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

In the Matter of the Accusation Against:	Case No. A1 2013 161
ORLYN TERCEROS RILEY,	OAH No. 2013080372
Respondent.	

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Director of Consumer Affairs as the Decision in the above entitled matter.

This Decision shall become effective November 13, 2014.

IT IS SO ORDERED OCT 13 2014.

Doreathea Johnson
DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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

In the Matter of the Accusation Against: ORLYN TERCEROS RILEY, Respondent.	Case No. A1 2013 161 OAH No. 2013080372

PROPOSED DECISION

Debra D. Nye-Perkins, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on August 27, 2014, in San Diego, California.

Desiree Kellogg, Deputy Attorney General, represented complainant, Lisa M. Moore, Bureau Chief, Cemetery and Funeral Bureau, Department of Consumer Affairs, State of California.

Courtney Pilchman, Attorney at Law, represented respondent, Orlyn Terceros Riley, who was present throughout the administrative proceeding.

The matter was submitted on August 27, 2014.

SUMMARY

In 2013, respondent received two convictions arising from the same incident. Specifically, respondent was convicted of aggravated assault, a felony, and spousal battery, a misdemeanor. At the time of the incident, respondent was being treated for bipolar disorder and had only recently adjusted his medications for treatment. Respondent also had a history of alcohol and methamphetamine abuse. Respondent's rehabilitation efforts, including successful employment as an embalmer, the absence of other criminal convictions, and other evidence submitted on his behalf, show he is a candidate for probation.

Placing respondent on probation with appropriate terms and conditions that prohibit him from having unsupervised contact with the public, that prohibit him from using controlled substances, and that enable the director to monitor his compliance is warranted and will adequately protect the public.

FACTUAL FINDINGS

Jurisdictional Matters

1. On July 17, 2013, complainant filed the accusation in this matter. The accusation accused respondent of having a conviction for aggravated assault, a felony, and spousal battery, a misdemeanor.

2. The accusation and other required jurisdictional documents were served on respondent, who timely filed a notice of defense. This hearing followed.

License History

3. On June 4, 2008, the Cemetery and Funeral Bureau issued Funeral Director License Number FDR 3054 to respondent. The Funeral Director License expired on June 30, 2013, and has not been renewed.

4. On July 1, 2010, the Cemetery and Funeral Bureau issued Embalmer License Number EMB 9202 to respondent. Respondent's embalmer license is currently active.

Respondent's Conviction

5. On January 30, 2013, respondent was convicted on his plea of guilty to violating Penal Code section 245, subdivision (a)(1), aggravated assault, a felony, and Penal Code section 243, subdivision (e)(1), battery against a spouse, a misdemeanor.

6. As a result of these convictions, respondent was sentenced to three years in state prison. That sentence was suspended and respondent was placed on five years formal probation. Additionally, respondent was ordered to complete a Batterer's Treatment Program, complete eight hours of community service, complete thirty days of CalTrans work service, continue psychiatric counseling, and pay fees, fines and restitution. A protective order was also issued for the victim.

7. Respondent is currently in compliance with a payment plan for the outstanding fines, fees and restitution. He has successfully completed his Batterer's Treatment Program, community service and CalTrans work service. He continues to attend psychiatric counseling as ordered. He has also abided by the protective order issued for the victim and has had no contact with her.

Circumstances of the Offense

8. On the evening of July 31, 2012, respondent broke into the home of his ex-girlfriend through a kitchen window by removing the window screen and opening the window. He then went upstairs to his ex-girlfriend's bedroom where she was sleeping, put

his hands around her neck and choked her so that she could not breathe. He continued to do so until his ex-girlfriend's aunt was able to push him off of her. After the aunt pushed him away from his ex-girlfriend, respondent fled the home and was arrested later that night.

9. Respondent testified that at the time, he was seeing Dr. Kamal Artin for his bipolar disorder. Dr. Artin was adjusting respondent's medications in an effort to control his bipolar disorder. On the night of the incident, respondent was taking clonazepam for anxiety, as well as other medications. According to respondent, he had not yet stabilized on his new medications, a process that took about five months. At the time of the incident, respondent had been taking these new medications for only about two months. According to respondent, he immediately stopped taking clonazepam after the choking incident.

