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

In the Matter of the Accusation Against: **SUNRISE MEMORIAL CEMETERY ASSOCIATION, INC.** Certificate of Authority No. COA 39 and **BUCK KAMPHAUSEN,** Cemetery Manager License No. CEM 259 Cemetery Broker License No. CEB 441 Cemetery Branch Broker License No. CBB 120441 Respondent.	Case No. A1 2015 7 OAH No. 2015070674

DECISION

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

This Decision shall become effective June 30, 2016.

IT IS SO ORDERED MAY 3 1 2016.

Doreathea Johnson

DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter on February 23 and April 4, 2016, in Oakland, California.

Carter Ott, Deputy Attorney General, represented complainant Lisa M. Moore, Bureau Chief, Cemetery and Funeral Bureau, Department of Consumer Affairs.

Steven H. Gurnee, Attorney at Law, represented respondents Sunrise Memorial Cemetery Association, Inc., and Buck Kamphausen, who was present throughout the administrative hearing.

The record was held open until April 15, 2016, for respondent Kamphausen to submit a response to complainant's request for costs reimbursement. Respondent Kamphausen's objections were received, marked for identification as Exhibit H and considered.

The record closed and the matter was submitted for decision on April 15, 2016.

FACTUAL FINDINGS

Introduction

1. Lisa M. Moore brought the accusation in her official capacity as the Bureau Chief, Cemetery and Funeral Bureau (Bureau), Department of Consumer Affairs.

2. The Bureau regulates cemeteries, cemetery managers, cemetery brokers and cemetery branch brokers pursuant to the Cemetery and Funeral Bureau Act, which is codified at Business and Professions Code, section 7611, et seq.

3. Public cemeteries and cemeteries organized, controlled or operated by religious corporations or churches are excluded from the Cemetery and Funeral Bureau Act pursuant to Business and Professions Code section 7612.2.

4. On February 6, 2016, respondent Sunrise Memorial Cemetery Association, Inc., transferred all rights and title to the Sunrise Memorial Cemetery to a religious organization known as the Hillcrest Baptist Church of Vallejo. Following the transfer, Sunrise Memorial Cemetery Association, Inc., surrendered Certificate of Authority No. COA 39 to the Bureau. The Bureau accepted the surrender and elected not to proceed with the accusation against respondent Sunrise Memorial Cemetery Association, Inc. The matter proceeded as against respondent Kamphausen.

5. Complainant herein seeks to impose discipline on respondent Kamphausen's licenses alleging that he: 1) acted as the manager of Sunrise Memorial Cemetery (cemetery) without approval from the Bureau; 2) failed to disclose that he was acting as the manager of cemetery; 3) negligently managed the cemetery; 4) failed to designate a manager of the cemetery; 5) failed to provide maintenance standards for the cemetery; and 6) failed to follow the Bureau's cemetery maintenance regulations. As set forth below, the evidence did not establish that respondent Kamphausen was the owner or manager of the Sunrise Memorial Cemetery, or that he was responsible for managing, designating a manager or maintaining the cemetery; rather, the evidence established that respondent Kamphausen volunteered his time and resources in an attempt to improve the condition of the cemetery. As a result, the accusation against respondent Kamphausen is dismissed.

Licensing and Background

SUNRISE MEMORIAL CEMETERY ASSOCIATION, INC.

6. On May 1, 1950, the Bureau issued Certificate of Authority No. COA 39 to Sunrise Memorial Cemetery Association, Inc.

7. Sunrise Memorial Cemetery Association, Inc. reported the following officers to the Bureau: President – Christ L. Pappakostas (associated April 28, 2004); Vice-President – vacant; Secretary – Arnold Dorer (associated June 28, 2004); Treasurer, Chief Financial

Officer – Buck Kamphausen (associated April 18, 2014); Director – Keith Wattles (associated April 18, 2014); Responsible Manager Officer – Christopher Sean Cowan (associated November 19, 2015).

