

1
2
3
4
5
6
7 **BEFORE THE**
8 **DEPARTMENT OF CONSUMER AFFAIRS**
9 **FOR THE CEMETERY AND FUNERAL BUREAU**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:
12 **MCGUIRE CREMATION AND FUNERAL**
13 **SERVICE**
14 1101 7th Street
15 Modesto, CA 95354
16 A Corporation: McGuire Funeral Service, Inc.

17 President: Samantha E. McGuire
18 Vice President: Shaun M. McGuire
19 Secretary/Treasurer: Michael F. Lillywhite
20 Manager: Shaun M. McGuire

21 **Funeral Establishment License No. FD 2023,**

22 **AND**

23 **SHAUN M. MCGUIRE**
24 3209 Moonview Drive
25 Ceres, CA 95307

26 **Funeral Director License No. FDR 3242**

27 **AND**

28 **MICHAEL F. LILLYWHITE**
400 12th, Suite 14
Modesto, CA 95307

Cremated Remains Disposer License No.
CRD 835

Respondents.

Case Nos. A1 2013 123, A1 2013 174

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

1 FINDINGS OF FACT

2 1. On or about December 13, 2013, Complainant Lisa M. Moore, in her official capacity
3 as the Bureau Chief of the Cemetery and Funeral Bureau, Department of Consumer Affairs, filed
4 Accusation Nos. A1 2013 123, A1 2013 174 against Respondents McGuire Cremation and
5 Funeral Service, Shaun M. McGuire, and Michael F. Lillywhite ("Respondents") before the
6 Director of Consumer Affairs. (Accusation attached as Exhibit A.)

7 **Funeral Establishment License**

8 2. On or about June 30, 2009, the Cemetery and Funeral Bureau issued Funeral
9 Establishment license Number FD 2023 to McGuire Cremation and Funeral Service
10 ("Respondent McGuire Cremation and Funeral Service"), A Corporation. The corporate officers
11 are as follows: President: Samantha E. McGuire, Vice President: Shaun M. McGuire, and
12 Secretary/Treasurer: Michael F. Lillywhite. Shaun M. McGuire was the Manager of Respondent
13 Cremation and Funeral Service. The funeral establishment license expired on June 30, 2013, and
14 has not been renewed.

15 **Funeral Director License**

16 3. On or about April 29, 2010, the Cemetery and Funeral Bureau issued Funeral
17 Director license Number FDR 3242 to Shaun M. McGuire ("Respondent McGuire"). The
18 Funeral Director license expired on April 30, 2013, and has not been renewed.

19 **Cremated Remains Disposer License**

20 4. On or about July 14, 2009, the Cemetery and Funeral Bureau issued Cremated
21 Remains Disposer license Number CRD 835 to Michael F. Lillywhite ("Respondent Lillywhite").
22 The Cremated Remains Disposer license expired on September 30, 2013, and has not been
23 renewed.

24 5. On or about December 20, 2013, Respondents were served by Certified and First
25 Class Mail copies of the Accusation No. A1 2013 123, A1 2013 174, Statement to Respondent,
26 Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections
27 11507.5, 11507.6, and 11507.7) at Respondents' address of record which, pursuant to California
28

1 Code of Regulations, title 16, section 1203, is required to be reported and maintained with the
2 Bureau. Respondent's address of record was:

3
4 McGuire Cremation and Funeral Service
5 1101 7th Street
6 Modesto, CA 95354

7 Shaun M. McGuire
8 3209 Moonview Drive
9 Ceres, CA 95307

10 Michael F. Lillywhite
11 400 12th, Suite 14
12 Modesto, CA 95307

13 6. Service of the Accusation was effective as a matter of law under the provisions of
14 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
15 124.

16 7. On or about January 15, 2014, the aforementioned documents sent to McGuire
17 Cremation and Funeral Service were returned by the U.S. Postal Service marked "Not deliverable
18 as addressed- unable to forward." The address on the documents was the same as the address on
19 file with the Bureau, 1101 7th Street, Modesto, CA 95354. Respondent McGuire Cremation and
20 Funeral Service failed to maintain an updated address with the Bureau and the Bureau has made
21 attempts to serve the Respondent at the address on file. Respondent McGuire Cremation and
22 Funeral Service has not made themselves available for service and therefore, has not availed themselves
23 of their right to file a notice of defense and appear at hearing.

24 8. No documents sent to Respondent Shaun McGuire at 3209 Moonview Drive, Ceres,
25 CA 95307, were returned as undeliverable.

26 9. On or about January 21, 2014, the aforementioned documents sent to Michael F.
27 Lillywhite were returned by the U.S. Postal Service marked "Moved, left no address- unable to
28 forward." The address on the documents was the same as the address on file with the Bureau, 400
12th, Suite 14, Modesto, CA 95307. Respondent Lillywhite failed to maintain an updated address
with the Bureau and the Bureau has made attempts to serve the Respondent at the address on file.

1 Respondent Lillywhite has not made himself available for service and therefore, has not availed
2 himself of their right to file a notice of defense and appear at hearing.

3 10. Government Code section 11506 states, in pertinent part:

4 (c) The respondent shall be entitled to a hearing on the merits if the respondent
5 files a notice of defense, and the notice shall be deemed a specific denial of all parts
6 of the accusation not expressly admitted. Failure to file a notice of defense shall
7 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
8 may nevertheless grant a hearing.

9 11. Respondents failed to file a Notice of Defense within 15 days after service upon them
10 of the Accusation, and therefore waived their right to a hearing on the merits of Accusation Nos.
11 A1 2013 123, A1 2013 174.

12 12. California Government Code section 11520 states, in pertinent part:

13 (a) If the respondent either fails to file a notice of defense or to appear at the
14 hearing, the agency may take action based upon the respondent's express admissions
15 or upon other evidence and affidavits may be used as evidence without any notice to
16 respondent.

17 13. Pursuant to its authority under Government Code section 11520, the Director finds
18 Respondents are in default. The Director will take action without further hearing and, based on
19 the relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
20 taking official notice of all the investigatory reports, exhibits and statements contained therein on
21 file at the Director's offices regarding the allegations contained in Accusation Nos. A1 2013 123,
22 A1 2013 174, finds that the charges and allegations in Accusation Nos. A1 2013 123, A1 2013
23 174, are separately and severally, found to be true and correct by clear and convincing evidence.

24 14. Taking official notice of its own internal records, pursuant to Business and
25 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
26 and Enforcement is \$13,639.06 as of January 29, 2014.

27 DETERMINATION OF ISSUES

28 1. Based on the foregoing findings of fact, Respondent McGuire Cremation and Funeral
Service has subjected its funeral establishment license No. FD 2023 to discipline.

