

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

1
2
3 IN THE MATTER OF)
4)
5 FITZHENRY'S CARSON VALLEY)
6 FUNERAL HOME,)
7 Establishment Permit EST58,)
8 Respondent.)

CASE NO. FB17-22

CONSENT DECREE

9
10 The State of Nevada Board of Funeral and Cemetery Services ("BOARD") having
11 jurisdiction over FITZHENRY'S CARSON VALLEY FUNERAL HOME ("FCV FH"),
12 Funeral Establishment Permit No. EST58; pursuant to NRS 642.5175; complaint against
13 said license and permit holders having received alleging violations of the Nevada statutes
14 and regulations controlling the practice of operating funeral establishments and
15 operating crematories; and the parties being mutually desirous of settling the controversy
16 between them relative to the pending complaint;

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

VOLUNTARY WAIVER OF RIGHTS

19
20 FCV FH is aware of, understand, and have been advised of the effect of this
21 Consent Decree, which has been carefully read and fully acknowledged. FCV FH has had
22 the opportunity to consult with competent counsel of their choice.

23 FCV FH has freely and voluntarily entered into this Consent Decree, and is aware
24 of their rights to contest the pending charges. These rights include representation by an
25 attorney at their own expense, the right to file an answer in response to a formal
26 complaint, the right to a public hearing on any charges or allegations formally filed, the
27 right to confront and cross-examine witnesses called to testify against them, the right to
28 present evidence on their own behalf, the right to testify on their own behalf, the right to

1 receive written findings of fact and conclusions of law supporting the decision on the
2 merits of the complaint, and the right to obtain judicial review of the decision. All of these
3 rights are being voluntarily waived by FCVFNH in exchange for the BOARD'S acceptance
4 of this Consent Decree.

5 If the Consent Decree is not accepted by the BOARD, no member of the BOARD
6 will be disqualified from further hearing of this matter, by reason of his or her
7 consideration of the Consent Decree. FCVFNH hereby waive any claim of bias or prejudice
8 based upon said consideration by any member of the BOARD in any subsequent
9 disciplinary hearing conducted by the BOARD.

10 **JURISDICTION**

11 FCVFNH acknowledges that the BOARD has jurisdiction over them and the conduct
12 alleged in the Complaint. FCVFNH acknowledge that the BOARD has the legal power and
13 authority to take disciplinary action, including, but not limited to, the revocation of
14 permits to operate funeral establishments and licenses to operate crematories in Nevada.

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

18 **PUBLICATION OF CONSENT DECREE**

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

26 **INDEMNIFICATION**

27 FCVFNH, for themselves, their heirs, executors, administrators, successors and
28 assigns, hereby indemnify and hold harmless the State of Nevada, the BOARD, the

1 Nevada Attorney General's office and each of its members, agents and employees in their
2 individual and representative capacities against any and all claims, suits, demands,
3 actions, debts, damages, costs, charges, and expenses, including court costs and attorney's
4 fees against any persons entities as well as all liability, losses, and damages of any nature
5 whatsoever that the persons and entities named in this paragraph shall have or may at
6 any time sustain or suffer by reason of this investigation, this disciplinary action, this
7 settlement or its administration.

8 **STIPULATED FACTS AND CONCLUSIONS OF LAW**

9 FCVFNH understands the nature of the allegations under consideration by the
10 BOARD. They acknowledge that the conduct alleged in the Complaint, if proven,
11 constitutes violations of the Nevada Board of Funeral and Cemetery Services Practice Act
12 (NRS and NAC 642) and NRS Chapter 451. It further recognizes that if this matter were
13 to be taken to a disciplinary hearing before the BOARD, there is a substantial likelihood
14 that the following allegations could be proven as true, and that as a result they would be
15 subject to disciplinary action by the BOARD. As such, without admitting to fault, liability
16 or guilt, FCVFNH does not contest the following allegations:

17 1. FCVFNH held a valid permit to operate a funeral establishment at 1380
18 Highway 395 North, Gardnerville, Nevada on the date of the alleged violations, and
19 continues to hold a valid establishment permit through the present day.

20 2. A complaint was received by the BOARD on or about September 5, 2017
21 alleging that FCVFNH cremated the remains of an individual with the initials R.B.M.
22 based upon the production of a Durable Power of Attorney for Healthcare in the name of
23 an individual with the initials A.D. who was not related to the decedent.

24 3. The Durable Power of Attorney for Healthcare did not speak to the issue of
25 burial or cremation and expired upon R.B.M.'s death, but granted the individual with the
26 initials A.D. "full power and authority: to make health care decisions for me before or
27 after my death...."

28 4. Decedent's brother, M.L.C. called FCVFNH on January 4, 2017 and its

1 representative refused to speak with M.L.C. on the basis that he was not next of kin and
2 stated that another individual had priority status regarding disposition authority over
3 the remains of R.B.M.

4 5. FCVFN allowed A.D. to order the cremation of R.B.M and the remains of
5 R.B.M. were released to A.D.

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

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

12 8. NRS 451.024 which details the order of priority for persons authorized to
13 order burial or cremation.

14 9. That pursuant to Nevada Revised Statute (NRS) 642.5175:

15 The following acts are grounds for which the Board may take disciplinary action
16 against a person who holds a license, permit, or certificate issued by the Board pursuant
17 to this chapter or chapter 451 or chapter 452 of NRS, or may refuse to issue such a
18 license, permit, or certificate to an applicant therefor:

- 19 1) Conviction of a crime involving moral turpitude.
- 20 2) Unprofessional conduct.
- 21 3) False or misleading advertising.
- 22 4) Conviction of a felony relating to the practice of funeral directors
or funeral arrangers.
- 23 5) Conviction of a misdemeanor that is related directly to the business
of a funeral establishment, direct cremation facility, cemetery, or
crematory.

