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

In the Matter of the First Amended Accusation Against: SIMPSON'S FAMILY MORTUARY; CURTIS SIMSON, SR. Funeral Establishment License No. FD 1559, CURTIS SIMPSON, SR. Funeral Director License No. FDR 1166, DERRICK SHERROD KING Funeral Director License No. FDR 2360, and SONYA LATRESE SIMPSON Funeral Director License No. FDR 2738 Respondents.	Case No. A1 2013 90

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Director of Consumer Affairs as the Decision in the above entitled matter.

This Decision shall become effective MAY 5, 2015.

IT IS SO ORDERED APR 06 2015.

Doreathea Johnson

DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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PROPOSED DECISION

Administrative Law Judge Angela Villegas, State of California, Office of Administrative Hearings, heard this matter on February 23, 24, and 25, 2015, in Los Angeles, California.

Nancy A. Kaiser, Deputy Attorney General, represented Complainant.

Richard R. Gutierrez, Esq., and Daniel Lombardo, Esq., represented all Respondents. Respondents Curtis Simpson, Sr., Derrick Sherrod King, and Sonya Latrese Simpson were also present.

Outside the presence of the administrative law judge, the parties settled the matter as to Respondents Derrick Sherrod King and Sonya Latrese Simpson. Accordingly, this Decision concerns only Respondents Simpson's Family Mortuary and Curtis Simpson, Sr.

Evidence was received, and the matter was submitted for decision on February 25, 2015.

FACTUAL FINDINGS

1. Complainant Lisa M. Moore, Chief of the Cemetery and Funeral Bureau, Department of Consumer Affairs (Bureau), filed the original and First Amended Accusations in her official capacity.

2. Respondent Simpson's Family Mortuary (Mortuary) holds funeral establishment license number FD 1559, issued by the Bureau on October 17, 1995, and scheduled to expire October 31, 2015, unless renewed.

3. Respondent Curtis Simpson, Sr., holds funeral director license number FDR 1166, issued by the Bureau on January 26, 1998, and scheduled to expire January 31, 2016, unless renewed. Mr. Simpson is the Mortuary's designated managing funeral director. Sonya Simpson is the Mortuary's operations manager, and is also Mr. Simpson's daughter. Derrick King is employed by the Mortuary as Ms. Simspon's assistant, and is also Mr. Simpson's nephew.

4. The Mortuary's and Mr. Simpson's licenses have disciplinary history. Effective January 10, 2006, in Bureau case number A1 2004 340 (OAH case no. 2005060092), the licenses of both the Mortuary and Mr. Simpson were suspended for 45 days and placed on probation for four years, pursuant to a stipulated settlement and disciplinary order. In the stipulated settlement, the Mortuary and Mr. Simpson "admit[ted] the truth of each and every charge and allegation in Amended and Supplemental Accusation No. A1 2004 340." (Exhibit 4.) The bases for discipline included the employment of unlicensed embalmers, fraud in the sale of a pre-need funeral service contract, failure to ensure the privacy of human remains, technical violations, and failure to ensure compliance with applicable laws and regulations. The terms of probation included a requirement that the Mortuary and Mr. Simpson "obey all federal, state and local laws, and all rules and regulations governing the programs regulated by the department." (*Id.*)

5. In addition, between July 2007 and February 2012, the Bureau cited the Mortuary on five occasions, and Mr. Simpson on three occasions, for violations of various laws and regulations, as follows.[1] Each of the citations is final.

(a) On July 6, 2007, the Bureau issued citation number IC 2007 68 against the Mortuary for violating Business and Professions Code sections 7707 and 7685.2, and fined the Mortuary $3,000. (Exhibit 5.) On the same day, the Bureau issued citation number

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[1] The stipulated settlement of case number A1 2004 340, incorporating by reference the Amended and Supplemental Accusation in that case (cf. Factual Finding 4), acknowledged the existence of additional citations against the Mortuary and Mr. Simpson, issued from July 1996 through March 2004. The existence of these earlier citations was not alleged in the present case, even as a matter in aggravation, and the earlier citations are not considered in this Decision.

IC 2007 69 against Mr. Simpson, for failing to ensure the Mortuary's compliance with Business and Professions Code sections 7707 and 7685.2 (Cal. Code Regs., tit. 16, § 1204), and fined Mr. Simpson $1,000. (Exhibit 6.)

(b) On May 8, 2009, the Bureau issued citation number IC 2009 48 against the Mortuary for violating Business and Professions Code section 7685.1, but did not impose an administrative fine. (Exhibit 7.)

(c) On July 30, 2010, the Bureau issued citation number FB 2010 47 against the Mortuary for violating Business and Professions Code section 7685.1, and fined the Mortuary $501. (Exhibit 8.)

(d) On October 7, 2010, the Bureau issued citation number IC 2010 176 against the Mortuary for violating Business and Professions Code section 7707, and fined the Mortuary $1,001. (Exhibit 9.) On the same date, the Bureau issued citation number IC 2010 392 against Mr. Simpson for failing to ensure the Mortuary's compliance with Business and Professions Code section 7707 (Cal. Code Regs., tit. 16, § 1204), and fined Mr. Simpson $501. (Exhibit 10.)

(e) On February 10, 2012, the Bureau issued citation number IC 2011 341 against the Mortuary for violating Business and Professions Code section 7707, and fined the Mortuary $2,500. (Exhibit 11.) On the same date, the Bureau issued citation number IC 2012 59 against Mr. Simpson for failing to ensure the Mortuary's compliance with Business and Professions Code section 7707 (Cal. Code Regs., tit. 16, § 1204), and fined Mr. Simpson $1,000. (Exhibit 12.)

6. At approximately 10:00 a.m. on February 28, 2013, family members of decedent Darlene D.[2] arrived at the Mortuary to view the body privately, in advance of a public viewing scheduled for later that day, and a funeral service and burial scheduled for the following day. After waiting an hour or more, family members were given access to the body. They did not recognize the person in the casket as Darlene D., and so informed Mortuary staff members. Darlene D.'s granddaughter was particularly distraught, and expressed her emotion to at least one staff member.

7. Mortuary staff responded to the family members' concerns by telling them that people's appearances change after death, and assuring them that this was, in fact, Darlene D.'s body. No Mortuary staff member, however, actually checked the body's identifying ankle band (cf. Factual Finding 10) to verify her identity. The family accepted the Mortuary's explanation, and proceeded with the public viewing, funeral, and burial.

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[2] Decedents are identified by first name and last initial to preserve their families' privacy.

8. After the body purported to be that of Darlene D. had been interred, the family of decedent Lillian R. came to the Mortuary to view her remains. Lillian R.'s daughter informed Mortuary staff that the body was not that of Lillian R. This time, Derrick King investigated, and determined, based on the body's identifying ankle band, that it was probably that of Darlene D. On Mr. Simpson's instruction, Mr. King brought Darlene D.'s husband to the Mortuary, where he positively identified Darlene D.'s body.

9. The Mortuary arranged a second viewing, funeral, casket, and burial for Darlene D. in a new grave, all of which the Mortuary paid for. The second set of ceremonies, although well-attended, left the family feeling sad about what had happened. On March 15, 2013, the body buried in Darlene D.'s original grave was disinterred, and identified as that of Lillian R. The Mortuary settled a claim by Lillian R.'s family for $89,000. Mr. Simpson apologized to both families.