2. Based on the foregoing findings of fact, Respondent Shaun M. McGuire has subjected
his funeral director license No. FDR 3242 to discipline.

1 3. Based on the foregoing findings of fact, Respondent Michael F. Lillywhite has
2 subjected his Cremated Remains Disposer License No. CRD 835 to discipline.

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

4 3. The Director of Consumer Affairs is authorized to revoke Respondents' funeral
5 establishment license, funeral director license, and cremated remains disposer license, based upon
6 the following violations alleged in the Accusation which are supported by the evidence contained
7 in the Default Decision Evidence Packet in this case.:

8 a. Respondent McGuire and Respondent McGuire Cremation and Funeral Service are
9 subject to discipline under Code section 7692, in that Respondents were delinquent in paying
10 monies owed to the local county health agency for permits with Stanislaus County Vital Records
11 when a majority of families paid for services during the time of arrangements, or shortly
12 thereafter. The circumstances are as follows: Between approximately March 29, 2012 and April
13 1, 2013, the County issued 192 disposition permits and/or death certificates to Respondents. By
14 letter dated April 8, 2013, Respondent McGuire admitted that because of a financial hardship,
15 Respondents fell behind on their payments to Vital Records for the those permits and certificates.
16 Respondent McGuire informed the Bureau investigator that a payment plan was set up with the
17 county, and misrepresented that Respondents would have the arrears paid off in the month of June
18 2013. Although a majority of families paid for services during the time of arrangements, or
19 shortly thereafter, it took Respondent McGuire several months to pay the county for seventy-five
20 (75) of those permits and/or certificates, and Respondents never paid the county for one hundred
21 and seventeen (117) permits and/or certificates. As a result, on or about May 1, 2013, a ban on
22 receiving both Death Certificates (DC's) and Application and Permit for Disposition of Human
23 Remains (Burial permits) was made against the Respondents for non-payment of the arrears owed
24 to the County.

25 b. Respondent McGuire is subject to discipline under Code sections 7686 and 7690, on
26 the grounds of unprofessional conduct within the meaning of Code section 7707, by failing to pay
27 for permits which were already issued to Respondents by the County.

28

1 c. Respondent McGuire is subject to discipline under Code sections 7686 and 7690, in
2 that he violated California Code of Regulations, title 16, section 1204, subdivision (b), by failing
3 to provide direct supervision and control over Respondent McGuire Cremation and Funeral
4 Service when Respondents failed to pay for permits which were already issued to Respondents by
5 the County.

6 d. Respondent McGuire and Respondent McGuire Cremation and Funeral Service are
7 subject to discipline under Code section 7704, through violation of Health and Safety Code
8 section 102775, in that Respondents failed to register the death of V.W. and failed to file the
9 required burial permit with the Stanislaus County Vital Records for V.W., within the required 8-
10 day timeline from the date of death.

11 e. Respondent McGuire and Respondent McGuire Cremation and Funeral Service are
12 subject to discipline under Code section 7692, in that Respondents took payment for cremation
13 services and misrepresented to the decedent's family that Respondents would have V.W.
14 cremated. The truth is that at the time of receipt of payment for cremation services from the
15 family of V.W., Respondents had been experiencing a financial hardship, placed in a cash-only
16 status for failure to pay the County arrears for previously issued permits and certificates, and were
17 experiencing problems and significant delays with delivering on contracts for cremation services.

18 f. Respondent McGuire is subject to discipline under Code sections 7686 and 7690, on
19 the grounds of unprofessional conduct within the meaning of Code section 7707, by taking
20 payment for cremation services and failing to deliver V.W. to the crematory for cremation.

21 g. Respondent McGuire and Respondent McGuire Cremation and Funeral Service are
22 subject to discipline under Code section 7692, in that Respondents took payment for cremation
23 services and misrepresented to the decedent's family that Respondents would have V.R.
24 cremated. The truth is that at the time of receipt of payment for cremation services from the
25 family of V.R., Respondents had been experiencing a financial hardship, placed in a cash-only
26 status for failure to pay the County arrears for previously issued permits and certificates, and were
27 experiencing problems and significant delays with delivering on contracts for cremation services.

28

1 h. Respondent McGuire is subject to discipline under Code sections 7686 and 7690, on
2 the grounds of unprofessional conduct within the meaning of Code section 7707, by taking
3 payment for cremation services and failing to pick up V.R. from the coroner's office and deliver
4 V.R. to the crematory for cremation.

5 i. Respondent McGuire and Respondent McGuire Cremation and Funeral Service are
6 subject to discipline under Code section 7692, in that Respondents took payment for cremation
7 services and misrepresented to the decedent's family that Respondents would have M.S.
8 cremated. Respondents misrepresentation was further exacerbated when they failed to timely
9 pick up the body from the Coroner's office and when Respondent McGuire told M.S.'s family
10 that M.S. was next in line for cremation. The truth is that at the time of receipt of payment for
11 cremation services from the family of M.S., Respondents had been experiencing a financial
12 hardship, placed in a cash-only status for failure to pay the County arrears for previously issued
13 permits and certificates, and were experiencing problems and significant delays with delivering
14 on contracts for cremation services. In addition, on or about approximately May 7, 2013, the time
15 of the misrepresentation to the family that M.S. was next in line for cremation, Respondent
16 McGuire's Funeral Director license had already expired on April 30, 2013, and had not been
17 renewed, and the county had already placed a ban on Respondents receiving any more death
18 certificates or burial permits as of May 1, 2013. In addition, on or about the time of Respondents
19 misrepresentation, they were aware, or should have been aware, of their intent to close the
20 business of McGuire Cremation and Funeral Services establishment, which was closed on May
21 13, 2013.

22 j. Respondent McGuire is subject to discipline under Code sections 7686 and 7690, on
23 the grounds of unprofessional conduct within the meaning of Code section 7707, by taking
24 payment for cremation services and failing to deliver M.S. to the crematory for cremation.

25 k. Respondent McGuire is subject to discipline under Code sections 7686 and 7690, in
26 that he violated California Code of Regulations, title 16, section 1204, subdivision (b), by failing
27 to provide direct supervision and control over Respondent McGuire Cremation and Funeral
28

1 Service when he made false statements to the decedents' family regarding the delay and status of
2 decedent's cremation.

3 l. Respondent McGuire and Respondent McGuire Cremation and Funeral Service are
4 subject to discipline under Code section 7692, in that Respondents took payment for cremation
5 services and misrepresented to the decedent's family that Respondents would have B.J. cremated
6 within a reasonable period of time. The truth is that at the time of receipt of payment for
7 cremation services from the family of B.J., Respondents had been experiencing a financial
8 hardship and were experiencing problems and significant delays with paying the county for
9 permits and certificates and delivering on contracts for cremation services.

