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

In the Matter of the Accusation Against: SIERRA VALLEY MORTUARY Brian Coates - Manager and Partner Charles Coates - Owner and Partner Peggy S. Coates - Partner Rodney A. Knight - Partner Mary F. Knight - Partner Leslie S. Coates - Partner Funeral Establishment License No. FD 2004, BRIAN COATES Funeral Director License No. FDR 3283, Respondents.	Case No. A1 2013 95 OAH No. 2014040755

DECISION AFTER REJECTION OF PROPOSED DECISION

Laurie R. Pearlman, Administrative Law Judge, Office of Administrative Hearings, heard this matter in Bakersfield on January 7 and 8, 2015. On March 4, 2015, ALJ Pearlman conducted an additional day of hearing in Los Angeles.

Zachary T. Fanselow, Deputy Attorney General, represented complainant Lisa M. Moore, Chief, Cemetery and Funeral Bureau ("Bureau" or "Complainant"), Department of Consumer Affairs, State of California.

Todd J. Bloomfield, Attorney at Law, represented Respondents Sierra Valley Mortuary and Brian Coates (collectively "Respondents").

Oral and documentary evidence was received. The record was left open until April 1, 2015, for Complainant to submit a Request for Protective Order Sealing Confidential Records, which was received on March 25, 2015. It was unopposed. The Request for Protective Order was marked as Exhibit 22 for identification and was admitted into evidence. The record was closed and the matter was submitted on April 1, 2015. A Protective Order Sealing Confidential Records was issued on May 1, 2015.

The Administrative Law Judge issued her Proposed Decision on May 1, 2015. After due consideration thereof, the Director declined to adopt said proposed decision and thereafter on June 3, 2015, issued an Order of Rejection of Proposed Decision. On August 31, 2015, an Order Fixing Date for Submission of Argument was issued. Written argument having been received from both parties and the time for filing written argument in this matter having expired, and the entire record, including the transcript of said hearing having been read and considered, the Director of the Department of Consumer Affairs pursuant to Section 11517 of the Government Code hereby makes the following decision:

FACTUAL FINDINGS

1. Complainant brought the Accusation in her official capacity as Bureau Chief on March 18, 2014. Respondents filed a timely notice of defense and this matter ensued.

2. On March 5, 2009, the Bureau issued Funeral Establishment License No.FD 2004 to Sierra Valley Mortuary ("Mortuary"), with Brian Coates, Charles Coates, Peggy S. Coates, Rodney A. Knight, Mary F. Knight and Leslie S. Coates as partners. The Funeral Establishment License expired on March 31, 2015, unless renewed.

3. On October 5, 2010, the Bureau issued Funeral Director License Number FDR 3283 to Brian Coates ("Respondent Coates"). The Funeral Director license will expire on October 31, 2015, unless renewed.

Sierra Valley Mortuary

4. The Mortuary is located in Lake Isabella, Kern County, California, approximately 50 miles from Bakersfield. It provides funeral services, prepares decedents for burial, and provides cremation services. The Mortuary began doing business in August 2003.

5. The Mortuary is organized as a general partnership, with six general partners. Charles Coates and his wife, Peggy Coates, own 40 percent. Their son, Brian Coates and his former wife, Leslie Coates, each own 15 percent. Charles Coates' sister, Mary Knight, and her husband, Rodney Knight, own the remaining 30 percent.

6. Respondent Coates is the Mortuary's licensed funeral director. He has a full-time job as the general manager of a gas station and does not work at the Mortuary every day. Charles Coates handles the Mortuary's day-to-day operations. He is on the phone with Respondent Coates at least once a week. Respondent Coates appears at the Mortuary approximately once per month.

Preneed Contracts

7. A preneed contract is an arrangement or plan between a funeral establishment and a client, requiring payment of money or issuance of security for a fixed sum to the funeral establishment to guarantee the costs of the specified arrangements for the final disposition of a dead human body, or the final disposition of human remains or for funeral services, funeral merchandise or personal property, sometime in the future, when these products services are not at-need. Funeral establishments receive the money directly from clients, or indirectly via trusts or preneed insurance policies.