8. Sunrise Memorial Cemetery Association, Inc. was a non-profit organization that operated Sunrise Memorial Cemetery. Sunrise Memorial Cemetery has been in existence since the 1800's; the first interment was in 1860. Sunrise Memorial Cemetery Association, Inc., was incorporated on February 1, 1927, as the Masonic and Oddfellows' Cemetery Association of Vallejo, California.

9. On March 13, 1959, the Masonic and Oddfellows' Cemetery Association of Vallejo, California, accepted a quitclaim deed from Gregory Harrier of the Hillside Cemetery Association. The Hillside Cemetery was directly adjacent to what was the Masonic and Oddfellows' Cemetery Association of Vallejo, California. It contains graves of the veterans of the Spanish American War. On October 26, 1984, a description of the property showed the union of the two cemeteries.

10. The name was changed from the Masonic and Oddfellows' Cemetery Association of Vallejo, California, to the Sunrise Memorial Cemetery Association, Inc., by a certificate of amendment filed with the Secretary of State on November 20, 1986. Historically, the corporation was run by nine board members who were members of the Masons and Oddfellows fraternal organizations.

RESPONDENT BUCK KAMPHAUSEN

11. Buck Kamphausen (respondent) owns and manages several cemeteries including Skyview Memorial Lawn in Vallejo, Evergreen Cemetery in Oakland, Mount Tamalpais Cemetery in Marin and Napa Valley Memorial Park in Napa, California. He has been in the cemetery and funeral business since attending the San Francisco College of Mortuary Science in 1964.

12. Respondent lives in Vallejo, California, and has been active in the community for many years.

13. On February 1, 1972, the Bureau issued Cemetery Broker License No. CEB 441 to respondent. The license is scheduled to expire on June 30, 2016, unless renewed.

14. On July 2, 2004, the Bureau issued Cemetery Branch Broker License No. CBB 120441 to respondent. The license is scheduled to expire on June 30, 2016, unless renewed.

15. On January 20, 2005, the Bureau issued Cemetery Manager License No. CEM 259 to respondent. The license is scheduled to expire on January 31, 2017, unless renewed.

The Endowment Care Fund and Maintenance Regulations

16. In 1939, the Legislature enacted a statutory framework for the collection of endowment funds to provide for the future maintenance of cemeteries. (Health & Saf. Code, § 8725.) Pursuant to the legislation, cemeteries charge an endowment fee at the time cemetery property (burial plots, crypts and niches) is sold. These funds are placed in trust for the future maintenance of a cemetery. By statute, only the income of the endowment fund, not the corpus, may be used to maintain the cemetery.

17. In 2006, the Legislature enacted Business and Professions Code section 9612.[1] It directed the Bureau to adopt regulations to establish the minimum standards of maintenance for endowment care cemeteries under the jurisdiction of the Bureau. In 2012, the Bureau promulgated regulations establishing maintenance standards. (Cal. Code Regs., tit. 16, § 2333.) The regulations apply only to certificated cemeteries and only to those portions of certificated cemeteries that are endowed (the property sold after the 1939 endowment care legislation became effective).

18. Portions of the Sunrise Memorial Cemetery are endowed. The evidence did not establish which portions of the cemetery are endowed; it appears that endowed property was sold immediately adjacent to non-endowed property. The portion of the cemetery that was previously the Hillside Cemetery appears to be entirely made up of non-endowed property.

Recent History of Sunrise Memorial Cemetery Association, Inc.

19. In 2003, Keith Wattles joined the Sunrise Memorial Cemetery Association, Inc. Board of Directors (Board). Wattles served honorably in the United States Navy from 1970 to 1980. From 1980 to 1989, he worked for Eastman Kodak. From 1989 to 2001, Wattles worked as a civilian police evidence technician for the Oakland Police Department. In 2015, Wattles retired from a construction company position.