10 m. Respondent McGuire is subject to discipline under Code sections 7686 and 7690, on
11 the grounds of unprofessional conduct within the meaning of Code section 7707, by taking
12 payment for cremation services and failing to deliver B.J. to the crematory for cremation within a
13 reasonable period of time, and failed to deliver decedent's ashes to the surviving family within a
14 reasonable period of time.

15 n. Respondent McGuire and Respondent McGuire Cremation and Funeral Service are
16 subject to discipline under Code section 7692, in that Respondents took payment for cremation
17 services and misrepresented to the decedent's family that Respondents would have R.M.
18 cremated and deliver the cremains to the surviving family within a reasonable period of time.
19 The truth is that at the time of receipt of payment for cremation services from the family of R.M.,
20 Respondents had been experiencing a financial hardship and were experiencing problems and
21 significant delays with paying the county for permits and certificates and delivering on contracts
22 for cremation services.

23 o. Respondent McGuire is subject to discipline under Code sections 7686 and 7690, on
24 the grounds of unprofessional conduct within the meaning of Code section 7707, by taking
25 payment for cremation services and failing to deliver R.M. to the crematory for cremation within
26 a reasonable period of time, and failed to deliver decedent's ashes to the surviving family within a
27 reasonable period of time.

28

1 p. Respondent McGuire and Respondent McGuire Cremation and Funeral Service are
2 subject to discipline under Code section 7692, in that Respondents took payment for cremation
3 services and misrepresented to the decedent's family that Respondents would have J.M. cremated.
4 The truth is that at the time of receipt of payment for cremation services from the family of J.M.,
5 Respondents had been experiencing a financial hardship and were experiencing problems and
6 significant delays with paying the county for permits and certificates and delivering on contracts
7 for cremation services.

8 q. Respondent McGuire and Respondent McGuire Cremation and Funeral Service are
9 subject to discipline under Code section 7692, in that Respondents misrepresented to the Bureau
10 investigator the true facts and circumstances of the status of McGuire Cremation and Funeral
11 Establishment and the bodies in Respondents' cold storage when they purposely hid bodies,
12 including J.M., from the investigator prior to his April 17, 2013 visit.

13 r. Respondent McGuire is subject to discipline under Code sections 7686 and 7690, on
14 the grounds of unprofessional conduct within the meaning of Code section 7707, by taking
15 payment for cremation services and failing to deliver J.M. to the crematory for cremation.

16 s. Respondent McGuire is subject to discipline under Code sections 7686 and 7690, in
17 that he violated California Code of Regulations, title 16, section 1204, subdivision (b), by failing
18 to provide direct supervision and control over Respondent McGuire Cremation and Funeral
19 Service when he misrepresented the true facts and circumstances of the status of McGuire
20 Cremation and Funeral Establishment and the bodies in Respondents' cold storage by purposely
21 hiding bodies, including J.M., from the Bureau investigator prior to the investigator's visit on
22 April 17, 2013.

23 t. Respondent McGuire and Respondent McGuire Cremation and Funeral Service are
24 subject to discipline under Code section 7692, in that Respondents took payment for cremation
25 services and misrepresented to the decedent's family that Respondents would have M.T.
26 cremated. In addition, Respondents made several misrepresentations to the decedents family that
27 M.T.'s cremains would be ready for them. The truth is that at the time of receipt of payment for
28 cremation services from the family of M.T., Respondents had been experiencing a financial

1 hardship, placed in a cash-only status for failure to pay the County arrears for previously issued
2 permits and certificates, and were experiencing problems and significant delays with delivering
3 on contracts for cremation services.

4 u. Respondent McGuire is subject to discipline under Code sections 7686 and 7690, on
5 the grounds of unprofessional conduct within the meaning of Code section 7707, by taking
6 payment for cremation services and failing to deliver M.T. to the crematory for cremation.

7 v. Respondent McGuire is subject to discipline under Code sections 7686 and 7690, in
8 that he violated California Code of Regulations, title 16, section 1204, subdivision (b), by failing
9 to provide direct supervision and control over Respondent McGuire Cremation and Funeral
10 Service when he made false statements to the decedents' family about the delay and status of
11 decedent's cremation.

12 w. Respondent McGuire and Respondent McGuire Cremation and Funeral Service are
13 subject to discipline under Code section 7703, for unprofessional conduct, in that Respondents
14 violated the laws regulating funeral directors and embalmers.

15 x. Respondent McGuire and Respondent McGuire Cremation and Funeral Service are
16 subject to discipline under Code section 7704, in that Respondents violated the laws affecting the
17 handling, custody, care or transportation of human remains.

18 y. Respondent Lillywhite is subject to discipline under Code sections 9725.1,
19 subdivision (a), on the grounds of unprofessional conduct, in that he assisted or abetted the
20 violation of state laws or regulations governing the disposition of human remains, as set forth
21 more fully above in paragraph 3, subdivisions a through x, by having a 10% ownership interest in
22 Respondent McGuire Cremation and Funeral Service, acting as secretary/treasurer of McGuire
23 Cremation and Funeral Service, and using his CRD license on the contract for services of
24 Respondent McGuire Cremation and Funeral Service.

25 **ORDER**

26 IT IS SO ORDERED that funeral establishment license No. FD 2023, heretofore issued to
27 Respondent McGuire Cremation and Funeral Service, is revoked; Funeral director license No.

28

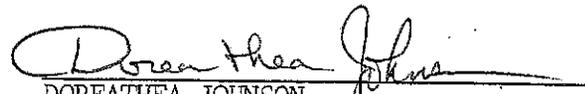
1 FDR 3242, heretofore issued to Respondent Shaun M. McGuire, is revoked; Cremated Remains
2 Disposer License No. CRD 835, heretofore issued to Michael F. Lillywhite, is revoked.

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

7 This Decision shall become effective on APRIL 27, 2014.

8 It is so ORDERED MAR 27 2014

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28


DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

11267794.DOC
DOJ Matter ID:SA2013112605

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation Nos. A1 2013 123, A1 2013 174

1 KAMALA D. HARRIS
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 STEPHANIE ALAMO-LATIF
Deputy Attorney General
4 State Bar No. 283580
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 327-6819
Facsimile: (916) 327-8643
7 E-mail: Stephanie.AlamoLatif@doj.ca.gov
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case Nos. A1 2013 123, A1 2013 174

12 **MCGUIRE CREMATION AND FUNERAL**
SERVICE

13 1101 7th Street
Modesto, CA 95354
14 A Corporation: McGuire Funeral Service, Inc.

