

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

3 IN THE MATTER OF)
4 JAMES SMOLENSKI)
5 Funeral Director License No.)
6 FD217)
7 RESPONDENT.)

CASE NO. FB16-09

8 **CONSENT DECREE**

9 The State of Nevada BOARD of Funeral and Cemetery Services ("BOARD") having
10 jurisdiction over licensee JAMES SMOLENSKI ("SMOLENSKI"), pursuant to
11 NRS 642.5175; complaint against said license holder alleging violations of the Nevada
12 statutes and regulations controlling the practice of funeral directors; and the parties
13 being 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 SMOLENSKI is aware of, understands, and has been advised of the effect of this
19 Consent Decree, which he has carefully read and fully acknowledged. SMOLENSKI has
20 had the opportunity to consult with competent counsel of its choice.

21 SMOLENSKI has freely and voluntarily entered into this Consent Decree, and is
22 aware of his rights to contest the charges pending against him. These rights include
23 representation by an attorney at his 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 him, the
26 right to present evidence on his own behalf, the right to testify on his own behalf, the
27 right to receive written findings of fact and conclusions of law supporting the decision on
28 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 SMOLENSKI in exchange for the
2 BOARD'S 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 SMOLENSKI 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 SMOLENSKI acknowledges that the BOARD has jurisdiction over him and the
10 conduct alleged in the Complaint. SMOLENSKI 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 SMOLENSKI 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
15 the satisfaction of the BOARD.

16 PUBLICATION OF CONSENT DECREE

17 SMOLENSKI 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
20 national databases as required by law. It is also understood that any meeting during
21 which the BOARD considers and accepts or rejects this Consent Decree is open to the
22 public and that the minutes of the BOARD meeting are a public document, available for
23 inspection by any person so requesting.

24 INDEMNIFICATION

25 SMOLENSKI, 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 their members, agents and employees in
28 their 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, 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 **SMOLENSKI** understands the nature of the allegations under consideration by the
8 **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
11 were to be taken to a disciplinary hearing before the **BOARD**, there is a substantial
12 likelihood that the following allegations could be proven as true, and that as a result he
13 would be subject to disciplinary action by the **BOARD**. As such, **SMOLENSKI** does not
14 contest the following allegations:

15 1. **SMOLENSKI** 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. **SMOLENSKI** was the approved managing Funeral Director of Fitzhenry's
18 Funeral Home ("FFH") on the date of the alleged violations, but is no longer the
19 managing Funeral Director of FFH or any other permitted funeral establishment or direct
20 cremation facility in Nevada.

21 3. The **BOARD** conducted an inspection of FFH on February 18, 2016, and
22 noted that two decedents in the refrigeration unit had been deceased for over one year
23 and there had been no contact with county social services.

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. NRS 642.345(3) states that a funeral director is responsible for the proper
4 management of each funeral establishment of which the funeral director is the manager.

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

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

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

16 8. That pursuant to Nevada Revised Statute (NRS) 642.5176:

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

- 20 (a) Refuse to renew the license or permit;
- 21 (b) Revoke the license or permit;
- 22 (c) Suspend the license or permit for a definite period or
23 until further order of the Board;
- 24 (d) Impose a fine of not more than \$5,000 for each act that
25 constitutes a ground for disciplinary action;
- 26 (e) Place the person on probation for a definite period subject
27 to any reasonable conditions imposed by the Board;
- 28 (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.

 9. SMOLENSKI does not contest the allegations and acknowledges that as a
consequence he is subject to discipline pursuant to the above charges and statutory
provisions.

STIPULATED ADJUDICATION

SMOLENSKI stipulates that pursuant to the authority of NRS 642.5176, his
Funeral Director License No. FD217 shall be placed on probation for six (6) months. The

1 term of the probation shall commence when and if SMOLENSKI is the managing funeral
2 director of any funeral establishment or direct cremation facility in Nevada. During the
3 term of probation, SMOLENSKI agrees to comply with the following conditions:

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

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

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

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

17 2. SMOLENSKI shall submit a report on the last day of each month of
18 probation which includes a list of all decedents under the care of any funeral
19 establishment for which he is the managing funeral director, who have not received burial
20 or cremation within 45 days of death. The report shall include an explanation for any
21 reasons for delay in disposition and efforts that have been made to ensure timely
22 cremation or burial.

