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

In the Matter of Petition for Reinstatement/Termination of Probation/Reduction of Penalty: **ANDREW WAYNE REEL** Funeral Director License No. FDR 2450 In the Matter of Petition to Terminate Probation: **ANDREW WAYNE REEL** Cemetery Manager License No. CEM 239 Crematory Manager License No. CRM 366 Petitioner.	Case No.: A1 2012 369

DECISION

The following represents the Decision of the Director of the Department of Consumer Affairs for the Cemetery and Funeral Bureau (Bureau) on the August 16, 2015, Petition for the Reinstatement of Funeral Director License number FDR 2450, and Petition to Terminate Probation of Cemetery Manager License number CEM 239 and Crematory Manager License number CRM 366, or in the alternative Petition to Modify Probation for Cemetery Manager License number CEM 239 and Crematory Manager License number CRM 366, issued to Andrew Wayne Reel (Petitioner).

PROCEDURAL HISTORY

On or about January 1, 2014, Petitioner's funeral director's license was revoked and his cemetery manager and crematory manager licenses were placed on probation for five years. On or about August 16, 2015, the Bureau received Petitioner's request for reinstatement of his funeral director's license and request to terminate probation of both his cemetery manager and crematory manager licenses, or in the alternative request to modify the terms of probation of these licenses by reducing or waiving ordered costs. On or about December 1, 2015, the Director set time for written argument on the matter. The Director received written argument from the Attorney General's Office on behalf of the Bureau, on January 4, 2016. No written argument was received from Petitioner. The time for written argument in this matter having expired, the Petition and Bureau's written argument, having been read and considered, the Director, pursuant to Government Code (Gov. Code) section 11522 and Business and Professions Code (Bus. & Prof.) section 7711, makes and enters his decision as follows:

FACTUAL FINDINGS

License History

1. On or about November 22, 2004, the Bureau issued Cemetery Manager License number CEM 239 and Crematory Manager License number CRM 366 to Petitioner. They were set to expire November 30, 2012, unless renewed.

2. On or about June 23, 2004, the Bureau issued Funeral Director License number FDR 2450 to Petitioner. It was set to expire June 30, 2013, unless renewed. Petitioner served as the managing funeral director of record for Advanced Care Funeral and Cremation Services (Advanced Care), Funeral Establishment License number FD 2044, owned by Dale Odom, from on or about February 20, 2012 through June 8, 2012, and June 19, 2012 through September 20, 2012.

3. On October 9, 2012, all of Petitioner's Bureau-issued licenses were suspended pursuant to an Interim Suspension Order, issued by the Office of Administrative Hearings, in Cemetery and Funeral Bureau Case No. I-2012-369, and remained suspended.

Jurisdictional Matters

4. On or about October 24, 2012, the Bureau made and filed an Accusation, Case Number A1-2012-369 (Accusation), against Petitioner and Advanced Care. The Accusation alleged that Petitioner aided and abetted the unlicensed practice of a funeral director and committed multiple acts of unprofessional conduct in the practice of funeral directing, including gross negligence and gross incompetence by failing to complete the disposition of human remains in a timely manner thereby allowing decomposition of decedents, failing to timely file death certificates, failing to timely obtain permits for disposition, failing to maintain Bureau approved storage and preparation facilities, and failing to provide written or printed memorandums or contract for services.

5. On or about November 1, 2013, the Petitioner entered into a Stipulated Settlement with the Bureau, whereby he admitted to the truth of each and every charge delineated above in enumerated paragraph number 4 of the Findings of Fact. Petitioner maintained that once he became aware that human remains which been entrusted to Advance Care were being left in storage and not being properly disposed of, he made cremation and/or funeral arrangements at his own expense and provided for the proper disposition of these human remains.

6. On or about January 16, 2014, pursuant to the terms of the Stipulated Settlement, the Director ordered Petitioner's funeral director's license revoked and placed his cemetery manager and crematory manager licenses on probation for five years.

