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

IN THE MATTER OF ACCUSATION AGAINST: **GREGORY ROBERT CALDERON** 1309 San Andres Street #C Santa Barbara, CA 93101 Funeral Director's License No. FDR 1487, Embalmers License No. EMB 8288, **GREGORY CALDERON dba CALDERON FUNERAL HOME** 1309 San Andres Street #C Santa Barbara, CA 93101 Funeral Establishment License No. FD 1988, Petitioners.	Case No. A1 2009 378

DECISION DENYING REINSTATEMENT

The Director of the Department of Consumer Affairs ("Director") issued a Default Decision revoking Petitioner Gregory Robert Calderon's Funeral Director's License and Embalmers License, issued by the Cemetery and Funeral Bureau ("Bureau"), as well as his Funeral Establishment License for which he did business as Calderon Funeral Home, effective February 20, 2011. On March 13, 2015, Petitioner Gregory Robert Calderon submitted a letter petitioning for reinstatement of the embalmer's license ("Petition").

The parties were offered an opportunity to submit written arguments. The time for filing additional written argument in this matter having expired, the Petition and written arguments submitted by both parties, having been read and considered, the Director, pursuant to Government Code section 11522, makes and enters his decision as follows:

FACTUAL FINDINGS

License History

1. On or about August 9, 1995, the Bureau issued Embalmers License number EMB 8288 to Petitioner Gregory Robert Calderon ("Calderon"). On or between August 31, 2009 and November 3, 2009, the embalmer's license expired and was subsequently renewed. The embalmer's license subsequently lapsed on August 31, 2010, and has not been renewed. These lapses in licensure, however, pursuant to Business and Professions Code section 118(b) did not deprive the Bureau of its authority to institute or continue this disciplinary proceeding.

2. On or about October 6, 1998, the Bureau issued Funeral Director's License number FDR 1487 to Petitioner, Gregory Calderon dba as Calderon Funeral Home ("CFH"). The funeral director's license subsequently lapsed on October 31, 2010, and has not been renewed. This lapse in licensure, however, pursuant to Business and Professions Code section 118(b) did not deprive the Bureau of its authority to institute or continue this disciplinary proceeding.

3. On or about August 18, 2008, the Bureau issued Funeral Establishment License Number FD 1988 to Petitioner. On or between August 31, 2009 and November 3, 2009, the funeral establishment license expired and was subsequently renewed. The funeral establishment license subsequently lapsed on August 31, 2010, and has not been renewed. These lapses in licensure, however, pursuant to Business and Professions Code section 118(b) did not deprive the Bureau of its authority to institute or continue this disciplinary proceeding.

Jurisdictional Matters

4. On or about September 16, 2010, Complainant filed Accusation No. A1 2009 378 ("Accusation") against Gregory Robert Calderon individually and d.b.a. Calderon Funeral Home ("Petitioner") before the Director of the Department of Consumer Affairs. The Accusation alleged the Petitioners conduct consisted of the following acts:

a. Violating Business and Professions Code section 7616, for operating and maintaining "Calderon Funeral Home" from August 31, 2009 to October 21, 2009 without an active funeral establishment license, while accepting bodies for preparation for funeral and disposition;

b. Violating Business and Professions Code section 7441, for embalming bodies from August 31, 2009 to October 21, 2009 without an active embalmer's license;

c. Violating Business and Professions Code section 7707 and section 1216 of Title 16 of the California Code of Regulations, for failing to timely cremate the bodies of three people, for improperly storing their remains in his funeral home, and for failing to take the necessary steps to correct a death certificate;

d. Violating Business and Professions Code sections 7737 and 7739, for failing to place his clients' funds for preneed arrangements into trust and for failing to pay those funds back when his business closed;

e. Violating Business and Professions Code section 7692, for accepting payments for preneed funeral arrangements and then closing his business without refunding those payments;

f. Violating Section 1275 of Title 16 of the California Code of Regulations, for accepting payments for preneed funeral arrangements without entering into agreements that included the required terms and disclosures;

g. Violating Section 1269 of Title 16 of the California Code of Regulations, for failing to report preneed funeral arrangements to the Bureau, failing to place his clients' funds for those preneed arrangements into trust, and for lying about the existence of those preneed arrangements to a Bureau investigator.

h. Violating Section 1204 of Title 16 of the California Code of Regulations, for failing to supervise and to control his funeral establishment to ensure full compliance with state law.

5. On or about October 18, 2010, Petitioners were served by Certified and First Class Mail copies of the Accusation No. A1 2009 378, Statement to Petitioner , Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Petitioner 's address of record.

6. Petitioners 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 2009 378.

7. On January 20, 2011, the Director issued an Order revoking Petitioners' licenses for failing to file a Notice of Defense. The Order became effective February 20, 2011.

8. On July 27, 2012, in the Superior Court, County of Santa Barbara, Petitioner Calderon was convicted of 18 felony counts of violating Penal Code section 368(d) (theft from an elder or dependent adult) and one felony count of violating Penal Code section 487(a) (grand theft by embezzlement). He was placed on five years' probation and ordered, among other conditions, to serve 270 days in County of Santa Barbara jail and pay restitution to 19 victims.