8. Brenda Cary ("Cary") was an employee of non-profit Elder Connection, then a subsidiary of Senior Serve, later a subsidiary of Stewards, Inc, an organization authorized by the Social Security Administration to serve as representative payees to receive and manage the Social Security funds of individuals determined to be unable to manage or direct the management on their own. Representative payees are authorized to spend clients Social Security recipients' funds to meet clients' needs but cannot sign legal documents on their behalf. They also insure clients' assets do not accumulate in excess of $2,000, which would put them in jeopardy of losing benefits. Social Security benefits recipients funds invested in irrevocable trusts for funeral, cremation, or interment expenses or life or burial insurance such as preneed contracts, are an exempt asset, not counted in determining eligibility for government assistance.[1]

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[1] Welfare & Intuitions Code sections 11158 and 12512.

9. Cary is the niece of Charles Coates. She used clients Social Security funds to purchase preneed contracts through Charles Coates, with the Mortuary as the beneficiary of the insurance policies.

Decedent D.C.[2]

10. D.C. lived alone in her own home until 2008 when Kern County Adult Protective Services arranged to have D.C., who was suffering from dementia, moved into a skilled nursing facility in Bakersfield. Cary, through Elder Connection, served as D.C.'s representative payee to manager her Social Security benefits.

11. On February 18, 2008, Cary and D.C. met with Charles Coates to make preneed funeral arrangements for D.C. because D.C. began accumulating excess assets and was in jeopardy of losing benefits. Cary signed the preneed contract on D.C.'s behalf, even though D.C. was present, cognizant and understood what was going on when her funeral arrangements were being made.

12. Charles Coates signed the preneed funeral agreement on behalf of the Mortuary. He handwrote "Family Requests" on the section pertaining to embalming although he did not speak with any member of D.C.'s family. At the bottom of the agreement, immediately above Charles Coates' signature is the statement "**ACCEPTANCE**: This funeral establishment agrees to provide all services, merchandise and cash advances indicated on this Statement." The agreement provided for a funeral service including after-hours/second person, embalming, dressing, cosmetology, flowers, register book and a traditional burial at Greenlawn Cemetery ("Greenlawn") where her husband was buried at a cost of $9,000. Cary funded the cost of the preneed agreement with D.C.'s funds through Homestead Life Insurance ("Homestead"), on D.C.'s behalf, in the amount of $9,000, with the Mortuary designated as the beneficiary.

13. A few months later, D.C. accumulated an excess of assets which again put her in danger of losing benefits. On or about October 16, 2008, Cary and D.C. met with Charles Coates again to make additional preneed funeral arrangements for D.C. Cary made arrangements for P.W. to also receive an obituary, a higher priced burial casket, and a headstone, at an additional cost of $2,500. Cary funded the cost of the second preneed agreement through Fore Thought Group Insurance ("Fore Thought"), on D.C.'s behalf, in the amount of $2,500, with the Mortuary designated as the beneficiary.

14. Once again, Charles Coates signed the preneed funeral agreement on behalf of the Mortuary. At the bottom of the agreement, immediately above Charles Coates signature is the statement "**ACCEPTANCE**: This funeral establishment agrees to provide all services, merchandise and cash advances indicated on this Statement."

15. On February 14, 2013, D.C. passed away in Bakersfield at age 91. The Mortuary picked up her body. Charles Coates reported D.C.'s death to Homesteaders. Her $9,000 insurance policy had increased to $11,267.78 with interest. On February 15, 2013, Charles Coates completed the bank draft in D.C's file for the accumulated amount of $11,267.78 and cashed the check.

16. Charles Coates also reported D.C.'s death to Fore Thought. D.C.'s $2,500 insurance policy had increased to $3,227.41. On or about March 27, 2013, Fore Thought issued the Mortuary a check in the amount of $3,227.41. On March 22, 2103, Charles Coates signed a completed claim for Fore Thought certifying that the funeral goods and services were furnished and that the amount of benefits claimed was in accordance with the terms of the funeral planning agreement. Roger Lori, Sr. the Mortuary's embalmer signed as the "person legally responsible for the funeral arrangements of the deceased" and authorized payment to the Mortuary.

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[2] Decedent's initials are used herein to protect her privacy.

17. The Mortuary received a total of $14,495.19 in insurance proceeds for D.C's preneed contracts where the combined total for said services totaled $11,500.

