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

In the Matter of Accusation Against:	)	Case No. A1-2009-151
	)	
STEWARD-PEARCE MORTUARY;	)	OAH No. 2009121220
LYDIA E. PEARCE, President	)	
	)	
Funeral Establishment License No. FD 1537,	)	
	)	
and	)	
	)	
CARL LEE STEEL	)	
	)	
Funeral Director License No. FDR 1886,	)	
	)	
Respondents.	)	
	)	

DECISION

The attached Proposed Decision and Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

This Decision shall become effective July 31, 2010.

IT IS SO ORDERED this 1st day of July, 2010.

Doreathea Johnson

DOREATHEA JOHNSON
Deputy Director, Legal Affairs Division
Department of Consumer Affairs

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

In the Matter of the Accusation Against: **STEWARD-PEARCE MORTUARY;** **LYDIA E. PEARCE, PRESIDENT** **Funeral Establishment License No. FD 1537,** **and** **CARL LEE STEEL** **Funeral Director License No. FDR 1886,** **Respondents.**	**Case No. A1-2009-151** **OAH No. 2009121220**

PROPOSED DECISION

Nancy Beezy Micon, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on May 19, 2010, in Los Angeles, California.

Thomas L. Rinaldi, Deputy Attorney General, represented complainant, Richard L. Wallinder, Bureau Chief of the Cemetery and Funeral Bureau, Department of Consumer Affairs.

Steward-Pearce Mortuary (respondent or Steward-Pearce) was represented by its president, Lydia E. Pearce (Pearce).

Carl Lee Steel (respondent Steel) represented himself.

Oral and documentary evidence was received, the record was closed, and the matter submitted on the hearing date, May 19, 2010.

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FACTUAL FINDINGS

1. Complainant filed the Accusation in his official capacity as Bureau Chief, Cemetery and Funeral Bureau, Department of Consumer Affairs (Bureau).

2. On October 7, 1994, Bureau issued Funeral Establishment license number FD 1537 to respondent Steward-Pearce. The license was in full force and effect at all relevant times. It will expire on October 31, 2010, unless renewed.

3. Pearce is the president of respondent Steward-Pearce.

4. On August 16, 1999, the Bureau issued Funeral Director license number FDR 1886 to respondent Steel. The license was in full force and effect at all relevant times. It will expire on August 31, 2010, unless renewed. Respondent Steel is listed on respondent Steward-Pearce's Funeral Establishment license as the manager of respondent Steward-Pearce.

Fraudulent Scheme at Respondent Steward-Pearce

5. On or about May 5, 2008, in the United States District Court, Central District of California, in case number 08-00332, Pearce was convicted, on her plea of guilty, to violating three counts of 18 United States Code sections 2 (Aiding and Abetting and Causing an Act to be Done) and 1343 (Wire Fraud), three felonies (the conviction). No evidence was presented concerning the court's sentencing.

6. The facts and circumstances surrounding the conviction are that Pearce, between approximately January and June 2006, participated in a scheme to defraud two financial assignment companies (insurance companies) by staging a fake funeral. The scheme involved the purchase of life insurance policies for an individual named "Jim Davis" (Davis). When the life insurance policies matured, a funeral was staged for Davis at respondent Steward-Pearce. After the funeral, the casket was exhumed and a fake cremation was arranged. Pearce provided the insurance companies with paperwork, funeral bills, and sworn statements of death. Based on the false documentation submitted by Pearce, the insurance companies advanced approximately $49,000 to respondent Steward-Pearce to cover the expenses for the fake funeral. Pearce knew the funeral for Davis was fake and that the documentation was fraudulent.

7. At the administrative hearing, Pearce justified her actions by claiming she participated in the scheme because her life was threatened. According to Pearce, she ran an honest business between 2001 and 2006. She contends she did not participate in all aspects of the criminal conduct, such as a scheme to obtain life insurance proceeds on Davis. She nevertheless explained that the financial hardship of respondent Steward-Pearce motivated her actions.

8. Pearce has not paid restitution to the insurance companies.

9. Pearce's grandmother died in February 1999. The funeral arrangements were handled by Steel Family Mortuary. Pearce explained that she wanted to serve other families who lost their loved ones and that she therefore got a job at Steel Family Mortuary in their insurance department. Pearce eventually took the test to become an insurance agent. She assisted families in the "pre-need" division of the insurance department. Pearce purchased the mortuary from the Steel family in approximately 2001. She prides herself on her sensitive treatment of grieving families. She wishes to retain her license and points out that her employees depend upon respondent Steward-Pearce for a living.

Respondent Steel

10. Respondent Steel and his family owned and operated Steel Family Mortuary for approximately six years. Effective June 28, 2001, the Steel Family Mortuary business was dissolved and its business wound up. As noted in factual finding number 9, Pearce purchased the business from the Steel family and formed respondent Steward-Pearce Mortuary. Respondent Steel agreed to allow respondent Steward-Pearce to utilize his funeral director's license while Pearce went through the process of obtaining her own license. Pearce did not obtain a funeral director's license. Respondent Steel nevertheless allowed Pearce to continue to "hang his license on the wall" because he knew it was necessary in order for respondent Steward-Pearce to operate.