Wattles has been a Mason since 2002. The Masons volunteer services and donate funds to the public schools, among other causes. When Wattles joined, he became active in the Vallejo lodge. In 2002, the average age of members of the organization was 72; Wattles was asked to replace a Mason on the Board of the Sunrise Memorial Cemetery Association, Inc., and he agreed. At the time, the Board was comprised of a mix of members of the Masons and Oddfellows organizations.

20. In 2003, the cemetery employed a caretaker who lived on the property, and two gardeners. Wattles observed that the cemetery was not well-maintained. As Wattles became acquainted with his new position, he learned that the caretaker was not performing his duties. Wattles and the other Board members terminated the caretaker within a couple of

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[1] Effective January 1, 2016, Business and Professions Code section 9612 was renumbered to be Business and Professions Code section 7612.4.

years of Wattles joining the Board. The two gardeners were kept on to maintain the property and dig graves.

21. Wattles also discovered that the Board was responsible for the endowment care fund; however, none of the Board members had a background in accounting or experience operating a cemetery. He learned that at times money was spent inappropriately.

22. In 2004, Board members asked respondent (whom they knew to be active in the community and to own several cemeteries), the former mayor of Vallejo, Terry Curtola, and Rick Wells, the former president of the Vallejo Chamber of Commerce, if they would assist the Board with managing the endowment care fund and giving advice concerning the operation of the cemetery. The three men agreed to act as trustees of the endowment care fund. They were not compensated for their services. After reviewing the finances, respondent advised the Board that the income from the endowment fund was insufficient to maintain the cemetery.

Over the past several decades, the number of property sales at Sunrise Memorial Cemetery had decreased significantly. In 2005, the number of interments was 133, in 2015, it was 31. The number of mausoleum sales decreased from 17 in 2005 to seven in 2015. The number of niche sales reduced from 13 in 2005 to six in 2015. The interment of cremains has remained fairly stable during that time. The decrease in sales caused a significant decrease in the funds available to operate and maintain the cemetery. Respondent estimates that a cemetery of the size of Sunrise Memorial Cemetery would require at least $300,000 per year to operate properly. Currently, Sunrise Memorial Cemetery has sales income and endowment trust income totaling approximately $35,000 per year.

23. In 2005, respondent asked Mark Alexander, who worked as a mortician at one of respondent's properties, to serve as the designated manager at Sunrise Memorial Cemetery. The Board had not designated a manager after firing the previous caretaker. Alexander, a licensed funeral director, cemetery manager, crematorium manager, cemetery salesperson, and mortician at Wiggins Funeral Home in Vallejo for 32 years, agreed to act as the manager of Sunrise Memorial Cemetery. Alexander was not compensated for becoming the manager. He agreed to act as manager in part because the family members of many of his clients were buried in the cemetery and he had an interest in its future maintenance. Alexander worked at Wiggins Funeral Home but spent time at Sunrise Memorial Cemetery as needed to meet with clients or to oversee the operations.

24. When Alexander assumed the role of manager he instituted changes. For example, written contracts had not been used to document sales, just receipts. Alexander printed contracts and brought the office systems up-to-date. Respondent's auditor assisted Alexander in compiling receipts and organizing the paperwork in the office. Alexander also had cemetery maintenance standards typed up, and hung them on the wall in the office.

25. Over the 10 years Alexander managed the cemetery, the decline in sales of cemetery property and the insufficient income from the endowment fund caused the

cemetery to fall into disrepair. When Alexander became the manager, two of four wells were working. One well went dry, then the only remaining well collapsed. A cistern that had previously provided water also collapsed, was a hazard and was boarded up. The cemetery was left without water service because there were no pipes connected to city water lines. The cost of drilling another well exceeds $60,000, far in excess of the cemetery's annual maintenance budget. Over the past few years, a drought caused the grass to turn brown and there was nothing Alexander could do about it.