Petition

9. On or about March 13, 2015, Petitioner Calderon filed a Petition for Reinstatement, pursuant to Government Code section 11522, seeking to reinstatement his embalmers license. The Petition states in part:

> *"For the last five years, there isn't a day that goes by where I am ashamed of myself for acting in an unprofessional manner.*
>
> *Every minute of each day I feel regret and remorse about the way I treated these family's wants and needs at a very difficult time. There is no excuse for my action's what so ever and I take full responsibility for them....*
>
> *I excepted the decision of the Courts and fulfilled the time given to me. I am paying restitution to each and every person I dealed with.....*
>
> *I am asking the Funeral Board to Reinstate my embalming license since I don't desire or want to do anything else...."*

10. On June 12, 2015, the parties were offered an opportunity to submit written argument. Written argument was submitted by both parties. Petitioner's written argument states in part:

> *" I was found guilty of the charges and I paid the penalty. All I ask is the chance to practice my profession of embalming which I was taught to do[.] I cannot change the past but if I could I would handle everything myself. I trusted in family and it didn't work out.... "*

LEGAL CONCLUSIONS

Burden/Standard of Proof

1. In seeking reinstatement, petitioner bears a heavy burden of proving rehabilitation. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1091 [citing *Calaway v. State Bar* (1986) 41 Cal.3d 743,

745 and *Tardiff v. State Bar* (1980) 27 Cal.3d 395, 403].) He must show by the most clear and convincing evidence that efforts made towards rehabilitation have been successful. (*Hippard, supra* 49 Cal.3d at 1092 [citing *Feinstein v. State Bar* (1952) 39 Cal.2d 541, 546-547].) Clear and convincing evidence means the evidence is "so clear as to leave no substantial doubt" and is "sufficiently strong to command the unhesitating assent of every reasonable mind." (*Mathieu v. Norrell Corporation* (2004) 115 Cal.App.4th 1174, 1190 [citing *Mock v. Michigan Millers Mutual Ins. Co.* (1992) 4 Cal.App.4th 306, 332-333].)

Rehabilitation Criteria

2. Pursuant to California Code of Regulations, Title 16, Section 1253.5, the factors the Director must consider in reviewing the Petition are found in California Code of Regulations, Title 16, Section 1253:

(1) The nature and severity of the act(s) or offense(s).

(2) Total crime record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the petitioner.

Legal Analysis

3. In applying the Findings of Fact to the Criteria for Rehabilitation, the Director finds:

a. Criteria (1) Nature and severity of the offense(s): The allegations against Petitioner that led to the revocation of his licenses were serious and are some of the most egregious in the cemetery and funeral industry. On nineteen separate occasions Petitioner intentionally defrauded consumers and their families as they were preparing for and seeking arrangements for their end-of-life needs, a time when people are most vulnerable.

b. Criteria (2) Total crime record: On October 26, 2012, judgment was entered against Petitioner by the Superior Court, County of Santa Barbara after he entered a conditional plea on July 27, 2012. The judgment found that Petitioner committed theft from elders or dependent adults and committed grand theft by embezzlement against 19 victims. Petitioner was ordered to make restitution to each victim. Additionally, Petitioner was sentenced to 270 days in the Santa Barbara Jail, was ordered to pay restitution, and was placed on five-year probation.

c. Criteria (3) Time that has elapsed since of the act(s) or offense(s): The offenses cited in the Accusation occurred between March 2009 and January 2010. Petitioner then absconded with victims' funds in January 2010. It has been approximately five years since the last offense. Petitioners' licenses have been revoked for approximately four years. And it has been less than three years since the convictions.

d. Criteria (4) Compliance with any or all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee: Petitioner served time in county jail. As of March 25, 2015, he still owes his victims $52, 565.85 in restitution. His last payment as of that date was the amount of $212.00 made on March 17, 2015. However, Petitioner is still on criminal probation. From the standpoint of a licensing agency's regulatory oversight of licensees, rehabilitation from the adverse implication of a criminal conviction cannot begin to be accurately assessed until the licensee is beyond the restrictions of criminal probation and the prospect of incarceration no longer looms over the head of the licensee. (*In re Gossage* (2000) 23 Cal.4th 1080, 1104-1105)

e. Criteria (5) Evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code: Petitioner has not submitted evidence of Penal Code section 1203.4 expungement.

f. Criteria (6) Evidence of rehabilitation submitted by the licensee: Rehabilitation is a state of mind, and the law looks with favor on rewarding with the opportunity to serve, one who has achieved reformation and regeneration. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) The evidence presented is to be considered in light of the moral shortcomings that previously resulted in discipline. (*Hippard, supra* 49 Cal.3d at 1092 [citing *Tardiff, supra* 27 Cal.3d at 403 and *Roth v. State Bar* (1953) 40 Cal.2d 307, 313].)

Petitioner Calderon submitted a copy of the Santa Barbara County Sentencing and Probation Order dated October 26, 2012, a copy of the criminal Probation Department Revenue Recovery Unit Account Statement ("Statement") dated March 24, 2015, and written argument in support of the Petition. However, while the Statement shows a payment was made on March 17, 2015, neither the Statement, nor Petition or written argument demonstrates evidence of rehabilitation. There is no evidence to support a finding that Petitioner Lane has achieved reformation, warranting reinstatement of his embalmers license. In fact, Petitioner has failed to submit any evidence of rehabilitation in support of the Petition.

DETERMINATION OF ISSUES

In considering whether to grant the Petition, the Director has considered the provisions of California Code of Regulations, Title 16, Sections 1253 and 1253.5. Given the Findings of Fact and Legal Conclusions above, Petitioner has failed to demonstrate he has rehabilitated himself and consequently has failed to prove that his license should be reinstated.

ORDER

The Petition is hereby denied. The license is not reinstated.

IT IS SO ORDERED this 25th day of September, 2015.

Doreathea Johnson

DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs