BEFORE THE OFFICE OF FUNERAL HOME AND CREMATORY REGISTRATION
STATE OF COLORADO

Case Nos. 2023-1189 and 2023-1988

FINAL AGENCY ORDER

IN THE MATTER OF THE PROCEEDING REGARDING CASEY'S HOME FOR FUNERALS, NO REGISTRATION,

Respondent.

The Director of the Division of Professions and Occupations ("Director"), pursuant to and after formal proceedings before a duly qualified Administrative Law Judge ("ALJ") in accordance with the provisions of section 12-135-101, et al., of the Colorado Revised Statutes ("Act") and the Administrative Procedure Act ("APA"), and having reviewed the ALJ's Initial Decision, hereby enters the following findings and order:

1. Respondent Casey's Home For Funerals ("Respondent") was served with a Notice of Grounds for Denial on May 7, 2024.

2. On or about May 8, 2024, Respondent filed a response to the Notice of Grounds for Denial.

3. On or about September 24, 2024, a hearing was held in person before the ALJ. Respondent was represented by its Designee, Adam J. Casey.

4. The ALJ's Initial Decision was rendered on March 21, 2025, and received by the Director on March 28, 2025. A copy of the Initial Decision is attached to this Order and incorporated herein by reference.

5. The Initial Decision was served on Respondent and the Director's prosecuting attorney on April 1, 2025, via first-class mail and electronic mail.

6. Neither the Director's prosecuting attorney nor Respondent filed exceptions.

7. Upon review of the Initial Decision and Record, the Director hereby:

   a. Accepts the Findings of Fact, as set forth in paragraphs one through ten of the attached Initial Decision, in their entirety.

   b. Adopts the Conclusions of Law, as set forth in the attached Initial Decision, in their entirety.

c. Adopts the ALJ's recommended decision that Respondent should be registered, as set forth in the penultimate paragraph of the attached Initial Decision.

IT IS THEREFORE ORDERED by the Director that Respondent should be registered to provide services as a funeral establishment in the state of Colorado and shall comply with all conditions of licensing as outlined in §12-135-110, C.R.S. The Final Agency Order is hereby effective upon service to Respondent. Any party adversely affected or aggrieved by any agency action may commence an action for judicial review before the District Court within thirty-five (35) days after such action becomes effective. Reference sections 24-4-106(3) and 12-20-408, C.R.S.

SO ORDERED this 5th day of May, 2025.

FOR THE OFFICE OF FUNERAL HOME AND CREMATORY REGISTRATION

SAM DELP
DIVISION DIRECTOR

STATE OF COLORADO **OFFICE OF ADMINISTRATIVE COURTS** 1525 Sherman Street, Denver, CO 80203	
Office of Funeral Home and Crematory Registration Petitioner vs. **Casey's Home for Funerals** Respondent	▲ **COURT USE ONLY** ▲ **CASE NUMBER:** **FC 2024-0003**

NOTICE OF ORDER ISSUANCE

The attached Initial Decision was issued March 21, 2025 in the above referenced case.

Dated: March 28, 2025

/s/ London Lenahan
London Lenahan
Court Clerk

STATE OF COLORADO **OFFICE OF ADMINISTRATIVE COURTS** 1525 Sherman Street, 4th Floor, Denver, Colorado 80203	
DIRECTOR OF THE DIVISION OF PROFESSIONS AND OCCUPATIONS, OFFICE OF FUNERAL AND MORTUARY SCIENCE SERVICES, Petitioner, vs. **CASEY'S HOME FOR FUNERALS,** Respondent.	▲ **COURT USE ONLY** ▲ **CASE NUMBER:** **FC 2024-0003**

INITIAL DECISION

This matter comes before the Office of Administrative Courts following Respondent's appeal of the order denying its application for registration as a funeral home. Hearing was held in person before Administrative Law Judge (ALJ) Lilith Z. Cole on September 24, 2024. Assistant Attorney General Mark A. Blechman represented the Director of the Division of Professions and Occupations, Office of Funeral and Mortuary Science Services (the Director). Respondent was represented by its Designee, Adam J. Casey. At hearing Petitioner's Exhibits 1–3 were admitted. The hearing was recorded.

CASE SUMMARY

Respondent's application for registration was denied by the Director pursuant to § 12-135-401(2), C.R.S. because Respondent's designee disclosed on the application that he had a previous conviction for a crime that if committed in this state would be a felony related to an activity regulated under the mortuary science code or a felony involving moral turpitude. There is no question that Respondent appropriately disclosed the Designee's past conviction or that the Director "may" deny an application in such circumstances. The question before the ALJ is the de novo consideration of whether the application for registration should have been approved.