26. Alexander was aware that the endowed portions of the cemetery should be maintained; however, there were no maps indicating which parts of the cemetery were endowed or not-endowed. He tried to maintain the entire cemetery to the best of his ability, but with very limited funds it was difficult. Alexander began to receive complaints from family members of the people whose remains were buried at the cemetery.

27. Respondent offered to send gardeners from the cemeteries he owns and manages to Sunrise Memorial Cemetery to cut the lawn and cut down and remove dead trees on occasion. Many of the trees at the cemetery were planted in the 1800's, and are coastal trees planted too far inland; they began dying and constituted a hazard. There are 30 to 40 trees at the cemetery that should be removed. Numerous trees fall down each year and one tree fell at a gravesite shortly after a group of people had left following a ceremony. The Board members were thankful the tree did not fall on or injure someone. Respondent has paid for approximately 20 dying trees to be removed from the cemetery.

28. Alexander and respondent posted signs around the cemetery grounds apprising family members that the endowment care fund was severely underfunded and that the current maintenance problems included: 1) collapsed wells and a failing water system; 2) old and diseased trees that were falling regularly; 3) large trees were disturbing graves and private mausoleums; 4) the roadways were deteriorating; 5) there were roof leaks; 6) the equipment was old and broken; and, 7) there were security issues. Another sign advised that due to budget restraints, the office was closed and individuals could call a number for appointments. Another sign advised that due to the drought, the cemetery grounds were not being watered.

29. To make matters worse, on August 24, 2014, an earthquake centered seven miles away, in Napa, California, caused widespread damage to the cemetery. Many headstones and monuments, which were built decades ago (or longer), toppled over or broke into pieces. The headstones and monuments had not been built to today's standards. In addition, the earthquake caused damage to the mausoleum and the roadways. The headstones are very heavy, requiring heavy equipment to move and repair. The cemetery did not have the funds to repair the headstones, so Board members advised Alexander to leave them where they fell in order to preserve the identity of the graves. The Board members hoped to organize a volunteer effort to repair the damage.

30. In addition to the lack of maintenance funds and the damage caused by the earthquake, over the past several years, the cemetery has been vandalized. Brass lettering from the mausoleum has been stolen, bronze nameplates and vases have been stolen, glass

doors and windows have been broken, one of the four historic canons on the property was also stolen, and other damage has occurred. There was no fence around the cemetery and homeless people and prostitutes began to sleep in the cemetery.

Respondent contacted a Vallejo resident who is an ironworker and negotiated a deal with him to build an iron fence surrounding the cemetery property. The Board agreed to allow this individual to use a garage on the cemetery property in exchange for building a fence around the perimeter. He builds two panels of fencing per month; the fence will be completed within a few months' time.

Molex Complaint

31. On January 14, 2015, the Bureau received a complaint regarding the cemetery. The complainant, Leela Molex, was upset about the lack of maintenance at the cemetery and because multiple headstones were damaged and lying down near the graves.

32. Bureau Field Representative Amber Weaver was assigned to respond to the complaint. Weaver visited the cemetery on January 29, 2015. She observed that the cemetery grounds were in a state of poor maintenance and repair. Many of the upright monuments were broken and lying in pieces. There were missing faceplates on several of the crypt fronts on the outside of the mausoleum and one crypt was completely open. The shoring posts holding up the awning over the outside mausoleums were unsecured and moved when touched. The grass was not mowed and many of the flat markers were not visible either partially or totally due to overgrowth and debris. The roadways were cracked and in a state of disrepair, and littered with fallen tree branches and landscape debris. The ceiling stripping on the inside mausoleum was hanging down and the carpet showed water leak spots and green mold. Entire sections of the back of the cemetery (mainly what was formerly the Hillside Cemetery), were completely unmaintained and many of the markers were visible amongst the overgrowth. The burial grounds were uneven and there were several areas of uneven and sunken grounds.

33. Weaver met with Alexander. Alexander advised her that the broken upright headstones were damaged in the August 2014 earthquake. The insurance company had denied the cemetery's claim for repairs because earthquake damage was not covered by the policy. Repairing the headstones would require heavy equipment and operators and the cemetery did not have the funds to pay for the repair. Alexander advised Weaver that the Masons were trying to organize volunteers to perform repairs.

34. Alexander also explained that the broken mausoleum fronts were also damaged in the earthquake. Unfortunately, the cemetery simply did not have the funds to repair the damage or to maintain the trees, lawn or roadways.

35. Weaver asked for a map of the endowed portions of the cemetery; Alexander informed her that the cemetery records did not establish what cemetery property was endowed. Weaver requested a copy of the cemetery maintenance standards. Alexander

provided Weaver with a copy of the cemetery maintenance standards upon her request in January 2015.

36. Alexander felt that Weaver was threatening his license as a result of the condition of the cemetery. He was tired of receiving complaints from family members and did not have the funds to make the necessary repairs. After meeting with Weaver, Alexander resigned as manager of the cemetery, effective February 13, 2015.

37. After Alexander resigned, respondent and the other Board members hoped to find another volunteer to fill the position, or to give the cemetery to the city or a church. Respondent contacted Weaver and offered to act as an interim cemetery manager until such time. Weaver advised him that he was not eligible to act as the cemetery manager because he owned and managed other cemeteries. Respondent was never designated as the cemetery manager of Sunrise Memorial Cemetery.

Pazos Complaint

38. On August 18, 2015, the Bureau received a complaint regarding the condition of the cemetery from Fred Pazos, whose father's remains were buried there. Pazos had left messages with the cemetery office that were not returned. Pazos reported that the grounds were overgrown, mausoleum nameplates were missing and/or broken, and the road and pathways were terribly neglected.

39. Weaver visited the cemetery in response to the complaint on September 2, 2015. She observed that the cemetery grounds remained in a state of poor maintenance and repair. The office was closed and no cemetery staff members were present. Weaver observed that the upright monuments had not been repaired and the cemetery was in a similar state of disrepair as when she visited in January. Weaver also observed a soiled mattress lying on the ground of the mausoleum breezeway.

Weaver left several messages with the cemetery office which were not returned for several days. Weaver noted that the cemetery had failed to file an endowment care fund report for 2014, which was due June 1, 2015. She contacted the Bureau's cemetery auditor, Charles Bane. Bane advised her that the cemetery was probably not earning enough sales to meet maintenance standards.

40. Weaver spoke with respondent on September 9, 2015; he had just returned from vacation. Respondent agreed to have someone remove the mattress. Weaver asked why the cemetery had not designated a manager. Respondent was upset at the Weaver's attitude; he was not sure what to do other than to have the Board give the cemetery to a local church, which he was trying to negotiate.

41. Weaver asked if the cemetery would waive disinterment charges for the Pazos family to move their family member to another cemetery, or to return what they had paid for the cemetery property. Respondent advised Weaver that the cemetery could not afford to

provide disinterment at no cost; if the Pazos family wanted to pay the disinterment fee of $400, respondent agreed to send his groundskeeper over to coordinate it.

Wenger Complaint

42. On September 14, 2015, the Bureau received a complaint concerning the lack of maintenance at the cemetery from Ray Wenger. Wenger's father is buried at the cemetery and he was disturbed by the state of disrepair at the cemetery.

