

1 BEFORE THE NEVADA STATE BOARD OF
2 FUNERAL AND CEMETERY SERVICES

3 IN THE MATTER OF)
4 DESERT MEMORIAL)
5 Establishment Permit No. EST46)
6 RESPONDENT.)

CASE NO. FB16-07

7
8 CONSENT DECREE

9 The State of Nevada BOARD of Funeral and Cemetery Services ("BOARD") having
10 jurisdiction over permittee DESERT MEMORIAL ("DM"), pursuant to NRS 642.5175;
11 complaint against said permit holder alleging violations of the Nevada statutes and
12 regulations controlling the practice of funeral establishments; and the parties being
13 mutually desirous of settling the controversy between them relative to the pending
14 complaint;

15 IT IS HEREBY STIPULATED AND AGREED between the undersigned parties
16 that this matter shall be settled and resolved upon the following terms:

17 VOLUNTARY WAIVER OF RIGHTS

18 DM is aware of, understands, and has been advised of the effect of this Consent
19 Decree, which it has carefully read and fully acknowledged. DM has had the opportunity
20 to consult with competent counsel of its choice.

21 DM has freely and voluntarily entered into this Consent Decree, and is aware of its
22 rights to contest the charges pending against the establishment. These rights include
23 representation by an attorney at its own expense, the right to file an answer in response
24 to a formal complaint, the right to a public hearing on any charges or allegations formally
25 filed, the right to confront and cross-examine witnesses called to testify against it, the
26 right to present evidence on its own behalf, the right to testify on its own behalf, the right
27 to receive written findings of fact and conclusions of law supporting the decision on the
28 merits of the complaint, and the right to obtain judicial review of the decision.

1 All of these rights are being voluntarily waived by DM in exchange for the BOARD'S
2 acceptance of this Consent Decree.

3 If the Consent Decree is not accepted by the BOARD, no member of the BOARD
4 will be disqualified from further hearing of this matter, by reason of his or her
5 consideration of the Consent Decree and DM hereby waives any claim of bias or prejudice
6 based upon said consideration by any member of the BOARD in any subsequent
7 disciplinary hearing conducted by the BOARD.

8 JURISDICTION

9 DM acknowledges that the BOARD has jurisdiction over it and the conduct alleged
10 in the Complaint. DM acknowledges that the BOARD has the legal power and authority
11 to take disciplinary action, including, but not limited to, the revocation of its permit to
12 operate a funeral establishment in Nevada.

13 DM acknowledges that the BOARD will retain jurisdiction over this matter until
14 all terms and conditions set forth in this Consent Decree have been met to the satisfaction
15 of the BOARD.

16 PUBLICATION OF CONSENT DECREE

17 DM acknowledges that at the time this Consent Decree becomes effective, it also
18 becomes a public document and will be reported to the State of Nevada, Legislative
19 Council Bureau, Disciplinary Action Reporting System; and such other national
20 databases as required by law. It is also understood that any meeting during which the
21 BOARD considers and accepts or rejects this Consent Decree is open to the public and
22 that the minutes of the BOARD meeting are a public document, available for inspection
23 by any person so requesting.

24 INDEMNIFICATION

25 DM, for itself, its heirs, executors, administrators, successors and assigns, hereby
26 indemnifies and holds harmless the State of Nevada, the BOARD, the Nevada Attorney
27 General's office and each of their members, agents and employees in their individual and
28 representative capacities against any and all claims, suits, demands, actions, debts,

1 damages, costs, charges, and expenses, including court costs and attorney's fees against
2 any persons, entities, as well as all liability, losses, and damages of any nature
3 whatsoever that the persons and entities named in this paragraph shall have or may at
4 any time sustain or suffer by reason of this investigation, this disciplinary action, this
5 settlement or its administration.

6 **STIPULATED FACTS AND CONCLUSIONS OF LAW**

7 DM understands the nature of the allegations under consideration by the BOARD.
8 It acknowledges that the conduct alleged in the Complaint, if proven, constitutes
9 violations of the Nevada Board of Funeral and Cemetery Services Practice Act (NRS and
10 NAC 642) and NRS Chapter 451. It further recognizes that if this matter were to be
11 taken to a disciplinary hearing before the BOARD, there is a substantial likelihood that
12 the following allegations could be proven as true, and that as a result it would be subject
13 to disciplinary action by the BOARD. As such, DM does not contest the following
14 allegations:

15 1. DM held a valid permit to operate a funeral establishment on the date of the
16 alleged violations and continues to hold a valid permit through the present day.

17 2. The BOARD received a written complaint on or about March 16, 2016,
18 alleging that decedents were not being cremated or buried within a reasonable time after
19 death, specifically, cases receiving payment from Clark County Social Services.

20 3. The investigation revealed numerous decedents from 2014 through the end
21 of 2015 under the care of Desert Memorial who did not receive timely burial or cremation
22 and in some cases there did not appear to be follow-up on certain cases for periods
23 exceeding one (1) year.

24 4. NRS 642.5174(12) states that unprofessional conduct includes violation of
25 any state law or municipal or county ordinance or regulation affecting the handling,
26 custody, care or transportation of dead human bodies, including, without limitation,
27 chapters 440, 451, and 452 of NRS.

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1 1. Within thirty (30) days of the approval and execution of this Consent Decree,
2 DM shall pay One Hundred Fifty Four dollars (\$154.00) in legal and investigative fees.

