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** P.O. Box 13033 Bakersfield, CA 93389 Funeral Establishment License No. FD 1807 Funeral Director License No. FDR 1318 Embalmer License No. EMB 8693 Respondent.	Case No. A1 2013 303 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about January 17, 2014, Complainant Lisa M. Moore, in her official capacity as the Bureau Chief of the Cemetery and Funeral Bureau, Department of Consumer Affairs[1], filed Accusation No. A1 2013 303 against Beloved Care Funeral Service; James Otis Gamble (Respondent) before the Director of Consumer Affairs. (Accusation attached as Exhibit A.)

[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.

Funeral Establishment License

2. On or about December 29, 2003, the Cemetery and Funeral Bureau (Bureau) issued Funeral Establishment License No. FD 1807 to Respondent or Respondents. The Funeral Establishment License was in full force and effect at all times relevant to the charges brought in Accusation No. A1 2013 303, expired on December 31, 2013, and has not been renewed.

Funeral Director License

3. On or about May 7, 1998, the Bureau issued Funeral Director License No. FDR 1318 to 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.

Embalmer License

4. On or about September 20, 2000, the Bureau issued Embalmer License No. EMB 8693 to Respondent. The Embalmer License was in full force and effect at all times relevant to the charges brought herein, expired on September 30, 2013, and has not been renewed.

5. On or about March 18, 2014, Respondent was served by Certified and First Class Mail copies of the Accusation No. A1 2013 303, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code section 971 and California Code of Regulations, Title 16, section 2304, is required to be reported and maintained with the Bureau. Respondent's address of record was and is: P.O. Box 13033, Bakersfield, CA 93389.

6. On or about January 27, 2014, Respondent was served by Certified and First Class Mail copies of the Accusation No. A1 2013 303, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's previously known address of record which, pursuant to Business and Professions Code section 971 and California Code of Regulations, Title 16, section 2304, was required to be reported and maintained with the Bureau. Respondent's previous address of record was: 115 18th Street, Bakersfield, CA 93301.

7. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c) and/or Business & Professions Code section 124.

8. On or about April 1, 2014, the domestic return receipt for the aforementioned documents was returned by the U.S. Postal Service indicating receipt on March 28, 2014 by Respondent.

9. Government Code section 11506 states, in pertinent part:

> (c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

10. Respondent failed to file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. A1 2013 303.

11. California Government Code section 11520 states, in pertinent part:

> (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.

12. Pursuant to its authority under Government Code section 11520, the Director finds Respondent is in default. The Director will take action without further hearing and, based on the relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the Director's offices regarding the allegations contained in Accusation No. A1 2013 303, finds that the charges and allegations in Accusation No. A1 2013 303, are separately and severally, found to be true and correct by clear and convincing evidence.

13. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement is $6,452.84 as of April 17, 2014.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent(s) have subjected their Funeral Establishment License No. FD 1807, Funeral Director License No. FDR 1318, and Embalmer License No. EMB 8693 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Director of Consumer Affairs is authorized to revoke Respondent's Funeral Establishment License, Funeral Director License, and Embalmer License based upon the following violations alleged in the Accusation which are supported by the evidence contained in the Default Decision Evidence Packet in this case:

(a) Business and Professions Code section 7692 in that Respondent(s) engaged in fraud and misrepresentation in providing funeral services.

(b) Business and Professions Code section 7707 in that Respondent(s) engaged in acts constituting unprofessional conduct in providing funeral services.

(c) To determine the degree of discipline, the Complainant alleges that:

1. 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.

2. 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."

3. 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 717 E. Brundage Lane, Bakersfield, CA 93304 (Brundage) without Bureau approval. A $1001.00 administrative fine was assessed.

4. 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.

5. 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, the original wall license as required. A $100.00 administrative fine was assessed.

ORDER

IT IS SO ORDERED that Funeral Establishment License No. FD 1807, Funeral Director License No. FDR 1318, and Embalmer License No. EMB 8693, heretofore issued to Respondent(s), are revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on MAY 22, 2014.

It is so ORDERED April 22, 2014

DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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DOJ Matter ID:LA2013510583
Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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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: **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 **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 (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

(...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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