Petition

7. On August 15, 2015, Petitioner emailed the instant Petition for Reinstatement of revoked funeral director's license and requested to terminate probation of his cemetery manager and

crematory manager licenses, or in the alternative, either waive or reduce the $1,551.25 ordered cost recovery. The Petition reads in pertinent part:

> "*In addition to requesting the cost recovery waiver or reduction, I would like to request that my probation for the CRM 366, and CEM 239 licenses be ended, and that my licenses be fully reinstated. I would also like to petition that my Funeral Director's License FDR 2450 be fully reinstated.*
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> *...I recognize that I had victimized myself by allowing Jermaine Odom, and Dale Odom to conduct business as they did without my proper supervision.*
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> *Throughout this case, I have not strayed from my position of being accountable. I have always taken responsibility that I was the Managing Funeral Director, and even though I was lied to, and was denied access to Jermaine Odom's activities, I should not have allowed for all of his activities to occur. I made mistakes, and I have learned from those mistakes. Just as my stipulation included, once I was made aware of Jermaine Odom's activities, I immediately cared for all decedents in Advance Care's charge using my own money. Advance Care should have been in compliance, and as the managing Funeral Director at the time, I should have made sure it was....*
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> ¶
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> *...I was well seasoned, and had the professional knowledge, and professional relationships in the industry to care for the decedents that Jermaine and Dale Odom failed to care for. Upon my notification of the actual circumstances, I had the bodies removed, and cared for properly. I filed all the death certificates and permits, and properly prepared for disposition, all using my families mortgage money that was already set aside, as my home was in a pre-foreclosure state....*
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> ¶
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> *I currently work for the state of California...I still work part time in the funeral industry on weekends and evenings. I continue to take self-improvement classes and trainings. I have taken and passed the CalHR promotional exams rankings 1, to include Staff Service Manager 1. I hold an active insurance license with the State of California and a Notary Public commission.*

Petitioner submitted no evidence in support of his Petition.

8. On December 1, 2015, the parties were offered an opportunity to submit written argument, to be received by December 31, 2015. No written argument was received from Petitioner. The Deputy Attorney General (DAG) filed written argument on behalf of the Bureau, recommending that Petitioner's requests be denied. However, the DAG's written argument was received on January 4, 2016, after the deadline for written argument was to be filed and will not be considered.

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Pursuant to the foregoing findings of fact, the Director makes the following determination of issues:

LEGAL CONCLUSIONS

Burden/Standard of Proof

1. A person whose license has been revoked may petition the governing agency for reinstatement. (Bus. & Prof. Code § 7711; Gov. Code § 11522.)

2. Petitioner carries the burden to establish by clear and convincing evidence that he is entitled to the requested relief. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) An applicant for reinstatement is in the same position as an applicant for initial licensure. (*Flanzer v. Board of Dental Examiners* supra 220 Cal.App.3d at 1396.)

Rehabilitation Criteria

2. California Code of Regulations, Title 16, sections 1253 and 2331(a) sets forth rehabilitation for the Director to consider when denying a license, while sections 1253.5 and 2331(b) set forth criteria when suspending or revoking a license. Since Petitioner's license has already been revoked, the Petition will be considered pursuant to the factors in sections 1253 and 2331(a):

(1) The nature and severity of the act(s) or offense(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the acts(s) or crime(s) under consideration as grounds for denial, which also could be so considered grounds for denial under Section 480 of the Business and Professions Code.

