

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

In the Matter of the Accusation Against:

**MOUNT EDEN CEMETERY  
ASSOCIATION**  
aka Mount Eden Cemetery  
2440 Depot Rd.  
Hayward, CA 94545

Case No. A1 2015 195

OAH No. 2016010190

Certificate of Authority No. COA 646

Respondent.

**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary 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 July 18, 2016.

It is so ORDERED JUN 17 2016.

  
DOREATHEA JOHNSON  
Deputy Director, Legal Affairs  
Department of Consumer Affairs

1 KAMALA D. HARRIS  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 JONATHAN D. COOPER  
Deputy Attorney General  
4 State Bar No. 141461  
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*Attorneys for Complainant*  
7

8 **BEFORE THE**  
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**FOR THE CEMETERY AND FUNERAL BUREAU**  
9 **STATE OF CALIFORNIA**

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13 **aka Mount Eden Cemetery**  
14 **2440 Depot Rd.**  
**Hayward, CA 94545**

OAH No. 2016010190

**STIPULATED SETTLEMENT AND**  
**DISCIPLINARY ORDER**

15 **Certificate of Authority No. COA 646**

16  
17 Respondent.

18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
19 entitled proceedings that the following matters are true:

20 **PARTIES**

21 1. Lisa M. Moore (Complainant) is the Bureau Chief of the Cemetery and Funeral  
22 Bureau. She brought this action solely in her official capacity and is represented in this matter by  
23 Kamala D. Harris, Attorney General of the State of California, by Jonathan D. Cooper, Deputy  
24 Attorney General.

25 2. Respondent Mount Eden Cemetery Association ("Respondent") is represented in this  
26 proceeding by attorney Adam S. Gruen, whose address is: 1791 Solano Avenue, D-1,  
27 Berkeley, CA, 94707.

28 3. On or about May 22, 2013, the Cemetery and Funeral Bureau issued Certificate of

1 Authority Number COA 646 to Mount Eden Cemetery Association, aka Mount Eden Cemetery  
2 (Respondent). The Certificate of Authority was in full force and effect at all times relevant to the  
3 charges brought herein and will expire on May 31, 2017, unless renewed.

4 **JURISDICTION**

5 4. Accusation No. A1 2015 195 was filed before the Director of Consumer Affairs  
6 (Director), for the Cemetery and Funeral Bureau (Bureau), and is currently pending against  
7 Respondent. The Accusation and all other statutorily required documents were properly served  
8 on Respondent on November 13, 2015. Respondent timely filed its Notice of Defense contesting  
9 the Accusation.

10 5. A copy of Accusation No. A1 2015 195 is attached as exhibit A and incorporated  
11 herein by reference.

12 **ADVISEMENT AND WAIVERS**

13 6. Respondent has carefully read, fully discussed with counsel, and understands the  
14 charges and allegations in Accusation No. A1 2015 195. Respondent has also carefully read,  
15 fully discussed with counsel, and understands the effects of this Stipulated Settlement and  
16 Disciplinary Order.

17 7. Respondent is fully aware of its legal rights in this matter, including the right to a  
18 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine  
19 the witnesses against them; the right to present evidence and to testify on its own behalf; the right  
20 to the issuance of subpoenas to compel the attendance of witnesses and the production of  
21 documents; the right to reconsideration and court review of an adverse decision; and all other  
22 rights accorded by the California Administrative Procedure Act and other applicable laws.

23 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and  
24 every right set forth above.

25 **CULPABILITY**

26 9. Respondent admits the truth of each and every charge and allegation in Accusation  
27 No. A1 2015 195.

28 10. Respondent agrees that its Certificate of Authority License is subject to discipline and

1 they agree to be bound by the Director's probationary terms as set forth in the Disciplinary Order  
2 below.

3 **CONTINGENCY**

4 11. This stipulation shall be subject to approval by the Director of Consumer Affairs or  
5 the Director's designee. Respondent understands and agrees that counsel for Complainant and the  
6 staff of the Cemetery and Funeral Bureau may communicate directly with the Director and staff  
7 of the Department of Consumer Affairs regarding this stipulation and settlement, without notice  
8 to or participation by Respondent or its counsel. By signing the stipulation, Respondent  
9 understands and agrees that they may not withdraw its agreement or seek to rescind the  
10 stipulation prior to the time the Director considers and acts upon it. If the Director fails to adopt  
11 this stipulation as the Decision and Order, the Stipulated Settlement and Disciplinary Order shall  
12 be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action  
13 between the parties, and the Director shall not be disqualified from further action by having  
14 considered this matter.

