

STATE OF MINNESOTA

BEFORE THE COMMISSIONER OF HEALTH

In the Matter of Everett H. Bain and
Wing Bain Funeral Home,
a licensed funeral establishment
located in Montevideo, Minnesota

STIPULATION AND CONSENT ORDER

IT IS HEREBY STIPULATED AND AGREED, by Everett H. Bain (“Owner”) on behalf of himself and Wing Bain Funeral Home and the Minnesota Department of Health (“Department”):

1. The Department is charged with the 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 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 4 below.

2. The Owner Everett H. Bain is the chief executive officer of Wing Bain Funeral Home, Inc. and is the owner and operator of Wing Bain Funeral Home in Montevideo, Minnesota. The Department has issued a funeral establishment license (#0718) for “Wing Bain Funeral Home” at 418 North Fifth Street, Montevideo, Minnesota.

3. Pursuant to Minn. Stat. § 149A.92, subd. 9 **Waste Disposal**, infectious and pathological waste generated in preparation of a body must be handled and disposed of according to the Infectious Waste Control Act, Minn. Stat. §§ 116.75 to 116.83, and packaged for disposal in the manner prescribed by rules. The rules governing the disposal of infectious waste are set forth in Minn. R. 7035.9100 to 7035.9150.

4. In August 2014, the Department conducted a routine inspection and discovered that the facility's infectious waste was not being disposed of in the proper manner. The licensed morticians that accompanied the inspector stated that the Owner took the infectious waste from the facility home with him and disposed of it in a manner not known to them. When the Owner was questioned, he stated that he utilized the Chippewa County Montevideo Hospital ("CCMH") for infectious waste disposal. When the CCMH Administrator Mark Paulson was questioned on August 15, 2014 as to whether Wing Bain Funeral Home had a contract with CCMH to dispose of its infectious waste, he stated that it did not, but that he had been contacted by the Wing Bain Funeral Home earlier that week to set up an agreement. Mark Paulson agreed to send a copy of the agreement to the Department when it was signed. The agreement, which was signed but not dated, was emailed to the Department on August 22, 2014.

5. The Owner acknowledges and admits that he has been disposing of infectious waste in an inappropriate manner that is not in compliance with Minn. Stat. § 149A.92, subd. 9.

6. In order to resolve this matter and thus avoid the expense and uncertainty of enforcement proceedings under Chapter 149A, the Owner on behalf of himself and

Wing Bain Funeral Home agrees to the following administrative penalties and corrective actions:

- A. **Administrative Penalties.** The Owner is hereby assessed a civil penalty of \$1,000.00. However, \$500.00 of the civil penalty shall be stayed so long as Wing Bain Funeral Home is in compliance with the Corrective Action requirements set forth in paragraph 6(C) below. Payment of the penalty amount of \$500.00 shall be 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.
- B. If the Department determines that the Owner or Wing Bain Funeral Home fails to comply with the Corrective Actions requirements of paragraph 6(C) below, or has violated Minn. Stat. § 149A.92, subd. 9, again within three years of the effective date of this Stipulation, the \$500.00 stayed penalty will become due and owing as set forth in paragraph 6(D) below.
- C. **Corrective Actions.** The Owner on behalf of himself and Wing Bain Funeral Home shall take the following corrective actions:
 - i.) The Owner must make certain that all infectious and pathological waste generated at Wing Bain Funeral Home in the preparation of dead human remains is properly packaged in a way that is suitable for the removal, transportation and disposal according to the Infectious Waste Control Act.
 - ii.) The Owner must immediately cease all acts of disposing of infectious pathological waste at any premises that has not been

issued a permit by the Minnesota Pollution Control Agency to properly dispose of and incinerate infectious material.

iii.) The Owner shall not in any way mix other waste materials in with infectious pathological waste prior to packaging and disposal. All infectious pathological waste generated shall be hauled by a "Commercial Transporter," as defined in Minn. R. 7035.9110, subp. 4, for disposal.

D. **Violation of this Stipulation.** If the Department determines that the Owner and/or any officer, employee, intern, clinical student, contractor or authorized representative of Wing Bain Funeral Home has violated Minn. Stat. § 149A.92, subd. 9, within three years of the effective date of this Stipulation, the Department shall give the Owner written notice specifying the violating actions. Unless the Owner initiates dispute resolution pursuant to paragraph 6(E) below within 30 calendar days after receiving the written notice from the Department, the \$500.00 stayed penalty will become due and owing.

E. If a dispute arises regarding the Department's determination that the Owner or Wing Bain Funeral Home has failed to comply with Minn. Stat. § 149A.92, subd. 9, the Owner on behalf of himself and/or Wing Bain Funeral Home 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 the

receipt of written notice from the Department concerning violation of Minn. Stat. § 149A.92, subd. 9. 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 the Owner.

F. Unless the Department and the Owner are able to reach a resolution of the dispute and to 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 6(F) above, it shall become an integral and enforceable part of this Stipulation, unless the Owner or Wing Bain Funeral Home commences an action to challenge the Commissioner's decision within sixty (60) calendar days of the date of their receipt of the decision. For purposes of judicial review, the Commissioner's decision shall be considered a final decision of the Department of Health.

7. This Stipulation shall not in any way limit or affect the authority of the Commissioner to proceed against the Owner or Wing Bain Funeral Home to initiate enforcement action for any alleged violation of Chapter 149A by the Owner or Wing Bain Funeral Home that is not the subject of this Stipulation.

8. The Owner, on behalf of himself and Wing Bain Funeral Home, hereby acknowledges that he has read, understood, and agreed to this Stipulation and has voluntarily signed it.

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

10. 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.

11. This Stipulation shall be binding upon the Owner and his successors and assignees; Wing Bain Funeral Home and its successors and assignees; and the Minnesota Department of Health and its successors and assignees.

12. This Stipulation may not be modified or amended except in writing and executed by the parties.

13. The effective date of this Stipulation is the date upon which it is signed on behalf of the Minnesota Department of Health.

SA HTB

Dated: 12-7-14

Everett H. Bain
Chief Executive Officer
Wing Bain Funeral Home, Inc.
418 North Fifth Street
Montevideo, Minnesota 56265

Darcy Miner

Dated: 12/12/14

Darcy Miner, Division Director
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