18. On an unidentified date after D.C.'s passing, Charles Coates called the Kern County Public Administrators Office ("Public Administrator's Office") to inquire whether Public Administrator's Office or Kern County Coroner's Office ("Coroner's Office") would sign for disposition of D.C.'s body. The role of the Public Administrators' Office is to safeguard assets or estates until family can be located and/or a search conducted for a will. The Public Administrator's Office declined legal responsibility of D.C.'s body and on or about March 14, 2013, concerned that the Mortuary had ample time to have D.C. sign the contract before she passed, Dawn Ratliff, from the Coroner's Office, filed a complaint with the Bureau. She also reported the case to Kern County Deputy Sheriff, Mike Boyd ("Deputy Boyd") of the Kern County Sheriff's Department.

Complainant's Investigation

19. Daniel Redmon ("Mr. Redmon"), a Bureau field representative, was assigned to investigate the Public Administrator's complaint against Respondents. He holds an active funeral director's license and has received training from the National Criminal Investigator Training As a field representative he inspects cemeteries, crematories, mortuaries and cremated remain disposes for compliance with the law. He also conducts investigations into complaints filed by consumers or other agencies, such as coroner's offices or law enforcement agencies, writes reports on the investigations which are filed with the Bureau. He has been involved in over 1,000 Bureau inspections and complaints collectively.

20. On or about March 29, 2013, Mr. Redmon called Charles Coates and asked him to fax the Bureau a copy of D.C.'s file. Included in the fax were D.C.'s two preneed contracts executed by Cary and the Mortuary, for D.C.'s funeral arrangement and D.C.'s death certificate. D.C.'s preneed agreement indicated embalming was to be performed per her family's request, but the death certificate indicated she was not embalmed.

21. Mr. Redmon and Bureau Field Representative Jeff Brown ("Mr. Brown"), a licensed embalmer made arrangements to meet with Charles Coates on May 1, 2013. However, both Charles Coates and Respondent Coates later refused to speak with them. With Respondents' refusal to speak with the Bureau about the discrepancy, Mr. Redmon decided to disinter D.C's remains from the ground for viewing.

22. On July 25, 2013, D.C.'s body was disinterred. Bureau Field Representative Steven Caulk ("Mr. Caulk"), a licensed embalmer and funeral director, appeared with Mr. Redmon and Mr. Brown for the disinterment. D.C.'s body was dressed in a soiled hospital gown with a towel covering her face. Her remains were examined and it was confirmed that D.C. had not been embalmed. They also determined that no cosmetology had been performed on the body, although the preneed contract included such services. Photographs were taken and D.C.'s remains were returned to her grave.

23. Further investigation into the complaint revealed in addition to failing to embalm and perform cosmetology services for which D.C.'s preneed arrangements paid for, Respondents also failed place an obituary in the newspaper, although Respondents accepted payment for these services. Charles Coates told Mr. Redmon that D.C. was not embalmed because he did not want to do that to the poor lady.

24. Deputy Boyd also conducted a parallel investigation. He interviewed Charles Coates on May 15, 2013. Charles Coates told him he did not embalm D.C. because he felt it was unnecessary and did not did not want to do that to her. Charles Coates also informed Deputy Body that he did not place an obituary because D.C. had no family members to view and would not know what to say.

Decedent P.W.[3]

25. Agent Redmond's investigation into decedent D.C.'s funeral arrangements, revealed another preneed trust agreement between Cary and Respondents for decedent P.W. The preneed requested funeral and burial services but the death certificate indicated a cremation.

26. P.W. had multiple sclerosis and dementia. She lived in a skilled nursing home in Bakersfield and received Medi-Cal benefits. Cary, through Elder Connection, served as P.W.'s representative payee to manager her Social Security benefits.

27. On or about April 3, 2007, Cary and P.W. met with Charles Coates to make preneed funeral arrangements for P.W. because P.W. began accumulating excess assets and was in jeopardy of losing benefits. Cary signed the preneed contract on P.W.'s behalf even though P.W. was present, cognizant, and understood what was going on when her funeral arrangements were being made.

28. Charles Coates signed the preneed funeral agreement on behalf of the Mortuary. He handwrote "Family Requests" on the section pertaining to embalming although he did not speak with any member of P.W.'s family. At the bottom of the agreement, immediately above Charles Coates signature is the statement "**ACCEPTANCE**: This funeral establishment agrees to provide all services, merchandise and cash advances indicated on this Statement." The agreement provided for a funeral service including embalming and a traditional burial at Union Cemetery at a cost of $9,000. Cary funded the cost of the preneed agreement with P.W.'s funds through Homestead on P.W.'s behalf in the amount of $9,000, with the Mortuary designated as the beneficiary.

