



*Protecting, maintaining and improving the health of all Minnesotans*

**Minnesota Department of Health  
AMENDED ADMINISTRATIVE PENALTY ORDER**

Daniel J. McRaith  
1801 4<sup>th</sup> Street NW  
Austin, Minnesota 55912

*I. Authority*

The Minnesota Department of Health is authorized, pursuant to Minn. Stat. §149A.06, to order corrections and assess administrative penalties in an amount up to \$10,000.00 per violation for violations of Minnesota Statutes, Chapter 149A.

*II. Findings of Fact*

1. On March 22, 2013 the Minnesota Department of Health ("MDH") Mortuary Science Section received a formal written complaint against Daniel J. McRaith of McRaith Funeral Home and Crematory, located at 711 North State Street, Waseca, Minnesota.
2. Daniel J. McRaith is a licensed Mortician M-3207 and one third former owner of McRaith Funeral Home and Crematory, located at 711 North State Street, Waseca, MN (Funeral Establishment #0542), and Dignity Cremation Service located at 107 North Skookum, Janesville, MN (Crematory #9043).
3. On May 3, 2010 Daniel J. McRaith of McRaith Funeral Home and Crematory and Dignity Cremation Service met with the son and daughter of the decedent to make final arrangements for disposition. Contrary to established funeral industry practice, Daniel J. McRaith failed to obtain proper signatures on the cremation authorization form and neglected to provide each consumer arranging final disposition a signed itemized written statement, for retention at the conclusion of the discussion of the arrangements.
4. On November 26, 2013, an investigator made a site visit to McRaith funeral Home and Crematory to investigate the complaint.
5. During the investigation, the investigator discovered that only one of two required signatures was obtained on the cremation authorization form and that the itemized written statement had not been signed and completed by one of two authorizing agents.
6. On January 29, 2014 after obtaining crematory records from McRaith Funeral Home and Crematory and Dignity Cremation Service, the investigator discovered that the decedent had been transported and cremated prior to having all required permits and documents.

### III. Violation Reference

Minn. Stat. § 149A.71, subd. 2(f) **Preventive Requirements:** To prevent unfair or deceptive acts or practices, the requirements of this subdivision must be met: Funeral providers must give an itemized written statement, for retention, to each consumer who arranges an at-need funeral or other disposition of human remains at the conclusion of the discussion of the arrangements. The itemized written statement must be signed by the consumer selecting the goods and services as required in section 149A.80. If the statement is provided by a funeral establishment, the statement must be signed by the licensed funeral director or mortician planning the arrangements. If the statement is provided by any other funeral provider, the statement must be signed by an authorized agent of the funeral provider. The statement must list the funeral goods, funeral services, burial site goods, or burial site services selected by that consumer and the prices to be paid for each item, specifically itemized cash advance items (these prices must be given to the extent then known or reasonable ascertainable, if the prices are not known or reasonable ascertainable, a good faith estimate shall be given and a written statement of the actual charges shall be provided before the final bill is paid), and the total cost of goods and services selected. At the conclusion of an at-need arrangement, the funeral provider is required to give the consumer a copy of the signed itemized written contract that must contain the information required in this paragraph.

Minn. Stat. § 149A.95, subd. 4 **Authorization to Cremate Required:** No crematory shall cremate or cause to be cremated any dead human body or identifiable body part without receiving written authorization to do so from the person or person(s) who have the legal right to control disposition as described in section 149A.80 or the person's legal designee. The written authorization must include:

- (1) the name of the deceased and the date of death;
- (2) a statement authorizing the crematory to cremate the body;
- (3) the name, address, relationship to the deceased, and signature of the person or persons with legal right to control; final disposition or a legal designee;
- (4) certification that the body does not contain any implanted mechanical or radioactive device, such as a heart pacemaker, that may create a hazard when placed in the cremation chamber;
- (5) authorization to remove the body from the container in which it was delivered, if that container is appropriate for cremation, and to place the body in an appropriate cremation container and directions for the disposition of the original container;
- (6) authorization to open the cremation container and reposition the body to facilitate a thorough cremation and to remove from the cremation chamber and separate from the cremated remains, any noncombustible materials or items;
- (7) directions for the disposition of any noncombustible materials or items removed from the cremation chamber;
- (8) acknowledgement that the cremated remains will be mechanically reduced to a granulated appearance and placed in an appropriate container and authorization to place any cremated remains that a selected urn or container will not accommodate into a temporary container;
- (9) acknowledgement that, even with the exercise of reasonable care, it is not possible to recover all particles of the cremated remains and that some particles may inadvertently become commingled with disintegrated chamber material and particles of other cremated remains that remain in the cremation chamber or other mechanical devices used to process the cremated remains; and
- (10) directions for the ultimate disposition of the cremated remains.

