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

In the Matter of the Accusation Against:

MICHAEL KENNY DAVIS
P.O. Box 37197
Albuquerque, NM 87176

Funeral Director License No. FDR 1762

and

ROSE CREMATORIUM;
425 West Perkins Avenue
McFarland, CA 93250

MICHAEL KENNY DAVIS
P.O. Box 37197
Albuquerque, NM 87176

Crematory Establishment License No. CR 126
Crematory Manager License No. CRM 199

and

DEWEY JEROME STAFFORD
3121 19th Street
Bakersfield, CA 93301

Funeral Director License No. FDR 266

Respondents.

Case Nos. A1 2011 367
A1 2011 97

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1
2 1. On or about June 6, 2012, Complainant Lisa M. Moore, in her official capacity as the
3 Bureau Chief of the Cemetery and Funeral Bureau, Department of Consumer Affairs^{1/}, filed
4 Accusation Nos. A1 2011 367 and A1 2011 97 against Michael Kenny Davis; Rose
5 Crematorium/Michael Kenny Davis; and Dewey Jerome Stafford before the Director of
6 Consumer Affairs. (Accusation attached as Exhibit A.)

7 2. On or about July 26, 1999, the Bureau issued Funeral Director License Number FDR
8 1762 to Michael Kenny Davis (Respondent Davis). The Funeral Director License, which was in
9 full force and effect at all times relevant to the charges brought herein, expired on August 31,
10 2012, and has not been renewed. This lapse in licensure, however, pursuant to Business and
11 Professions Code section 118(b), does not deprive the Bureau of its authority to institute or
12 continue this disciplinary proceeding.

13 3. On or about April 4, 2003, the Bureau issued Crematory Establishment License
14 Number CR 126 to Rose Crematorium; Michael Kenny Davis (Respondent Rose Crematorium).
15 The Crematorium Establishment License was in full force and effect at all times relevant to the
16 charges brought herein, but was cancelled prior to expiring on April 30, 2012. This lapse in
17 licensure, however, pursuant to Business and Professions Code section 118(b), does not deprive
18 the Bureau of its authority to institute or continue this disciplinary proceeding.

19 4. On or about July 6, 2004, the Bureau issued Crematory Manager License Number
20 CRM 199 to Respondent Davis. The Crematory Manager License, which was in full force and
21 effect at all times relevant to the charges brought herein, expired on July 31, 2012, and has not
22 been renewed. This lapse in licensure, however, pursuant to Business and Professions Code
23 section 118(b), does not deprive the Bureau of its authority to institute or continue this
24 disciplinary proceeding.

25
26 ^{1/} Effective January 1, 1996, the Department of Consumer Affairs succeeded to, and
27 was vested with, all the duties, powers, purpose, responsibilities and jurisdiction of the
28 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.

1 5. On or about February 13, 1997, the Bureau issued Funeral Director License Number
2 FDR 266 to Dewey J. Stafford (Respondent Stafford). The Funeral Director License, which was
3 in full force and effect at all times relevant to the charges brought herein, expired on February 29,
4 2012 and is currently delinquent. This lapse in licensure, however, pursuant to Business and
5 Professions Code section 118(b), does not deprive the Bureau of its authority to institute or
6 continue this disciplinary proceeding.

7 6. On or about June 26, 2012, Respondents Davis, Rose Crematorium and Stafford were
8 served by Certified and First Class Mail copies of the Accusation Nos. A1 2011 367 and A1 2011
9 97, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes
10 (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondents' addresses of record
11 which, pursuant to Business and Professions Code section 136- and California Code of
12 Regulations, title 16, section 2304, is required to be reported and maintained with the Bureau.
13 Respondents' addresses of record were and are:

14 Respondent Davis
15 P.O. Box 37197
16 Albuquerque, New Mexico 87176

17 Respondent Rose Crematorium
18 425 West Perkins Avenue
19 McFarland, CA 93250; and

20 Respondent Stafford
21 3121 19th Street
22 Bakersfield, CA 93301

23 7. Service of the Accusation was effective as a matter of law under the provisions of
24 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
25 124.

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1 discipline; and Respondent Stafford has subjected his Funeral Director License No. FDR 266 to
2 discipline.

3 2. The agency has jurisdiction to adjudicate this case by default.