11. Respondent Steel credibly testified that he felt he was doing a favor for a friend. Respondent Steel received no compensation from respondent Steward-Pearce. He had no involvement in the business of respondent Steward-Pearce or the fake funeral scheme. His first knowledge of the fraudulent scheme was when he heard about it on the television news. After learning of the allegations, respondent Steel took immediate action to remove his license from respondent Steward-Pearce. Respondent Steel asserted that he did not realize he needed to be present to oversee respondent Steward-Pearce. He has fully cooperated with complainant and acknowledges that he was wrong to allow Pearce to use his license for respondent Steward-Pearce when he had no involvement in the operations of the business.

12. Respondent Steel is a retired police officer with the Los Angeles Police Department, where he served for approximately 33 years between March 1974 and July 2007. Respondent Steel became involved in the cemetery and mortuary business when his family decided to assist his brother in starting Steel Family Mortuary. Respondent Steel does not intend to engage in the cemetery and mortuary business in the future.

13. Based on his testimony and credible demeanor during his testimony, respondent Steel does not appear to be a threat to the public.

Costs

14. The Bureau incurred costs, including attorney fees, in the total sum of $3,551.75 in connection with the investigation and prosecution of this action. Those costs are deemed just and reasonable.

LEGAL CONCLUSIONS

1. Cause exists to revoke or suspend respondent Steward-Pearce Mortuary's funeral establishment license number FD 1537 pursuant to Business and Professions Code section 7692, for misrepresentation and fraud, as set forth in factual finding numbers 5 through 8.

2. Cause exists to revoke or suspend respondent Steward-Pearce Mortuary's funeral establishment license number FD 1537 pursuant to Business and Professions Code section 7707, for unprofessional conduct, as set forth in factual finding numbers 5 through 8.

3. Cause exists to discipline respondent Carl Lee Steel's funeral director license number FDR 1886 pursuant to Business and Professions Code section 7703, in conjunction with California Code of Regulations, title 16, section 1204, for failure to ensure compliance with the laws and regulations governing funeral establishments, as set forth in factual finding numbers 2 through 13.

4. Cause exists to order respondents to pay the costs claimed under Business and Professions Code section 125.3, as set forth in factual finding number 14. Respondent Steward-Pearce, as the party who engaged in the misrepresentation and fraud resulting in the initiation of this action, will be ordered to reimburse complainant for its costs.

5. Complainant established that respondent Steward-Pearce engaged in misrepresentation and fraud in the conduct of its business in order to collect approximately $49,000 from insurance companies for a fake funeral. Pearce argues that she engaged in the fraudulent conduct because her life was threatened. Pearce, however, has done nothing to show that her motives were anything other than to obtain funds through the use of fraud. Although more than four years have passed since the fraudulent conduct took place, Pearce has not engaged in efforts to make restitution to the insurance companies. She admitted that her actions were motivated by the financial hardship being experienced at respondent Steward-Pearce. As the owner and president of respondent Steward-Pearce, Pearce was responsible for conducting the business in a lawful manner. The public relies upon respondent Steward-Pearce to conduct itself with honesty and integrity. Pearce's guilty plea and conviction establish that respondent Steward-Pearce was involved in the commission of misrepresentation and fraud, and that it engaged in unprofessional conduct.

Respondent Steward-Pearce presented no evidence to establish that the public safety, welfare and interest can be adequately protected should respondent Steward-Pearce be permitted to retain its licensure.

6. Complainant established that respondent Steel did not properly oversee the activities at respondent Steward-Pearce. Respondent Steel admits that he allowed his funeral director's license to be "hung on the wall" as a favor to Pearce without having any oversight of the operation of the business. Respondent Steel should have known better. However, he credibly testified that he did not. He had no involvement in the actual wrongdoing, immediately took action to correct the situation, and fully cooperated with complainant in this action. Should respondent Steel choose to work as a funeral director in the future or engage in any other business or profession regulated by the State of California there is no doubt that he will exercise his duties with honesty and integrity. A thirty day suspension is sufficient discipline for his negligent conduct.

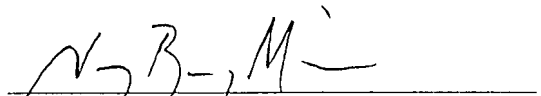
ORDER

1. Funeral Establishment License No. FD 1537, issued to respondent, Steward-Pearce Mortuary, Lydia E. Pearce, President, is revoked.

2. Funeral Director License No. FDR 1886, issued to Respondent Carl Lee Steel, is suspended for thirty days, effective thirty days after the effective date of this decision.

3. Respondent Steward-Pearce Mortuary, Lydia E. Pearce, President, shall reimburse the Bureau the sum of $3,551.75 for its costs of investigation and prosecution. Respondent Steward-Pearce Mortuary, Lydia E. Pearce, President, shall make timely payment as directed by the Bureau pursuant to Business and Professions Code Section 125.3.

