

1 **BEFORE THE STATE OF NEVADA**

2 **FUNERAL AND CEMETERY SERVICES BOARD**

3 IN THE MATTER OF:

4 JAMES LEE, Managing Funeral Director
License No. FD69,

Case Nos. FB19-07 and FB19-10

5 Respondent.
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7 **CONSENT DECREE**

8 The State of Nevada Board of Funeral and Cemetery Services ("BOARD") having
9 jurisdiction over JAMES LEE ("RESPONDENT"), Funeral Director License No. FD69;
10 pursuant to NRS 642.5175; complaint against said license holder having been received
11 alleging violations of the Nevada statutes and regulations controlling the practice of
12 funeral directors and the parties being mutually desirous of settling the controversy
13 between them relative to the pending complaint;

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

16 **VOLUNTARY WAIVER OF RIGHTS**

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

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

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1 rights are being voluntarily waived by RESPONDENT 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 will
4 be disqualified from further hearing of this matter, by reason of his or her consideration of
5 the Consent Decree. RESPONDENT hereby waives any claim of bias or prejudice based
6 upon said consideration by any member of the BOARD in any subsequent disciplinary
7 hearing conducted by the BOARD.

8 JURISDICTION

9 RESPONDENT acknowledges that the BOARD has jurisdiction over him and the
10 conduct alleged in the Complaint. RESPONDENT acknowledges that the BOARD has the
11 legal power and authority to take disciplinary action, including, but not limited to, the
12 revocation of his license to practice as a funeral director in Nevada.

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

16 PUBLICATION OF CONSENT DECREE

17 RESPONDENT acknowledges that at the time this Consent Decree becomes
18 effective, it also becomes a public document and will be reported to the State of Nevada,
19 Legislative 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 that
22 the minutes of the BOARD meeting are a public document, available for inspection by any
23 person so requesting.

24 INDEMNIFICATION

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

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

6 **STIPULATED FACTS AND CONCLUSIONS OF LAW**

7 RESPONDENT understands the nature of the allegations under consideration by
8 the BOARD. He 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. He 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 he would be
13 subject to disciplinary action by the BOARD. As such, RESPONDENT does not contest the
14 following allegations:

15 1. RESPONDENT held a valid funeral director license on the date of the alleged
16 violations and continues to hold a valid funeral director license through the present day.

17 2. RESPONDENT was the managing funeral director for HITES FUNERAL
18 HOME AND CREMATORY ("HITES") on the date of the alleged violations and continues
19 to be the managing funeral director of HITES through the present day.

20 3. The BOARD initiated a complaint on or about July 30, 2019, alleging Clark
21 County Social Services removed HITES from its social services contract because there were
22 too many bodies being stored at the establishment for extended periods of time thereby
23 raising concerns about how it was caring for the bodies.

24 a. It is alleged that Davis Funeral Home is currently in possession of
25 many social services bodies received from HITES and there is information indicating that
26 deceased individuals were stored at HITES for months (in several cases over a year)
27 without transferring the permits or finalizing disposition.

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1 4. The second complaint was initiated as a result of an inspection performed by
2 the BOARD inspector.

3 a. It is alleged that the BOARD inspector noticed many discrepancies on
4 the funeral establishment's records with the spelling of names of decedents and dates of
5 death.

6 b. The inspection report noted the following:

7 i. Bodies that had been in the care of the funeral home for extended
8 periods of time;

9 ii. The location was not being maintained in a sanitary and
10 professional manner as there were bodily fluids seeping onto shelves and soaking sheeting
11 without being properly cleaned.

12 5. NRS 642.5174(1) states that unprofessional conduct includes
13 misrepresentation or fraud in the operation of a funeral establishment, direct cremation
14 facility, cemetery or crematory, or the practice of a funeral director or funeral arranger.

15 6. NRS 642.5174(11) states that unprofessional conduct includes violation of any
16 provision of this chapter, any regulation adopted thereto or any order of the Board.

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

21 8. NRS 642.5174(15) states that unprofessional conduct includes taking undue
22 advantage of the patrons of a funeral establishment or direct cremation facility, or being
23 guilty of fraud or misrepresentation in the sale of merchandise to those patrons.

24 9. NRS 642.345(3) states that a funeral director is responsible for the proper
25 management of each funeral establishment or direct cremation facility of which the funeral
26 director is the manager.

27 10. NRS 642.5174(18) states that unprofessional conduct includes unethical
28 practices contrary to the public interest as determined by the Board.

1 11. NRS 440.450 states that the funeral director or person acting as undertaker
2 is responsible for obtaining and filing the certificate of death with the local health officer,
3 or his or her deputy, in the registration district in which the death occurred, and for
4 securing a burial or removal permit prior to any disposition of the body.

5 12. NRS 440.490 states that the funeral director or person acting as undertaker
6 shall present the completed certificate of death to the local registrar within 72 hours after
7 the occurrence or discovery of the death. If a case is referred to the coroner, he or she shall
8 present a completed certificate to the local registrar upon disposition of the investigation.

9 13. NRS 451.020 states that every dead body lying within this state shall be
10 decently buried or cremated with a reasonable time after death.

11 14. NRS 451.675(1)(a) and (b) states that if the operator of a crematory cannot
12 cremate human remains immediately after receiving them, the operator shall place them
13 in a holding facility within or adjacent to the crematory which preserves the dignity of the
14 remains and protects for the health and safety of employees of the operator.

15 15. NAC 451.070(1) and (2) states that the operator of a crematory, funeral
16 establishment or direct cremation facility shall ensure that any human remains awaiting
17 cremation are properly identified at all times and the identity of the human remains is
18 maintained throughout the entire cremation process.

19 16. NAC 642.158(6) states that the premises of any location where human
20 remains are stored must be maintained in a sanitary and professional manner.

- 21 17. That pursuant to Nevada Revised Statute (NRS) 642.5175:
22 The following acts are grounds for which the Board may take
23 disciplinary action against a person who holds a license, permit,
24 or certificate issued by the Board pursuant to this chapter or
25 chapter 451 or chapter 452 of NRS, or may refuse to issue such a
26 license, permit, or certificate to an applicant therefor:
27 1) Conviction of a crime involving moral turpitude.
28 2) Unprofessional conduct.
 3) False or misleading advertising.
 4) Conviction of a felony relating to the practice of funeral
 directors or funeral arrangers.
 5) Conviction of a misdemeanor that is related directly to the
 business of a funeral establishment, direct cremation facility,
 cemetery, or crematory.

1 18. That pursuant to Nevada Revised Statute (NRS) 642.5176:
2 If the Board determines that a person who holds a license, permit
3 or certificate issued by the Board pursuant to this chapter or
chapter 451 or 452 of NRS has committed any of the acts set forth
in NRS 642.5175 the Board may:

- 4 1) Refuse to renew the license or permit;
- 5 2) Revoke the license or permit;
- 6 3) Suspend the license or permit for a definite period or until
further order of the Board;
- 7 4) Impose a fine of not more than \$5,000 for each act that
constitutes a ground for disciplinary action;
- 8 5) Place the person on probation for a definite period subject to
any reasonable conditions imposed by the Board;
- 9 6) Administer a public reprimand; or
- 10 7) Impose any combination of disciplinary actions set forth in
paragraphs (a) to (f), inclusive.
 - 11 a) The Board shall not administer a private reprimand.
 - 12 b) An order that imposes discipline and the findings of fact
and conclusions of law supporting that order are public
records.

13 19. RESPONDENT does not contest the allegations in the Complaint, and
14 acknowledges that as a consequence they are subject to discipline pursuant to the above
15 charges and statutory provisions.

16 STIPULATED ADJUDICATION

17 RESPONDENT stipulates that pursuant to the authority of NRS 642.5176, the
18 BOARD will impose a SUSPENSION of his funeral director license FD69 for six (6) months.
19 After six (6) months of SUSPENSION, RESPONDENT's funeral director license shall be
20 placed on probation for one (1) year. During the term of the probation, RESPONDENT
21 agrees to comply with the following conditions:

22 1. Within thirty (30) days of the approval and execution of this Consent Decree,
23 RESPONDENT shall six hundred eighty-six and 90/100 dollars (\$686.90) attorney's fees
and costs and one thousand dollars (\$1,000) in administrative fines.

24 a. No grace period is permitted. Full payment not actually received by
25 the BOARD on or before the thirty days as indicated above, shall be construed as an event
26 of default by RESPONDENT.

27 b. In the event of default, RESPONDENT agrees that his funeral director
28 license shall be immediately suspended. The suspension of RESPONDENT license to

1 Consent Decree, the BOARD may impose any penalty upon RESPONDENT authorized by
2 NRS 642.5176

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

8 **ACCEPTANCE BY THE BOARD**

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

11 **COMPLETE CONSENT DECREE**

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

15 DATED this 10th day of January 20~~18~~ 2019

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18 By: James A. Lee
19 JAMES A. LEE
20 Funeral Director License No. FD69
21 Respondent
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1 The foregoing Consent Decree between JAMES A. LEE and the STATE OF NEVADA
2 FUNERAL AND CEMETERY SERVICES BOARD in Case Nos. FB19-07 and FB19-10 is
3 approved as to form and conten

4 DATED this 22 day of ²⁰ January, 2019.

5 AARON D. FORD
6 Attorney General

7 By: 

8 HENNA RASUL
9 Senior Deputy Attorney General
10 Office of the Attorney General
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12 Carson City, Nevada 89701
13 (775) 684-1234
14 hrasul@ag.nv.gov
15 *Counsel to the State of Nevada, Funeral and
16 Cemetery Services Board*

13 **ORDER**

14 By a majority vote on the 05 day of FEBRUARY, 2020, the State of Nevada
15 Board of Funeral and Cemetery Services approved and adopted the terms and conditions
16 set forth in the attached Consent Decree with JAMES A. LEE.

17 **IT IS HEREBY ORDERED AND MADE**

18 **EFFECTIVE, DATED** this 05 day of FEBRUARY, 2020

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20 **STATE OF NEVADA FUNERAL AND
21 CEMETERY SERVICES BOARD**

22 By: 
23 **DR. RANDY SHARP**
24 Board Chairman
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