rents a Uhaul and loads them all up and transfers them to another location to continue to rot away until he decided to cremate. Often times families are lost wondering what[']s going on and they are fed lies and excuses when in reality their loved one is sitting rotting away. When you approach the property you can

smell death when you walk into the front door you'[re] greeted with the putrid smell of death trying to be masked by cheap aerosol spray freshener and burning incense. The funeral home has to be consistently bombed and dead flies throughout the garage and stairs to basement in basement proper equipment protective nor professional is available. The United States Postal Service along with Fed Ex has threatened to stop service. He needs to be stopped he has made it clear that business has failed and he[']s taking all profits that he can providing minimal services until he[']s stopped . . . There are numerous safety hazards going on in the facility. 1. There are two bodies in the garage that have yet to be embalmed or cremated since 2014, which have been putting off a foul odor and caused some employees sickness. 2. Due to the uncleanliness of the facility there are flies that have infested the place.

58. On September 12, 2016, MIOSHA received complaint #8, alleging:

1. Garage is consistently filled with human remains in varying stage of decomposition.
2. Garage is left open and bodies can be seen on the floor in boxes along with fluids, flies, and maggots.
3. Employees are not provided with proper [personal protective equipment] just cheap latex and vinyl restaurant-grade gloves.
4. Smell of death greets you at the front door and employer attempts to mask the smell with incense.
5. Dead flies throughout the garage and stairs to the basement. Also no PPE is available to employees.

59. On September 20, 2016, MIOSHA opened inspection #1186123 based on Swanson's failure to abate the violation associated with Rule 325.70009(2)(a) and inspection #1044214, which resulted in the issuance of a citation on December 1, 2016, the proposed penalty of a \$7,000.00 fine, and the case remained open, as of July 10, 2017.

60. On September 21, 2016, MIOSHA opened inspection #1177704 based on complaint #7, which resulted in the issuance of a citation on December 1, 2016,

the proposed penalty of a \$1,100.00 fine, and the case remained open pending the abatement of the following violations, as of July 10, 2017:

- a. Garbage from the facility, including medical waste, was stored on the floor of the garage in a large pile, contrary to Rule 408.10015(2).
- b. The facility stored garbage in a large pile on the garage floor, the garage door was damaged and did not close completely, leaving the garage infested with flies and other insects. There was nothing to prevent rodents from entering, and there was garbage, medical waste, and un-refrigerated human remains present in the garage, contrary to Rule 325.47409.
- c. The facility accumulated regulated waste and disposed of it in the regular garbage. The waste was not labeled or color coded, was not in a closable leakproof container, and it was in clear bags on the floor mixed with other garbage, contrary to Rule 325.70010(1).
- d. During the inspection, two respirators were observed stored improperly. One was hung by a hook outside of the embalming room, and another was in the garage laying on a shelf. Neither was in a protective container and were exposed to moisture and ambient air from contaminated areas, contrary to 29 CFR §1910.134(h)(2)(i).
- e. Two lab coats were contaminated with chemicals that may have been bodily fluids, contrary to Rule 325.60003a(8)(c).

61. A violation of a state law or municipal or county ordinance or regulation affecting the handling, custody, care, or transportation of a dead human body by a person licensed under Article 18 of the Occupational Code is also a violation of the Occupational Code, MCL 339.1810(1)(h).

62. On June 8, 2017, the Department requested a copy of Swanson's Medical Waste Management Plan required by section 13813 of the Public Health Code, MCL 333.13813(1), within 15 days, and Swanson's failed to provide the requested record to the Department.

63. Swanson's medical waste producer registration No. MW0039132, required by MCL 333.13813(1), expired on February 28, 2004.

64. Swanson's conduct, as demonstrated above, shows a failure to act in a reasonably timely fashion to effectuate proper final disposition of the aforementioned remains and to prevent putrefaction and potentially infectious agents from coming in contact with air or with individuals.

65. A violation of part 138 of the public health code, MCL 333.13801 to 333.13831, by a person licensed under Article 18 of the Occupational Code is also a violation of the Occupational Code, MCL 339.1810(1)(q).

Complaint Nos. 327569 and 327570

66. A copy of the Statement of Complaint filed by R.P. (initials used to protect confidentiality) is attached as Exhibit 7.

67. R.P.'s husband died on March 2, 2015.

68. Swanson's removed the decedent from Sparrow Hospital in Lansing on March 3, 2015. The decedent was taken to Tri-County Cremation in Ypsilanti Township.

69. Swanson's failed to provide next-of-kin with a written contract for funeral, cremation, or any related services.

70. The decedent was cremated on March 13, 2015 despite Swanson's failing to secure written authorization from next-of-kin.

71. R.P. picked up the decedent's ashes from Swanson's on March 20, 2015. Despite that the cremation had already taken place, and at the request of Swanson's, R.P. signed the cremation authorization at that time.

