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

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|---|---|
| In the Matter of the Accusation Against:<br><br>**DAMBACHER MOUNTAIN MEMORIAL CEMETERY, INC.**<br>**22394 Lyons Bald Mountain Rd.**<br>**Sonora, CA 95370**<br><br>**Certificate of Authority No. COA 602**<br><br>**JEFFREY RICHARD WILSON**<br>**225 E. Rose Ave.**<br>**Sonora, CA 95370**<br><br>**Cemetery Manager No. CEM 206**<br><br>Respondents. | Case No. A1 2014 130<br><br>**A C C U S A T I O N** |

Complainant alleges:

PARTIES

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

[1] Effective January 1, 1996, the Department of Consumer Affairs succeeded to, and was vested with, all the duties, powers, purpose, responsibilities and jurisdiction of the Cemetery 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.

2. On or about April 7, 2006, the Cemetery and Funeral Bureau issued Certificate of Authority Number COA 602 to Dambacher Mountain Memorial Cemetery, Inc., Jeffrey Richard Wilson, Responsible Manager Officer (Respondent). The Certificate of Authority will expire on April 30, 2015, and the renewal is on hold due to the nonpayment of Administrative fines.

3. On or about September 17, 2004, the Cemetery and Funeral Bureau issued Cemetery Manager Number CEM 206 to Jeffrey Richard Wilson (Respondent). The Cemetery Manager was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2015, unless renewed.

JURISDICTION

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

5. Section 9725 states:

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

6. Section 125.3, subdivision (a), states, in pertinent part: "Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department . . . . upon request of the entity bringing the proceedings may request the administrative law judge may direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case."

7. Section 125.9, states, in pertinent part: "(5) Failure of a licensee to pay a fine within 30 days of the date of assessment, unless the citation is being appealed, may result in disciplinary action being taken by the board, bureau, or commission."

8. Section 9727 states in pertinent part:

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

"(c) Willfully disregarded or violated any of the provisions of this act relating to cemetery brokerage.

9. Section 9650 states:

(a) Each cemetery authority shall file with the bureau annually, on or before June 1, or within five months after close of their fiscal year provided approval has been granted by the bureau as provided for in Section 9650.1, a written report in a form prescribed by the bureau setting forth the following:

(1) The number of square feet of grave space and the number of crypts and niches sold or disposed of under endowment care by specific periods as set forth in the form prescribed.

(2) The amount collected and deposited in both the general and special endowment care funds segregated as to the amounts for crypts, niches and grave space by specific periods as set forth either on the accrual or cash basis at the option of the cemetery authority.

(3) A statement showing separately the total amount of the general and special endowment care funds invested in each of the investments authorized by law and the amount of cash on hand not invested, which statement shall actually show the financial condition of the funds.

(4) A statement showing separately the location, description, and character of the investments in which the special endowment care funds are invested. The statement shall show the valuations of any securities held in the endowment care fund as valued pursuant to Section 9659.

(5) A statement showing the transactions entered into between the corporation or any officer, employee or stockholder thereof and the trustees of the endowment care funds with respect to those endowment care funds. The statement shall show the dates, amounts of the transactions, and shall contain a statement of the reasons for those transactions.

(b) The report shall be verified by the president or vice president and one other officer of the cemetery corporation. The information submitted pursuant to paragraphs (2), (3), (4), and (5) shall be accompanied by an annual audit report of the endowment care fund and special care fund signed by a certified public accountant or public accountant. The scope of the audit shall include the inspection, review, and audit of the general purpose financial statements of the endowment care fund and special care fund, which shall include the balance sheet, the statement of revenues, expenditures, and changes in fund balance.

(c) If a cemetery authority files a written request prior to the date the report is due, the bureau may, in its discretion, grant an additional 30 days within which to file the report.

10. Section 9725.1 states:

> Unprofessional conduct by any licensee or registrant or by any agent or employee of a licensee or registrant constitutes grounds for disciplinary action. Unprofessional conduct includes, but is not limited to, the following:
>
> (a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of this chapter and any regulation adopted thereunder, or of any federal or state law or regulation governing the disposition of human remains, operation of cemeteries or crematories, the sale of cemetery property, or the sale of crematory services or commodities.

FIRST CAUSE FOR DISCIPLINE

(Failure to Comply with Citations)

11. Respondents are subject to disciplinary action under sections 125.9, 9727, and 9725.1 for failure to comply with citations issued by the Bureau. The circumstances are as follows:

12. On or about October 24, 2013, the Bureau issued Citation No. IC 2013 210 against Dambacher Mountain Memorial for failing to comply with Health and Safety Code sections 8738.2 and 8777 in that the establishment failed to deposit $800 collected through sales contracts into the Endowment Care Fund (ECF) during the calendar years 2010 and 2011 and $500 collected through sales contracts for pre-need funds into the Special Care Fund (SCF) during the calendar years 2010 and 2011 as required. A fine was assessed in the amount of $1,000 and an order of abatement requiring the deposit of funds into the ECF and SCF. No appeal was filed and the citation became final on November 24, 2013. To date Respondents have not complied with the citation, nor paid the fine.

13. On or about December 5, 2013, the Bureau issued Citation No. IC 2013 256 against Dambacher Mountain Memorial for failing to comply with Business and Professions Code section 9650 in that the cemetery authority failed to file the annual 2012 Endowment Care Fund and Special Care Fund Report for the year ending December 31, 2013. A fine was assessed in the amount of $2,000 and the order of abatement required the filling of the reports and payment of fines. No appeal was filed and the citation became final on January 5, 2014. To date Respondents have not complied with the citation, nor paid the fine.

14. On or about November 9, 2012, the Bureau issued Citation No. IC 2012 216 against Dambacher Mountain Memorial for failing to comply with Business and Professions Code section 9650 in that the cemetery authority failed to file the annual 2011 Endowment Care Fund and Special Care Fund Report for the year ending December 31, 2011. A fine was assessed in the amount of $2,000 and the order of abatement required the filling of the reports and payment of fines. No appeal was filed and the citation became final on December 9, 2012. To date Respondents have not complied with the Order of Abatement. The fine has been paid.

15. On or about November 18, 2011, the Bureau issued Citation No. IC 2011 217 against Dambacher Mountain Memorial for failing to comply with Business and Professions Code section 9650 in that the cemetery authority failed to file the annual 2010 Endowment Care Fund and Special Care Fund Report for the year ending December 31, 2010. A fine was assessed in the amount of $2,000 and the order of abatement required the filling of the reports and payment of fines. No appeal was filed and the citation became final on December 18, 2011. To date Respondents have not complied with the Order of Abatement. The fine has been paid.

PRAYER

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

1. Revoking or suspending Certificate of Authority Number COA 602, issued to Dambacher Mountain Memorial Cemetery, Inc., Jeffrey Richard Wilson ;

2. Revoking or suspending Cemetery Manager Number CEM 206, issued to Jeffrey Richard Wilson;

3. Ordering Dambacher Mountain Memorial Cemetery, Inc. and Jeffrey Richard Wilson to pay the Cemetery and Funeral Bureau the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

4. Taking such other and further action as deemed necessary and proper.

DATED: Sept. 24, 2014

Lisa M. Moore

LISA M. MOORE
Bureau Chief
Cemetery and Funeral Bureau
Department of Consumer Affairs
State of California
*Complainant*

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