

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA DEPARTMENT OF HEALTH

In the Matter of  
Ivan Werner

**RECOMMENDED ORDER  
ON MOTION FOR  
SUMMARY DISPOSITION**

The above-entitled matter is before the undersigned Administrative Law Judge on the motion of the Department of Health (the Department) for summary disposition.

Wendy Wilson Legge, Assistant Attorney General, 525 Park Street, Suite 500, St. Paul, Minnesota 55103, filed the Motion on behalf of the Department. Richard A. Grayson, Sanborn & Grayson, 50 East Fifth Street, Suite 201, St. Paul, Minnesota 55101, represents the Applicant in this matter, Ivan Werner. A memorandum was filed in this matter on behalf of the Applicant, in opposition to the motion for summary disposition. The record closed on this motion on September 23, 1996, upon receipt of the Department's response to Applicant's memorandum.

Notice is hereby given that, pursuant to Minn. Stat. § 14.61 the final decision of the Commissioner of Health shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Commissioner. Exceptions to this Order, if any, shall be filed with Anne M. Barry, Commissioner of Health, 717 Delaware Street S.E., Minneapolis, Minnesota 55440.

Based on the record in this matter, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

**RECOMMENDED ORDER**

IT IS RECOMMENDED that the Department's motion for summary disposition be GRANTED.

Dated this \_\_\_\_\_ day of October, 1996.

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STEVE M. MIHALCHICK  
Administrative Law Judge

**NOTICE**

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

**MEMORANDUM**

The Department has moved for summary disposition of this matter, asserting that the Applicant cannot meet his burden of proof to show he is entitled to the grant of a license and therefore, no issues remain for hearing. The Department maintains that an applicant for a license to practice mortuary science must either follow the normal licensure process or qualify for reciprocal licensure. The Applicant does not meet the requirements of the normal licensure process. The Applicant maintains that reciprocal licensure should be granted based on Applicant's decades of experience as a licensed mortician in California. The Department asserts that an applicant must have at least a two year degree from a postsecondary institution to meet the statutory standard for reciprocal licensure. The Applicant asserts that the reciprocal licensure standard does not require pre-mortuary science education and the Commissioner of Health has the authority to grant Applicant the requested license.

Summary disposition is the administrative equivalent of summary judgment. Minn. Rule 1400.5500(K). Summary judgment is appropriate where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Sauter v. Sauter, 70 N.W.2d 351, 353 (Minn. 1955); Louwagie v. Witco Chemical Corp., 378 N.W.2d 63, 66 (Minn. App. 1985); Minn.R.Civ.P. 56.03 (1984). A genuine issue is one that is not sham or frivolous. A material fact is a fact whose resolution will affect the result or outcome of the case. Illinois Farmers Insurance Co. v. Tapemark Co., 273 N.W.2d 630, 634 (Minn. 1978); Highland Chateau v. Minnesota Department of Public Welfare, 356 N.W. 2d 804, 808 (Minn. App. 1984).

The Department, as the moving party, has the initial burden of showing the absence of a genuine issue concerning any material fact. To successfully resist this motion for summary disposition, the nonmoving party, the Applicant, must show that specific facts are in dispute which have a bearing on the outcome of the case. Hunt v. IBM Mid America Employees, 384 N.W.2d 853, 855 (Minn. 1986). The existence of a genuine issue of material fact must be established by the nonmoving party by substantial evidence; general averments are not enough to meet the nonmoving party's burden under Minn.R.Civ.P. 56.05. Id.; Murphy v. Country House, Inc., 307 Minn. 344, 351-52, 240 N.W.2d 507, 512 (1976); Carlisle v. City of Minneapolis, 437 N.W.2d 712, 715 (Minn.App. 1988). The evidence presented to defeat a summary judgment motion, however, need not be in a form that would be admissible at trial. Carlisle, 437 N.W.2d at 715 (citing Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986)). The nonmoving party also has the benefit of the most favorable view of the evidence. All doubts and inferences must be resolved against the moving party. See Celotex, 477 U.S. at 325; Thiele v. Stich, 425 N.W.2d 580, 583 (Minn. 1988); Greaton v. Enich, 185 N.W.2d 876, 878 (Minn. 1971); Dollander v. Rochester State Hospital, 362 N.W.2d 386, 389 (Minn.App. 1985).

