



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

**Minnesota Department of Health  
ADMINISTRATIVE PENALTY ORDER**

Brenny Funeral & Cremation Services.  
Mr. Joseph Brenny  
P.O. Box 643  
Brainerd, Minnesota 56401

***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. The Minnesota Department of Health, Mortuary Science Section ("Department") investigated a complaint concerning Brenny Funeral & Cremation Services. The complaint involved a decedent who had entered into a preneed funeral agreement with Brenny Funeral & Cremation Services on April 30, 1998.
2. During the investigation, the Department discovered in December 2013, Brenny Funeral & Cremation Services utilized an unlicensed staff person to consult by telephone with the family of a decedent for the purpose of making arrangements for immediate burial of the decedent and for a graveside service. The unlicensed staff person failed to refer the family to the on-staff mortician to finalize the funeral arrangements. The unlicensed staff person did not inform the family that only licensed personnel can make funeral arrangements and did not offer the family the opportunity to meet in person with the mortician to discuss the arrangements and sign the paperwork.
3. The licensed mortician on staff failed to discuss or confirm the arrangements with the person or persons with the legal right to control the disposition of the decedent's remains. Prior to the graveside services, Brenny Funeral & Cremation Services failed to provide the decedent's family with a copy of the decedent's preneed funeral agreement and failed to provide the family with an itemized written statement of the goods and services to be provided.
4. The burial arrangements and graveside services arranged by Brenny Funeral & Cremation did not adhere to the specific instructions set forth in decedent's preneed funeral agreement or the instructions of the person or persons with the legal right to control the disposition of the decedent's remains. The decedent was buried in a cloth

covered casket and a minimum grave liner instead of a casket or vault that was similar in style or material specified in the preneed agreement. The decedent was also buried in clothing that the family had not provided or authorized.

5. As part of the funeral arrangements, the decedent's family had ordered memorial cards. Brenny Funeral & Cremation Services failed to provide the decedent's family with memorial cards until after the graveside services were concluded.

### *III. Violation Reference*

#### **Minn. Stat. § 149A.70, Subd. 6, Use of unlicensed personnel, states:**

Except as otherwise provided in this chapter, a licensed funeral establishment may not employ unlicensed personnel to perform the duties of a funeral director or mortician. A licensee may be personally assisted by a non-licensed employee when removing a dead human body from the place of death and in the lifting of a dead human body at the funeral establishment. The non-licensed employee must be in the immediate physical presence of the licensee in charge at all times. The funeral establishment and the individual licensee are responsible for compliance and training of the non-licensed employee outlined in sections 149A.90, Subdivision 6, and 149A.92, subdivisions 7 and 10, and shall be fully accountable for all actions of the non-licensed employee.

#### **Minn. Stat. §149A.70, Subdivision 7(6), Unprofessional conduct, states:**

No licensee or intern shall engage in or permit others under the licensees or intern's supervision or employment to engage in unprofessional conduct. Unprofessional conduct includes, but is not limited to:

...

- (6) Intentionally misleading or deceiving any customer in the sale of any goods or services provided by the licensee.

#### **Minn. Stat. §149A.71, Subdivision 2(f), Preventive requirements, states:**

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 reasonably ascertainable if the prices are not known or reasonably 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.71, Subdivision 2(g), Preventive requirements, states:**

Upon receiving actual notice of the death of an individual with whom a funeral provider has entered a preneed funeral agreement, the funeral provider must provide a copy of all preneed funeral agreement documents to the person who controls final disposition of the human remains or to the designee of the person controlling disposition. The person controlling final disposition shall be provided with these documents at the time of the person's first in-person contact with the funeral provider, if the first contact occurs in person at a funeral establishment, alkaline hydrolysis facility, crematory, or other place of business of the funeral provider. If the contact occurs by other means or at another location, the documents must be provided within 24 hours of the first contact.

**Minn. Stat. §149A.80, Subdivision 1, Advance directives and will of decedent, states:**

A person may direct the preparation for, type, or place of that person's final disposition, as well as the type of conveyance to be used to transport the body to the place of final disposition by written instructions. Arrangements made in advance of need must be in writing and dated, signed, and witnessed. The person or persons otherwise entitled to control the final disposition under this chapter shall faithfully carry out the reasonable and otherwise lawful directions of the decedent to the extent that the decedent has provided resources for the purpose of carrying out the directions. If the instructions are contained in a will, they shall be immediately carried out, regardless of the validity of the will in other respects or of the fact that the will may not be offered for or admitted to probate until a later date, subject to other provisions of this chapter or any other law of this state. This subdivision shall be administered and construed so that the reasonable and lawful instructions of the decedent or the person entitled to control the final disposition shall be faithfully and promptly performed.

***IV. Corrective Order***

It is ordered that the Brenny Funeral & Cremation Services 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 Brenny Funeral & Cremation Services fails to demonstrate to the satisfaction of the Director that the corrective actions specified below have been taken or that 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 shall 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:**

1. Create and implement a written procedure for handling phone arrangements from the initial first call until final disposition is completed. The written procedure must ensure that support staff and licensed personnel understand their respective roles. The written procedure must ensure that whenever unlicensed personnel retrieve first call information, they must refer families to a licensed mortician for scheduling services. The written procedure must ensure that only licensed morticians or licensed funeral directors are allowed to speak to families regarding arranging or scheduling funeral services, regardless of the method of communication. The written procedure must be submitted to the Minnesota Department of Health, Mortuary Science Section for approval on or before May 1, 2015.
2. After receiving approval from the Department of the new procedure for handling funeral arrangements, Brenny Funeral & Cremation Services must conduct training for all employees on the new procedure. The funeral home must maintain records including a sign in log of the employees who attended the training. Such records must include at a minimum: the topic, date and time of the training, printed names and the signatures of employees who attended the training. A copy of the record of new training for all employees must be submitted to the Minnesota Department of Health Mortuary Science Section on or before June 1, 2015.

***V. PENALTY ASSESSMENT***

**Forgivable Penalty Assessment**

You are assessed a FORGIVABLE administrative penalty of \$5,000 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 and 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 and 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 shall 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**

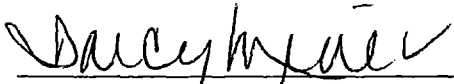
You are also assessed a NONFORGIVABLE penalty of \$5,000 for the violation described in Sections II and III.

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 within 30 days after you receive this order.

***VI. 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> of March, 2015.



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.