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

In the Matter of the Accusation Against: INSPIRATION CHAPEL & NAPA VALLEY MEMORIAL PARK, INC. Certificate of Authority COA 588; KATHRYN S. CARTER, Cemetery Manager License No. CEM 110; DAVID E. WHALIN, Cemetery Manager License No. CEM 364, INSPIRATION CHAPEL & NAPA VALLEY MEMORIAL PARK, INC. Funeral Establishment License No. FD 1156; DAVID E. WHALIN, Designated Managing Funeral Director No. FDR 792, KATHRYN S. CARTER, Cemetery Manager License No. CEM 110; Funeral Director License No. FDR 219, NAPA COUNTY CREMATORY, Crematory License No, CR 224; DAVID E. WHALIN Crematory Manager License No. CRM 56; ROBERT JOHN PIERCE, Funeral Director License No. FDR 555, RICHARD PIERCE FUNERAL SERVICE, Funeral Establishment License No. FD 364, DAVID E. WHALIN, Manager INSPIRATION CHAPEL & NAPA MEMORIAL VALLEY PARK, INC; KATHRYN S. CARTER; DAVID E. WHALIN 2383 Napa Vallejo Highway Napa, CA 94559 Funeral Director No. FDR 219 Respondents.	Case Nos. A1- 2011-19 and A1-2011-37 OAH No. 2012050824 **DECISION AND ORDER** **(Respondent David E. Whalin)**

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The attached Stipulated Settlement and Disciplinary Order are hereby adopted by the Director of the Department of Consumer Affairs and the Cemetery and Funeral Bureau as the Decision and Order in the above entitled matter.

This Decision shall become effective on October 26, 2012.

IT IS SO ORDERED SEP 26 2012.

Doreathea Johnson

DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

KAMALA D. HARRIS
Attorney General of California
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Attorneys for Complainant

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

In the Matter of the Accusation Against: INSPIRATION CHAPEL & NAPA VALLEY MEMORIAL PARK, INC. Certificate of Authority COA 588; KATHRYN S. CARTER, Cemetery Manager License No. CEM 110; DAVID E. WHALIN, Cemetery Manager License No. CEM 364, INSPIRATION CHAPEL & NAPA VALLEY MEMORIAL PARK, INC. Funeral Establishment License No. FD 1156; DAVID E. WHALIN, Designated Managing Funeral Director No. FDR 792, KATHRYN S. CARTER, Cemetery Manager License No. CEM 110; Funeral Director License No. FDR 219, NAPA COUNTY CREMATORY, Crematory License No, CR 224; DAVID E. WHALIN Crematory Manager License No. CRM 56; ROBERT JOHN PIERCE, Funeral Director License No. FDR 555, RICHARD PIERCE FUNERAL SERVICE, Funeral Establishment License No. FD 364, DAVID E. WHALIN, Manager	Case Nos. A1-2011-19 and A1-2011-37 OAH No. 2012050824 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER** **(Respondent David E. Whalin)**

INSPIRATION CHAPEL & NAPA MEMORIAL VALLEY PARK, INC; KATHRYN S. CARTER; DAVID E. WHALIN
2383 Napa Vallejo Highway
Napa, CA 94559

Funeral Director No. FDR 219

Respondents.

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Lisa M. Moore (Complainant) is the Bureau Chief of the Cemetery and Funeral Bureau. She brought this action solely in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Kim M. Settles, Deputy Attorney General.

2. Respondent David E. Whalin (Respondent) is representing himself in this proceeding and has chosen not to exercise his right to be represented by counsel.

3. On or about May 22, 1997, the Cemetery and Funeral Bureau issued Funeral Director License No. FDR 792 to David E. Whalin (Respondent). The Funeral Director License was in full force and effect at all times relevant to the charges brought in Accusation No. A1- 2011-19; A1-2011-37 and will expire on May 31, 2013, unless renewed.

4. On or about March 22, 2004, the Cemetery and Funeral Bureau issued Crematory Manager License No. 56 to David E. Whalin (Respondent). The Crematory Manager License was in full force and effect at all times relevant to the charges brought in Accusation No. A1-2011-19; A1-2011-37 and will expire on March 31, 2013, unless renewed.

5. On or about October 18, 2007, the Cemetery and Funeral Bureau issued Cemetery Manager License No. 364 to Inspiration Chapel & Napa Memorial Valley Park, Inc; Kathryn S. Carter; David E. Whalin (Respondent). The Cemetery Manager License was in full force and effect at all times relevant to the charges brought in Accusation No. A1-2011-19; A1-2011-37 and will expire on November 30, 2012, unless renewed.

JURISDICTION

6. Accusation No. A1- 2011-19; A1-2011-37 was filed before the Director of Consumer Affairs (Director), for the Cemetery and Funeral Bureau (Bureau), and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on March 22, 2012. Respondent timely filed his Notice of Defense contesting the Accusation.

7. A copy of Accusation No. A1- 2011-19; A1-2011-37 is attached as exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

8. Respondent has carefully read, and understands the charges and allegations in Accusation No. A1- 2011-19; A1-2011-37. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

9. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

10. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

11. Respondent admits that there is a factual basis for the imposition of discipline based on the charges and allegations in Accusation No. A1- 2011-19; A1-2011-37.

12. Respondent agrees that his Funeral Director, Crematory Manager License, and Cemetery Manger License are subject to discipline and he agrees to be bound by the Director's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

13. This stipulation shall be subject to approval by the Director of Consumer Affairs or his designee. Respondent understands and agrees that counsel for Complainant and the staff of the Cemetery and Funeral Bureau may communicate directly with the Director and staff of the Department of Consumer Affairs regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Director considers and acts upon it. If the Director fails to adopt this stipulation as the Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Director shall not be disqualified from further action by having considered this matter.

14. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

15. This Stipulated Settlement and Disciplinary Order are intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

16. In consideration of the foregoing admissions and stipulations, the parties agree that the Director may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Funeral Director No. FDR 792, Crematory Manager License No. CRM 56, and Cemetery Manager License No. CEM 364, issued to Respondent David E. Whalin (Respondent) are revoked. However, the revocations are stayed and Respondent is placed on probation for three (3) years on 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 department.