15 President: Samantha E. McGuire
Vice President: Shaun M. McGuire
16 Secretary/Treasurer: Michael F. Lillywhite
Manager: Shaun M. McGuire

17 Funeral Establishment License No. FD 2023,
18

19 **AND**

20 **SHAUN M. MCGUIRE**
3209 Moonview Drive
21 Ceres, CA 95307

22 Funeral Director License No. FDR 3242

23 **AND**

24 **MICHAEL F. LILLYWHITE**
400 12th, Suite 14
25 Modesto, CA 95307

26 Cremated Remains Disposer License No.
27 **CRD 835**

28 Respondents.

ACCUSATION

1 Lisa M. Moore ("Complainant") alleges:

2 **PARTIES**

3 1. Complainant brings this Accusation solely in her official capacity as the Bureau Chief
4 of the Cemetery and Funeral Bureau, Department of Consumer Affairs.

5 **Funeral Establishment License**

6 2. On or about June 30, 2009, the Cemetery and Funeral Bureau issued Funeral
7 Establishment license Number FD 2023 to McGuire Cremation and Funeral Service, A
8 Corporation ("Respondent Establishment"). The corporate officers are as follows: President:
9 Samantha E. McGuire, Vice President: Shaun M. McGuire, and Secretary/Treasurer: Michael F.
10 Lillywhite. Shaun M. McGuire was the Manager of Respondent Cremation and Funeral Service.
11 The funeral establishment license expired on June 30, 2013, and has not been renewed.

12 **Funeral Director License**

13 3. On or about April 29, 2010, the Cemetery and Funeral Bureau issued Funeral
14 Director license Number FDR 3242 to Shaun M. McGuire ("Respondent McGuire"). The
15 Funeral Director license expired on April 30, 2013, and has not been renewed.

16 **Cremated Remains Disposer License**

17 4. On or about July 14, 2009, the Cemetery and Funeral Bureau issued Cremated
18 Remains Disposer license Number CRD 835 to Michael F. Lillywhite ("Respondent Lillywhite").
19 The Cremated Remains Disposer license expired on September 30, 2013, and has not been
20 renewed.

21 **JURISDICTION**

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

25 6. Code section 7686 states, in pertinent part, that the Bureau may suspend or revoke a
26 license, after proper notice and hearing to the licensee, if the licensee has been found guilty by the
27 Bureau of any of the acts or omissions constituting grounds for disciplinary action. The
28 proceedings under this article shall be conducted in accordance with Chapter 5 of Part 1 of

1 Division 3 of Title 2 of the Government Code, and the Bureau shall have all the powers granted
2 therein.

3 7. Code section 9749.5 states that a cremated remains disposer shall be subject to and
4 shall be disciplined by the bureau in accordance with Article 6 (commencing with Section 9725).
5 Any violation of this article shall also be grounds for disciplinary action.

6 8. Code section 9737 states that the proceedings under this article shall be conducted in
7 accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of
8 the Government Code, and the bureau shall have all the powers granted therein.

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

13 STATUTORY PROVISIONS

14 **Business and Professions Code**

15 10. Code section 7692 states:

16 "Misrepresentation or fraud in the conduct of the business or the profession of a funeral
17 director or embalmer constitutes a ground for disciplinary action."

18 11. Code section 7703 states:

19 "Violation of any of the provisions of this chapter or of the rules and regulations adopted
20 pursuant to this chapter constitutes ground for disciplinary action."

21 12. Code section 7704 states:

22 "Violation of any state law or municipal or county ordinance or regulation affecting the
23 handling, custody, care or transportation of human remains constitutes grounds for disciplinary
24 action."

25 13. Code section 7707 states:

26 "Gross negligence, gross incompetence or unprofessional conduct in the practice of funeral
27 directing or embalming constitutes a ground for disciplinary action."

28 ∞

1 14. Code section 9725.1 states:

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

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

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

10 **Health and Safety Code**

11 15. Health and Safety Code section 7100 states, in pertinent part:

12 a. The right to control the disposition of the remains of a deceased person, the
13 location and conditions of interment, and arrangements for funeral goods and services to be
14 provided, unless other directions have been given by the decedent pursuant to Section 7100.1,
15 vests in, and the duty of disposition and the liability for the reasonable cost of disposition of the
16 remains devolves upon, the following in the order named:

17 (1) An agent under a power of attorney for health care who has the right and
18 duty of disposition under division 4.7 (commencing with Section 4600) of the probate Code,
19 except that the agent is liable for the costs of disposition only in either of the following cases...

20 (2) The competent surviving spouse;

21 (3) The sole surviving competent adult child of the decedent or, if there is
22 more than one competent adult child of the decedent, the majority of the surviving competent
23 adult children...

24 (4) The surviving competent parent or parents of the decedent. If one of the
25 surviving competent parents is absent, the remaining competent parent shall be vested with the
26 rights and duties of this section after reasonable efforts have been unsuccessful in locating the
27 absent surviving competent parent.

28

1 (5) The sole surviving competent adult sibling of the decedent or, if there is
2 more than one surviving competent adult sibling of the decedent, the majority of the surviving
3 competent adult siblings...

4 (6) The surviving competent adult person or persons respectively in the next
5 degrees of kinship or, if there is more than one surviving competent adult person of the same
6 degree of kinship, the majority of those persons...

7 (7) A conservator of the person appointed under Part 3 (commencing with
8 Section 1800) of Division 4 of the Probate Code when the decedent has sufficient assets.

9 (8) A conservator of the estate appointed under (commencing with Section
10 1800) of Division 4 of the Probate Code when the decedent has sufficient assets.

11 (9) The public administrator when the deceased has sufficient assets.

12

13 16. Health and Safety Code section 102775 states:

14 "Each death shall be registered with the local registrar of births and deaths in the district in
15 which the death was officially pronounced or the body was found, within eight calendar days
16 after death and prior to any disposition of the human remains."

17 REGULATORY PROVISIONS

18 17. California Code of Regulations, title 16, section 1204, provides, in pertinent part: "

19 b. "The designated managing licensed funeral director of a licensed funeral
20 establishment shall be responsible for exercising such direct supervision and control over the
21 conduct of said funeral establishment as is necessary to ensure full compliance with the Funeral
22 Directors and Embalmers Law, the provisions of this chapter and the applicable provisions of the
23 Health and Safety Code. Failure of the designated managing licensed funeral director and/or the
24 licensed funeral establishment to exercise such supervision or control, or failure of the holder of
25 the funeral establishment license to make such designation shall constitute a ground for
26 disciplinary action."

