



REPRESENTING
ALEX SINK
CHIEF FINANCIAL OFFICER
STATE OF FLORIDA

FILED

APR 22 2009

Docketed by

IN THE MATTER OF:

EPPS MORTUARY, INC.

CASE NO. 103893-09-FC

and

LAWRENCE J. EPPS, JR.

EMERGENCY ORDER

COMES NOW ALEX SINK, in her capacity as Chief Financial Officer of the State of Florida or her designee, pursuant to Sections 120.569(2)(n) and 120.60(6), Florida Statutes, and Rule 28-106.501, Florida Administrative Code, and issues this Emergency Order against the funeral establishment license of Epps Mortuary, Inc. ("Epps Mortuary") and the funeral director and embalmer license of Lawrence J. Epps, Jr. within the purview of the Department of Financial Services, and as grounds therefor finds:

FINDINGS OF FACT

1. Pursuant to Section 20.121 and Chapter 497, Florida Statutes, and Chapter 69K, Florida Administrative Code, the Department of Financial Services is the state agency charged with the regulation of funeral establishments, funeral directors, and embalmers in this state.

2. Epps Mortuary, which is located at 626 Dr. Martin Luther King, Jr. Boulevard North, Lake Wales, Florida 33853, is licensed as a funeral establishment, having been issued license number F041896. At all times pertinent hereto, Epps Mortuary was licensed as a funeral establishment.

3. Lawrence J. Epps, Jr. ("Mr. Epps") is currently a funeral director and embalmer (25-00) within the state of Florida, having been issued license number F043918. At all times pertinent hereto, Mr. Epps was the funeral director in charge (FDIC) of Epps Mortuary.

4. On March 26, 2009, Jessica Morse, a Financial Examiner with the Department's Division of Funeral, Cemetery and Consumer Services ("Examiner Morse") conducted a routine inspection of Epps Mortuary.

5. While conducting her inspection, Examiner Morse observed a body in the far rear corner of the preparation room that was draped with a cot cover. Examiner Morse also noticed a foul odor in the preparation room, which became stronger as she approached the body.

6. Examiner Morse inquired about the body in the corner of the preparation room. In response, Mr. Epps told Examiner Morse, "There are bugs," and that he took possession of the body approximately three months prior to the inspection.

7. Examiner Morse told Mr. Epps that she would need to see the body and asked that Mr. Epps remove the material covering it, which he did.

8. After Mr. Epps removed the cot cover, Examiner Morse saw that the body was encased in a lightweight body bag. When the body bag was opened and the outermost plastic covering removed, numerous flies emerged.

9. A cursory examination of the body evidenced that the head and neck were covered in mold and maggots. As more of the outer plastic covering was removed, flies continued to emerge from the body, additional maggots and unidentified insects were visible, and seepage from the body flowed out of the bag and onto the floor of the preparation room.

10. It was determined that the body Examiner Morse observed was that of B.P., who died on December 22, 2008. A Monthly Report of Cases Embalmed and Bodies Handled

submitted to the Department by Mr. Epps, on behalf of Epps Mortuary, indicated that the body was both received by Epps Mortuary and embalmed by Mr. Epps on December 22, 2008.

11. Because the neck of the decedent was covered in thick mold, it was impossible for Examiner Morse to conclusively determine whether an embalming incision was present. However, based on her knowledge and experience regarding embalming and body decomposition, Examiner Morse concluded that the body had not, in fact, been embalmed; or, at best, that it was improperly or inadequately embalmed.

12. At no time was the body of B.P. refrigerated, transported for refrigeration, or stored in any manner other than observed by Examiner Morse.

13. Even if some form of embalming took place, the presence of maggots, mature flies, insects, mold, and excessive seepage is clear evidence of Mr. Epps' failure to practice embalming within the acceptable standards known to the mortuary community or to comply with the industry standards and requirements for proper refrigeration, storage, and/or embalming of bodies.

14. Epps Mortuary was unable to secure funds from B.P.'s family, Social Services, or the City of Lake Wales to provide for the disposition of B.P.'s body. Rather than incur the relatively minor expense of proper embalming or off-site refrigeration, Epps Mortuary chose to allow the body of B.P. to remain unpreserved for three months, resulting in severe decomposition.

15. The facts found above are of such a shocking and appalling nature as to warrant immediate action by the Department. People die every minute in Florida, meaning that Epps Mortuary will have multiple daily opportunities to obtain new contracts to provide funeral services, including embalming and refrigeration. Mr. Epps' failure to regularly examine or

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attend to the body and take action as soon as it began to show signs of deterioration indicates that he lacks the skill, good judgment, and knowledge necessary to appropriately handle dead bodies entrusted to him in a manner consistent with the laws of this state.

16. Funeral directors, embalmers, and funeral establishments licensed by this state have an absolute duty to treat all dead bodies with care and respect. This duty is not contingent on a promise or receipt of payment for services. The negligence displayed by Mr. Epps and Epps Mortuary in this case cannot be excused by the decedent's indigent status or his family's unwillingness or inability to immediately pay for disposition of the body.

17. As a result of the Department's investigation and based upon the statutory violations listed below, the Chief Financial Officer has concluded that the continued unrestricted operation of Epps Mortuary constitutes an immediate serious danger to the public health, safety, and welfare and that emergency action by the Department is required to stop Mr. Epps and Epps Mortuary from committing future violations. This recent occurrence clearly indicates that serious problems exist regarding Mr. Epps' handling of dead bodies, especially when funds for disposition cannot be immediately secured, which is an unfortunately frequent occurrence in the industry. The presence of maggots, flying insects, and mold is hazardous to anyone entering Epps Mortuary, including employees, consumers, and friends and family members of decedents, not to mention the potential of infestation of other bodies in the custody of Epps Mortuary.

18. Considering the egregious facts in this case, the sanctions imposed by this Order are the least restrictive under the circumstances to address the violations which have occurred. There are no other remedies available to the Department that will adequately protect the public from future harm. Funeral establishment directors and embalmers are called upon to provide their services to citizens at a time when they are most vulnerable—immediately following the

death of a loved one. These citizens depend on these licensees to care for the bodies of their loved ones in a manner consistent with the duties imposed by statute regarding proper care of the deceased. The disregard for the laws of this state regarding the proper, respectful handling of dead bodies and displayed by Epps Mortuary and Mr. Epps demonstrates serious defects in judgment, knowledge, and competence, and constitute a threat to the public to the degree that the public welfare and safety cannot be assured as long as Epps Mortuary and Mr. Epps continue to embalm and maintain bodies in the state of Florida. Additionally, the failure of Epps Mortuary to follow the appropriate procedures for refrigerating, preserving, and/or embalming bodies constitutes a serious immediate threat to the public's health, safety, and welfare. Nothing short of the immediate action described by this Order will ensure the protection of the public from continued harm.

19. An administrative complaint seeking final disciplinary action against Epps Mortuary and Mr. Epps for the violations described herein and other violations to be charged will be filed promptly following the approval of a probable cause panel to be convened at the earliest possible date pursuant to Section 497.153, Florida Statutes.

20. The specific sanctions imposed in this Emergency Order, the rights of Epps Mortuary and Mr. Epps to appeal the Order to the appropriate district court of appeal, and the rights of Epps Mortuary and Mr. Epps to elect Section 120.57(1), Florida Statutes administrative proceedings to challenge the allegations in the administrative complaint to be filed in this matter, satisfy compliance with the due process requirements of Florida Statutes and the United States and Florida Constitutions.

APPLICABLE STATUTES AND RULES

21. The evidence obtained thus far by the Department strongly indicates that Epps Mortuary and Mr. Epps have violated the following provisions of Chapter 497, Florida Statutes: Sections 497.152 and 497.386, Florida Statutes. The provisions provide as follows:

497.152 Disciplinary grounds. This section sets forth conduct that is prohibited and that shall constitute grounds for denial of any application, imposition of discipline, or other enforcement action against the licensee or other person committing such conduct. For purposes of this section, the requirements of this chapter include the requirements of rules adopted under authority of this chapter. No subsection heading in this section shall be interpreted as limiting the applicability of any paragraph within the subsection.

(1) GENERAL PROVISIONS.--The generality of the provisions of this subsection shall not be deemed to be limited by the provisions of any other subsection.

(a) Violating any provision of this chapter or any lawful order of the board or department or of the statutory predecessors to the board or department.

(b) Committing fraud, deceit, negligence, incompetency, or misconduct in the practice of any of the activities regulated under this chapter.

497.386 Storage, preservation, and transportation of human remains.

(2) A dead human body may not be held in any place or in transit over 24 hours after death or pending final disposition unless the body is maintained under refrigeration at a temperature of 40 degrees Fahrenheit or below or is embalmed or otherwise preserved in a manner approved by the licensing authority in accordance with the provisions of this chapter.

(4) The licensing authority shall establish by rule the minimal standards of acceptable and prevailing practices for the handling and storing of dead human bodies, provided that all human remains transported or stored must be completely covered and at all times treated with dignity and respect.

IT IS THEREFORE ORDERED THAT the license of Lawrence J. Epps, Jr. is hereby restricted as follows:

As long as this Order remains in effect, Mr. Epps' right to embalm bodies at Epps Mortuary or any other location, on behalf of Epps Mortuary or otherwise, is suspended. The

handling, storing, and embalming of bodies at Epps Mortuary shall be conducted in accordance with the terms of this Order, as set forth below.

IT IS FURTHER ORDERED THAT that the licenses of Epps Mortuary and Mr. Epps are restricted as set forth below:

(a) Effective immediately, embalming of dead bodies at Epps Mortuary shall be performed only by a Department-approved licensee. "Department-approved licensee" means a Department-licensed embalmer or funeral home director identified in writing to the Department by Epps Mortuary that meets the Department's regulatory standards. Upon receipt of Epps Mortuary's nominee(s), the Department will examine the records of the proposed licensee(s) and determine whether to approve or deny the arrangement(s). Upon approval, the licensee(s) shall provide a copy of his or her license and contact information to the Department.

(b) For each body embalmed at Epps Mortuary as provided for in part (a) above, the Department-approved licensee shall submit to the Department a written, signed statement indicating that he or she was the person who actually performed the embalming procedure in its entirety and that the procedure was performed in a manner consistent with Chapter 497, Florida Statutes. This statement must be received by the Department no later than five (5) days after the embalming is performed.

In addition to, and in accordance with, the restrictions set forth above, Epps Mortuary shall:

(c) Embalm or refrigerate, within 24 hours of receipt, all bodies in accordance with Section 497.386(2), Florida Statutes, and the provisions of this Order. Should refrigeration services not be available at Epps Mortuary, it is the responsibility of Epps

Mortuary to transfer the body to a Department-approved licensee for refrigeration. The licensee shall be approved by the Department in the manner set forth in part (a) above.

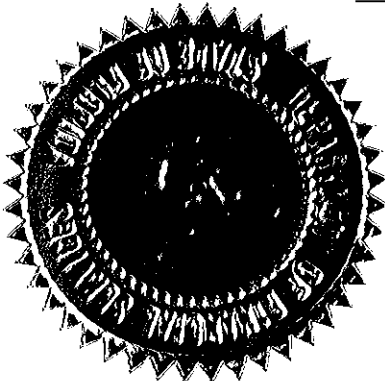
(d) Notify the Department of any embalmed body that is being stored at Epps Mortuary for more than seven (7) days. On the eighth (8th) day after the body is received, Epps Mortuary shall provide the Department with the following information: 1) The date Epps Mortuary took possession of the body; 2) the date the body was embalmed; 3) the name and license number of the person who performed the embalming; and 4) the date and manner of the final disposition of the body. The notice must be signed by an authorized representative of Epps Mortuary.

Nothing in this Order is intended or shall be read to prohibit Epps Mortuary and Mr. Epps from engaging in "funeral directing" as defined by Section 497.372, Florida Statutes, provided such activities do not violate any of the provisions of this Order.

NOTICE OF RIGHTS

Any party who is adversely affected by this Order is entitled to seek judicial review of this Order pursuant to Sections 120.60(6) and 120.68, Florida Statutes, and Rules 9.110 and 9.190, Florida Rules of Appellate Procedure. Review proceedings must be instituted by filing a petition for review or notice of appeal with Tracey Beal, Agency Clerk, at 612 Larson Building, 200 East Gaines Street, Tallahassee, Florida 32399-0333, and a copy of the same, accompanied by the applicable filing fees, with the appropriate district court of appeal within thirty (30) days of rendition of this Order.

DONE AND ORDERED this 22nd day of April, 2009.





Tammy Teston
Deputy Chief Financial Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing EMERGENCY ORDER has been provided to Lawrence J. Epps, Jr., FDIC of Epps Mortuary, Inc., 626 Dr. Martin Luther King, Jr. Boulevard North, Lake Wales, Florida 33853 this 22nd day of April, 2009.



MARY K. SURLLES, ESQ.

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