

1
2
3
4
5
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 2011 239

11 **MITCHELL HUGHES LEWIS**
12 P.O. Box 1069
13 Lower Lake, CA 95457
14 **Embalmer License No. EMB 7145**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

15 Respondent.

16
17 FINDINGS OF FACT

18 1. On or about July 11, 2011, Complainant Bev Augustine, in her official capacity as the
19 Bureau Chief of the Cemetery and Funeral Bureau, Department of Consumer Affairs^{1/}, filed
20 Accusation No. A1 2011 239 against Mitchell Hughes Lewis (Respondent) before the Director of
21 Consumer Affairs. (Accusation attached as Exhibit A.)

22 2. On or about October 22, 1980, the Cemetery and Funeral Bureau (Bureau) issued
23 Embalmer License No. EMB 7145 to Respondent. The Embalmer License was in full force and
24

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

1 effect at all times relevant to the charges brought in Accusation No. A1 2011 239 and will expire
2 on October 31, 2011, unless renewed.

3 3. On or about July 14, 2011, Respondent was served by Certified and First Class Mail
4 copies of the Accusation No. A1 2011 239, Statement to Respondent, Notice of Defense, Request
5 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
6 11507.7) at Respondent's address of record which, pursuant to California Code of Regulations,
7 title 16, section 1203, is required to be reported and maintained with the Bureau, which was and
8 is:

9 P.O. Box 1069
10 Lower Lake, CA 95457.

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

14 5. Government Code section 11506 states, in pertinent part:

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

20 6. Respondent failed to file a Notice of Defense within 15 days after service upon him
21 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
22 A1 2011 239.

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

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

28 8. 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

1 file at the Director's offices regarding the allegations contained in Accusation No. A1 2011 239,
2 finds that the charges and allegations in Accusation No. A1 2011 239, are separately and
3 severally, found to be true and correct by clear and convincing evidence.

4 9. Based on the Default Decision Evidence Packet, and taking official notice of its own
5 internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined
6 that the reasonable costs for Investigation and Enforcement is \$1,680.00 as of October 3, 2011.

7 DETERMINATION OF ISSUES

8 1. Based on the foregoing findings of fact, Respondent Mitchell Hughes Lewis has
9 subjected his Embalmer License No. EMB 7145 to discipline.

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

11 3. The Director of Consumer Affairs is authorized to revoke Respondent's Embalmer
12 License based upon the following violations alleged in the Accusation which are supported by the
13 evidence contained in the Default Decision Evidence Packet in this case:

14 a. Respondent is subject to disciplinary action under sections 490 and 7691 of the Code
15 in that Respondent was convicted of multiple crimes that are substantially related to the duties,
16 functions, or qualification of an embalmer.

17 ORDER

18 IT IS SO ORDERED that Embalmer License No. EMB 7145, heretofore issued to
19 Respondent Mitchell Hughes Lewis, is revoked.

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

24 This Decision shall become effective on November 30, 2011

25 It is so ORDERED OCT 31 2011

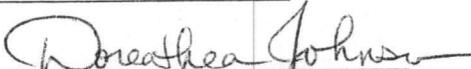
26 
27 DOREATHEA JOHNSON
28 Deputy Director, Legal Affairs
Department of Consumer Affairs

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JUSTIN R. SURBER
Deputy Attorney General
4 State Bar No. 226937
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 355-5437
6 Facsimile: (415) 703-5480
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. A1 2011 239

12 **MITCHELL HUGHES LEWIS**
13 P.O. Box 1069
Lower Lake, CA 95457
14 **Embalmer License No. EMB 7145**

A C C U S A T I O N

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Bev Augustine (Complainant) brings this Accusation solely in her official capacity as
20 the Bureau Chief of the Cemetery and Funeral Bureau, Department of Consumer Affairs.¹

21 2. On or about October 22, 1980, the Cemetery and Funeral Bureau issued Embalmer
22 License Number EMB 7145 to Mitchell Hughes Lewis (Respondent). The Embalmer License
23 was in full force and effect at all times relevant to the charges brought herein and will expire on
24 October 31, 2011, unless renewed.

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

JURISDICTION

1
2 3. This Accusation is brought before the Director of Consumer Affairs (Director) for the
3 Cemetery and Funeral Bureau, under the authority of the following laws. All section references
4 are to the Business and Professions Code unless otherwise indicated.

5 4. Section 7686 states:

6 The bureau may suspend or revoke licenses, after proper notice and hearing to the licensee,
7 if the licensee has been found guilty by the bureau of any of the acts or omissions constituting
8 grounds for disciplinary action. The proceedings under this article shall be conducted in
9 accordance with Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code, and the
10 bureau shall have all the powers granted therein.

11 5. Section 7691 states:

12 Conviction of a crime substantially related to the qualifications, functions and duties of the
13 license holder in question constitutes a ground for disciplinary action. The record of conviction,
14 or a certified copy thereof, shall be conclusive evidence of such conviction.

15 6. Section 7709 states:

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

24 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or
25 revoke a license on the ground that the licensee has been convicted of a crime substantially
26 related to the qualifications, functions, or duties of the business or profession for which the
27 license was issued.