Minn. Stat. § 149A.95, subd. 6 **Acceptance of Delivery of Body:** No dead human body shall be accepted for final disposition by cremation unless encased in an appropriate cremation container or wrapped in an impermeable sheet or pouch and placed on a tray rigid enough for handling with ease, accompanied by a disposition permit issued pursuant to section 149A.93, subdivision 3, including a photocopy of the completed death record or a signed release authorizing cremation of the body received from the coroner or medical examiner, and accompanied by a cremation authorization that complies with

from the coroner of medical examiner, and accompanied by a cremation authorization that complies with subdivision 4. A crematory shall refuse to accept delivery of a cremation container where there is:

- (1) evidence of leakage of fluids from the cremation container;
- (2) a known dispute concerning cremation of the body delivered;
- (3) a reasonable basis for questioning any of the representations made on the written authorization to cremate; or
- (4) any other lawful reason.

Minn. Stat. § 149A.60, **Prohibited Conduct:** The regulatory agency may impose disciplinary measures or take disciplinary action against a person whose conduct is subject to regulation under this chapter for failure to comply with any provision of this chapter or laws, rules, orders, stipulation agreements, settlements, compliance agreements, licenses, and permits adopted, or issued for the regulation of the removal, preparation, transportation, arrangements for disposition or final disposition of dead human bodies, or for the regulation of the practice of mortuary science.

#### *IV. Conclusion*

1. By failing to provide at the conclusion of the discussion of the arrangements an itemized written and signed statement for retention to the family, as required in section 149A.80, Daniel J. McRaith violated Minn. Stat. § 149A.71, subd. 2(f).
2. By failing to obtain signatures on written authorization from the person or person(s) who have the legal right to control disposition as described in section 149A.80 or the person's legal designee on the written cremation authorization form Daniel J. McRaith violated Minn. Stat. § 149A.95, subd. 4.
3. By failing to have proper medical authorization and required signatures on Cremation Authorization Form Daniel J. McRaith violated Minn. Stat. § 149A.95, subd.6.
4. By failing to follow the statutory requirements of chapter 149A as enumerated in paragraphs 1 through 3 of this section, Daniel McRaith violated the laws of the Chapter and the Department is authorized pursuant to Minn. Stat. § 149A.60 to take disciplinary action against him.

#### *V. Corrective Order*

It is ordered that Daniel J. McRaith must demonstrate, IN WRITING, to the satisfaction of the Director of the Health Regulation Division that the corrective actions specified have been taken or that appropriate steps toward correcting the violation have been taken. The Minnesota Department of Health must receive a written letter demonstrating your plans to comply with this Corrective Order before the 31<sup>st</sup> day after you receive this order.

If Daniel J. McRaith fails to demonstrate to the satisfaction of the Director that the corrective actions specified below have been taken or appropriate steps toward correction of the violation specified above have been taken, within the 30-day period, the forgivable penalty assessed will become due and payable as described in section V. A plan to correct the violation may be developed within the 30-day period for corrective action. The plan must be approved by the Director. Failure to comply with the approved plan shall be cause for subsequent enforcement action.

