

**STATE OF MINNESOTA
COMMISSIONER OF HEALTH**

In the Matter of Joseph S. Klecatsky & Sons Funeral Home,
a licensed funeral establishment,
located in Eagan, Minnesota

STIPULATION AND CONSENT ORDER

IT IS HEREBY STIPULATED AND AGREED by Thomas E. Klecatsky and Richard N. Klecatsky, licensed morticians and owners, on behalf of themselves and Joseph S. Klecatsky & Sons Funeral Home (“Klecatsky & Sons”), a licensed funeral establishment, and the Minnesota Department of Health (“Department”):

1. The Department is charged with enforcement of Minn. Stat. ch. 149A, (“Chapter 149A”), which governs the practice of mortuary science. The Department is authorized by Minn. Stat. §§ 149A.06, subd. 1 and 149A.60 to assess monetary penalties and enter into compliance agreements with persons whose conduct is subject to regulation under Chapter 149A; and to impose disciplinary action against such persons for failure to comply with any provision of Chapter 149A or laws and rules governing the removal, preparation, transportation, arrangements for final disposition of dead human bodies, and the practice of mortuary science. The purpose of this Stipulation and Consent Order (“Stipulation”) is to resolve the violations alleged in paragraphs 5, 6 and 7 below.

2. Thomas E. Klecatsky (M- 2789) and Richard N. Klecatsky (M-2790) are licensed morticians and owners of Joseph S. Klecatsky and Sons Funeral Home. The Department has issued a funeral establishment license (#0800) to “Joseph S. Klecatsky & Sons Funeral Home” located at 1580 Century Point, Eagan, Minnesota 55121.

3. Pursuant to Minn. Stat. § 149A.70, subd. 7, “no licensee or intern shall engage in or permit others under the licensee’s or intern’s supervision or employment to engage in unprofessional conduct. Unprofessional conduct includes but is not limited to: (7) Knowingly making a false statement in the procuring, preparation, or filing of any required permit or document.

4. Pursuant to Minn. Stat. § 149A.71, subd. 2(f), “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.”

5. On April 6, 2015, the Department received a complaint alleging that the decedent’s dead human body was cremated against the family’s wishes to view prior to the cremation, and that the cremation authorization form had been altered to immediate cremation with no viewing. In addition, the family was not provided a signed copy of the Statement of Funeral Goods and Services at the conclusion of the arrangements before they left the funeral home.

6. Thomas E. Klecatsky admits and acknowledges that, on March 13, 2015, Suzanne Soummane, staff mortician at “Klecatsky & Sons” met with the decedent’s family to make funeral arrangements and to plan for final disposition of the decedent’s human remains. During the final arrangements the family expressed that there were family members traveling from out of town and their wishes were to wait with cremation until they had the opportunity to discuss with those traveling their desire to view prior to cremation taking place. During the arrangements the spouse was asked to sign and initial

the cremation authorization form. Further discussion resulted in the family providing additional instruction for a particular date and time the funeral home could cremate the decedent's dead human remains. During the discussion of the cremation authorization form the mortician altered the form by crossing out the spouse's initials and her written wishes for desired date and time to cremate. She then required the spouse to re-initial below the provided lines. It wasn't until the spouse provided additional initials that the mortician added additional markings on the authorization form that indicated that the decedent's dead human remains could be cremated immediately. There was no attempt by the mortician to provide the family a new un-altered authorization form to sign and provide clear and precise direction for cremation. The cremation authorization form was altered by the mortician in such a way that it was difficult to understand when the cremation could take place and which initials by the family were valid. In addition the mortician did not make contact with the family after they left the funeral home and before she cremated the body to confirm family's wishes to view or to gain permission and final authorization to cremate.

7. Mr. Thomas E. Klecatsky is also aware that the staff mortician discussed arrangements for final disposition of the decedent's human remains on March 13, 2015 without providing the family members who requested the arrangements with a signed written itemized statement of funeral goods and services at the conclusion of the discussion but instead waited to provide them a signed copy the day of the funeral service.

8. In order to resolve this matter and avoid the expense and uncertainty of enforcement proceedings under Chapter 149A, Thomas E. and Richard N Klecatsky agree on behalf of themselves and Klecatsky & Sons to the following administrative penalties and corrective actions:

A. **Administrative Penalties.** Thomas E. and Richard N. Klecatsky and Klecatsky & Sons are hereby assessed a civil penalty of \$8,000 as follows:

i. **Stayed Penalty.** \$3,500.00 of the civil penalty shall be stayed so long as Thomas E. and Richard N. Klecatsky and Klecatsky & Sons are in compliance with the Corrective Action requirements set forth in paragraph 8(B) below. If the Department determines that Thomas E. and Richard N. Klecatsky, staff morticians, or Klecatsky & Sons have failed to comply with the Corrective Action requirements of paragraph 8(B) below or have violated Minn. Stat. §§ 149A.70, subd. 7 or 149A.71, subd. 2 (f) within three years of the effective date of this Stipulation, the \$3,500 stayed penalty will become due and owing as set forth in paragraph 8(C) below.

ii. **Penalty Due Now.** Payment of the remaining penalty amount of \$4,500.00 shall be made by check or money order payable to "Treasurer, State of Minnesota." The payment is due within 30 days of the effective date of this Stipulation and Consent Order and shall be sent to the Minnesota Department of Health, Mortuary Science Section.

