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

10 In the Matter of the Accusation Against:

Case No. A1 2009 178

11 **MIGUEL ANGEL DEL VALLE**

1125 Iris Ave.

Imperial Beach, CA 91932

DEFAULT DECISION AND ORDER

12 and

[Gov. Code, §11520]

13 855 Broadway

14 Chula Vista, CA 91911

15 Apprentice Embalmer No. AE 13099,

16 Respondent.

17
18 FINDINGS OF FACT

19 1. On or about December 21, 2009, Complainant Richard L. Wallinder, Jr., in his
20 official capacity as the Bureau Chief of the Cemetery and Funeral Bureau, Department of
21 Consumer Affairs, State of California, filed Accusation No. A1 2009 178 against Miguel Angel
22 Del Valle (Respondent) before the Director of the Department of Consumer Affairs (Director).

23 2. On or about September 5, 2006, the Cemetery and Funeral Bureau (Bureau) issued a
24 Certificate of Registration as an Apprentice Embalmer (Apprentice Embalmer No. AE 13099) to
25 Respondent Miguel Angel Del Valle. Respondent was subsequently issued a 150-day temporary
26 apprentice embalmer registration that expired on October 5, 2008, pursuant to Family Code
27 section 17520.

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1 3. On or about December 31, 2009, Mona Sebastian, an employee of the Department of
2 Justice, served by Certified and First Class Mail, a copy of the Accusation No. A1 2009 178,
3 Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code
4 sections 11507.5, 11507.6, and 11507.7, to Respondent's address of record with the Bureau,
5 which was and is:

6 Community Mortuary
7 855 Broadway
8 Chula Vista, CA 91911

8 A copy of the Accusation is attached as Exhibit A, and is incorporated herein by reference.

9 4. On or about February 18, 2010, Sandra Sotelo, an employee of the Department of
10 Justice, served by Certified and First Class Mail, a copy of the Accusation No. A1 2009 178,
11 Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code
12 sections 11507.5, 11507.6, and 11507.7, to Respondent's additional address of record with the
13 Bureau, which was and is:

14 1125 Iris Ave.
15 Imperial Beach, CA 91932

16 5. Service of the Accusation was effective as a matter of law under the provisions of
17 Government Code section 11505, subdivision (c).

18 6. On or about February 23, 2010, the aforementioned documents mailed to
19 Respondent's address of record on Iris Ave. were returned by the U.S. Postal Service marked
20 "Returned to Sender- Undeliverable as Addressed."

21 7. Business and Professions Code section 118 states, in pertinent part:

22 (b) The suspension, expiration, or forfeiture by operation of law of a license
23 issued by a board in the department, or its suspension, forfeiture, or cancellation by
24 order of the board or by order of a court of law, or its surrender without the written
25 consent of the board, shall not, during any period in which it may be renewed,
26 restored, reissued, or reinstated, deprive the board of its authority to institute or
continue a disciplinary proceeding against the licensee upon any ground provided by
law or to enter an order suspending or revoking the license or otherwise taking
disciplinary action against the license on any such ground.

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1 8. Government Code section 11506 states, in pertinent part:

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

7 9. Respondent failed to file a Notice of Defense within 15 days after service upon him
8 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
9 A1 2009 178.

10 10. Government Code section 11520 states, in pertinent part:

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

15 11. Pursuant to its authority under Government Code section 11520, the Director finds
16 Respondent is in default. The Director will take action without further hearing and, based on the
17 evidence on file herein, finds that the allegations in Accusation No. A1 2009 178 are true.

18 12. The total costs for investigation and enforcement in connection with the Accusation
19 are \$3,489.50 as of March 10, 2010.

20 DETERMINATION OF ISSUES

21 1. Based on the foregoing findings of fact, Respondent Miguel Angel Del Valle has
22 subjected his Certificate of Registration as an Apprentice Embalmer (Apprentice Embalmer No.
23 AE 13099) to discipline.

24 2. A copy of the Accusation is attached.

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

26 4. The Director of the Department of Consumer Affairs is authorized to revoke
27 Respondent's Certificate of Registration as an Apprentice Embalmer based upon the following
28 violations alleged in the Accusation:

a. February 14, 2008 Criminal Conviction for False Imprisonment (Business and
Professions Code sections 490 and 7668, subdivision (i)).

