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

In the Matter of the Accusation Against:
**BELOVED CARE FUNERAL SERVICE;
JAMES OTIS GAMBLE**
P.O. Box 13033
Bakersfield, CA 93389

Funeral Establishment License No. FD 1807
Funeral Director License No. FDR 1318
Embalmer License No. EMB 8693

Respondent.

Case No. A1 2013 303
DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about January 17, 2014, Complainant Lisa M. Moore, in her official capacity as the Bureau Chief of the Cemetery and Funeral Bureau, Department of Consumer Affairs¹, filed Accusation No. A1 2013 303 against Beloved Care Funeral Service; James Otis Gamble (Respondent) before the Director of Consumer Affairs. (Accusation attached as Exhibit A.)

¹ 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 Funeral Establishment License

2 2. On or about December 29, 2003, the Cemetery and Funeral Bureau (Bureau) issued
3 Funeral Establishment License No. FD 1807 to Respondent or Respondents. The Funeral
4 Establishment License was in full force and effect at all times relevant to the charges brought in
5 Accusation No. A1 2013 303, expired on December 31, 2013, and has not been renewed.

6 Funeral Director License

7 3. On or about May 7, 1998, the Bureau issued Funeral Director License No. FDR 1318
8 to Respondent. The Funeral Director License was in full force and effect at all times relevant to
9 the charges brought herein and will expire on May 31, 2014, unless renewed.

10 Embalmer License

11 4. On or about September 20, 2000, the Bureau issued Embalmer License No. EMB
12 8693 to Respondent. The Embalmer License was in full force and effect at all times relevant to
13 the charges brought herein, expired on September 30, 2013, and has not been renewed.

14 5. On or about March 18, 2014, Respondent was served by Certified and First Class
15 Mail copies of the Accusation No. A1 2013 303, Statement to Respondent, Notice of Defense,
16 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,
17 and 11507.7) at Respondent's address of record which, pursuant to Business and Professions
18 Code section 971 and California Code of Regulations, Title 16, section 2304, is required to be
19 reported and maintained with the Bureau. Respondent's address of record was and is: P.O. Box
20 13033, Bakersfield, CA 93389.

21 6. On or about January 27, 2014, Respondent was served by Certified and First Class
22 Mail copies of the Accusation No. A1 2013 303, Statement to Respondent, Notice of Defense,
23 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,
24 and 11507.7) at Respondent's previously known address of record which, pursuant to Business
25 and Professions Code section 971 and California Code of Regulations, Title 16, section 2304, was
26 required to be reported and maintained with the Bureau. Respondent's previous address of record
27 was: 115 18th Street, Bakersfield, CA 93301.

1 7. Service of the Accusation was effective as a matter of law under the provisions of
2 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
3 124.

4 8. On or about April 1, 2014, the domestic return receipt for the aforementioned
5 documents was returned by the U.S. Postal Service indicating receipt on March 28, 2014 by
6 Respondent.

7 9. Government Code section 11506 states, in pertinent part:

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

13 10. Respondent failed to file a Notice of Defense within 15 days after service upon him
14 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. A1
15 2013 303.

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

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

21 12. Pursuant to its authority under Government Code section 11520, the Director finds
22 Respondent is in default. The Director will take action without further hearing and, based on the
23 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
24 taking official notice of all the investigatory reports, exhibits and statements contained therein on
25 file at the Director's offices regarding the allegations contained in Accusation No. A1 2013 303,
26 finds that the charges and allegations in Accusation No. A1 2013 303, are separately and
27 severally, found to be true and correct by clear and convincing evidence.

28 13. Taking official notice of its own internal records, pursuant to Business and
Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
and Enforcement is \$6,452.84 as of April 17, 2014.

DETERMINATION OF ISSUES

1
2 1. Based on the foregoing findings of fact, Respondent(s) have subjected their Funeral
3 Establishment License No. FD 1807, Funeral Director License No. FDR 1318, and Embalmer
4 License No. EMB 8693 to discipline.