29. P.W. passed away on January 6, 2009, at age 85. Upon her death, the Mortuary took possession of the body. Upon notification of death, Homestead sent the Mortuary the insurance proceeds. The policy had accumulated to $9,226.13.

30. P.W. has three adult daughters. Two live in Texas and the other lives several hours from Bakersfield. Charles Coates communicated with daughters J.A. and N.B. about P.W.'s end-of-life arrangements. The Mortuary cremated P.W. The value of the cremation services totaled $1,958.00, leaving $7,268.13 in unused fees. Respondents have maintained the excess $7,268.13 since 2009.

31. J.A. was initially contacted by the Mortuary the same day their mother passed, but she became too emotional, so after the first day, N.B. took over handling the funeral arrangements. N.B. testified at hearing. She recalled speaking with "Chuck"[4] by telephone. He told her that the State of California was helping cover the costs of the cremation. Charles Coates told J.A. they had to send the Mortuary a money order in the amount of $300 to $500 to cover the cost of the cremation and shipment of the remains. Charles Coates did not inform them he received a check from the insurance company pursuant to the preneed contract. Respondents erroneously shipped PW.'s remains to daughter J.A.

32. The first time N.B. heard about their mother's preneed contract was when Mr. Redmon contacted her [February 2014]. He asked J.A. about the preneed and J.A. confirmed that Respondents did not mention anything about a preneed when she spoke to them.

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[3] The initials of decedent and her family members are used to protect their privacy.

[4] Charles Coates, the Mortuary's owner and a partner, is also known as "Chuck".

Cary's Interview

33. Cary did not testify. On March 9, 2011, she was interviewed by Deputy Boyd. The interview was transcribed. A copy of the interview transcript was entered into evidence by the parties via Stipulation.

34. Cary and Charles Coates met with D.C. in her nursing facility to discuss the preneed funeral arrangements. D.C. understood the conversation and participated in the selection of her preened funeral arrangements. After the meeting, Cary and Charles Coates went to the Elder Connect office to complete the paperwork, where she signed the agreement. At the time D.C. and P.W.'s agreements were entered into, employees of Elder Connection were under the belief they were authorized to sign pre-need funeral agreements. They were later advised by the Social Security Administration that they could not sign the preneed agreements on clients' behalf so they ceased that practice.

Respondents' Evidence

35. Charles Coates testified at the hearing. Respondents have owned and operated the Mortuary since August 2003. Respondent Coates is Charles Coates son. He testified that they are good people and they did nothing wrong with regard D.C. and P.W.

36. Charles Coates acknowledged D.C. understood the discussion about the preneed funeral arrangements. He admitted the Mortuary did not embalm D.C.'s body and failed to perform cosmetology services. He testified that the Mortuary failed to embalm and cosmeticize D.C.'s body because her body had significantly decomposed after 44 days of refrigeration causing slippage of D.C.'s skin, which prevented them from performing the agreed upon services. He also testified that there was not enough money in the policy to cover the agreed upon services, although Respondents received payment from the insurance company for the services.

37. Charles Coates admitted the Mortuary failed to publish D.C.'s obituary. He testified that they did not place an obituary because he did not know enough about D.C. to write one.

38. Charles Coates testified that under Health and Safety Code section 7100, subdivision (c), Respondent Coates, as funeral director, had complete authority to control disposition of D.C.'s remains because no family was located by the Public Administrator's Office. He did not explain why the Mortuary failed to provide the required written notice to the Public Administrators Office, as set out in the Health and Safety Code. He also posited that Respondents did not have an obligation to provide the services listed in D.C's preneed agreement because Cary was not authorized to sign the agreement.

39. Charles Coates testified that Cary made Respondent's the beneficiary of two separate insurance policies for D.C's burial and funeral arrangements in the amount of $9,000 and $2,500 respectively. He contended that the policy was not fully funded because D.C. was issued a check in the amount of $1, 050. However, he was unable to testify what the reimbursement check represented. He admitted the Mortuary received a total of $14,495.19 in insurance proceeds on behalf of D.C for the contracted services totaling $11, 500.

