

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

3 IN THE MATTER OF)

4 LA PALOMA FUNERAL)
5 SERVICES, LLC)
6 Establishment Permit No. EST79)

CASE NO. FB16-08

7 **RESPONDENT.**)
8

9 **CONSENT DECREE**

10 The State of Nevada BOARD of Funeral and Cemetery Services ("BOARD") having
11 jurisdiction over permittee LA PALOMA FUNERAL SERVICES ("LPFS"), pursuant to
12 NRS 642.5175; a complaint against said permit holder having been received alleging
13 violations of the Nevada statutes and regulations controlling the practice of funeral
14 establishments; and the parties being mutually desirous of settling the controversy
15 between them relative to the pending complaint;

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

18 **VOLUNTARY WAIVER OF RIGHTS**

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

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

1 these rights are being voluntarily waived by LPFS 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 LPFS hereby waives any claim of bias or
6 prejudice based upon said consideration by any member of the BOARD in any subsequent
7 disciplinary hearing conducted by the BOARD.

8 JURISDICTION

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

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

15 1. LPFS held a valid permit to operate a funeral establishment on the date of
16 the 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 two (2) decedents who were not cremated for
21 approximately 120 days after death as the funeral home did not conduct any follow-up or
22 submit any of the necessary paperwork for cremation or burial for over 90 days.

23 4. The investigation revealed one (1) decedent who did not receive cremation or
24 burial for over 90 days after death as the funeral home did not conduct any follow-up or
25 submit any of the necessary paperwork for cremation or burial for over 60 days.

26 5. The investigation revealed that the three (3) decedents referenced in (3) and
27 (4) did not receive any follow-up or submission of required paperwork as the case files had
28 been misplaced on the desk of a former employee of LPFS.

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

5 7. NRS 642.5174(18) states that unprofessional conduct includes unethical
6 practices contrary to the public interest as determined by the Board.

7 8. NRS 451.020(1) states that every dead body within this state shall be
8 decently buried or cremated within a reasonable time after death.

9 9. That pursuant to Nevada Revised Statute (NRS) 642.5175:

10 The following acts are grounds for which the Board may take
11 disciplinary action against any person who holds a license,
12 permit or certificate issued by the Board:

- 13 1. Conviction of a crime involving moral turpitude.
- 14 2. Unprofessional conduct.
- 15 3. False or misleading advertising.
- 16 4. Conviction of a felony relating to the practice of funeral
17 directors.
- 18 5. Conviction of a misdemeanor that is related directly to the
19 business of a funeral establishment.

20 10. That pursuant to Nevada Revised Statute (NRS) 642.5176:

21 1. If the Board determines that a person who holds a license,
22 permit or certificate issued by the Board has committed any of the
23 acts set forth in NRS 642.5175, the Board may:

- 24 (a) Refuse to renew the license or permit;
- 25 (b) Revoke the license or permit;
- 26 (c) Suspend the license or permit for a definite period or
27 until further order of the Board;
- 28 (d) Impose a fine of not more than \$5,000 for each act that
constitutes a ground for disciplinary action;
- (e) Place the person on probation for a definite period subject
to any reasonable conditions imposed by the Board;
- (f) Administer a public reprimand; or
- (g) Impose any combination of disciplinary actions set forth
in paragraphs (a) to (f), inclusive.

2. The Board shall not administer a private reprimand.

3. An order that imposes discipline and the findings of fact and
conclusions of law supporting that order are public records.

1 11. LPFS does not contest the allegations and acknowledges that as a
2 consequence it is subject to discipline pursuant to the above charges and statutory
3 provisions.

4 **STIPULATED ADJUDICATION**

5 LPFS stipulates that pursuant to the authority of NRS 642.5176, its establishment
6 permit number EST79 shall be placed on probation for six (6) months. During the term of
7 probation, LPFS agrees to comply with the following conditions:

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

10 a. No grace period is permitted. Full payment not actually received by
11 the BOARD on or before the thirty days as indicated above, shall be construed as an event
12 of default by LPFS.