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

(4) The extent to which the [Petitioner] has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the [Petitioner] Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) 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 which led to the revocation of his licenses were severe in that they harmed seven consumers and their end-of-life care needs.

b. *Criteria (2) Evidence of any act(s) committed subsequent to the acts(s) or crime(s) under consideration*: There is no evidence that Petitioner committed any acts which are grounds for denial since discipline was imposed, December 2013, effective January 31, 2014.

c. *Criteria (3) Time that has elapsed since of the act(s) or offense(s)*: Petitioner's offenses cited in the Accusation occurred between February 2012 and September 2012. It was less than three years from the time of Petitioner's last offense(s) and the filing of his Petition.

d. *Criteria (4) Compliance with any or all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee*: As the party seeking reinstatement and/or a full unencumbered license, the burden at all times rests on Petitioner to prove such privileges should be reinstated. However, Petitioner's request is absent any evidence reflecting his compliance with probation.[1] The Probationary Order also requires Petitioner to submit to the Bureau for approval, a community service program for the second through fifth year of probation in which Petitioner shall provide volunteer services on a regular basis to a non-profit community or charitable facility or agency for at least twelve hours per year over the second through fifth years of probation, totaling 48 hours. There is no evidence to reflect his compliance with this specifically tailored probationary term, in which he agreed to in the Stipulated Settlement. While restitution was not ordered Petitioner states that once he was made aware of Advance Care's owner and employee's failure to properly dispose of human remains, he immediately cared for all decedents using his own money. However, those alleged actions were already used as mitigating factors at the time the Stipulated Settlement was entered into.

e. *Criteria (5) Evidence of rehabilitation submitted by the [Petitioner]*: 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.) While Petitioner admits he allowed the owner and employee to conduct business without the proper managing supervision he was accountable for, he continues to herald himself as the victim. His Petition spends more time condemning his prior employer than it does putting forth evidence of his own rehabilitation since his admitted violations of his profession's regulatory laws and his obligations as the managing funeral director. The amount of evidence of rehabilitation required to justify admission varies according to the seriousness of the misconduct at issue. (*Kwasnik v. State Bar*, (1990) 50 Cal.3d 1061, 1086.) While Petitioner asserts he continues to take self-improvement classes and trainings, he failed to identify the class or offer evidence of the classes he has taken to support that he should be considered a viable candidate to re-enter the profession as a funeral director or to practice as either a cemetery or crematory manager without restrictions.

4. Business and Professions Code section 125.3 provides that a licensee found to have violated licensing laws may be ordered to pay the Bureau a sum not to exceed the reasonable costs of the investigation and enforcement of the cause. Petitioner stipulated that the Bureau's actual cost were in fact in the Stipulated Settlement, probationary term number 8, which reads:

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[1] While the DAG's written argument was untimely, the Bureau's acknowledgement that Petitioner has being paying down his costs ordered by the Director, will be taken into consideration. In addition, the Bureau's acknowledgement that Petitioner is current with filing quarterly reports and has completed his required ethics course, as ordered by the Director will also be taken into consideration. So, while the DAG's report was not submitted timely, the Director will consider evidence submitted by the Bureau as to Petitioner's compliance with probation.

Costs Recovery. Respondent shall pay the department's actual and reasonable costs of investigation and enforcement of this matter in the amount of $1,551.25. Said amounts shall be paid six (6) months prior to the termination from probation. Probation shall not terminate until full payment has been made. Respondent's license shall not be renewed until the cost recovery has been paid in full or Respondent is otherwise in compliance with a payment plan approved by the Department.

Petitioner failed to submit any evidence in support of the reduction of the ordered costs, either to the reasonableness of the ordered or his inability to pay cost. Nor has he submitted evidence to show his compliance with the current term ordering payment of costs.

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 2331. 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 or that his probation should be terminated pursuant to Government Code section 11522.

ORDER

The Petition is hereby denied. Funeral Director License number FDR 2450, issued to Andrew W. Reel is not reinstated.

The Petition to Terminate Probation of Cemetery Manager License number CEM 239 and Crematory Manager License number 366 issued to Andrew W. Reel are not terminated.

The Petition to Reduce Penalty for Cemetery Manager License number CEM 239 and Crematory Manager License number 366 is not sustained.

This Decision shall become effective on APRIL 1, 2016.

IT IS SO ORDERED this 18th day of March, 2016.

Doreathea Johnson

DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs