

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 BUREAU

Complainant,

v

SWANSON'S FUNERAL HOME, INC.
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.

ORDER OF SUMMARY SUSPENSION

1. Attorney General Bill Schuette, through Assistant Attorney General Eric. M. St. Onge, on behalf of the Department of Licensing and Regulatory Affairs, Corporations, Securities & Commercial Licensing Bureau (Department) filed a First Superseding Formal Complaint (Complaint) against the above referenced Respondents, under the Occupational Code, MCL 339.101 *et seq.* (Occupational Code), the Prepaid Funeral and Cemetery Sales Act, MCL 328.211 *et seq.*, their associated administrative rules, and the Administrative Procedures Act of 1969 (APA), MCL 24.201 *et seq.*

2. Section 505 of the Occupational Code, MCL 339.505, provides the Department the authority to summarily suspend a license or registration if, after an investigation, based upon an affidavit of a person with knowledge of the facts, it determines an imminent threat to the public health, safety, or welfare exists requiring emergency action.

3. Based on Respondents' conduct, as detailed in the Affidavit and the Complaint, the Department finds that the public health, safety, or welfare requires emergency action.

IT IS ORDERED THAT:

A. Respondents' licenses to engage in the practice of mortuary science and as a mortuary science establishment in the State of Michigan are summarily suspended beginning on the mailing date of this Order.

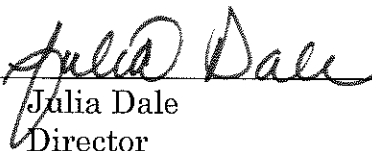
B. Any bodies found on the premises of the mortuary science establishment awaiting cremation or burial, any bodies transported to a crematory by Respondents awaiting cremation, and any cremains found on the premises of the mortuary science establishment awaiting delivery to a customer must be immediately surrendered to the custody and control of the Genesee County Medical Examiner or another qualified facility with adequate and appropriate refrigeration equipment.

C. The Michigan Vital Records Office within the Department of Health and Human Services will be notified of these license suspensions, which may affect Respondents' access to the Electronic Death Registration System (EDRS) and the ability to file death certificates throughout the state during the period of suspension.

Respondents have the right to petition the Department to dissolve this Order, under MCL 339.505. If Respondents request a dissolution hearing, the request must clearly state it is a Petition to Dissolve Summary Suspension and must be filed with Department at the address indicated below.

MICHIGAN DEPARTMENT OF
LICENSING AND REGULATORY AFFAIRS

BY



Julia Dale

Director

Corporations, Securities &
Commercial Licensing Bureau

Dated: 7/11/17

Responsive Pleadings Should Be Filed With:

Department of Licensing and Regulatory Affairs
Corporations, Securities & Commercial Licensing Bureau
Regulatory Compliance Division
P.O. Box 30018
Lansing, MI 48909

and

Eric M. St. Onge (P56630)
Assistant Attorney General
Michigan Department of Attorney General
Licensing & Regulation Division
525 W. Ottawa, 3rd Floor, Wms Bldg.
P.O. Box 30758
Lansing, Michigan 48909

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STATE OF MICHIGAN)
COUNTY OF INGHAM)

AFFIDAVIT OF JULIA DALE

Julia Dale, being first duly sworn, deposes and says that:

1. She makes this Affidavit in support of the Department of Licensing and Regulatory Affairs' request for summary suspension of Respondents' licenses set forth above; that the following facts are within her personal knowledge or her knowledge and belief; that she is competent to testify to the facts and will do so if called as a witness.

2. She is the director of the Corporations, Securities & Commercial Licensing Bureau within the Department of Licensing and Regulatory Affairs ("Department"), and has the responsibility of directing the investigation of complaints from the general public and the

Department alleging violations of the Michigan Occupational Code (“Occupational Code”), MCL 339.101 *et seq.* and the associated administrative rules and reviewing records of mortuary science establishments and individuals and other documents involving persons and entities issued a license under Article 18 of the Occupational Code, MCL 339.1801 *et seq.*

3. In the course of her duties, she reviewed reports and other documents and substantiated the following facts:

- a. Swanson’s Funeral Home, Inc. (“Swanson’s”) is currently licensed as a mortuary science establishment under the Occupational Code.
- b. O’Neil D. Swanson II was, at all relevant times, Swanson’s designated manager.
- c. Swanson’s has never been registered under the Prepaid Funeral and Cemetery Sales Act.
- d. Swanson’s “producing facility” registration no. MW0039132, under the Medical Waste Regulatory Act, part 138 of the Michigan Public Health Code, expired on February 28, 2004.
- e. On October 8, 2015, Bureau of Professional Licensing Investigator Richard Whitacre and MIOSHA Inspector Matthew Macomber inspected Swanson’s facility located at 2210 Martin Luther King Avenue in Flint, Michigan, based on a complaint received from Darin Vickers, the manager of Leslie Funeral Home.
- f. The inspection verified that two unrefrigerated human bodies were stored in Swanson’s garage stored in cardboard cremation containers stacked against the back wall and on top of each other.
- g. The inspectors detected an odor of decomposition associated with the storage of the bodies, and liquid staining was evident on the outside of one of the two containers.

- h. O'Neil D. Swanson, II verified to the inspectors that the two bodies were stored in this manner since at least May of 2015.
- i. Documents verified that the individuals died on February 20, 2014, and November 24, 2014.
- j. On September 14, 2016, Bureau of Professional Licensing Investigators, Brandon Wilson and Thea Hines, conducted an unannounced inspection of Swanson's facility after receipt of an anonymous complaint. The outside temperature was 72 degrees, and the temperature of the facility's garage was about 80 degrees.
- k. The inspection verified that there were 10 unrefrigerated bodies stored in Swanson's garage in cardboard cremation containers, and only one of the bodies was embalmed. One decedent had been in the garage for approximately six weeks without being embalmed. The odor of decomposition could be detected 30 feet away from the garage.
- l. The investigators observed maggots crawling on the garage floor, and one of the two garage doors did not close tightly against the concrete.
- m. Swanson's preparation room contained remnants from embalming that occurred at least the day before, and the hand wash sink contained what appeared to be dried blood, hair, and pieces of tissue. The room did not contain walls constructed of washable or waterproof material.
- n. Decedents were stored in the preparation room partially covered with newspaper or an autopsy smock. They were also stored on tables in an adjacent room or hallway covered in autopsy smocks, presumably awaiting embalming.
- o. The investigators observed no arterial and hardening fluids in the preparation room with which to embalm the bodies.

- p. On Monday, May 15, 2017, Corporations, Securities & Commercial Licensing Bureau Inspector Marshall Ogan conducted an unannounced inspection of Swanson's facility after media reports that Swanson's mixed up the bodies of two deceased women. The outside temperature was about 60 degrees.
- q. The inspection revealed that there were five unrefrigerated bodies stored in Swanson's garage in cardboard cremation containers, and only one of the bodies was embalmed. 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. One of the decedents died February 3, 2017, and was not embalmed.
- r. The facility had a strong decomposition odor that intensified as the inspector reached the garage.
- s. The inspection further revealed dirty equipment and a dirty sink in the embalming room with the last embalming represented to have occurred over the prior weekend.
- t. On June 8, 2017, the investigator requested a copy of Swanson's Medical Waste Management Plan required by the Medical Waste Regulatory Act within 15 days, and Respondent failed to produce the document within the timeframe requested.
- u. MIOSHA received eight complaints against Swanson's between 2012 and 2016 and inspected Swanson's facility six times, issuing four citations for serious and repeated violations of standards and laws it enforces, including failure to control for and train employees regarding blood-borne pathogens exposure, failure to monitor employees for formaldehyde exposure, failure to make hepatitis B vaccinations available to employees, failure to train, provide, and fit-test employees for respirator use, failure to train and provide employees appropriate personal protective equipment, failure to properly clean or dispose of personal protective equipment, failure to provide quick

drench showers and eyewash facilities, failure to keep work surfaces clean and decontaminated, and the improper storage and disposal of medical waste in clear garbage bags mixed with regular garbage in an unsecured garage.

