

Administrative Penalty Order Issued to Kerntz Funeral Home, establishment License 1273

**Terry Kerntz
Kerntz Funeral Home
140 E Sheridan Street
Ely, Minnesota 55731**

Authority

The Minnesota Department of Health, Mortuary Science Section, (“Department”), is authorized, pursuant to Minnesota Statutes section 149A.03 (<https://www.revisor.mn.gov/statutes/cite/149A>), to license funeral establishments and morticians, enforce state laws relating to the removal, preparation, transportation, and disposition of dead human bodies, and conduct inspections of licensed funeral establishments. If the Department determines that a licensee has violated a provision of Chapter 149A, it has the authority to order corrections and to assess administrative penalties in an amount up to \$10,000.00 per violation under section 149A.06. If the Department determines that a violation of Chapter 149A has occurred, and the violation is a serious or a repeat violation, the Department has the authority, under Minnesota Statutes section 149A.06, subdivision 4, to make an administrative penalty non-forgivable.

Findings of Fact

1. Terry Kerntz is 50% owner of Kerntz Funeral Home, located at 140 E. Sheridan Street Ely, Minnesota 55731. Kerntz Funeral Home operates under Kerntz Enterprises LLC. Mr. Kerntz has not been issued a license to practice mortuary science by the Minnesota Department of Health (“Department”) but Kerntz Funeral home does employ a licensed mortician.
2. On October 20, 2022, the Department received a complaint that Kerntz Funeral Home was asked to assist a family with a decedent who had no pre-planned funeral services in place and that Mr. Kerntz made the funeral arrangements.
3. On October 6, 2022, the day the funeral arrangements were reportedly made, Mr. Kerntz reached out to the Department, requesting assistance regarding a disposition. Mr. Kerntz told Department staff that he was meeting with a family who might qualify for county assistance with funeral expenses and that he was meeting with the family at the licensee’s request: the licensee was concerned about a possible COVID exposure and was in the adjacent room with the door closed.
4. During the October 6, 2022 conversation, the Department explained to Mr. Kerntz that meeting with the family to make funeral arrangements constitutes licensed work, which he could not personally perform. The Department told Mr. Kerntz he would have to arrange for a licensed mortician to complete all licensed work until the licensee could return. The

Department told Mr. Kerntz he might be engaging in illegal practice which could lead to discipline and/or a penalty.

5. On December 16, 2022, the Department issued Mr. Kerntz a Notice of Investigation regarding the complaint received on October 20, 2022. The Notice of Investigation requested a written response to the allegation and a "...complete unaltered copy of the arrangement file of decedent."
6. Mr. Kerntz responded to the Notice of Investigation and denied completing a removal or handling the decedent. He explained that on October 6, 2022, he was trying to get information from the decedent's girlfriend (who was hard of hearing) to file the death certificate. Mr. Kerntz stated he met with the girlfriend at the licensee's request: the licensee brought the body to the funeral home but did not want to meet face to face with the girlfriend due to a possible COVID exposure. Therefore, the licensee was in an adjoining room during the meeting. Typically, he stated the licensee would have met with the girlfriend via phone but could not in this case because she was hard of hearing and needed to meet in person. Under typical circumstances, Mr. Kerntz stated he would not have met with the girlfriend. The decedent's girlfriend identified another friend of the deceased. Mr. Kerntz attempted to speak with that friend, but the girlfriend kept saying the decedent had no money and left without signing anything.
7. Mr. Kerntz explained the licensee obtained information from the same friend about the burial plot the family owned, the associated costs, and the care required. According to Mr. Kerntz's written statement, after that conversation, he contacted the Department because he wanted to know how to proceed regarding payment for funeral expenses. Mr. Kerntz stated this was an extraordinary circumstance and he did not know that he was doing anything wrong.
8. Mr. Kerntz also provided the full funeral arrangement file in response to the Notice of Investigation. In relevant part, the file contained the following documents:
 - Statement of Funeral Goods and Services contract dated January 10, 2023, signed by Mr. Kerntz. No one from the decedent's family signed the Statement.
 - A Declaration of Claim of Funeral Director for Payment of Public Assistance Burial, dated January 10, 2023, signed by Mr. Kerntz. This form attests that the undersigned was a licensed funeral director, that funeral arrangements were made by the licensed funeral director, and identified the costs associated with the burial of the decedent.
9. The Department reviewed the death records for the decedent. License number M-3735 (belonging to the Kerntz Funeral Home licensee-mortician) was entered into the Minnesota Registration and Certification System (MR&C) as the funeral director who made the funeral arrangements. MR&C is an electronic death and birth filing system through the Office of Vital Records.
10. Mr. Kerntz exchanged emails with the Department regarding the date on the Statement of Funeral Goods and Services (January 10, 2023). Mr. Kerntz explained that he did not submit the Statement prior to January 10, 2023 because he was not sure what the county would pay for regarding the burial. Once he received authorization from the county, he completed the Statement and submitted it. The Statement of Goods and Services provided to the department was signed by Terry Kerntz but does not contain a signature from the decedent's family, such as the decedent's girlfriend.