4 3. The Director of Consumer Affairs is authorized to revoke Respondent Davis' Funeral
5 Director License, and Crematory Manager License; Respondent Rose Crematorium's Crematory
6 Establishment License; and Respondent Stafford's Funeral Director License, based upon the
7 following violations alleged in the Accusation which are supported by the evidence contained in
8 the Default Decision Evidence Packet in this case:

9 a. As to Respondent Davis

10 Unprofessional Conduct [pursuant to Code sections 7703 and 7707, and California
11 Code of Regulations, title 16, section 1204(b)]; Cremating Human Remains Without Disposition
12 Permits [pursuant to Code sections 9725, 9725.1 and 9787.2(b), for violating Health and Safety
13 Code section 7055(a)]; Failure to Log Time and Date of Cremation [pursuant to Code section
14 9787.2 (b), for violating California Code of Regulations, title 16, section 2340(a)]; Unlawful
15 Cremation of Non-Human Remains [pursuant to Code section 9787.2(b), for violating Health and
16 Safety Code section 8344.5]; Failing to Put Client Funds into Trust [pursuant to Code sections
17 7737 and 7739]; Fraud [pursuant to Code section 7692]; Failing to Report Preneed Arrangements
18 [pursuant to California Code of Regulations, title 16, section 1269]; and Failure to Exercise
19 Supervision or Control [pursuant to California Code of Regulations, title 16, section 1204].

20 b. As to Respondent Rose Crematorium

21 Cremating Human Remains Without Disposition Permits [pursuant to Code sections
22 9725, 9725.1 and 9787.2(b), for violating Health and Safety Code section 7055(a)]; Failure to
23 Log Time and Date of Cremation [pursuant to Code section 9787.2 (b), for violating California
24 Code of Regulations, title 16, section 2340(a)].

25 c. As to Respondent Stafford

26 Failure to File Death Certificates and/or Disposition Permits [pursuant to Code
27 sections 7703 and 7707, and California Code of Regulations, title 16, section 1204(b), for
28 violating Health and Safety Code section 103050]; and Gross Negligence, Gross Incompetence,

1 or Unprofessional Conduct [pursuant to Code sections 7703 and 7707, and California Code of
2 Regulations, title 16, section 1204(b)].

3 ORDER

4 IT IS SO ORDERED that Funeral Director License No. FDR 1762, and Crematory
5 Manager License No. CRM 199, heretofore issued to Respondent Michael Kenny Davis, are
6 revoked.

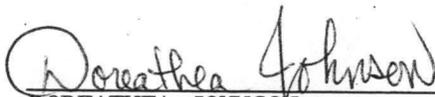
7 IT IS FURTHER ORDERED that Crematory Establishment License No. CR 126,
8 heretofore issued to Respondent Rose Crematorium, is revoked.

9 IT IS FURTHER ORDERED that Funeral Director License No. FDR 266, heretofore issued
10 to Respondent Dewey Jerome Stafford, is revoked.

11 Pursuant to Government Code section 11520, subdivision (c), Respondents may serve
12 respective written motions requesting that the Decision be vacated and stating the grounds relied
13 on within seven (7) days after service of the Decision on Respondents. The agency in its
14 discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in
15 the statute.

16 This Decision shall become effective on MARCH 22, 2013.

17 It is so ORDERED FEB 21 2013

18
19 

20 DOREATHEA JOHNSON
21 Deputy Director, Legal Affairs
22 Department of Consumer Affairs

23
24
25 default decision_LIC.rtf
26 DOJ Matter ID:LA2011505964

27 Attachment:
28 Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 KEVIN J. RIGLEY
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300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
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6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

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

11 In the Matter of the Accusation Against:

Case Nos. A1 2011 367
A1 2011 97

12 **MICHAEL KENNY DAVIS**
13 P.O. Box 37197
14 Albuquerque, NM 87176

A C C U S A T I O N

15 Funeral Director License No. FDR 1762

16
17 and

18 **ROSE CREMATORIUM;**
19 425 West Perkins Avenue
McFarland, CA 93250
20 **MICHAEL KENNY DAVIS**
21 P.O. Box 37197
Albuquerque, NM 87176

22 Crematory Establishment License No. CR 126
23 Crematory Manager License No. CRM 199

24
25 and
26
27
28

1 **DEWEY JEROME STAFFORD**
2 3121 19th Street
3 Bakersfield, CA 93301

4 Funeral Director License No. FDR 266

5 Respondents.
6

7
8 Complainant alleges:

9 **PARTIES**

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

13 2. On or about July 26, 1999, the Bureau issued Funeral Director License Number FDR
14 1762 to Michael Kenny Davis (Respondent Davis). The Funeral Director License was in full
15 force and effect at all times relevant to the charges brought herein and will expire on August 31,
16 2012, unless renewed.