15 12. The parties understand and agree that Portable Document Format (PDF) and facsimile  
16 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile  
17 signatures thereto, shall have the same force and effect as the originals.

18 13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an  
19 integrated writing representing the complete, final, and exclusive embodiment of their agreement.  
20 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,  
21 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary  
22 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a  
23 writing executed by an authorized representative of each of the parties.

24 14. In consideration of the foregoing admissions and stipulations, the parties agree that  
25 the Director may, without further notice or formal proceeding, issue and enter the following  
26 Disciplinary Order:

27 **DISCIPLINARY ORDER**

28 IT IS HEREBY ORDERED that Certificate of Authority License No. COA 646, issued to

1 Respondent Mount Eden Cemetery Association, aka Mount Eden Cemetery, is revoked.  
2 However, the revocation is stayed and Respondent is placed on probation for six (6) years on the  
3 following terms and conditions.

4       1.    **Obey All Laws.** Respondent shall comply with all conditions of probation and obey  
5 all federal, state and local laws, and all rules and regulations governing the programs regulated by  
6 the Bureau.

7       2.    **Quarterly Reports.** Respondent shall submit quarterly declarations under penalty of  
8 perjury, in a format designated by the Bureau, stating whether or not Respondent has been in  
9 compliance with all the conditions of probation. Respondent shall also submit such additional  
10 written reports and verifications of actions requested by the Bureau. Should the final probation  
11 report not be made as directed, the period of probation shall be extended until such time as the  
12 final report is made.

13       3.    **Interview with Bureau Representative.** As necessary, Respondent shall appear in  
14 person for scheduled interviews with the Bureau Chief or other designated representative for the  
15 purpose of monitoring compliance with the terms of this decision.

16       4.    **Out-of-State Residence or Operation.** Should Respondent leave California to  
17 reside or operate outside this state, Respondent must notify the Bureau in writing of the dates of  
18 departure and return. Reporting in person may be waived if the Respondent moves out of the  
19 state. However, Respondent shall continue compliance with other terms of probation to retain  
20 California licensure. Periods of residency, business operation or employment outside California  
21 shall not reduce the probationary period.

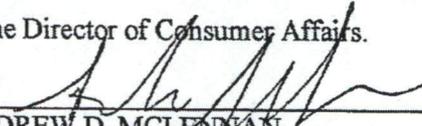
22       5.    **Completion of Probation.** Upon successful completion of probation, Respondent's  
23 license will be fully restored.

24       6.    **Violation of Probation.** Should Respondent violate probation in any respect, the  
25 director of the Department of Consumer Affairs, after giving Respondent notice and an  
26 opportunity to be heard, may revoke probation and carry out the disciplinary order which was  
27 stayed. If an Accusation or Petition to Revoke Probation is filed against Respondent during  
28 probation, the Bureau shall have continuing jurisdiction until the matter is final, and the probation



1 and Disciplinary Order and have fully discussed it with my attorney, Adam S. Gruen. I  
2 understand the stipulation and the effect it will have on the Certificate of Authority. On behalf of  
3 Respondent Mount Eden Cemetery Association, aka Mount Eden Cemetery, I enter into this  
4 Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree  
5 to be bound by the Decision and Order of the Director of Consumer Affairs.

6 DATED: 5-27-16

  
ANDREW D. MCLENNAN  
Responsible Managing Officer  
Mount Eden Cemetery Association  
*Respondent*

9 I have read and fully discussed with Andrew D. McLennan, on behalf of Respondent  
10 Mount Eden Cemetery Association, aka Mount Eden Cemetery, the terms and conditions and  
11 other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its  
12 form and content.

13 DATED: 5-27-16

  
ADAM S. GRUEN  
*Attorney for Respondent*

**ENDORSEMENT**

16 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
17 submitted for consideration by the Director of Consumer Affairs.

