OAH 21-0900-39573

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HEALTH

In the Matter of the Administrative Penalty Order Issued to Rochester Cremation Services

ORDER ON MOTION FOR SUMMARY DISPOSITION

The above matter is before Administrative Law Judge Kimberly Middendorf pursuant to a motion for summary disposition (Motion).

Kaitrin Vohs, Assistant Attorney General, appeared on behalf of the Minnesota Department of Health (Department). Michael D. Sharkey, Sharkey Law, PLLC, appeared on behalf of Rochester Cremation Services (Respondent).

On March 29, 2024, Respondent moved for summary disposition. On April 12, 2024, the Department filed a response to Respondent's Motion, and the Motion record closed.

Based on the submissions of the parties and for the reasons set forth in the attached Memorandum, the Judge issues the following:

ORDER

1. Respondent's Motion for Summary Disposition is **DENIED**.

2. This matter will proceed to hearing as scheduled pursuant to the November 28, 2023 First Prehearing Order.

Dated: June 20, 2024

KIMBERLY MIDDENDORF
Administrative Law Judge

MEMORANDUM

This matter arises from an administrative penalty order (APO) issued to Respondent under Minn. Stat. § 149A.01-.98 (2022). That chapter regulates "the removal, preparation, transportation, arrangements for disposition, and final disposition of dead human bodies for purposes of public health and the protection of the public."[1] The Department imposed a civil penalty of $10,000 on Respondent based on an October 2018 removal of a body by an unlicensed person in violation of Minn. Stat. § 149A.20 and other violations related to insufficient and missing documentation.[2]

I. Factual and Procedural History

Respondent operates a funeral home in Rochester, Minnesota that is licensed through the Department.[3] Between March 2017 and March 2020, an employee named Colin Maxon (Maxon) worked for Respondent in an unlicensed capacity.[4] Maxon was not an intern registered with the Department.[5]

On October 11, 2018, Maxon, representing Respondent, moved the body of a deceased person from Charter House, a residential care center, to the Mayo Clinic's Division of Anatomic Pathology.[6] For the release of the decedent's body, Maxon signed the residential facility's Death Note form and indicated he was the funeral director.[7]

On September 1, 2023, the Department issued the APO Respondent challenges. The Department ordered Respondent to take various corrective actions and assessed a non-forgivable $10,000 penalty for violations of chapter 149A.[8] Specifically, the Department concluded that:

1. In October 2018, Respondent's unlicensed employee completed a removal of a dead body from a place of death. At that time, the employee did not qualify for an exception as an intern or as described in Minn. Stat. ch. 149A; and

2. Respondent did not have required certificates or statements of funeral goods and services for all decedents.[9]

Respondent timely appealed the APO and the Department commenced this contested case hearing. Respondent argues that the undisputed facts establish that this matter is outside of the Department's jurisdiction, and it is entitled to judgment as a matter

[1] Minn. Stat. § 149A.01, subd. 1.
[2] Notice and Order for Prehearing Conference (Notice and Order), Exhibit (Ex.) 1 (Nov. 7, 2023).
[3] Respondent's (Resp's) Motion; Declaration (Decl.) of Marguerite A. Slonine (Slonine Decl.) ¶ 3.
[4] Slonine Decl. ¶ 3.
[5] *Id*.
[6] The decedent requested to donate her tissue and organs to Mayo Clinic's Alzheimer's Disease Research Center. *See* Resp's Motion at Ex. A.
[7] Slonine Decl. ¶ 5.
[8] Notice and Order, Ex. 1.
[9] *Id. See* Minn. Stat. §§ 149A.71, subd. 2 (f); 149A.90, subd. 4; and 149A.93, subds. 1-2.

of law.[10] The Department contends that there are disputed facts that prevent summary disposition.[11]

II. Summary Disposition Standard

Summary disposition is the administrative equivalent of summary judgment and the same legal standards apply.[12] Summary disposition is appropriate when there is no genuine issue of material fact and a party is entitled to judgment as a matter of law.[13] A genuine issue is one that is not a sham or frivolous, and a material fact is one which will affect the outcome of the case.[14] The Office of Administrative Hearings has generally followed the summary judgment standards developed in judicial courts in considering motions for summary disposition in contested case matters.[15]

The moving party must demonstrate that no genuine issues of material fact exist and that it is entitled to summary disposition as a matter of law.[16] If the moving party is successful, the nonmoving party then has the burden of proof to show specific facts are in dispute that can affect the outcome of the case.[17] It is not sufficient for the nonmoving party to rest on mere averments or denials; presentation of specific facts demonstrating a genuine issue for hearing is required.[18] When considering a motion for summary disposition, the Administrative Law Judge must view the facts in the light most favorable to the nonmoving party.[19] All doubts and factual inferences must be resolved against the moving party.[20] If reasonable minds could differ as to the import of the evidence, disposition as a matter of law should not be granted.[21]

III. Legal Analysis

Respondent argues summary disposition must be granted because the alleged removal that took place on October 11, 2018 was an "inter-healthcare facility transportation" not governed by Minn. Stat. § 149A.20. Respondent maintains that its handling of the decedent's remains was outside the Department's jurisdiction. The Department maintains that Respondent allowed an unlicensed employee to complete a removal of a dead body in violation of Minn. Stat. ch. 149A.