FINDINGS OF FACT

On the basis of uncontroverted testimony, the ALJ finds the following to be the essential facts of the case:

1. On January 31, 2023, Adam J. Casey filed an application to register Casey's Home for Funerals as a funeral home in Colorado, pursuant to CITE, listing himself as the Appointed Designee and his title as Mortuary Master (MM).[1]

2. In response to Questions 20 and 21, Mr. Casey truthfully disclosed his conviction in 2016 in Cook County Illinois of Funeral Directing without a license and forgery on a death certificate. He provided copies of the case materials, including texts and Facebook posts from his supervisor at the time, and a newspaper article about his arrest. Exhibits 1 and 2.

3. By letter dated March 17, 2023, the Director notified Mr. Casey that his application for registration had been denied, the reasons why, and the means by which Mr. Casey could appeal the decision. Exhibit 3.

4. On May 8, 2024, the Office of Administrative Courts (OAC) received the Director's filing of the Notice of Duty to Answer, Notice to Set, Notice of Hearing, and Notice of Grounds for Denial. Respondent's Answer was received on May 13, 2024. Thus, all measures of timeliness have been satisfied.

5. Director Mayhugh testified that the funeral industry is susceptible to fraud. He noted that this has recently been demonstrated clearly in Colorado. Thus, when considering an application that discloses a conviction, the next question is evidence of rehabilitation. Director Mayhugh testified that he looks for evidence of the acceptance of responsibility, believing that rehabilitation begins with this. Because Mr. Casey continues to view his conviction as a miscarriage of justice, the Director does not believe Mr. Casey is rehabilitated.

6. Director Mayhugh also testified about the distinction between the registration of the funeral and the licensing of funeral directors, which is not yet required under Colorado law. He expressed the opinion that a provisional license will be an option for a funeral director once that portion of the law becomes operational, but that no such provision exists in the statute or regulations for a provisional licensing of a funeral home.

7. Respondent called Robert Matthews, the Funeral Director at Harris Funeral Directors to testify on his behalf. Mr. Matthews has worked in his present capacity for 4 (four) years, but testified that he has worked in the industry for over 20 years. He testified that he has known Mr. Casey for about 10 years, including during the time Mr. Casey was an independent contractor in Chicago.

8. Mr. Casey also chose to testify on his own behalf. He testified to his 2015 graduation from Mortuary School in Texas, his provisional Texas licensing, and his gift for embalming and the "restorative arts." In addition, he testified about his move to Colorado with his parents, and

[1] Mr. Casey identifies himself as Master Casey in his application and all pleadings. As far as the ALJ can tell based on the record, Mr. Casey has a Bachelor's Degree in Mortuary Science and the designation "Master" is a commercial title he has given himself which is unrelated to his Mortuary Science education.

that he hopes to be appropriately licensed in Colorado to provide all necessary funeral services for them when they pass.

9. When questioned by the ALJ about the notation in court records from Cook County, Illinois, that he spent time in custody in 2020, Mr. Casey explained that while still on probation, he returned to Cook County and encountered the former work colleagues he believes set him up. He testified that "they tried to fight me and got me arrested."

10. The ALJ notes that there appears to be no question that Mr. Casey engaged in legally proscribed behavior in Cook County, Illinois. According to court records, he pled "no lo contendere" upon the advice of counsel. The ALJ also notes that Mr. Casey's evidence is uncontroverted that he was also set up maliciously for prosecution by his former work colleagues.

DISCUSSION AND CONCLUSIONS OF LAW

The ALJ first notes that this matter is conducted pursuant to Colorado's Administrative Procedure Act (APA), § 25-4-105, C.R.S. and the ALJs review is de novo.[2] Contrary to the assertions of counsel for the Director at hearing, the ALJ is not bound by any prior decision of the Director regarding Respondent's license. The administrative appeal to which Respondent is entitled is not "Judicial Review," and is therefore not conducted pursuant to § 24-4-106, C.R.S.

The ALJ's next task after identifying the proper standard of review is to assign the burden of proof. The proper assignment of the burden of proof is a substantial right of the parties and constitutes reversible error when allocated to the wrong party. *Atl. & Pac. Ins. Co. v. Barnes*, 666 P.2d 163, 165 (Colo. App. 1983). In proceedings conducted pursuant to the APA, the party who seeks to change the status quo bears the burden of proof. §24-4-105 (7), C.R.S. Because Respondent has not previously been licensed in Colorado, Respondent is the party seeking to change the status quo and therefor bears the burden to demonstrate by a preponderance of the evidence that the Director did not apply or improperly applied the law and or regulations in denying Respondent's application to be licensed as a funeral home in Colorado.

