

STATE OF MINNESOTA  
BEFORE THE COMMISSIONER OF HEALTH

In the Matter of Maple Oaks Funeral Home and  
Phalen Park Funeral Home

**CEASE AND DESIST ORDER**

TO: Maple Oaks Funeral Home and Phalen Park Funeral Home, 2585 Stillwater Road,  
Maplewood, Minnesota 55119:

**AUTHORITY**

1. Minnesota law authorizes the Commissioner of the Minnesota Department of Health (“MDH”) to issue an administrative penalty order requiring a funeral home to correct violations of Chapter 149A of the Minnesota Statutes (“Chapter 149A”) and to assess penalties for those violations. Minn. Stat. § 149A.06 (2014). If, upon re-inspection, a deficiency specified in an Administrative Penalty Order has not been corrected, the person subject to the order is considered to be noncompliant. *Id.*
2. Minnesota law authorizes the Commissioner of MDH to issue a Cease and Desist order to stop a person, including but not limited to any individual or funeral establishment licensed by Chapter 149A, from violating any order issued by MDH or from violating any provision of Chapter 149A that the Commissioner is authorized to regulate or enforce. Minn. Stat. §§ 149A.02, subd. 32; 149A.08, subd. 1 (2014).

**STATUTORY REQUIREMENTS**

3. **Certificate of removal.** Chapter 149A prohibits removal of a dead human body from the place of death without the completion of a certificate of removal. *See* Minn. Stat. § 149A.90 (2014).

4. **Required records.** Chapter 149A requires that every funeral establishment that embalms a dead human body create and maintain a record of every embalming performed. *See* Minn. Stat. § 149A.91 (2014).
5. **Embalming Rooms.** Chapter 149A sets forth requirements for preparation and embalming rooms. *See* Minn. Stat. § 149A.92 (2014). An embalming room must be properly lit and ventilated, the flooring must be nonporous, walls and ceilings must be covered with materials to ensure sanitary conditions, the room must be constructed to prevent odors from entering other parts of the building, and equipment, receptacles, conditions, instruments, and supplies must be maintained in a clean and sanitary condition at all times. *Id.* subds. 3, 5, 8. In addition, the embalming room must be private. *Id.* subd. 7. Thus, windows must be treated to prevent viewing the room from the outside and doors must be signed to indicate that the room is private and that only authorized persons are allowed in. *Id.* subds. 5, 7. All authorized persons present in an embalming room must be attired in compliance with state and federal regulations for control of disease and for safety. *Id.* Infectious and pathological waste must be handled and disposed of in accordance with the Infectious Waste Control Act. *Id.* subd. 9.
6. **Holding Facilities.** Chapter 149A requires a funeral establishment to limit access to a holding facility for storing bodies to authorized personnel and to preserve the dignity of the remains. Minn. Stat. § 149A.91, subd. 8 (2014).
7. **Embalming Practices.** Chapter 149A requires a funeral establishment to ensure that known and accepted embalming standards of mortuary science are followed to inhibit the growth of pathogenic organisms in dead human bodies. Minn. Stat. § 149A.91, subd. 8 (2014).

8. The Commissioner of MDH has authority to enforce the statutory provisions identified in paragraphs 3-5. Minn. Stat. §§ 149A.03-.04 (2014).

#### **FINDINGS OF FACT**

9. Edward P. Vasey and David J. Thorsell are the owners of Maple Oaks Funeral Home (license number 0618) (“Maple Oaks”) and Phalen Park Funeral Home (license number 0039) (“Phalen Park”) at 2585 Stillwater Road, Maplewood, Minnesota. The facility is licensed by MDH as both Maple Oaks Funeral Home and Phalen Park Funeral Home. Edward P. Vasey (M-2307) and David J. Thorsell (M-2283) are the licensed morticians at facility.
10. On October 1, 2014, MDH received a complaint about the condition of a decedent in the care of Maple Oaks Funeral Home.
11. During the initial site visit on February 25, 2015, MDH found the conditions of the preparation and embalming room to be in violation of Minn. Stat. § 149A.
12. MDH issued a signed Administrative Penalty Order to Maple Oaks which was received by Maple Oaks March 25, 2015. The Order determined that Maple Oaks had violated Chapter 149A by failure to maintain the required removal certificates and embalming reports; failure to maintain the preparation room and equipment, instruments, and receptacles in a clean and sanitary condition; failure to utilize a proper holding facility; and failure to treat with dignity and respect the body of the deceased. The order required Maple Oaks to submit, within 10 days of receiving the signed Order, a plan for corrective actions to correct the violations noted in the order. The Order also required Maple Oaks to submit, within 10 days of its receipt of the signed Order, a detailed cleaning schedule for the preparation and embalming room and copies of the certificate of removal and embalming report used

by Maple Oaks. The Order assessed both a forgivable and a non-forgivable penalty to be paid by April 23, 2015.

