

**STATE OF MINNESOTA
COMMISSIONER OF HEALTH**

In the Matter of Thomson-Dougherty Funeral Home,
a licensed funeral establishment,
located in Minneapolis, Minnesota

STIPULATION AND CONSENT ORDER

IT IS HEREBY STIPULATED AND AGREED by Michael P. Dougherty, licensed mortician and owner, on behalf of Thomson-Dougherty Funeral Home (“Thomson-Dougherty”), a licensed funeral establishment, and the Minnesota Department of Health (“Department”):

1. The Department is charged with enforcement of Minnesota Statutes, Chapter 149A, (“Chapter 149A”), which governs the practice of mortuary science. The Department is authorized by Minnesota Statutes §§ 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.

2. The purpose of this Stipulation and Consent Order (“Stipulation”) is to resolve the violations alleged in paragraphs 4, 5, 6, 7, 8, and 9 below.

3. Michael P. Dougherty is a licensed mortician and owner of Thomson-Dougherty Funeral Home. The Department has issued a funeral establishment license (#0046) to “Thomson-Dougherty Funeral Home” located at 2535 Park Avenue, Minneapolis, Minnesota 55404.

4. Pursuant to Minnesota Statutes § 149A.70, subd. 4, “no licensee shall directly or indirectly pay or cause to be paid any sum of money or other valuable consideration for the securing of business or for obtaining the authority to dispose of any dead human body. For the purposes of this subdivision, licensee includes a registered intern or any agent, representative, employee, or person acting on behalf of the licensee.

5. Pursuant to Minnesota Statutes § 149A.70, subd. 7(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.

6. Pursuant to Minnesota Statutes § 149A.90, subd. 4, No dead human body shall be removed from the place of death by a mortician or funeral director or by a non-compensated person with the right to control the dead human body without the completion of a certificate of removal and, where possible, presentation of a copy of that certificate to the person or representative of the legal entity with physical or legal custody of the body at the death site. The certificate of removal shall be in the format provided by the commissioner that contains at least, the following information: 1) The name of the deceased, if known; 2) The date and time of removal; 3) A brief listing of the type and condition of any personal property removed with the body; 4) The location to which the body is taken; 5) The name, business address, the license number of the individual making the removal; and 6) The signature of the individual making the removal and, where possible, the individual or representative of the legal entity with physical or legal custody of the body at the death site.

7. Pursuant to Minnesota Statutes § 149A.90, subd. 5, a copy of the certificate of removal shall be given, where possible, to the person or representative of the legal entity having physical or legal custody of the body at the death site.

8. Pursuant to Minnesota Statutes § 149A.93, subd. 2, a certificate of removal is required when: 1) Legal and physical custody of the body is transferred; 2) A body is transported by public transportation; or 3) A body is removed from the state.

9. Pursuant to Minnesota Statutes § 149A.93, subd. 5, when a death occurs outside of the state and the body travels into or through this state, the body must be accompanied by a

permit for burial, removal, or other disposition issued in accordance with the laws and rules of the state where the death occurred.

10. Reilly D. Dougherty is a Minnesota licensed mortician and is employed at Thomson-Dougherty funeral Home.

11. On November 6, 2015, the Department received a complaint alleging that Reilly D. Dougherty took possession and removed the decedent's dead human body from the place of death in the state of Wisconsin and transported the decedent into the state of Minnesota without holding a valid Wisconsin License to practice mortuary science in that state. In addition, Reilly D. Dougherty did not properly complete required documentation for the release and transportation of human remains from Wisconsin.

