

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

In the Matter of the Accusation Against

CAROL A. ARCHIE,

Cemetery Salesperson License No. CES
42210,

Respondent.

Case Nos. A1 2010132

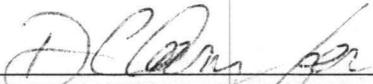
OAH No. 2011040610

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted as the Decision of the Director of Consumer Affairs in the above-entitled matter.

This Decision shall become effective on JANUARY 20, 2012

IT IS SO ORDERED December 21, 2011.



DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
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PROPOSED DECISION

This matter was heard before Michael C. Cohn, Administrative Law Judge, State of California, Office of Administrative Hearings, in Oakland, California, on September 22, 2011.

Complainant Lisa M. Moore, Deputy Bureau Chief of the Cemetery and Funeral Bureau, Department of Consumer Affairs, was represented by Leslie E. Brast, Deputy Attorney General.

Respondent Carol A. Archie represented herself.

The matter was submitted for decision on September 22, 2011.

FACTUAL FINDINGS

1. On October 19, 2009, the Cemetery and Funeral Bureau issued cemetery salesperson license number CES 42210 to respondent Carol A. Archie. The license expired on June 30, 2010, and has not been renewed.

2. Shawnon Giana Jetter died on November 27, 2009. She was 20 years old. After her death, a family dispute arose concerning the disposition of her remains. That dispute led to this disciplinary accusation against respondent. Although respondent was licensed as a cemetery salesperson at the time, none of the acts with which she was charged occurred while she was acting in her licensed capacity.

3. Giana, as she was known, was the only child of Sean and Sabrina Jetter. Sean and Sabrina were divorced when Giana was an infant. Giana lived with her mother until Sabrina died when Giana was 10 years old. Giana then lived with her father until she was 17 years old. Sean had remarried and Giana formed an attachment to her stepmother, Wanda Jetter. After Sean and Wanda divorced, Giana moved out of her father's house and went to live with Wanda in Vallejo. For about the last year of her life, Giana lived independently. She was working full-time and attending college.

4. Respondent is a cousin of the late Sabrina Jetter. She and Giana had a close relationship.

5. Giana became ill in late November 2009. Respondent's son brought Giana from her apartment to respondent's home. On November 24, 2009, respondent took Giana to the hospital. Shortly after arrival, Giana became non-responsive and was placed on life support. Respondent did not know how to reach Giana's father but on November 25 was able to get word to him through a relative that he needed to come to the hospital. When Sean Jetter arrived at the hospital he was advised that his daughter was brain dead and he needed to decide whether to discontinue life support. After having Giana transferred to another hospital for a second opinion, on November 27, 2009, Jetter made the decision to remove his daughter from life support. Respondent and her family were present at the hospital when this decision was made. She did not dispute Jetter's authority to make the decision.

6. Sean Jetter made arrangements for Giana's funeral through Baker-Atkins Mortuary. Giana's body was moved from the hospital morgue to the mortuary on December 4, 2009. Shirell Hall is the mortuary's administrator. Hall testified that respondent called her "numerous times" on December 4 and 5, 2009, saying she was Giana's aunt and wanted to make arrangements to transport her body for burial in another state. Respondent told Hall that she had a durable power of attorney and that Sean Jetter therefore had no authority to make arrangements for his daughter's burial. Hall asked respondent to fax the document to her and arranged for respondent to come to the mortuary. Respondent said she would come with her attorney.

7. Respondent subsequently faxed to the mortuary a number of documents. One of these was a Medical Power of Attorney designating respondent as Giana's health care agent. The document was purportedly signed by Giana on December 5, 2006 (her 18th birthday) "at Richmond, CA." Two witnesses were listed, both of whom give their addresses as being in San Antonio, Texas. One of the witnesses was Narda Roberson, respondent's sister. Another document was a "Declaration Regarding Final Arrangements of Shawnon G. Jetter." This document provided that Giana wished to be buried with her mother at Woodside Cemetery in Middletown, Ohio, and that all arrangements and decisions concerning her funeral would be made by respondent. This document was also purportedly signed by Giana on December 5, 2006. Her address was listed as the same address in San Antonio that was shown on the power of attorney as Narda Roberson's address.

8. When Sean Jetter came to the mortuary, Hall showed him the documents she had received. Jetter told Hall that the documents were forgeries. He showed her his daughter's driver's license and had Hall compare the signatures. While this was happening, respondent and another woman, whom she represented was her attorney, arrived at the mortuary. When Hall told respondent that the signature on the documents she had sent did not match the one on Giana's driver's license, the other woman nudged respondent with her elbow and said, "Let's go." The two women left. Jetter then completed arrangements for his daughter's burial, including payment for the mortuary's services.