Based upon the pleadings and affidavits submitted in this matter, and construing the facts in the light most favorable to the Applicant, the underlying facts in this matter appear to be as follows:

The Applicant graduated from North High School in Minneapolis, Minnesota in 1951. In 1972, the Applicant enrolled in the California College of Mortuary Science (CCMS) in Los Angeles, California. The Applicant's enrollment in CCMS was terminated at the end of the first quarter for "low grades." Benke Affidavit, Exhibit 1, at 4. The Applicant reenrolled the following quarter and remained enrolled for a total of seven quarters. The quarters completed by Applicant constituted successful completion of the Mortuary Science program at CCMS. Werner Affidavit, Exhibit 3. No degree was issued to the Applicant. The Applicant took and passed the National Boards of the Conference of Funeral Service Examining Boards on June 12, 1974. *Id.* Exhibit 2, at 3. The Applicant received a National Board Certificate in embalming, anatomy, pathology, bacteriology, chemistry, restorative art, and mortuary administration on June 12, 1974. *Id.* Exhibit 1 at 6. The Applicant received a Certificate as an Embalmer from the California Board of Funeral Directors and Embalmers (California Board) on July 10, 1974. *Id.* Exhibit 1, at 8. The California Board issued Applicant a Certificate of Qualification as a Funeral Establishment Manager on October 6, 1976. *Id.* Exhibit 1, at 7.

The Applicant began practicing as a funeral director and embalmer in California in 1974. Werner Affidavit. This practice has continued through 1994 with no adverse licensing actions or complaints to the California Board. Werner Affidavit, Exhibit 2.

On November 14, 1994, the Applicant submitted a letter to the Department requesting licensure in Minnesota as a practitioner in mortuary science. Benke Affidavit, Exhibit 1. On December 8, 1994, the Department replied that :

The State of Minnesota has established criteria for licensure as a mortician by endorsement in law and rule. Currently, in addition to graduation from an accredited school of mortuary science, passage of the National Board Exam, and licensure in another state, you must also have a total of 90 quarter college level credits. As we have discussed, you do not have these additional college level credits. Therefore, we are not able to grant you a license at this time.

Benke Affidavit, Exhibit 3.

On January 31, 1996, the Applicant requested review of the decision under Minn. Stat. § 149.03. On February 26, 1996, the Department responded that the only qualification Applicant lacks is “two years of pre-mortuary science credits with credits in specified areas.” Benke Affidavit, Exhibit 6, at 1. The response also stated that “experience in the State of California will not be accepted as a substitute for meeting Minnesota’s formal educational requirements.” *Id.* Exhibit 6, at 2. A meeting was held after this response in which the Applicant requested a waiver of the pre-mortuary science educational requirement for licensure. Benke Affidavit, Exhibit 9. The Department indicated that it lacked the authority to waive the requirement and suggested registration as a resident trainee to allow the Applicant to practice mortuary science in Minnesota without having to meet all the licensing educational requirements. *Id.* Resident trainees must complete 45 credit hours (30 hours under the semester system) of the same type of credits as licensees to qualify. *Id.*

Following the Department’s decision, the Applicant requested a contested case hearing. The Department issued a Notice of and Order for Hearing on July 1, 1996.

The educational standards for applicants, licensees from other states, and trainees are set out in Minn. Stat. § 149.03. Applicants must have completed a two-year postsecondary course of study before beginning mortuary science study and complete a mortuary science program from an accredited institution. Minn. Stat. § 149.03, subd. 1. For licensees from other states, subdivision 2 states in pertinent part:

Any holder of a license issued by state authority in any other state maintaining a system and standard of examination for license to engage in the business or practice of mortuary science, which, in the judgment of the commissioner, shall be substantially the equivalent to that required in this state for the issuance of a license therefor, may obtain a license from the commissioner without examination in the discretion of the commissioner upon payment of an application fee in an amount prescribed the commissioner pursuant to section 144.122 and upon proof of good moral character, temperate habits, and practical experience. . . .

