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

In the Matter of the Petition to Revoke  
Probation Against:

**RICHARD ENCARNACION, JR., AKA  
RICHARDO ENCARNACION**

**1520 Mount Vernon Avenue, #B  
Bakersfield, CA 93306  
Apprentice Embalmer Registration No.  
13354;**

Respondent.

Case No. A1 2009 214  
OAH No. 2013070765  
**DEFAULT DECISION AND ORDER**  
  
[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about June 14, 2013, Complainant Lisa M. Moore, in her official capacity as the Bureau Chief of the Cemetery and Funeral Bureau, Department of Consumer Affairs<sup>1</sup> ("Complainant"), filed Petition to Revoke Probation No. A1 2009 214 against Richard

<sup>1</sup>. Effective January 1, 1996, the Department of Consumer Affairs succeeded to, and was vested with, all the duties, powers, purpose, responsibilities and jurisdiction of the Cemetery Board and the Board of Funeral Directors and Embalmers, and consolidated the functions into the Cemetery and Funeral Programs. Effective January 1, 2001, the regulatory agency is designated as the Cemetery and Funeral Bureau.

1 Encarnacion, Jr., aka Richardo Encarnacion ("Respondent") before the Director of Consumer  
2 Affairs. On or about April 18, 2014, Complainant filed the First Amended Petition to Revoke  
3 Probation against Respondent. (Petition and First Amended Petition to Revoke Probation are  
4 attached as Exhibit A.)

5 2. On or about January 4, 2011, the Cemetery and Funeral Bureau (Bureau) issued  
6 Apprentice Embalmer Registration No. 13354 to Respondent. The Apprentice Embalmer  
7 Registration expired on November 22, 2012, and has not been renewed.

8 3. On or about June 20, 2013, Respondent was served by Certified and First Class Mail  
9 copies of the Petition to Revoke Probation No. A1 2009 214, Statement to Respondent, Notice of  
10 Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5,  
11 11507.6, and 11507.7) at Respondent's address which was and is: 1520 Mount Vernon Avenue,  
12 #B Bakersfield, CA 93306.

13 4. On or about April 21, 2014, Respondent was served by Certified and First Class Mail  
14 copies of the First Amended Petition to Revoke Probation, Supplemental Statement to  
15 Respondent, Request for Discovery, and Discovery Statutes at Respondent's address which was  
16 and is: 1520 Mount Vernon Avenue, #B Bakersfield, CA 93306.

17 5. Service of the Petition and First Amended Petition to Revoke Probation was effective  
18 as a matter of law under the provisions of Government Code section 11505, subdivision (c)  
19 and/or Business & Professions Code section 124.

20 6. On or about June 25, 2013, Respondent signed and returned a Notice of Defense,  
21 requesting a hearing in this matter. A Notice of Hearing was served by mail at Respondent's  
22 address of record and it informed him that an administrative hearing in this matter was scheduled  
23 for June 18, 2014.

24 7. On or about June 16, 2014, Respondent requested a continuance of the hearing. On  
25 or about June 17, 2014, the Office of Administrative Hearings granted Respondent's request for  
26 continuance and issued an Order setting the hearing on July 15, 2014, beginning at 10:00 a.m.  
27 Respondent failed to appear at that hearing.

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

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

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

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

11. Pursuant to its authority under Government Code section 11520, the Director finds Respondent is in default. The Director will take action without further hearing and, based on the relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the Director's offices regarding the allegations contained in Petition to Revoke Probation No. A1 2009 214, finds that the charges and allegations in Petition to Revoke Probation No. A1 2009 214, are separately and severally, found to be true and correct by clear and convincing evidence.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Richard Encarnacion, Jr., aka Richardo Encarnacion has subjected his Apprentice Embalmer Registration No. 13354 to discipline.

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

3. The Director of Consumer Affairs is authorized to revoke Respondent's Apprentice Embalmer Registration based upon the following violations alleged in the Petition and First Amended Petition to Revoke Probation which are supported by the evidence contained in the Default Decision Evidence Packet in this case.:

a. First Cause to Revoke Probation on the grounds of Respondent's violation of Term of Probation Number One stating: "Respondent shall comply with all conditions of probation and obey all federal, state, and local laws, and all rules and regulations governing the programs

1 regulated by the bureau”, and Business and Professions Code section 7665 by failing to submit  
2 required reports of apprenticeship for the period December 8, 2011 through September 4, 2012.

3 b. Second Cause to Revoke Probation on the grounds of Respondent’s violations of  
4 Term of Probation Number One and California Code of Regulations, Title 16, section 1203  
5 requiring all holders of licenses or registrations to immediately notify the Bureau of any change to  
6 mailing address data.

7 c. Third Cause to Revoke Probation on the grounds of Respondent’s violation of Term  
8 of Probation Number Two which states: “Respondent shall submit quarterly declarations under  
9 penalty of perjury, in a format designated by the bureau, stating whether or not respondent has  
10 been in compliance with all the conditions of probation. Respondent shall also submit such  
11 additional written reports and verifications of actions requested by the bureau. Should the final  
12 probation report not be made as directed, the period of probation shall be extended until such time  
13 as the final report is made” by failing to submit quarterly reports for the quarters ending: October  
14 15, 2012, January 15, 2013, April 15, 2013, July 15, 2013, October 15, 2013, January 15, 2014,  
15 and April 15, 2014.