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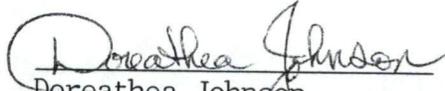
ORDER

IT IS SO ORDERED that the Certificate of Registration as an Apprentice Embalmer (Apprentice Embalmer No. AE 13099) heretofore issued to Respondent Miguel Angel Del Valle is revoked.

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

This Decision shall become effective on April 29, 2010.

It is so ORDERED 4/07/2010


Doreathea Johnson
Deputy Director, Legal Affairs

Attachment:
Exhibit A: Accusation No. A1 2009 178

Exhibit A
Accusation No. A1 2009 178

1 EDMUND G. BROWN JR.
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2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 RON ESPINOZA
Deputy Attorney General
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6 San Diego, CA 92186-5266
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7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. A1 2009 178

13 **MIGUEL ANGEL DEL VALLE**

1125 Iris Ave.

14 Imperial Beach, CA 91932

A C C U S A T I O N

15 and

16 855 Broadway

17 Chula Vista, CA 91911

18 Apprentice Embalmer No. AE 13099,

19 Respondent.

20
21 Complainant alleges:

22 **PARTIES**

23 1. Richard L. Wallinder (Complainant) brings this Accusation solely in his official
24 capacity as the Bureau Chief of the Cemetery and Funeral Bureau, Department of Consumer
25 Affairs.¹

26 ¹ Effective January 1, 1996, the Department of Consumer Affairs succeeded to, and was vested with, all the
27 duties, powers, purpose, responsibilities and jurisdiction of the Cemetery Board and the Board of Funeral Directors
28 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 7. Section 7668, subdivision (i), of the Code provides that the Bureau may suspend or
2 revoke a certificate of apprenticeship, after notice and upon complaint and hearing in accordance
3 with the provisions of Article 6, if the apprentice is guilty of "[c]onviction of a crime substantially
4 related to the qualifications, functions and duties of an apprentice, in which case the record of
5 conviction, or a certified copy, shall be conclusive evidence of the conviction."

6 8. Section 7709 of the Code states:

7 "A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed
8 to be a conviction within the meaning of this article. The bureau may order the license suspended
9 or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the
10 judgment of conviction has been affirmed on appeal or when an order granting probation is made
11 suspending the imposition of sentence, irrespective of a subsequent order under the provisions of
12 Section 1203.4 of the Penal Code allowing such person to withdraw his plea of guilty and to enter
13 a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information
14 or indictment."

15 9. Section 482 of the Code states:

16 "Each board under the provisions of this code shall develop criteria to evaluate the
17 rehabilitation of a person when:

18 "(a) Considering the denial of a license by the board under Section 480; or

19 "(b) Considering suspension or revocation of a license under Section 490.

20 "Each board shall take into account all competent evidence of rehabilitation furnished by
21 the applicant or licensee."

22 10. Section 490 of the Code states:

23 "(a) In addition to any other action that a board is permitted to take against a licensee, a
24 board may suspend or revoke a license on the ground that the licensee has been convicted of a
25 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
26 or profession for which the license was issued.

27 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
28 discipline a licensee for conviction of a crime that is independent of the authority granted under

1 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
2 of the business or profession for which the licensee's license was issued.

3 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
4 conviction following a plea of nolo contendere. Any action that a board is permitted to take
5 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
6 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
7 made suspending the imposition of sentence, irrespective of a subsequent order under the
8 provisions of Section 1203.4 of the Penal Code.

9 "(d) The Legislature hereby finds and declares that the application of this section has been
10 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th
11 554, and that the holding in that case has placed a significant number of statutes and regulations
12 in question, resulting in potential harm to the consumers of California from licensees who have
13 been convicted of crimes. Therefore, the Legislature finds and declares that this section
14 establishes an independent basis for a board to impose discipline upon a licensee, and that the
15 amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session do not
16 constitute a change to, but rather are declaratory of, existing law."

