

**BEFORE THE DIRECTOR
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE CEMETERY AND FUNERAL BUREAU
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. A1-2009-74

TIMOTHY JOHN GAFFNEY
Green Hills Memorial Park
27501 S. Western Avenue
Rancho Palos Verdes, CA 90275
Cemetery Salesperson License No. 40622

Respondent.

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the Director of Consumer Affairs and the Cemetery and Funeral Bureau as the Decision and Order in the above entitled matter.

This Decision shall become effective on July 10, 2010.

It is so ORDERED 06/10/2010.



DOREATHEA JOHNSON
Deputy Director, Legal Affairs Division
Department of Consumer Affairs

1 EDMUND G. BROWN JR.
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
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Attorneys for Complainant
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8 **BEFORE THE DIRECTOR**
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13 **TIMOTHY JOHN GAFFNEY**
Green Hills Memorial Park
14 27501 S. Western Avenue
Rancho Palos Verdes, CA 90275
15 **Cemetery Salesperson License No. 40622**

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

16 Respondent.

17
18 In the interest of a prompt and speedy resolution of this matter, consistent with the public
19 interest and the responsibilities of the Director of Consumer Affairs and the Cemetery and
20 Funeral Bureau, the parties hereby agree to the following Stipulated Surrender and Disciplinary
21 Order which will be submitted to the Director for his approval and adoption as the final
22 disposition of the Accusation.

23 PARTIES

24 I. Richard L. Wallinder, Jr. (Complainant) is the Bureau Chief of the Cemetery and
25 Funeral Bureau. He brought this action solely in his official capacity and is represented in this
26 matter by Edmund G. Brown Jr., Attorney General of the State of California, by Nancy A. Kaiser,
27 Deputy Attorney General.

28 ///

1 negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order
2 may not be altered, amended, modified, supplemented, or otherwise changed except by a writing
3 executed by an authorized representative of each of the parties.

4 14. In consideration of the foregoing admissions and stipulations, the parties agree that
5 the Director may, without further notice or formal proceeding, issue and enter the following
6 Order:

7 **ORDER**

8 IT IS HEREBY ORDERED that Cemetery Salesperson License No. 40622, issued to
9 Respondent Timothy John Gaffney is surrendered and accepted by the Director of the Department
10 of Consumer Affairs (Director).

11 15. The surrender of Respondent's Cemetery Salesperson License and the acceptance of
12 the surrendered license by the Director shall constitute the imposition of discipline against
13 Respondent. This stipulation constitutes a record of the discipline and shall become a part of
14 Respondent's license history with the Director and the Cemetery and Funeral Bureau (Bureau).

15 16. Respondent shall lose all rights and privileges as a licensed cemetery salesperson in
16 California as of the effective date of the Director's Decision and Order.

17 17. Respondent shall cause to be delivered to the Director both his wall license
18 certificate and, if one was issued, pocket license on or before the effective date of the Decision
19 and Order.

20 18. If he ever applies for licensure or petitions for reinstatement in the State of California,
21 the Director shall treat it as a new application for licensure. Respondent must comply with all the
22 laws, regulations and procedures for licensure in effect at the time the application or petition is
23 filed, and all of the charges and allegations contained in Accusation No. A1-2009-74 shall be
24 deemed to be true, correct and admitted by Respondent when the Director determines whether to
25 grant or deny the application or petition.

26 19. Should Respondent ever apply or reapply for a new license or certification, or petition
27 for reinstatement of a license, by any other professional licensing agency in the State of
28 California, all of the charges and allegations contained in Accusation, No. A1-2009-74 shall be

1 deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of
2 Issues or any other proceeding seeking to deny or restrict licensure.

3 20. Respondent shall pay the Bureau its costs of investigation and enforcement in the
4 amount of \$2,542.50 prior to issuance of a new or reinstated license.

5 ACCEPTANCE

6 I have carefully read the Stipulated Surrender of License and Order. I understand the
7 stipulation and the effect it will have on my Cemetery Salesperson License. I enter into this
8 Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to
9 be bound by the Decision and Order of the Director of the Department of Consumer Affairs.

10
11 DATED: _____

4-29-10


TIMOTHY JOHN GAFFNEY
Respondent

12
13
14 ENDORSEMENT

15 The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted
16 for consideration by the Director of the Department of Consumer Affairs.