11. The Department is unaware of other Statements of Funeral Goods and Services (or other good faith estimate of unknown charges) for this decedent that were provided to a family member or the decedent's girlfriend prior to January 10, 2023.

Specific Provisions of Chapter 149A

The full text of Minnesota Statutes, Chapter 149A may be found on the website of the Office of the Revisor of Statutes, <https://www.revisor.mn.gov/statutes/cite/149A>.

1. *Id.* § 149A.01, subd. 2

"In Minnesota no person shall, without being licensed by the commissioner of health:
(1) take charge of or remove from the place of death a dead human body;
(2) prepare a dead human body for final disposition, in any manner; or
(3) arrange, direct, or supervise a funeral, memorial service, or graveside service."

2. *Id.* §149A.05, subd. 1:

"The regulatory agency may issue correction orders that require a person subject to regulation under this chapter to correct violations of this chapter or rules, orders, stipulation agreements, settlements, compliance agreements, licenses, and permits adopted or issued by the regulatory agency."

3. *Id.* §149A.05, subd. 2:

"The correction order must include:
(1) a concise statement of the deficiencies alleged to constitute the violation;
(2) a reference to the section of law, rule, order, stipulation agreement, settlement, compliance agreement, license, or permit that has been violated;
(3) a statement of the time by and the manner in which the violation must be corrected;
and
(4) a statement of the right to request a hearing under sections 14.57 to 14.62."

4. *Id.* § 149A.20, subd. 1

"Except as provided in section 149A.01, subdivision 3, any person who takes charge of or removes from the place of death a dead human body, or prepares a dead human body for final disposition in any manner, or arranges, directs, or supervises a funeral, memorial service, or graveside service must possess a valid license to practice mortuary science issued by the commissioner. A funeral establishment may provide a nonlicensed individual to direct or supervise a memorial service provided they disclose that information to the person or persons with the authority to make the funeral arrangement as provided in section 149A.80."

5. *Id.* § 149A.60

“The regulatory agency may impose disciplinary measures or take disciplinary action against a person whose conduct is subject to regulation under this chapter for failure to comply with any provision of this chapter or laws, rules, orders, stipulation agreements, settlements, compliance agreements, licenses, and permits adopted, or issued for the regulation of the removal, preparation, transportation, arrangements for disposition or final disposition of dead human bodies, or for the regulation of the practice of mortuary science.”

6. *Id.* § 149A.70, subd. 1

“Only a person holding a valid license to practice mortuary science issued by the commissioner may use the title of mortician, funeral director, or any other title implying that the licensee is engaged in the business or practice of mortuary science.”

7. *Id.* § 149A.70, subd. 6

“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 nonlicensed 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 nonlicensed 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 nonlicensed 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 nonlicensed employee.”

8. *Id.* § 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:

- (1) harassing, abusing, or intimidating a customer, employee, or any other person encountered while within the scope of practice, employment, or business;*
- (2) using profane, indecent, or obscene language within the immediate hearing of the family or relatives of the deceased;*
- (3) failure to treat with dignity and respect the body of the deceased, any member of the family or relatives of the deceased, any employee, or any other person encountered while within the scope of practice, employment, or business;*
- (4) the habitual overindulgence in the use of or dependence on intoxicating liquors, prescription drugs, over-the-counter drugs, illegal drugs, or any other mood altering substances that substantially impair a person’s work-related judgment or performance;*
- (5) revealing personally identifiable facts, data, or information about a decedent, customer, member of the decedent’s family, or employee acquired in the practice or business without the prior consent of the individual; except as authorized by law;*

- (6) intentionally misleading or deceiving any customer in the sale of any goods or services provided by the licensee;
- (7) knowingly making a false statement in the procuring, preparation, or filing of any required permit or document; or
- (8) knowingly making a false statement on a record of death.”