27 ≡

28 ≡

1 18. California Code of Regulations, title 16, section 1277.5, subdivision (b), provides, in
2 pertinent part: "The "survivor" is the person with the right to control disposition of the remains
3 under Health and Safety Code section 7100, or their assignee."

4 **COST RECOVERY**

5 19. Code section 125.3 provides, in pertinent part, that the Bureau may request the
6 administrative law judge to direct a licentiate found to have committed a violation or violations of
7 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
8 enforcement of the case.

9 **BACKGROUND ON ESTABLISHMENT**

10 20. Shaun M. McGuire, Vice-President and Manager, has a 10% ownership interest in
11 McGuire Cremation and Funeral Service; Michael Lillywhite, Secretary/Treasurer, has a 10%
12 ownership interest in McGuire Cremation and Funeral Service.

13 21. During the Bureau's investigation of numerous complaints against all Respondents¹,
14 it was discovered that because of Respondents' failure to pay monies owed to Stanislaus County
15 Vital Records for disposition permits and death certificates, on or about March 13, 2013, the
16 County Health Services Agency placed Respondents' account on a cash-only status, in effect until
17 monies owed were paid in full. On or about May 1, 2013, a ban on receiving both Death
18 Certificates (DC's) and Application and Permit for Disposition of Human Remains (Burial
19 permits) was made against the Respondents for non-payment of the arrears owed to the County.
20 The ban was set to remain in place until all past charges were paid in full. As a result of this ban,
21 plus several complaints filed against Respondents, on May 16, 2013, under the direction of the
22 Stanislaus County Coroner's office, all cases that were currently in Respondents' cold storage
23 were removed and transported to other facilities for cremation.

24 22. On June 25, 2013, a Bureau investigator went to Respondent Cremation and Funeral
25 Service Establishment to check on the status of the business and discovered that McGuire
26 Cremation and Funeral Services was no longer in operation. In place of the Cremation and

27 ¹ "Respondents," as used herein, refers collectively to Respondent Establishment,
28 Respondent McGuire, and Respondent Lillywhite.

1 Funeral Services business was a fully operating thrift store. The investigator called Respondent
2 McGuire and confirmed that the business was no longer in operation.

3 23. Respondent McGuire admitted through a written statement to the Bureau investigator
4 that on or about May 13, 2013, Respondents closed McGuire Cremation and Funeral Services.
5 According to Respondent McGuire's written statement, all public business functions ceased on
6 May 13, 2013 and Respondents did not and would not be taking any more cases.

7 **FIRST CAUSE FOR DISCIPLINE**

8 **(Misrepresentation or Fraud in the conduct or business of a Funeral Director)**

9 24. Complainant re-alleges paragraphs 20 through 23 above. Respondent McGuire and
10 Respondent Establishment are subject to discipline under Code section 7692, in that Respondents
11 were delinquent in paying monies owed to the local county health agency for permits with
12 Stanislaus County Vital Records when a majority of families paid for services during the time of
13 arrangements, or shortly thereafter. The circumstances are as follows:

14 a. Between approximately March 29, 2012 and April 1, 2013, the County issued
15 192 disposition permits and/or death certificates to Respondents. By letter dated April 8, 2013,
16 Respondent McGuire admitted that because of a financial hardship, Respondents fell behind on
17 their payments to Vital Records for the those permits and certificates. Respondent McGuire
18 informed the Bureau investigator that a payment plan was set up with the county, and
19 misrepresented that Respondents would have the arrears paid off in the month of June 2013.
20 Although a majority of families paid for services during the time of arrangements, or shortly
21 thereafter, it took Respondent McGuire several months to pay the county for seventy-five (75) of
22 those permits and/or certificates, and Respondents never paid the county for one hundred and
23 seventeen (117) permits and/or certificates. As a result, on or about May 1, 2013, a ban on
24 receiving both Death Certificates (DC's) and Application and Permit for Disposition of Human
25 Remains (Burial permits) was made against the Respondents for non-payment of the arrears owed
26 to the County.

27 ///

28 ///

1 for services for V.W., Respondent McGuire refused to pick up V.W. from the coroner's office
2 until receipt of the check. Respondents received and cashed the Air Force Aid check on April 15,
3 2013, and picked up V.W. from the Coroner's office.

4 30. On or about April 20, 2013, the Coroner's Office contacted Stanislaus County Vital
5 Records and reminded them that the new internment permit was still not complete and that V.W.
6 had still not been cremated; even though Respondent McGuire had received the entire amount of
7 the cost for services.

8 31. On or about May 1, 2013, Respondents' permit permissions were suspended due to
9 non-payment of arrears, as set forth above in paragraph 18 above. Consequently, V.W. was in
10 Respondents' cold storage at the establishment with no planned date of removal by Respondents.
11 On or about May 9 and 16, 2013, Bureau investigator received Respondent McGuire's written
12 confirmations that due to Respondents' financial hardship, V.W. was not yet cremated. On or
13 about May 8, 2013, Respondent McGuire concurred that he failed to file the death certificate
14 within the required eight calendar days because of alleged confusion between Respondent
15 McGuire, the coroner's office, and the family.

16 32. On or about May 16, 2013, under direction of the Stanislaus County Coroner's
17 Office, V.W. was removed from Respondent Establishment, delivered to "A Bay Area
18 Crematory," and was cremated later that same day.

19 **FOURTH CAUSE FOR DISCIPLINE**

20 **(Failure to Register Death within Required Time)**

21 33. Complainant re-alleges paragraphs 20 through 23 and 27 through 32 above.
22 Respondent McGuire and Respondent Establishment are subject to discipline under Code section
23 7704, through violation of Health and Safety Code section 102775, in that Respondents failed to
24 register the death of V.W. and failed to file the required burial permit with the Stanislaus County
25 Vital Records for V.W., within the required 8-day timeline from the date of death.

26 ///

27 ///

28 ///

1 FIFTH CAUSE FOR DISCIPLINE

2 (Misrepresentation or Fraud – Failure to Cremate)

3 34. Complainant re-alleges paragraphs 20 through 23 and 27 through 32 above.
4 Respondent McGuire and Respondent Establishment are subject to discipline under Code section
5 7692, in that Respondents took payment for cremation services and misrepresented to the
6 decedent's family that Respondents would have V.W. cremated. The truth is that at the time of
7 receipt of payment for cremation services from the family of V.W., Respondents had been
8 experiencing a financial hardship, placed in a cash-only status for failure to pay the County
9 arrears for previously issued permits and certificates, and were experiencing problems and
10 significant delays with delivering on contracts for cremation services.

