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

In the Matter of the Accusation and Petition to Revoke Against:	Case No. A1 2015 219
ROYAL MEMORIES FUNERAL AND CREMATION SERVICES, INC. **Harold D. Cole, President and Manager**	OAH No. 2016 051070
Funeral Establishment, License No. FD 2078;	
HAROLD DWIGHT COLE,	
Funeral Director, License No. FDR 2589,	
Respondents.	

ORDER OF REJECTION

Pursuant to section 11517 of the Government Code, the Proposed Decision of the Administrative Law Judge in the above-captioned matter is rejected. The Director of the Department of Consumer Affairs, Cemetery and Funeral Bureau, will now decide the case upon the record, including the transcript of the hearing held on September 20, 2016, and upon such written argument as the parties may wish to submit. No new evidence will be allowed.

The parties will be notified of the deadline for submission of written argument when the transcript of the above-mentioned hearing becomes available. The Director respectfully requests that the parties specifically address the following issues in their arguments: (1) nature and severity of the past offenses; (2) total crime record; (3) the time that has elapsed since commission of the act(s) or offense(s); (4) whether the probationers have complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against them; (5) if applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code; and (6) evidence, if any, of rehabilitation submitted by the probationers that may apply, as well as level of penalty.

IT IS SO ORDERED this 26th day of October, 2016.

Doreathea Johnson

DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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

In the Matter of the Accusation and Petition to Revoke Probation Against: ROYAL MEMORIES FUNERAL AND CREMATION SERVICES INC., Harold D. Cole, President and Manager, Funeral Establishment License No. FD 2078 HAROLD DWIGHT COLE, Funeral Director License No. FDR 2589 Respondents.	Case No. A1 2015 219 OAH No. 2016051070

PROPOSED DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on September 20, 2016, in Oakland, California.

Jonathan D. Cooper, Deputy Attorney General, represented complainant Lisa M. Moore, Chief of the Cemetery and Funeral Bureau (Bureau).

Respondent Harold Dwight Cole (Cole) represented himself and respondent Royal Memories Funeral and Cremation Services Inc. (Royal Memories).

The matter was submitted on September 20, 2016.

FACTUAL FINDINGS

1. On August 17, 2005, the Bureau issued Funeral Director License No. FDR 2589 to respondent Cole. This license was active at all times relevant to this matter, and as of the date of this hearing was scheduled to expire on August 31, 2017.

2. On January 13, 2011, the Bureau issued Funeral Establishment License No. FD 2078 to respondent Royal Memories for a funeral establishment on Redwood Drive in San Rafael. Respondent Cole is the president of Royal Memories and is responsible for Royal Memories' activities as a licensed funeral establishment. Royal Memories surrendered this license in late February 2015, and the Bureau cancelled it effective March 3, 2015.

3. Respondent Royal Memories also holds two other funeral establishment licenses for different locations, one in Oakland and one in Vallejo. Those licenses are not in jeopardy in this proceeding.

Prior Disciplinary Action

4. After a hearing in August 2014, the Bureau revoked Funeral Director License No. FDR 2589 and Funeral Establishment License No. FD 2078. The Bureau stayed the revocations and placed the licenses on probation for three years effective November 13, 2014.

5. The Bureau found in the prior disciplinary proceeding that respondent Cole's funeral director license had expired on August 31, 2012, and that he had waited several months to renew it. The Bureau made no finding in the prior proceeding regarding whether Cole had engaged in any activities requiring licensure as a funeral director between September 1, 2012, and the date he renewed his funeral director license.

6. The Bureau found in the prior disciplinary proceeding that respondent Royal Memories had moved out of its Redwood Drive office in September 2012, after having stopped doing business there earlier in 2012. The Bureau found as well that Royal Memories had neither notified the Bureau that Royal Memories would cease operating its funeral establishment on Redwood Drive nor received Bureau permission to operate a funeral establishment at a new location. Royal Memories had an active website in August 2014, however, listing a business address for Royal Memories on Fourth Street in San Rafael that the Bureau had never approved.[1] The Bureau made no finding in the prior proceeding regarding whether Royal Memories ever actually had used the Fourth Street location for any activities requiring licensure of that location as a funeral establishment.

7. The conditions of respondents' probation beginning November 13, 2014, included a condition requiring both respondents to "obey all federal, state and local laws, and all rules and regulations governing the programs regulated by the department." In addition, the Bureau required respondent Cole to seek Bureau approval within 30 days for an ethics course, and to complete that course within the first year of probation.