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[10] Resp's Motion.
[11] Department's Memorandum of Law in Opposition to Respondent's Motion for Summary Disposition (Dept. Mem.) (Apr. 12, 2024).
[12] Minn. R. 1400.5500(K) (2023).
[13] Minn. R. Civ. P. 56.03; Minn. R. 1400.5500(K).
[14] *Highland Chateau v. Minnesota Dep't of Pub. Welfare*, 356 N.W.2d 804, 808 (Minn. Ct. App. 1984), rev. denied (Minn. Feb. 6, 1985).
[15] Minn. R. 1400.6600 (2023).
[16] *Theile v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).
[17] *Highland Chateau*, 356 N.W.2d at 808.
[18] Minn. R. Civ. P. 56.05.
[19] *Ostendorf v. Kenyon*, 347 N.W.2d 834, 836 (Minn. Ct. App. 1984).
[20] *Thiele*, 425 N.W.2d at 583.
[21] *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250-51 (1986).

Minnesota law prohibits the unlicensed practice of mortuary science.[22] The law requires "any person who takes charge of or removes from the place of death a dead human body" to possess a valid license to practice mortuary science.[23]

Exceptions to the mortuary license requirement are allowed as follows: 1) an anatomical bequest program within an accredited school of medicine or mortuary science, 2) a person prescribed by law relating to an unclaimed human body that is held subject to anatomical study, 3) licensed medical personnel from an ambulance service, 4) licensed medical personnel in performance of duties, and 5) coroner or medical examiner in performance of duties.[24] There is also an exception for interns who are licensed by the Department and under the direct supervision of a licensed funeral director.[25]

Respondent does not claim Maxon's actions fall within one of the statutory exceptions for licensure. Relying on a mortuary science textbook's definition of "removal," Respondent claims that Maxon's actions do not constitute a "removal" of a deceased person. Instead, Respondent asserts that Maxon's handling of the decedent's remains was an "inter-healthcare facility transfer" because the body was taken to perform an autopsy, rather than for "final disposition."[26]

It is undisputed that Respondent allowed an unlicensed employee to move a dead body from the place of death at a residential care facility to the Mayo Clinic. It is also undisputed that the move in question was from a residential facility to the morgue at the Mayo Clinic.[27]

Respondent's argument nevertheless fails. Minn. Stat. ch. 149A does not define "removal." The narrow definition Respondent urges would be plainly at odds with the statutory language which broadly mandates licensure not only for removals but also for any person "who takes charge of" a dead human body. Maxon's actions arguably fall within the ordinary understanding of what it means to take charge of something.

In addition, Respondent states that it provides inter-healthcare facility transfers free of charge to the Mayo Clinic. In Respondent's view, the lack of a fee renders the October 18, 2018 event an inter-healthcare facility transfer outside of Minn. Stat. ch. 149A. Respondent provides no reference to statute or case law that would allow an exception under these circumstances but maintains it should not be sanctioned for a service it provides without cost. The matter of payment or lack thereof appears immaterial to the issue of whether Respondent violated Minn. Stat. § 149A.20.

The Department argues the October 11, 2018 transport was a removal by an unlicensed person. Contradicting Respondent's argument of an inter-healthcare facility

[22] Minn. Stat. § 149A.01, subd. 2.
[23] Minn. Stat. § 149A.20, subd. 1
[24] Minn. Stat. § 149A.01, subd. 3.
[25] Minn. Stat. § 149A.20, subd. 6.
[26] *See* Resp's Motion at 6-7.
[27] *See* Dept. Mem. at 2-3.

transfer, the Department produced a Mayo Clinic log of all in-patient transports from the hospital to the morgue in October 2018.[28] The decedent in this case was not included on that list. Further, the Department produced a Death Note form from the decedent's residential facility, Chart House, where Maxon appeared to sign the form as the funeral director even though no licensed funeral director was present. These are all disputed material facts that prevent summary disposition.

CONCLUSION

There are issues of material fact to be determined in this case. Specifically, the dispute as to whether the October 11, 2018 actions of Respondent's unlicensed employee constitute taking charge of or a removal prohibited by Minn. Stat. § 149A.20 or an unregulated inter-healthcare facility/in-patient transfer. Because of this, the Judge must deny summary disposition. This case shall proceed to an evidentiary hearing.

K. J. M.

[28] *See* Slonine Decl.