Complaint Nos. 329299 and 329301

72. A copy of the Statement of Complaint filed by M.B. is attached as Exhibit 8.

73. L.G. passed away on March 23, 2016.

74. L.G.'s family contracted with Swanson's for L.G.'s funeral services to be conducted on April 2, 2016.

75. At the time of the April 2, 2016 funeral services, L.G.'s family observed the following:

a. L.G.'s neck and cheek appeared swollen, and L.G. required additional makeup.

b. L.G.'s family requested additional makeup, but were advised that none was available. L.G.'s family hired an outside party to re-apply makeup to L.G.

c. There was a yellow fluid in L.G.'s casket, and an orange fluid around L.G.'s body.

d. There was duct tape on L.G.'s arm. The family was advised by Swanson's that it was used to prevent embalming fluid from escaping from L.G.'s previous IV sites.

e. Upon touch from family members, L.G.'s shoulder felt wet.

f. L.G.'s funeral could not be completed on April 2, 2016 because Swanson's failed to properly pay the cemetery on time. L.G. was eventually buried on April 4, 2016.

Compliant Nos. 330673 and 330674

76. A copy of the Statement of Complaint filed by S.M. is attached as Exhibit 9.

77. On August 17, 2016, Complainant's mother J.A. passed away. Swanson's was contacted and took possession of J.A. later that day.

78. On August 18, 2016 and August 19, 2016, Complainant made arrangements with Swanson's and entered into a contract with Swanson's for a simple cremation of J.A.

79. Despite the above, Swanson's failed to effectuate the cremation of J.A. until September 6, 2016.

Complaint Nos. 331260 and 331261

80. From December 6 through December 8, 2016, State Assistant Administrator Dana Paehlig conducted an investigation of Swanson's activities and

an examination of its books, records, contracts, and other documents relating to prepaid funeral contracts under MCL 328.230(1) and MCL 339.502.

81. During the investigation, O'Neil D. Swanson, II and his wife represented to Ms. Paehlig that Swanson's was neither registered to sell prepaid contracts under MCL 328.216, nor did it maintain a contract with a registrant under the Prepaid Act under which the registrant sells, provides, or agrees to sell or provide merchandise, funeral services, or cemetery services under a prepaid contract on its behalf as a mortuary science establishment, despite the fact that Swanson's checked the box on its 2015 license renewal application indicating that it met the requirements of MCL 339.1806(4). Attached as Exhibit 10 is a copy of the renewal application.

82. In 2006, then prepaid funeral and cemetery sales registrant, Anthony Burton and Associates of Funeral Directors, LLC, assigned a \$6,643.00 prepaid contract to Swanson's when Swanson's was not registered to sell, provide, or agree to provide merchandise or funeral or cemetery services pursuant to a prepaid contract. Attached as Exhibit 11 is a copy of the prepaid contract and a copy of the letter from Respondents to the contract holder notifying her of the assignment of the contract to Swanson's.

83. Swanson's website, www.swansonsfuneralhomes.com, offers "pre-planning services," constituting an offer to sell merchandise or funeral or cemetery services pursuant to a prepaid contract when Swanson's is not registered to sell,

provide, or agree to provide such services. Attached as Exhibit 12 is a copy of printouts from the pre-planning page of Swanson's website.

84. Swanson's website, www.swansonsfuneralhomes.com, and letterhead use the name "Swanson Funeral Home, Inc.," rather than "Swanson's Funeral Home, Inc.," and its website advertises or offers "pre-planning services" in the form of merchandise or funeral services for sale before the death of a prospective contract beneficiary when it does not hold a registration under the Prepaid Act to do so, in a manner that is false, misleading, deceptive, or unfair. Attached as Exhibit 13 is a copy of printouts from the home page of Swanson's website.

85. Swanson's violated the Prepaid Act or rules promulgated under that Act.

86. Swanson's violated a rule of conduct of an occupation, as set forth above.

87. Swanson's conduct in representing that it met the requirements of MCL 339.1806(4) when it did not and its false, misleading, or deceptive advertising constitutes fraud, deceit, or dishonesty in the practice of mortuary science, contrary to MCL 339.604(b).

88. Swanson's conduct in failing to meet the requirements of MCL 339.1806(4) and its false, misleading, or deceptive advertising demonstrates incompetence in the practice of mortuary science.

89. A violation of the Prepaid Act by a person who is licensed under Article 18 of the Occupational Code is considered a violation of Article 18 of the

Occupational Code, and the violator is subject to penalties under chapter 6 of the Occupational Code.

Complaint Nos. 331735 and 331740

90. A copy of the Statement of Complaint filed by W.A. is attached as Exhibit 14.

91. On December 4, 2016, Complainant's sister, R.M. passed away.

92. On December 5, 2016, Complainant's family made arrangements with Swanson's for a simple cremation of R.M. The contract for the services was \$805.00, which was paid in full on December 5, 2016.