17 11. Section 493 of the Code states:

18 "Notwithstanding any other provision of law, in a proceeding conducted by a board within
19 the department pursuant to law to deny an application for a license or to suspend or revoke a
20 license or otherwise take disciplinary action against a person who holds a license, upon the
21 ground that the applicant or the licensee has been convicted of a crime substantially related to the
22 qualifications, functions, and duties of the licensee in question, the record of conviction of the
23 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
24 and the board may inquire into the circumstances surrounding the commission of the crime in
25 order to fix the degree of discipline or to determine if the conviction is substantially related to the
26 qualifications, functions, and duties of the licensee in question.

27 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
28 'registration.'"

1 12. Title 16, California Code of Regulations, section 1252, states:

2 "For the purposes of denial, suspension, or revocation of a license pursuant to Division 1.5
3 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be
4 considered to be substantially related to the qualifications, functions or duties of a licensed
5 funeral establishment, licensed funeral director, or licensed embalmer if to a substantial degree it
6 evidences present or potential unfitness of a licensed funeral establishment, licensed funeral
7 director, or licensed embalmer to perform the functions authorized by his license in a manner
8 consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be
9 limited to those involving the following:

10 "(a) Conviction of a crime involving fiscal dishonesty.

11 "(b) Any violation of the provisions of Chapter 12, Division 3 of the Business and
12 Professions Code."

13 13. Title 16, California Code of Regulations, section 1253.5, states:

14 "(a) When considering the suspension or revocation of a license on the ground that a
15 licensed funeral establishment, licensed funeral director, or licensed embalmer has been convicted
16 of a crime, the Board, in evaluating the rehabilitation of such person and his eligibility for a
17 license, will consider the following criteria:

18 "(1) Nature and severity of the act(s) or offense(s).

19 "(2) Total criminal record.

20 "(3) The time that has elapsed since commission of the act(s) or offense(s).

21 "(4) Whether the licensee has complied with any terms of parole, probation, restitution or
22 any other sanctions lawfully imposed against the licensee.

23 "(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the
24 Penal Code.

25 "(6) Evidence, if any, of rehabilitation submitted by the licensee.

26 "..."

27 14. Section 125.3 of the Code provides, in pertinent part, that the [Bureau] may request
28 the administrative law judge to direct a licentiate found to have committed a violation or

1 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
2 and enforcement of the case.

3
4 CAUSE FOR DISCIPLINE

5 (February 14, 2008 Criminal Conviction- False Imprisonment on January 31, 2008)

6 15. Respondent is subject to disciplinary action under Code sections 490 and 7668,
7 subdivision (i), in that he was convicted of a crime substantially related to the qualifications,
8 functions and duties of an apprentice embalmer. The circumstances are as follows:

9 a. On or about January 31, 2008, Respondent did unlawfully and intentionally
10 falsely imprison another person.

11 b. On or about February 14, 2008, in the criminal case entitled, *People of the State*
12 *of California v. Miguel A. Del Valle*, in the Superior Court of California, County of San Diego,
13 Case No. SCS217030, Respondent was convicted on his plea of guilty to violating Penal Code
14 section 236/237(a) (false imprisonment).

15 c. On or about March 13, 2008, Respondent was sentenced as follows: imposition
16 of sentence suspended and Respondent placed on three years formal probation. As part of
17 probation, Respondent was ordered to serve 180 days in jail, and to pay fines and fees.

18 PRAYER

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

21 1. Revoking or suspending the Certificate of Registration as an Apprentice Embalmer
22 (Apprentice Embalmer No. AE 13099) issued to Miguel Angel Del Valle;

23 2. Ordering Miguel Angel Del Valle to pay the Cemetery and Funeral Bureau the
24 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
25 Professions Code section 125.3; and

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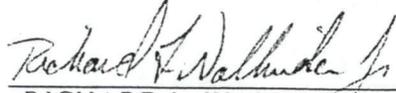
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3. Taking such other and further action as deemed necessary and proper.

DATED: 12/21/09



RICHARD L. WALLINDER
Bureau Chief
Cemetery and Funeral Bureau
Department of Consumer Affairs
State of California
Complainant

SD2009702366