

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

In the Matter of the Accusation Against:

**DANIEL A. MANDEL
2325 Sonoma Blvd.
Vallejo, CA 94590**

Funeral Director License No. FDR 2703

And

**MANDEL FUNERAL SERVICE OF
NORTHERN CALIFORNIA
Daniel A. Mandel, President, Treasurer,
Secretary, Manager
2325 Sonoma Blvd.
Vallejo, CA 94590**

Funeral Establishment License No. FD 1906

Respondents.

Case No. A1-2010-79

OAH No. 2011010055

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Director of Consumer Affairs and the Cemetery and Funeral Bureau as the Decision and Order in the above entitled matter.

This Decision shall become effective on August 5, 2011.

It is so ORDERED JUL 05 2011.



DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
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8 **BEFORE THE**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **FOR THE CEMETERY AND FUNERAL BUREAU**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. A1-2010-79

13 **DANIEL A. MANDEL**
2325 Sonoma Blvd.
Vallejo, CA 94590

OAH No. 2011010055
**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

14 **Funeral Director License No. FDR 2703**

15 **And**

16 **MANDEL FUNERAL SERVICE OF**
17 **NORTHERN CALIFORNIA**
Daniel A. Mandel, President, Treasurer,
Secretary, Manager
18 2325 Sonoma Blvd.
Vallejo, CA 94590

19 **Funeral Establishment License No. FD 1906**

20 Respondents.
21

22 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
23 entitled proceedings that the following matters are true:

24 **PARTIES**

25 1. Bev Augustine (Complainant) is the Bureau Chief of the Cemetery and Funeral
26 Bureau. She brought this action solely in her official capacity and is represented in this matter by
27 Kamala D. Harris, Attorney General of the State of California, by Jonathan D. Cooper, Deputy
28 Attorney General.

1 the right to present evidence and to testify on his own behalf; the right to the issuance of
2 subpoenas to compel the attendance of witnesses and the production of documents; the right to
3 reconsideration and court review of an adverse decision; and all other rights accorded by the
4 California Administrative Procedure Act and other applicable laws.

5 8. On behalf of both Respondents, Daniel A. Mandel voluntarily, knowingly, and
6 intelligently waives and gives up each and every right set forth above.

7 **CULPABILITY**

8 9. On behalf of both Respondents, Daniel A. Mandel admits the truth of each and every
9 charge and allegation in Accusation No. A1-2010-79.

10 10. Respondent Mandel Funeral Service agrees that its Funeral Establishment License is
11 subject to discipline, and agrees to be bound by the Director of Consumer Affairs (Director)'s
12 Disciplinary Order below.

13 11. Respondent Daniel A. Mandel agrees that his Funeral Director License is subject to
14 discipline, and agrees to be bound by the Director of Consumer Affairs (Director)'s Disciplinary
15 Order below.

16 **CONTINGENCY**

17 12. This stipulation shall be subject to approval by the Director of Consumer Affairs or
18 his designee. Respondents understand and agree that counsel for Complainant and the staff of the
19 Cemetery and Funeral Bureau may communicate directly with the Director and staff of the
20 Department of Consumer Affairs regarding this stipulation and settlement, without notice to or
21 participation by Respondent. By signing the stipulation, Respondents understand and agree that
22 they may not withdraw their agreement or seek to rescind the stipulation prior to the time the
23 Director considers and acts upon it. If the Director fails to adopt this stipulation as the Decision
24 and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except
25 for this paragraph, it shall be inadmissible in any legal action between the parties, and the
26 Director shall not be disqualified from further action by having considered this matter.

27 13. The parties understand and agree that facsimile copies of this Stipulated Settlement
28 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and

1 effect as the originals.

2 14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
3 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
4 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
5 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
6 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
7 writing executed by an authorized representative of each of the parties.

8 15. In consideration of the foregoing admissions and stipulations, the parties agree that
9 the Director may, without further notice or formal proceeding, issue and enter the following
10 Disciplinary Order:

11 **DISCIPLINARY ORDER**

12 IT IS HEREBY ORDERED that Funeral Establishment License No. FD 1906, issued to
13 Mandel Funeral Service of Northern California, is revoked.

14 IT IS HEREBY ORDERED that Funeral Director License No. FDR 2703, issued to Daniel
15 A. Mandel, is revoked. However, the revocation is stayed and Respondent Mandel is placed on
16 probation for four (4) years on the following terms and conditions.

