

**STATE OF MINNESOTA
COMMISSIONER OF HEALTH**

In the Matter of John E. Zaharia, Mortician

STIPULATION AND CONSENT ORDER

IT IS HEREBY STIPULATED AND AGREED by John E. Zaharia, Mortician and an employee of Zaharia Family Funeral and Cremation Service, 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 paragraph 6 and 7 below.

2. John E. Zaharia is a licensed mortician (#M-3578) and an employee of Zaharia Family Funeral and Cremation Service in Truman, Minnesota. The Department had issued a funeral establishment license (#0516) to “Zaharia Family Funeral and Cremation Service” located at 102 East Ciro Street, Truman, Minnesota 56088.

3. Pursuant to Minn. Stat. § 149A.95, subd. 4, **Authorization to cremate required**, no crematory shall cremate or cause to be cremated any dead human body or identifiable body part without receiving written authorization to do so from the person or

persons who have the legal right to control disposition as described in section 149A.80 or the person's legal designee. Pursuant to subparagraph 3 of the statute, the written authorization must include the name, address, relationship to the deceased, and signature of the person or persons with the legal right to control disposition or a legal designee.

4. Pursuant to Minn. Stat. § 149A.95, subd. 8, **Identification of Body**, all licensed crematories shall develop, implement, and maintain an identification procedure whereby dead human bodies can be identified from the time the crematory accepts delivery of the remains until the cremated remains are released to an authorized party. After cremation, an identifying disk, tab, or other permanent label shall be placed within the cremated remains container before the cremated remains are released from the crematory. Each identification disk, tab, or label shall have a number that shall be recorded on all paperwork regarding the decedent. This procedure shall be designed to reasonably ensure that the proper body is cremated and that the cremated remains are returned to the appropriate party.

5. Pursuant to Minn. Stat. § 149A.95, subd. 14, **Cremation procedures; processing cremated remains**, the cremated human remains must be reduced by a motorized mechanical device to granulated appearance appropriate for final disposition and placed in a cremated remains container along with the appropriate identifying disk, tab, or permanent label.

6. On January 28, 2014 the Department received a complaint alleging that John E. Zaharia did not obtain proper signatures on the cremation authorization form relating to a deceased person (the "decedent"). Mr. Zaharia obtained the signature of only one of the two persons who have the legal right to control disposition of the decedent's

body, whereas the signatures of a majority of such persons are required. Also, when the family received the decedent's cremated remains from John E. Zaharia, the urn did not have any type of identification on the outside of the cremated remains container, and the required metal identification tag had been removed from the cremated remains inside the urn. John E. Zaharia then released a set of unidentified cremated remains to the family of the decedent.

7. John E. Zaharia admits and acknowledges that on October 31, 2013, he was in charge of final disposition of the decedent's cremated remains. Prior to cremation, Mr. Zaharia did not obtain proper authorization and signatures for cremation as required by Minn. Stat. § 149A.95, subd. 4. Mr. Zaharia admits that at the completion of the cremation process, he did not follow proper procedure to label the container holding the cremated remains of the decedent. In addition, Mr. Zaharia removed the metal ID tag # 7703 from the cremated remains inside the urn, in violation of Minn. Stat. §149A.95, subd. 8, and then released to the family an urn containing cremated remains without an identification disk, tab, or permanent label in violation of Minn. Stat. § 149A.95, subd. 14. It wasn't until the investigation by the Department was it discovered that the identifying Metal ID tag # 7703 was separated from the cremated remains and misplaced in the decedent's file at the funeral home.

8. In order to resolve this matter and avoid the expense and uncertainty of enforcement proceedings under Chapter 149A, John E. Zaharia agrees to the following administrative penalties and corrective actions:

- A. **Administrative Penalties.** John E. Zaharia is hereby assessed a civil penalty of \$10,000. However, \$4,000.00 of the civil penalty

shall be stayed so long as Mr. Zaharia is in compliance with the Corrective Action requirements set forth in paragraph 8(C) below. Payment of the penalty amount of \$6,000.00 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.

