

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

IN THE MATTER OF )  
 )  
JAY POSTER, )  
Funeral Director License No. 619 )  
 )  
RESPONDENT. )  
\_\_\_\_\_ )

CASE NO. FB14-12

**CONSENT DECREE**

The State of Nevada BOARD of Funeral and Cemetery Services ("BOARD") having jurisdiction over licensee JAY POSTER ("POSTER"), pursuant to NRS 642.470; complaint against said licensee having been received alleging violations of the Nevada statutes and regulations controlling the practice of funeral directors; 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**

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

POSTER has freely and voluntarily entered into this Consent Decree, and he is aware of his rights to contest the charges pending against him. These rights include representation by an attorney at his 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 him, the right to present evidence on his own behalf, the right to testify on his 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. All of these rights are being voluntarily waived by POSTER in exchange for the BOARD'S acceptance of this Consent Decree.

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

6 **JURISDICTION**

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

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

14 **PUBLICATION OF CONSENT DECREE**

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

21 **INDEMNIFICATION**

22 POSTER, for himself, his heirs, executors, administrators, successors and assigns,  
23 hereby indemnifies and holds harmless the State of Nevada, the BOARD, the Nevada  
24 Attorney General's office and each of their members, agents and employees in their individual  
25 and representative capacities against any and all claims, suits, demands, actions, debts,  
26 damages, costs, charges, and expenses, including court costs and attorney's fees against  
27 any persons entities as well as all liability, losses, and damages of any nature whatsoever that  
28 the persons and entities named in this paragraph shall have or may at any time sustain or

1 suffer by reason of this investigation, this disciplinary action, this settlement or its  
2 administration.

3 **STIPULATED FACTS AND CONCLUSIONS OF LAW**

4 POSTER understands the nature of the allegations under consideration by the  
5 BOARD. He acknowledges that the conduct alleged in the Complaint, if proven, constitutes  
6 violations of the Nevada Board of Funeral and Cemetery Services Practice Act (NRS and  
7 NAC 642) and NRS Chapter 440. He further recognizes that if this matter were to be taken to  
8 a disciplinary hearing before the BOARD, there is a substantial likelihood that the following  
9 allegations could be proven as true, and that as a result he would be subject to disciplinary  
10 action by the BOARD. As such, POSTER does not contest the following allegations:

11 1. POSTER held a valid Funeral Director license on the date of the alleged  
12 violations and continues to hold a valid Funeral Director license through the present day.

13 2. A complaint was received by the BOARD on or about August 25, 2014, alleging  
14 that POSTER, while working as a licensed funeral director at King David Memorial Chapel on  
15 August 18, 2014, proceeded with a burial without having obtained the required burial permit.

16 3. Additionally details of an incident report suggest that misrepresentation was  
17 made to Southern Nevada Health District regarding the interment.

18 4. NRS 642.480(1) states that unprofessional conduct includes misrepresentation  
19 or fraud in the operation of a funeral establishment.

20 5. NRS 642.480(2) states that unprofessional conduct includes violation of any  
21 state law or municipal or county ordinance or regulation affecting the handling, custody, care  
22 or transportation of dead bodies.

23 6. NRS 440.450 states that the funeral director or person acting as the undertaker  
24 is responsible for securing a burial or removal permit prior to any disposition of a body.

25 7. NRS 440.520 which states that the funeral director shall deliver the burial permit  
26 to the sexton or person in charge of the place of burial, before interring or otherwise disposing  
27 of the body.

28

1           8.     NRS 440.560 states that no person in charge of any premises in which  
2 interments are made shall inter or permit the interment or other disposition of any body unless  
3 it is accompanied by a burial, removal, or transit permit.

4  
5           9.     That pursuant to Nevada Revised Statute (NRS) 642.470:

6           The following acts are grounds for which the Board may take disciplinary  
7 action against a person who holds a funeral director's license, a permit to  
8 operate a funeral establishment or a license to conduct direct cremations  
9 or immediate burials, or may refuse to issue such a license or permit to  
10 an applicant therefor:

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

17           10.    That pursuant to Nevada Revised Statute (NRS) 642.473:

18           If the Board determines that a person who holds a funeral director's  
19 license, a permit to operate a funeral establishment or a license to  
20 conduct direct cremations or immediate burials has committed any of  
21 the acts set forth in NRS 642.470, the Board may:

- 22           (a) Refuse to renew the license or permit;
- 23           (b) Revoke the license or permit;
- 24           (c) Suspend the license or permit for a definite period or until  
25 further order of the Board;
- 26           (d) Impose a fine of not more than \$5,000 for each act that  
27 constitutes a ground for disciplinary action;
- 28           (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.

29           11.    POSTER does not contest the allegations in the Complaint, and acknowledges  
30 that as a consequence he is subject to discipline pursuant to the above charges and statutory  
31 provisions.

32           ///

1 **STIPULATED ADJUDICATION**

2 POSTER stipulates that pursuant to the authority of NRS 642.473, that his funeral  
3 license number 619 shall be placed on probation for six (6) months. During the term of  
4 probation, POSTER agrees to comply with the following conditions:

5 1. Within thirty (30) days of the approval and execution of this Consent Decree,  
6 POSTER shall pay five hundred fifty (\$550.00) in legal and investigative fees and three  
7 thousand dollars (\$3,000.00) in administrative fines.

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

11 b. In the event of default, POSTER agrees that his funeral director license  
12 shall be immediately suspended. The suspension of POSTER's license shall continue until  
13 the unpaid balance is paid in full and the suspension is subject to being reported to all  
14 appropriate agencies.

15 c. POSTER acknowledges that the BOARD has the legal power and  
16 authority to take action against him, including instituting debt collection actions for unpaid  
17 monetary assessments in this case.

18 2. POSTER must attend at least a three (3) hour course pre-approved by the  
19 BOARD Executive Director on the issue of ethics as it relates to the funeral industry.

20 3. POSTER 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 practice as a funeral  
22 director in this State. From the date of execution of this Consent Decree until POSTER  
23 satisfies the payment requirements of subsection 1 of this Stipulated Adjudication section,  
24 POSTER shall report any and all violations to the BOARD in writing within seventy-two (72)  
25 hours.

26 4. POSTER is required to notify the BOARD in writing within seventy-two (72)  
27 hours after any change in employment as a funeral director, including self-

1 employment, consulting or volunteering. Any notification of termination or change of  
2 employment shall contain a full explanation of the circumstances surrounding it.

3 5. POSTER agrees that he will be financially responsible for all requirements of  
4 this Consent Decree, including the cost of any reasonable financial assessments by the  
5 Board for the cost of monitoring his compliance or carrying out the provisions of this Consent  
6 Decree upon a determination of non-compliance with the provisions of this Consent Decree.

7 6. After a minimum of six (6) months, POSTER may apply to the BOARD for  
8 termination of his probation and full reinstatement of his funeral license number 619.  
9 POSTER understands that prior to terminating his probation and full reinstatement of his  
10 license he must prove to the BOARD's satisfaction that he has complied with all the terms  
11 and conditions of his Consent Decree. POSTER shall submit a written request to the BOARD  
12 for termination of his probation. Upon receipt of this request, the BOARD may request  
13 additional information from POSTER to determine his compliance with the Consent Decree.  
14 Upon establishing POSTER has met all of the requirements of the Consent Decree, he shall  
15 meet with the Chair of the BOARD or his/her designee, the Executive Director and BOARD  
16 counsel for evaluation of his compliance with the Consent Decree and for their  
17 recommendation of termination of probation, full reinstatement, or additional disciplinary  
18 action at a separate hearing before the BOARD.

19 **VIOLATION OF TERMS OF CONSENT DECREE**

20 POSTER understands that the BOARD may, upon thirty (30) days' notice to POSTER,  
21 convene a hearing for the limited purpose of establishing that he violated the terms of this  
22 Consent Decree. If such a hearing results in a finding of a violation of this Consent Decree,  
23 the BOARD may impose any penalty upon POSTER authorized by NRS 642.473 including,  
24 but not limited to, revocation of his license to practice as a funeral director in the State of  
25 Nevada.

26 POSTER agrees to waive his right to appeal the substantive legal basis of the original  
27 disciplinary action, which is the basis for this Consent Decree. In the event an alleged  
28

1 violation of the Consent Decree is taken to hearing and the facts which constitute the violation  
2 are determined to be not proven, no disciplinary action shall be taken by the BOARD.

3 **ACCEPTANCE BY THE BOARD**

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


6 **COMPLETE CONSENT DECREE**

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

10 DATED this 10<sup>th</sup> day of January, 2015

11  
12 By:   
13 Jay Poster, Funeral License No. 619

14 DATED this 12<sup>th</sup> day of January, 2015

15  
16 By:   
17 Robert F. List, Esq.  
18 Senior Partner  
19 Kolesar & Leatham  
20 400 South Rampart Blvd., Suite 400  
21 Las Vegas, Nevada 89145  
22 (702) 362-7800  
23 Attorney for Respondent  
24  
25  
26  
27  
28

1 The foregoing Consent Decree between JAY POSTER and the STATE OF NEVADA  
2 FUNERAL AND CEMETERY SERVICES BOARD in Case No. FB14-12 is approved as to  
3 form and content.

4 DATED this 15 day of January, 2015

5  
6 ADAM PAUL LAXALT  
Attorney General

7  
8  
9 By: 

10 HENNA RASUL  
11 Senior Deputy Attorney General  
12 100 N. Carson Street  
13 Carson City, Nevada 89701  
14 (775) 684-1234  
15 Counsel to the State of Nevada  
16 Board of Funeral and Cemetery  
17 Services  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**ORDER**

By a majority vote on the 20th day of January, 2015, 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 JAY POSTER, License No. 619.

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

**DATED** this 20th day of January, 2015

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