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. **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.

4. **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.

5. **Completion of Probation.** Upon successful completion of probation, Respondent's license will be fully restored.

6. **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.

7. **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.

8. **Cost Recovery.** Respondent shall pay the department's actual and reasonable costs of investigation and enforcement of this matter in the amount of two thousand five hundred dollars ($2,500.00). This amount shall be paid within two months of completion of Respondent's probation. Probation shall not terminate until full payment has been made. Respondent's license shall not be renewed until the cost recovery has been paid in full or Respondent is otherwise in compliance with a payment plan approved by the department.

9. **Notification to Clients.** Upon suspension of license, Respondent shall provide prospective clients with a copy of the decision before rendering services. Upon request, Respondent shall provide the department with proof of providing a copy of said decision to prospective clients.

10. **Limitation of Duties.** Limitation of Duties – Respondent shall not perform or practice as a Designated Managing Funeral Director during the period of probation. Within 30 days from the effective date of this decision, Respondent shall submit to the Department, for prior approval, a plan to implement this restriction. Respondent shall submit proof satisfactory to the department of this term of probation.

11. **Provision of Records.** Respondent shall provide specific records for department inspection as required.

12. **Evidence of Knowledge.** Respondent shall provide evidence satisfactory to the department that the licensee and all employees are knowledgeable in the laws and regulations governing the funeral industry, if deemed necessary by the policy chief or department director.

13. **Ethics.** Within 30 days of the effective date of this decision, Respondent shall submit for prior Department approval a course of ethics which will be completed within the first year of probation.

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ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Funeral Director License, Cemetery Manager License, and Crematory Manager License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

DATED: 7/31/2012

DAVID E. WHALIN
Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order are hereby respectfully submitted for consideration by the Director of Consumer Affairs.

Dated: July 31, 2012

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
DIANN SOKOLOFF
Supervising Deputy Attorney General

Kim M. Settles

KIM M. SETTLES
Deputy Attorney General
Attorneys for Complainant

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Stipulation.rtf

Exhibit A

Accusation Nos. A1-2011-19 and A1-2011-37

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BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE CEMETERY AND FUNERAL BUREAU
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In the Matter of the Accusation Against: **INSPIRATION CHAPEL & NAPA VALLEY MEMORIAL PARK, INC., Certificate of Authority COA 588; KATHRYN S. CARTER, Cemetery Manager License No. CEM 110; DAVID E. WHALIN, Cemetery Manager License No. CEM 364 2383 Napa Vallejo Highway, Napa, CA 94558** **INSPIRATION CHAPEL & NAPA VALLEY MEMORIAL PARK, INC., Funeral Establishment License No. FD 1156; DAVID E. WHALIN, Designated Managing Funeral Director, Funeral Director License No. FDR 792; 2383 Napa Vallejo Highway, Napa, CA 94558** **KATHRYN S. CARTER, Cemetery Manager License No. CEM 110 Funeral Director License No. FDR 219 21 Lone Oak Court, Napa, CA 94558** **NAPA COUNTY CREMATORY, Crematory License No. CR 224; DAVID E. WHALIN, Crematory Manager License No. CEM 56; ROBERT JOHN PIERCE, Funeral Director License No. FDR 555 1660 Silverado Trail, Napa, CA 94559** **RICHARD PIERCE FUNERAL SERVICE, Funeral Establishment License No. FD 364, DAVID E. WHALIN, Manager, Funeral Director License No. FDR 755 1660 Silverado Trail, Napa, CA 94559** Respondents.	Nos. A1 2011 19 and A1 2011 37 **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.[1]

2. On or about December 6, 1965, the Cemetery and Funeral Bureau issued Funeral Establishment License Number FD 1156 to Inspiration Chapel & Napa Valley Memorial Park, Inc.; Robert J. Pierce, President (deceased); Kathryn S. Carter, Vice-President (Respondents). The Funeral Establishment License expired on December 31, 2009, and has not been renewed. The license is currently in "cancelled" status.

3. On or about February 10, 1997, the Cemetery and Funeral Bureau issued Funeral Director Number FDR 219 to Kathryn S. Carter, (Respondent). The Funeral Director License expired on February 28, 2010, and has not been renewed. The license is currently in "delinquent" status.

4. On or about May 22, 1997, the Cemetery and Funeral Bureau issued Funeral Director License Number FD 792 to David E. Whalin (Respondent). The Funeral Director license will expire on May 31, 2012, unless renewed.

5. On or about March 22, 2004, the Cemetery and Funeral Bureau issued Crematory Manager License Number CRM 56 to David E. Whalin (Respondent). The Crematory Manger License expired on March 31, 2010, and has not been renewed. The license is currently in "delinquent" status.

6. On or about May 25, 2005, the Cemetery and Funeral Bureau issued Crematory License Number CR 224 to Napa County Crematory, Robert J. Pierce, President (Deceased), Kathryn S. Carter, Vice-President, and David E. Whalin, Responsible Crematory Manager

[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.

(Respondents). The Crematory License expired on or about May 31, 2010. The license is currently in "cancelled" status.

7. On or about October 18, 2007, the Cemetery and Funeral Bureau issued Cemetery Manager License Number CEM 364 to David E. Whalin (Respondent). The Cemetery Manager License expired on November 30, 2009. The license is currently in "delinquent" status.

8. On or about June 7, 2004, the Cemetery and Funeral Bureau issued Cemetery Manager License Number CEM 110 to Kathryn S. Carter (Respondent). The Cemetery Manager License will expire on June 30, 2012, unless renewed.

9. On or about May 25, 2005, the Cemetery and Funeral Bureau issued Certificate of Authority – Cemetery License Number COA 588 to Napa Valley Memorial Park, Kathryn S. Carter, President; Robert J. Pierce, Vice-President (deceased) (Respondents). The Certificate of Authority – Cemetery expired on May 31, 2008, and has not been renewed. The license is currently in "cancelled" status.