B. If the Department determines that John E. Zaharia fails to comply with the Corrective Action requirements of paragraph 8(C) below or has violated Minn. Stat. §§ 149A.95, subd. 4; 149A.95, subd. 8, or 149A.95 subd. 14 within three years of the effective date of this Stipulation, the \$4,000 stayed penalty will become due and owing as set forth in paragraph 8(D) below.

C. **Corrective Actions.** John E. Zaharia shall take the following corrective actions:

- i. John E. Zaharia must ensure that whenever he agrees to make arrangements for final disposition of dead human bodies by cremation he must obtain proper signatures on the cremation authorization form as required by Minn. Stat. § 149A.95, subd. 4. In addition, Mr. Zaharia shall ensure that when providing cremation services he properly identifies and tracks the human remains throughout the process from the beginning to the end of the cremation. He shall create a log approved by the Department that includes

all required information for the purpose of tracking human remains. Also, he shall assure that all cremated remains containers are properly labeled with the name of the deceased person and cremation identification number on the outside of the cremated remains container, and that a metal tag, disk or permanent label is properly placed inside the cremated remains container assuring proper identification of the deceased person prior to releasing to the appropriate party as required by Minn. Stat. § 149A.95, subd. 8. Mr. Zaharia also shall release all cremated remains in a cremated remains container along with the appropriate identifying disk, tab, or permanent label as required in Minn. Stat. § 149A.95, subd. 14.

- ii. Within 30 days of the effective date of this Stipulation, John E. Zaharia shall provide to the Department a written “Action Plan” outlining the specific process to be followed insuring that proper written authorization to cremate is obtained and proper procedures are in place for identifying, tracking and releasing cremated remains. Upon receipt of the Department’s approval of the plan, Mr. John E. Zaharia shall immediately implement the plan at his current place of employment.

- D. **Violation of this Stipulation.** If the Department determines that John E. Zaharia has violated Minn. Stat. § 149A.95, subd. 4, Minn. Stat. § 149A.95, subd. 8 or Minn. Stat. § 149A.95, subd. 14 within three years of the effective date of this Stipulation, the Department shall give Mr. Zaharia written notice by certified mail specifying the violating actions. Unless Mr. Zaharia initiates dispute resolution pursuant to paragraph 8(E) below within 30 calendar days after receiving the written notice from the Department, the \$4,000 stayed penalty will become due and owing.
- E. If a dispute arises regarding the Department's determination pursuant to paragraph 8(D) above that John E. Zaharia has failed to comply with Minn. Stat. § 149A.95, subd. 4; Minn. Stat. § 149A.95, subd. 8; or Minn. Stat. § 149A.95, subd. 14, Mr. Zaharia may initiate dispute resolution by providing the Department with a written statement setting forth the matter in dispute, his position, and the information he is relying on to support his 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.95, subd. 4; Minn. Stat. § 149A.95, subd. 8; or Minn. Stat. § 149A.95, subd. 14. 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 Mr. Zaharia.

F. Unless the Department and John E. Zaharia are able to reach a resolution of the dispute and reduce such resolution to writing in a form agreed upon by the parties within twenty-one (21) calendar days after the Department's reply, the Commissioner shall issue a written decision to the parties resolving the dispute.

G. If a Commissioner's decision is issued pursuant to paragraph 8(F) above, it shall become an integral and enforceable part of this Stipulation, unless John E. Zaharia 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. For purposes of judicial review, the Commissioner's decision shall be considered a final decision of the Department of Health.

9. This Stipulation shall not in any way limit or affect the Department's authority to proceed against John E. Zaharia to initiate enforcement action for any alleged violation of Chapter 149A by Mr. Zaharia that is not the subject of the Stipulation.

10. John E. Zaharia hereby acknowledges that he has read, understood, and agreed to this Stipulation and has 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 John E. Zaharia 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.

JOHN E. ZAHARIA

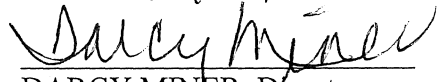
Dated: 2-3-15



John E. Zaharia
102 East Ciro Street
Truman, Minnesota 56088

**MINNESOTA DEPARTMENT
OF HEALTH**

Dated: 2/19/15



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