10. Bodies are brought to the Mortuary by removal technicians, whose job includes verifying the deceased person's identity and placing an identifying band around the person's ankle. (Cf. Factual Finding 8.) The identifying ankle bands on the bodies of Darlene D. and Lillian R. had their names spelled in large letters in black marker against a white background. (Exhibits 21 and 23.) In addition, Lillian R.'s body had a toe tag with a hospital identification sticker stating her name. (*Id.*)

11. The Mortuary's confusion of the bodies of Darlene D. and Lillian R. originated with employee Earnest Taylor, who did not check Lillian R.'s identifying ankle band before dressing her in Darlene D.'s clothing for presentation to Darlene D.'s family. The Mortuary's usual protocol includes verifying the identities of bodies before dressing them and presenting them to family members, but in the case of Lillian R. and Darlene D., that protocol was not followed. Mr. Taylor told the Bureau's investigator, inconsistently, that he "ha[d] not been checking the ankle band or any other band for that matter" and that "normally he check[ed] the ankle tag but in this case he did not." (Exhibit 22.)

12. A reasonable mortuary and its staff, including the designated managing funeral director, would have specified and followed whatever procedures were necessary to verify the identity of a body at all times while the body was in the Mortuary's possession (testimony of Bureau field representative John R. Gettys III), particularly before presenting it to a family as that of the family's deceased loved one, and before sending the body to the cemetery for burial. A reasonable mortuary and its staff would also have attempted to verify a body's identity if the family raised concerns over it. The Mortuary's failure to ensure that the bodies of Darlene D. and Lillian R. were correctly identified constituted an extreme departure from what would have been reasonable under the circumstances, and reflected a want of even scant care, since the only action necessary to verify the bodies' identity was to look at their ankle bands. The conduct of the Mortuary and its staff in confusing the bodies of Darlene D. and Lillian R. was unprofessional.

13. On March 26, 2013, the Mortuary sent the body of Edna F. to the crematory, and the body was cremated.[3] The cremation was not witnessed by any of Edna F.'s family members, even though the contract between the Mortuary and Edna F.'s family provided for "WITNESSING." (Exhibit 18.) (Emphasis in original.) Both before and after Edna F.'s death, her sons had informed Mortuary staff—specifically, Sonya Simpson—that they wished to have a witnessed cremation, due to one son's concern that their mother's remains might otherwise be cremated together with the remains of other people. The Mortuary charged the family $490 for the witnessed cremation, and required the son who wished to witness the cremation to provide a notarized document so stating.

14. The Mortuary's usual procedure for arranging a witnessed cremation was for the Mortuary's counselor to telephone the crematory and determine a date and time for the witnessed cremation, then confirm the date and time with the family. According to the documents reviewed by the Bureau's investigator, this procedure was not set forth in writing; nevertheless, Ms. Simpson and crematory employee Delano Blackwell testified believably to its existence. Moreover, the Bureau's investigator testified to his belief that the Mortuary intended to perform the witnessed cremation as promised. When a cremation was to be witnessed, the Mortuary normally included (and still includes) "witnessing" as a line item on the contract with the decedent's family, as was done in the case of Edna F. In addition, Sonya Simpson placed a notation inside Edna F.'s file jacket and a sticky note in the file, noting "witness." The death certificate clerk who handled the file, however, did not notice the "witnessing" notation on the contract or the other notes in the file, and sent Edna F.'s body to the crematory without waiting for the witnessed cremation to be arranged.

15. When Sonya Simpson retrieved the file to follow up on the arrangements for Edna F., she noticed documentation indicating the body had already been cremated. On March 30, 2013, Ms. Simpson told Edna F.'s daughter-in-law about the mistake, apologized, and, after obtaining Mr. Simpson's authorization, offered compensation to the family. Mr. and Ms. Simpson also instructed the death certificate clerks to read the entire file before sending a body for cremation, and if a witnessed cremation has been requested, to note that fact on the front of the file jacket. In addition, the death certificate clerks must now confirm every witnessed cremation with the decedent's family by telephone, and review the file with Ms. Simpson, before sending a body to the crematory.

16. A reasonable mortuary and its staff, including its designated managing funeral director, would have had procedures to ensure that, when a family requests and pays for a witnessed cremation, they are allowed to witness the cremation, and would have ensured that staff followed those procedures. A reasonable mortuary and designated managing funeral director would have recognized the importance of adhering to such procedures because of the irreversibility of cremation.

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[3] The crematory is also owned by the Simpson family, but is a separate entity, and is not a party to the present proceeding.

17. The Mortuary's conduct in the case of Edna F.'s cremation departed from what would have been reasonable, and was unprofessional, because the Mortuary did not ensure that Edna F.'s son was able to witness the cremation, which the Mortuary had promised the son he would be allowed to do, and for which the family had paid. The Mortuary's conduct was not, however, an extreme departure from what would have been reasonable, nor did it reflect the absence of even scant care. On the contrary, the Mortuary had procedures in place to follow up on requests for witnessed cremations, and Ms. Simpson followed those procedures by noting, in three places, the Mortuary's promise to provide a witnessed cremation—on the contract, in capital letters; on the inside of the file jacket; and on a sticky note. In addition, she personally followed up to make the arrangements. These actions bespeak an effort—albeit an insufficient one—to fulfill the Mortuary's promise of a witnessed cremation.

18. On June 7, 2014, a funeral service was held at the Mortuary for Toby H. When Toby H.'s mother had made the funeral arrangements with the Mortuary the previous month, she asked that the song "Keep Your Head to the Sky," by Earth, Wind & Fire, be played as the family entered for the service, and provided her Mortuary counselor, Mr. Henderson, with a CD containing the song. The song had special meaning to the family because it had been played at the funeral of Toby H.'s twin sister years before, a circumstance Toby H.'s mother communicated to Mr. Henderson. At the service, however, instead of playing "Keep Your Head to the Sky," the Mortuary played the song "Evil" from the Earth, Wind & Fire CD. The evidence did not indicate the Mortuary promised to play "Keep Your Head to the Sky" without intending to play it, or without reasonable grounds to believe the song would be played. Rather, the evidence indicated the wrong song was played because of a failure of, or breakdown in, communication between Mr. Henderson and the person who actually directed Toby H.'s funeral service.

19. As the service proceeded, a Mortuary staff member attempted to open the casket, which Toby H.'s mother had rented, rather than purchased, since the body was to be cremated. The casket's lid malfunctioned and the staff member could not open it, and had to get help. After several minutes of wrestling with the casket lid in front of those attending the service, staff members got the lid open, but it did not sit correctly. Instead, it either hung crookedly or had to be placed on the floor.[4] Toby H.'s family members suffered emotionally as a result of the things that went wrong with the funeral service.

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[4] Toby H.'s mother testified to the latter; his sister testified to the former. Nevertheless, both testified that the lid did not rest normally in the open position.

20. In addition, the Mortuary mistakenly charged the family for a hearse ("funeral coach" (Exhibits 13 – 15)), even though no hearse was used. Toby H.'s mother's receipt of death certificates and Toby H.'s ashes was also delayed because the Mortuary's death certificate clerk overlooked a notation in the file that Toby H.'s father's whereabouts were unknown.[5] (Exhibit 13.)