10. On or about December 8, 1970, the Cemetery and Funeral Bureau issued Funeral Establishment License Number FD 364 to Richard Pierce Funeral Service, Robert J. Pierce, President (deceased); Kathryn S. Carter, Vice-President. The Funeral Bureau License expired on December 31, 2009. The license is currently in "cancelled" status.

JURISDICTION

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

12. Section 7686 states, in pertenent part:

"The bureau may suspend or revoke licenses, 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."

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13. Section 9725 states:

"Upon grounds provided in this article and the other articles of this act, the license of any cemetery licensee and the certificate of authority of any cemetery corporation may be revoked or suspended in accordance with the provisions of this article."

14. Section 7703 of the Code states:

"Violation of any of the provisions of this chapter or of the rules and regulations adopted pursuant to this chapter constitutes a ground for disciplinary action."

15. Section 118, subdivision (b) of the Code provides, in pertinent part, that the expiration 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.

STATUTORY AND REGULATORY PROVISIONS

16. Section 7707 of the Code states:

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

17. Section 9725.1 states:

"Unprofessional conduct by any licensee or registrant or by any agent or employee of a licensee or registrant constitutes grounds for disciplinary action. Unprofessional conduct includes, but is not limited to the following:

(a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of this chapter and any regulation adopted there under, or of any federal or state law or regulation governing the disposition of human remains, operation of cemeteries or crematories, the sale of cemetery property, or the sale of cemetery services or commodities. . ."

18. Section 7735 states:

"No funeral establishment licensed under the laws of the State of California, or the agents or employees of a funeral establishment, shall enter into or solicit any preneed arrangement, contract, or plan, hereinafter referred to as "contract," requiring the payment to the licensee of money or the delivery to the licensee of securities to pay for the final disposition of human

remains or for funeral services or for the furnishing of personal property or funeral merchandise, wherein the use or delivery of those services, property or merchandise is not immediately required, unless the contract requires that all money paid directly or indirectly and all securities delivered under that agreement or under any agreement collateral thereto, shall be held in trust for the purpose for which it was paid or delivered until the contract is fulfilled according to its terms; provided, however, that any payment made or securities deposited pursuant to this article shall be released upon the death of the person for whose benefit the trust was established as provided in Section 7737. The income from the trust may be used to pay for a reasonable annual fee for administering the trust, including a trustee fee to be determined by the bureau, and to establish a reserve of not to exceed 10 percent of the corpus of the trust as a revocation fee in the event of cancellation on the part of the beneficiary. The annual fee for trust administration may be recovered by withdrawals from accumulated trust income, provided that total withdrawals for this purpose shall not exceed the amount determined by the bureau. In no case shall the total amount withdrawn in a year for trust administration exceed the total amount of posted trust income for the immediate 12 preceding months. In addition to annual fees and reserves authorized by this section, a trustee may, at its election, pay taxes on the earning on any trust pursuant to Section 17760.5 of the Revenue and Taxation Code. In no event, however, shall taxes paid on the earnings of any trust be considered part of the fees or reserves authorized by this section. All remaining income shall be accumulated in trust.

None of the corpus of the trust shall be used for payment of any commission nor shall any of the corpus of the trust be used for other expenses of trust administration, or for the payment of taxes on the earnings of the trust."

23. Section 7737 of the Code states:

"All securities purchased by the trustor for deposit in trust and all money received from the trustor for deposit in trust shall be placed in trust with a trustee with 30 days of their receipt by the funeral establishment pursuant to a trust agreement executed by the funeral establishment, the trustor and trustee which shall provide that the trustee shall hold the money or securities in trust for the purposes for which deposited and that the trustee, upon the signature of a majority of

such trustees, shall deliver the corpus of the trust to the funeral establishment upon the filing of a certified copy of the death certificate or other satisfactory evidence of the death of the beneficiary, together with satisfactory evidence that the funeral establishment has furnished the merchandise and services provided, however, that (1) in the case of a trust agreement between any of the trustees set forth in Section 7736 and a recipient of public assistance, under the provisions of subdivision (a) of Section 11156 or paragraph (1) of subdivision (e) of Section 12152 of the Welfare and Institutions Code, and provided the value limitations of those sections are not exceeded, such trust agreement may further provide that it is irrevocable, and (2) in all other cases such trust agreement shall further provide that at any time before the funeral establishment has furnished the merchandise and services provided for in the contract the trustor or the legally appointed representative may in writing demand and receive the return of the corpus of the trust, together with any income accrued in the trust, less the revocation fee provided for in Section 7735; provided, however, that if and when the trustor becomes otherwise eligible, or in order to become eligible, for public social services, as provided in Division 9 (commencing with Section 10000) of the Welfare and Institutions Code, he or she may agree, at his or her option, that the trust shall be irrevocable in order to avail himself or herself of the provisions of Section 11158 or Section 12152 of the Welfare and Institutions Code. The delivery of the corpus of the trust and the accumulated income to the funeral establishment performing the services, trustor or beneficiary pursuant to the terms of this article and the trust agreement herein referred to, shall relieve the trustee of any further liabilities with regard to those funds or income therefrom."

19. Section 7739 states:

"Any person willfully violating the provisions of this article or any of them shall be punishable either by imprisonment in the county jail for a period not exceeding six months, or by fine not exceeding five hundred dollars ($500), or by both imprisonment and fine, or by imprisonment in the state prison for 16 months, or two or three years. If the violator is a funeral establishment licensee, he or she shall also be subject to disciplinary action as provided in Article 6 (commencing with Section 7686)."

20. Section 9650 states:

"(a) Each cemetery authority shall file with the bureau annually, on or before June 1, or within five months after close of their fiscal year provided approval has been granted by the bureau as provided for in Section 9650.1, a written report in a form prescribed by the bureau setting forth the following:

(1) The number of square feet of grave space and the number of crypts and niches sold or disposed of under endowment care by specific periods as set forth in the form prescribed.

(2) The amount collected and deposited in both the general and special endowment care funds segregated as to the amounts for crypts, niches and grave space by specific periods as set forth either on the accrual or cash basis at the option of the cemetery authority.

(3) A statement showing separately the total amount of the general and special endowment care funds invested in each of the investments authorized by law and the amount of cash on hand not invested, which statement shall actually show the financial conditions of the funds.