11 SIXTH CAUSE FOR DISCIPLINE

12 (Unprofessional Conduct – Funeral Directing)

13 35. Complainant re-alleges paragraphs 20 through 23 and 27 through 32 above.
14 Respondent McGuire is subject to discipline under Code sections 7686 and 7690, on the grounds
15 of unprofessional conduct within the meaning of Code section 7707, by taking payment for
16 cremation services and failing to deliver V.W. to the crematory for cremation.

17 DECEDENT V.R.

18 36. On or about April 16, 2013, V.R. passed away and the Stanislaus County Coroner's
19 office took possession of V.R. On or about April 26, 2013, V.R.'s survivor, P.G. made
20 arrangements with Respondents for cremation services. P.G. paid Respondents \$866 for those
21 services.

22 37. On or about May 6, 2013, the Coroner's office contacted Stanislaus County Health
23 Vital Records indicating that the Coroner's office had made numerous unsuccessful attempts to
24 contact Respondents by phone regarding V.R.. Although Respondents were paid by V.R.'s
25 family for cremation services, Respondent's never picked up V.R. from the Coroner's office.
26 Consequently, the family had to make other arrangements for V.R.'s cremation.

27 38. On or about May 8, 2013, V.R. was delivered to Eaton Family Funeral Service and
28 was cremated on May 9, 2013.

1 SEVENTH CAUSE FOR DISCIPLINE

2 (Misrepresentation or Fraud -- Failure to Cremate)

3 39. Complainant re-alleges paragraphs 20 through 23 and 36 through 38 above.
4 Respondent McGuire and Respondent Establishment are subject to discipline under Code section
5 7692, in that Respondents took payment for cremation services and misrepresented to the
6 decedent's family that Respondents would have V.R. cremated. The truth is that at the time of
7 receipt of payment for cremation services from the family of V.R., Respondents had been
8 experiencing a financial hardship, placed in a cash-only status for failure to pay the County
9 arrears for previously issued permits and certificates, and were experiencing problems and
10 significant delays with delivering on contracts for cremation services.

11 EIGHTH CAUSE FOR DISCIPLINE

12 (Unprofessional Conduct -- Funeral Directing)

13 40. Complainant re-alleges paragraphs 20 through 23 and 36 through 38 above.
14 Respondent McGuire is subject to discipline under Code sections 7686 and 7690, on the grounds
15 of unprofessional conduct within the meaning of Code section 7707, by taking payment for
16 cremation services and failing to pick up V.R. from the coroner's office and deliver V.R. to the
17 crematory for cremation.

18 DECEDENT M.S.

19 41. On or about March 16, 2013, M.S. passed away and the Stanislaus County Coroner's
20 office took possession of M.S. On or about April 1, 2013, M.S.'s survivor, G.H. made
21 arrangements with Respondents for services by signing, among other things, a "Statement of
22 Goods and Services Selected" ("Service Contract"), for cremation and alternative services. G.H.
23 paid Respondents \$600 for those services.

24 42. On or about May 14, 2013, the Cemetery and Funeral Bureau received an online
25 complaint alleging that Respondents did not pick up M.S. from the Coroner's Office until April
26 12, 2013, and as of May 14, 2013, he had yet to be cremated. G.H. relayed that she had problems
27 with even getting Respondents to pick up M.S.'s body from the Coroner's office. In addition, one
28

1 week prior to submitting her complaint to the Bureau, Respondents' misrepresented to G.H. that
2 M.S. was next in line for cremation.

3 43. On or about May 15, 2013, a Bureau Investigator went to Respondent Establishment
4 and confirmed that M.S. was still in Respondents' cold storage. On or about May 16, 2013, the
5 Bureau Investigator received Respondent McGuire's written confirmation that due to
6 Respondents' financial hardship, M.S. was not yet cremated.

7 44. On or about May 16, 2013, under direction of the Stanislaus County Coroner's
8 Office, M.S. was removed from Respondent Establishment, delivered to "A Bay Area
9 Crematory" on May 22, 2013, and was cremated later that same day.

10 **NINTH CAUSE FOR DISCIPLINE**

11 **(Misrepresentation or Fraud - Failure to Cremate)**

12 45. Complainant re-alleges paragraphs 20 through 23 and 41 through 44 above.
13 Respondent McGuire and Respondent Establishment are subject to discipline under Code section
14 7692, in that Respondents took payment for cremation services and misrepresented to the
15 decedent's family that Respondents would have M.S. cremated. Respondents misrepresentation
16 was further exacerbated when they failed to timely pick up the body from the Coroner's office
17 and when Respondent McGuire told M.S.'s family that M.S. was next in line for cremation. The
18 truth is that at the time of receipt of payment for cremation services from the family of M.S.,
19 Respondents had been experiencing a financial hardship, placed in a cash-only status for failure to
20 pay the County arrears for previously issued permits and certificates, and were experiencing
21 problems and significant delays with delivering on contracts for cremation services. In addition,
22 on or about approximately May 7, 2013, the time of the misrepresentation to the family that M.S.
23 was next in line for cremation, Respondent McGuire's Funeral Director license had already
24 expired on April 30, 2013, and had not been renewed, and the county had already placed a ban on
25 Respondents receiving any more death certificates or burial permits as of May 1, 2013. In
26 addition, on or about the time of Respondents misrepresentation, they were aware, or should have
27 been aware, of their intent to close the business of McGuire Cremation and Funeral Services
28 establishment, which was closed on May 13, 2013.

1 TENTH CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct – Funeral Directing)

3 46. Complainant re-alleges paragraphs 20 through 23 and 41 through 44 above.
4 Respondent McGuire is subject to discipline under Code sections 7686 and 7690, on the grounds
5 of unprofessional conduct within the meaning of Code section 7707, by taking payment for
6 cremation services and failing to deliver M.S. to the crematory for cremation.

7 ELEVENTH CAUSE FOR DISCIPLINE

8 (Failure to Provide Direct Supervision and Control)

9 47. Complainant re-alleges paragraphs 20 through 23 and 41 through 44 above.
10 Respondent McGuire is subject to discipline under Code sections 7686 and 7690, in that he
11 violated California Code of Regulations, title 16, section 1204, subdivision (b), by failing to
12 provide direct supervision and control over Respondent McGuire Cremation and Funeral Service
13 when he made false statements to the decedents' family regarding the delay and status of
14 decedent's cremation.

15 DECEDENT B.J.

16 48. On or about February 16, 2013, B.J. passed away. On or about February 19, 2013,
17 B.J.'s survivor, S.C. made arrangements with Respondents for cremation services. S.C. paid
18 Respondents \$500 for those services.