28

1 CAUSE FOR DISCIPLINE

2 (Convictions)

3 15. Respondent is subject to disciplinary action under sections 490 and 7691 of the Code
4 in that Respondent was convicted of multiple crimes that are substantially related to the duties,
5 functions, or qualification of an embalmer. The circumstances are described in paragraphs 9-11,
6 above.

7 DISCIPLINARY CONSIDERATIONS

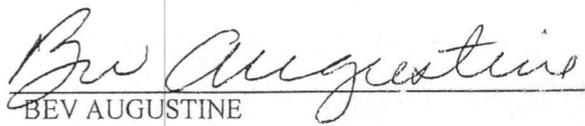
8 16. To determine the degree of discipline, if any, to be imposed on Respondent,
9 Complainant alleges that in addition to the convictions that are cause for discipline, Respondent
10 has a long criminal history as described in paragraphs 12-14, above.

11 PRAYER

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

- 14 1. Revoking or suspending Embalmer License Number EMB 7145, issued to Mitchell
15 Hughes Lewis;
- 16 2. Ordering Mitchell Hughes Lewis to pay the Cemetery and Funeral Bureau the
17 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
18 Professions Code section 125.3;
- 19 3. Taking such other and further action as deemed necessary and proper.
- 20
- 21

22 DATED: 7/11/11

23 

24 BEV AUGUSTINE
25 Bureau Chief
26 Cemetery and Funeral Bureau
27 Department of Consumer Affairs
28 State of California
Complainant

SF2011201825
20480465.doc

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JUSTIN R. SURBER
Deputy Attorney General
4 State Bar No. 226937
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 355-5437
6 Facsimile: (415) 703-5480
Attorneys for Complainant

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

10
11 In the Matter of the Accusation Against:

Case No. A1 2011 239

12 **MITCHELL HUGHES LEWIS**
P.O. Box 1069
13 Lower Lake, CA 95457
14 **Embalmer License No. EMB 7145**

STATEMENT TO RESPONDENT

[Gov. Code §§ 11504, 11505(b)]

15 Respondent.

16
17 TO RESPONDENT:

18 Enclosed is a copy of the Accusation that has been filed with the Director of Consumer
19 Affairs, Cemetery and Funeral Bureau (Bureau), and which is hereby served on you.

20 Unless a written request for a hearing signed by you or on your behalf is delivered or
21 mailed to the Bureau, represented by Deputy Attorney General Justin R. Surber, within fifteen
22 (15) days after a copy of the Accusation was personally served on you or mailed to you, you will
23 be deemed to have waived your right to a hearing in this matter and the Bureau may proceed upon
24 the Accusation without a hearing and may take action thereon as provided by law.

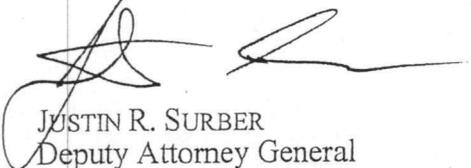
25 The request for hearing may be made by delivering or mailing one of the enclosed forms
26 entitled "Notice of Defense," or by delivering or mailing a Notice of Defense as provided in
27 section 11506 of the Government Code, to
28

1 Disciplinary Guidelines will be provided to you on your written request to the state agency
2 bringing this action.

3 If you are interested in pursuing this alternative to a formal administrative hearing, or if you
4 have any questions, you or your attorney should contact Deputy Attorney General Justin R.
5 Surber at the earliest opportunity.

6 Dated: July 13, 2011

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


JUSTIN R. SURBER
Deputy Attorney General
Attorneys for Complainant

10
11
12
13
14 SF2011201825
statement to respondent.rtf

15
16
17
18
19
20
21
22
23
24
25
26
27
28



DECLARATION OF SERVICE BY MAIL

RE: Mitchell Hughes Lewis

No. A1 2011 239

I, Ellis M. Kjer declare that I am over 18 years of age, and not a party to the within cause; my business address is 1625 North Market Blvd., Suite S-208, Sacramento, California, 95834. I served a true copy of the attached

Default Decision and Order
Accusation
Exhibit

on each of the following, by placing the same in an envelope (or envelopes) addressed (respectively) as follows:

First Class U.S. Mail & Certified U.S. Mail to:

Mitchell Hughes Lewis
P.O. Box 1069
Lower Lake, CA 95457

First Class Mail to:

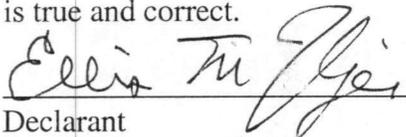
Justin R. Surber, DAG
Office of the Attorney General
California Department of Justice
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004

Cemetery and Funeral Bureau
Attn: Jeff Brown
1625 North Market Blvd., Suite S-208
Sacramento, California, 95834

Each said envelope was then, on November 1, 2011, sealed and deposited in the United States mail at Sacramento, the county in which I am employed, with the postage thereon fully prepaid.

Executed on November 1, 2011, at Sacramento, California.

I declare under penalty of perjury that the foregoing is true and correct.


Declarant