40. Charles Coates testified that the Mortuary provided $17,080.76 in services to D.C. and had actually been underpaid $2,585.57. The $17,080.76 worth of services calculation was based upon the costs for goods and services at the time D.C. passed and not in accordance with the costs agreed upon in the preened contracts. The $17,080.76 worth of services also failed to apply a package according to the Mortuary's package price lists at the time of her death. The $17,080.76 worth of services also included the 44 days of refrigeration time.

41. Charles Coates denied speaking with P.W.'s daughter N.B. He denied asking J.A. for money to handle P.W.'s cremation services. He denied asking for and/or receiving a money order from J.A. to handle P.W.'s cremation services. The Mortuary has held on to retain the excess $7,268.13 since 2009.[5]

42. Dale Cornell, the pastor at the church attended by Charles Coates, testified on his behalf. Charles Coates served as a church deacon for several terms. Cornell described him as a man of character and integrity, who serves as a church usher and assists with the sick and with hospital calls. Cornell refers families in need to the Mortuary and has seen that Charles Coates has "a spiritual emphasis" in his manner of conducting business. Cornell admittedly testified that he was not aware of the specifics of the allegations against Respondents.

Costs

43. 12. Complainant has requested reimbursement for costs incurred by the Board in connection with the prosecution of this matter, in the total amount of $11,817.50. Complainant established that the actual costs of investigation and prosecution incurred by the Bureau in this matter are $11,817.50. Respondents did not present any evidence of financial inability to pay costs.

LEGAL CONCLUSIONS

1. Business and Professions Code[6] section 7601.1 provides that public protection is the highest priority for the Bureau in exercising its licensing, regulatory, and disciplinary functions.

2. Section 7686 provides in pertinent part that 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.

3. Section 7692 provides in pertinent part that misrepresentation or fraud in the conduct of the business of a funeral director constitutes grounds for disciplinary action.

4. Section 7703 provides in pertinent part that violation of any of the provisions of law regulating mortuaries or funeral directors constitutes grounds for disciplinary action.

5. Section 7704 provides in pertinent part that violation of any state law or regulation affecting the handling, custody or transportation of human remains constitutes a ground for disciplinary action.

6. Section 7707 provides in pertinent part that gross negligence, gross incompetence or unprofessional conduct in the practice of funeral directing constitutes grounds for disciplinary action.

7. Section 7735 provides in pertinent part that 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

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[5] On December 4, 2014, eight months after the Bureau filed an Accusation against the Mortuary, Charles Coates sent a letter to the Bureau, inquiring what to do with the money.

[6] All section references are to the Business and Professions Code unless otherwise indicated.

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.

8. Section 7745 provides in pertinent part that every funeral establishment shall present to the survivor of the deceased who is handling the funeral arrangements or the responsible party a copy of any preneed agreement which has been signed and paid for in full, or in part by, or on behalf of the deceased and is in the possession of the funeral establishment. The copy may be presented in person, by certified mail, or by facsimile transmission, as agreed upon by the survivor of the deceased or the responsible party. A funeral establishment that knowingly fails to present a preneed agreement to the survivor of the deceased or the responsible party shall be liable for a civil fine equal to three times the cost of the preneed agreement, or one thousand dollars ($1,000), whichever is greater.

9. California Code of Regulations, Title 16, section 1204 provides in pertinent part that a funeral establishment must designate a licensed funeral director to manage the establishment. He or she is responsible for exercising direct supervision and control over the conduct of the funeral establishment to ensure full compliance with the laws governing funeral establishments. Failure of the funeral director or the funeral establishment to exercise such supervision or control constitutes grounds for disciplinary action.

10. Section 125.3 provides in pertinent part that the Bureau may request the administrative law judge to direct a licentiate found to have committed a violation of the licensing act to pay a sum not to exceed the Bureau's reasonable costs of investigation and enforcement of the case.