B. **Corrective Actions** Thomas E. and Richard N. Klecatsky, Suzanne Soummane and Klecatsky & Sons shall take the following corrective actions:

- i. Klecatsky & Sons must ensure that whenever Ms. Soummane or any other licensed mortician in its employ agrees to make arrangements for final disposition of dead human bodies the mortician will, at the conclusion of the discussion of the arrangements, provide a signed written itemized statement of funeral goods and services to the consumer who requested the arrangements. In addition, Klecatsky & Sons shall ensure that when arranging for burial services Ms. Soummane or any other licensed mortician in its employ follows the wishes of the family and does not cremate or cause to cremate before family has opportunity to view the decedent.
- ii. Klecatsky & Sons shall create and implement a written procedure for scheduling and handling cremations. The written procedure must include a requirement that the funeral home will, to the best of its ability, honor requests for private viewings made by individuals with the right to control the disposition of the decedent's human remains and will not unnecessarily or prematurely cremate before seeking approval and authorization from the legal next of kin.

- iii. Klecatsky & Sons shall also create and implement a written policy for communicating with individuals and family members who have the right to control the disposition of the decedent's body. The policy shall ensure that these individuals are well informed and have been given accurate information regarding their options for disposition of the decedent's body so they are able to make informed decisions.
- iv. Within 30 days of the effective date of this Stipulation, Thomas E. and Richard N. Klecatsky, and Klecatsky & Sons shall provide to the Department a written "Action Plan" outlining the specific processes to be followed to ensure that itemized written statements of funeral goods and services are provided at the conclusion of the discussion of all funeral arrangements, that proper procedures are in place for arranging and scheduling cremations, and that procedures are in place governing communications with individuals or family members who have the right to control the disposition of a decedent's human remains. Upon receipt of the Department's approval of the plan, Thomas E. and Richard N. Klecatsky shall immediately implement the plan at Klecatsky & Sons or any other funeral establishment where they are employed.

C. **Violation of this Stipulation.** If the Department determines that Thomas E. and Richard N. Klecatsky, and Klecatsky & Sons has violated Minn. Stat. § 149A.70, subd. 7 or Minn. Stat. § 149A.71, subd. 2(f) within three years of the effective date of this Stipulation, the Department shall give Thomas E. and Richard N. Klecatsky and/or Klecatsky & Sons written notice by certified mail specifying the violating actions. Unless Thomas E. and Richard N. Klecatsky and/or Klecatsky & Sons initiates dispute resolution pursuant to paragraph 8(D) below within 30 calendar days after receiving the written notice from the Department, the \$3,500 stayed penalty will become due and owing.

D. **Dispute Resolution.** If a dispute arises regarding the Department's determination pursuant to paragraph 8(C) above that Thomas E. and Richard N. Klecatsky and/or Klecatsky & Sons have failed to comply with Minn. Stat. § 149A.70, subd. 7 or Minn. Stat. § 149A.71, subd. 2 (f), Thomas E. and Richard N. Klecatsky, on behalf of themselves and/or Klecatsky & Sons, may engage in dispute resolution as follows:

- i. Thomas E. and Richard N. Klecatsky may initiate the dispute resolution process by providing the Department with a written statement setting forth the matter in dispute, their position, and the information they are relying on to support their position. Dispute resolution shall be initiated within

thirty (30) calendar days after receipt of written notice from the Department concerning violation(s) of Minn. Stat. § 149A.70, subd. 7 or Minn. Stat. § 149A.71, subd. 2(f).

- ii. The Department will have fourteen (14) calendar days after receipt of the request for dispute resolution to provide a written statement of its position and supporting information to Thomas E. and Richard N. Klecatsky.
- iii. If the Department and Thomas E. and Richard N. Klecatsky are unable within twenty-one (21) calendar days after the Department's reply is sent to reach a resolution of the dispute and reduce such resolution to writing in a form agreed upon by the parties, the Commissioner shall issue a written decision to the parties resolving the dispute.
- iv. Unless Thomas E. and Richard N. Klecatsky commences an action in the Minnesota Court of Appeals to seek judicial review of the Commissioner's decision within sixty (60) calendar days of the date of receipt of the decision, the Commissioner's decision shall become an integral and enforceable part of this Stipulation. For purposes of judicial review, the Commissioner's decision shall be considered a final decision of the Department.

9. This Stipulation shall not in any way limit or affect the Commissioner's authority to proceed against Thomas E. and Richard N. Klecatsky or Klecatsky & Sons to initiate enforcement action for any alleged violation of Chapter 149A by Thomas E. and Richard N. Klecatsky or Klecatsky & Sons that is not the subject of this Stipulation.

10. Thomas E. and Richard N. Klecatsky hereby acknowledge, on behalf of themselves and Klecatsky & Sons, that they have read, understood, and agreed to this Stipulation and have freely and voluntarily signed it.

11. The terms of this Stipulation shall be legally enforceable by either party in a court of appropriate jurisdiction.

12. This Stipulation contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, that varies the terms of the Stipulation.

13. This Stipulation shall be binding upon Thomas E. and Richard N. Klecatsky and their successors and assignees, Klecatsky & Sons and its successors and assignees, and the Minnesota Department of Health and its successors and assignees.

14. This Stipulation may not be modified or amended except in writing and any modifications or amendments must be signed by all the parties.

15. This Stipulation is effective on the date it is signed on behalf of the Minnesota Department of Health.

Dated: Aug 20, 2015

Thomas E. Klecatsky

Thomas E. Klecatsky, Owner
Klecatsky & Sons Funeral Home
1580 Century Point
Eagan, Minnesota 55121

Dated: September 1, 2015

Darcy Miner

DARCY MINER, Director
Health Regulation Division
Minnesota Department of Health
85 East Seventh Place
P.O. Box 64882
St. Paul, MN 55164-0882

Dated: AUGUST 20, 2015

Richard N. Klecatsky

Richard N. Klecatsky, Owner
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