

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

IN THE MATTER OF)
FITZHENRY'S FUNERAL HOME)
Establishment Permit No. EST36)
RESPONDENT.)

CASE NO. FB16-09

CONSENT DECREE

The State of Nevada BOARD of Funeral and Cemetery Services (BOARD) having jurisdiction over permittee FITZHENRY'S FUNERAL HOME (FFH), pursuant to NRS 642.5175; a complaint having been received against said permit holder alleging violations of the Nevada statutes and regulations controlling the practice of funeral establishments; and the parties being mutually desirous of settling the controversy between them relative to the pending complaint;

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

VOLUNTARY WAIVER OF RIGHTS

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

FFH has freely and voluntarily entered into this Consent Decree, and is aware of its rights to contest the charges pending against the establishment. These rights include representation by an attorney at its own expense, the right to file an answer in response to a formal complaint, the right to a public hearing on any charges or allegations formally filed, the right to confront and cross-examine witnesses called to testify against it, the right to present evidence on its own behalf, the right to testify on its own behalf, the right 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.

1 All of these rights are being voluntarily waived by FFH 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 FFH 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 FFH acknowledges that the BOARD has jurisdiction over it and the conduct
10 alleged in the Complaint. FFH 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 FFH 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 FFH 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 FFH, 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 FFH 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, FFH does not contest the following
14 allegations:

15 1. FFH 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 conducted an inspection of FFH on February 18, 2016, and
18 noted that two decedents in the refrigeration unit had been deceased for over one (1) year
19 and there had been no contact with county social services.

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

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

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

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

- 5 1. Conviction of a crime involving moral turpitude.
- 6 2. Unprofessional conduct.
- 7 3. False or misleading advertising.
- 8 4. Conviction of a felony relating to the practice of funeral
9 directors.
- 10 5. Conviction of a misdemeanor that is related directly to the
11 business of a funeral establishment.

12 6. That pursuant to Nevada Revised Statute (NRS) 642.5176:

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

- 16 (a) Refuse to renew the license or permit;
- 17 (b) Revoke the license or permit;
- 18 (c) Suspend the license or permit for a definite period or
19 until further order of the Board;
- 20 (d) Impose a fine of not more than \$5,000 for each act that
21 constitutes a ground for disciplinary action;
- 22 (e) Place the person on probation for a definite period subject
23 to any reasonable conditions imposed by the Board;
- 24 (f) Administer a public reprimand; or
- 25 (g) Impose any combination of disciplinary actions set forth
26 in paragraphs (a) to (f), inclusive.
- 27 2. The Board shall not administer a private reprimand.
- 28 3. An order that imposes discipline and the findings of fact and
conclusions of law supporting that order are public records.

7. FFH does not contest the allegations and acknowledges that as a
consequence it is subject to discipline pursuant to the above charges and statutory
provisions.

STIPULATED ADJUDICATION

FFH stipulates that pursuant to the authority of NRS 642.5176, its establishment
permit number EST36 shall be placed on probation for six (6) months. During the term of
probation, FFH agrees to comply with the following conditions:

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

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

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

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

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

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

18 4. FFH shall submit to a monthly inspection for the term of the probation
19 period to verify compliance with the terms of the Consent Decree.

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

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1 6. FFH agrees that it will be financially responsible for all requirements of this
2 Consent Decree, including the cost of any reasonable financial assessments by the
3 BOARD for the cost of monitoring its compliance or carrying out the provisions of this
4 Consent Decree upon a determination of non-compliance with the provisions of this
5 Consent Decree.

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

18 **VIOLATION OF TERMS OF CONSENT DECREE**

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

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

6 **ACCEPTANCE BY THE BOARD**

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

9 **COMPLETE CONSENT DECREE**

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

13 DATED this 5th day of December, 2016.

14 By: Catherine Wheat
15 FITZHENRY'S FUNERAL HOME
16 Legal Representative
17 Permit No. EST36

18 The foregoing Consent Decree between FFH and the STATE OF NEVADA
19 FUNERAL AND CEMETERY SERVICES BOARD in Case No. FB16-09 is approved as to
20 form and content.

21 DATED this 3 day of December, 2016.

22 ADAM PAUL LAXALT
23 Attorney General

24 By: [Signature]
25 HENNA RASUL
26 Senior Deputy Attorney General
27 100 N. Carson Street
28 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 FFH, permit No. EST36.

IT IS HEREBY ORDERED AND MADE EFFECTIVE.

DATED this 13TH day of December, 2016.

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