Respondent's Testimony

10. Respondent is thirty-eight years old and works full-time as an embalmer at Inglewood Mortuary in Inglewood, California, where he has worked for the past one and one-half years. Prior to working at Inglewood Mortuary, he worked at his own embalming company where he worked for several different clients. He obtained his associate degree in mortuary science in 2007. Respondent testified that he currently spends approximately ninety-five to ninety-eight percent of his time working only with the deceased while performing his embalming duties. He further testified that, even though his funeral director license is expired, he may occasionally show a family of the deceased into a room, a job that typically falls under the functions of a funeral director.

11. Respondent was diagnosed with bipolar disorder eight years ago, at the age of thirty, after he went into rehabilitation for methamphetamine and alcohol addiction. Respondent testified that prior to his diagnosis, he had been unknowingly self-medicating by using methamphetamine and alcohol. He went into a thirty-day inpatient rehabilitation program in 2005 or 2006. Additionally, in 2011 he completed a seven or eight week drug prevention class that was ordered by a court as a result of his arrest in 2011 for being under the influence of methamphetamine. The charges for his 2011 arrest were dismissed. He also has attended multiple Narcotics Anonymous meetings and Alcoholics Anonymous meetings, but has not attended those meetings for at least a year. Respondent's current rehabilitation efforts for his methamphetamine and alcohol abuse consist of abstaining and having no contact with previous friends who abuse drugs. Respondent has been clean and sober for two years and three months.

12. Respondent also currently seeks treatment from a psychiatrist and a psychologist for his bipolar disorder, as well as anger management issues. His primary psychiatrist is Dr. Artin, whom he has been seeing for the past two years and four months. Respondent testified that, at the time of the choking incident, he was seeing Dr. Artin for his bipolar disorder. Dr. Artin was adjusting respondent's medications in an effort to control his bipolar disorder.

13. Respondent was also taking multiple medications prescribed by Dr. Artin, including clonazepam, risperidone, and Lamotrigine. Respondent testified that after the incident, he stopped taking clonazepam. He believes that the clonazepam caused him to "fly off the handle" on the night of the incident.

14. Respondent admits that he is remorseful and disappointed in himself for making mistakes on the evening that he choked his ex-girlfriend. He claims that he has undergone cognitive restructuring through his therapy and counseling that taught him to control his anger, to react to confrontation properly, and to treat others respectfully. Respondent's testimony was sincere and credible.

Documentary Rehabilitation Evidence

15. In support of his testimony regarding his rehabilitation efforts, respondent provided four letters from his psychiatrist, Dr. Artin, regarding his therapy and treatment. Three of those letters were typewritten with Dr. Kamal Artin's signature and were dated August 25, 2014, August 28, 2013, and March 15, 2013. One of the letters was handwritten on a prescription notepad and dated June 26, 2013. All four letters stated that respondent continues to be under Dr. Artin's care and visits Dr. Artin every three weeks as required by respondent's probation officer. In each of the letters, Dr. Artin stated that despite the requirements of his probation, respondent does not require visits every three weeks for his care because he is stable and compliant with his treatment. In his August 25, 2014, letter Dr. Artin stated that respondent has been taking his medication with no side effects, and his mood is stable.

16. In addition to the letters from his psychiatrist, respondent provided documentary evidence of his completion of court-ordered community service at the Second Harvest Food Bank. He also provided documentary evidence of successful completion of the required fifty-two sessions of Batterers' Intervention Program from the Center for Fulfilling Solutions. The Batters' Intervention Program also consisted of an alcohol and substance abuse treatment component, and respondent completed twenty-six sessions of that part of the program.