43. On October 9, 2015, Weaver visited the cemetery to investigate the complaint. She again observed that the cemetery was in a poor state of maintenance and repair. The office was closed. However, on this visit, she observed several workers present throughout the grounds with landscape equipment. The roadway to the outside of the mausoleum had been cleared to allow access, since her last visit. Two workers were painting the overhang and appeared to be shoring the support poles. Weaver approached a groundskeeper, Fernando Borrayo, Jr. Borrayo was employed as a groundskeeper at Napa Valley Memorial Park. Respondent had instructed him to perform repairs at Sunrise Memorial Cemetery. He had removed the mattress from the breezeway. Borrayo advised Weaver that a homeless shelter had opened across the street from the cemetery and that vagrancy was a major problem at the cemetery. Borrayo advised Weaver that they would be performing repairs at the cemetery for the next week or so.

Respondent contacted Weaver later that day and confirmed to her that he had sent two crews of workers from his cemeteries to work at Sunrise Memorial Cemetery. Respondent advised Weaver that the Hillcrest Baptist Church would take title to the cemetery on November 19, 2015, and its pastor, Christopher Cowan, would be designated as the manager of the cemetery on that date. Respondent was planning to repair the roofs and was trying to take care of dead and fallen the trees, but needed to bring a crane to the cemetery to accomplish that.

44. Weaver returned to the cemetery on October 19, 2015. The grounds were still in a state of poor maintenance and repair, and the office was closed. The grass had been mowed, but was brown. Several areas had fallen trees and/or branches lying on graves. The roadway pavement had multiple cracks. There were holes and other damaged areas inside and outside of walls and fences. Weaver observed an exposed electrical outlet lying on the carpet. An open concrete vault sitting exposed on top of the grounds was filled with debris.

Repairs had been made to the overhang and shoring poles on the outside mausoleum. The road to the mausoleum had been cleared. The outside columbarium had been cleared out so the niches were visible. Weaver observed a worker mowing the lawn and another worker painting the outer fence.

45. Weaver returned to the cemetery on November 4, 2015. The cemetery grounds remained in a state of poor maintenance and repair. The office was closed and no staff members were present.

46. Weaver contacted the three active Board members of Sunrise Memorial Cemetery Association, Inc., that she was aware of: Chris Pappakostas (president), Keith Wattles (director) and Arnold Dorer (secretary). Pappakostas reported that he had not been involved in the cemetery over the past five years. Wattles reported that he had no ownership interest in the cemetery and was sad that they could not afford to keep it up for the families. Dorer had not been involved much in the past five years. He and Wattles relied on Alexander and respondent to keep them abreast of what was happening at the cemetery.

Transfer of Cemetery Title

47. Due to the insufficient funds available to maintain the cemetery, the Board asked the City of Vallejo to take ownership of the cemetery, but the city could not afford it and refused. The Board then talked to a nearby church, Hillcrest Baptist Church of Vallejo. On October 18, 2015, the Hillcrest Baptist Church voted to accept ownership of the cemetery.

Christopher Cowan, the pastor of Hillcrest Baptist Church, wrote a letter stating that the church had been a part of the Sunrise Memorial Cemetery community for 50 years and was located nearby. The church was pleased to have the opportunity to serve the community and to get its youth members involved in the project. The plan was to replace water lines, repair and reset broken headstones, repair leaking buildings, replace broken crypt plates, repair roadways, mow and trim the cemetery on a regular basis. Pastor Cowan stated further that Skyview Memorial Lawn and Napa Valley Cemetery had agreed to allow their staff and equipment to be used to oversee the day-to-day tasks of the cemetery, such as mowing lawns, excavating graves, setting up for graveside services, closing graves and setting headstones.

The deed transferring title to the Hillcrest Baptist Church was filed on February 6, 2016, and was signed by Dorer as secretary and respondent as treasurer.

48. Sunrise Memorial Cemetery did not designate a cemetery manager after Alexander resigned effective February 13, 2015, until Cowan became the designated manager effective November 19, 2015.

Bureau Costs of Investigation and Enforcement

49. The Bureau incurred $3,295.38 in investigation costs and $27,295 in enforcement costs.

50. Respondent objects to the request for reimbursement of enforcement costs, arguing that the costs are excessive and inaccurate.