17 3. On or about April 4, 2003, the Bureau issued Crematory Establishment License
18 Number CR 126 to Rose Crematorium; Michael Kenny Davis (Respondent Rose Crematorium).
19 The Crematorium Establishment License was in full force and effect at all times relevant to the
20 charges brought herein, but was cancelled prior to expiring on April 30, 2012.

21 4. On or about July 6, 2004, the Bureau issued Crematory Manager License Number
22 CRM 199 to Respondent Davis. The Crematory Manager License was in full force and effect at
23 all times relevant to the charges brought herein and will expire on July 31, 2012, unless renewed.
24

25
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 11. Section 7704 of the Code states that violation of any state law or municipal or county
2 ordinance or regulation affecting the handling, custody, care or transportation of human remains
3 constitutes a ground for disciplinary action.

4 12. Section 7707 of the Code provides in full: “Gross negligence, gross incompetence or
5 unprofessional conduct in the practice of funeral directing or embalming constitutes a ground for
6 disciplinary action.”

7 13. Section 7735 of the Code provides in relevant part that funeral establishments may
8 enter into “preneed arrangements” for people to pay for funeral services in advance, but only if
9 the contract for this preneed arrangement requires that all money paid shall be held in trust:

10 “No funeral establishment licensed under the laws of the State of California, or the agents
11 or employees of a funeral establishment, shall enter into or solicit any preneed arrangement,
12 contract, or plan, hereinafter referred to as ‘contract,’ requiring the payment to the licensee of
13 money or the delivery to the licensee of securities to pay for the final disposition of human
14 remains or for funeral services or for the furnishing of personal property or funeral merchandise,
15 wherein the use or delivery of those services, property or merchandise is not immediately
16 required, unless the contract requires that all money paid directly or indirectly and all securities
17 delivered under that agreement or under any agreement collateral thereto, shall be held in trust for
18 the purpose for which it was paid or delivered until the contract is fulfilled according to its
19 terms . . .”

20 14. Section 7737 of the Code provides in relevant part that a funeral establishment must
21 place all money received for a preneed arrangement in trust within 30 days of receipt:

22 “All securities purchased by the trustor for deposit in trust and all money received from the
23 trustor for deposit in trust shall be placed in trust with a trustee [a bank or trust company] within
24 30 days of their receipt by the funeral establishment pursuant to a trust agreement executed by the
25 funeral establishment, the trustor and trustee which shall provide that the trustee shall hold the
26 money or securities in trust for the purposes for which deposited and that the trustee, upon the
27 signature of a majority of such trustees, shall deliver the corpus of the trust to the funeral
28 establishment upon the filing of a certified copy of the death certificate or other satisfactory

1 evidence of the death of the beneficiary, together with satisfactory evidence that the funeral
2 establishment has furnished the merchandise and services”

3 15. Section 7739 of the Code provides that violations of the statutes governing preneed
4 arrangements are crimes as well as bases for Bureau disciplinary action.

5 “Any person willfully violating the provisions of this article or any of them shall be
6 punishable either by imprisonment in the county jail for a period not exceeding six months, or by
7 fine not exceeding five hundred dollars (\$500), or by both imprisonment and fine, or by
8 imprisonment in the state prison for 16 months, or two or three years. If the violator is a funeral
9 establishment licensee, he or she shall also be subject to disciplinary action as provided in Article
10 6 (commencing with Section 7686).”

11 16. Section 9725 of the Code states:

12 “Upon grounds provided in this article and the other articles of this act, the license of any
13 cemetery licensee and the certificate of authority of any cemetery corporation may be revoked or
14 suspended in accordance with the provisions of this article.”

15 17. Section 9725.1 of the Code states:

16 “Unprofessional conduct by any licensee or registrant or by any agent or employee of a
17 licensee or registrant constitutes grounds for disciplinary action. Unprofessional conduct includes,
18 but is not limited to, the following:

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

23 “(b) Negligence in performing any act related to the operation of a cemetery or
24 crematory.”