17 1. **Obey All Laws.** Respondent Mandel shall comply with all conditions of probation
18 and obey all federal, state and local laws, and all rules and regulations governing the programs
19 regulated by the department.

20 2. **Quarterly Reports.** Respondent Mandel shall submit quarterly declarations under
21 penalty of perjury, in a format designated by the department, stating whether or not Respondent
22 Mandel has been in compliance with all the conditions of probation. Respondent Mandel shall
23 also submit such additional written reports and verifications of actions requested by the
24 department. Should the final probation report not be made as directed, the period of probation
25 shall be extended until such time as the final report is made. In addition, such failure shall be
26 considered to be a violation of probation.

27 3. **Interview with Department Representative.** As necessary, Respondent Mandel
28 shall appear in person for scheduled interviews with the director or other designated

1 representative for the purpose of monitoring compliance with the terms of this decision.

2 4. **Out-of-State Residence or Operation.** Should Respondent Mandel leave California
3 to reside or operate outside this state, Respondent Mandel must notify the department in writing
4 of the dates of departure and return. Reporting in person may be waived if Respondent Mandel
5 moves out of the state. However, Respondent Mandel shall continue compliance with other terms
6 of probation to retain California licensure. Periods of residency, business operation or
7 employment outside California shall not reduce the probationary period.

8 5. **Completion of Probation.** Upon successful completion of probation, Respondent
9 Mandel's license will be fully restored.

10 6. **Violation of Probation.** Should Respondent Mandel violate probation in any
11 respect, the director of the Department of Consumer Affairs, after giving Respondent Mandel
12 notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order
13 which was stayed. If an Accusation or Petition to Revoke Probation is filed against Respondent
14 Mandel during probation, the department shall have continuing jurisdiction until the matter is
15 final, and the probation shall be extended until the matter is final.

16 7. **License Issued During Probation.** Any license or registration issued to Respondent
17 Mandel by the department during the period of probation shall be issued as a probationary license
18 or registration and is subject to all the terms and conditions set forth herein. Respondent Mandel
19 must comply with terms and conditions herein and demonstrate no cause for disciplinary action or
20 denial of an application.

21 8. **Cost Recovery.** Respondent Mandel shall pay the department's actual and
22 reasonable costs of investigation and enforcement of this matter in the amount of \$3,539.16. Said
23 amount shall be paid in 23 equal monthly payments of \$147.46, with the first payment due on the
24 effective date of the decision and the 24th and final payment being \$147.58. Probation shall not
25 terminate until full payment has been made. Respondent Mandel's license shall not be renewed
26 until the cost recovery has been paid in full or Respondent is otherwise in compliance with the
27 above-described payment plan.

1 9. **Limitation of Duties.** Respondent shall not drive during the course of his
2 employment without a valid California Driver's License. Within 30 days from the effective date
3 of this decision, respondent shall provide to the Bureau documentation from the California
4 Department of Motor Vehicles confirming that he possesses a valid driver's license.

5 Respondent will not be approved as a Designated Managing Funeral Director during the
6 period of probation.

7 10. **Provision of Records.** Respondent Mandel shall provide specific records for
8 department inspection as required.

9 11. **Proof of Compliance with Criminal Probation Requirements.** Respondent
10 Mandel shall provide proof to the Bureau of compliance of the probation requirements resulting
11 from the criminal conviction set forth in the Accusation.

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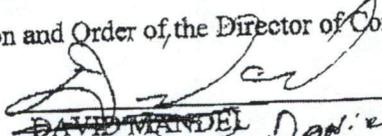
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17 **ACCEPTANCE**

18 I am authorized to sign this stipulation on my own behalf and on behalf of Mandel Funeral
19 Service of Northern California. I have carefully read the Stipulated Settlement and Disciplinary
20 Order. I understand the stipulation and the effect it will have on Mandel Funeral Service of
21 Northern California's Funeral Establishment License, and on my Funeral Director License. I enter
22 into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently,
23 and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

24 DATED: 6/9/2011


DAVID MANDEL
Respondent

David Mandel

26 **ENDORSEMENT**

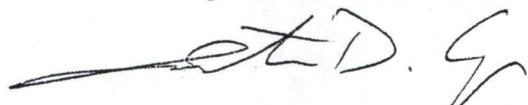
27 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully

1 submitted for consideration by the Director of Consumer Affairs.