19 49. On or about May 7, 2013, S.C. went into the Stanislaus County Vital Records Office
20 to pick up death certificates for B.J. S.C. informed the Vital Records Office that he had a hard
21 time getting his mother's ashes from Respondents. Although S.C. had paid Respondent's for
22 services on February 19, 2013, Respondents' failed to register B.J.'s death until April 17, 2013.
23 B.J. was received to "A Bay Area Crematory" on April 19, 2013, and was cremated on April 20,
24 2013. The cremation took place 60 days after the cremation arrangements were made. In
25 addition, S.C. did not received B.J.'s ashes until May 2, 2013.

26 ///

27 ///

28 ///

1 TWELVTH CAUSE FOR DISCIPLINE

2 (Misrepresentation or Fraud -- Failure to Cremate within Reasonable Period of Time)

3 50. Complainant re-alleges paragraphs 20 through 23 and 48 through 49 above.
4 Respondent McGuire and Respondent Establishment are subject to discipline under Code section
5 7692, in that Respondents took payment for cremation services and misrepresented to the
6 decedent's family that Respondents would have B.J. cremated within a reasonable period of time.
7 The truth is that at the time of receipt of payment for cremation services from the family of B.J.,
8 Respondents had been experiencing a financial hardship and were experiencing problems and
9 significant delays with paying the county for permits and certificates and delivering on contracts
10 for cremation services.

11 THIRTEENTH CAUSE FOR DISCIPLINE

12 (Unprofessional Conduct -- Funeral Directing)

13 51. Complainant re-alleges paragraphs 20 through 23 and 48 through 49 above.
14 Respondent McGuire is subject to discipline under Code sections 7686 and 7690, on the grounds
15 of unprofessional conduct within the meaning of Code section 7707, by taking payment for
16 cremation services and failing to deliver B.J. to the crematory for cremation within a reasonable
17 period of time, and failed to deliver decedent's ashes to the surviving family within a reasonable
18 period of time.

19 DECEDENT R.M.

20 52. On or about January 14, 2013, R.M. passed away. On or about January 15, 2013,
21 R.M.'s survivor, S.M. made arrangements with Respondents for cremation services, an urn, and a
22 keepsake pendant. S.M. paid Respondents \$682.96 for those services.

23 53. On or about May 20, 2013, R.M.'s family went into the Stanislaus County Vital
24 Records Office complaining that they had still not received R.M.'s cremains, and although they
25 made numerous attempts, they had not been able to get in touch with Respondents.

26 54. On or about July 15, 2013, the Bureau's investigator received faxed documents from
27 "A Bay Area Crematory" confirming that R.M. was delivered to Bay Area for cremation on
28

1 February 22, 2013, and cremated on February 23, 2013. The cremation took place 39 days after
2 the cremation arrangements were made. The family of R.M. received the cremains in May 2013.

3 **FOURTEENTH CAUSE FOR DISCIPLINE**

4 **(Misrepresentation or Fraud – Failure to Cremate within Reasonable Period of Time)**

5 55. Complainant re-alleges paragraphs 20 through 23 and 52 through 54 above.
6 Respondent McGuire and Respondent Establishment are subject to discipline under Code section
7 7692, in that Respondents took payment for cremation services and misrepresented to the
8 decedent's family that Respondents would have R.M. cremated and deliver the cremains to the
9 surviving family within a reasonable period of time. The truth is that at the time of receipt of
10 payment for cremation services from the family of R.M., Respondents had been experiencing a
11 financial hardship and were experiencing problems and significant delays with paying the county
12 for permits and certificates and delivering on contracts for cremation services.

13 **FIFTEENTH-FIRST CAUSE FOR DISCIPLINE**

14 **(Unprofessional Conduct – Funeral Directing)**

15 56. Complainant re-alleges paragraphs 20 through 23 and 52 through 54 above.
16 Respondent McGuire is subject to discipline under Code sections 7686 and 7690, on the grounds
17 of unprofessional conduct within the meaning of Code section 7707, by taking payment for
18 cremation services and failing to deliver R.M. to the crematory for cremation within a reasonable
19 period of time, and failed to deliver decedent's ashes to the surviving family within a reasonable
20 period of time.

21 **DECEDENT J.M.**

22 57. On or about February 15, 2013, J.M. passed away. J.M.'s body was taken to
23 Respondent Establishment. On or about February 19, 2013, J.M.'s survivor, J.M. made
24 arrangements with Respondents for services by signing, among other things, a "Statement of
25 Goods and Services Selected" ("Service Contract") for cremation services. J.M. paid
26 Respondents \$425 for those services.

27 58. On or about April 17, 2013, the Bureau investigator conducted a routine inspection at
28 Respondent Cremation and Funeral Service establishment. While there, the investigator reviewed

1 who was currently in Respondents' cold storage. The investigator did not observe decedent J.M.
2 to be in Respondents' cold storage that day. During the investigator's May 15, 2013, visit to
3 Respondents' establishment, Respondent McGuire informed the investigator that McGuire had
4 purposely hid bodies from the investigator prior to his visit on April 17, 2013.

5 59. On or about May 16, 2013, under direction of the Stanislaus County Coroner's
6 Office, J.M. was removed from Respondent Cremation and Funeral Service. J.M. was delivered
7 to "A Bay Area Crematory" on May 22, 2013, and cremated later that same day. The cremation
8 took place 92 days after the cremation arrangements were made.

9 60. Survivor J.M. informed the Stanislaus County Vital Records that Respondents made a
10 lot of excuses during the three month period they had J.M.'s body as to why the cremation was
11 taking so long. Respondents eventually stopped calling the family back.

12 **SIXTEENTH CAUSE FOR DISCIPLINE**

13 (Misrepresentation or Fraud - Failure to Cremate)

14 61. Complainant re-alleges paragraphs 20 through 23 and 57 through 60 above.
15 Respondent McGuire and Respondent Establishment are subject to discipline under Code section
16 7692, in that Respondents took payment for cremation services and misrepresented to the
17 decedent's family that Respondents would have J.M. cremated. The truth is that at the time of
18 receipt of payment for cremation services from the family of J.M., Respondents had been
19 experiencing a financial hardship and were experiencing problems and significant delays with
20 paying the county for permits and certificates and delivering on contracts for cremation services.

21 **SEVENTEENTH CAUSE FOR DISCIPLINE**

22 (Misrepresentation or Fraud)

23 62. Complainant re-alleges paragraphs 20 through 23 and 57 through 60 above.
24 Respondent McGuire and Respondent Establishment are subject to discipline under Code section
25 7692, in that Respondents misrepresented to the Bureau investigator the true facts and
26 circumstances of the status of McGuire Cremation and Funeral Establishment and the bodies in
27 Respondents' cold storage when they purposely hid bodies, including J.M., from the investigator
28 prior to his April 17, 2013 visit.

