

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

3 IN THE MATTER OF)

4 DAVIS FUNERAL HOME)

CASE NO. FB16-06

5 Establishment Permit No. EST26)

6 RESPONDENT.)
7 _____

8 **CONSENT DECREE**

9 The State of Nevada BOARD of Funeral and Cemetery Services ("BOARD") having
10 jurisdiction over permittee DAVIS FUNERAL HOME ("DFH"), pursuant to NRS
11 642.5175; complaint against said permit holder alleging violations of the Nevada statutes
12 and 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 DFH is aware of, understands, and has been advised of the effect of this Consent
19 Decree, which it has carefully read and fully acknowledged. DFH has had the
20 opportunity to consult with competent counsel of its choice.

21 DFH has freely and voluntarily entered into this Consent Decree, and is aware of
22 its 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 DFH 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 DFH 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 DFH acknowledges that the BOARD has jurisdiction over it and the conduct
10 alleged in the Complaint. DFH 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 DFH 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 DFH 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 DFH, 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 DFH 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, DFH does not contest the following
14 allegations:

15 1. DFH 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 one (1) decedent who died October 6, 2015, and
21 came into custody of DFH on November 4, 2015, but was not cremated until March 8,
22 2016 even though all paperwork was complete and Clark County Social Services had
23 approved the payment January 26, 2016.

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

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

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

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

14 7. That pursuant to Nevada Revised Statute (NRS) 642.5176:

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

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

32 8. DFH does not contest the allegations and acknowledges that as a
33 consequence it is subject to discipline pursuant to the above charges and statutory
34 provisions.

35 STIPULATED ADJUDICATION

36 DFH stipulates that pursuant to the authority of NRS 642.5176, its establishment
37 permit number EST26 shall be placed on probation for six (6) months. During the term of
38 probation, DFH agrees to comply with the following conditions:

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1 1. Within thirty (30) days of the approval and execution of this Consent Decree,
2 DFH 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 DFH.

6 b. In the event of default, DFH agrees that its establishment permit
7 shall be immediately suspended. The suspension of DFH'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. DFH acknowledges that the BOARD has the legal power and
11 authority to take action against it, including instituting debt collection actions for unpaid
12 monetary assessments in this case.

13 2. DFH 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. DFH 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. DFH shall submit to a monthly inspection for the term of the probation
21 period to verify compliance with the terms of the Consent Decree.

22 5. DFH 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 DFH satisfies the terms of the Stipulated Adjudication section, DFH shall report
26 any and all violations to the BOARD in writing within seventy-two (72) hours.

27 6. DFH 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, DFH may apply to the BOARD for
5 termination of its probation and full reinstatement of its establishment permit number
6 EST26. DFH understands that prior to terminating its probation and full reinstatement
7 of its permit it must prove to the BOARD's satisfaction that it has complied with all the
8 terms and conditions of its Consent Decree. DFH shall submit a written request to the
9 BOARD for termination of its probation. Upon receipt of this request, the BOARD may
10 request additional information from DFH to determine its compliance with the Consent
11 Decree. Upon establishing DFH has met all of the requirements of the Consent Decree,
12 its legal owner/representative shall meet with the Chair of the BOARD or his/her
13 designee, the Executive Director and BOARD counsel for evaluation of its compliance
14 with the Consent Decree and for their recommendation of termination of probation, full
15 reinstatement, or additional disciplinary action at a separate hearing before the BOARD.

16 VIOLATION OF TERMS OF CONSENT DECREE

17 DFH understands that the BOARD may, upon thirty (30) days' notice to DFH,
18 convene a hearing for the limited purpose of establishing that it violated the terms of this
19 Consent Decree. It is agreed by all parties that in establishing if any terms of this
20 Consent Decree have been violated, only the cases that fall within the probationary period
21 shall be considered; any previous cases shall not be part of any hearings under the terms
22 of this Consent Decree. If such a hearing results in a finding of a violation of this Consent
23 Decree, the BOARD may impose any penalty upon DFH authorized by NRS 642.5176
24 including, but not limited to, revocation of its permit to operate a funeral establishment in
25 the State of Nevada.

26 DFH agrees to waive its 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 violation of the Consent Decree is taken to hearing and the facts which constitute the

1 violation are determined to be not proven, no disciplinary action shall be taken by the
2 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
8 DFH. It may not be altered, amended, or modified without the express written consent of
9 the parties.

10 DATED this 1ST day of DECEMBER, 2016.

11 

12 By: _____

13 DAVIS FUNERAL HOME
14 Legal Representative
Permit No. EST26

15 The foregoing Consent Decree between DFH and the STATE OF NEVADA
16 FUNERAL AND CEMETERY SERVICES BOARD in Case No. FB16-06 is approved as to
17 form and content.

18 DATED this 13 day of DECEMBER, 2016.

19
20 ADAM PAUL LAXALT
21 Attorney General

22
23 By: 

24 HENNA RASUL
25 Senior Deputy Attorney General
26 100 N. Carson Street
27 Carson City, Nevada 89701
28 (775) 684-1234
Counsel to the State of Nevada
Board of Funeral and Cemetery
Services

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 DFH, permit No. EST26.

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