9. Respondent maintains that after Giana died, Jetter said he did not have funds to pay for her funeral and asked respondent and her family to help pay. She testified her family decided that if they were going to pay for the funeral, Giana would be buried in Ohio, with her mother. She maintains that a family member led her to believe there was a plot available for Giana there. She contacted her sister in Texas, who said she had a power of attorney that Giana had signed "one summer" when she was visiting there. Respondent maintains she did not know of the existence of the document before this date and she believed it to be genuine.

10. The evidence demonstrates that the documents respondent faxed to the mortuary were forgeries. First, the signatures on the documents do not match Giana's known signature. Second, the documents contain a number of inconsistencies. Both the power of attorney and the declaration regarding final arrangements were purportedly signed on December 5, 2006. The power of attorney was supposedly signed by Giana in Richmond, but was witnessed by two Texas residents. On the other hand, while the declaration regarding final arrangements did not indicate where it was signed, it listed Giana's address as being in Texas, implying the form was signed there. But according to respondent, Giana had been in Texas "one summer," not in December. And her father's testimony that Giana was not in Texas on her 18th birthday, the day the documents were purportedly signed, is supported by the hearsay evidence of school records showing Giana was in attendance at Hogan High School in Vallejo on December 5, 2006. It is unclear, therefore, how either document could have been signed or witnessed in Texas on that date. Finally, it is contrary to both reason and common experience that a healthy 18-year-old would, on her birthday, sign documents granting a medical power of attorney and detailing funeral arrangements.

11. Respondent's testimony that she believed the documents she faxed to the mortuary were genuine is not credible. After having tried for several days to convince the mortuary that she was the one who had the right to control the disposition of Giana's remains, the fact that respondent left the mortuary as soon as Hall told her she believed the documents she had provided were forgeries is telling; respondent knew her attempts to mislead the mortuary had failed.

12. It is unquestioned that respondent had a close relationship with Giana. And it is clear from the evidence and their demeanor that respondent and Giana's father do not like one another. It is apparent that respondent has had a number of grievances with Jetter over the years. She does not believe Jetter has told the truth about why his daughter moved out of

his home and into his ex-wife's home in Vallejo or about how close he subsequently was to his daughter. But even if respondent's concerns were all legitimate, none of them justified respondent's deceitful attempt to gain control of the disposition of Giana's remains.

13. The board has incurred costs of \$8,698.75 in the investigation and prosecution of this matter. These costs, which consist of investigative costs and attorney's fees, are reasonable.

LEGAL CONCLUSIONS

First Cause for Discipline

1. Business and Professions Code section 9727, subdivision (d), provides that the bureau may revoke or suspend the license of any cemetery licensee who has acted in a manner that would warrant denial of a license. Business and Professions Code section 480, subdivision (a)(2), provides that a licensing agency may deny a license if the applicant has committed any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or substantially injure another.

2. The matters set forth in Factual Findings 6 through 10 establish that respondent acted dishonestly with the intent to substantially injure the interest of Sean Jetter when she faxed forged documents to the mortuary in an effort to gain the right to control the disposition of Giana's remains. Cause for disciplinary action against her license thereby exists pursuant to Business and Professions Code sections 9727, subdivision (d), and 480, subdivision (a)(2).

Second Cause for Discipline

3. Business and Professions Code section 9725.1, subdivision (a), provides that violating or attempting to violate any law or regulation governing the disposition of human remains constitutes unprofessional conduct for which a licensee may be disciplined.

4. Health and Safety Code section 7050.5, subdivision (a), provides that it is unlawful for any person to remove any human remains from any location other than a cemetery without authority of law. Respondent's actions as set forth in Factual Findings 6 through 10 constituted an attempt to remove Giana's remains from the mortuary without authority of law. Cause for disciplinary action for unprofessional conduct thereby exists pursuant to Business and Professions Code section 9725.1, subdivision (b).

Third Cause for Discipline

5. This cause for discipline was dismissed at the hearing on motion of complainant.

Fourth Cause for Discipline

6. Business and Professions Code section 9725.1, provides that unprofessional conduct by a licensee constitutes grounds for disciplinary action.

7. The matters set forth in Factual Findings 6 through 10 establish that respondent acted dishonestly, and therefore unprofessionally, when she faxed forged documents to the mortuary in an effort to gain the right to control the disposition of Giana's remains. Cause for disciplinary action against her license thereby exists pursuant to Business and Professions Code section 9725.1.

Cost Recovery

4. Section 125.3 provides that a board may order a licensee found to have violated the licensing law to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case. Under that section, cause exists to order respondent to reimburse the bureau its costs of \$8,698.75. If respondent fails to pay these costs, her registration may not be reinstated except under limited circumstances at the bureau's discretion. (Bus. & Prof. Code, § 125.3, subds. (g)(1) and (g)(2).)

ORDER

Cemetery salesperson license number CES 42210 issued to respondent Carol A. Archie is revoked pursuant to Legal Conclusions 1, 2 and 4.