13 b. In the event of default, LPFS agrees that its establishment permit
14 shall be immediately suspended. The suspension of LPFS's permit shall continue until
15 the unpaid balance is paid in full and the suspension is subject to being reported to all
16 appropriate agencies.

17 c. LPFS acknowledges that the BOARD has the legal power and
18 authority to take action against it, including instituting debt collection actions for unpaid
19 monetary assessments in this case.

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

24 3. LPFS shall enter at least the minimum available decedent information into
25 the Electronic Death Registry System ("EDRS") within (7) seven days of taking custody of
26 the remains of the decedent.

27 4. LPFS shall submit to a monthly inspection for the term of the probation
28 period to verify compliance with the terms of the Consent Decree.

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

6 6. LPFS agrees that it will be financially responsible for all requirements of
7 this Consent Decree, including the cost of any reasonable financial assessments by the
8 BOARD for the cost of monitoring its compliance or carrying out the provisions of this
9 Consent Decree upon a determination of non-compliance with the provisions of this
10 Consent Decree.

11 7. After a minimum of six (6) months, LPFS may apply to the BOARD for
12 termination of its probation and full reinstatement of its establishment permit number
13 EST79. LPFS understands that prior to terminating its probation and full reinstatement
14 of its permit it must prove to the BOARD's satisfaction that it has complied with all the
15 terms and conditions of its Consent Decree. LPFS shall submit a written request to the
16 BOARD for termination of its probation. Upon receipt of this request, the BOARD may
17 request additional information from LPFS to determine its compliance with the Consent
18 Decree. Upon establishing LPFS has met all of the requirements of the Consent Decree,
19 its legal owner/representative shall meet with the Chair of the BOARD or his/her
20 designee, the Executive Director and BOARD counsel for evaluation of its compliance
21 with the Consent Decree and for their recommendation of termination of probation, full
22 reinstatement, or additional disciplinary action at a separate hearing before the BOARD.

23 **VIOLATION OF TERMS OF CONSENT DECREE**

24 LPFS understands that the BOARD may, upon thirty (30) days' notice to LPFS,
25 convene a hearing for the limited purpose of establishing that it violated the terms of this
26 Consent Decree. If such a hearing results in a finding of a violation of this Consent

27 ///

28 ///

1 Decree, the BOARD may impose any penalty upon LPFS authorized by NRS 642.5176
2 including, but not limited to, revocation of its permit to operate a funeral establishment in
3 the State of Nevada.

4 LPFS agrees to waive its right to appeal the substantive legal basis of the original
5 disciplinary action, which is the basis for this Consent Decree. In the event an alleged
6 violation of the Consent Decree is taken to hearing and the facts which constitute the
7 violation are determined to be not proven, no disciplinary action shall be taken by the
8 BOARD.

9 **ACCEPTANCE BY THE BOARD**

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

12 **COMPLETE CONSENT DECREE**

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

16 DATED this 28th day of Nov, 2016.

17
18 By: Ryan Bowen
19 LA PALOMA FUNERAL SERVICES, LLC
20 Legal Representative/Owner
21 Permit No. EST79
22
23
24
25
26
27
28

1 The foregoing Consent Decree between LPFS and the STATE OF NEVADA
2 FUNERAL AND CEMETERY SERVICES BOARD in Case No. FB16-05 is approved as to
3 form and content.

4 DATED this 13 day of December, 2016.

5
6 ADAM PAUL LAXALT
Attorney General

7
8
9 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

14
15
16
17 **ORDER**

18 By a majority vote on the 13TH day of December, 2016, the State of Nevada
19 Board of Funeral and Cemetery Services approved and adopted the terms and conditions
20 set forth in the attached Consent Decree with LPFS, permit No. EST79.

21 **IT IS HEREBY ORDERED AND MADE EFFECTIVE.**

22 DATED this 13TH day of December, 2016.

23
24 By: 

Wayne Fazzino, Chair
Board of Funeral and Cemetery Services