1 EIGHTEENTH CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct – Funeral Directing)

3 63. Complainant re-alleges paragraphs 20 through 23 and 57 through 60 above.
4 Respondent Moguire is subject to discipline under Code sections 7686 and 7690, on the grounds
5 of unprofessional conduct within the meaning of Code section 7707, by taking payment for
6 cremation services and failing to deliver J.M. to the crematory for cremation.

7 NINETEENTH CAUSE FOR DISCIPLINE

8 (Failure to Provide Direct Supervision and Control)

9 64. Complainant re-alleges paragraphs 20 through 23 and 57 through 60 above.
10 Respondent McGuire is subject to discipline under Code sections 7686 and 7690, in that he
11 violated California Code of Regulations, title 16, section 1204, subdivision (b), by failing to
12 provide direct supervision and control over Respondent McGuire Cremation and Funeral Service
13 when he misrepresented the true facts and circumstances of the status of McGuire Cremation and
14 Funeral Establishment and the bodies in Respondents' cold storage by purposely hiding bodies,
15 including J.M., from the Bureau investigator prior to the investigator's visit on April 17, 2013.

16 DECEDENT M.T.

17 65. On or about April 2, 2013, M.T. passed away. On or about April 4, 2013, M.T.'s
18 survivor, J.H. made arrangements with Respondents for services by signing, among other things,
19 a "Statement of Goods and Services Selected" ("Service Contract") for cremation services. On or
20 about April 16, 2013, J.H. paid Respondents \$425 for those services.

21 66. On or about April 17, 2013, the Bureau investigator conducted a routine inspection at
22 Respondent Cremation and Funeral Service establishment. While there, the investigator
23 confirmed that M.T. was in Respondents' cold storage. On or about May 15, 2013, the
24 investigator went back to Respondent's established and confirmed that M.T. was still in cold
25 storage and still had not been cremated.

26 67. On or about May 16, 2013, under direction of the Stanislaus County Coroner's
27 Office, M.T. was removed from Respondent Cremation and Funeral Establishment. M.T. was
28

1 delivered to "A Bay Area Crematory" on May 20, 2013, and cremated on May 22, 2013. The
2 cremation took place 48 days after the cremation arrangements were made.

3 68. Survivor J.H. informed the Stanislaus County Vital Records that Respondents made
4 promises that M.T.'s cremains would be ready for them several times.

5 **TWENTIETH CAUSE FOR DISCIPLINE**

6 (Misrepresentation or Fraud - Failure to Cremate)

7 69. Complainant re-alleges paragraphs 20 through 23 and 65 through 68 above.
8 Respondent McGuire and Respondent Establishment are subject to discipline under Code section
9 7692, in that Respondents took payment for cremation services and misrepresented to the
10 decedent's family that Respondents would have M.T. cremated. In addition, Respondents made
11 several misrepresentations to the decedents family that M.T.'s cremains would be ready for them.
12 The truth is that at the time of receipt of payment for cremation services from the family of M.T.,
13 Respondents had been experiencing a financial hardship, placed in a cash-only status for failure to
14 pay the County arrears for previously issued permits and certificates, and were experiencing
15 problems and significant delays with delivering on contracts for cremation services.

16 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

17 (Unprofessional Conduct - Funeral Directing)

18 70. Complainant re-alleges paragraphs 20 through 23 and 65 through 68 above.
19 Respondent McGuire is subject to discipline under Code sections 7686 and 7690, on the grounds
20 of unprofessional conduct within the meaning of Code section 7707, by taking payment for
21 cremation services and failing to deliver M.T. to the crematory for cremation.

22 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

23 (Failure to Provide Direct Supervision and Control)

24 71. Complainant re-alleges paragraphs 20 through 23 and 65 through 68 above.
25 Respondent McGuire is subject to discipline under Code sections 7686 and 7690, in that he
26 violated California Code of Regulations, title 16, section 1204, subdivision (b), by failing to
27 provide direct supervision and control over Respondent McGuire Cremation and Funeral Service
28

1 when he made false statements to the decedents' family about the delay and status of decedent's
2 cremation.

3 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

4 (Violation of Laws Regulating Funeral Directors and Embalmers)

5 72. Complainant re-alleges paragraphs 20 through 71 above. Respondent McGuire and
6 Respondent Establishment are subject to discipline under Code section 7703, for unprofessional
7 conduct, in that Respondents violated the laws regulating funeral directors and embalmers.

8 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

9 (Violation of Laws Relating to Human Remains)

10 73. Complainant re-alleges paragraphs 20 through 72 above. Respondent McGuire and
11 Respondent Establishment are subject to discipline under Code section 7704, in that Respondents
12 violated the laws affecting the handling, custody, care or transportation of human remains.

13 **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

14 (Unprofessional Conduct – Violation of Laws Governing Disposition of Human Remains)

15 74. Complainant re-alleges paragraphs 20 through 73, and their subparts, above.
16 Respondent Lillywhite is subject to discipline under Code sections 9725.1, subdivision (a), on the
17 grounds of unprofessional conduct, in that he assisted or abetted the violation of state laws or
18 regulations governing the disposition of human remains, as set forth more fully above in
19 paragraphs 22 through 75, by having a 10% ownership interest in Respondent Establishment,
20 acting as secretary/treasurer of Respondent Establishment, and using his CRD license on the
21 contract for services of Respondent Establishment.

22 **PRAYER**

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

- 25 1. Revoking or suspending Funeral Establishment license Number FD 2023, issued to
26 McGuire Cremation and Funeral Service;
- 27 2. Revoking or suspending Funeral Director license Number FDR 3242, issued to Shaun
28 M. McGuire;

1 3. Revoking or suspending Cremated Remains Disposer License Number CRD 835,
2 issued to Michael F. Lillywhite;

3 4. Ordering McGuire Cremation and Funeral Service, Shaun M. McGuire, and Michael
4 Lillywhite to pay the Cemetery and Funeral Bureau the reasonable costs of the investigation and
5 enforcement of this case, pursuant to Business and Professions Code section 125.3;

6 5. Taking such other and further action as deemed necessary and proper.
7

8
9 DATED: December 13, 2013 Lisa M. Moore

10 LISA M. MOORE
11 Bureau Chief
12 Cemetery and Funeral Bureau
13 Department of Consumer Affairs
14 State of California
15 *Complainant*

16 SA2013112605
17
18
19
20
21
22
23
24
25
26
27
28