11. Health & Safety Code section 7100 provides:

> (a) The right to control the disposition of the remains of a deceased person, the location and conditions of interment, and arrangements for funeral goods and services to be provided, unless other directions have been given by the decedent pursuant to Section 7100.1, vests in, and the duty of disposition and the liability for the reasonable cost of disposition of the remains devolves upon, the following in the order named:
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> (1) An agent under a power of attorney for health care who has the right and duty of disposition under Division 4.7 (commencing with Section 4600) of the Probate Code, except that the agent is liable for the costs of disposition only in either of the following cases:
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> (A) Where the agent makes a specific agreement to pay the costs of disposition.
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> (B) Where, in the absence of a specific agreement, the agent makes decisions concerning disposition that incur costs, in which case the agent is liable only for the reasonable costs incurred as a result of the agent's decisions, to the extent that the decedent's estate or other appropriate fund is insufficient.
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> (2) The competent surviving spouse.
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> (3) The sole surviving competent adult child of the decedent, or if there is more than one competent adult child of the decedent, the majority of the surviving competent adult children. However, less than the majority of the surviving competent adult children shall be vested with the rights and duties of this section if they have used reasonable efforts to notify all other surviving competent adult children of their instructions and are not aware of any opposition to those instructions by the majority of all surviving competent adult children.

(4) The surviving competent parent or parents of the decedent. If one of the surviving competent parents is absent, the remaining competent parent shall be vested with the rights and duties of this section after reasonable efforts have been unsuccessful in locating the absent surviving competent parent.

(5) The sole surviving competent adult sibling of the decedent, or if there is more than one surviving competent adult sibling of the decedent, the majority of the surviving competent adult siblings. However, less than the majority of the surviving competent adult siblings shall be vested with the rights and duties of this section if they have used reasonable efforts to notify all other surviving competent adult siblings of their instructions and are not aware of any opposition to those instructions by the majority of all surviving competent adult siblings.

(6) The surviving competent adult person or persons respectively in the next degrees of kinship, or if there is more than one surviving competent adult person of the same degree of kinship, the majority of those persons. Less than the majority of surviving competent adult persons of the same degree of kinship shall be vested with the rights and duties of this section if those persons have used reasonable efforts to notify all other surviving competent adult persons of the same degree of kinship of their instructions and are not aware of any opposition to those instructions by the majority of all surviving competent adult persons of the same degree of kinship.

(7) The public administrator when the deceased has sufficient assets.

(b)(1) If any person to whom the right of control has vested pursuant to subdivision (a) has been charged with first or second degree murder or voluntary manslaughter in connection with the decedent's death and those charges are known to the funeral director or cemetery authority, the right of control is relinquished and passed on to the next of kin in accordance with subdivision (a).

(2) If the charges against the person are dropped, or if the person is acquitted of the charges, the right of control is returned to the person.

(3) Notwithstanding this subdivision, no person who has been charged with first or second degree murder or voluntary manslaughter in connection with the decedent's death to whom the right of control has not been returned pursuant to paragraph (2) shall have any right to control disposition pursuant to subdivision (a) which shall be applied, to the extent the funeral director or cemetery authority know about the charges, as if that person did not exist.

(c) A funeral director or cemetery authority shall have complete authority to control the disposition of the remains, and to proceed under this chapter to recover usual and customary charges for the disposition, when both of the following apply:

(1) Either of the following applies:

(A) The funeral director or cemetery authority has knowledge that none of the persons described in paragraphs (1) to (6), inclusive, of subdivision (a) exists.

(B) None of the persons described in paragraphs (1) to (6), inclusive, of subdivision (a) can be found after reasonable inquiry, or contacted by reasonable means.

(2) The public administrator fails to assume responsibility for disposition of the remains within seven days after having been given written notice of the facts. Written notice may be delivered by hand, U.S. mail, facsimile transmission, or telegraph.

(d) The liability for the reasonable cost of final disposition devolves jointly and severally upon all kin of the decedent in the same degree of kinship and upon the estate of the decedent. However, if a person accepts the gift of an entire body under subdivision (a) of Section 7155.5, that person, subject to the terms of the gift, shall be liable for the reasonable cost of final disposition of the decedent.

(e) This section shall be administered and construed to the end that the expressed instructions of the decedent or the person entitled to control the disposition shall be faithfully and promptly performed.

(f) A funeral director or cemetery authority shall not be liable to any person or persons for carrying out the instructions of the decedent or the person entitled to control the disposition.

(g) For purposes of this section, "adult" means an individual who has attained 18 years of age, "child" means a natural or adopted child of the decedent and "competent" means an individual who has not been declared incompetent by a court of law or who has been declared competent by a court of law following a declaration of incompetence.