DATED: June 17, 2010



Nancy Beezy Micon
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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: **STEWARD-PEARCE MORTUARY;** **LYDIA E. PEARCE, PRESIDENT** **1701 East South Street** **Long Beach, CA 90805** **Funeral Establishment License No. FD 1537,** **and** **CARL LEE STEEL** **1701 East South Street** **Long Beach, CA 90805** **Funeral Director License No. FDR 1886** Respondents.	Case No. A1-2009-151 A C C U S A T I O N

Complainant alleges:

PARTIES

1. Richard L. Wallinder (Complainant) brings this Accusation solely in his official capacity as the Bureau Chief of the Cemetery and Funeral Bureau, Department of Consumer Affairs.[1]

[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.

2. On or about October 7, 1994, the Cemetery and Funeral Bureau issued Funeral Establishment License Number FD 1537 to Steward-Pearce Morturary; Lydia E. Pearce, President, and Carl Lee Steel, Manager (Respondent Pearce Mortuary.) The Funeral Establishment License was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2009, unless renewed.

3. On or about August 16, 1999, the Cemetery and Funeral Bureau issued Funeral Director License Number FDR 1886 to Carl Lee Steel (Respondent Steel.) The Funeral Director License was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2010, unless renewed.

JURISDICTION

4. 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.

5. Section 7692 of the Code states:

"Misrepresentation or fraud in the conduct of the business or the profession of a funeral director or embalmer constitutes a ground for disciplinary action.

6. 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.

7. 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.

8. Section 125.3 of the Code provides, in pertinent part, that the Board/Registrar/Director 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.

9. 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."

10. California Code of Regulations, title 16, section 1204 states in pertinent part:

(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 Board within 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.

FRAUDULENT SCHEME

11. On or around May 5, 2008, Lydia Eileen Pearce (Pearce), president of Steward – Pearce Mortuary, was convicted in the United States District Court on her plea of guilty to three felony counts of violating 18 United States Code sections 1343 (Wire Fraud) and 2 (Aiding and Abetting and Causing an Act to be Done in the United States District Court for the Central District of California, in a case entitled *United States of America v. Lydia Eileen Pearce*, Case No. 08 00332. The facts and circumstances of the conviction are that in or around 2006, she participated in a scheme to defraud financial assignment companies by staging fake funerals.[2] The scheme operated in substance in the following manner: Life insurance policies were

[2] Financial assignment companies advance cash to mortuaries to cover funeral expenses in exchange for a small fee and an assignment on a deceased individual's life insurance policy.

purchased for an individual purportedly named "Jim Davis" (Davis). Once the policies matured, Pearce, through Respondent Pearce Mortuary and others planned a fake funeral for Davis. Pearce, through Respondent Pearce Mortuary and other co-conspirators wired assignment paperwork to insurance companies which allowed them to receive funds once Respondent Pearce Mortuary submitted the funeral bills and sworn statements of death. Based on the assignment paperwork submitted by Respondent Pearce Mortuary and others, assignments sums in amounts including $30,962.42 and $18,249.88 were received as compensation. These sums were fraudulent because they were for a fake funeral and also constituted double billing as claims were made to multiple companies for the same fake funeral.

12. Respondent Pearce Mortuary and others conducted an actual funeral for Davis despite knowing that it was fake. Instead of an actual corpse, the casket was filled with various materials to ensure the proper weight. Shortly after the fake funeral was carried out and in order to conceal their actions, Respondent Pearce Mortuary and its co-conspirators arranged for the casket allegedly containing the remains of Davis to be exhumed and the alleged remains to be cremated.

FIRST CAUSE FOR DISCIPLINE

(Misrepresentation)

13. Respondent Pearce Mortuary is subject to disciplinary action under section 7692 in that it made material misrepresentations as further described in paragraph nos. 11-12.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

14. Respondents are subject to disciplinary action under section 7707 in that they committed acts of unprofessional conduct as further described in paragraph nos. 11-12.

THIRD CAUSE FOR DISCIPLINE

(Failure to Supervise)

15. Respondent Steel is subject to disciplinary action under section 7703 and California Code of Regulations, title 16, section 1204 in that Respondent Steel failed to ensure that Steward-Pearce Mortuary, Inc. was in full compliance with the Funeral Directors and Embalmers Law, when it was not, for the reasons identified in paragraph nos. 11-12.

PRAYER

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

1. Revoking or suspending Funeral Establishment License Number FD 1537, issued to Steward Pearce Mortuary; Lydia E. Pearce, President, and Carl Lee Steel, Manager and Funeral Director.

2. Revoking or suspending Funeral Director License Number FDR 1886, issued to Carl Lee Steel.

3. Ordering Respondents 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: 11/04/09

RICHARD L. WALLINDER
Bureau Chief
Cemetery and Funeral Bureau
Department of Consumer Affairs
State of California
Complainant

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