(4) A statement showing separately the location, description, and character of the investments in which the special endowment care funds are invested. The statement shall show the valuations of any securities held in the endowment care fund as valued pursuant to Section 9659.

(5) A statement showing the transactions entered into between the corporation or any officer, employee or stockholder thereof and the trustees of the endowment care funds with respect to those endowment care funds. The statement shall show the dates, amounts of the transactions, and shall contain a statement of the reasons for those transactions.

(b) The report shall be verified by the president or vice president and one other officer of the cemetery corporation. The information submitted pursuant to paragraphs (2), (3), (4), and (5) shall be accompanied by an annual audit report of the endowment care fund and special care fund signed by a certified public accountant or public accountant. The scope of the audit shall include the inspection, review, and audit of the general purpose financial statements of the endowment

care fund and special care fund, which shall include the balance sheet, the statement of revenues, expenditures, and changes in fund balance.

(c) If a cemetery authority files a written request prior to the date the report is due, the bureau may, in its discretion, grant an additional 30 days within which to file the report."

21. Probate Code section 16002 states:

"(a) The trustee has a duty to administer the trust solely in the interest of the beneficiaries.

(b) It is not a violation of the duty provided in subdivision (a) for a trustee who administers two trusts to sell, exchange, or participate in the sale or exchange of trust property between the trusts, if both of the following requirements are met:

(1) The sale or exchange is fair and reasonable with respect to the beneficiaries of both trusts.

(2) The trustee gives to the beneficiaries of both trusts notice of all material facts related to the sale or exchange that the trustee knows or should know."

22. Probate Code section 16004 states:

"(a) The trustee has a duty not to use or deal with trust property for the trustee's own profit or for any other purpose unconnected with the trust, nor to take part in any transaction in which the trustee has an interest adverse to the beneficiary.

(b) The trustee may not enforce any claim against the trust property that the trustee purchased after or in contemplation of appointment as trustee, but the court may allow the trustee to be reimbursed from trust property the amount that the trustee paid in good faith for the claim.

(c) The transaction between the trustee and a beneficiary which occurs during the existence of the trust or while the trustee's influence with the beneficiary remains and by which the trustee obtains an advantage from the beneficiary is presumed to be a violation of the trustee's fiduciary duties. This presumption is a presumption affecting the burden of proof. This subdivision does not apply to the provisions of an agreement between a trustee and a beneficiary relating to the hiring or compensation of the trustee."

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23. Probate Code section 16046 states:

"(a) Except as provided in subdivision (b), a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule.

(b) The settlor may expand or restrict the prudent investor rule by express provisions in the trust instrument. A trustee is not liable to a beneficiary for the trustee's good faith reliance on these express provisions."

24. Probate Code section 16047 states:

"(a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

(b) A trustee's investment and management decisions respecting individual assets and courses of action must be evaluated not in isolation, but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(c) Among circumstances that are appropriate to consider in investing and managing trust assets are the following, to the extent relevant to the trust or its beneficiaries:

(1) General economic conditions.

(2) The possible effect of inflation or deflation.

(3) The expected tax consequences of investment decisions or strategies.

(4) The role that each investment or course of action plays within the overall trust portfolio.

(5) The expected total return from income and the appreciation of capital.

(6) Other resources of the beneficiaries known to the trustee as determined from information provided by the beneficiaries.

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(7) Needs for liquidity, regularity of income, and preservation or appreciation of capital.

(8) An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

(d) A trustee shall make a reasonable effort to ascertain facts relevant tot the investment and management of trust assets.

(e) A trustee may invest in any kind of property or type of investment or engage in any course of action or investment strategy consistent with the standards of this chapter."

25. Probate Code section 16048 states:

"In making and implementing investment decisions, the trustee has a duty to diversify the investments of the trust unless, under the circumstances, it is prudent not to do so."

26. Health and Safety Code section 8725 states:

"Every cemetery authority which now or hereafter maintains a cemetery may place its cemetery under endowment care and establish, maintain, and operate an endowment care fund. Endowment care and special care funds consisting of trust funds created by irrevocable trust agreements may be commingled for investment and the income therefrom shall be divided between the endowment care and special care funds in the proportion that each fund contributed to the principal sum invested. Special care funds derived from trusts created by a revocable agreement shall not be commingled for investment and shall be accounted for separately from all other funds. The funds may be held in the name of the cemetery authority or its directors or in the name of the trustees appointed by the cemetery authority."

27. Health and Safety Code section 8726 states:

"The principal of all funds for endowment care shall be invested and the income only may be used for the care, maintenance, and embellishment of the cemetery in accordance with the provisions of law and the resolutions, bylaws, rules and regulations or other actions or instruments of the cemetery authority and for no other purpose. Endowment and special care funds shall be maintained separate and distinct from all other funds and the trustees shall keep separate records thereof."

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28. Health and Safety Code section 8731 states:

"(a) The cemetery authority may appoint a board of trustees of not less than three in number as trustees of its endowment care fund. The members of the board of trustees shall hold office subject to the direction of the cemetery authority.

(b) If within 30 days after notice of non-receipt by the Cemetery and Funeral Bureau or other agency with regulatory authority over cemetery authorities, the cemetery authority fails to file the report required by Section 9650 of the Business and Professions Code, of if the report is materially not in compliance with law or the endowment care fund is materially not in compliance with law, the cemetery authority may be required to appoint as sole trustee of its endowment care fund under Section 8733.5, any bank or trust company qualified under the provisions of the Banking Law (Division 1 (commencing with Section 99) of the Financial Code) to engage in the trust business. That requirement may be imposed by the Cemetery and Funeral Bureau or other agency with regulatory authority over cemetery authorities, provided that the cemetery authority has received written notice of the alleged violation and has been given the opportunity to correct the alleged violation, and there has been a finding of a material violation in an administrative hearing.

(c)(1) Each member of the board of trustees shall provide signatory acknowledgment of understanding of the role of a trustee in managing trust funds in the following areas:

(A) Trustee duties, powers, and liabilities as contained in Part 4 (commencing with Section 16000) of Division 9 of the Probate Code.