18  
19 Dated: 6/8/16

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
FRANK H. PACOE  
Supervising Deputy Attorney General

  
JONATHAN D. COOPER  
Deputy Attorney General  
*Attorneys for Complainant*

**Exhibit A**

**Accusation No. A1 2015 195**

1 KAMALA D. HARRIS  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 JONATHAN D. COOPER  
Deputy Attorney General  
4 State Bar No. 141461  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
Telephone: (415) 703-1404  
6 Facsimile: (415) 703-5480  
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12 **MOUNT EDEN CEMETERY ASSOCIATION**  
aka Mount Eden Cemetery  
13 2440 Depot Rd.  
Hayward, CA 94545

**ACCUSATION**

14 Certificate of Authority No. COA 646

15  
16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about May 22, 2013, the Cemetery and Funeral Bureau issued Certificate of  
23 Authority Number COA 646 to Mount Eden Cemetery Association, aka Mount Eden Cemetery  
24 (Respondent). The Certificate of Authority was in full force and effect at all times relevant to the  
25

26 <sup>1</sup> 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 charges brought herein and will expire on May 31, 2016, unless renewed.

2 **JURISDICTION**

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

6 4. Section 9725 of the Code states:

7 Upon grounds provided in this article and the other articles of this act, the license of any  
8 cemetery licensee and the certificate of authority of any cemetery corporation may be revoked or  
9 suspended in accordance with the provisions of this article.

10 **STATUTES AND REGULATIONS**

11 5. Section 9725.1 of the Code states:

12 Unprofessional conduct by any licensee or registrant or by any agent or employee of a  
13 licensee or registrant constitutes grounds for disciplinary action. Unprofessional conduct includes,  
14 but is not limited to, the following:

15 (a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the  
16 violation of this chapter and any regulation adopted thereunder, or of any federal or state law or  
17 regulation governing the disposition of human remains, operation of cemeteries or crematories,  
18 the sale of cemetery property, or the sale of crematory services or commodities.

19 (b) Negligence in performing any act related to the operation of a cemetery or crematory.

20 6. California Health and Safety Code section 8726 states:

21 The principal of all funds for endowment care shall be invested and the income only may be  
22 used for the care, maintenance, and embellishment of the cemetery in accordance with the  
23 provisions of law and the resolutions, bylaws, rules and regulations or other actions or  
24 instruments of the cemetery authority and for no other purpose. Endowment and special care  
25 funds shall be maintained separate and distinct from all other funds and the trustees shall keep  
26 separate records thereof.

27 7. California Health and Safety Code section 8738 states:

28 An endowment care cemetery is one which has deposited in its endowment care fund the

1 minimum amounts heretofore required by law and shall hereafter have deposited in its  
2 endowment care fund at the time of or not later than completion of the initial sale not less than the  
3 following amounts for plots sold or disposed of:

4 (a) Four dollars and fifty cents (\$4.50) a square foot for each grave.

5 (b) Seventy dollars (\$70) for each niche.

6 (c) Two hundred twenty dollars (\$220) for each crypt; provided, however, that for  
7 companion crypts, there shall be deposited two hundred twenty dollars (\$220) for the first crypt  
8 and one hundred ten dollars (\$110) for each additional crypt.

9 (d) Seventy dollars (\$70) for the cremated remains of each deceased person scattered in the  
10 cemetery at a garden or designated open area that is not an interment site subject to subdivision

11 (a).

12 8. California Health and Safety Code section **8738.1** states:

13 In addition to the requirements of Section 8738 any endowment care cemetery hereafter  
14 established shall also have deposited in its endowment care fund the additional sum of twenty-  
15 five thousand dollars (\$25,000), or thirty-five thousand dollars (\$35,000) if established on or after  
16 January 1, 1977, before disposing of any plot or making any sale thereof.

17 9. California Health and Safety Code section **8738.2** states:

18 The endowment care fund under the provisions of this code shall be kept separate and apart  
19 from all other cemetery funds. Separate records and books shall be kept of the endowment care  
20 fund. The amount to be deposited in the endowment care fund shall be separately shown on the  
21 original purchase agreement and a copy delivered to the purchaser. In the sale of cemetery  
22 property, no commission shall be paid a broker or salesman on the amount deposited by the  
23 purchaser in the fund.

24 10. California Health and Safety Code section **8739.1** states:

25 Any cemetery established, on or after September 7, 1955, or excluded from the exemption  
26 provided in subdivision (c) of Section 8250 by virtue of paragraph (2) of such subdivision, shall  
27 be an endowment care cemetery.

28 ///

1 11. California Health and Safety Code section 8746 states:

2 Any person, partnership, corporation, association, or his, her, or its agents or  
3 representatives, who shall violate any of the provisions of this article, except as provided in  
4 Section 8785, or make any willful or false statement appearing on a sign, contract, agreement,  
5 receipt, statement, literature or other publication shall be guilty of a misdemeanor.

6 12. California Health and Safety Code section 8750 states:

7 Endowment care funds shall not be used for any purpose other than to provide through  
8 income only for the reserves authorized by law and for the endowment care of the cemetery in  
9 accordance with the resolutions, by-laws, rules and regulations or other actions or instruments of  
10 the cemetery authority.

11 13. California Health and Safety Code section 8785 states:

12 Any person, partnership, or corporation administering, managing, or having responsibility  
13 for endowment care or special care funds who violates the provisions of this chapter relating to  
14 the collection, investment, or use of those funds shall be punished either by imprisonment in a  
15 county jail for a period not exceeding six months or by fine not exceeding five hundred dollars  
16 (\$500), or by both such imprisonment and fine, or by imprisonment pursuant to subdivision (h) of  
17 Section 1170 of the Penal Code for 16 months, or two or three years. If the violator is a cemetery  
18 licensee or the holder of a certificate of authority, he, she, or it shall be subject to disciplinary  
19 action as provided in Article 6 (commencing with Section 9725) of Chapter 19 of Division 3 of  
20 the Business and Professions Code.

21 **FIRST CAUSE FOR DISCIPLINE**

22 (Improper Expenditure and Maintenance of Endowment Fund Corpus)

23 14. Respondent is subject to disciplinary action under Business and Professions Code  
24 section 9725.1(a) and under Health and Safety Code section 8785, in that Respondent has  
25 violated laws pertaining to the collection, investment, or use of endowment care funds. The  
26 circumstances are as follows:

27 15. In or about 1993, Respondent established an endowment care fund. By 2011, the  
28 fund corpus amounted to approximately \$430,000.00. Respondent, however, removed and failed

1 to account for the corpus of the fund. By July, 2012, the corpus balance was reduced to  
2 approximately \$270,043.00. By January, 2013, all of the funds had been removed from the  
3 account. Respondent's actions violated applicable law, as follows:

4 a. Respondent failed, in violation of Health and Safety Code section 8726, to segregate  
5 its endowment care funds and use only the income from the fund for care, maintenance, and  
6 embellishment of the cemetery.

7 b. Respondent failed, in violation of Health and Safety Code section 8738.2, to  
8 segregate the endowment care funds from all other cemetery funds.

9 c. Respondent failed, in violation of Health and Safety Code section 8750, to limit its  
10 use of endowment care funds to the purpose of providing, through income, for Respondent's  
11 reserves and for endowment care of the cemetery.

#### 12 SECOND CAUSE FOR DISCIPLINE

13 (Failure to Have Minimum Endowment Care Fund)

14 16. Respondent is subject to disciplinary action under Business and Professions Code  
15 sections 9725.1(a) and under Health and Safety Code sections 8738 and 8785, in that Respondent  
16 failed maintain an adequate endowment care fund as required by law. The circumstances are as  
17 follows:

18 17. On or about October, 2012, Respondent deposited \$35,000.00 into its endowment  
19 care fund in order to comply with Health and Safety Code section 8738.1. However, near in time  
20 to when the Bureau issued Certificate of Authority Number COA 646 in May, 2013, Respondent  
21 removed the money from its endowment care fund and thereafter failed to keep the required  
22 minimum amount in the endowment care fund as required by law.

#### 23 PRAYER

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

26 1. Revoking or suspending Certificate of Authority License Number COA 646, issued to  
27 Mount Eden Cemetery Association, aka Mount Eden Cemetery

28 2. Ordering Respondent to pay the Cemetery and Funeral Bureau the reasonable costs of

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the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: November 10, 2015 *Lisa M. Moore*

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