23 3. SMOLENSKI shall ensure that at least the minimum available decedent
24 information for any decedents under the care of any funeral establishment for which he is
25 the managing funeral director is entered into the Electronic Death Registry System
26 ("EDRS") within seven (7) days of taking custody of the remains of the decedent.

27 4. SMOLENSKI shall obey all federal, state and local laws, and orders of the
28 BOARD, which are not inconsistent with this Consent Decree, pertaining to the practice

1 of a funeral director in this State. From the date of execution of this Consent Decree until
2 **SMOLENSKI** satisfies the terms of the Stipulated Adjudication section, **SMOLENSKI**
3 shall report any and all violations to the **BOARD** in writing within seventy-two (72)
4 hours.

5 5. **SMOLENSKI** agrees that he will be financially responsible for all
6 requirements of this Consent Decree, including the cost of any reasonable financial
7 assessments by the **BOARD** for the cost of monitoring its compliance or carrying out the
8 provisions of this Consent Decree upon a determination of non-compliance with the
9 provisions of this Consent Decree.

10 6. After a minimum of six (6) months of probation served, **SMOLENSKI** may
11 apply to the **BOARD** for termination of his probation and full reinstatement of his
12 Funeral Director License No. FD217. If **SMOLENSKI** is unable to serve probation due to
13 not being the managing funeral director of any funeral establishment or direct cremation
14 facility within three (3) years, **SMOLENSKI** may apply to the **BOARD** for termination of
15 his probation and full reinstatement of his Funeral Director License No. FD217.
16 **SMOLENSKI** understands that prior to terminating his probation and full reinstatement
17 of his license he must prove to the **BOARD**'s satisfaction that he has complied with all the
18 terms and conditions of its Consent Decree. **SMOLENSKI** shall submit a written request
19 to the **BOARD** for termination of his probation. Upon receipt of this request, the **BOARD**
20 may request additional information from **SMOLENSKI** to determine his compliance with
21 the Consent Decree. Upon establishing **SMOLENSKI** has met all of the requirements of
22 the Consent Decree, he shall meet with the Chair of the **BOARD** or his/her designee, the
23 Executive Director and **BOARD** counsel for evaluation of its compliance with the Consent
24 Decree and for their recommendation of termination of probation, full reinstatement, or
25 additional disciplinary action at a separate hearing before the **BOARD**.

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VIOLATION OF TERMS OF CONSENT DECREE

SMOLENSKI understands that the BOARD may, upon thirty (30) days' notice to SMOLENSKI, convene a hearing for the limited purpose of establishing that he violated the terms of this Consent Decree. If such a hearing results in a finding of a violation of this Consent Decree, the BOARD may impose any penalty upon SMOLENSKI authorized by NRS 642.5176 including, but not limited to, revocation of his license to practice as a funeral director in the State of Nevada.

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

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 SMOLENSKI. It may not be altered, amended, or modified without the express written consent of the parties.

DATED this 22nd day of NOVEMBER, 2016.

By: 
JAMES SMOLENSKI
Funeral Director
License No. FD217

1 The foregoing Consent Decree between SMOLENSKI and the STATE OF NEVADA
2 FUNERAL AND CEMETERY SERVICES BOARD in Case No. FB16-09 is approved as to
3 form and content.

4 DATED this 13 day of December, 2016.

5
6 ADAM PAUL LAXALT
Attorney General

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9 By: 

10 HENNA RASUL
11 Senior Deputy Attorney General
100 N. Carson Street
12 Carson City, Nevada 89701
13 (775) 684-1234
Counsel to the State of Nevada
Board of Funeral and Cemetery Services

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17 **ORDER**

18 By a majority vote on the 13th day of December, 2016, the State of Nevada
19 Board of Funeral and Cemetery Services approved and adopted the terms and conditions
20 set forth in the attached Consent Decree with SMOLENSKI, License No. FD217.

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

22 DATED this 13th day of December, 2016.

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24 By: 

25 Wayne Fazzino, Chair
26 Board of Funeral and Cemetery Services
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