17 Dated: 5/4/10

Respectfully submitted,

18 EDMUND G. BROWN JR.
Attorney General of California
19 GREGORY J. SALUTE
Supervising Deputy Attorney General

20 

21 NANCY A. KAISER
22 Deputy Attorney General
23 *Attorneys for Complainant*

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Exhibit A

Accusation No. A1-2009-74

1 EDMUND G. BROWN JR.
Attorney General of California
2 GREGORY J. SALUTE
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3 NANCY A. KAISER
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8 **BEFORE THE DIRECTOR**
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10 **FOR THE CEMETERY AND FUNERAL BUREAU**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. AI 2009 74

13 **TIMOTHY JOHN GAFFNEY**
14 **3995 Carson Street**
15 **Torrance, CA 90503**
16 **Cemetery Salesperson License No. 40622**

A C C U S A T I O N

Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Richard L. Wallinder, Jr. (Complainant) brings this Accusation solely in his official
20 capacity as the Bureau Chief of the Cemetery and Funeral Bureau (Bureau), Department of
21 Consumer Affairs.¹

22 2. On or about July 15, 2008, the Bureau issued Cemetery Salesperson License Number
23 40622 to Timothy John Gaffney (Respondent). The Cemetery Salesperson License was in full
24 force and effect at all times relevant to the charges brought herein and will expire on June 30,
25 2010, unless renewed.

26 ¹ Effective January 1, 1996, the Department of Consumer Affairs succeeded to, and was
27 vested with, all the duties, powers, purpose, responsibilities and jurisdiction of the Cemetery
28 Board and the Board of Funeral Directors and Embalmers, and consolidated the functions into the
Cemetery and Funeral Programs. Effective January 1, 2001, the regulatory agency is designated
as the Cemetery and Funeral Bureau.

1 JURISDICTION

2 3. This Accusation is brought before the Director of the Department of Consumer
3 Affairs (Director), under the authority of the following laws. All section references are to the
4 Business and Professions Code (Code) unless otherwise indicated.

5 4. Section 477 of the Code states that:

6 "As used in this division:

7 "(a) 'Board' includes 'bureau,' 'commission,' 'committee,' 'department,' 'division,'
8 'examining committee,' 'program,' and 'agency.'

9 "(b) 'License' includes certificate, registration or other means to engage in a
10 business or profession regulated by this code."

11 5. Section 9607 states that: "'Cemetery licensee' means any cemetery broker, cemetery
12 salesperson, or cemetery manager."

13 6. Section 118, subdivision (b), of the Code provides that the suspension/expiration/
14 surrender/cancellation of a license shall not deprive the Director of jurisdiction to proceed with a
15 disciplinary action during the period within which the license may be renewed, restored, reissued
16 or reinstated.

17 7. Section 9725 states, in part, that:

18 "Upon grounds provided in this article [Article 6 (commencing with section 9725)], and the
19 other articles of this act, the license of any cemetery licensee . . . may be revoked or suspended in
20 accordance with the provisions of this article."

21 8. Section 9725.1 states, in part, that:

22 "Unprofessional conduct by any licensee or registrant or by any agent or employee of a
23 licensee or registrant constitutes grounds for disciplinary action."

24 9. Section 9727 states:

25 "The bureau may suspend or revoke the license of any cemetery licensee who, within the
26 immediately preceding three years, has done any of the following:

27 ...

1 "(d) Acted or conducted himself or herself in a manner which would have warranted the
2 denial of his or her application for a cemetery license, or for a renewal thereof."

3 10. Section 9727.1 of the Code states that the bureau may suspend or revoke the license
4 of any cemetery licensee who procures a cemetery license, for himself or herself or any
5 salesperson, by fraud, misrepresentation or deceit. An action to suspend or revoke a license for a
6 violation of the provisions of this section shall be commenced within three years after the
7 discovery by the bureau of that violation.

8 11. Section 9727.2 states:

9 "A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to
10 be a conviction within the meaning of this article. The bureau may order the license suspended or
11 revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment
12 of conviction has been affirmed on appeal or when an order granting probation is made
13 suspending the imposition of sentence, irrespective of a subsequent order under the provisions of
14 Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and
15 to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation,
16 information or indictment."