**The following corrective actions are required by this order:**

On or before October 15, 2015, Daniel J. McRaith must attend a continuing education course on the proper protocol that addresses all three areas of violation; providing an itemized written statement, obtaining proper authorization and documentation for cremation, and having proper documentation in place for cremation as follows:

1. The continuing education course must be conducted by a provider that is approved by the Minnesota Department of Health, Mortuary Science Section on or before October 15, 2015, Daniel J. McRaith must identify an upcoming continuing education course that would satisfy the above requirement and must submit to the Minnesota Department of Health, Mortuary Science Section, for the Department's approval, a written outline of the course that includes the course content and objectives; an overall number of continued education units allowed for this course ; and the name and title of the instructor with contact information. After approval of the proposed continuing education course by the Department, Daniel J. McRaith must attend the continuing education course.
2. In the event that Daniel J. McRaith (1) is, by October 15, 2015, after reasonable inquiry, unable to identify a continuing education course that meets the above requirements; or (2) there is no continuing education course that meets the above requirements which is offered on or before October 15, 2015, he shall submit the Minnesota Department of Health, Mortuary Science Section, a written request for an extension of time.
3. Within five working days after attending the approved course, Daniel J. McRaith must submit to the Minnesota Department of Health, Mortuary Science Section a copy of the completion certificate, the name of the continuing education course, the number of continuing education units received, and the date and time that the course was held.

**VI. PENALTY ASSESSMENT**

**Forgivable Penalty Assessment**

You are assessed a FORGIVABLE administrative penalty of \$2,500.00 for the violation described in Sections II and III.

If you demonstrate to the Director of the Health Regulation Division, IN WRITING, within 30 days that the corrective actions have been taken, or that appropriate steps have been taken toward correcting the violation, which may include the development of a plan for correction, to the satisfaction of the Director, this penalty will be forgiven.

If you fail to demonstrate that the corrective actions have been taken, or that appropriate steps have been taken toward correcting the violation, to the satisfaction of the Director, the assessed penalty becomes DUE AND PAYABLE on the 31st day after this order was received. A plan to correct the violation may be developed within the 30-day time period for corrective action. The plan must be approved by the Director. Failure to comply with the approved plan shall be cause for subsequent enforcement action.

**Non-forgivable Penalty Assessment**

You are also assessed a NONFORGIVABLE penalty of \$2,500.00 for the violation described in Sections II and III.

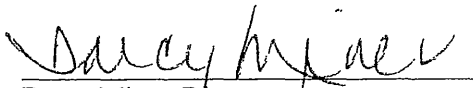
The penalty shall be paid by certified check or money order payable to "Treasurer, State of Minnesota." The payment must be submitted to the Minnesota Department of Health, Mortuary Science Section within 30 days of the date of receipt of this order.

1. Licensee may pay the \$2,500.00 civil penalty in monthly installments of up to four months after the effective date of this action. If licensee chooses to make installments, he must notify MDH in writing about his intentions, including how many installments he intends to make, in what amount, and over which time period. Licensee must send this information to: Investigation and Enforcement Unit, Mortuary Science Program, MDH, PO Box 64882, Saint Paul, MN 55164-0882.
2. Each payment must be made by check or money order payable to "Treasurer, State of Minnesota" and mailed to; Investigation and Enforcement Unit, Mortuary Science Section, MDH, PO Box 64882, Saint Paul, MN 55164-0882. Each payment is due by the last day of each month; however, licensee may prepay at any time.
3. The penalty may be referred to the Minnesota Department of Revenue (MDOR), or any other source of collection, if the debt is 14 days past the established due date. When this determination for a penalty becomes public and MDH refers the matter to MDOR, MDOR is authorized by Minnesota Statutes, section 16D.17 to obtain a judgement against licensee without further notice or proceeding.

#### VII. REQUEST FOR HEARING

You may appeal this order by requesting a hearing. The hearing request must be in writing and delivered to the Department of Health by certified mail within 20 days after you receive this order. The request must state the specific reasons for seeking a review of the order. The Minnesota Department of Health will initiate a hearing within 30 days of receiving a request for a hearing.

SO ORDERED this 4<sup>th</sup> day of September



Darcy Miner, Director  
Health Regulation Division  
Minnesota Department of Health  
85 East Seventh Place  
P.O. Box 64900  
St. Paul, Minnesota 55164-0900

Direct correspondence and any appeals to: Gilbert Acevedo, Manager of the Mortuary Science Section, Minnesota Department of Health, P.O. Box 64882, St. Paul, MN 55164-0882.