16 4. Term of Probation Six states: “Should respondent violate probation in any respect, the  
17 Director of the bureau, after giving respondent notice and an opportunity to be heard, may revoke  
18 probation and carry out the disciplinary order which was stayed. If an Accusation or Petition to  
19 Revoke Probation is filed against respondent during probation, the bureau shall have continuing  
20 jurisdiction until the matter is final, and the probation shall be extended until the matter is final.”

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ORDER

IT IS SO ORDERED that Apprentice Embalmer Registration No. 13354, heretofore issued to Respondent Richard Encarnacion, Jr., aka Richardo Encarnacion, 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 November 13, 2014.

It is so ORDERED OCT 13 2014

  
\_\_\_\_\_  
DORÉATHEA JOHNSON  
Deputy Director, Legal Affairs  
Department of Consumer Affairs

70910095.DOCX  
SD2013805335

Attachment:  
Exhibit A: Petition to Revoke Probation and First Amended Petition to Revoke Probation

# Exhibit A

Petition to Revoke Probation and First Amended Petition to Revoke Probation

1 KAMALA D. HARRIS  
Attorney General of California  
2 JAMES M. LEDAKIS  
Supervising Deputy Attorney General  
3 WILLIAM A. BUESS  
Deputy Attorney General  
4 State Bar No. 134958  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2039  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*  
8

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

12 In the Matter of the Petition to Revoke  
Probation Against:

Case No. AI 2009 214

13 **RICHARD ENCARNACION, JR., AKA**  
14 **RICHARDO ENCARNACION**

**PETITION TO REVOKE PROBATION**

15 Apprentice Embalmer Registration No.  
13354

16 Respondent.  
17

18  
19 Complainant alleges:

20 **PARTIES**

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

24 ///

25 \_\_\_\_\_  
26 <sup>1</sup> Effective January 1, 1996, the Department of Consumer Affairs succeeded to, and was  
27 vested with, all the duties, powers, purpose, responsibilities and jurisdiction of the Cemetery  
28 Board and the Board of Funeral Directors and Embalmers, and consolidated the functions into the  
Cemetery and Funeral Programs. Effective January 1, 2001, the regulatory agency is designated  
as the Cemetery and Funeral Bureau.



1           "(a) Notwithstanding any other provisions of this code, the provisions of this division shall  
2 govern the denial of licenses on the grounds of:

3           "(1) Knowingly making a false statement of material fact, or knowingly  
4 omitting to state a material fact, in an application for a license.

5           "(2) Conviction of a crime.

6           "(3) Commission of any act involving dishonesty, fraud or deceit with the  
7 intent to substantially benefit himself or another, or substantially injure another.

8           "(4) Commission of any act which, if done by a licentiate of the business or  
9 profession in question, would be grounds for suspension or revocation of license.

10          "(b) Notwithstanding any other provisions of this code, the provisions of this division shall  
11 govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2)  
12 of subdivision (a) .

13          "(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good  
14 moral character or any similar ground relating to an applicant's character, reputation, personality,  
15 or habits."

16          9. Section 480 of the Code states:

17          "(a) A board may deny a license regulated by this code on the grounds that the applicant has  
18 one of the following:

19          "(1) Been convicted of a crime. A conviction within the meaning of this section means a  
20 plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a  
21 board is permitted to take following the establishment of a conviction may be taken when the  
22 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when  
23 an order granting probation is made suspending the imposition of sentence, irrespective of a  
24 subsequent order under the provisions of Section 1203.4 of the Penal Code. .

25          "(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially  
26 benefit himself or herself or another, or substantially injure another.

27          "(3) (A) Done any act that if done by a licentiate of the business or profession in question,  
28 would be grounds for suspension or revocation of license.



1 of apprenticeship: (a) Shall file a report of apprenticeship as follows: (1) On or before January 15  
2 of each year covering the period of apprenticeship ending as of December 31 preceding....(4)  
3 Upon application for leave of absence for a period in excess of 15 days.”

4 **REGULATORY PROVISION**

5 12. California Code of Regulations (“CCR”), Title 16, section 1203 provides: “Each  
6 person holding a certificate of registration, license, permit or any other authority to practice or  
7 engage in any activity in the State of California under any and all laws administered by the bureau  
8 shall file his or her proper and current mailing address with the bureau at its office in Sacramento  
9 and shall immediately notify the bureau at its said office of any and all changes of mailing  
10 address, giving both his or her old and his or her new address.”

11 **FIRST CAUSE TO REVOKE PROBATION**

12 (Failure to submit required report of apprenticeship)

13 13. At all times after the effective date of Respondent’s probation, Term and Condition of  
14 Probation number One stated: “Respondent shall comply with all conditions of probation and  
15 obey all federal, state, and local laws, and all rules and regulations governing the programs  
16 regulated by the bureau.”

17 14. Respondent’s probation is subject to revocation under Probation Condition 6 and  
18 Business and Professions Code section 7665 because he failed to comply with Probation  
19 Condition One, referenced above. The facts and circumstances regarding this violation are as  
20 follows:

21 A. Business and Professions Code section 7665 requires Respondent to submit reports of  
22 apprenticeship. Respondent failed to submit the required report of apprenticeship for the period  
23 December 8, 2011 through September 4, 2012.

24 **SECOND CAUSE TO REVOKE PROBATION**

25 (Failing to report changes of mailing address)

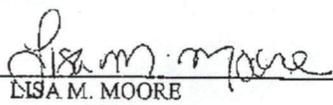
26 15. At all times after the effective date of Respondent’s probation, Condition One stated:  
27 “Respondent shall comply with all conditions of probation and obey all federal, state, and local  
28 laws, and all rules and regulations governing the programs regulated by the bureau.”



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

DATED: June 14, 2013



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

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