13. On April 20, 2015, Maple Oaks sent a letter to MDH. However, the letter lacked sufficient detail about Maple Oaks' plan to correct the noted deficiencies and the required documents were not enclosed with the letter.
14. During a follow-up visit on April 28, 2015, an MDH investigator found the conditions of Maple Oaks' preparation and embalming room had worsened since the original site visit occurred on February 25, 2015. Additionally, the embalming room contained four dead human bodies in various stages of decomposition. On April 28, 2015, the Department hand delivered a letter of non-compliance to Maple Oaks and conducted a follow-up visit. The letter stated that the civil penalty in the amount of \$20,000 was past due. To date, MDH has not received payment for the penalties assessed in the Order.
15. On May 7, 2015, MDH received from Maple Oaks copies of Maple Oaks' removal certificate, embalming report, and cleaning schedule.
16. On May 13, 2015, an MDH investigator found the conditions of Maple Oaks' preparation and embalming room had worsened since the second site visit on April 28, 2015. Additionally, the embalming room contained six dead human bodies in various stages of decomposition.

### **CONCLUSIONS**

17. By failing to comply with MDH's administrative penalty order, Maple Oaks is in violation of Minn. Stat. § 149A.06.
18. By continuing to maintain its embalming room in unsanitary conditions and to treat dead human bodies without respect, failure to maintain the required removal certificates and

embalming reports; and failure to utilize a proper holding facility, Maple Oaks and Phalen Park are in violation of Minnesota Statutes Sections 149A. 90 subdivision 4 and 8; and 149A. 91 subdivisions 8 and 10 and 149A. 92, subdivisions 3, 5, 7, 8, and 9.

**IT IS HEREBY ORDERED** that Maple Oaks Funeral Home and Phalen Park shall cease and desist violating Chapter 149A of the Minnesota Statutes. It is further ordered that Maple Oaks and Phalen Park shall do the following:

- a. Immediately cease taking charge of, or removing any dead human body from the place of death. This order applies to any decedent's body, whether the decedent's family are new clients making at-need arrangements or the decedent was a client who previously made pre-need arrangements with Maple Oaks Funeral Home or Phalen Park Funeral Home.
- b. Immediately cease the preparation of dead human bodies for final disposition in any manner, this includes embalming, cremating, washing, dressing, or casketing of dead human bodies.
- c. Immediately cease all transportation of dead human bodies.
- d. Immediately cease the use of an improper holding facility for the storing of dead human bodies.
- e. Immediately commence disposing of infectious and pathological waste in the manner required by law.
- f. Within three days of receiving this Order, immediately contact each family that has engaged Maple Oaks Funeral Home or Phalen Park Funeral Home to provide funeral services for a decedent and inform them of the need to choose another provider.

- g. Immediately restore the preparation and embalming room, equipment, and supplies to a clean and sanitary condition.

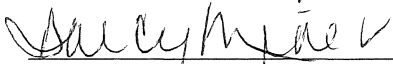
#### FAILURE TO COMPLY

If Maple Oaks and Phalen Park fail to comply with any part of this order, the Department may assess an administrative penalty of up to \$10,000, institute a proceeding in district court to obtain injunctive relief, or revoke, suspend, limit, or condition the licenses of Maple Oaks, Phalen Park, Edward P. Vasey (M-2307) and David J. Thorsell (M-2283) Minn. Stat. §§ 149A.06, subd. 6, 149A.08, subd. 6.

#### NOTICE OF RIGHT TO HEARING

You may appeal this order by requesting a hearing. A request for hearing must be made in writing, must be delivered to MDH by certified mail within 20 calendar days after the receipt of the cease and desist order, and must specifically state the reasons for seeking review of the order. Any hearing on this matter shall be conducted pursuant to Minnesota Statutes § 14.57 to 14.62. If, within 20 calendar days of receipt of this Order, Maple Oaks or Phalen Park fail to request a hearing in writing, this Order will become a final order. You may find additional information about your rights and responsibilities with regard to this Order in Minnesota Statutes Section 149A.08.

SO ORDERED this 15<sup>th</sup> day of May, 2015.

  
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