

STATE OF MINNESOTA
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
AND THE DEPARTMENT OF HEALTH

In the Matter of the Administrative Penalty
Order Issued to Brenny Funeral and
Cremation Services

SETTLEMENT AGREEMENT

This settlement agreement (“Agreement”) is made by and between the Minnesota Department of Health (“the Department”) and Brenny Funeral and Cremation Services (License No. 0217) (“Brenny”).

WHEREAS, on March 4, 2015 the Department issued an Administrative Penalty Order (“APO”) to Brenny pursuant to Minn. Stat. § 149A.06; and

WHEREAS, on March 26, 2015, Brenny timely requested a hearing before an administrative law judge at the Office of Administrative Hearings, and the appeal has been docketed as OAH Docket No. 08-0900-32459; and

WHEREAS, it is the desire of the parties to fully, finally and completely release and settle the issues raised in the March 4, 2015 APO and other pending investigations as of the date this Agreement is executed;

NOW THEREFORE, in consideration of the recitals and the promises made herein, the parties agree as follows:

1. *Compliance with Minn. Stat. ch. 149A.* Brenny reaffirms its commitment to comply with the requirements of Minn. Stat. ch. 149A;
2. *APO.* The parties agree that the March 4, 2015 APO and this executed Settlement Agreement, including the executed Stipulation for Dismissal and executed Order, will be

published on the website of the Mortuary Science Section of the Minnesota Department of Health;

3. *Administrative Action and Investigations.* In exchange for Brenny's agreement to and compliance with the following terms, the Mortuary Science Section of the Department agrees to terminate its efforts to enforce the March 4, 2015 APO at the Office of Administrative Hearings and terminate any and all investigations regarding Brenny pending on the date this Agreement is executed;

a. *Written Procedure.* Brenny agrees to create and implement a written procedure for handling contact with the family of a decedent from an initial telephone call or correspondence or other contact until final disposition is completed. The written procedure must ensure that whenever an unlicensed employee receives an initial telephone call from the family of a decedent that he or she refers the family to a licensed mortician or funeral director for scheduling services. The written procedure must ensure that only licensed morticians or funeral directors are allowed to speak to families regarding arranging or scheduling funeral services, memorial services, or graveside services, regardless of the method of communication. The written procedure must be submitted to the Department for review and approval within sixty (60) days after execution of this agreement. Brenny agrees to send the written procedure to Manager, Mortuary Science Section, P.O. Box 64882, St. Paul, Minnesota 55164-0882. Once Brenny receives the Department's written approval of the written procedure, Brenny agrees to provide a copy of the written procedure to each of its employees.

b. *Training.* Brenny agrees that its employees, including licensed and unlicensed staff, will receive training on the requirements of Minn. Stat. ch. 149A,

including but not limited to the requirements of Minn. Stat. §§ 149A.01 and 149A.71, and the written procedure for handling contact with the family of a decedent. Within sixty (60) days after Brenny receives the Department's approval of the written procedure referenced in paragraph 3(a), Brenny agrees to submit for the Department's approval the proposed content of the training and the name(s) of the person(s) who will conduct the training. Brenny agrees that its employees shall receive this training within one hundred twenty (120) days after Brenny receives the Department's written approval of the proposed training. The parties agree that Attorney Michael D. Sharkey is an acceptable person to conduct the training provided that the Department approves of the proposed content of the training.

c. *Verification.* Within ten (10) days of the completion of the training referenced in paragraph 3(b), Brenny agrees to submit to the Department verification that the training occurred, including a copy of the training materials, the name and credentials of the trainer, the date the training was held, and a list including the name, license number if applicable, and signature of each Brenny employee who attended the training. Brenny shall send the training proposal and verification to Manager, Mortuary Science Section, P.O. Box 64882, St. Paul, Minnesota 55164-0882.

d. *Withdrawal of Appeal.* Brenny agrees to withdraw its request for a hearing on the March 4, 2015 APO.

e. *Payment of Civil Penalty.* In consideration for the Department agreeing to withdraw the March 4, 2015 APO and terminate any and all pending investigations regarding Brenny, Brenny agrees to pay a \$10,000 civil penalty as follows:

i. \$2,500 to be received by January 1, 2016;

- ii. \$2,500 to be received by February 1, 2016;
- iii. \$2,500 to be received by March 1, 2016; and
- iv. \$2,500 to be received by April 1, 2016.

The checks shall be made payable to the "State of Minnesota" and shall be sent to Manager, Mortuary Science Section, Minnesota Department of Health, P.O. Box 64882, St. Paul, MN 55164-0882.

2. *Fees and Costs.* The parties agree that, with the exception of the civil penalty described in paragraph 3(e) of this Agreement, the parties are not entitled to and shall not seek from any court any other monetary relief or compensation, including damages or other fees, costs, expenses or disbursements in connection with the issues raised in the March 4, 2015 APO and the appeal and request for hearing on that document and any investigation pending before the Mortuary Science Section of the Department on the date of execution of this Agreement. The parties agree that, except to the extent stated in this agreement, the parties are responsible for their own fees, costs, and expenses.

3. *Future Investigations.* All parties acknowledge that this Agreement does not preclude the Department from investigating and/or disciplining Brenny for any future complaints or violations of Minn. Stat. ch. 149A.

4. *Dismissal of OAH Case.* The Department and Brenny agree to dismiss the appeal of the March 4, 2015 APO pending before the OAH (OAH No. 08-0900-32459) with prejudice. Upon execution of this Settlement Agreement, the parties, individually or by their counsel, shall execute a stipulation to dismiss the appeal with prejudice in the form attached hereto as Exhibit A. The Department shall file the stipulation with the OAH.

5. *Failure to Comply.* Brenny acknowledges that, in addition to action the Department may take against Brenny pursuant to Minnesota Statutes ch. 149A and other remedies provided by law, if Brenny fails to comply with any terms of this Settlement Agreement, the March 4, 2015 APO shall be reinstated as originally issued and any other pending investigations closed pursuant to this Agreement may be reopened. In addition, if Brenny fails to comply with any terms of the Settlement Agreement, the full amount of the penalty initially assessed in the March 4, 2015 APO shall immediately become due and owing.

6. *Settlement Agreement.* This Agreement is binding. The parties acknowledge that they have been advised that (1) the other parties have no duty to protect their interests or provide them with information about their legal rights, (2) signing this Agreement may adversely affect their legal rights; and (3) they should consult an attorney before signing this Agreement if they are uncertain of their rights.

7. *Government Data.* All signatories to this Settlement Agreement acknowledge that the Department's release of information concerning this matter from the files of the Department is governed by Minn. Stat. ch. 149A, the Minnesota Government Data Practices Act (Minn. Stat. ch. 13) and the Official Records Act (Minn. Stat. ch. 15).

8. *Entire Agreement.* This Settlement Agreement constitutes the entire agreement between and among the parties. This Agreement supersedes any and all prior agreements. No modification shall be binding on any of the parties unless it has been agreed to by the parties in writing, signed by them and identified as an amendment to this Agreement. There are no inducements or representations leading to the execution of this Settlement Agreement except as herein explicitly contained. If any part of this agreement is rendered invalid by a Court of competent jurisdiction, the rest of the agreement shall still remain in force.

9. *Voluntary and Knowing Action.* The parties to this Settlement Agreement acknowledge that they have read and understand the terms of this Settlement Agreement, that they have been represented by legal counsel or had the opportunity to retain legal counsel, and that they are voluntarily entering into this Settlement Agreement to resolve the dispute among them.

10. *Denial of Wrongdoing and Liability.* It is understood by the parties that by Brenny is not admitting to any guilt, liability, or wrongdoing by signing this Settlement Agreement.

11. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be deemed an original.

The parties have caused this Agreement to be signed on the dates opposite their signatures.

Dated: 1/4/16

MINNESOTA DEPARTMENT OF HEALTH

By: Darcy Miner
DARCY MINER, Director Health Regulation Division

Dated: 12.14.15

BRENNY FUNERAL AND CREMATION SERVICES
(License No. 0217)

By: Jay Brenny
Title: OWNER