

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

SETTLEMENT AGREEMENT

1. PARTIES.

This Stipulated Agreement, hereinafter the “Agreement,” shall apply to and be binding upon the following parties:

- A. Rochester Cremation Services hereinafter “Respondent”; and
- B. The Commissioner of the Minnesota Department of Health, hereinafter “Department.”

2. PURPOSE AND SCOPE OF SETTLEMENT AGREEMENT.

The purpose of this Agreement is to resolve the appeal of the September 1, 2023 Administrative Penalty Order requiring corrective actions issued by the Department to Respondent. In entering into this Agreement, the Department and Respondent are settling a disputed matter.

3. DEFINITIONS.

Unless otherwise explicitly stated, the definitions in Minnesota Statutes section 149A.02 apply to the terms used in this Agreement.

4. STATEMENT OF FACTS AND LAW.

The following constitutes a summary of the facts agreed to by Respondent and the Department.

- A. The Department is authorized, pursuant to Minnesota Statutes section 149A.03, to license funeral establishments and morticians. The Department also, pursuant to Minnesota Statutes section 149A.03, enforces state laws relating to the removal, preparation, transportation, and disposition of dead human bodies. Pursuant to Minnesota Statutes section 149A.06, the Department has the authority to conduct inspections of licensed funeral establishments, and if the Department determines

that a licensee has violated a provision of Chapter 149A, it has the authority to order corrections and to assess administrative penalties.

- B. Respondent is licensed by the Department as a funeral establishment, located at 1605 Civic Center Drive, Rochester, Minnesota 55901.
- C. The Department conducted an investigation of Respondent relating to the removal of a dead body from the Mayo Clinic Retirement Community without a license to practice mortuary science. Following the investigation, the Department determined that Respondent violated certain provisions of chapter 149A, including sections 149A.20; 149A.70, subds. 1, 6; 149A.71, subd. 2(f); 149A.90, subd. 4; and 149A.93, subds. 1-2. As a result, on September 1, 2023, the Department issued an Administrative Penalty Order (“APO”) with corrective actions and a non-forgivable penalty of \$10,000. On September 15, 2023, the Department received Respondent’s request for a contested case hearing regarding the September 1, 2023 APO.
- D. The Department thereafter commenced a contested case at the Office of Administrative Hearings (“OAH”). The matter has been docketed as OAH Docket No. 21-0900-39573.
- E. The Parties have agreed to an informal disposition of this matter without a hearing.
- F. Respondent does not admit liability for any purpose, and this Settlement Agreement shall not be admissible or used by any person or entity in any other proceeding, except that MDH, its Commissioner, an administrative law judge, or a court may consider this Settlement Agreement as evidence in any future proceeding against Respondent under Minnesota Statutes Chapter 149A.

5. RESOLUTION.

In order to settle this dispute, the Parties agree as follows:

- A. By entering into this settlement agreement, Respondent hereby withdraws its appeal of the September 1, 2023 APO and the Parties will stipulate to the dismissal of the contested case, OAH Docket No. 21-0900-39573.
- B. Respondent agrees to pay \$5,000 of the non-forgivable civil penalty assessed in the September 1, 2023 APO. Respondent shall pay the \$5,000 once the Department has issued an invoice with payment instructions outlined. The Department agrees to rescind \$5,000 of the penalty assessed in the September 1, 2023 APO.
- C. Within six months of the execution of the agreement, Respondent will complete the corrective actions listed on page 7 of the APO, attached hereto as Exhibit 1. A general funeral service ethics continuing education course that addresses documentation or recordkeeping shall satisfy the requirement in paragraph 4 on

page 7 of the attached APO, even if documentation and recordkeeping are not the focus of the course. Respondent shall obtain approval from the Department on selection of the continuing education course. Respondent shall contact Debbie Thao regarding approval of the continuing education course at: 651-201-4200 or debbie-thao@state.mn.us.