Ultimate Conclusions

51. Respondent was not an owner or the manager of the Sunrise Memorial Cemetery. He volunteered his time and resources in an attempt to improve the condition of

the cemetery. Respondent was not responsible for maintaining the cemetery, nor was he responsible for designating a cemetery manager or operating the cemetery.

LEGAL CONCLUSIONS

Maintenance Standards Enforced by the Bureau

1. In 2006, the Legislature enacted Business and Professions Code section 9612. It directed the Bureau to adopt regulations to establish the minimum standards of maintenance for endowment care cemeteries under the jurisdiction of the Bureau. Section 9612 stated:

> The regulations shall consider differences in cemetery size, location, topography, and type of interments. The regulations shall also consider the extent to which funds are available from the cemetery's endowment care funds to perform maintenance.

Effective January 1, 2016, section 9612 was renumbered as Business and Professions Code section 7612.4. The language quoted above remains in section 7612.4.

2. Pursuant to Business and Professions Code section 7612.4, in 2012, the Bureau adopted regulations establishing minimum standards of maintenance for endowment care cemeteries under the jurisdiction of the Bureau. The regulations are found at California Code of Regulations, title 16, section 2333.

Section 2333 states at subdivisions (a) and (b):

(a) Every endowment care cemetery shall have cemetery maintenance standards to ensure the property is kept in a condition so as to prevent the cemetery's offensive deterioration. . . .

(b) Each endowment care cemetery shall perform, at a minimum, the following maintenance on its cemetery property:

(1) Trim or mow grass and prune shrubs and trees in and around the cemetery. Grass shall be trimmed or mowed to a level where flat markers of individual graves can be seen.

(2) Suppress or remove weeds on the developed cemetery property.

(3) Provide a sufficient supply of water to keep cemetery grass and plants as green as seasonally possible in accordance with natural terrain, availability of water, and local or county ordinances regarding water use.

(4) Repair or restore improvements, structures and fences on the property which are owned by the cemetery.

(5) Keep cemetery roads seasonally accessible and repair surfacing which presents a hazard.

(6) Keep all occupied crypts and niches properly sealed or closed.

(7) Refill or reset settled graves and markers annually, or within 120 days of the cemetery office becoming aware of the issue.

(8) Repair any grave marker, monument, or burial vault that is damaged by the negligence of the cemetery or its employees or contractors.

(9) Supply and empty trash receptacles when filled, and keep public areas of the cemetery grounds and water features clear of trash and debris.

(10) Provide clear delineation of undeveloped cemetery property with the use of signage.

(11) Control vermin and insect problems.

3. The Bureau seeks to impose discipline on respondent Kamphausen's licenses because the Sunrise Memorial Cemetery failed to maintain the cemetery pursuant to the standards set forth in California Code of Regulations, title 16, section 2333.

The evidence established that Sunrise Memorial Cemetery was in a state of serious disrepair and poor maintenance. The family members of those whose remains are buried there are justifiably upset about the circumstances. (Factual Findings 25 through 45.) However, the evidence did not establish that respondent owned the cemetery or acted as the cemetery manager. (Factual Findings 37 and 51.) Respondent volunteered his time and resources in an effort to improve the condition of the cemetery. (Factual Findings 22, 24, 27, 28, 30, 37, and 51.) Under these circumstances, cause does not exist for imposing discipline on respondent's licenses.

Lack of Cemetery Maintenance Standards

4. California Code of Regulations, title 16, section 2333, subdivision (a), provides in relevant part:

> Every endowment care cemetery shall have cemetery maintenance standards to ensure the property is kept in a condition so as to prevent the cemetery's offensive deterioration.

The evidence established that Sunrise Memorial Cemetery had maintenance standards which were posted on the wall of the office. (Factual Finding 24.) Weaver requested that Alexander provide her with a copy of the maintenance standards in January 2015, which he did. (Factual Finding 35.) The evidence did not establish that the cemetery lacked maintenance standards. Cause to impose discipline on respondent's licenses pursuant to California Code of Regulations, title 16, section 2333, subdivision (a), does not exist.

Failure to Designate a Cemetery Manager

5. Business and Professions Code section 9723, recently renumbered as section 7653.6, requires that a cemetery licensed under the Act employ a licensed cemetery manager to manage, supervise and direct its operations. The cemetery must report the designation of a cemetery manager, and any changes within 10 days of the effective date of the change in manager.

The evidence established that after his meeting with Weaver, Alexander resigned as cemetery manager, effective February 13, 2015. (Factual Finding 36.) Respondent offered to be the interim manager, but was not able to perform those duties because pursuant to California Code of Regulations, title 16, section 2326.5, subdivision (a), an individual who manages a licensed cemetery may not be approved to manage another licensed cemetery unless they are under common ownership. (Factual Finding 37.) Because the cemetery did not have funds to pay a manager, it took some time to find someone willing to take over the management of the cemetery. Effective November 19, 2015, Chris Cowan, the pastor of Hillcrest Baptist Church, agreed to assume those duties. The Bureau was notified of his designation once the agreement was put in place. (Factual Findings 43 and 48.)

The cemetery, which is no longer under the Bureau's jurisdiction because it has surrendered its certificate of authority and is now owned by a church, failed to designate a cemetery manager from February 13 to November 19, 2015. Under the circumstances here, cause for discipline on respondent's licenses does not exist.

Approval to Share Cemetery Manager

6. California Code of Regulations, title 16, section 2326.5, subdivision (a), provides that licensed cemeteries, upon approval by the Bureau, may designate a licensed cemetery manager to manage more than one licensed cemetery if the licensed cemeteries are under common ownership. The Bureau alleges that respondent acted as Sunrise Memorial Cemetery's de facto cemetery manager without prior approval of the Bureau.

The evidence did not establish that respondent Kamphausen acted as the manager of Sunrise Memorial Cemetery. The evidence established the respondent Kamphausen offered to serve as the interim manager but was unable to do so, pursuant to California Code of Regulations, title 16, section 2326.5, subdivision (a). As a member of the cemetery's Board of Directors, after Alexander resigned and before Cowan took over, respondent oversaw the cemetery, volunteered his crews and negotiated to the transfer ownership to the Hillcrest

Baptist Church. Cause for discipline of respondent Kamphausen's licenses does not exist under these circumstances.

Misrepresentation

7. Business and Professions Code section 9726, renumbered as section 7711.2, authorizes the Bureau to impose discipline on a licensee who has made substantial misrepresentations to the Bureau. Complainant alleges that respondent Kamphausen failed to disclose to the Bureau that he was acting as the cemetery manager for Sunrise Memorial Cemetery. The evidence does not support this allegation. No cause for discipline exists pursuant to Business and Professions Code section 9726 or 7711.2.

Unprofessional Conduct – Negligence

8. Pursuant to Business and Professions Code section 9725.1, renumbered as section 7711.1, the Bureau is authorized to impose discipline on a licensee who has committed unprofessional conduct. The evidence did not establish that respondent Kamphausen committed unprofessional conduct and therefore no cause for discipline exists pursuant to Pursuant to Business and Professions Code section 9725.1 or 7711.1.

Costs Reimbursement

9. Business and Professions Code section 125.3 permits the Bureau to request an order directing the licentiate found to have committed a violation of the licensing act to reimburse it for its costs of investigation and enforcement. Because respondent Kamphausen has not been found to have committed a violation of the licensing act, the request for cost reimbursement is denied.

ORDER

The accusation against respondent Buck Kamphausen is dismissed.

DATED: May 11, 2016

DocuSigned by:
Jill Schlichtmann
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JILL SCHLICHTMANN
Administrative Law Judge
Office of Administrative Hearings