21. After Toby H.'s mother complained about the above problems, the Mortuary refunded her $750, which included (a) $400 of the $825 charged for casket rental; (b) $200 of the $350 charged for the unused hearse; and (c) $150 for the honorarium she paid the minister (cf. fn. 5). (Exhibits 15 – 17.) Mr. Simpson "was not able" to talk with the family to apologize. (Testimony of Curtis Simpson, Sr.)

22. The Bureau's investigator interviewed Mortuary staff members about the things that went wrong at Toby H.'s service, and, particularly from Mortuary counselor Mr. Henderson, received inconsistent information and changing accounts. In addition, the notes and testimony of the Bureau's investigator indicated that Mr. Simpson was present for the interviews with the Mortuary's staff members. At the administrative hearing, however, Mr. Simpson did not recall being present for all of the interviews. The investigator's recollection, as confirmed by his contemporaneous notes, was credible.

23. A reasonable mortuary and its staff, including its designated managing funeral director, (a) would have ensured that equipment to be used in a funeral service, such as a rental casket, functioned properly prior to the service; (b) would have ensured that employees communicated accurate and timely information about a family's wishes, including the music to be played; and (c) would not have charged a family for a hearse that was not used, and if such a charge were made by mistake, would have done a final accounting and refunded the full amount of the erroneous charge to the family. (Testimony of Bureau field representative John R. Gettys III.) The evidence did not disclose what a reasonable mortuary and its staff would have done with regard to the timely production of death certificates, but common experience indicates that employees, in the exercise of reasonable care, would examine the entire file to obtain information pertinent to the discharge of their duties. (Gov. Code, § 11425.50, subd. (c).)

24. Complainant's evidence did not include expert opinion that the Mortuary's or Mr. Simpson's conduct in connection with the Toby H. funeral constituted an extreme departure from what would have been reasonable, or reflected the failure to exercise even scant care. Bureau field representative John R. Gettys III described the conduct of the Mortuary and Mr. Simpson in connection with the Toby H. funeral as unprofessional, and

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[5] At the hearing, evidence was also presented that the Mortuary failed to remit an honorarium earmarked for the officiant of the funeral service, so that the family was required to travel to the officiant and provide him with the honorarium personally, and that Toby H.'s fingernails were not cleaned, but instead were merely covered up for the service. These matters were not pled in the original or First Amended Accusation, and are not considered against Respondents in this Decision.

Bureau investigator Ted Mims concurred in that opinion. Nevertheless, given the minimal effort that would have been required for Mortuary staff to ensure the proper functioning of the rental casket prior to the funeral service, to ensure that the person directing the service had the correct music playlist, to provide a full refund of the charge for the unused hearse, and to notice the information in the file as to the unknown whereabouts of Toby H.'s father, the Mortuary's failure to undertake those efforts reflected not only unprofessionalism, but also a failure to exercise even scant care, so as to constitute an extreme departure from what would have been reasonable.

25. In all of the above instances, Mr. Simpson was upset that the problems had occurred, and offered, or tried to offer, his apologies and other remedies to the affected families as soon as he learned of the problems. Moreover, in the time since those incidents, the Mortuary and Mr. Simpson have made an effort to improve operations and prevent similar occurrences in the future.

(a) Mr. Simpson ordered the destruction of the defective rental casket used in Toby H.'s funeral, and terminated the employee who failed to verify the identity of Lillian R.'s body, instead presenting her as Darlene D. In addition, Mr. Simpson instituted a policy of testing employees on a weekly basis to assess their skills, and testified that any employee who fails a test twice will be terminated, though the evidence did not disclose whether any employees have yet been terminated under this policy. Employees are also subjected to monthly drug testing. Cameras have been installed to record employee activity, which Mr. Simpson and "other management" monitor. (Testimony of Curtis Simpson, Sr.) The Mortuary has also begun requiring its employees to better document their communications and actions.

(b) Mr. Simpson plans, as soon as is practicable, to replace most or all of the staff members who were involved in the mishaps that led to the present proceeding. He has already hired some new employees, who "know what they're doing" (*id.*) and can handle delegated tasks, but feels he cannot let other employees go until trained replacements have been hired. Mr. Henderson, who made the arrangements for Toby H., is still employed by the Mortuary, but Mr. Simpson plans to terminate him. The death certificate clerk who failed to notice the "witnessing" notations in Edna F.'s file is also still employed at the Mortuary, though she no longer processes cremation permits. The clerk who does handle such permits has her work checked by Mr. Simpson. (Cf. Factual Finding 15.)

(c) Mr. Simpson holds weekly meetings to help him "stay on top of everything." (*Id.*) He now authorizes Ms. Simpson and Mr. King to disburse Mortuary funds in his absence, to avoid another instance of leaving a clergy member without the honorarium earmarked for him or her. (Cf. fn. 5.) Mr. Simpson has also retained a management consultant, Rambo House, to assist him in overhauling the operations and marketing of the Mortuary.

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26. The evidence did not indicate that either the Mortuary or Mr. Simpson is incapable of carrying out the functions of a mortuary and/or funeral director. No expert opinion was offered as to the Mortuary's or Mr. Simpson's capability, or lack thereof, to perform competently. Conversely, the evidence indicated that the Mortuary conducts approximately 1,200 funerals per year. Until May 2011, when he lost a leg to amputation, Mr. Simpson was solely in charge of overseeing the Mortuary's operations. From May 2011 until August or September 2014, he had days when pain kept him from coming to work. As a result, he could not exercise the same level of control over the business, but did not delegate his duties to anyone else in his absence. He believes the 2013 and 2014 incidents giving rise to the present proceeding occurred, in part, because of his absence. He feels better now, and does not believe he will have to miss work again due to pain.

27. The Mortuary and Mr. Simpson enjoy a good reputation among the parishioners of churches led by several ministers who testified at the administrative hearing, and among the ministers themselves, who described the Mortuary as providing quality service. They also praised Mr. Simpson for his generosity in providing funeral services at greatly reduced cost for homeless military veterans and others too impoverished to pay the usual prices for funeral services. Over the years, the Mortuary under Mr. Simpson's management has been financially successful.

28. The Bureau's reasonable costs of investigation in this matter were $3,261.97, and its reasonable costs of enforcement were $8,772.50, for a total of $12,034.47. No argument was presented that this figure was unreasonable, and the evidence did not indicate that Respondents would be unable to pay it.

LEGAL CONCLUSIONS

1. (a) Complainant established cause to discipline the Mortuary's and Mr. Simpson's licenses by clear and convincing evidence, based on their conduct in connection with the services provided for Darlene D., Lillian R., Edna F., and Toby H. (Bus. & Prof. Code, § 7686; *Imports Performance v. Dept. of Consumer Affairs, Bur. of Automotive Repair* (2011) 201 Cal.App.4th 911, 916.) Nevertheless, not every cause for discipline (CFD) asserted in the First Amended Accusation was substantiated.

(b) Mr. Simpson is responsible for the Mortuary's violations as its designated managing funeral director. (Factual Finding 3.) (Cal. Code Regs., tit. 16 (Regulation), § 1204, subds. (a) and (b).) The Mortuary is responsible for the violations of its employees because, like any business entity, it can act only through its agents and/or employees. (E.g., *Groves v. City of Los Angeles* (1953) 40 Cal.2d 751, 755-756; *Sunderland v. Lockheed Martin Aeronautical Systems Support Co.* (2005) 130 Cal.App.4th 1, 8-9.)