The Director denied Respondent's application due to the disclosure by Respondent's designee of a criminal conviction that is either (a) substantially similar to a crime that would prohibit licensing in Colorado or (b) constitutes moral turpitude, which is also grounds under Colorado law for the denial of Respondent's application. § 12-135-401 (2), C.R.S. While the statute clearly gives the Director the discretion to deny an application for registration on this basis, neither the statute nor the regulations subsequently developed to implement the statute provide any grounds

[2] Per § 12-20-202(6)(c), C.R.S., "the executive director may employ an administrative law judge . . . to conduct hearings on any matter within the jurisdiction of the regulator. . . . An administrative law judge employed pursuant to this subsection (6)(c) shall conduct hearings in accordance with section 24-4-105 and the administrative law judge has the authority specified in 24-4-105."

for exercising this discretion.[3] Although Director testified that the statute does not contemplate a provisional registration as for an individual licensee pursuant to § 12-135-501, C.R.S., § 12-135-401(1) does give the Director authority to put a funeral establishment on probation per §12-20-401(b). A registered funeral establishment must also comply with terms and conditions of Director, is subject to routine inspections, as well as fines and even a cease and desist order when the Director has credible evidence in a written complaint that a registrant is acting in a manner that poses and imminent threat to the health and safety of the public, pursuant to § 12-135-403, C.R.S. Thus, the Director has multiple resources other than denial to monitor Respondent's conduct of its business to insure it complies with all necessary laws, including Mr. Casey's licensing as a funeral home director or mortuary science practitioner by January 1, 2027, and to take action to prevent harm to the public.

Mr. Casey contends (a) the crime to which he pled guilty in Cook County Illinois was prompted by malice on the part of previous employers, and (b) he has had no other disciplinary history, before or since, despite continuous work as a Mortuary Science Practitioner. The Director contends that Mr. Casey's first claim demonstrates that he has not taken appropriate responsibility for his prior actions, and that this undermines any claims of rehabilitation Respondent might offer. Moreover, the Director contends that the statute at issue does not provide for consideration of rehabilitation following conviction for an "unlawful" act under the Colorado statute.

Because ALJs review is de novo, she is not required to find the Director's denial was arbitrary or capricious in order to reverse his denial. The ALJ notes that neither the statute nor regulations provide any parameters for the exercise of the Director's discretion. Although neither the statute nor the regulations provide clear grounds for the Director's exercise of discretion, the Director himself testified that rehabilitation is a factor he considers generally and did specifically in this case. The ALJ is at liberty to apply this same standard based on the evidence and testimony at hearing, and may make the same decision or may disagree with the Director's assessment of whether Mr. Casey has demonstrated rehabilitation following his conviction for Funeral Directing without a license and forgery on a death certificate in 2016.

No evidence was presented to the ALJ contradicting Mr. Casey's assertion of continuous work as a Mortuary Science Practitioner since his conviction in 2016. The only evidence of subsequent law enforcement involvement is evidence that he was incarcerated following an altercation with the prior employer he believes "set him up" resulting in his conviction. The Director does not dispute that Mr. Casey has continued to work in the Funeral and Mortuary Sciences industry without further incident since 2018 (except as noted), thus demonstrating that even if he continues to "improperly" hold others responsible for his conviction, he has ceased to engage in the behavior that led to that conviction. While one might prefer that an Authorized Designee with Mr. Casey's history simply acknowledged that he broke the law and affirm

[3] The ALJ notes that 4 CCR 742-1 has been extensively updated and expanded since hearing. The expanded regulation also does not provide any grounds for the Director's exercise of discretion.

explicitly that he will not do that again, the evidence of his conduct demonstrates his rehabilitation.

Mr. Matthews, a person with knowledge of and experience as a Funeral Director and in the mortuary industry for over twenty years testified on behalf of Mr. Casey. He testified that he has known Mr. Casey for a decade and supports his application for Casey Funeral Homes to be registered in Colorado. The ALJ notes that Mr. Matthews knew Mr. Casey prior to his conviction in 2016, has extensive experience in the industry Colorado is belatedly re-regulating, and chose to appear before the ALJ to support Mr. Casey's appeal of the denial of his application for registration. There every reason to believe he is an accurate judge of any risk Mr. Casey and Casey's Home for Funerals pose to the public in Colorado, and his assessment is that Casey's Home for Funerals should be registered.

INITIAL DECISION

It is therefore the Initial Decision of the ALJ that Casey's Home for Funerals should be registered. Mr. Casey, Respondent's Appointed Designee shall comply with all conditions of licensing as outlined in § 12-135-110, C.R.S. Nothing in this order relieves Casey's Home for Funerals from continuous compliance with statutes and regulations governing the practice of Mortuary Science in Colorado, as those regulations continue to evolve, including the requirement that a Funeral Director be licensed, effective January 1, 2027 pursuant to § 12-135-501, et. seq., C.R.S.

Pursuant to § 24-4-105(14)(b)(II), C.R.S., the parties shall have 30 days from the date this Initial Decision is mailed to file written exceptions. The failure to file exceptions to provisions of the Initial Decision will waive the right to seek judicial review of a final agency decision that affirms those provisions.

Done and Signed this 21st day of March, 2025.

Lilith Z. Cole
Administrative Law Judge