17. Respondent also provided six letters of reference regarding his character from five individuals. Two of those letters were from respondent's supervising embalmer, Jamie Jones, who also works at Inglewood Cemetery Mortuary. Three other letters were from other embalmers or funeral directors who are familiar with respondent's work as an embalmer and funeral director. Each of these letters praised respondent's work, professionalism and integrity. One letter was from a real estate consultant who has known respondent for five years and praised his friendship.

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Cost Recovery

18. Complainant submitted documentation establishing that it incurred $1,580 in investigation and prosecution costs. Those costs were reasonable.

Evaluation

19. Respondent was convicted of two very serious crimes– aggravated assault and spousal battery – arising from conduct on July 31, 2012, when he was being treated by his psychiatrist with multiple medications for bipolar disorder. At the time, respondent had not yet acclimated to his medications, and after the choking incident, his psychiatrist changed his medications.

20. Honesty, integrity and trustworthiness are essential in both the funeral director and embalming businesses because of the trust people place in funeral directors and embalmers during a traumatic and emotional time in their lives. Persons holding funeral director's licenses and embalmer's licenses must be trustworthy and must not take advantage of others. Funeral directors typically have more direct contact with grieving families than do embalmers, who are primarily concerned with proper treatment of the deceased. Respondent's criminal convictions demonstrate a lack of integrity and trustworthiness, as well as an inclination towards violence. Respondent's convictions are substantially related to the qualifications, functions and duties of a licensed funeral director and a licensed embalmer.

21. Respondent has been law-abiding since he committed his crimes in 2012. He has made an effort to understand the reasons he engaged in his crimes and to remediate any underlying psychological problems. He is currently taking medication to control his bipolar disorder and has stabilized his condition with medication. He has been fully employed and complied with all conditions of probation to date.

22. It would not be contrary to public interest to grant respondent a probationary funeral director's license and a probationary embalmer's license and to require, as a condition of probation, that there always be a chaperone present when he interacts with members of the public who seek funeral or cemetery services.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Where an agency representative has filed charges against the holder of a license, as was done in this case, the party filing the charges has the burden of proof. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789.)

2. In determining the proper standard of proof to apply in disciplinary proceedings, courts have drawn a distinction between professional licenses such as those held by doctors, lawyers, and real estate brokers, and nonprofessional or occupational licenses that have less onerous requirements for licensure, such as those held by food processors and vehicle salespersons. The standard of proof utilized in proceedings to impose discipline on a professional license is "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) Proceedings to revoke or otherwise impose discipline on occupational or nonprofessional licenses apply the preponderance of the evidence standard of proof. (*Mann v. Department of Motor Vehicles* (1999) 76 Ca.App.4th 312.)

3. Obtaining a license as an embalmer requires an applicant to be over the age of eighteen, have completed at least two years of apprenticeship under a licensed embalmer, have assisted in embalming not fewer than one hundred human remains, have graduated from a mortuary science program approved by the bureau, have passed an examination administered by the bureau, and have passed the sciences section of the national examination administered by the International Conference of Funeral Service Examining Boards. Obtaining a license as a funeral director requires an applicant to be over the age of eighteen, possess an Associate in Arts or Associate in Science degree or equivalent, and pass an examination administered by the bureau. (Bus. & Prof. Code, §§ 7619, 7622, 7643, and 7646.) Because of the substantial education, training, and experience that are required to hold an embalmer or funeral director license, the clear and convincing standard of proof applies in this disciplinary proceeding. "Clear and convincing evidence" requires a high probability of the existence of the disputed fact, greater than proof by a preponderance of the evidence. Evidence of a charge is clear and convincing as long as there is a high probability that the charge is true. (*People v. Mabini* (2001) 92 Cal.App.4th 654, 662.)

Purpose of the Cemetery and Funeral Bureau

4. Business and Professions Code section 7601.1 provides as follows:

> Protection of the public shall be the highest priority for the Cemetery and Funeral Bureau in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

Applicable Statutes

5. Business and Professions Code section 490 provides in part:

> (a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions,

or duties of the business or profession for which the license was issued.

6. Business and Professions Code Section 7691 provides in part:

> 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.