2. (a) Complainant established cause to discipline the Mortuary's and Mr. Simpson's licenses based on the Mortuary's representation that the body of Lillian R. was that of Darlene D., and vice-versa. (Factual Findings 6 – 9.) (Bus. & Prof. Code, §§ 7686

and 7692; Regulation § 1204, subd. (b).) (Cf. CFD 1.) It was not established that the Mortuary purposely misrepresented the identity of Lillian R.'s and Darlene D.'s bodies (Factual Finding 6 – 11), but the evidence did indicate that the Mortuary did so without reasonable grounds to believe its representations were true (Factual Findings 6 – 12), which constitutes negligent misrepresentation. (See, e.g., *Bily v. Arthur Young & Co.* (1992) 3 Cal.4th 370, 407-408 (a negligent misrepresentation is one made without reasonable grounds to believe it is true).)

(b) Mortuary staff lacked reasonable grounds to believe their representations were true, because they had not verified either body's identity prior to presenting it to the family in question. (Factual Findings 6 – 12.) Mortuary staff reiterated the misrepresentation as to Darlene D. by reassuring her family members, without taking steps to verify the body's identity. (Factual Finding 7.) Darlene D.'s family relied on these misrepresentations by accepting the assurances of Mortuary staff, and proceeding with the funeral and burial of the body they had been told was Darlene D. (*Id.*) The family suffered emotionally because of the misrepresentations. (Factual Finding 9.)

3. Complainant established cause to discipline the Mortuary's and Mr. Simpson's licenses based on the Mortuary's gross negligence and unprofessional conduct in substituting Lillian R.'s body for that of Darlene D., and vice-versa. (Factual Findings 6 – 12.) (Bus. & Prof. Code, §§ 7686 and 7707; Regulation § 1204, subd. (b).) (Cf. CFD 2.) (See *City of Santa Barbara v. Superior Court* (2007) 41 Cal.4th 747, 754 ("'Gross negligence' long has been defined in California and other jurisdictions as either a 'want of even scant care' or 'an extreme departure from the ordinary standard of conduct.'"); *Van Meter v. Bent Construction Co.* (1956) 46 Cal.2d 588, 594 (same).) The failure of Mortuary staff to exercise even slight care to ascertain the correct identity of either body was an extreme departure from the standard of care and constituted unprofessional conduct. (Factual Finding 12.)

4. Complainant established cause to discipline Mr. Simpson's license on grounds that he failed to ensure the Mortuary's compliance with applicable laws and regulations in connection with Darlene D. and Lillian R. (Factual Findings 6 – 12.) (Bus. & Prof. Code, § 7686; Regulation § 1204, subd. (b).) (Cf. CFD 3.)

5. Complainant did not establish cause to discipline the Mortuary's or Mr. Simpson's license based on misrepresentation or fraud in the conduct of business in connection with Edna F. (Bus. & Prof. Code, §§ 7686 and 7692.) (Cf. CFD 4.)

(a) The evidence did not indicate that the Mortuary promised a witnessed cremation without intending to perform the promise, such that the promise can be deemed fraudulent. (Factual Findings 13 – 15.) (See *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638 (promise made without intent to perform constitutes "an implied misrepresentation of fact that may be actionable fraud").)

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(b) No authority presented to, or found by, the administrative law judge supports the proposition that a promise made *with* intent to perform, but not actually performed, is tantamount to a misrepresentation. Case law in the civil context holds that a promise made with intent to perform, but without reasonable grounds to believe performance will occur—in other words, a negligent false promise—is not actionable as a misrepresentation. (See *Tarmann v. State Farm Mutual Automobile Insurance Co.* (1991) 2 Cal.App.4th 153, 159 ("[M]aking a promise with an honest but unreasonable intent to perform is wholly different from making one with no intent to perform and, therefore, does not constitute a false promise. Moreover, we decline to establish a new type of actionable deceit: the negligent false promise."); *Magpali v. Farmers Group* (1996) 48 Cal.App.4th 471, 481-482 (following *Tarmann*).)

(c) Even if such a "negligent false promise" constitutes a misrepresentation under Business and Professions Code section 7692, the evidence did not indicate that the Mortuary promised a witnessed cremation without reasonable grounds to believe the promise would be fulfilled. (Factual Findings 13 – 15.) On the contrary, the Mortuary had procedures and took steps to ensure that the promise would be fulfilled, but those procedures and steps proved insufficient. (*Id.*) The Mortuary's unfulfilled promise does not, under the circumstances shown by the evidence, amount to a misrepresentation.

6. Complainant established cause to discipline the Mortuary's and Mr. Simpson's licenses based on the Mortuary's unprofessional conduct in connection with the promised witnessed cremation of Edna F. (Factual Findings 13 – 17.) (Bus. & Prof. Code, §§ 7686 and 7707; Regulation § 1204, subd. (b).) (Cf. CFD 5.) The Mortuary should have been able to fulfill its promise of a witnessed cremation, and it was due to a breakdown or insufficiency in the Mortuary's professional procedures that the promise went unfulfilled. (Factual Findings 13 – 17.) The evidence did not establish gross negligence in connection with the services rendered to the family of Edna F., because the evidence indicated that the Mortuary exercised at least some care in having procedures to provide, and attempting to provide, the promised witnessed cremation. (*Id.*) Nevertheless, cause for discipline under Business and Professions Code section 7707 is established by unprofessional conduct alone.

7. Complainant established cause to discipline Mr. Simpson's license on grounds that he failed to ensure the Mortuary's compliance with applicable laws and regulations in connection with Edna F. (Factual Findings 13 – 17.) (Bus. & Prof. Code, § 7686; Regulation § 1204, subd. (b).) (Cf. CFD 6.)

8. Complainant did not establish cause to discipline the Mortuary's or Mr. Simpson's license based on misrepresentation in the conduct of business in connection with Toby H. (Bus. & Prof. Code, §§ 7686 and 7692.) (Cf. CFD 7.)

(a) The evidence did not indicate clearly or convincingly that the Mortuary's promises in connection with Toby H.'s funeral service—particularly, its promise to abide by the family's wishes to have certain music played at a certain time in the service—were made without intent to perform, or even without reasonable grounds to believe the

promises could be performed. (Factual Finding 18.) On the contrary, the evidence indicated simply that the efforts undertaken to fulfill the promise were ineffective. (*Id.*) Likewise, the evidence did not indicate that the charge for the unused hearse was misleading; rather, the evidence indicated it was mistaken and that Toby H.'s family did not rely on it, instead demanding it be reversed. (Factual Findings 20 and 21.)

(b) Counsel for Complainant argued that inconsistencies in the statements of Mortuary employees during the Bureau's investigation of the Toby H. matter, and Mr. Simpson's inability to recall having been present for all of the Bureau's investigative interviews (Factual Finding 22), also constituted misrepresentation under Business and Professions Code section 7692. This contention was unpersuasive.. First, neither the original nor First Amended Accusation pled those misrepresentations. Second and more important, Business and Professions Code section 7692 proscribes "[m]isrepresentation or fraud *in the conduct of the business or profession*" (emphasis supplied). Any misrepresentation that may have occurred in connection with the Bureau's *investigation* and/or the *hearing* of this matter is not encompassed by Business and Profession Code section 7692.