(B) Reporting and regulatory requirements contained in Article 3 (commencing with Section 9650) of Chapter 19 of Division 3 of the Business and Professions Code.

(C) Provisions related to the care of active cemeteries contained in Chapter 5 (commencing with Section 8700) of Part 3 of Division 8.

(2) The signatory acknowledgment shall be retained by the cemetery authority during the duration of the trustee's term of office."

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29. Health and Safety Code 8738 states:

"An endowment care cemetery is one which has deposited in its endowment care fund the minimum amounts heretofore required by law and shall hereafter have deposited in its endowment care fund at the time of or not later than completion of the initial sale not less than the following amounts for plots sold or disposed of:

(a) Four dollars and fifty cents ($4.50) a square foot for each grave.

(b) Seventy dollars ($70) for each niche.

(c) Two hundred twenty dollars ($220) for each crypt; provided, however, that for companion crypts, there shall be deposited two hundred twenty dollars ($220) for the first crypt and one hundred ten dollars ($110) for each additional crypt.

(d) Seventy dollars ($70) for the cremated remains of each deceased person scattered in the cemetery at a garden or designated open area that is not an interment site subject to subdivision (a)."

30. Health and Safety Code section 8747.5 states:

"Each cemetery shall at all times maintain and keep within the State of California all books, accounts, records, cash and evidences of investments of its general and special care funds. They shall be readily available for inspection and examination by the Cemetery and Funeral Bureau in accordance with the provisions of the Business and Professions Code."

31. Health and Safety Code section 8750 states:

"Endowment care funds shall not be used for any purpose other than to provide through income only for the reserves authorized by law and for the endowment care of the cemetery in accordance with the resolutions, by-laws, rules and regulations or other actions or instruments of the cemetery authority."

32. Health and Safety Code section 8751 states:

"The funds shall be invested and reinvested, and kept invested in:

(a) Bonds of the United States or this state, or of any county, city and county, or city in this state.

(b) Bonds legal for investment for savings banks in this state.

(c) First mortgages or first trust deeds on improved real estate.

(d) Income producing improved real estate in any city or city and county in this state.

(e) Investment certificates in any savings and loan association organized existing and doing business under the laws of this state.

(f) Investments of the type enumerated for domestic incorporated insurers in Article 3, Chapter 2, part 2, of Division 1 of the Insurance Code of this state.

(g) By deposit in a bank which is insured by the Federal Deposit Insurance Corporation.

(h) Shares of a duly chartered and insured federal savings and loan association."

33. Health and Safety Code section 8751.1 states:

"In addition to the requirements of Section 8751, the funds may be invested and reinvested and kept invested in investments of the type and in the manner as provided in Part 4 (commencing with Section 16000) of Division 9 of the Probate Code."

34. Health and Safety Code section 8777 states:

"All money or property received by a cemetery authority for deposit in a special care fund shall be placed in the custody of the trustee or trustees thereof within 30 days after receipt by the cemetery authority. The corpus of special care trusts shall be invested and reinvested and kept invested as authorized by Section 8778."

35. Health and Safety Code section 8778 states:

" The following shall be eligible investments for all special care trusts:

(a) Bonds of the United States or this state, or of any county, city or city and county in this state.

(b) Bonds which are legal investments for commercial banks in this state.

(c) Certificates of deposit or other interest-bearing accounts in any bank in this state insured by the Federal Deposit Insurance Corporation.

(d) Investment certificates or shares in any state or federally chartered savings and loan association insured by the Federal Savings and Loan Insurance Corporation.

(e) Investments in first trust deeds on improved real estate, provided such loans require monthly amortization of principal and interest and are fully amortized within 30 years or

the term of the loan, whichever comes first. No loan shall be made to the cemetery authority; director, officer, or stockholder of a cemetery authority, or trustees of the special care funds; or partners, relatives, agents, or employees thereof.

(f) Any investment that is lawful for endowment care funds under Sections 8751 and 8751.1.

36. Health and Safety Code section 8778.5 states:

"Each special care trust fund established pursuant to this article shall be administered in compliance with the following requirements:

(a)(1) The board of trustees shall honor a written request of revocation by the trustor within 30 days upon receipt of the written request.

(2) Except as provided in paragraph (3), the board of trustees upon revocation of a special care trust may assess a revocation fee on the earned income of the trust only, the amount of which shall not exceed 10 percent of the trust corpus, as set forth in subdivision (c) of Section 2370 of Title 16 of the California Code of Regulations.

(3) If, prior to or upon the death of the beneficiary of a revocable special care trust, the cemetery authority is unable to perform the services of the special care trust fund agreement, the board of trustees shall pay the entire trust corpus and all earned income to the beneficiary or trustor, or the legal representative or either the beneficiary or trustor, without the imposition of a revocation fee.

(b) Notwithstanding subdivision (d) of Section 2370 of Title 16 of the California Code of Regulations, the board of trustees may charge an annual fee for administering a revocable special care trust fund, which may be recovered by administrative withdrawals from current trust income, but the total administrative withdrawals in any year shall not exceed 4 percent of the trust balance.

(c) Notwithstanding Section 8785, any person, partnership, or corporation who violates this section shall be subject to disciplinary action as provided in Article 6 (commencing with Section 9725) of Chapter 19 of Division 3 of the Business and Professions Code, or by a civil fine

not exceeding five hundred dollars ($500), or by both, as determined by the Cemetery and Funeral Bureau and shall not be guilty of a crime."

37. Health and Safety Code section 8779.5 states:

"Each special care fund established pursuant to this article shall be held in trust and managed by either the board of trustees of the cemetery authority's endowment care fund or by a board of trustees meeting the qualifications prescribed by this chapter for such a board of trustees. However, nothing in this section shall be construed to modify the terms of any special care trust established prior to January 1, 1977."

38. California Code of Regulations, title 16, section 1204 states:

"(a) Any person, association, partnership, corporation or other organization licensed and conducting business as a funeral establishment shall designate a licensed funeral director to manage the establishment, and shall report the designation to the bureau within ten (10) days of the effective date of the designation.