7. Business and Professions Code Section 7709 provides in part:

> A plea . . . of guilty . . . is deemed to be a conviction within the meaning of this article. The bureau may order a license suspended or revoked . . . 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 . . . allowing such person to withdraw his plea of guilty. . . .

Substantial Relationship

8. Licensing authorities do not enjoy unfettered discretion to determine on a case-by-case basis whether a given conviction is substantially related to the relevant professional qualifications. Business and Professions Code section 481 requires each licensing agency to develop criteria to aid it to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates. (*Donaldson v. Department of Real Estate* (2005) 134 Cal.App.4th 948, 955-956.)

9. Under the Bureau's substantial relationship criteria set forth at California Code of Regulations, title 16, section 1252:

> For the purposes of denial . . . 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.

10. Respondent's convictions are substantially related to the qualifications, functions, and duties of a licensed funeral director. Also, respondent's convictions are substantially related to the qualifications, functions, and duties of a licensed embalmer.

Rehabilitation

11. Under the Bureau's rehabilitation criteria set forth at California Code of Regulations, title 16, section 1253.5:

> (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 bureau, in evaluating the rehabilitation of such person and his or her 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 licensee.

12. Rehabilitation is a state of mind, and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved reformation and regeneration. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) An individual's candor, cooperation and remorse, and a willingness to accept punishment and good faith efforts to rehabilitate himself may be significant mitigating factors. (*Hipolito v. State Bar* (1989) 48 Cal.3d 621, 626.) The evidentiary significance of an applicant's misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990)

50 Cal.3d 1061, 1070.) Since persons under the direct supervision of correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that one did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

13. Respondent's convictions are very serious and involved violence. He was convicted of two crimes based upon one incident but has no other convictions. It has been only two years since the incident resulting in his convictions, but during that time respondent has adjusted his medications to stabilize his condition and attended all psychiatric treatments and required probationary conditions. He has also been successfully working as an embalmer at Inglewood Cemetery Mortuary.

Cause Exists for Discipline

14. Cause exists to revoke respondent's Funeral Director's License and Embalmer's License under Business and Professions Code sections 490, and 7691. In January 2013, respondent was convicted of aggravated assault and spousal abuse, substantially related criminal convictions. After his conviction respondent took prompt steps to rehabilitate himself, cooperated with law enforcement officers and the criminal justice system, and successfully continues psychiatric treatment. Respondent has been law-abiding since the misconduct that occurred two years ago. He has complied with all conditions of probation to date but remains on probation until January 30, 2018.

15. Under the circumstances, it would not be contrary to the public interest to grant respondent a probationary funeral director's license and probationary embalmer's license and to require, as a condition of his probation, that there always be a chaperone present when he interacts with members of the public who seek funeral, cemetery or embalming services.

Disciplinary Guidelines

16. California Code of Regulations, title 16, section 1253.6, provides that in reaching a decision in a disciplinary action under the Administrative Procedure Act, the bureau shall consider the disciplinary guidelines entitled "A Manual of Disciplinary Guidelines for Funeral Establishments, Funeral Directors, Embalmers, and Apprentice Embalmers (September, 1997)." Deviation from the guidelines is appropriate when the bureau, in its sole discretion, determines that the facts of the particular case warrant such a deviation, for example: the presence of mitigating factors; the age of the case; or evidentiary problems in the case.

17. Under the guidelines, the recommended discipline for violation of Business and Professions Code sections 490 and 7691, conviction of a crime by a licensee, ranges from a minimum discipline of revocation, stayed, and three years' probation, to a maximum disciplinary order of revocation.

Application of Facts to Law

18. Respondent's has two convictions, one felony and one misdemeanor, arising from the same incident. He was convicted in January 2013 for crimes occurring in July 2012, only two years ago. Respondent was diagnosed as suffering from bipolar disorder prior to the incident and was undergoing a change in his medications. Respondent has complied with the terms of his probation, including treatment with his psychiatrist every three weeks. He has been stable on his current medication for treatment of bipolar disorder for at least two years. He currently works as an embalmer at Inglewood Cemetery Mortuary where he spends approximately ninety-five to ninety-eight percent of his time working with the deceased and having no contact with the public.

Weighing all factors in aggravation, explanation, mitigation and rehabilitation, it is concluded that granting a probationary embalmer's license and a probationary funeral director's license, with appropriate terms and conditions, will adequately protect the public.

Cost Recovery

19. Complainant is seeking recovery of the reasonable costs of investigation and enforcement of the instant matter in the amount of $1,580.50. *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, held that a regulation imposing costs for investigation and enforcement under California Code of Regulations, title 16, section 317.5 (which is similar to Bus. & Prof. Code, § 125.3) did not violate due process. But, it was incumbent on the board in that case to exercise discretion to reduce or eliminate cost awards in a manner such that costs imposed did not "deter [licensees] with potentially meritorious claims or defenses from exercising their right to a hearing." The Supreme Court set forth four factors to consider in deciding whether to reduce or eliminate costs: (1) whether the licensee used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; (2) whether the licensee had a "subjective" good faith belief in the merits of his position; (3) whether the licensee raised a "colorable challenge" to the proposed discipline; and (4) whether the licensee had the financial ability to make payments.

20. Respondent achieved a reduction in the severity of the discipline sought to be imposed. Evidence was presented that supports a finding that respondent is able to pay the costs requested by the bureau. After applying the *Zuckerman* criteria in the instant matter, it is concluded that it is reasonable to require respondent to pay the costs of investigation and prosecution of the Accusation against respondent.

ORDER

Respondent Orlyn Terceros Riley's Funeral Director's License is revoked; provided, however, that respondent shall be entitled to receive a probationary Funeral Director's License upon successful completion of all necessary requirements for reinstatement of an

expired license. Respondent Orlyn Terceros Riley's Embalmer's License is revoked; provided, however, that respondent shall immediately be entitled to receive a probationary Embalmer's License. The probationary licenses issued to respondent for both the Funeral Director's License and the Embalmer's License shall remain in effect for a period of five years and shall be subject to all of the following terms and conditions:

1. Obey All Laws

Respondent shall comply with all conditions of probation and obey all federal, state and local laws, and all rules and regulations governing the programs regulated by the bureau and the Department of Consumer Affairs.

2. Quarterly Reports

Respondent shall submit quarterly declarations under penalty of perjury, in a format designated by the department, stating whether or not respondent has been in compliance with all the conditions of probation. Respondent shall also submit such additional written reports and verifications of actions requested by the department. Should the final probation report not be made as directed, the period of probation shall be extended until such time as the final report is made.

3. Notice of Citation or Arrest

Respondent shall notify the Cemetery and Funeral Bureau in writing within 72 hours of any citation or arrest. The written notification shall set forth the date of the citation or arrest, the name of the citing or arresting law enforcement agency, the address of the citing or arresting law enforcement agency, the offense or offenses for which respondent was cited or arrested, and the name and address of the court or other agency where respondent is to make any appearance. Written notice shall be mailed to the Cemetery & Funeral Bureau, Department of Consumer Affairs, 1625 North Market Blvd., Suite S208, Sacramento, CA 95834.

4. Notification to Employer

Before assuming or continuing any position as a licensed funeral director or licensed embalmer, respondent shall provide a true copy of the Decision(s) and Accusation(s) to the Chief Executive Officer of every entity where respondent will be providing professional services as a funeral director or embalmer. Respondent shall submit proof of compliance to the department or its designee, within 15 calendar days of the effective date of the Decision herein.

This condition shall apply to any change in employment while respondent is on probation.

5. Third Party Chaperone

During probation, respondent shall have a third party chaperone present while consulting, meeting with or advising any member of the public in person. Respondent shall, within 30 calendar days of the effective date of the Decision, submit to the department or its designee for prior approval a log by which respondent proposes to document his contact with members of the public and the names of the persons providing chaperone services. Each third party chaperone shall initial and date the log when the chaperone's services are provided. The log shall include the name and address of the member of the public, the name and the address of the chaperone who was present during the meeting, and the date and location of the meeting between respondent and the member of the public.

Respondent shall keep this log in a separate file or ledger, in chronological order, and shall make the log available for immediate inspection and copying on the premises at all times during business hours by the department or its designee. Respondent shall retain the log for the entire term of probation. Failure to maintain a log or the failure to make the log available for immediate inspection and copying on the premises is a violation of probation.

6. Interview with Department Representative

As necessary, respondent shall appear in person for scheduled interviews with the director or other designated representative for the purpose of monitoring compliance with the terms of this decision.

7. Psychological Evaluation

On a periodic basis and at the sole discretion of the department or its designee, respondent shall undergo psychological evaluation by licensed psychologists and/or psychiatrists as are approved by the department. If requested by the department, the evaluator shall furnish a written report to the department or its designee regarding respondent's judgment and ability to function independently, safely and not pose a threat to the public, as well as respondent's ability to abstain from the abuse of any controlled substance or alcohol. The cost of any evaluation shall be borne by respondent. Respondent shall execute a Release of Information authorizing the evaluator to release all information to the department. Respondent shall comply with the recommendations of the evaluator. The evaluation shall be treated as confidential by the department and is not subject to discovery.

8. Psychotherapy

Within 30 days of the effective date of this decision, respondent shall submit to the department for its prior approval, the name and qualifications of one or more therapists of respondent's choice. Such therapist shall possess a valid California license and may be respondent's treating psychologist or psychiatrist. Upon approval by the department, respondent shall undergo and continue treatment until the department determines that no further psychotherapy is necessary. Respondent shall have the treating psychotherapist

submit quarterly reports to the department and notify the department immediately if the therapist believes respondent poses a threat to the public, or if the therapist believes that respondent is abusing any controlled substances or alcohol. All cost of therapy shall be borne by respondent. Respondent shall execute a Release of Information authorizing the therapist to divulge information to the department.

9. Out of State Residence or Operation

Should respondent leave California to reside or operate outside this state, respondent must notify the department in writing of the dates of departure and return. Reporting in person may be waived if the respondent moves out of the state. However, respondent shall continue compliance with other terms of probation to retain California licensure. Periods of residency, business operation or employment outside California shall not reduce the probationary period.

10. License Issued During Probation

Any license or registration issued to respondent by the department during the period of probation shall be issued as a probationary license or registration and is subject to all the terms and conditions set forth herein. Respondent must comply with terms and conditions herein and demonstrate no cause for disciplinary action or denial of an application.

Respondent shall not be permitted to petition for a reduction in penalty, the modification of any probationary term, or the early termination of probation until at least two years from the effective date of this decision have elapsed.

11. Cost Recovery

Respondent shall pay to the bureau costs associated with its enforcement pursuant to Business and Professions Code Section 125.3 in the amount of $1,580.00. Respondent shall be permitted to pay these costs in a payment plan approved by the bureau, with payments to be completed no later than three months prior to the end of the probation term.

If respondent has not complied with this condition during the probationary term, and respondent has presented sufficient documentation of his good faith efforts to comply with this condition, and if no other conditions have been violated, the bureau, in its discretion, may grant an extension of the respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation will apply.

12. Violation of Probation

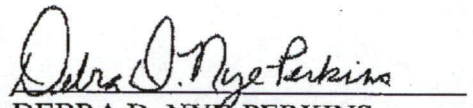
Should respondent violate probation in any respect, the director of the Department of Consumer Affairs, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If an Accusation or Petition

to Revoke Probation is filed against respondent during probation, the department shall have continuing jurisdiction until the matter is final, and the probation shall be extended until the matter is final

13. Completion of Probation

Upon successful completion of probation, respondent shall be entitled to an unrestricted license.

DATED: September 26, 2014



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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 **ACCUSATION**

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:

(a) "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency."

(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:

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

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

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.

. . . .

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