KAMALA D. HARRIS
Attorney General of California
ARMANDO ZAMBRANO
Supervising Deputy Attorney General
LANGSTON M. EDWARDS
Deputy Attorney General
State Bar No. 237926
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 620-6343
Facsimile: (213) 897-2804
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: **BELOVED CARE FUNERAL SERVICE;** **JAMES OTIS GAMBLE, JR.** **115 18th Street** **Bakersfield, CA 93301** **Funeral Establishment License No. FD 1807** **Funeral Director License No. FDR 1318** **Embalmer License No. EMB 8693** Respondents.	Case No. A1 2013 303 **A C C U S A T I O N**

Complainant alleges:

PARTIES

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

2. On or about December 29, 2003, the Cemetery and Funeral Bureau issued Funeral Establishment License Number FD 1807 to Beloved Care Funeral Service; James Otis Gamble, Jr. (Respondent or Respondents). The Funeral Establishment License was in full force and effect at all times relevant to the charges brought herein and expired on December 31, 2013. On or about May 7, 1998, the Cemetery and Funeral Bureau issued Funeral Director License Number FDR 1318 to James Otis Gamble, Jr. (Respondent). The Funeral Director License was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2014, unless renewed. On or about September 20, 2000, the Cemetery and Funeral Bureau issued Embalmer License Number EMB 8693 to James Otis Gamble, Jr. (Respondent). The Embalmer License was in full force and effect at all times relevant to the charges brought herein and expired on September 30, 2013.

JURISDICTION

3. 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.

4. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender and/or cancellation of a license shall not deprive the Director of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

STATUTORY PROVISIONS

5. Section 7686 of the Code states:

"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. The proceedings under this article shall be conducted

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(…continued)
as the Cemetery and Funeral Bureau.

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

6. 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."

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."

COST RECOVERY

8. Section 125.3 of the Code provides, in pertinent part, that the 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.

BACKGROUND FACTS

Infant Cremation

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

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

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

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

[2] Initials are used in each instance in order to protect consumer identity and preserve consumer confidentiality.

13. On or around September 18, 2013, after being confronted by a Bureau Investigator, Respondent falsely represented that the infant was being held at West Side Memorial Services, an approved storage facility. The infant was actually being stored at Respondent's old funeral home located at 4840 Brundage Lane, Bakersfield, an unapproved location.

14. On or around September 19, 2013, Respondent represented that he would deliver the infant's cremated remains to J.C. "the next day" by 11:00 a.m.

15. On or around September 20, 2013 at 11:00 a.m., Respondent had not delivered the infant's remains to J.C.

16. The same day, J.C. picked up his infant's remains and learned that Respondent placed them in a different urn that what J.C. and his family had chosen.

Cemetery Marker Fraud

17. On or around August 13, 2013, M.M. filed a complaint with the Bureau alleging that M.M. paid Respondent approximately $5448.13 for her husband's funeral services including interment costs and to place a marker (headstone) at her husband's burial location at Belmont Memorial Park Cemetery (Belmont).

18. M.M. learned that Respondent failed to pay Belmont.

19. Respondent admitted that he took M.M.'s money and wrote a bad check to Belmont because he was "in a hole just trying to keep a phone and lights for that month."

20. Respondent also admitted that he has a problem when he mixes "other peoples money with [his] struggling funds."

Life Insurance Policy Fraud

21. On or around August 8, 2013, C.J. filed a complaint with the Bureau alleging that Respondent was given a $10,000.00 life insurance policy to submit a claim to pay for the funeral services of M.J., a family member.

22. When the insurance company transferred the money to Respondent, Respondent claimed the Internal Revenue Service (IRS) and the State Franchise Tax Board (Tax Board) seized the funds because Respondent was "behind in payments."

23. On or around August 14, 2014, Respondent admitted to a Bureau Investigator that he lied about the IRS and Tax Board seizing the $10,000.00 life insurance policy funds.

24. Respondent admitted that the money he received from the insurance company funds were just "gone" because his account was "overdrawn and [he] did not realize how much it was overdrawn."

25. Respondent admitted that he spent C.J.'s insurance policy funds on other unrelated matters.

26. C.J. and family were forced to use a credit card to pay for M.J.s' funeral services.

FIRST CAUSE FOR DISCIPLINE

(Misrepresentation/Fraud)

27. Respondents Beloved Care Funeral Service and James Otis Gamble, Jr. (collectively, "Respondents") are subject to disciplinary action under section 7692 in that Respondents engaged in fraud and misrepresentation in providing funeral services. Complainant incorporates paragraphs 9 – 26 by reference, as if fully incorporated herein.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

28. Respondents Beloved Care Funeral Service and James Otis Gamble, Jr. (collectively, "Respondents") are subject to disciplinary action under section 7707 in that Respondents engaged in acts constituting unprofessional conduct in providing funeral services. Complainant incorporates paragraphs 9 – 26 by reference, as if fully incorporated herein.

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DISCIPLINARY CONSIDERATIONS

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

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

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

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

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

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

PRAYER

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

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

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

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

DATED: January 17, 2014

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

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