

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

3 IN THE MATTER OF )  
4 DESERT MEMORIAL )  
5 Establishment Permit No. EST46 )  
6 RESPONDENT. )  
7 \_\_\_\_\_ )

CASE NO. FB16-07

8 CONSENT DECREE

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

21 DM has freely and voluntarily entered into this Consent Decree, and is aware of its  
22 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 DM 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 DM hereby waives any claim of bias or prejudice  
6 based upon said consideration by any member of the BOARD in any subsequent  
7 disciplinary hearing conducted by the BOARD.

### 8 JURISDICTION

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

13 DM 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 DM 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 DM, 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 DM 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, DM does not contest the following  
14 allegations:

15 1. DM held a valid permit to operate a funeral establishment on the date of the  
16 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 numerous decedents from 2014 through the end  
21 of 2015 under the care of Desert Memorial who did not receive timely burial or cremation  
22 and in some cases there did not appear to be follow-up on certain cases for periods  
23 exceeding one (1) year.

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

### 34 STIPULATED ADJUDICATION

35 DM stipulates that pursuant to the authority of NRS 642.5176, its establishment  
36 permit number EST46 shall be placed on probation for six (6) months. During the term of  
37 probation, DM 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 DM 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 DM.

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

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

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

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

16 **VIOLATION OF TERMS OF CONSENT DECREE**

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

23 DM agrees to waive its right to appeal the substantive legal basis of the original  
24 disciplinary action, which is the basis for this Consent Decree. In the event an alleged  
25 violation of the Consent Decree is taken to hearing and the facts which constitute the  
26 violation are determined to be not proven, no disciplinary action shall be taken by the  
27 BOARD.

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**ACCEPTANCE BY THE BOARD**

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

**COMPLETE CONSENT DECREE**

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

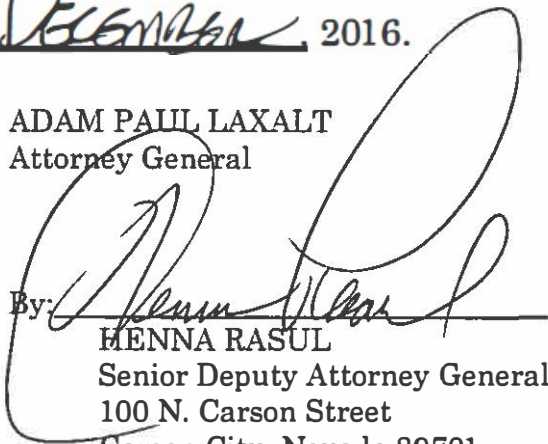
DATED this 17 day of November, 2016.

By:   
\_\_\_\_\_  
DESERT MEMORIAL  
Legal Representative  
Permit No. EST46

The foregoing Consent Decree between DM and the STATE OF NEVADA FUNERAL AND CEMETERY SERVICES BOARD in Case No. FB16-07 is approved as to form and content.

DATED this 13 day of December, 2016.

ADAM PAUL LAXALT  
Attorney General

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

ORDER

1  
2 By a majority vote on the 13<sup>th</sup> day of December, 2016, the State of Nevada  
3 Board of Funeral and Cemetery Services approved and adopted the terms and conditions  
4 set forth in the attached Consent Decree with DM, permit No. EST46.

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

6 DATED this 13<sup>th</sup> day of December, 2016.

7  
8 By: Wayne G. Fazzino  
9 Wayne Fazzino, Chair  
10 Board of Funeral and Cemetery Services  
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