2 Dated: 6/20/11

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
FRANK H. PACOE
Supervising Deputy Attorney General



JONATHAN D. COOPER
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. A1-2010-79

1 EDMUND G. BROWN JR.
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2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JONATHAN D. COOPER
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12 **DANIEL A. MANDEL**
13 **2325 Sonoma Blvd.**
Vallejo, CA 94590

A C C U S A T I O N

14 **Funeral Director License No. FDR 2703**

15 **And**

16 **MANDEL FUNERAL SERVICE OF**
17 **NORTHERN CALIFORNIA**
18 **Daniel A. Mandel, President, Treasurer,**
Secretary, Manager
19 **2325 Sonoma Blvd.**
Vallejo, CA 94590

20 **Funeral Establishment License No. FD 1906**

21 Respondents.

22 Complainant alleges:

23 **PARTIES**

24 1. Richard L. Wallinder, Jr. (Complainant) brings this Accusation solely in his official
25 capacity as the Bureau Chief of the Cemetery and Funeral Bureau (hereinafter "the Bureau"),
26 Department of Consumer Affairs.¹

27 ¹ Effective January 1, 1996, the Department of Consumer Affairs succeeded to, and was
28 vested with, all the duties, powers, purpose, responsibilities and jurisdiction of the Cemetery
(continued...)

1 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
2 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
3 made suspending the imposition of sentence, irrespective of a subsequent order under the
4 provisions of Section 1203.4 of the Penal Code.

5 (d) The Legislature hereby finds and declares that the application of this section has been
6 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th
7 554, and that the holding in that case has placed a significant number of statutes and regulations
8 in question, resulting in potential harm to the consumers of California from licensees who have
9 been convicted of crimes. Therefore, the Legislature finds and declares that this section
10 establishes an independent basis for a board to impose discipline upon a licensee, and that the
11 amendments to this section made by Senate Bill 797 of the 2007-08 Regular Session do not
12 constitute a change to, but rather are declaratory of, existing law.

13 6. Section **7686** of the Code states, in pertinent part, that the bureau may suspend or
14 revoke licenses, after proper notice and hearing to the licensee, if the licensee has been found
15 guilty by the bureau of any of the acts or omissions constituting grounds for disciplinary action.
16 The proceedings under this article shall be conducted in accordance with Chapter 5 of Part 1 of
17 Division 3 of Title 2 of the Government Code, 1 and the bureau shall have all the powers granted
18 therein.

19 7. Section **7691** of the Code states:

20 Conviction of a crime substantially related to the qualifications, functions and duties of the
21 license holder in question constitutes a ground for disciplinary action. The record of conviction,
22 or a certified copy thereof, shall be conclusive evidence of such conviction.

23 8. Section **7703** of the Code states:

24 Violation of any of the provisions of this chapter or of the rules and regulations adopted
25 pursuant to this chapter constitutes a ground for disciplinary action.

26 9. Section **7707** of the Code states:

27 Gross negligence, gross incompetence or unprofessional conduct in the practice of funeral
28 directing or embalming constitutes a ground for disciplinary action.

1 10. California Code of Regulations, Title 16, section **1204(b)**, states:

2 The designated managing licensed funeral director of a licensed funeral establishment shall
3 be responsible for exercising such direct supervision and control over the conduct of [the] funeral
4 establishment as is necessary to ensure full compliance with the Funeral Directors and Embalmers
5 Law, the provisions of this chapter and the applicable provisions of the Health and Safety Code.
6 Failure of the designated managing licensed funeral director and/or the licensed funeral
7 establishment to exercise such supervision or control, or failure of the holder of the funeral
8 establishment license to make such designation shall constitute a ground for disciplinary action.

9 11. California Code of Regulations, Title 16, section **1252**, states:

10 For the purposes of denial, suspension, or revocation of a license pursuant to Division 1.5
11 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be
12 considered to be substantially related to the qualifications, functions or duties of a licensed
13 funeral establishment, licensed funeral director, or licensed embalmer if to a substantial degree it
14 evidences present or potential unfitness of a licensed funeral establishment, licensed funeral
15 director, or licensed embalmer to perform the functions authorized by his license in a manner
16 consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be
17 limited to those involving the following:

18 (a) Conviction of a crime involving fiscal dishonesty.

19 (b) Any violation of the provisions of Chapter 12, Division 3 of the Business and
20 Professions Code.

21 12. California Code of Regulations, Title 16, section **1253.5**, states:

22 (a) When considering the suspension or revocation of a license on the ground that a
23 licensed funeral establishment, licensed funeral director, or licensed embalmer has been convicted
24 of a crime, the Board, in evaluating the rehabilitation of such person and his eligibility for a
25 license, will consider the following criteria:

26 (1) Nature and severity of the act(s) or offense(s).

27 (2) Total criminal record.

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

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

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

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

6 (b) Petition for Reinstatement. When considering a petition for reinstatement of a license
7 under the provisions of Section 11522 of the Government Code, the Board shall evaluate
8 evidence of rehabilitation submitted by the petitioner considering those criteria specified in
9 Section 1253 of this article.

10 COSTS

11 13. Section 125.3 of the Code provides, in pertinent part, that the [Bureau] may request
12 the administrative law judge to direct a licentiate found to have committed a violation or
13 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
14 and enforcement of the case.

15 FACTUAL SUMMARY

16 14. On or about January 8, 2010, Respondent Mandel, acting in his capacity as a licensed
17 funeral director and as the manager of Respondent Mandel Funeral Service, undertook to
18 transport the body of F.S.² via hearse from Vallejo to the Rolling Hills Memorial Park in El
19 Sobrante, California, for burial.

20 15. While driving the hearse, Respondent Mandel drove erratically and collided with a
21 vehicle on Highway 80, on or near the Carquinez Bridge. The collision caused the left front tire
22 of the hearse to fail.

23 16. After the collision, Respondent Mandel continued to drive the hearse for several
24 miles on Highway 80, notwithstanding that the exposed left front wheel of the hearse was
25 emitting a shower of sparks due to contact with the pavement. Eventually, after the sparks had
26 caused the hearse to catch fire and the hearse had become engulfed in flames, Respondent Mandel

27 _____
28 ² The identity of F.S. is withheld to protect the family's privacy.

1 stopped and exited the vehicle.

2 17. California Highway Patrol officers subsequently arrived on the scene and observed
3 objective signs indicating that Respondent Mandel was intoxicated. Subsequent tests of
4 Respondent Mandel's breath showed that Respondent Mandel's blood alcohol level was
5 approximately .18%.

6 18. Based on the conduct described in paragraphs 14 - 17, on or about September 21,
7 2010, in Solano Superior Court case number VCR206242, Respondent was convicted of having
8 violated California Vehicle Code section 23152(a)(driving with excessive blood alcohol level).

9 **FIRST CAUSE FOR DISCIPLINE**

10 (Criminal Conviction)

11 19. Respondents are subject to disciplinary action under sections 490, 7691 and 7703 of
12 the Code, and under California Code of Regulations, Title 16, section 1204(b), in that Respondent
13 Mandel has been convicted of a crime substantially related to the qualifications, functions and
14 duties of a funeral director, and said conviction indicates and constitutes a lack of the supervision
15 and control necessary to ensure full compliance with the Funeral Directors and Embalmers Law
16 and the applicable provisions of the Health and Safety Code. The facts and circumstances are set
17 forth above in paragraphs 14 - 18.

18 **SECOND CAUSE FOR DISCIPLINE**

19 (Gross Negligence, Gross Incompetence, Unprofessional Conduct)

20 20. Respondents are subject to disciplinary action under sections 7703 and 7707 of the
21 Code, and under California Code of Regulations, Title 16, section 1204(b), in that Respondent
22 Mandel acted with gross negligence, gross incompetence and unprofessional conduct in the
23 practice of funeral directing or embalming, and said conduct indicates and constitutes a lack of
24 the supervision and control necessary to ensure full compliance with the Funeral Directors and
25 Embalmers Law and the applicable provisions of the Health and Safety Code. The facts and
26 circumstances are set forth above in paragraphs 14 - 18.

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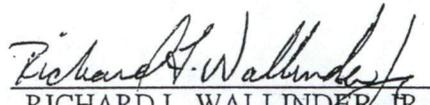
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PRAYER

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

1. Revoking or suspending Funeral Establishment License Number FD 1906, issued to Daniel A. Mandel;
2. Revoking or suspending Funeral Director License Number FDR 2703, issued to Mandel Funeral Service of Northern California;
3. Ordering Respondents Daniel A. Mandel and Mandel Funeral Service of Northern California to pay the Cemetery and Funeral Bureau the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
4. Taking such other and further action as deemed necessary and proper.

DATED: 10/21/70


RICHARD L. WALLINDER, JR.
Bureau Chief
Cemetery and Funeral Bureau
Department of Consumer Affairs
State of California
Complainant