25 18. Section 9787.2 of the Code states:

26 “A crematory shall at all times employ a licensed crematory manager to manage, supervise,
27 and direct its operations.

28 ///

1 “(a) Every crematory shall designate a licensed crematory manager to manage the
2 crematory, and shall report the designation to the bureau within 10 days of the effective date. Any
3 change in the designated manager shall be reported to the bureau within 10 days.

4 “(b) The designated crematory manager shall be responsible for exercising direct
5 supervision and control over the operations, employees, and agents of the crematory as is
6 necessary to ensure full compliance with the applicable provisions of the Business and
7 Professions Code, the Health and Safety Code, and any regulations adopted thereto. Failure of the
8 designated crematory manager or the licensed crematory to exercise that supervision or control
9 shall constitute a ground for disciplinary action.

10 “(c) A crematory may employ, in addition to the designated crematory manager,
11 additional licensed crematory managers. However, only one licensed crematory manager may be
12 appointed as the designated crematory manager of the crematory.”

13 19. Health and Safety Code section 7055, subdivision (a), states, in pertinent part:

14 “(a) Every person, who for himself or herself or for another person, interrs or incinerates a
15 body or permits the same to be done, or removes any remains, other than cremated remains, from
16 the primary registration district in which the death or incineration occurred or the body was
17 found, except a removal by a funeral director in a funeral director's conveyance or an officer of a
18 duly accredited medical college engaged in official duties with respect to the body of a decedent
19 who has willfully donated his or her body to the medical college from that registration district or
20 county to another registration district or county, or within the same registration district or county,
21 without the authority of a burial or removal permit issued by the local registrar of the district in
22 which the death occurred or in which the body was found; or removes interred human remains
23 from the cemetery in which the interment occurred, or removes cremated remains from the
24 premises on which the cremation occurred without the authority of a removal permit is guilty of a
25 misdemeanor...”

26 20. Health and Safety Code section 8344.5 states:

27 “A crematory regulated by the Cemetery and Funeral Bureau shall knowingly cremate only
28 human remains in cremation chambers, along with the cremation container, personal effects of the

1 deceased, and no more than a negligible amount of chlorinated plastic pouches utilized for disease
2 control when necessary.”

3 21. Health and Safety Code section 103050 states, in pertinent part:

4 “(a) No person shall dispose of human remains unless both of the following has occurred:

5 “(1) There has been obtained and filed with a local registrar a death certificate, as
6 provided in Chapter 6 (commencing with Section 102775).

7 “(2) There has been obtained from a local registrar a permit for disposition.

8 “(b) (1) Notwithstanding subdivision (a), neither a death certificate nor a permit for
9 disposition shall be required to transport human remains from California to an adjacent state for
10 disposition in that state when all of the following circumstances exist:

11 “(A) The remains are found within 50 miles of the California border and the nearest
12 licensed funeral establishment is within 20 miles of the border in the adjacent state, and the
13 remains are released to that funeral establishment.

14 “(B) The coroner with jurisdiction over the area in which the remains were found
15 authorizes their release pursuant to paragraph

16 “(2) The coroner may release the remains to a licensed out-of-state funeral establishment
17 without a death certificate or permit for disposition when he or she determines that all of the
18 following conditions exist:

19 “(A) No forensic interest in the remains exists.

20 “(B) A reasonable certainty exists that the cause of death will be provided either by the
21 primary physician, or by a review of medical records by the coroner or medical examiner.”

22 **REGULATORY PROVISIONS**

23 22. California Code of Regulations, title 16, section 1204, states, in part:

24 “(a) Any person, association, partnership, corporation or other organization licensed and
25 conducting business as a funeral establishment shall designate a licensed funeral director to
26 manage the establishment, and shall report the designation to the Board within 10 days of the
27 effective date of the designation.

28 ///

1 “(b) The designated managing licensed funeral director of a licensed funeral establishment
2 shall be responsible for exercising such direct supervision and control over the conduct of said
3 funeral establishment as is necessary to ensure full compliance with the Funeral Directors and
4 Embalmers Law, the provisions of this chapter and the applicable provisions of the Health and
5 Safety Code. Failure of the designated managing licensed funeral director and/or the licensed
6 funeral establishment to exercise such supervision or control, or failure of the holder of the
7 funeral establishment license to make such designation shall constitute a ground for disciplinary
8 action.”