17 12. Section 141 of the Code states:

18 "(a) For any licensee holding a license issued by a board under the jurisdiction of the
19 department, a disciplinary action taken by another state, by any agency of the federal government,
20 or by another country for any act substantially related to the practice regulated by the California
21 license, may be a ground for disciplinary action by the respective state licensing board. A
22 certified copy of the record of the disciplinary action taken against the licensee by another state,
23 an agency of the federal government, or another country shall be conclusive evidence of the
24 events related therein.

25 "(b) Nothing in this section shall preclude a board from applying a specific statutory
26 provision in the licensing act administered by that board that provides for discipline based upon a
27 disciplinary action taken against the licensee by another state, an agency of the federal
28 government, or another country."

1 13. Section 475 of the Code states:

2 "(a) Notwithstanding any other provisions of this code, the provisions of this division shall
3 govern the denial of licenses on the grounds of:

4 (1) Knowingly making a false statement of material fact, or knowingly omitting
5 to state a material fact, in an application for a license.

6 "(2) Conviction of a crime.

7 "(3) Commission of any act involving dishonesty, fraud or deceit with the
8 intent to substantially benefit himself or another, or substantially injure another.

9 "(4) Commission of any act which, if done by a licentiate of the business or
10 profession in question, would be grounds for suspension or revocation of license.

11 "(b) Notwithstanding any other provisions of this code, the provisions of this division shall
12 govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2)
13 of subdivision (a).

14 COST RECOVERY

15 14. Section 125.3 of the Code provides that the Director may request the administrative
16 law judge to direct a licentiate found to have committed a violation or violations of the licensing
17 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
18 case.

19 FIRST CAUSE FOR DISCIPLINE

20 (Secured License by Material Misrepresentation)

21 15. Respondent has subjected his license to disciplinary action under sections 9727.1 and
22 475, subdivisions (a)(1) and (b), of the Code, in that Respondent procured his Cemetery
23 Salesperson License by fraud, misrepresentation or deceit. Specifically, Respondent falsely
24 represented in his Application for Cemetery Salesperson License (the application) that he had not
25 been convicted of any law of any state and that no government authority in any state had taken
26 disciplinary action against him. The circumstances are as follows:

27 a. On or about July 8, 2008, the Bureau received an Application for Cemetery
28 Salesperson License from Respondent. On or about June 17, 2008, Respondent certified under

1 penalty of perjury on his Application for Cemetery Salesperson License that the answers given in
2 the application are true and correct.

3 b. The third question in Section D of the application states "Have you ever been
4 convicted of, or pled no contest to, a violation of any law of the United States, any state or local
5 jurisdiction, or any foreign country?" Respondent checked the "No" box. In fact, Respondent
6 had been convicted of violating the laws of the state of Texas, as follows:

7 (i.) On or about November 9, 1994, in a criminal proceeding entitled *State of Texas v.*
8 *Timothy John Gaffney*, County Court at Law # 2, Bell County, Texas, Case Number 2C94-1623,
9 Respondent was convicted on his plea of guilty for violating section Texas Penal Code, Section
10 19.05 (Homicide-Criminal Negligent), committed on July 25, 1992. Respondent was fined
11 \$3,000 and sentenced to 365 days in County Jail. Respondent's sentence was suspended and he
12 was placed on community supervision for 24 months. On February 28, 1996, Respondent's
13 community supervision was revoked for violating the conditions of the community supervision,
14 as set forth below.

15 (ii.) On or about February 28, 1996, in a criminal proceeding entitled *State of Texas v.*
16 *Timothy John Gaffney*, County Court at Law # 2, Bell County, Texas, Case Numbers 2C95-3402
17 Respondent was convicted on his plea of guilty for violating Texas Penal Code section 49.04
18 (operating a motor vehicle in a public place while intoxicated), which he committed on May 14,
19 1995. Respondent was sentenced to 60 days in County Jail and fined \$750.

20 (iii.) On or about February 28, 1996, in a criminal proceeding entitled *State of Texas v.*
21 *Timothy John Gaffney*, County Court at Law # 2, Bell County, Texas, Case Numbers 2C95-3403
22 Respondent was convicted on his plea of guilty for violating Texas Health and Safety Code
23 section 481.121 (marijuana possession), which he committed on May 14, 1995. He was
24 sentenced to 60 days in County Jail and fined \$500.