8. *Id.* § 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. 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.”

Conclusion

Based on the results of the investigation, the Department has found that Kerntz Funeral Home violated Minnesota Statutes Chapter 149A. Specifically, the Department concluded that:

1. Although the Kerntz Funeral Home’s licensee was identified in the MR&C database as having completed the funeral arrangements for the decedent at issue, the Department concludes that funeral arrangements were made by Mr. Kerntz, an unlicensed person. This occurred in violation of Minn. Stat. §§ 149A.01 subd. 2; 149A.20 subd. 1; 149A.70 subd. 1; 149A.70 subd. 6, and 149A.70 subd. 7.
2. Kerntz Funeral Home was non-compliant with requirements in chapter 149A relating to services that must be provided by a licensed mortician and documents that must be signed by a licensed mortician. Kerntz Funeral Home has a licensed mortician on staff, but Mr. Kerntz’s decisions (as partial owner of a funeral home), to sign documents as a licensed mortician and sign documents that only a licensed mortician can sign, in totality amounted to the making of funeral arrangements by an unlicensed person. This occurred in violation of Minn. Stat. §§ 149A.01, subd. 2; 149A.20, subd. 1; 149A.70 subd. 1; 149A.70 subd. 6; 149A.70 subd. 7; and 149A.71 subd. 2(f).

- On October 6, 2022, Department staff told Mr. Kerntz to stop the meeting with the decedent's girlfriend, that his actions could be contrary to law, and to arrange for a licensed mortician. The Department recognizes the atypical circumstances surrounding this meeting; however, these facts strongly indicate that Mr. Kerntz knew (or suspected) that his conduct might constitute unlicensed practice.
 - The funeral arrangement file contained a Statement of Funeral Goods and Services Contract that was signed only by Mr. Kerntz. These statements must be signed by a licensed funeral director or licensed mortician making the funeral arrangements. Mr. Kerntz is not a licensed mortician.
 - The funeral arrangement file contained an application for county reimbursement for burial expenses. The form was signed by Mr. Kerntz, attesting to himself as a licensed funeral director and attesting that funeral arrangements were made by a licensed funeral director. Mr. Kerntz is not a licensed mortician.
3. Kerntz Funeral Home was non-compliant with the requirements in chapter 149A regarding the Statement of Funeral Goods and Services. This occurred in violation of Minn. Stat. §149A.70 subd. 2(f).
- The Statement of Funeral Goods and Services Contract itemizing the charges for services and merchandise was signed by Mr. Kerntz only and was dated three (3) months after the decedent passed. Importantly, because it was not signed by anyone in the decedent's family there is no indication of what goods or services the family (or anyone) agreed to, as required by law. In other words, there is no information as to how Kerntz Funeral Home arrived at the charges submitted with the application for county burial assistance.
 - Because no other statement or itemized list was received during the investigation, the facts indicate that Mr. Kerntz did not review the statement with the decedent's family, and signed and submitted it to the county anyway.

The Following Corrective Actions are Required by this Order:

The following corrective actions are issued pursuant to Minnesota Statutes, section 149A.05, subds. 1 and 2.

1. Effective immediately, Kerntz Funeral Home shall ensure that Mr. Terry Kerntz cease all licensed activities.
2. Kerntz Funeral Home shall create, implement, and submit a written contingency plan which will assure the Department that Kerntz Funeral Home will comply with all requirements of chapter 149A if the funeral home's licensee is unavailable, even in extraordinary circumstances or times where no pre-planned funeral arrangements have been made. The contingency plan shall be delivered to the Department on October 27, 2023, and must specifically include:
 - Written policies demonstrating that Kerntz Funeral Home will comply with all requirements of licensure. The plan shall include policies adopted by Kerntz Funeral Home that ensure Terry Kerntz and all unlicensed staff comply with chapter 149A and only those possessing a valid license to practice are providing licensed services.
 - Written policies for ensuring that all forms, such as the Statement of Funeral Goods and Services, are completed according to the requirements in chapter 149A.