(b) The designated managing licensed funeral director of a licensed funeral establishment shall be responsible for exercising such direct supervision and control over the conduct of said funeral establishment as is necessary to ensure full compliance with the Funeral Directors and Embalmers Law, the provisions of this chapter and the applicable provisions of the Health and Safety Code. Failure of the designated managing licensed funeral director and/or the licensed funeral establishment to exercise such supervision or control, or failure of the holder of the funeral establishment license to make such designation shall constitute a ground for disciplinary action.

(c) A licensed funeral establishment may, upon approval by the bureau, designate a licensed funeral director to manage more than one (1) facility under the following conditions:

(1) The licensed funeral establishments are under common ownership, and;

(2) The common owners have designated one (1) funeral establishment as the main office. The main office is defined as a designated location registered with the bureau where the principals of the funeral establishment can be contacted, and;

(3) The remaining establishment must be within a sixty (60) mile radius of the main office, and;

(4) the licensed funeral establishments requesting permission from the bureau to use one (1) designated managing licensed funeral director, must make a written request, on a form 21F-12 (4/93) provided by the bureau. An inspection shall be scheduled and completed to ensure that the conditions set forth in this section have been satisfied.

(d) A funeral director who advertises his or her services shall hold a current, active license, and shall include his or her license number, the name and license number of the funeral establishment at which he or she is employed, and the name of the city or community where the funeral establishment is located on any television and print advertising including, but not limited to, telephone and other directory listings, and newspaper and magazine advertisements."

39. California Code of Regulations, title 16, section 1263 states:

"(a) The trust funds shall be invested and reinvested, and kept invested in:

(1) Bonds of or securities guaranteed by the United States or an Agency thereof or this State, or of any County, City, or City and County in this State.

(2) Bonds which are legal investments for commercial banks in this State.

(3) Certificates of deposit or other interest-bearing accounts in any bank in this State insured by the Federal Deposit Insurance Corporation.

(4) Investment certificates or shares in any state or federally chartered savings institution insured by the Federal Savings and Loan Insurance corporation.

(5) Investments of the type and in the manner as provided in Section 15001 et. Seq. of the Probate Code.

(b) No loan shall be made to any licensed funeral establishment; nor to any owner, director, officer, partner or stockholder of any licensed funeral establishment; or to trustees of the trust funds; or to partners, relatives, agents, or employees of any licensed funeral establishment or of such trustees."

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40. California Code of Regulations, title 16, section 1267 states:

"Each funeral establishment charged with the reporting of pre-need funds hereunder shall at all times maintain or cause the trustee of the pre-need trust to maintain in California and available for inspection by the bureau during reasonable working hours, complete financial records of all pre-need contracts and arrangements, which records shall be established and maintained in accordance with generally accepted accounting principles. Such records shall include the following, provided, however, that records may otherwise be established and maintained in accordance with generally accepted accounting principles:

(a) An individual trustor contract, plan or agreement.

(b) An individual trustor or beneficiary ledger account which shall set forth the amount of the contract, all payments received, all income pro-rated in accordance with the ratio which the trust corpus of the account bears to the entire corpus invested as set forth in Section 1265.

(c) A cash receipts journal which shall show each payment received and shall be totaled monthly.

(d) A cash disbursement journal which will show each withdrawal for an investment in compliance with 1263 and each disbursement to the funeral establishment for a serviced account or to the individual trustor on a cancelled account, and all withdrawals for documented expenses.

(e) In the case where a checking account is used to deposit payments received or disbursements to the funeral establishment and/or the funeral director, a trustor or an investment, it shall be designated as a trust fund account, and be reported as such. It shall be reconciled each month with the balance shown in the trust account by accounting for checks not yet presented and outstanding, bank deposits not shown on the bank statements, and other adjustments required.

(f) A general ledger which shall be posted monthly with respect to all accounts controlling the fiduciary relationship with the individual trustors. Such postings shall occur within ninety (90) days after the close of each business month.

(g) A portfolio of all investments related to the trust funds.

(h) Records for serviced accounts shall include but not be limited to:

(1) A copy of the death certificate or other satisfactory evidence of the death; copies of all documents required as specified under Section 7685 and 7685.2, Division 3, Chapter 12, Article 5.5 of the Business and Professions Code; a copy of the final arrangements (itemized); and a copy of the final statement to the family.

(2) All monies received from the trust; all monies received from the family; and all monies received from the Veterans Administration or Social Security or any other source to be applied to the final bill.

(3) A record showing credit for each of the above.

(i) Records for cancelled accounts shall include but not be limited to:

(1) A record of all income earned and documented expenses taken including a revocation fee as stated in Section 7735, Division 3, Chapter 12, Article 9, of the Business and Professions Code.

(2) A copy of the final accounting to the family with the cancelled check or withdrawal slip showing the amount refunded to the trustor.

(j) All of the foregoing records shall be retained for a period of one (1) year after the account has been cancelled or serviced and audited by the bureau and compliance with all recommendations made and audit exceptions resolved or seven (7) years from the date of service or cancellation, whichever comes first.

The required books and records for more than one (1) licensed funeral establishment may be centrally maintained at a single location in California with notification to the bureau or the main office as defined in Section 1204(c)(2), provided that a monthly summary of all financial transactions pertaining to each individual trust account for each licensed funeral establishment is available, at each such establishment during reasonable working hours, to the bureau or its authorized representatives; and provides further that the monthly summary contains sufficient information from which the current balance of each individual trustor's account or each individual trustor's share of any commingled trust account may be identified."

41. California Code of Regulations, title 16, section 1268 states:

"No pre-need trust funds shall be mingled or commingled with the funds of any other person, firm, or corporation; except that, for the purpose of investment pursuant to Division 3, Chapter 12, Article 9 of the Business and Professions Code and the provisions of this Article, all pre-need funeral trust funds received and held by a single trustee or a single set of trustees, may be commingled for investment purposes.

If the bureau finds that such funds have been invested in violation of this Article, it shall, by written order mailed to the person or persons in charge of such funds, require the reinvestment of such funds in conformity to this Article within ninety (90) days from the date of such order; provided, however, that such period may be extended by the bureau at its discretion.