3 a. No grace period is permitted. Full payment not actually received by
4 the BOARD on or before the thirty days as indicated above, shall be construed as an event
5 of default by DM.

6 b. In the event of default, DM agrees that its establishment permit shall
7 be immediately suspended. The suspension of DM's permit shall continue until the
8 unpaid balance is paid in full and the suspension is subject to being reported to all
9 appropriate agencies.

10 c. DM acknowledges that the BOARD has the legal power and authority
11 to take action against it, including instituting debt collection actions for unpaid monetary
12 assessments in this case.

13 2. DM shall submit a report on the last day of each month of probation which
14 includes a list of all decedents under its care, who have not received burial or cremation
15 within 45 days of death. The report shall include an explanation for any reasons for delay
16 in disposition and efforts that have been made to ensure timely cremation or burial.

17 3. DM shall enter at least the minimum available decedent information into
18 the Electronic Death Registry System ("EDRS") within seven (7) days of taking custody of
19 the remains of the decedent.

20 4. DM shall submit to a monthly inspection for the term of the probation period
21 to verify compliance with the terms of the Consent Decree.

22 5. DM shall obey all federal, state and local laws, and orders of the BOARD,
23 which are not inconsistent with this Consent Decree, pertaining to the operation of a
24 funeral establishment in this State. From the date of execution of this Consent Decree
25 until DM satisfies the terms of the Stipulated Adjudication section, DM shall report any
26 and all violations to the BOARD in writing within seventy-two (72) hours.

27 6. DM agrees that it will be financially responsible for all requirements of this
28 Consent Decree, including the cost of any reasonable financial assessments by the

1 BOARD for the cost of monitoring its compliance or carrying out the provisions of this
2 Consent Decree upon a determination of non-compliance with the provisions of this
3 Consent Decree.

4 7. After a minimum of six (6) months, DM may apply to the BOARD for
5 termination of its probation and full reinstatement of its establishment permit.
6 DM understands that prior to terminating its probation and full reinstatement of its
7 permit it must prove to the BOARD's satisfaction that it has complied with all the terms
8 and conditions of its Consent Decree. DM shall submit a written request to the BOARD
9 for termination of its probation. Upon receipt of this request, the BOARD may request
10 additional information from DM to determine its compliance with the Consent Decree.
11 Upon establishing DM has met all of the requirements of the Consent Decree, its legal
12 owner/representative shall meet with the Chair of the BOARD or his/her designee, the
13 Executive Director and BOARD counsel for evaluation of its compliance with the Consent
14 Decree and for their recommendation of termination of probation, full reinstatement, or
15 additional disciplinary action at a separate hearing before the BOARD.

16 **VIOLATION OF TERMS OF CONSENT DECREE**

17 DM understands that the BOARD may, upon thirty (30) days' notice to DM,
18 convene a hearing for the limited purpose of establishing that it violated the terms of this
19 Consent Decree. If such a hearing results in a finding of a violation of this Consent
20 Decree, the BOARD may impose any penalty upon DM authorized by NRS 642.5176
21 including, but not limited to, revocation of its permit to operate a funeral establishment in
22 the State of Nevada.

23 DM agrees to waive its right to appeal the substantive legal basis of the original
24 disciplinary action, which is the basis for this Consent Decree. In the event an alleged
25 violation of the Consent Decree is taken to hearing and the facts which constitute the
26 violation are determined to be not proven, no disciplinary action shall be taken by the
27 BOARD.

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ACCEPTANCE BY THE BOARD

This Consent Decree will be presented and accepted by the BOARD with a recommendation for approval from the Attorney General's Office at its next meeting.

COMPLETE CONSENT DECREE

This Consent Decree embodies the entire agreement between the BOARD and DM. It may not be altered, amended, or modified without the express written consent of the parties.

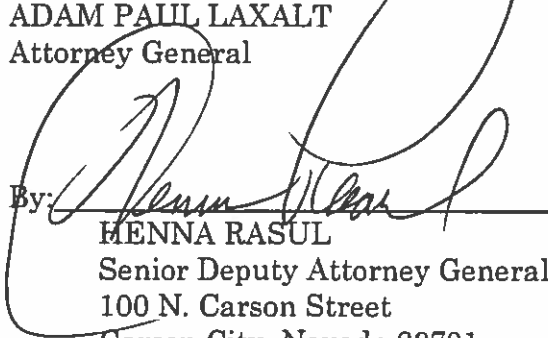
DATED this 17 day of November, 2016.

By: 
DESERT MEMORIAL
Legal Representative
Permit No. EST46

The foregoing Consent Decree between DM and the STATE OF NEVADA FUNERAL AND CEMETERY SERVICES BOARD in Case No. FB16-07 is approved as to form and content.

DATED this 13 day of December, 2016.

ADAM PAUL LAXALT
Attorney General

By: 
HENNA RASUL
Senior Deputy Attorney General
100 N. Carson Street
Carson City, Nevada 89701
(775) 684-1234
Counsel to the State of Nevada
Board of Funeral and Cemetery Services

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ORDER

By a majority vote on the 13th day of December, 2016, the State of Nevada Board of Funeral and Cemetery Services approved and adopted the terms and conditions set forth in the attached Consent Decree with DM, permit No. EST46.

IT IS HEREBY ORDERED AND MADE EFFECTIVE.

DATED this 13th day of December, 2016.

By: Wayne G. Fazzino
Wayne Fazzino, Chair
Board of Funeral and Cemetery Services