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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: **ORLYN TERCEROS RILEY** **14131 Elystan Circle** **Westminster, CA 92683** **Funeral Director License No. FDR 3054** **Embalmer License No. EMB 9202** Respondent.	Case No. A1 2013 161 **A C C U S A T I O N**

Complainant alleges:

PARTIES

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

2. On or about June 4, 2008, the Cemetery and Funeral Bureau issued Funeral Director License Number FDR 3054 to Orlyn Terceros Riley (Respondent). The Funeral Director License expired on June 30, 2013, and has not been renewed.

3. On or about July 1, 2010, the Cemetery and Funeral Bureau issued Embalmer License Number EMB 9202 to Respondent. The Embalmer License was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2014, unless renewed.

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JURISDICTION

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

5. Section 118, subdivision (b) of the Code provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Bureau of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under section 7725.5 of the Code, the Bureau can renew a license within five years of its expiration.

6. Section 7686 of the Code provides, in pertinent part, that the Bureau may suspend or revoke a license, after proper notice and hearing to the licensee, if the licensee has been found guilty by the Bureau of any of the acts or omissions constituting grounds for disciplinary action.

STATUTORY PROVISIONS

7. Section 477 of the Code states:

> As used in this division:
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> (a) "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency."
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> (b) "License" includes certificate, registration or other means to engage in a business or profession regulated by this code.

8. Section 482 of the Code states:

> Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:
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> (a) Considering the denial of a license by the board under Section 480; or
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> (b) Considering suspension or revocation of a license under Section 490.
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> Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

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

10. Section 493 of the Code states:

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

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

11. Section 7691 of the Code states:

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

12. Section 7709 of the Code states:

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

REGULATORY PROVISIONS

13. California Code of Regulations, title 16, section 1252 states:

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

(a) Conviction of a crime involving fiscal dishonesty.

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

14. California Code of Regulations, title 16, section 1253.5 states:

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

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

(2) Total criminal record.

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

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

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

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

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COSTS

15. Section 125.3 of the Code provides, in pertinent part, that the Bureau may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

CAUSE FOR DISCIPLINE

(January 30, 2013 Criminal Conviction for Aggravated Assault & Spousal Battery on July 31, 2012)

16. Respondent has subjected his licenses to disciplinary action under sections 490 and 7691 of the Code in that he was convicted of crimes that are substantially related to the qualifications, functions, and duties of a funeral director and embalmer. The circumstances are as follows:

a. On or about January 30, 2013, in a criminal proceeding entitled *People of the State of California v. Orlyn Terceros Riley,* in Orange County Superior Court, case number

12WF2103, Respondent was convicted on his plea of guilty to violating Penal Code section 245, subdivision (a)(1), aggravated assault, a felony (Count 2); and Penal Code section 243, subdivision (e)(1), battery against a spouse, a misdemeanor (Count 3). Pursuant to the plea agreement, the court dismissed an additional count of violating Penal Code section 459/460, first degree burglary, a felony.

b. As a result of the conviction, on or about January 30, 2013, the court sentenced Respondent to the middle term of three years in state prison on the principal charge (Count 2). The sentence was suspended and Respondent was placed on five years formal probation. Respondent was ordered to complete a Batterer's Treatment Program, complete eight hours of community service, complete 30 days of CalTrans work service, continue psychiatric counseling, pay fees, fines, and restitution, and comply with felony probation terms. A protective order was issued for the victim.

c. The facts that led to the conviction are that on or about the early morning of July 31, 2012, the Westminster Police Department responded to the residence of a woman (victim) who told officers that she was asleep in her bedroom when she woke to Respondent choking her around her neck; she could not breath and she thought Respondent was going to kill her. It was determined that Respondent (who was the ex-boyfriend of the victim), entered the victim's house through the kitchen window. A family member intervened and pulled Respondent off the victim. The victim fled the house. Respondent was arrested later the same day outside of his residence.

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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 Director License Number FDR 3054, issued to Orlyn Terceros Riley;

2. Revoking or suspending Embalmer License Number EMB 9202, issued to Orlyn Terceros Riley;

3. Ordering Orlyn Terceros Riley 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;

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

DATED: July 17, 2013

Lisa M. Moore

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

SD2013705276