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[1] The website also listed the Oakland and Vallejo business addresses that the Bureau had approved for Royal Memories' other funeral establishment licenses.

Allegations in This Proceeding

8. On January 6, 2016, acting in her official capacity as chief of the Bureau, complainant Lisa M. Moore served respondents with an Accusation and Petition to Revoke Probation (accusation and petition).

9. Complainant alleged that respondent Royal Memories had continued to operate or advertise a funeral establishment on Fourth Street in San Rafael even after the Bureau had denied permission for Royal Memories to operate a funeral establishment there, and even after Royal Memories had surrendered Funeral Establishment License No. FD 2078. In addition, complainant alleged that respondent Cole had not satisfied the probation condition requiring him to complete an ethics course.

10. Complainant contended that both of these actions violated the probation conditions identified in Finding 7, above, and that operating at or advertising the Fourth Street location violated the Cemetery and Funeral Act (Bus. & Prof. Code, § 7600 et seq.). Complainant sought revocation of respondents' probation and licenses, and respondents requested a hearing.

Unlicensed Funeral Establishment

11. In February 2014, while the prior disciplinary proceeding was pending, respondent Royal Memories applied to the Bureau for permission to conduct business under Funeral Establishment License No. FD 2078 at the Fourth Street location in San Rafael.

12. The Bureau denied this application in December 2014, on the ground that this location did not have suitable space for storing or handling human remains. The Bureau's letter denying this application noted that the location was "a 'virtual office' . . . available on an hourly to monthly basis for the receipt of mail, telephone answering services, and office rental space on an as-needed basis."

13. Respondent Cole explained at the hearing on this accusation and petition that he had intended to use the Fourth Street location as a "satellite" office for Royal Memories. He had not planned to handle human remains there, but had planned only to use the office space for client conferences.

14. After receiving the Bureau's letter denying permission for Royal Memories to operate a funeral establishment at the Fourth Street location, respondent Royal Memories elected to surrender Funeral Establishment License No. FD 2078. Royal Memories retained its licenses for funeral establishments in Oakland and Vallejo, and continued to use those locations in its business.

15. Respondent Cole testified credibly that he had never met with any client or potential client at the Fourth Street location.

16. As recently as December 23, 2015, a website at the address <www.royalmemories.funeralplan2.com> included a graphic element consisting of a photograph with text arranged around it stating three addresses for Royal Memories. The graphic element was an electronic version of the image on glossy cards that respondent Cole had obtained to advertise Royal Memories. The graphic element included the Oakland and Vallejo addresses for which Royal Memories holds funeral establishment licenses, as well as the Fourth Street address that the Bureau had never approved for a funeral establishment; it also included funeral establishment license numbers for each address. The graphic element included only one telephone number for Royal Memories.

17. Elsewhere, the website repeated Royal Memories' business addresses and telephone number. Beginning in or before March 2015, that text stated only the licensed Oakland and Vallejo addresses, but not any address in San Rafael.

18. Respondent Cole does not maintain his business's website. Instead, he contracts with a vendor, Aurora Caskets, to host and maintain the site. In the past, he has communicated with staff members at Aurora Caskets about the website simply by calling them on the telephone. More recently, he has delegated responsibility for interacting with Aurora Caskets to a family member who has begun working for Royal Memories.

19. Respondent Cole testified credibly that shortly after the prior disciplinary proceeding, he telephoned a staff member at Aurora Caskets and asked that person to remove the Fourth Street address from the Royal Memories website. He did not realize, however, that to eliminate that address from the graphic element he would need to provide a new electronic version of the element. Furthermore, he did not visit the website to confirm that Aurora Caskets had removed the address in accordance with his request, and did not realize for many months that the address persisted on the website in the graphic element.

20. Since December 23, 2015, Aurora Caskets has revised the Royal Memories website completely, removing any references to the Fourth Street address. Respondent Cole also has procured new advertising cards that list only the licensed Oakland and Vallejo addresses for Royal Memories.

Ethics Course

21. On December 4, 2014, respondents' Bureau probation monitor, Sandra Patterson, sent respondents a letter reminding Cole that he needed to submit information to the Bureau by December 13, 2014, regarding the ethics course he proposed to take to fulfill that probation condition.

22. Over the next several weeks, Patterson and Cole communicated regarding courses Cole might take to satisfy the probation condition. Cole sent Patterson a course description for a course titled "Business 75: Salesmanship" that Cole proposed to take at Laney College during the Spring 2015 semester. While Patterson was out of the office on a holiday vacation, complainant approved this course to satisfy the probation requirement.

23. Laney College is one of several community colleges in the east Bay Area operated by the Peralta Community College District (Peralta). After Patterson returned from her vacation, she contacted the Admissions and Records Department at Peralta to confirm the course description and schedule for Business 75 during the Spring 2015 semester. Patterson learned that neither Laney College nor any other Peralta college would offer that course during Spring 2015.

24. In February 2015, respondent Cole prepared his first quarterly compliance report for his probation monitor. On that report, Cole stated that he had failed to comply with a probation condition, and explained that he had been unable to register for an ethics course "due to my health." Regardless of respondent Cole's health during this period, this explanation was misleading at best; the true reason that respondent Cole was unable to register for the ethics course the Bureau had approved was that no such course was available in Spring 2015.

25. After filing this February 2015 quarterly report, respondent Cole did not propose any other courses to Patterson to satisfy the probation condition requiring him to take an ethics course. In May 2015, however, respondent Cole prepared his second quarterly compliance report, and indicated incorrectly on that report that he had complied with all conditions of his probation during the period between mid-February and mid-May.

26. During the summer 2016 session, respondent Cole took and passed a course at Berkeley City College titled "Business 2: Introduction to Business Law," and took and passed Business 75 at Laney College. Both of these courses included ethics components. This evidence established that respondent Cole has satisfied the substance, although not the timetable, of the probation condition directing him to complete an ethics course.

27. Respondent Cole testified candidly that he had construed the probation condition requiring him to take an ethics course as an insult to his integrity, and believed that the Bureau had overreached by requiring him to take such a course. After completing Business 2 and Business 75, however, respondent realized that both courses had given him valuable new information that is directly relevant to management of his business.

Additional Evidence

28. In addition to operating Royal Memories, respondent Cole works in a hospital or clinic setting with mentally ill patients. Twice since 2013, he has suffered temporary disability because of on-the-job injuries. One of these injuries was a head injury that occurred in late 2014, very near to the effective date of the prior disciplinary order. Respondent missed several weeks of work in early 2015 because of this injury.

29. Respondent Cole has worked in the funeral services industry for about 16 years, first in Southern California and since 2008 in the Bay Area. He takes great professional pride in serving families honestly and compassionately during difficult personal circumstances.

30. After the prior disciplinary proceeding, respondent Cole realized that he needed help to manage Royal Memories properly. He believes that his family member's administrative help has greatly improved management of the business.

31. Respondent Cole knows of no complaints or investigations about him or Royal Memories pertaining to their treatment of clients, money, personal effects such as jewelry or clothing, or human remains. Routine Bureau inspections of Royal Memories' licensed funeral establishments have not identified any problems relating to sanitation or management.

Costs

32. The California Department of Justice, Office of the Attorney General, has charged the Bureau $3,300 for prosecution costs on this matter. Complainant's claim for these costs is supported by a declaration that complies with California Code of Regulations, title 1, section 1042. These prosecution costs are reasonable.

LEGAL CONCLUSIONS

1. The Bureau has authority to revoke respondents' probation if a preponderance of evidence establishes the facts supporting discipline. The Bureau has authority to revoke a funeral establishment license upon a preponderance of evidence as well. With respect to a funeral director license, which requires a college degree and an examination (Bus. & Prof. Code, §§ 7619, 7622), clear and convincing evidence may be necessary to support license revocation. The factual findings above rest on clear and convincing evidence.

Cause for License Discipline

2. A "funeral establishment" is "a place of business . . . devoted exclusively to those activities as are incident, convenient, or related to the preparation and arrangements, financial and otherwise, for the funeral, transportation, burial or other disposition of human remains." (Bus. & Prof. Code, § 7616, subd. (a).) The Bureau may not license a building or a portion of a building as a funeral establishment unless the location includes a suitable space for storing or handling human remains. (*Id.*) A person or business entity that operates a funeral establishment may, however, conduct "business or financial transactions" at a location different from the location where the person or business stores or handles human remains (*id.*, subd. (d)); also, two or more licensed funeral establishments may share a single facility for storing or handling human remains (*id.*, subd. (b)).