9 23. California Code of Regulations, title 16, section 1269 requires funeral establishments
10 entering into preneed arrangements to disclose the details of those arrangements to the Bureau:

11 “(a) Each licensed funeral establishment and licensed funeral director who enters into any
12 preneed arrangements, contracts or plans described in and subject to the provisions of Article 9,
13 Chapter 12, Division 3 of the Business and Professions Code shall file with the Bureau annually
14 on or before May 1 of each year and upon transfer of license or cessation of business, a written,
15 verified or audited report, on form 21P-4A (1/94) prescribed and furnished by the Bureau,
16 pertaining to funds received and held under such arrangements, contracts or plans. Firms utilizing
17 a fiscal year accounting system may request permission, in writing to the Bureau Chief, to file
18 said report on a fiscal year basis and, if permission is granted, said report shall then be filed with
19 the Bureau no later than 120 days from the date of the close of said fiscal year.

20 “(b) The report required under this Article shall accompany the forms of assignment or
21 transfer of a funeral establishment license. The report required hereunder upon cessation of
22 business as a licensed funeral establishment shall be submitted thirty (30) days prior to such
23 cessation of business.

24 “(c) In cases where trust corpus is deposited in individual savings accounts, and not
25 commingled for investment purposes, the Bureau may require a verified report. Said requirement
26 of verification shall be deemed complied with by a verification under penalty of perjury by the
27 owner, partners, or, in the case of a corporation, by the president or vice-president and one other
28 officer thereof and, in addition thereto, all reports must contain a verification under penalty of

1 perjury executed by at least two (2) trustees not employed by the funeral establishment and, in the
2 case of a banking institution or trust company legally authorized to act as a trustee within the
3 meaning of Section 7736 of Article 9, Chapter 12, Division 3, of the Business and Professions
4 Code, a verification under penalty of perjury on behalf of such trustee by an authorized
5 representative of said trustee.

6 “(d) In cases where trust funds have been commingled for purposes of investment, the
7 Bureau may require, in addition to the written report required by subsection (a) of this section, an
8 independent audit report prepared and signed by a Certified Public Accountant or Public
9 Accountant, currently licensed in the State of California, which certifies compliance with the
10 provisions of Article 9, Chapter 12, Division 3 of the Business and Professions Code and the
11 provisions of this Article.

12 “(e) All written reports required under this section shall include, but are not limited to, a
13 statement setting forth:

14 “(1) Amounts collected pursuant to preneed arrangements, contracts or plans, or any
15 agreements collateral thereto;

16 “(2) Amounts deposited with the trustee and held in trust;

17 “(3) Amounts of authorized expenditures of income allocable to individual accounts,
18 itemized as to the nature of expenditures;

19 “(4) Amount of authorized expenditures of income paid, itemized as to the nature of
20 expenditure; and

21 “(5) Separately, the total amount of such trust funds invested in each of the investments
22 authorized by law and the amount of cash on hand not invested which statement actually shows
23 the financial condition of the trust funds.”

24 24. California Code of Regulations, title 16, section 1275 has detailed requirements for
25 preneed arrangements:

26 “A preneed trust contract within the meaning of Article 9, Chapter 12, Division 3, of the
27 Business and Professions Code shall include but not be limited to the following information:

28 ///

- 1 “(a) The name and address of the trustor.
- 2 “(b) The name and address of the beneficiary.
- 3 “(c) The names and addresses of the trustees.
- 4 “(d) The name, address and phone number of the funeral establishment.
- 5 “(e) A sequential number which shall be continuous and in order of issue.
- 6 “(f) A copy of the completed funeral arrangements forms including, but not limited to, the
- 7 following:
- 8 “(1) A description of the merchandise and services selected which is sufficiently detailed
- 9 to identify them; and
- 10 “(2) Any disclosure of prices or itemization of services or merchandise, which is required
- 11 to be provided pursuant to State or Federal law, rule or regulation then in effect.
- 12 “(g) A statement that earned annual income is being credited to the account and that
- 13 administrative expenses, if charged, are paid from income only.
- 14 “(h) A statement, in clear nontechnical language, that the contract is either a guaranteed
- 15 preneed contract or that it is a nonguaranteed preneed contract, and, if guaranteed only in part, the
- 16 services or merchandise included in the guarantee shall be specified. This statement shall be
- 17 printed in bold face type and shall be located on the first page of the contract.
- 18 “(1) If the contract is guaranteed, there shall be included in the contract a complete
- 19 explanation of all the terms and conditions limiting the guarantee.
- 20 “(2) If the contract is not guaranteed, there shall be included in the contract a complete
- 21 explanation of how the trust balance will be applied to pay for services and merchandise provided
- 22 at the beneficiary's death and that there may be additional payments required or a refund due.
- 23 “(i) A statement that the trustees of the trust will deliver the corpus of the trust and net
- 24 income to the funeral establishment filing a certified copy of the Death Certificate and evidence
- 25 that said funeral establishment has furnished the merchandise and services. (Corpus of the Trust
- 26 means all monies paid and all securities delivered pursuant to this prearrangement contract.)
- 27 “(j) A statement that the amount of revocation fee to be charged in the event of
- 28 revocation, shall in no event exceed ten percent (10%) of the paid-in corpus and is chargeable

1 against earned income only; and a statement that no revocation fee may be charged if the funeral
2 establishment is unable to perform substantially according to the terms of the agreement.

3 “(k) In immediate proximity to the space reserved for the purchaser's signature, in a size
4 equal to at least ten point (10-point) bold type, the following statement: "All funds received will
5 be deposited with the trustees within thirty (30) days and held in a trust which is fully refundable
6 upon fifteen (15) days' written notice except when the beneficiary is the recipient of public
7 assistance, as provided in the Welfare and Institutions Code and this trust agreement has been
8 designated as being irrevocable thereunder."

9 25. California Code of Regulations, title 16, section 2340, subdivision (a)(7) provides, in
10 pertinent part, that each crematory licensee who operates a crematory shall keep a record of all
11 remains cremated, including, among other things, the date and time of cremation.

12 **COST RECOVERY AND RESTITUTION**

13 26. Section 125.3, subdivision (a), of the Code states, in pertinent part:

14 "Except as otherwise provided by law, in any order issued in resolution of a disciplinary
15 proceeding before any board within the department . . . upon request of the entity bringing the
16 proceedings may request the administrative law judge may direct a licentiate found to have
17 committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable
18 costs of the investigation and enforcement of the case."

19 27. Section 11519(d) of the Government Code provides, in pertinent part, that the
20 Registrar may require restitution of damages suffered as a condition of probation in the event
21 probation is ordered.

22 **Bureau Complaint No. I-2011-367**

23 28. On or about August 23, 2011, a complaint was received by the Bureau alleging that
24 Aaron Davis Rose Funeral Home had picked up three deceased persons from the Kern County
25 Coroner's Office (KCCO) and transported these bodies after stacking one of them on top of
26 another in the transporting vehicle. Photographs depicting this violation were taken by an
27 employee of the KCCO and submitted to the Bureau as proof thereof.

28 ///

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct)**

3 29. Respondent Davis, as Funeral Director of Aaron Davis Rose Funeral Home on or
4 about August 23, 2011, is subject to disciplinary action under sections 7703 and 7707 of the
5 Code, and California Code of Regulations, title 16, section 1204, subdivision (b), for engaging in
6 unprofessional conduct by committing the acts set forth in particularity in paragraph 28 above.

7 **Bureau Complaint No. I-2011-97**

8 30. Pursuant to an investigation conducted by the Bureau, it was established that between
9 January 1, 2011 and June 30, 2011, Respondents Rose Crematorium and Davis cremated the
10 remains of 110 (out of 136) decedents without disposition permits. In 107 of those instances, the
11 disposition permits were filed after the bodies had already been cremated. In the remaining three
12 cases, as of October 2011, no disposition permits had ever been filed.

13 31. In furtherance of the same investigation as set forth in paragraph 30 above, it was also
14 determined that on two instances between January 1, 2011 and June 30, 2011, Respondents Rose
15 Crematorium and Davis failed to log the date and time of two decedents that had been cremated at
16 Respondents' facility, as required by law.