- D. The Parties acknowledge that upon execution of this Agreement, this Agreement becomes a final order of the Commissioner.
- E. The Parties waive all further hearings, reviews, procedures, proceedings, and claims related to the September 1, 2023 APO to which the Parties may be entitled under the Minnesota and or United States Constitutions, statutes, or rules.

6. RESPONSIBILITY FOR COSTS.

The Parties agree that, with the exception of the penalty assessed in paragraph 5 of this Agreement, the Parties are not entitled to and shall not seek from any court or OAH any other monetary relief or compensation, including damages or other fees, costs, expenses, disbursements, or litigation expenses in connection with the issues raised in the September 1, 2023 APO and Respondent’s appeal and request for a hearing.

7. DISMISSAL OF PROCEEDINGS.

The Parties agree that upon execution of this Agreement, the appeal pending at OAH (Docket No. 21-0900-39573) may be dismissed.

8. RIGHT TO COUNSEL.

Respondent acknowledges that it has been advised of his rights to a hearing in this matter, to present argument, and to appeal from any adverse determination after a hearing, and Respondent hereby expressly waives those rights. Respondent further acknowledges that it has been represented by Michael D. Sharkey, Sharkey Law PLLC, that it has read, understands, and agrees to this Agreement, and has freely and voluntarily signed and entered into this Agreement.

9. OTHER REMEDIES RESERVED.

Nothing in this Agreement shall waive the Department’s right to enforce this Agreement, or to take any action authorized by law, including the exercise of the Department’s authority under chapter 149A. This Agreement shall not in any way limit or affect the authority of the Department or the Commissioner to proceed against Respondent by initiating a contested case hearing or by other appropriate means on the basis of any act, conduct, or omission of Respondent justifying enforcement that is not the subject of the September 1, 2023 APO. The Parties acknowledge that this Agreement does not preclude the Department from any future investigation, survey, or enforcement action against Respondent.

10. ENTIRE AGREEMENT.

This Agreement contains the entire agreement between the Parties, there being no other agreement of any kind, verbal or otherwise, which varies the terms of this agreement.

11. VENUE.

Disputes regarding the meaning of this Agreement or actions to enforce this Agreement shall be venued in Ramsey County District Court, in St. Paul, Minnesota.

12. DATA PRACTICES.

The Parties to this Agreement understand and agree that the release of information from any Department file pertaining to this matter, including this Agreement, is governed by the Minnesota Government Data Practices Act, Minn. Stat. ch. 13; the Official Records Act, Minn. Stat. § 15.17; and any other applicable law.

13. SUCCESSORS.

All rights inure to, and obligations bind, successors, heirs, and assignees of all parties involved.

14. AMENDMENTS.

This Agreement may only be amended by written and signed agreement between the Parties.

15. EFFECTIVE DATE AND COUNTERPARTS.

This Agreement shall be effective upon the date it is signed by all parties. This Agreement may be executed in one or more counterparts, which shall be construed together as if one instrument. Any party shall be entitled to rely on an electronic or facsimile copy of a signature as if it were an original.

BY THEIR SIGNATURES HEREON, THE UNDERSIGNED REPRESENT THAT THEY HAVE AUTHORITY TO BIND THE PARTIES THEY REPRESENT, THEIR AGENTS, CONTRACTORS, AND SUBSIDIARIES

ROCHESTER CREMATION SERVICES

BY: _____

NAME:

Dated this ___ day of _____, 2024.

MINNESOTA DEPARTMENT OF HEALTH

BY: _____

NAME: Carol Backstrom

TITLE: Assistant Commissioner of the Minnesota Department of Health

Dated this ___ day of _____, 2024.

ROCHESTER CREMATION SERVICES

BY: 

NAME: Michael D. Johnson

Dated this 20th day of DECEMBER, 2024.

MINNESOTA DEPARTMENT OF HEALTH

BY: 

NAME: Carol Backstrom

TITLE: Assistant Commissioner of the Minnesota Department of Health

Dated this 13th day of January, 2024.