

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

In the Matter of the Administrative Penalty
Order Issued to Daniel J. McRaith, Licensed
Mortician

SETTLEMENT AGREEMENT

This settlement agreement ("Agreement") is made by and between the Minnesota Department of Health ("the Department") and licensed mortician Daniel J. McRaith (M-3207).

WHEREAS, on September 4, 2015 the Department issued an Amended Administrative Penalty Order ("APO") to McRaith pursuant to Minn. Stat. § 149A.06; and

WHEREAS, on September 11, 2015, McRaith denied that he violated the law and 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. 82-0900-32773; and

WHEREAS, it is the desire of the parties to fully, finally and completely release and settle the issues raised in the APO;

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

1. *Compliance with Minn. Stat. ch. 149A.* McRaith reaffirms his commitment to comply with the requirements of Minn. Stat. ch. 149A.
2. *No Admissions.* This Agreement does not constitute an admission of liability, an admission of a violation of Minn. Stat. ch. 149A or any other law, or any other admission of wrongdoing by McRaith.

3. *Administrative Action and Investigations.* In exchange for McRaith's agreement to and compliance with the following terms, the Mortuary Science Section of the Department agrees to terminate its efforts to enforce the APO;

a. *Training.* McRaith agrees that he will attend a National Funeral Directors Association ("NFDA") Certified Crematory Operator program in Welch, Minnesota on May 23, 2016;

b. *Verification.* Within ten (10) days of the completion of the training referenced in paragraph 4(a), McRaith shall submit to the Department verification that the training occurred. McRaith shall send the verification to Manager, Mortuary Science Section, P.O. Box 64882, St. Paul, Minnesota 55164-0882.

c. *Withdrawal of Appeal.* McRaith agrees to withdraw his appeal of the APO, docketed as OAH No. 82-0900-32773.

d. *Payment of Civil Penalty.* McRaith agrees to pay a civil penalty in the amount of \$1,000;

McRaith must pay the \$1,000 civil penalty within three (3) months of the date this agreement is fully executed;

The check(s) 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.

4. *Training May Not Be Credited to Required Continuing Education Hours.* The training referenced in paragraph 3(a) may not be credited toward McRaith's continuing education hours required under Minn. Stat. § 149A.40, subd. 11.

5. *Fees and Costs.* The parties agree that, with the exception of the civil penalty described in paragraph 3(d) 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 APO and the appeal and request for hearing on that document. The parties agree that, except to the extent stated in this agreement, the parties are responsible for their own fees, costs, and expenses.

6. *Future Investigations.* All parties acknowledge that this Agreement resolves all issues raised in the APO and does not resolve any other complaints against McRaith that may be pending before the Department and does not preclude the Department from investigating and/or disciplining McRaith for any future complaints or violations of Minn. Stat. ch. 149A.

7. *Dismissal of OAH Case.* The Department and McRaith agree to dismiss the appeal of the APO pending before the OAH (OAH No. 82-0900-32773) with prejudice. Upon execution of this 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.

8. *Failure to Comply.* McRaith acknowledges that, in addition to action the Department may take against McRaith pursuant to Minnesota Statutes ch. 149A and other remedies provided by law, if McRaith fails to comply with any terms of this Agreement, the APO shall be reinstated as originally issued and the APO shall become a final order unless McRaith shows good cause, as determined by the Department, for his failure to comply. If McRaith shows good cause for failing to comply with the training requirement in paragraph 3(a), he must submit an alternative training proposal to the Department for its approval by June 15, 2016. McRaith must complete the alternative training proposal within ninety (90) days of the

Department approving the alternative training proposal, and he must comply with the verification requirements in paragraph 3(b) within ten (10) days of the completion of the training. In the event McRaith shows good cause for failing to comply with the training requirement in paragraph 3(a) but fails to comply with the preceding requirements, the APO shall be reinstated as originally issued and the APO shall become a final order. In the event the APO becomes a final order, the full amount of the penalty initially assessed in the APO (\$5,000) and not yet paid shall be due within thirty (30) days of the date on which the APO became a final order. 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 due date. When this determination for penalty becomes public and MDH refers the matter to MDOR, MDOR is authorized by Minnesota Statutes, section 16D.17 to obtain a judgment against McRaith without further notice or proceedings.

9. *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.

10. *Government Data.* All signatories to this 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).

11. *Entire Agreement.* This 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 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.

12. *Voluntary and Knowing Action.* The parties to this Agreement acknowledge that they have read and understand the terms of this 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 between them.

13. *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: 5/9/16
By: Stella French
STELLA FRENCH, Director Health Regulation Division

DANIEL J. MCRAITH (M-3207)
Dated: 5/6/16
By: Daniel J. Mcraith
Title: Funeral Director