9. Complainant established cause to discipline the Mortuary's and Mr. Simpson's licenses based on gross negligence and unprofessional conduct in connection with Toby H. (Factual Findings 18 – 21, 23, and 24.) (Bus. & Prof. Code, §§ 7686 and 7707; Regulation § 1204, subd. (b).) (Cf. CFD 8.) Mortuary staff failed to exercise even scant care to ensure that the rental casket was in proper working order, the proper music was played, the inaccurate funeral coach charge was fully and promptly reversed, and the file was reviewed so that death certificates could be issued timely. (Factual Findings 23 and 24.)

10. Complainant established cause to discipline Mr. Simpson's license on grounds that he failed to ensure the Mortuary's compliance with applicable laws and regulations in connection with Toby H. (Factual Findings 18 – 21, 23, and 24.) (Bus. & Prof. Code, § 7686; Regulation § 1204, subd. (b).) (Cf. CFD 9.)

11. The Mortuary's, and by extension Mr. Simpson's, conduct with regard to Lillian R., Darlene D., Edna F., and Toby H. is substantially related to the qualifications, functions, and duties of a licensed funeral establishment and a licensed funeral director because, to a substantial degree, it evidences potential unfitness to perform the functions authorized by each license in a manner consistent with public health, safety, and/or welfare, and because it involved violations of provisions of Chapter 12, Division 3, of the Business and Professions Code. (Factual Findings 6 – 24.) (Cf. Legal Conclusions 1 – 4, 6, 7, and 9.) (Regulation § 1252, subd. (b).)

12. The evidence did not clearly and convincingly establish gross incompetence on the part of either the Mortuary or Mr. Simpson. (Factual Finding 26.) Gross incompetence is the inability to perform within acceptable standards. (See *Pollak v. Kinder* (1978) 85 Cal.App.3d 833, 838 (" [T]he terms negligence and incompetency are not synonymous; a licensee may be competent or capable of performing a given duty but negligent in performing that duty."); *Glover v. Board of Medical Quality Assurance* (1991) 231 Cal.App.3d 203, 208 (incompetence could be inferred from gross negligence where

"expert testimony unequivocally indicat[ed] that a minimally competent physician would have chosen a different course of treatment[.]").) In this case, the evidence did not include expert testimony that Respondents lacked competence. Rather, the evidence indicated that the Mortuary and Mr. Simpson are capable of performing competently, but that they performed adequately in connection with the matters giving rise to the present proceeding. (Factual Findings 6 – 26.) Nevertheless, cause for discipline under Business and Professions Code section 7707 was established based on the Mortuary's and Mr. Simpson's gross negligence and/or unprofessional conduct; therefore, Complainant's failure to establish gross incompetence is immaterial. (Cf. CFDs 2, 5, and 8.)

13. Given the causes for discipline established in this case, the aggravating and mitigating circumstances, and the evidence presented of rehabilitation, the appropriate discipline is the revocation of the Mortuary's and Mr. Simpson's licenses. (Bus. & Prof. Code, § 7690, subd. (e).)

14. Under the Bureau's Disciplinary Guidelines (Guidelines) (see Regulation § 1253.6 (requiring consideration of Guidelines)), when misrepresentation or fraud in the conduct of business (Bus. & Prof. Code, § 7692) has been established, the recommended discipline ranges from a minimum of stayed revocation, with three years' probation, to a maximum of outright revocation. (Guidelines at p. 3.) Likewise, when gross negligence and/or unprofessional conduct (Bus. & Prof. Code, § 7707) have been established, the recommended discipline ranges from a minimum of stayed revocation, with 30 days' suspension and five years' probation, to a maximum of outright revocation. (Guidelines at p. 7.) The Guidelines provide that outright revocation is appropriate "for the most serious and/or repeated violations" (Guidelines at p. 1) and "is warranted in cases involving repeated and/or flagrant offenses, and where serious damage or consumer harm results from a violation." (*Id.*) The Guidelines do not specify criteria for evaluating aggravating and/or mitigating circumstances, or evidence of rehabilitation, but Regulation section 1253.5 provides such criteria for situations in which a licensee has been convicted of a crime. Together with the Guidelines' general principles, some of Regulation section 1253.5's criteria can be applied by analogy.

15. The violations established in this case caused harm, in the form of emotional suffering, to the families of Darlene D. and Toby H., and could reasonably be expected to have occasioned emotional suffering to the families of Edna F. and Lillian R. as well. (See *Christensen v. Superior Court* (1991) 54 Cal.3d 868, 886, 891 (it is foreseeable that mishandling of mortuary services will cause emotional distress to family members of the deceased).) (Factual Findings 6 – 24.) (Regulation § 1253.5, subd. (a)(1); Guidelines at p. 1.) The Mortuary's, and by extension Mr. Simpson's, violations ranged from serious in the case of the problems with Toby H.'s funeral service, to very serious, in the case of Edna F.'s non-witnessed cremation, to extremely serious in the case of the substitution of Lillian R.'s body for that of Darlene D., and the Mortuary's failure to respond appropriately to concerns voiced by Darlene D.'s family as to the identity of the body presented to them. (Factual Findings 6 – 24.) (Regulation § 1253.5, subd. (a)(1); Guidelines at p. 1.)

16. All of the violations were recent. (Factual Findings 6 – 24.) (Regulation § 1253.5, subd. (a)(3).) Moreover, the violations occurred despite the imposition of prior discipline. (Factual Finding 4.) (Regulation § 1253.5, subd. (a)(2).) Indeed, the July 6, 2007 and May 8, 2009 citations were issued during the Mortuary's and Mr. Simpson's prior license probation (Factual Findings 4 and 5), indicating that the Mortuary and Mr. Simpson did not adhere strictly to the term of probation requiring them to obey all applicable laws and regulations (Regulation § 1253.5, subd. (a)(4)), and generating doubt as to their willingness and ability to do so now.

17. On the other hand, it is commendable that, in every instance giving rise to this proceeding, Mr. Simpson attempted to rectify the problems that occurred, apologize to the families, and offer various forms of compensation. (Factual Findings 9, 15, and 21.) Even in so doing, however, the refund offered to Toby H.'s family did not fully reimburse them for the unused hearse, which undermined the refund's ameliorative effect. (Factual Finding 21.)

18. In the face of the conduct that led to the present proceeding, and the Mortuary's and Mr. Simpson's significant history of discipline and cited violations, it was incumbent on them to demonstrate commensurately significant strides in the direction of reform. (Regulation § 1253.5, subd. (a)(6).) They did not make that showing. They have taken some steps, but not enough to provide assurance that they can continue to be licensed without undue peril to the public.

19. The Mortuary and Mr. Simpson have improved their procedures with regard to witnessed cremations, implemented more stringent policies to ensure employee compliance with Mortuary procedures overall, begun the process of replacing staff members who contributed to, or caused, the problems that gave rise to this proceeding, and hired a management consultant. (Factual Findings 15 and 25.) But the evidence did not show what, if any concrete measures the Mortuary has taken to improve operations as a result of the management consultant's advice, and insufficient time has passed without incident to allow a determination that any of the new policies or heightened employee oversight have been effective to prevent recurrence of the lapses that gave rise to this proceeding. (Factual Finding 25.)