17 32. Pursuant to the same investigation as set forth in paragraph 30 above, it was further
18 determined that Respondents Rose Crematorium and Davis had also been knowingly and
19 unlawfully using its cremation chambers to cremate the remains of drugs that had been seized by
20 the Kern County Sheriff's Department (KCSD) at its (KCSD's) request.

21 **SECOND CAUSE FOR DISCIPLINE**

22 **(Cremating Human Remains Without Disposition Permits)**

23 33. Respondents Rose Crematorium and Davis are subject to disciplinary action under
24 Code sections 9725, 9725.1 and 9787.2, subdivision (b), for violating Health and Safety Code
25 section 7055, subdivision (a), by committing the acts set forth in particularity in paragraph 30
26 above.

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28 ///

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Failure to Log Time and Date of Cremation)**

3 34. Respondents Rose Crematorium and Davis are subject to disciplinary action under
4 section 9787.2, subdivision (b) of the Code, for violating California Code of Regulations, title
5 16, section 2340, subdivision (a), by committing the acts set forth in particularity in paragraph 31
6 above.

7 **FOURTH CAUSE FOR DISCIPLINE**

8 **(Unlawful Cremation of Non-Human Remains)**

9 35. Respondents Rose Crematorium and Davis are subject to disciplinary action under
10 section 9787.2, subdivision (b) of the Code, for violating Health and Safety Code section 8344.5,
11 by committing the acts set forth in particularity in paragraph 32 above.

12 **Bureau Complaint No. I-2011-450**

13 36. Pursuant to an investigation conducted by the Bureau, it was established that between
14 January 1, 2011 and June 30, 2011, Respondent Stafford, while acting as Funeral Director of
15 Davis Funeral Home, located at 425 West Perkins Avenue, McFarland, California, 93250, failed
16 to file death certificates and disposition permits as required by law prior to cremating the remains
17 of 110 (out of 136) decedents. In 107 of those instances, the death certificates and disposition
18 permits were both filed after the bodies had already been cremated. In the remaining three cases,
19 as of October 2011, no death certificates or disposition permits had ever been filed.

20 **FIFTH CAUSE FOR DISCIPLINE**

21 **(Failure to File Death Certificates and/or Disposition Permits)**

22 37. Respondent Stafford is subject to disciplinary action under sections 7703 and 7707 of
23 the Code, and California Code of Regulations, title 16, section 1204, subdivision (b), for violating
24 Health and Safety Code section 103050, by committing the acts set forth in particularity in
25 paragraph 36 above.

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1 **SIXTH CAUSE FOR DISCIPLINE**

2 **(Gross Negligence, Gross Incompetence, or Unprofessional Conduct)**

3 38. Respondent Stafford is subject to disciplinary action under sections 7703 and 7707 of
4 the Code, and California Code of Regulations, title 16, section 1204, subdivision (b), for engaging
5 in gross negligence, gross incompetence, or unprofessional conduct by committing the acts set
6 forth in particularity in paragraph 36 above.

7 **Complaint No. I-2012-120**

8 39. Pursuant to a complaint investigated by the Bureau, it was determined that while
9 acting as Funeral Director of Aaron Davis Rose Funeral Home prior to the date said establishment
10 was sold in or around November 2011, Respondent Davis accepted preneed monies from one or
11 more consumers, failed to notify the Bureau that he had done so, and then unlawfully failed to
12 place those funds into trust.

13 **SEVENTH CAUSE FOR DISCIPLINE**

14 **(Failing to Put Client Funds into Trust)**

15 40. By committing the acts set forth in particularity in paragraph 39 above, Respondent
16 Davis is subject to disciplinary action under sections 7737 and 7739 of the Code because he failed
17 to place his clients' funds for preneed arrangements into trust and failed to pay those funds back
18 when his business was sold in or around November 2011.

19 **EIGHTH CAUSE FOR DISCIPLINE**

20 **(Fraud)**

21 41. By committing the acts set forth in particularity in paragraph 39 above, Respondent
22 Davis is subject to disciplinary action under section 7692 because he accepted payments from
23 clients for preneed funeral arrangements and then sold one or more of his subject funeral
24 establishments without informing the subsequent purchaser of such funeral establishments that he
25 had accepted such funds and/or refunding those payments to such clients.

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7. Ordering Respondents Michael Kenny Davis and Dewey Jerome Stafford 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;

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

DATED: June 6, 2012

Lisa M. Moore

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