12. On July 18, 2016, the Department contacted Michael P. Dougherty, as owner of the funeral establishment employing Reilly D. Dougherty, and informed him of Reilly D. Dougherty's actions, and the Department's conclusion that Reilly D. Dougherty had violated Chapter 149A. Michael P. Dougherty understands and acknowledges that, on October 26, 2015, Reilly D. Dougherty, staff mortician at "Thomson-Dougherty" traveled into the state of Wisconsin with the intention to practice mortuary science without holding a license to practice in that state and took possession of the decedent at their place of death, then transported the decedent back into the state of Minnesota; once returning into the state of Minnesota with the decedent Reilly D. Dougherty contacted Barth A. Humlie at Morris Nilsen Funeral Home who is licensed in both Minnesota and Wisconsin to ask if he would help him by providing his signature and Wisconsin License number on the release and transportation document required by Wisconsin; Barth A. Humlie agreed and gave permission and direction to Reilly D. Dougherty to forge his signature and Wisconsin license number on the Wisconsin documentation; and that Reilly D. Dougherty failed to complete and provide a signed certificate of removal to the decedent's legal next of kin at the death site.

13. Michael P. Dougherty was also made aware that staff mortician Reilly D. Dougherty despite funeral industry practice paid Barth A. Humlie a sum of money to use his signature and Wisconsin license number.

14. Based on the Department's findings, Michael P. Dougherty understands and acknowledges that Reilly D. Dougherty violated Chapter 149A.

15. In order to resolve this matter and avoid the expense and uncertainty of enforcement proceedings under Chapter 149A, Michael P. Dougherty agrees on behalf of Reilly D. Dougherty and Thomson-Dougherty to the following administrative penalties and corrective actions:

A. **Administrative Penalties.** Thomson-Dougherty and Michael P. Dougherty as owner of Thomson-Dougherty are hereby assessed a civil penalty of \$8,000 as follows:

i. **Stayed Penalty.** \$2,000.00 of the civil penalty shall be stayed so long as Michael P. Dougherty and Thomson-Dougherty are in compliance with the Corrective Action requirements set forth in paragraph 15(B) below. An additional \$3,000.00 of the civil penalty will be stayed if Michael P. Dougherty agrees to and assures the "Department" that Reilly D. Dougherty will complete the educational requirements set forth in the course outline provided by the University of Minnesota Mortuary Science Program. If the Department determines that Michael P. Dougherty, staff morticians, or Thomson-Dougherty have failed to comply with the Corrective Action requirements of paragraph 15(B) below or have violated Minnesota Statutes § 149A.70, subd. 4, Minnesota Statutes § 149A.70, subd. 7(7), Minnesota Statutes § 149A.90, subd. 4, Minnesota Statutes § 149A.90, subd. 5, Minnesota Statutes §

149A.93, subd. 2, or Minnesota Statutes § 149A.93, subd. 5 within five years of the effective date of this Stipulation, the \$5,000.00 stayed penalty will become due and owing as set forth in paragraph 15(C) below.

- ii. **Penalty Due Now.** Payment of the remaining penalty amount of \$3,000.00 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 and shall be sent to the Minnesota Department of Health, Mortuary Science Section.

B. **Corrective Actions** Michael P. Dougherty, Reilly D. Dougherty and Thomson-Dougherty shall take the following corrective actions:

- i. Thomson-Dougherty must ensure that whenever Reilly or any other licensed mortician in its employ agrees to make a removal of dead human remains from their initial place of death that they hold a valid license to practice mortuary science in each state they enter and take possession of human remains. In addition, Thomson-Dougherty shall ensure that a certificate of removal is completed and signed for every removal and that a copy is provided to the legal entity or representative at the time of removal at the death site. Thomson-Dougherty shall ensure that they do not fraudulently use signatures and license numbers of other licensee's other than their own and that they do not offer compensation to another licensee for the use and forgery of their name and license number. Thomson-Dougherty shall ensure that Reilly D. Dougherty complies with the

written course outline provided by the University of Minnesota and completes and successfully passes the independent study course.

ii. Thomson-Dougherty shall also create and implement a written policy for taking possession of human remains and for transporting human remains from other states their staff are not licensed to practice in. The policy shall ensure that Thomson-Dougherty contract with a licensed mortician who holds a valid license to practice in the state where the death occurs so that licensee can physically remove the decedent from that state on behalf of Thomson-Dougherty and complete all necessary documentation.