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

6 3. The Director of Consumer Affairs is authorized to revoke Respondent's Funeral
7 Establishment License, Funeral Director License, and Embalmer License based upon the
8 following violations alleged in the Accusation which are supported by the evidence contained in
9 the Default Decision Evidence Packet in this case:

10 (a) Business and Professions Code section 7692 in that Respondent(s) engaged in fraud
11 and misrepresentation in providing funeral services.

12 (b) Business and Professions Code section 7707 in that Respondent(s) engaged in acts
13 constituting unprofessional conduct in providing funeral services.

14 (c) To determine the degree of discipline, the Complainant alleges that:

15 1. On or about May 3, 2013, the Bureau issued Citation No. IC 2013 158 to
16 Respondents for violating Bus. & Prof. Code section 7628 [failure to properly request change of
17 location]. Specifically, on or around March 12, 2013, Respondent Establishment operated at
18 4840 E. Brundage Lane, Bakersfield, CA (Brundage) without authorization. A \$250.00
19 administrative fine was imposed.

20 2. On or about May 3, 2013, the Bureau also cited Respondent for violating Cal.
21 Code of Regs. Title 16, section 1214 [failure to obtain express authorization for embalming].
22 Specifically, on or around March 12, 2013, Respondent Establishment failed to complete
23 Authorization for Disposition With or Without Embalming forms for several decedents. No fine
24 was assessed, however, Respondent was informed "abatement will be considered satisfactory
25 resolution of the violation."

26 3. On or about February 21, 2013, the Bureau issued Citation No. IC 2013 62 to
27 Respondent for violating Bus. & Prof. Code section 7616 [operating at an unapproved location].
28 Specifically, on or around February 13, 2013, Respondent Establishment was discovered

1 operating without approval at 717 E. Brundage Lane, Bakersfield, CA 93304 (Brundage) without
2 Bureau approval. A \$1001.00 administrative fine was assessed.

3 4. On or about February 21, 2013, the Bureau also cited Respondent for violating
4 Bus. & Prof. Code section 7628 [failure to properly request change of location]. Specifically, on
5 or around February 13, 2013, Respondent Establishment operated at Brundage without
6 authorization. Respondent failed to correct the deficiencies contained in a June 2012 application
7 for change in location. A \$100.00 administrative fine was assessed.

8 5. On or about February 21, 2013, the Bureau also cited Respondent for violating
9 Bus. & Prof. Code section 7680 [failure to conspicuously display license]. Specifically, on or
10 around February 13, 2013, Respondent failed to post in public view, the original wall license as
11 required. A \$100.00 administrative fine was assessed.

12
13 **ORDER**

14 IT IS SO ORDERED that Funeral Establishment License No. FD 1807, Funeral Director
15 License No. FDR 1318, and Embalmer License No. EMB 8693, heretofore issued to
16 Respondent(s), are revoked.

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

21 This Decision shall become effective on MAY 22, 2014.

22 It is so ORDERED April 22, 2014

23
24 
25 _____
26 DOREATHEA JOHNSON
27 Deputy Director, Legal Affairs
28 Department of Consumer Affairs

51496903.DOC
DOJ Matter ID:LA2013510583
Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 ARMANDO ZAMBRANO
Supervising Deputy Attorney General
3 LANGSTON M. EDWARDS
Deputy Attorney General
4 State Bar No. 237926
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 620-6343
6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

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

11 In the Matter of the Accusation Against:

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12 **BELOVED CARE FUNERAL SERVICE;**
13 **JAMES OTIS GAMBLE, JR.**
14 **115 18th Street**
15 **Bakersfield, CA 93301**

ACCUSATION

16 **Funeral Establishment License No. FD 1807**

17 **Funeral Director License No. FDR 1318**

18 **Embalmer License No. EMB 8693**

19 Respondents.
20

21 Complainant alleges:

22 **PARTIES**

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

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
(continued...)

1 in accordance with Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code, and the
2 bureau shall have all the powers granted therein.”

3 6. Section 7692 of the Code states:

4 “Misrepresentation or fraud in the conduct of the business or the profession of a funeral
5 director or embalmer constitutes a ground for disciplinary action.”

6 7. Section 7707 of the Code states:

7 “Gross negligence, gross incompetence or unprofessional conduct in the practice of funeral
8 directing or embalming constitutes a ground for disciplinary action.”

9
10 **COST RECOVERY**

11 8. Section 125.3 of the Code provides, in pertinent part, that the Director may request
12 the administrative law judge to direct a licentiate found to have committed a violation or
13 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
14 and enforcement of the case.

15
16 **BACKGROUND FACTS**

17 *Infant Cremation*

18 9. On or around September 9, 2013, J.C.² filed a complaint with the Bureau alleging that
19 Respondent failed to cremate J.C.’s infant child (infant) after more than three (3) months in
20 Respondent’s possession. The complaint also alleged that Respondent was paid for its services.

21 10. The same day, Kern County Vital Records office confirmed that Respondent failed to
22 follow proper procedure with the infant by failing to file a death certificate timely.

23 11. Respondent admitted that he failed to obtain a doctor’s signature for purposes of
24 filing the infant’s death certificate.

25 12. Respondent also failed to prepare a contract for J.C. prior to rendering services.

26
27 ² Initials are used in each instance in order to protect consumer identity and preserve consumer
28 confidentiality.

1 DISCIPLINARY CONSIDERATIONS

2 29. To determine the degree of discipline, Complainant alleges that:

3 a. On or about May 3, 2013, the Bureau issued Citation No. IC 2013 158 to
4 Respondents for violating Bus. & Prof. Code section 7628 [failure to properly request change of
5 location]. Specifically, on or around March 12, 2013, Respondent Establishment operated at
6 4840 E. Brundage Lane, Bakersfield, CA (Brundage) without authorization. A \$250.00
7 administrative fine was imposed.

8 b. On or about May 3, 2013, the Bureau also cited Respondent for violating Cal. Code
9 of Regs. Title 16, section 1214 [failure to obtain express authorization for embalming].
10 Specifically, on or around March 12, 2013, Respondent Establishment failed to complete
11 Authorization for Disposition With or Without Embalming forms for several decedents. No fine
12 was assessed, however, Respondent was informed "abatement will be considered satisfactory
13 resolution of the violation."

14 c. On or about February 21, 2013, the Bureau issued Citation No. IC 2013 62 to
15 Respondent for violating Bus. & Prof. Code section 7616 [operating at an unapproved location].
16 Specifically, on or around February 13, 2013, Respondent Establishment was discovered
17 operating without approval at the Brundage location without Bureau approval. A \$1001.00
18 administrative fine was assessed.

19 d. On or about February 21, 2013, the Bureau also cited Respondent for violating Bus.
20 & Prof. Code section 7628 [failure to properly request change of location]. Specifically, on or
21 around February 13, 2013, Respondent Establishment operated at Brundage without
22 authorization. Respondent failed to correct the deficiencies contained in a June 2012 application
23 for change in location. A \$100.00 administrative fine was assessed.

24 e. On or about February 21, 2013, the Bureau also cited Respondent for violating Bus.
25 & Prof. Code section 7680 [failure to conspicuously display license]. Specifically, on or around
26 February 13, 2013, Respondent failed to post in public view, its original wall license as required.
27 A \$100.00 administrative fine was assessed.

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PRAYER

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

1. Revoking or suspending Funeral Establishment License Number FD 1807 issued to Beloved Care Funeral Service; revoking or suspending Funeral Director License Number FDR 1318 and Embalmer License Number EMB 8693 issued to James Otis Gamble, Jr.;

2. Ordering James Otis Gamble, Jr. to pay the Cemetery and Funeral Bureau the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: January 17, 2014 Lisa M. Moore
LISA M. MOORE
Bureau Chief
Cemetery and Funeral Bureau
Department of Consumer Affairs
State of California
Complainant

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