Respondent shall reimburse the bureau investigative and prosecution costs of \$8,698.75.

DATED: October 20, 2011


MICHAEL C. COHN
Administrative Law Judge
Office of Administrative Hearings

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8 **BEFORE THE**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **FOR THE CEMETERY AND FUNERAL BUREAU**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No.

A12010132

13 **CAROL A. ARCHIE**
14 **4100 Hilltop Drive**
15 **Richmond, California 94803**
16 **Cemetery Salesperson License No. CES**
17 **42210**

ACCUSATION

Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Lisa M. Moore. (Complainant) brings this Accusation solely in her official capacity
21 as the Deputy Bureau Chief of the Cemetery and Funeral Bureau, Department of Consumer
22 Affairs.¹

23 2. On or about October 19, 2009, the Cemetery and Funeral Bureau issued Cemetery
24 Salesperson License Number CES 42210 to Carol A. Archie (Respondent). The Cemetery
25 Salesperson License expired on June 30, 2010, and has not been 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 Consumer Affairs (Director) for the
3 Cemetery and Funeral Bureau under the authority of the following laws. All section references
4 are to the Business and Professions Code unless otherwise indicated.

5 4. Section 9725 states:

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

10 5. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
11 surrender, or cancellation of a license shall not deprive the Bureau of jurisdiction to proceed with
12 a disciplinary action during the period within which the license may be renewed, restored,
13 reissued or reinstated.

14 **STATUTORY PROVISIONS**

15 6. Section 9727 states:

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

18 ". . . .

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

21 7. Section 480 of the Code states:

22 "(a) A board may deny a license regulated by this code on the grounds that the applicant has
23 one of the following:

24 ". . . .

25 "(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially
26 benefit himself or herself or another, or substantially injure another.

27 ". . . ."

1 within the department upon request of the entity bringing the proceedings, the
2 administrative law judge may direct a licentiate found to have committed a violation or violations
3 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
4 enforcement of the case."

5 **FIRST CAUSE FOR DISCIPLINE**

6 (Acts Involving Dishonesty, Fraud, or Deceit)

7 12. Respondent is subject to disciplinary action under sections 9727(d) and 480(a)(2) of
8 the Code in that Respondent acted in a way that would have warranted denial of her application if
9 she were applying for a license. Specifically, Respondent committed acts involving dishonesty,
10 fraud, or deceit with the intent substantially to benefit herself or another or substantially to injure
11 another. The circumstances are as follows:

12 13. In or around December of 2009, following the death of Shawnon Giana Jetter
13 ("Giana"), Respondent knowingly presented forged documents to the Baker Williams Mortuary
14 ("Mortuary") in an attempt to acquire the right to dispose of the remains of Giana. The
15 documents, purportedly executed by Giana, stated that Giana wished to be buried in a particular
16 cemetery and directed that all related decisions be made by Respondent. Sean Jetter, Giana's
17 surviving parent, had and was attempting to exercise his right to dispose of Giana's remains at the
18 time.

19 **SECOND CAUSE FOR DISCIPLINE**

20 (Attempted Violation of Law Governing Disposition of Human Remains)

21 14. Respondent is subject to disciplinary action under section 9725.1(a) of the Code in
22 conjunction with California Health and Safety Code § 7050.5 in that Respondent willfully
23 attempted to remove human remains from Mortuary without the right legally to do so. The
24 circumstances are described above in the First Cause For Discipline.

25 ///

26 ///

27 ///

28 ///

1 **THIRD CAUSE FOR DISCIPLINE**

2 (Publication of False Statement Concerning a Cemetery)

3 15. Respondent is subject to disciplinary action under section 9683 of the Code in that
4 Respondent published and distributed a false statement concerning the cemetery where Giana
5 chose to be buried. The circumstances are described above in the First Cause For Discipline.

6 **FOURTH CAUSE FOR DISCIPLINE**

7 (Unprofessional Conduct)

8 16. Respondent is subject to disciplinary action under section 9725.1 of the Code in that
9 Respondent acted unprofessionally. The circumstances are described above in the First Cause
10 For Discipline.

11 **PRAYER**

12 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
13 and that following the hearing, the Director of Consumer Affairs issue a decision:

14 1. Revoking or suspending Cemetery Salesperson License Number CES 42210, issued
15 to Carol A. Archie;

16 2. Ordering Carol A. Archie to pay the Cemetery and Funeral Bureau the reasonable
17 costs of the investigation and enforcement of this case, pursuant to Business and Professions
18 Code section 125.3;

19 3. Taking such other and further action as deemed necessary and proper.
20
21

22 DATED: December 27, 2010

Lisa M. Moore

23 LISA M. MOORE
24 Deputy Bureau Chief
25 Cemetery and Funeral Bureau
26 Department of Consumer Affairs
27 State of California
28 *Complainant*

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