Minn. Stat. § 149.03, subd. 2.

In addition to the education and testing requirements, successful initial applicants for licensure must complete “at least one year of apprenticeship in mortuary science.” Minn. Stat. § 149.03, subd. 1.

The Department has adopted rules to specify what credit hours must be included in the two-year course of study required by Minn. Stat. § 149.03, subd. 1. That course of study must include:

a minimum of 60 semester or 90 quarter credits at an accredited college or university with credit evaluation in course areas as follows: communications, 12 quarter credits to include speech and English; the social sciences, 20 quarter credits to include sociology and psychology; natural science, 20 quarter credits to include general or inorganic chemistry and biology; health education (to include personal or community health) 4 quarter credits; and elective areas, 34 quarter credits. . . .

Minn. Rule 4610.0400, subp. 3.

The Applicant asserts that the lack of a “practical experience” requirement in the statutory standards for new licensees demonstrates that those standards are inappropriate for reciprocal license applicants. That argument overlooks the requirement in Minn. Stat. § 149.03, subd. 1, that new licensees complete an apprenticeship of at least a year. The practical experience requirement in Minn. Stat. § 149.03, subd. 2, correlates to the apprenticeship requirement in subdivision 1, not the educational requirements.

The similarity in licensure standards between Minnesota and California, which both require completion of the National Board examination, is cited by the Applicant to demonstrate that the “system and standard” for both states are “substantially the equivalent” as required for reciprocal licensure under Minn. Stat. § 149.03, subd. 2. The Department interprets “system and standard” to be the combined educational, experience, and testing requirements of the Minnesota licensure statute.

The statutory language is not ambiguous. The statute gives the Commissioner of Health the discretion to grant reciprocal licensure where, in the Commissioner’s judgment, the holder of an out-of-state license has obtained that credential under a system that is “substantially the equivalent” to Minnesota’s licensure requirements. Passing the nationally recognized test for applied mortuary science is consistent with the “standard” language of the statute. The “system” portion of the statute would be superfluous under Applicant’s interpretation. Under the canons of statutory interpretation, no portion of a statute should be construed to be “superfluous, void or insignificant.” Vait v. Merrilat Industries, 431 N.W.2d 536, 537 (Minn. 1988)(*citing Gale v. Commissioner of Taxation*, 37 N.W.2d 711 (Minn. 1949)).

The dispute in this matter is similar to applications by persons lacking degrees from accredited law schools seeking licensure to practice law in Minnesota. In those cases, however, the applicants have completed the educational requirement by

obtaining the required degree, but not from an accredited law school. The result in all but one of those cases has been to deny licensure as not meeting the state standard.<sup>[1]</sup> In Re the Petition of Busch, 313 N.W.2d 419 (Minn. 1981); In Re the Application of Hanson, 275 N.W.2d 790 (Minn. 1978). In this matter, the Applicant has not completed the pre-mortuary science educational requirement. There is no basis in existing law to compel the conclusion that an educational requirement can be overlooked in granting reciprocal licensure.

The Commissioner of Health is expressly authorized by Minn. Stat § 149.03, subd. 2, to exercise discretion in the granting of reciprocal licenses. That discretion is bounded by the standard that the system and standards of licensure in the licensee's state be "substantially the equivalent" to Minnesota's system. The Applicant has not demonstrated that the Commissioner has improperly exercised her discretion in denying reciprocal licensure. The statutory standard of "substantially the equivalent" is not met where the state system of the licensee does not require at least two years of college-level study and the Minnesota system does. To hold otherwise would conflict with the statutory requirements imposed on new licensees in Minnesota.

Since no genuine issues of fact have been raised, there is no purpose to going forward with a hearing on the issue of whether the Department should issue a license to the Applicant. The Department's Motion for Summary Disposition should, therefore, be GRANTED.

S.M.M.

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<sup>[1]</sup> In the sole case to allow licensure in Minnesota from a nonaccredited law school, the Supreme Court noted that the only reason the law school was not accredited was a policy decision not to offer accreditation since the school was proprietary, rather than a not-for-profit institution. Dolan v. State Board of Law Examiners, 483 N.W.2d 64 (Minn. 1992).