24 10. That pursuant to Nevada Revised Statute (NRS) 642.5176:

25 If the Board determines that a person who holds a license, permit or certificate
26 issued by the Board pursuant to this chapter or chapter 451 or 452 of NRS has committed
27 any of the acts set forth in NRS 642.5175 the Board may:

- 28 1. Refuse to renew the license or permit;

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

11. FCVFH, without admitting to fault, liability or guilt, but in the interest of administrative efficiency and economy, does not contest the allegations in the Complaint, and acknowledges that as a consequence they are subject to discipline pursuant to the above charges and statutory provisions.

STIPULATED ADJUDICATION

FCVFH stipulates that pursuant to the authority of NRS 642.5176, the BOARD will administer a PUBLIC REPRIMAND. In addition, FCVFH agrees to comply with the following conditions:

1. Within thirty (30) days of the approval and execution of this Consent Decree, FCVFH shall pay one thousand forty-nine dollars and 65/100 (\$1,049.65) in legal and investigative fees and five hundred dollars (\$500.00) in administrative fines.

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

b. In the event of default, FCVFH agrees that its establishment permit shall be immediately suspended. The suspension of FCVFH's permit to operate a funeral establishment shall continue until the unpaid balance is paid in full and the suspension is subject to being reported to all appropriate agencies.

2. Within ninety (90) days of the approval and execution of this Consent Decree, FCVFH shall provide a detailed plan to ensure that all staff handling

1 arrangements for disposition at FCVFB, understand the order of priority for persons
2 authorized to order burial or cremation.

3 3. Within ninety (90) days of approval and execution of this Consent Decree,
4 FCVFB shall present written policies and procedures detailing the procedures for release
5 of cremated remains, and proof that all employees have received a copy of the written
6 policies and procedures.

7 4. FCVFB shall obey all federal, state and local laws, and orders of the
8 BOARD, which are not inconsistent with this Consent Decree, pertaining to the operation
9 of a funeral establishment in this State. Any and all violations shall be reported by
10 FCVFB to the BOARD in writing within seventy-two (72) hours.

11 5. FCVFB agrees that they will be financially responsible for all requirements
12 of this Consent Decree and any reasonable financial assessments by the Board for the
13 Cost of monitoring its compliance or carrying out the provisions of this Consent Decree.

14 **VIOLATION OF TERMS OF CONSENT DECREE**

15 FCVFB understands that the BOARD may, upon thirty (30) days' notice to
16 respondents, convene a hearing for the limited purpose of establishing that they violated
17 the terms of this Consent Decree. If such a hearing results in a finding of a violation of
18 this Consent Decree, the BOARD may impose any penalty upon FCVFB authorized by
19 NRS 642.5176.

20 FCVFB agrees to waive their rights to appeal the substantive legal basis of the
21 original disciplinary action, which is the basis for this Consent Decree. In the event an
22 alleged violation of the Consent Decree is taken to hearing and the facts that constitute
23 the violation are determined to be not proven, no disciplinary action shall be taken by
24 the BOARD.

25 **ACCEPTANCE BY THE BOARD**


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

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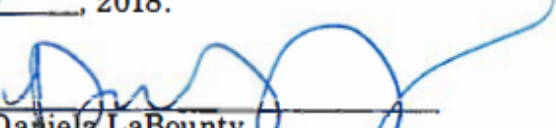
1 COMPLETE CONSENT DECREE

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

5 DATED this 22 day of August, 2018.

6 By: 
7 Lori Spilde, Vice President
8 Keystone America, Inc.
9 Fitzhenry's Carson Valley Funeral Home
10 Funeral Establishment Permit No. EST58

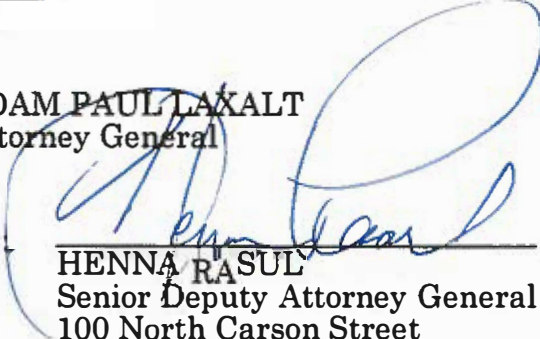
11 DATED this 24th day of August, 2018.

12 By: 
13 Daniela LaBounty
14 Weinberg Wheeler Hudgins Guinn & Dial
15 6385 South Rainbow Blvd., Suite 400
16 Las Vegas, NV 89118
17 (702) 938-3838

18 The foregoing Consent Decree between FITZHENRY'S CARSON VALLEY
19 FUNERAL HOME and the STATE OF NEVADA FUNERAL AND CEMETERY
20 SERVICES BOARD in Case No. . FB17-22 is approved as to form and content.

21 DATED this 27 day of August, 2018.

22 ADAM PAUL LAXALT
23 Attorney General

24 By: 
25 HENNA RA SUL
26 Senior Deputy Attorney General
27 100 North Carson Street
28 Carson City, Nevada 89701-4717
(775) 684-1234

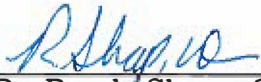
ORDER

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2 By a majority vote on the 02 day of OCT, 2018, 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 FITZHENRY'S CARSON VALLEY
5 FUNERAL HOME.

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

7 **DATED this 02 day of OCT, 2018.**

8
9 By:



Dr. Randy Sharp, Chairman
for the Board of Funeral and
Cemetery Services