25 b. The fourth question in Section D of the application states "Have you ever had any
26 professional or vocational license or registration denied, suspended, revoked, placed on probation
27 or other disciplinary action taken by this or any other government authority in this state or any
28

1 other state, or any foreign country?" Respondent checked the "No" box. In fact, the Banking
2 Commissioner of Texas had taken disciplinary action against Respondent, as follows:

3 (i.) On or about December 21, 2007, in a disciplinary action before the Banking
4 Commissioner of Texas, entitled *In the Matter of Timothy Gaffney, Individually, and as President*
5 *of Heritage Maintenance Systems, L.C., et al.*, Order Nos. 2007-049 and 2007-050, the
6 Commissioner issued Orders to Cease and Desist Activity and Orders of Seizure of Prepaid
7 Funeral Records against Respondent and his companies, which required them to cease and desist
8 from engaging in the sale of prepaid funeral benefits contracts in violation of Chapter 154 of the
9 Texas Finance Code. Order Nos. 2007-049 and 2007-050 were issued on December 21, 2007,
10 and the Final Order Disposing of Appeals was issued on April 29, 2008.

11 (ii.) The Texas Banking Commissioner found that Respondent and his companies sold,
12 collected, and held money for approximately 170 illegal prepaid funeral benefits contracts in
13 violation of Texas Finance Code, sections 154.101 and 154.102 (permit requirements), and
14 received payments from consumers of more than \$500,000. In addition, the Commissioner found
15 that funds or payments received by Respondent from his sales of prepaid funeral benefits
16 contracts were not placed in trust or submitted to either a prepaid insurance funded permit holder
17 or their approved preneed insurance company as insurance premiums in accordance with Texas
18 Finance Code, sections 154.203 (collection of premiums by licensed insurance agent only) or
19 154.253 (deposit of money paid or collected). The Commissioner found that Gaffney and his
20 companies misappropriated or converted funds that belonged to "at least" one beneficiary under a
21 prepaid funeral benefits contract.

22 **SECOND CAUSE FOR DISCIPLINE**

23 **(Disciplinary action taken by another state)**

24 16. Respondent has subjected his license to disciplinary action under section 141 of the
25 Code, in that Respondent had a disciplinary action taken against him by the Texas Banking
26 Commissioner, a government authority of the state of Texas, for selling preneed funeral benefits
27 contracts to consumers without the required permit and misappropriating the purchasers'
28 payments, as described in paragraph 15, above.

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Unprofessional conduct)**

3 17. Respondent has subjected his license to disciplinary action under sections 9725.1, on
4 the grounds of unprofessional conduct, in that Respondent sold preneed funeral benefits contracts
5 to consumers without the required permit and misappropriated the consumers' payments, as
6 described in paragraphs 15 and 16, above.

7 **FOURTH CAUSE FOR DISCIPLINE**

8 **(Acts Warranting Denial of License)**

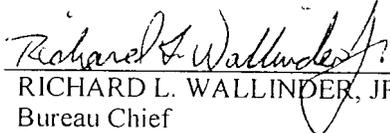
9 18. Respondent has subjected his license to disciplinary action under sections 9727,
10 subdivision (d), and 475, subdivisions (a)(2), (a)(3), and (a)(4), of the Code, in that Respondent
11 acted or conducted himself in a manner which would have warranted the denial of his application
12 for a cemetery license, as set forth in paragraphs 15 through 17, above.

13 **PRAYER**

14 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
15 and that following the hearing, the Director issue a decision:

- 16 1. Revoking or suspending Cemetery Salesperson License Number 40622, issued to
17 Timothy John Gaffney;
- 18 2. Ordering Timothy John Gaffney to pay the Bureau the reasonable costs of the
19 investigation and enforcement of this case, pursuant to Business and Professions Code section
20 125.3; and,
- 21 3. Taking such other and further action as deemed necessary and proper.

22 DATED: 3/3/10

23 
24 RICHARD L. WALLINDER, JR.
25 Bureau Chief
26 Cemetery and Funeral Bureau
27 Department of Consumer Affairs
28 State of California
Complainant

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