In the enforcement of its order, the bureau is authorized to bring such action as may be necessary to enforce the provisions of law subject to its jurisdiction."

42. California Code of Regulations, title 16, section 1269 states:

"(a) Each licensed funeral establishment and licensed funeral director who enters into any pre-need arrangements, contracts or plans described in and subject to the provisions of Article 9, Chapter 12, Division 3 of the Business and professions Code shall file with the bureau annually on or before May 1 of each year and upon transfer of license or cessation of business, a written, verified or audited report, on form 21 P-4A (1/94) prescribed and furnished by the bureau, pertaining to funds received and held under such arrangements, contracts or plans. Firms utilizing a fiscal year accounting system may request permission, in writing to the bureau chief to file said report on a fiscal year basis and, if permission is granted, said report shall then be filed with the bureau no later than one hundred twenty (120) days from the date of the close of said fiscal year.

(b) The report required under this Article shall accompany the forms of assignment or transfer of a funeral establishment license. The report required hereunder upon cessation of business as a licensed funeral establishment shall be submitted thirty (30) days prior to such cessation of business.

(c) In cases where trust corpus is deposited in individual savings accounts, and not commingled for investment purposes, the bureau may require a verified report. Said requirement

of verification shall be deemed complied with by a verification under penalty of perjury by the owner, partners, or, in the case of a corporation, by the president or vice-president and one (1) other officer thereof and, in addition thereto, all reports must contain a verification under penalty of perjury executed by at least two (2) trustees not employed by the funeral establishment and, in the case of a banking institution or trust company legally authorized to act as a trustee within the meaning of Section 7736 of Article 9, Chapter 12, Division 3, of the Business and Professions Code, a verification under penalty of perjury on behalf of such trustee by an authorized representative of said trustee.

(d) In cases where trust funds have been commingled for purposes of investment, the bureau may require, in addition to the written report required by section (a) of this section, an independent audit report prepared and signed by a Certified Public Accountant or Public Accountant, currently licensed in the State of California, which certifies compliance with the provisions of Article 9, Chapter 12, Division 3 of the Business and Professions Code and the provisions of this Article.

(e) All written reports required under this section shall include, but are not limited to, a statement setting forth:

(1) Amounts collected pursuant to pre-need arrangements, contracts or plans, or any agreements collateral thereto;

(2) Amounts deposited with the trustee and held in trust;

(3) Amounts of authorized expenditures of income allocaable to individual accounts, itemized as to the nature of expenditures;

(4) Amount of authorized expenditures of income paid, itemized as to the nature of expenditure; and

(5) Separately, the total amount of such trust funds invested in each of the investments authorized by law and the amount of cash on hand not invested which statement actually show the financial condition of the trust funds.

(f) Two (2) or more funeral establishments who utilize a common trust fund to hold and administer payments received under pre-need contracts may cause the trustee of that common

trust fund to file one (1) combined annual report regarding all such pre-need contracts, provided each funeral establishment's information is disclosed separately."

43. California Code of Regulations, title 16, section 1274 states:

"If, for any reason, a licensed funeral establishment or licensed funeral director is unable to perform the funeral services prior to or upon the death of the beneficiary of a pre-need trust agreement, then the trustees shall pay all trust corpus and net income to the beneficiary, trustor or the legal representative of either the beneficiary or trustor without the imposition of any revocation charge."

44. 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.

FACTUAL SUMMARY

45. On or about March 31, 2004, Chapel of the Chimes, the owner of Napa Valley Memorial Park, sold all the assets, including the Napa Valley Memorial Park name and business, to Inspiration Chapel and Napa Valley Memorial Park, License No. COA 513, a California corporation formed by Respondent, Kathryn S. Carter. The purchase agreement included the cemetery, Napa Valley Memorial Park, License No. COA 588, and the funeral establishment, Inspiration Chapel and Napa Valley Memorial Park, License No. FD 1156. Both establishments are located at 2383 Napa Vallejo Highway in Napa, California, and are operated by the management company Pierce Carter, LLC, formed by husband and wife Kathryn S. Carter and Robert Pierce (deceased).

A Preneed Trust Fund Report and financial statement filed by Respondents in March, 2004 indicates that Respondents Kathryn S. Carter and Robert Pierce were entrusted with $711,818.40 of funeral preneed trust funds at the time of the purchase. The trust funds had been maintained in allowable, diversified investments prior to the time they were entrusted to Respondents, Carter and Pierce. The trust funds represented, in part, a minimum of 298 consumers. By on or about March, 2005, the balance of the preneed trust funds had been reduced to $674,845.00.

Respondents moved the trust funds totalling $674,845.00 out of the original, allowable and diversified investment securities and transferred all of the trust funds into Cornerstone Income Fund LP ("Cornerstone"), a company that invested in hedge funds. The investments are not allowable or diversified in accordance with the law.

Respondents invested $674,845.00 of funeral preneed funds and $889,835.00 of endowment care funds and special care funds with Cornerstone. In or about July 2007, the Department of Corporations ordered Cornerstone to cease and desist operations after findings that Cornerstone engaged in fraudulent and deceptive business practices. Respondents recovered $938,431.00 of the total invested trust funds through Cornerstone Income Fund's liquidation efforts.

46. Under the authority vested in the Bureau by Section 9652, subdivision (a) and California Code of Regulations, title 16, section 1267, the Bureau conducted an audit of the Endowment Care Fund and Special Care Trust Fund of Napa Valley Memorial Park, and the Pre-need Trust Fund of Inspiration Chapel and Napa Valley Memorial Park. The audit period covered March 2004 through October 2009. The purpose of the audit was to determine if Inspiration Chapel & Napa Valley Memorial Park, Inc. operated in compliance with funeral trust's endowment care fund and special care fund's laws and regulations.

A. The Bureau determined that Napa Valley Memorial Park is not in compliance with the applicable laws and regulations governing the administration of the Endowment Care and Special Care Trust Fund, in that Respondents failed to:

(1) Deposit the Endowment Care and Special Care funds collected into separate and distinct valid Endowment Care Fund and Special Care Fund trust fund accounts. This resulted in the loss of those trust funds collected since March 2004.