20. The Mortuary's and Mr. Simpson's good reputation among many who have used their services, and Mr. Simpson's generosity in providing services to the less fortunate, are noteworthy, as is the Mortuary's nearly 20-year history in business, and Mr. Simpson's 17-year history as a licensed funeral director, and the success enjoyed by both. (Factual Findings 2, 3, and 27.) Nevertheless, the histories of both licenses have been blemished by prior citations (Factual Finding 5), and most troublingly, by a less than entirely successful four-year probation (Factual Findings 4 and 5), which illustrates that the Mortuary and Mr. Simpson, when given the chance to demonstrate reform and improvement, did not wholly do so. Moreover, many of the changes Respondents began to implement after the problems that gave rise to this proceeding—such as holding employees accountable for their work and requiring rigorous documentation—reflect practices that should already have been in place in the operation of an efficient and responsible business.

21. Accordingly, the circumstances of this case present significant concern over public protection, and over the ability of the Mortuary and Mr. Simpson to benefit from discipline short of outright license revocation. Given the serious and repeated nature of the present violations, as aggravated by the Mortuary's and Mr. Simpson's past violations, discipline short of outright revocation will not be sufficient to assure public protection.

22. Complainant established the Bureau's entitlement to recover its reasonable costs of investigation and enforcement in the amount of $12,034.47. (Factual Finding 28.) (Bus. & Prof. Code § 125.3, subd. (a).) The amount sought by the Bureau has not been reduced to reflect CFDs not established. (See *Zuckerman v. State Bd. of Chiropractic Examiners* (2002) 29 Cal. 4th 32, 45 (agency "must not assess the full costs of investigation and prosecution when to do so will unfairly penalize a [licensee] who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed.").) In this case, Complainant established that Respondents engaged in all of the conduct on which the First Amended Accusation was based, and the Bureau's costs of investigation and prosecution were incurred in determining and proving that conduct. Complainant's failure to establish some of the legal theories pled was not due to a failure to establish that Respondents engaged in the complained-of conduct. The presumably-minimal amount by which the pleading of inapplicable legal theories increased the cost of drafting the original and First Amended Accusations could not be determined. Moreover, the existence of inapplicable legal theories did not result in a reduction in the severity of discipline imposed. Accordingly, the Bureau is entitled to recover its full costs.

ORDER

1. Funeral establishment license number FD 1559, issued to Respondent Simpson's Family Mortuary, is revoked.

2. Funeral director license number FDR 1166, issued to Respondent Curtis Simpson, Sr., is revoked.

3. Respondents Simpson's Family Mortuary and Curtis Simpson, Sr., jointly and severally, shall pay the Bureau's actual and reasonable costs of investigation and enforcement in this matter in the amount of $12, 034.47. This amount shall be paid within a time frame to be determined by the Bureau. The payment of these costs shall be a condition precedent to the reinstatement of either or both Respondents' license(s).

Dated: March 9, 2015

Angela Villegas
Administrative Law Judge
Office of Administrative Hearings

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

In the Matter of the First Amended Accusation Against: **SIMPSON'S FAMILY MORTUARY; CURTIS SIMPSON, SR.** 3443 West Manchester Blvd. Inglewood, CA 90305 **Funeral Establishment License No. FD 1559,** **CURTIS SIMPSON SR.** 3443 West Manchester Blvd. Inglewood, CA 90305 **Funeral Director License No. FDR 1166,** **Derrick Sherrod King** 6235 South Harvard Boulevard Los Angeles, CA 90047 **Funeral Director License No. FDR 2360,** and **Sonya Latrese Simpson** 3443 West Manchester Blvd. Inglewood, CA 90305 **Funeral Director License Number FDR 2738** Respondents.	Case No. A1 2013 90 **FIRST AMENDED ACCUSATION**

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Complainant alleges:

PARTIES

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

2. On or about October 17, 1995, the Cemetery and Funeral Bureau (Bureau) issued Funeral Establishment License Number FD 1559 to Simpson's Family Mortuary; Curtis Simpson, Sr. (Respondent Simpson's Family Mortuary). The Funeral Establishment License was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2015, unless renewed.

3. On or about January 26, 1998, the Bureau issued Funeral Director License Number FDR 1166 to Curtis Simpson, Sr. (Respondent Curtis Simpson). The Funeral Director License was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2016, unless renewed.

4. On or about August 15, 2003, the Bureau issued Funeral Director License Number FDR 2360 to Derrick Sherrod King (Respondent King). The Funeral Director License was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2015, unless renewed.

5. On or about November 9, 2005, the Bureau issued Funeral Director License Number FDR 2738 to Sonya Latrese Simpson (Respondent S. Simpson). The Funeral Director License was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2015, unless renewed.

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[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.

JURISDICTION

6. This First Amended 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.

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

8. Section 477 states:

As used in this division:

"(a) 'Board' includes 'bureau,' 'commission,' 'committee,' 'department,' 'division,' 'examining committee,' 'program,' and 'agency.'

9. Section 7686 of the Code states, 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. The proceedings under this article shall be conducted in accordance with Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code, 1 and the Bureau shall have all the powers granted therein.

10. Section 7692 of the Code provides that misrepresentation or fraud in the conduct of the business or the profession of a funeral director or embalmer constitutes a ground for disciplinary action.

11. 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."

REGULATORY PROVISIONS

12. Title 16, California Code of Regulations, section 1204, states, in pertinent part, that:

"(b) The designated managing licensed funeral director of a licensed funeral establishment shall be responsible for exercising such direct supervision and control over the conduct of said funeral establishment as is necessary to ensure full compliance with the Funeral Directors and

Embalmers Law, the provisions of this chapter and the applicable provisions of the Health and Safety Code. Failure of the designated managing licensed funeral director and/or the licensed funeral establishment to exercise such supervision or control, or failure of the holder of the funeral establishment license to make such designation shall constitute a ground for disciplinary action."

COST RECOVERY

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

FACTUAL SUMMARY

Consumer Complaint re Decedent Darlene D.

14. On or about February 28, 2013, Respondent Simpson's Family Mortuary's employee mistakenly removed decedent Lillian R. from refrigeration and prepared her for viewing and burial as decedent Darlene D. and dressed her in the clothing of decedent Darlene D. without positively identifying the body. The employee, an unlicensed individual, had not been checking the identification bracelets on the decedents.

15. During the service for Darlene D., her family told Respondent King that the body in the viewing room was not their loved one. Respondent King told the family that it was their loved one and they just were not used to seeing dead people. Respondent Simpson's Family Mortuary sent decedent Lillian R. to be buried at Roosevelt Memorial Park in Gardena, California, representing that the decedent was Darlene D., which resulted in the cemetery burying the wrong person in Darlene D.'s grave on or about March 1, 2013.

16. At the viewing for Lillian R., Respondent Simpson's Family Mortuary's staff was informed that the person they were viewing in the casket was not Lillian R., indicating that a second female body was misidentified and dressed as Lillian R. Respondent King told the family of Lillian R. that she had been cremated. Later Respondent King notified the family that Lillian

R. had been buried, not cremated. The foregoing indicates a complete lack of control over the conduct of the business.

17. As of March 11, 2013, the decedent that was supposed to be buried in Roosevelt Memorial Park, Darlene D., was still being held in Respondent Simpson Family Mortuary's refrigeration unit. Darlene D.'s name was shown on her ankle band.