3. A funeral establishment license concerns a fixed physical location. (Bus. & Prof. Code, §§ 7617, 7625.) Operating a funeral establishment at a location the Bureau has not licensed for this function is unlawful, and is a ground for license discipline. (*Id.*, §§ 7617, 7703.)

By reason of the matters set forth in Findings 11 and 12, complainant established that respondent Royal Memories does not hold and has never held a license authorizing operation of a funeral establishment on Fourth Street in San Rafael. By reason of the matters set forth in Findings 6, 13, and 15, however, complainant did not establish that Royal Memories ever has operated a funeral establishment at this location. Complainant did not establish cause to discipline Royal Memories for unlicensed operation of a funeral establishment.

4. In addition, no person or corporation "shall . . . hold himself or herself or itself out as engaging in or conducting, the business of a funeral establishment without a license," and doing so also is grounds for discipline. (Bus. & Prof. Code, §§ 7617, 7703.) As set forth in Findings 16 and 20, respondent Royal Memories maintains a website that stated until late 2015 that Royal Memories operated a licensed funeral establishment on Fourth Street in San Rafael. Complainant established cause to discipline Royal Memories for holding itself out as conducting a funeral establishment at an unlicensed location.

5. As set forth in Finding 2, respondent Cole is the licensed funeral director responsible for Royal Memories' regulated activities. (Bus. & Prof. Code, § 7616.2.) Cause for discipline against Royal Memories' funeral establishment license is also cause for discipline against Cole's funeral director license.

Causes for Probation Revocation

6. By reason of the matters set forth in Factual Findings 7, 11, 12, 16, and 20 and in Legal Conclusion 4, cause exists to revoke probation as to Royal Memories' Funeral Establishment License No. FD 2078, for violation of the requirement that Royal Memories obey all laws pertaining to funeral establishments.

7. By reason of the matters set forth in Factual Findings 2, 7, 11, 12, 16, and 20 and in Legal Conclusion 5, cause exists to revoke probation as to Cole's Funeral Director License No. FDR 2589, for violation of the requirement that he cause Royal Memories to obey all laws pertaining to funeral establishments.

8. By reason of the matters set forth in Factual Findings 7, 24, 25, and 26, cause exists to revoke probation as to Cole's Funeral Director License No. FDR 2589, for violation of the requirement that he complete a Bureau-approved ethics course within the first year of probation.

Disciplinary Considerations

9. Operating a funeral establishment at an unlicensed location would be a serious disciplinary concern, because of the potential hazards of handling human remains in an inappropriate setting. In this matter, however, respondents did not operate a funeral establishment at an unlicensed location. Rather, as set forth in Findings 16 through 19, respondent Royal Memories carelessly maintained a website listing an office that it never actually used and characterizing that unused office as a "funeral establishment." These

errors might have misled potential clients, but they did not hold the same potential to harm the public as would operation of a funeral establishment in an unlicensed location.

10. For these reasons, revoking the funeral establishment license formerly held by Royal Memories for its location in San Rafael is not necessary to protect the public. Likewise, the advertising violation standing alone does not show that revocation of respondent Cole's funeral director license is necessary to protect the public.

11. With respect to the ethics class, however, respondent Cole's error was more serious. His decision to disregard the Bureau's order until the eve of the hearing in this matter, as set forth in Findings 21 through 27, demonstrates an irresponsible attitude toward the Bureau's regulatory authority.

12. The head injury respondent suffered in late 2014, as described in Finding 28, tempers this irresponsibility somewhat, as does respondent's decision (described in Finding 30) to seek help managing the administrative aspects of his business. Further, and as set forth in Findings 29 and 31, respondent has worked in the funeral services business for many years without serious incident.

13. Considering all these factors, revocation of respondent Cole's funeral director license would penalize him without offering significant protection to the public against dangerous or unethical business practices. A one-year extension to respondent Cole's probation will give respondent Cole a final opportunity to demonstrate to the Bureau that he can comply with all regulatory requirements under the Cemetery and Funeral Act.

14. By reason of the matters set forth in Finding 26, respondent Cole need not be ordered again to complete a course in ethics.

Cost Recovery

15. A licensee found to have committed a violation of the licensing act may be required to pay the Bureau the reasonable costs of the investigation and enforcement of the case. (Bus. & Prof. Code, § 125.3.)