93. Swanson's took possession of R.M. on December 6, 2016.

94. Despite the above, Swanson's failed to effectuate the cremation of R.M. until December 29, 2016.

95. The allegations contained in paragraphs 2 to 94 above are incorporated by reference against Respondent O'Neil D. Swanson, II, as manager of Swanson's.

COUNT I

96. Respondents' conduct as described above in representing that Swanson's met the requirements of MCL 339.1806(4) when it did not, and their false, misleading, or deceptive advertising constitutes fraud, deceit, or dishonesty in the practice of mortuary science, contrary to MCL 339.604(b).

COUNT II

97. Respondents' conduct as described above demonstrates their inability to serve the public in the practice of mortuary science for violating a rule of conduct of an occupation, contrary to MCL 339.604(c).

COUNT III

98. Respondents' conduct as described above demonstrates their inability to serve the public in the practice of mortuary science for committing an act of gross negligence in practicing an occupation, contrary to MCL 339.604(e).

COUNT IV

99. Respondents' conduct as described above demonstrates their inability to serve the public in the practice of mortuary science for committing an act which demonstrates incompetence, contrary to MCL 339.604(g).

COUNT V

100. Respondents' conduct as described above demonstrates a violation of a state law or municipal or county ordinance or regulation affecting the handling, custody, care or transportation of a dead human body, contrary to MCL 339.1810(1)(h).

COUNT VI

101. Respondents' conduct as described above demonstrates their inability to serve the public in the practice of mortuary science by failing to maintain the embalming room in a clean and sanitary condition at all times and failing to keep the instruments clean and sterilized after each use, contrary to Rule 339.18931(3) in violation of MCL 339.604(c).

COUNT VII

102. Respondents' conduct as described above demonstrates their inability to serve the public in the practice of mortuary science for failing to maintain the embalming room with walls and ceilings made of or covered by washable and waterproof material, contrary to Rule 339.18931(4)(b) in violation of MCL 339.604(c).

COUNT VIII

103. Respondents engaged in activities requiring a registration under the Prepaid Act when Swanson's was not registered to sell, provide, or agree to provide such services, contrary to MCL 328.216(1).

COUNT IX

104. Respondents' use of a website as described above in advertising prepaid merchandise or funeral or cemetery services when Swanson's did not hold a registration under the Prepaid Act to do so and Respondents' use of letterhead with the inaccurate name of the licensee was done in a manner that is false, misleading, deceptive, or unfair, contrary to MCL 328.228(1)(c) and Rule 339.18941(1) in violation of MCL 339.604(c).

COUNT X

105. Respondents violated the Prepaid Act or rules promulgated under that Act, contrary to MCL 328.228(1)(g). Under MCL 328.231, a violation of the Prepaid Act by a person who is licensed under Article 18 of the Occupational Code is

considered a violation of Article 18 of the Occupational Code, and the violator is subject to penalties under MCL 339.602.

COUNT XI

106. As detailed above, Respondents violated provisions of the Medical Waste Regulatory Act, part 138 of the Michigan Public Health Code, primarily enforced by the Michigan Department of Environmental Quality, contrary to MCL 339.1810(1)(q).

COUNT XII

107. As detailed above, Respondents violated several rules and regulations enforced by MIOSHA and its federal counterpart for the protection of employees involving bloodborne infectious diseases, sanitation, respiratory protection, personal protective equipment, formaldehyde, and hazard communication, constituting state laws or regulations affecting the handling, custody, care, or transportation of a dead human body by a person licensed under Article 18 of the Occupational Code, contrary to MCL 339.1810(1)(h).

THEREFORE, Complainant Department of Licensing and Regulatory Affairs hereby commences proceedings pursuant to the Administrative Procedures Act of 1969, MCL 24.201 *et seq.*, the Occupational Code, *supra*, the Prepaid Act, *supra*, and the associated administrative rules to determine whether disciplinary action should be taken by the Department of Licensing and Regulatory Affairs, pursuant to the Occupational Code, for the reasons set forth herein.

Any written response shall be submitted to the Corporations, Securities & Commercial Licensing Bureau, Regulatory Compliance Division, Department of Licensing and Regulatory Affairs, P.O. Box 30018, Lansing, Michigan, 48909, with a copy to the undersigned assistant attorney general.

FURTHER, the formal complaints previously filed against Respondents on September 12, 2016 are hereby WITHDRAWN and replaced in full by this superseding complaint.

Respectfully submitted,

BILL SCHUETTE
Attorney General



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Dated: July 11, 2017

LF: 2016-0138162-B/Swanson Funeral Home, Inc., 327820 & 327855/Complaint – First Superseding Formal – 2017-05-25