iii. Within 30 days of the effective date of this Stipulation, Michael P. Dougherty, and Thomson-Dougherty shall provide to the Department a written "Action Plan" outlining the specific processes to be followed to ensure that proper procedures for removing and taking possession of human remains from other states are in place, procedures for properly completing a certificate of removal is in place for every removal that takes place and that a copy is given to the legal next of kin at the time of the removal at the place of death, and written policies are in place to address forgery of signatures and license numbers. The action plan should address the illegal practice of compensating an agent for the use of their name and license number. In addition to Reilly D. Dougherty completing the required independent study course, Michael P. Dougherty is required to provide training to all his employee's on new policies and procedures regarding the areas of violation. A completed record of

the material used for training, content of training, and attendance records should be provided along with the action plan. Upon receipt of the Department's approval of the plan, Michael P. Dougherty, and Thomson-Dougherty shall immediately implement the plan at Thomson-Dougherty or any other funeral establishment where they are employed.

- C. **Violation of this Stipulation.** If the Department determines that Michael P. Dougherty, and Thomson-Dougherty has violated Minnesota Statutes § 149A.70, subd. 4, Minnesota Statutes § 149A.70, subd. 7(3), Minnesota Statutes § 149A.90, subd. 4, Minnesota Statutes § 149A.90, subd. 5, Minnesota Statutes § 149A.93, subd. 2, or Minnesota Statutes § 149A.93, subd. 5, within five years of the effective date of this Stipulation, the Department shall give Michael P. Dougherty, and Thomson-Dougherty written notice by certified mail specifying the violating actions.
- Unless Michael P. Dougherty, and Thomson-Dougherty initiates dispute resolution pursuant to paragraph 15(D) below within 30 calendar days after receiving the written notice from the Department, the \$5,000 stayed penalty will become due and owing.
- D. **Dispute Resolution.** If a dispute arises regarding the Department's determination pursuant to paragraph 15(C) above that Michael P. Dougherty, and Thomson-Dougherty have failed to comply with Minnesota Statutes § 149A.70, subd. 4, Minnesota Statutes § 149A.70, subd. 7(7), Minnesota Statutes § 149A.90, subd. 4, Minnesota Statutes § 149A.90, subd. 5, Minnesota Statutes § 149A.93, subd. 2, or Minnesota Statutes § 149A.93, subd. 5, Michael P. Dougherty, and Thomson-Dougherty, on

behalf of himself and/or Thomson-Dougherty, may engage in dispute resolution as follows:

- i. Michael P. Dougherty 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 Minnesota Statutes § 149A.70, subd. 4, Minnesota Statutes § 149A.70, subd. 7(7), Minnesota Statutes § 149A.90, subd. 4, Minnesota Statutes § 149A.90, subd. 5, Minnesota Statutes § 149A.93, subd. 2, or Minnesota Statutes § 149A.93, subd. 5.
- 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 Michael P. Dougherty.
- iii. If the Department and Michael P. Dougherty 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 Michael P. Dougherty 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.

16. This Stipulation shall not in any way limit or affect the Commissioner's authority to proceed against Michael P. Dougherty, or Thomson Dougherty to initiate enforcement action for any alleged violation of Chapter 149A by Michael P. Dougherty, or Thomson-Dougherty that is not the subject of this Stipulation.

17. Michael P. Dougherty hereby acknowledges, on behalf of himself and Thomson Dougherty, that he has read, understood, and agreed to this Stipulation and has freely and voluntarily signed it.

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

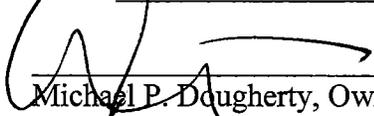
19. This Stipulation contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, that varies the terms of the Stipulation.

20. This Stipulation shall be binding upon Michael P. Dougherty and his successors and assignees, Thomson-Dougherty and its successors and assignees, and the Minnesota Department of Health and its successors and assignees.

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

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

Dated: 14 SEP 16



Michael P. Dougherty, Owner
Thomson Dougherty Funeral Home
2535 Park Avenue
Minneapolis, Minnesota 55404

Dated: 10/24/16



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