In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth the standards by which a licensing board must exercise its discretion to reduce or eliminate cost awards to ensure that the board does not deter licensees with potentially meritorious claims from exercising their administrative hearing rights. The court held that a licensing board requesting reimbursement for costs relating to a hearing must consider the licensee's "subjective good faith belief" in the merits of his position and whether the licensee has raised a "colorable challenge" to the proposed discipline. (*Id.* at p. 45.) The board also must consider whether the licensee will be "financially able to make later payments." (*Ibid.*) Lastly, the board may not assess full costs of investigation and enforcement when it has conducted a "disproportionately large investigation." (*Ibid.*)

All these matters have been considered. Assessment against respondent Cole of the Bureau's reasonable enforcement costs of $3,300, as set forth in Finding 32, will reimburse the Bureau fairly without unduly burdening respondent's exercise of his hearing rights.

ORDER

Accusation

1. The accusation against Funeral Establishment License No. FD 2078, held by respondent Royal Memories Inc., and against Funeral Director License No. FDR 2589, held by respondent Harold Dwight Cole, is terminated without imposition of discipline.

Petition to Revoke Probation—Funeral Establishment License No. FD 2078

2. The petition to revoke probation with respect to Funeral Establishment License No. FD 2078 is denied.

Petition to Revoke Probation—Funeral Director License No. FD 2589

3. The petition to revoke probation with respect to Funeral Director License No. FDR 2589 is granted. The probation previously granted to Funeral Director License No. FDR 2589 is revoked; however, the revocation is stayed and the license is placed on probation for four years, effective November 13, 2014, on the following terms and conditions.

OBEY ALL LAWS

Respondent Harold Dwight Cole shall comply with all conditions of probation and obey all federal, state, and local laws, and all rules and regulations governing the programs regulated by the department.

QUARTERLY REPORTS

Respondent Harold Dwight Cole shall submit quarterly declarations under penalty of perjury, in a format designated by the department, stating whether or not respondent has been in compliance with all the conditions of probation. Respondent Harold Dwight Cole shall also submit such additional written reports and verifications of actions requested by the department. Should the final probation report not be made as directed, the period of probation shall be extended until such time as the final report is made.

INTERVIEW WITH DEPARTMENT REPRESENTATIVE

As necessary, respondent Harold Dwight Cole shall appear in person for scheduled interviews with the Director or other designated representative for the purpose of monitoring compliance with the terms of this decision.

OUT-OF-STATE RESIDENCE OR OPERATION

Should respondent Harold Dwight Cole leave California to reside or operate outside this state, respondent must notify the department in writing of the dates of departure and return. Reporting in person may be waived if the respondent moves out of state. However, respondent Harold Dwight Cole shall continue compliance with other terms of probation to retain California licensure. Periods of residency, business operation, or employment outside California shall not reduce the probationary period.

COMPLETION OF PROBATION

Upon successful completion of probation, respondent Harold Dwight Cole's license will be fully restored.

VIOLATION OF PROBATION

Should respondent Harold Dwight Cole violate probation in any respect, the Director of the department, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation or Petition to Revoke Probation is filed against respondent Harold Dwight Cole during probation, the department shall have continuing jurisdiction until the matter is final, and the probation shall be extended until the matter is final.

LICENSE ISSUED DURING PROBATION

Any license or registration issued to respondent Harold Dwight Cole by the department during the period of probation shall be issued as a probationary license or registration and is subject to all the terms and conditions set forth herein. Respondent Harold Dwight Cole must comply with terms and conditions herein and demonstrate no cause for disciplinary action or denial of an application.

EVIDENCE OF KNOWLEDGE

Respondent Harold Dwight Cole shall provide evidence satisfactory to the department that the licensee and all employees are knowledgeable in the laws and regulations governing the funeral industry, if deemed necessary by the policy chief or department director.

Cost Reimbursement

4. Respondent Harold Dwight Cole shall reimburse the Bureau $3,300 for its reasonable enforcement costs in this matter. Within 30 days after the effective date of this Order, respondent either may pay this full sum to the Bureau or may enter into an agreement with the Bureau to pay the costs on a schedule acceptable to the Bureau. Respondent shall complete payment of all costs by the date of termination of probation, and probation shall not terminate for Funeral Director License No. FDR 2589 until full payment has occurred. In addition, Funeral Director License No. FDR 2589 will not be renewed unless and until cost reimbursement is complete, or unless and until respondent is in compliance with a payment plan approved by the Bureau.

DATED: October 12, 2016

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Juliet E. Cox
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JULIET E. COX
Administrative Law Judge
Office of Administrative Hearings