- Written policies for ensuring that any applications for public-funded burial assistance are signed by the correct individuals and are completed accurately.
- A summary of how Kerntz Funeral Home shall, under circumstances when licensed staff is unavailable to carry out licensed work, arrange for and provide a substitute licensed mortician to complete all licensed work.
- Kerntz Funeral Home shall promptly notify St. Louis County PHHS (Burial Assistance) to inform its office that Terry Kerntz is not a licensed funeral director, although he represented himself as such on the application for county burial assistance.

Penalty Assessed

Pursuant to Minnesota Statutes, section 149A.06, Terry Kerntz is assessed a non-forgivable penalty of \$2,000.00. In setting this penalty amount, the Department considered:

1. The Department's statutory ability to assess up to \$10,000.00 for each specific violation identified in an inspection, investigation, or compliance review.
2. The willfulness of the violations.
 - Despite the extraordinary circumstances, Terry Kerntz signed a Statement of Funeral Goods and Services, completed (and signed) an application for public burial assistance from the county, and independently met with the decedent's girlfriend after the decedent's body was brought to the funeral home. In particular, Mr. Kerntz would have (or should have) known that only a licensed mortician can sign the abovementioned documents and did so anyway.
 - Despite a warning from the Department's staff on October 6, 2022, Mr. Kerntz continued to engage in the practice of mortuary science by making at-need funeral arrangements knowing that it could result in discipline and a penalty.
3. By personally signing the Statement of Funeral Goods and Services and signing the application for public burial assistance as a licensed funeral director, Mr. Kerntz either intentionally allowed, or improperly permitted, himself to be held out publicly as a person licensed to make funeral arrangements. This behavior risked misrepresentations to the public, and to a county public burial assistance program, that he could practice mortuary science or was a licensed mortician, neither of which were accurate.
4. The number of violations, gravity of the violations, and the economic benefit gained by Mr. Kerntz contributes to the amount of the fine. Mr. Kerntz's conduct relating to this decedent resulted in violations of several provisions of Chapter 149A and inaccurate information to a county burial assistance program.
 - The Statement of Goods and Services, signed by Mr. Kerntz, contains several provisions relating to costs associated with "professional services." Mr. Kerntz represented to the public and to a county burial assistance program that he could use the title 'funeral director' to charge consumers and county assisted services for licensed work.
 - Mr. Kerntz's signature on the application for burial assistance represented to a public entity that he was licensed and that funeral arrangements were made by a licensed person. Mr. Kerntz would be aware that a licensed person would need to make those representations. This is an additional factor the Department specifically considered when issuing this Order.

- The Statement of Goods and Services signed by Mr. Kerntz did not have a signature from the decedent's family and is dated three (3) months after the burial. The file lacks evidence that the decedent's family ever acknowledged, or agreed to, the services. No other Statement was received in the investigation.

How to Pay the Penalty Assessed

Mr. Terry Kerntz shall pay the \$2,000.00 assessed civil penalty once the Department has issued an invoice with payment instructions outlined.

If sixty (60) calendar days pass between the established due date of the payment and when Mr. Kerntz pays, the penalty may be referred to the Minnesota Department of Revenue, ("MNDOR"), or any other source for collection. When this determination for a penalty becomes public and the Department refers the matter to MNDOR, MNDOR is authorized by Minn. Stat. § 16D.17 to obtain a judgement against Mr. Kerntz without further notice or proceeding.

Requesting a Hearing

Mr. Kerntz may appeal this APO by requesting a hearing. The hearing request must be **in writing** and delivered to the Department by certified mail within twenty (20) calendar days from the date of receipt of this APO and specifically state the reasons why review of the order is sought. The Department will initiate the hearing process within thirty (30) calendar days of receiving a request for a hearing in accordance with Minn. Stat. § 149A.06, subd. 6.

Certified mail should be directed to:

Minnesota Department of Health
Reconsideration Unit
85 7th PI E
PO Box 64970
St. Paul, MN 55164-0970

So ordered this **9th day of October 2023** by Maria King, Health Regulation Division Director.

Minnesota Department of Health