18. On March 15, 2013, the Los Angeles Coroner's Office (Coroner) assisted the Bureau with the disinterment of the unidentified female decedent from Darlene D.'s grave at Roosevelt Memorial Park. The Coroner identified the decedent who was removed from the grave as decedent Lillian R. from two (2) leg/ankle bands on the decedent, both of which stated Lillian R.'s name. There was a piece of paper between the decedent's legs that had Darlene D.'s name written on it. The Coroner took digital photographs of the decedent in the casket that had been disinterred and showed them to Doris H., Lillian R.'s daughter. Doris H. identified her mother from the photographs presented. Decedent Lillian R. was released to Respondent Simpson's Family Mortuary to prepare for the decedent's interment at Inglewood Park Cemetery in Inglewood, California.

19. On or about March 11, 2013, the Bureau received a complaint from decedent Darlene D.'s husband.

FIRST CAUSE FOR DISCIPLINE

(Misrepresentation or Fraud)

20. Respondents Simpson's Family Mortuary, Simpson, and King have subjected their licenses to discipline under sections 7686 and 7692 of the Code in that they committed misrepresentation or fraud in the conduct of the business or the profession of a funeral director, as set forth more fully in paragraphs 14-19, above.

SECOND CAUSE FOR DISCIPLINE

(Gross negligence, gross incompetence or unprofessional conduct)

21. Respondents Simpson's Family Mortuary, Simpson, and King have subjected their licenses to discipline under sections 7686 and 7707 of the Code, in that they committed gross

negligence, gross incompetence or unprofessional conduct, as set forth more fully in paragraphs 14-20, above.

THIRD CAUSE FOR DISCIPLINE

(Failure to Ensure Compliance with Laws and Regulations)

22. Respondents Simpson and King have subjected their licenses to discipline under section 7686 of the Code, for violating California Code of Regulations, Title 16, section 1204(b), in that they failed to ensure compliance with the Funeral Directors and Embalmers Law and the regulations adopted thereunder, as set forth more fully in paragraphs 14-21, above.

Consumer Complaint re Decedent Edna F.

23. In January 2013, prior to Edna F.'s death, Edna F.'s son, Keith B., and his wife met with Respondent S. Simpson at Respondent Simpson's Family Mortuary and made arrangements for a funeral service at a church and for Keith B.'s mother's remains to be cremated. Keith B. told Respondent S. Simpson when he met with her that his brother, Maurice B., wanted to witness his mother's cremation. The next day Keith B.'s wife and Maurice B. returned to Respondent's facility to get clarification on what Respondent S. Simpson told them. They were told by a male employee at the facility that a notarized document from Maurice B. would be required for him to witness his mother's cremation.

24. On or about March 22, 2013, after Edna F.'s death, Keith B., his wife, and Maurice B. met with Respondent S. Simpson at Respondent Simpson's Family Mortuary's facility and completed the funeral and cremation arrangements. Keith B. and Maurice B. again told her that Maurice B. wanted to witness Edna F.'s cremation and gave her the notarized document from Maurice B. requesting the witnessed cremation. Respondent S. Simpson told Maurice B. and Keith B. there would be an additional charge of approximately $490.00 for a witnessed cremation. The brothers paid the additional $490.00, along with the remainder of the funeral bill. The witnessed cremation fee is listed on the Respondent Simpson's Family Mortuary's Statement of Goods and Services, which memorializes the transaction. Respondent S. Simpson told Maurice B. that he would be called and given a date and time for Edna F.'s cremation and gave him the address for the crematory.

25. On or about March 30, 2013, a few days after Edna F.'s funeral service, Ms. Simpson called Keith B.'s wife and told her that Edna F. had mistakenly been cremated without a witnessed cremation being arranged. She explained that it was a paperwork error and offered to compensate the family for the error made by the funeral establishment.

26. On or about April 2, 2013, the Bureau received a complaint from the family of decedent Edna F. regarding the foregoing.

FOURTH CAUSE FOR DISCIPLINE

(Misrepresentation or Fraud)

27. Respondents Simpson's Family Mortuary, Simpson, and S. Simpson have subjected their licenses to discipline under sections 7686 and 7692 of the Code in that they committed misrepresentation or fraud in the conduct of the business or the profession of a funeral director, as set forth more fully in paragraphs 23-26, above.

FIFTH CAUSE FOR DISCIPLINE

(Gross negligence, gross incompetence or unprofessional conduct)

28. Respondents Simpson's Family Mortuary, Simpson, and S. Simpson have subjected their licenses to discipline under sections 7686 and 7707 of the Code, in that they committed gross negligence, gross incompetence or unprofessional conduct, as set forth more fully in paragraphs 23-27, above.

SIXTH CAUSE FOR DISCIPLINE

(Failure to Ensure Compliance with Laws and Regulations)

29. Respondents Simpson and S. Simpson have subjected their licenses to discipline under section 7686 of the Code, for violating California Code of Regulations, Title 16, section 1204(b), in that they failed to ensure compliance with the Funeral Directors and Embalmers Law and the regulations adopted thereunder, as set forth more fully in paragraphs 23-28, above.

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Consumer Complaint re Toby H.

30. In or about May 2014, Jacquelyn H. made funeral arrangements at Simpson's Family Mortuary (Simpson's) for her deceased son, Toby H., who died on May 20, 2014. Jacquelyn H. met with Simpson's Funeral Counselor Edwin Henderson (Henderson) to complete the arrangements, which included a chapel funeral service, the rental of a wooden casket for the service, and cremation. During the arrangements conference, Jacquelyn H. stressed to Henderson specific songs from a CD should be played when the family entered the chapel and during Toby's funeral service. Jacquelyn H. gave Henderson the CD with the songs. She also advised Henderson in writing that she did not know where Toby's father was or whether he was still alive.

31. On June 7, 2014, Toby's funeral service was held. The songs Jacquelyn requested to be played during Toby's funeral service were not played. One song played by Simpson's during the funeral service was inappropriate, namely, the song, "*Evil*" by Earth, Wind & Fire.

32. During Toby's funeral service when it was time to view his remains, representatives from Simpson's who were working the funeral service could not open the wooden rental casket used for the service. The minister presiding over the funeral service advised the representatives to get some help. The representatives were eventually able to open the casket by removing the lid. Toby H.'s family and friends sat in the chapel and watched for approximately ten minutes while the representatives struggled to open the defective casket, causing anxiety for the family. Simpson's placed Toby H's remains inside a casket that was defective. Simpson's should have discovered that the casket lid was faulty and addressed the problem prior to Toby's viewing.

33. In addition, Simpson's improperly charged Jacquelyn H. for a funeral coach that was not used to transport Toby's remains to the crematory.

34. Furthermore, the issuance of the death certificate and the cremation of Toby H.'s remains were unnecessarily delayed. Simpson's death certificate clerk, Marie Theus, claimed that she reviewed the cremation papers and the funeral program for Toby H. and could not find any mention of a father in any of the paperwork. She was directed to notify the Public Administrator's Office (PA) which she did. The PA conducted an investigation and eventually gave Simpson's clearance to cremate Toby without the father's signature because his whereabouts were unknown.

Toby's cremation took place after the clearance letter was received from the PA. During the Bureau's investigation of this matter, Jacqueline H.'s note stating that Toby H.'s father's whereabouts were unknown was found in Simpson's funeral file.

35. After Jacqueline H. complained about the foregoing to Simpson's, Simpson's gave Jacqueline H. a partial refund of $750 for the broken casket and the funeral coach charge.

36. On or about July 15, 2014, the Bureau received a complaint from Jacqueline H. regarding the foregoing.

SEVENTH CAUSE FOR DISCIPLINE

(Misrepresentation or Fraud)

37. Respondents Simpson's Family Mortuary and Simpson have subjected their licenses to discipline under sections 7686 and 7692 of the Code in that they committed misrepresentation or fraud in the conduct of the business or the profession of a funeral director, as set forth more fully in paragraphs 30-36, above.

EIGHTH CAUSE FOR DISCIPLINE

(Gross negligence, gross incompetence or unprofessional conduct)

38. Respondents Simpson's Family Mortuary and Simpson have subjected their licenses to discipline under sections 7686 and 7707 of the Code, in that they committed gross negligence, gross incompetence or unprofessional conduct, as set forth more fully in paragraphs 30-37, above.

NINTH CAUSE FOR DISCIPLINE

(Failure to Ensure Compliance with Laws and Regulations)

39. Respondent Simpson has subjected his license to discipline under section 7686 of the Code, for violating California Code of Regulations, Title 16, section 1204(b), in that he failed to ensure compliance with the Funeral Directors and Embalmers Law and the regulations adopted thereunder, as set forth more fully in paragraphs 30-38, above.

DISCIPLINARY CONSIDERATIONS

40. To determine the degree of discipline, if any, to be imposed on Respondents Simpson's Family Mortuary and Simpson, Complainant alleges that on or about February 9, 2006, in a prior disciplinary action entitled *In the Matter of the Amended and Supplemental*

Accusation Against: Simpson Family Mortuary and Curtis Simpson, Sr., before the Department of Consumer Affairs for the Cemetery and Funeral Bureau, in Case Number A1 2004 340, the licenses of Respondent Simpson's Family Mortuary and Respondent Simpson were disciplined for violating the following sections of the Business and Professions Code:

a. Section 7699 (aiding or abetting unlicensed activity);

b. Sections 7641 and 7632 (failure to have licensed embalmers);

c. Section 7616(a)(2) with California Code of Regulations, Title 16, Section 1216(a) (failure to maintain establishment and preparation room in a clean and sanitary condition);

d. Section 7686 with California Code of Regulations, Title 6, Section 1209 (failed to maintain first call vehicle in sanitary condition);

e. Section 7686 with California Code of Regulations, Title 16, Sections 1255 and 1256 (failed to have the required California Code of Regulations, Title 16, Section 1221 placard posting on the doors leading into the preparation room);

f. Section 7680 (failed to display funeral establishment license in conspicuous place of business);

g. Section 7686 with California Code of Regulations, Title 16, Section 1211(a) (failed to display funeral establishment license on the casket price list);

h. Section 7686 with California Code of Regulations, Title 16, Section 1258.1(b) (failure to provide complete description for the infant and children caskets);

i. Section 7686 in violation of Section 7685(b) (failure to provide the required pre-need disclosure statement);

j. Section 7686 with California Code of Regulations, Title 16, Section 1258(b) (failure to have the required scientific disclaimer);

k. Section 7686 with California Code of Regulations, Title 16, Sections 1258.1(c), 1258.1(d) and 1258.1(e) (failure to display all casket offerings);

l. Section 7686 with California Code of Regulations, Title 16, Section 7685.1(a) (failure to display price);

m. Section 7685.1(a) (failure to describe casket);

n. Section 7686 with California Code of Regulations, Title 16, Section 1214 (failure to use correct authorization form);

o. Section 7686 in violation of California Code of Regulations, Title 16, Section 1221 (failure to ensure the privacy of human remains);

p. Section 7703 of the Code, and California Code of Regulations, Title 16, Section 1204(b) (failure to ensure compliance with laws and regulations);

q. Section 7707 (unprofessional conduct);

r. Section 7692 (fraud); and,

s. Section 7707 (unprofessional conduct - failure to honor contracts).

Both licenses were revoked with revocation stayed and placed on probation for four (4) years with terms and conditions. That decision is now final and is incorporated by reference as if fully set forth.

Respondent Simpson's Family Mortuary - Citations

41. On or about June 28, 2007, in a prior action, the Bureau issued Citation Number IC 2007 68 to Respondent Simpson's Family Mortuary for violating Business and Professions Code sections 7707 and 7685.2 and fined Respondent $3,000. That Citation is now final and is incorporated by reference as if fully set forth.

42. On or about May 8, 2009, in a prior action, the Bureau issued Citation Number IC 2009 48 to Respondent Simpson's Family Mortuary for violating Business and Professions Code section 7685.1. No fine was assessed. That Citation is now final and is incorporated by reference as if fully set forth.

43. On or about July 30, 2010, in a prior action, the Bureau issued Citation Number FB 2010 47 to Respondent Simpson's Family Mortuary for violating Business and Professions Code section 7685.1 and fined Respondent $501.00. That Citation is now final and is incorporated by reference as if fully set forth.

44. On or about October 7, 2010, in a prior action, the Bureau issued Citation Number IC 201 0 176 to Respondent Simpson's Family Mortuary for violating Business and Professions

Code section 7707 and fined Respondent $1,001.00. That Citation is now final and is incorporated by reference as if fully set forth.

45. On or about February 10, 2012, in a prior action, the Bureau issued Citation Number IC 2011 341 to Respondent Simpson's Family Mortuary for violating Business and Professions Code sections 7707 and fined Respondent $2,500.00. That Citation is now final and is incorporated by reference as if fully set forth.

Respondent Curtis Simpson, Sr. - Citations

46. On or about July 6, 2007, in a prior action, the Bureau issued Citation Number IC 2007 69 to Respondent Simpson for violating California Code of Regulations, title 16, section 1204(b) and fined Respondent $1,000. That Citation is now final and is incorporated by reference as if fully set forth.

47. On or about October 7, 2010, in a prior action, the Bureau issued Citation Number IC 2010 392 to Respondent Simpson for violating California Code of Regulations, title 16, section 1204(b) and fined Respondent $ 501.00. That Citation is now final and is incorporated by reference as if fully set forth.

48. On or about February 10, 2012, in a prior action, the Bureau issued Citation Number IC 2012 59 to Respondent Simpson for violating California Code of Regulations, title 16, section 1204(b) and fined Respondent $1, 000.00. That Citation is now final and is incorporated by reference as if fully set forth.

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PRAYER

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

1. Revoking or suspending Funeral Establishment License Number FD 1559, issued to Simpson's Family Mortuary; Curtis Simpson, Sr.;

2. Revoking or suspending Funeral Director License Number FDR 1166, issued to Curtis Simpson, Sr.;

3. Revoking or suspending Funeral Director License Number FDR 2360, issued to Derrick Sherrod King;

4. Revoking or suspending Funeral Director License Number FDR 2738, issued to Sonya Latrese Simpson;

5. Ordering Simpson's Family Mortuary, Curtis Simpson, Sr., Derrick Sherrod King, and Sonya Latrese Simpson to pay the Bureau the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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

DATED: January 27, 2015

Lisa Moore

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

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