(2) Maintain and safeguard the Endowment Care Fund and Special Care Fund trusts that were transferred from the prior owner of the funeral establishment to their custody when the cemetery was purchased. Respondents were unable to account for $1,022,801.00 of the above-referenced trust funds that should have been invested.

(3) Provide adequate and complete trust records to the Cemetery and Funeral Bureau auditors for examination.

(4) File the annual Endowment Care Fund and Special Care Fund trust reports with the Bureau for 2004, 2005, 2006, 2007, 2008, and 2009.

(5) Maintain on file the Trustee Acknowledgement Form.

B. The Bureau also determined that Inspiration Chapel and Napa Valley Memorial Park were not in compliance with applicable laws and regulations governing the administration of Funeral Preneed Trust Funds, in that Respondents failed to:

(1) Deposit the Funeral Preneed funds collected into a separate and distinct valid trust fund account. This resulted in a loss of those preneed trust funds collected since March 2004.

(2) Maintain and safeguard the funeral preneed trusts that were transferred to their custody when the funeral establishment was purchased. Respondents were unable to account for $711, 818.40 of funeral preneed trust funds that should have been invested.

(3) Provide adequate and complete trust records to the Cemetery and Funeral Bureau Auditors for examination.

(4) File the annual funeral preneed trust reports to the Bureau for 2006, 2007, 2008 and 2009.

(5) Deposit the Preneed Trust funds collected into a separate and distinct trust fund account.

FIRST CAUSE FOR DISCIPLINE

47. Respondents are subject to disciplinary action under Code section 7737, in that Respondents failed to timely deposit money received for preneed funeral arrangements into the appropriate funeral trust account.

A. The license for Inspiration Chapel & Napa Valley Memorial Park, Inc., was cancelled on or about March 23, 2010, after Respondent, Kathryn Carter notified the Bureau that the establishment had closed. The closure of the establishment results in the establishment

owner's inability to perform under California Code of Regulations, title 16, section 1274. Respondents should return to the trustors the funeral preneed monies collected and the accumulated income, in accordance with California Code of Regulations, title 16, section 1274.

SECOND CAUSE FOR DISCIPLINE

48. Respondents are subject to disciplinary action under Code section 7703, in that they failed to maintain and safeguard funeral preneed trust investments in violation of the following provisions of the California Code of Regulations, title 16:

A. Section 1263 - Respondents failed to maintain and safeguard preneed trust fund investments pursuant to California Probate Code section 16002, subdivision (a), 16004, subdivision (a), 16045, 16046, 16047, and 16048.

B. Section 1268 - Respondents improperly commingled the preneed trust in the funeral establishment's general checking account.

THIRD CAUSE FOR DISCIPLINE

49. Respondents are subject to disciplinary action under Code section 7703, in that they failed to timely file the required annual funeral preneed trust reports for the calendar years 2005, 2006, 2007, 2008, and 2009, as required by California Code of Regulations, title 16, section 1269.

FOURTH CAUSE FOR DISCIPLINE

50. Respondents are subject to disciplinary action under Code section 7703, in that they failed to properly maintain and provide complete financial records of all preneed contracts for inspection in violation of the following regulations contained in California Code of Regulation, title 16:

A. Section 1267 - failed to maintain and provide for inspection by the Bureau the complete financial records of all preneed contracts.

B. Section 1267, subdivision (j) - failed to retain records for a period of one year after the account has been cancelled or serviced and audited by the Bureau.

C. Section 1204, subdivision (b) - designated managing licensed funeral director failed to exercise direct supervision and control over conduct of the funeral establishment as is necessary to ensure full compliance with the law.

D. Section 1263 - failed to maintain and safeguard preneed trust fund investments pursuant to California Probate Code section 16002, subdivision (a), 160004, subdivision (a), 16045, 16046, 16047, and 16048.

FIFTH CAUSE FOR DISCIPLINE

51. Respondents are subject to disciplinary action under Code section 9725.1, subdivision (a), in that they violated s tate law governing the operation of cemeteries, the sale of cemetery property, or the sale of crematory services or commodities as follows:

A. Failed to deposit contributions into the Special Care Trust and Endowment Care Trust as required by Health and Safety Code sections 8726, 8777, 8738, and 8778.5, subdivision (a)(3).

B. Failed to maintain and safeguard Endowment Care Fund and Special Care Fund trust fund investments as required by Health and Safety Code section 8778, 8750, 8751, 8751.1, 8779.5, 8725, and Probate Code sections 16002, subdivisions (a); 16004, subdivision (a); 16045, 16046,16047, subdivision (a); and 16048.

C. Failed to provide records for inspection and examination, as requested by Bureau staff in violation of Health and Safety Code section 8747.5.

D. Failed to maintain Trustee Acknowledgement Form on file in violation of Health and Safety Code section 8731, subdivision (c)(1).

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SIXTH CAUSE FOR DISCIPLINE

52. Respondents are subject to discipline under Code section 9650, in that they failed to timely file the required annual Endowment Care Fund and Special Care Fund reports for the calendar years 2004, 2005, 2006, 2007, 2008, and 2009, with the Bureau.

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 Certificate of Authority Number COA 588, issued to Inspiration Chapel & Napa Memorial Valley Park, Inc;

2. Revoking or suspending Cemetery Manager License No. CEM 110, issued to Kathryn S. Carter;

3. Revoking or suspending Cemetery Manager License No. CEM 364, issued to David E. Whalin;

4. Revoking or suspending Funeral Establishent Licence Number FD 1156, issued to Inspiration Chapel & Napa Memorial Valley Park, Inc;

5. Revoking or suspending Funeral Director License Number FDR 219, issued to Kathryn S. Carter;

6. Revoking or suspending Funeral Director License Number FDR 792, issued to David E. Whalin;

7. Revoking or suspending Crematory License Number CR 224, issued to Napa County Crematory;

8. Revoking or suspending Crematory Manager License Number CRM 56, issued to David E. Whalin;

9. Ordering Kathryn S. Carter 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;

10. Ordering David E. Whalin 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;

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

DATED: March 19, 2012

Lisa M. Moore

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

SF2011900157