- v. Respondents checked the box on its 2015 license renewal application indicating that it met the requirements of MCL 339.1806(4), when it did not.
- w. R.P. filed a Statement of Complaint with the Department alleging that Swanson's cremated their loved one without securing written authorization to do so from next-of-kin before the cremation occurred. R.P. signed the cremation authorization after picking up the cremains.
- x. M.B. filed a Statement of Complaint with the Department alleging that Swanson's inadequately embalmed and prepared their loved one and failed to pay the cemetery on time, so the funeral of their loved one could not be completed, as planned. Their loved one was buried two days later.
- y. S.M. filed a Statement of Complaint with the Department alleging that Swanson's failed to cremate their loved one until September 6, 2016, after taking possession of the deceased on August 17, 2016.
- z. W.A. filed a Statement of Complaint with the Department alleging that Swanson's failed to cremate their loved one until December 29, 2016, after taking possession of the deceased on December 5, 2016.
- aa. From December 6 through December 8, 2016, State Assistant Administrator Dana Paehlig examined Swanson's books, records, contracts, and other documents related to prepaid funeral contracts and discovered that Swanson's was assigned a \$6,643.00 prepaid contract in 2006 from Anthony Burton and Associates of Funeral Directors,

LLC, when Swanson's was not registered under the Prepaid Funeral and Cemetery Sales Act.

bb. During the examination, Respondent O'Neil D. Swanson II and his wife represented that Swanson's was neither registered to sell prepaid contracts, nor did it maintain a contract with a registrant under the Prepaid Act under which the registrant agreed to sell or provide merchandise, funeral services, or cemetery services under a prepaid contract on its behalf as a mortuary science establishment. Despite that, someone on behalf of Swanson's indicated on its 2015 license renewal application that it met the requirements of MCL 339.1806(4).

cc. 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.

dd. 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.

4. Respondents' above conduct shows that they committed an act of gross negligence in practicing an occupation, given their failure to act in a reasonably timely manner to effectuate the final disposition of the remains to prevent putrefaction and potentially infectious agents from coming into contact with the air or with individuals.

5. Respondents' above conduct proves that they committed an act which demonstrates incompetence in the practice of mortuary science.

6. Respondents' above conduct 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.

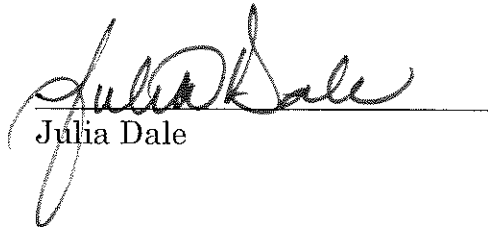
7. Respondents' above conduct demonstrates a violation of the Medical Waste Regulatory Act.

8. Respondents' above conduct demonstrates a violation of the Prepaid Funeral and Cemetery Sales Act.

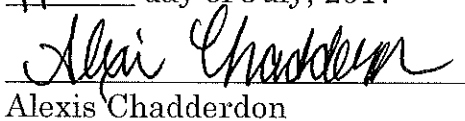
9. Respondents' above conduct in representing that Swanson's met the requirements of MCL 339.1806(4) when it did not and its false, misleading, or deceptive advertising constitutes fraud, deceit, or dishonesty in the practice of mortuary science.

10. Respondents' above conduct demonstrates an inability to serve the public in a fair, open, and honest manner in the practice of mortuary science.

11. Respondents' above conduct proves that they conducted themselves in a manner that justifies summary suspension of the licenses set forth above, under § 505 of the Occupational Code, MCL 339.505.


Julia Dale

Subscribed and sworn before me this
11th day of July, 2017


Alexis Chadderdon

Notary Public, State of Michigan
County of Ingham
My commission expires 2/17/2020

Acting in the County of Ingham

ALEXIS CHADDERDON
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF INGHAM
My Commission Expires Feb. 17, 2020
Acting in the County of Ingham