12. Health & Safety Code section 7100.1 provides:

(a) A decedent, prior to death, may direct, in writing, the disposition of his or her remains and specify funeral goods and services to be provided. Unless there is a statement to the contrary that is signed and dated by the decedent, the directions may not be altered, changed, or otherwise amended in any material way, except as may be required by law, and shall be faithfully carried out upon his or her death, provided both of the following requirements are met: (1) the directions set forth clearly and completely the final wishes of the decedent in sufficient detail so as to preclude any material ambiguity with regard to the instructions; and, (2) arrangements for payment through trusts, insurance, commitments by others, or any other effective and binding means, have been made, so as to preclude the payment of any funds by the survivor or survivors of the deceased that might otherwise retain the right to control the disposition.

(b) In the event arrangements for only one of either the cost of interment or the cost of the funeral goods and services are made pursuant to this section, the remaining wishes of the decedent shall be carried out only to the extent that the decedent has sufficient assets to do so, unless the person or persons that otherwise have the right to control the disposition and arrange for funeral goods and services agree to assume the cost. All other provisions of the directions shall be carried out.

(c) If the directions are contained in a will, they shall be immediately carried out, regardless of the validity of the will in other respects or of the fact that the will may not be offered for or admitted to probate until a later date.

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LEGAL CONCLUSION

1. In cases involving a professional license, Complainant must prove her case by clear and convincing evidence to a reasonable certainty. *Mann v. Department of Motor Vehicles* (1999) 76 Cal.App.4th 312, 318-19; *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853; *Realty Projects, Inc. v. Smith* (1973) 32 Cal.App.3d 204, 212.

First Cause for Discipline - Fraud and/or Misrepresentation

2. Cause exists by clear and convincing evidence to revoke Respondents' Funeral Establishment and Funeral Director licenses under section 7692, in that the preneed arrangement was D.C.'s written direction of how her remains were to be disposed and the specific funeral goods and services to be provided. Respondents committed acts of fraud or misrepresentation by entering into a contract for D.C.'s burial and related services to be performed at a set price, accepting money for the these services, and then intentionally failing to provide the agreed upon services which decedent arranged for and which were paid for by decedent into insurance policies made payable to the Mortuary.

Second Cause for Discipline - Gross Negligence, Gross Incompetence, and/or Unprofessional Conduct

3. Cause exists by clear and convincing evidence to revoke Respondents' Funeral Establishment and Funeral Director licenses under section 7707 in that Respondents committed acts constituting gross negligence, gross incompetence, and unprofessional conduct in connection with the handling of funeral and burial services for D.C. by neglecting to embalm D.C., perform cosmetology services or place an obituary, services which decedent arranged for and paid for through insurance policies made payable to the Mortuary. Respondents committed acts constituting gross negligence, gross incompetence, and unprofessional conduct by entering into preneed contract with Cary, Charles Coates niece, with D.C.'s funds, making the Mortuary a beneficiary, when Cary lacked authority to enter into contract.

Third Cause for Discipline - Failure to Supervise

4. Cause exists by clear and convincing evidence to revoke Respondent Coates' Funeral Director license under section 7703 and California Code of Regulations, Title 16, Section 1204, in that Respondent Coates was solely responsible for the conduct of the establishment and he failed to exercise proper supervision and control over the funeral business practices of the funeral establishment, when Respondents committed acts constituting fraud and misrepresentation, gross negligence, gross incompetence, and unprofessional conduct in connection with the handling of D.C.'s funeral and burial services.

Fourth Cause for Discipline - Fraud and/or Misrepresentation

5. Cause exists by clear and convincing evidence to revoke Respondents' Funeral Establishment and Funeral Director licenses under section 7692 in that the preneed arrangement was P.W.'s written direction of how her remains were to be disposed and the specific funeral goods and services to be provided. Respondents committed acts of fraud or misrepresentation, in handling the funeral and burial services for P.W. by entering into a contract for P.W.'s burial and related services charging P.W's insurance for the burial , and then never informing P.W.'s family of P.W.'s directives and then failing to perform the paid for funeral arrangements, which P.W. arranged for and paid for through her insurance policy made payable to the Mortuary.

Fifth Cause for Discipline - Gross Negligence, Gross Incompetence, and/or Unprofessional Conduct

6. Cause exists by clear and convincing evidence to revoke Respondents' Funeral Establishment and Funeral Director licenses under section 7707 in that Respondents committed acts constituting gross

negligence, gross incompetence, and unprofessional conduct in handling the funeral and burial services for P.W. by failing to provide the agreed upon "full burial" services which decedent arranged for and paid for through her insurance policy made payable to the Mortuary.

Sixth Cause for Discipline (Failure to Supervise)

7. Cause exists by clear and convincing evidence to revoke Respondent Coates' Funeral Director license under section 7703 and California Code of Regulations, Title 16, Section 1204, in that Respondent Coates was solely responsible for the conduct of the establishment and he failed to exercise proper supervision and control over the funeral business practices of the funeral establishment, when Respondents committed acts constituting fraud and misrepresentation, gross negligence, gross incompetence, and unprofessional conduct in connection with P.W's end-of-life services.

Disciplinary Guidelines

8. The Bureau adopted A Manual of Disciplinary Guideline for Funeral Establishments, Funeral Directors, Embalmers, and Apprentice Embalmers, September 1997 ("Disciplinary Guidelines") to assist in making the determination of the appropriate level of discipline once cause for such action has been established. (16 C.C.R. 1253.6) The Disciplinary Guidelines is published for use by licensees, attorneys, administrators and judges so that disciplinary sanctions may be imposed fairly, consistently and completely in accordance with due process of the law.

9. The recommended discipline for a violation of Business and Professions Code section 7692, fraud and/or misrepresentation in the conduct of business ranges from revocation stayed with three years' probation to revocation. The recommended discipline for a violation of Business and Professions Code section 7707, gross negligence, gross incompetence, and/or unprofessional conduct, ranges from revocation stayed with five years' probation and 30 days suspension, to revocation. The Disciplinary Guidelines provides that outright revocation is warranted in cases involving repeated and/or flagrant offenses, and where serious danger or consumer harm results from a violation.

Disciplinary Considerations

10. Respondents ensured the Mortuary received the reward of the preneed agreements by accepting the insurance policy benefits, and then neglected their duties to abide by the specific terms of the preneed agreements. In fact, Respondents did more than merely accept the benefit of the preneed agreements; they took overt action to contact the insurance companies to request payment of the benefits pursuant to the agreements. Respondents then denied the validity and enforceability of the agreements when they were required to comply with their agreed upon terms.

11. Respondents violations were deliberate. Furthermore, their victims, decedents' D.C. and P.W., were two vulnerable, elderly women with dementia, who had no family, or family in the area, to ensure their end-of-life arrangements were followed consistent with their preneed agreements, although they paid for these services and goods through insurance policies payable to Respondents. Decedents' D.C. and P.W., were harmed when they did not receive the end of life services they arranged for with Respondents.

12. The public must be assured that they will receive the services for which their preneed agreements instruct and which they pay for, once they are deceased. Consumers should be assured that funeral establishments that enter into preneed agreements to provide goods and services, will in fact provide those agreed upon services, even if a decedent has no heirs to respect decedents' instructions, when the funeral establishment receives payment for those services. In addition, consumers should be assured that funeral

establishments that enter into preneed agreements to provide goods and services, will in fact inform those responsible for arranging and paying or decedents end-of-life services, that a preneed agreement exists.

Cost Recovery

13. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct.

14. These factors have been considered. The total amount of costs of investigation and prosecution of this case is $11,817.50. It was established that Respondents violated provisions of the Cemetery and Funeral law. Under all the facts and circumstances, and taking into consideration the Board's obligation to protect the public through licensing actions such as this one, the Administrative Law Judge determined that cause exists under Business and Professions Code section 125.3 to impose the reasonable costs of investigating and enforcing the case, in the sum of $11,817.50.

ORDER

1. Funeral Establishment License No. FD 2004, issued to Sierra Valley Mortuary is revoked.

2. Funeral Director License No. FDR 3283, issued to Brian Coates, is also revoked.

3. Respondents are ordered to pay to the Bureau the sum of $11,817.50, for its investigative and enforcement costs.

This Decision shall become effective on November 30, 2015

IT IS SO ORDERED this 28th day of October, 2015.

Doreathea Johnson

DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs