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6 **BEFORE THE**
7 **DEPARTMENT OF CONSUMER AFFAIRS**
8 **FOR THE CEMETERY AND FUNERAL BUREAU**
9 **STATE OF CALIFORNIA**

9 In the Matter of the Petition to Revoke
10 Probation Against:

Case No. D1-2010-79

11 **DANIEL A. MANDEL**
12 **2325 Sonoma Blvd.**
13 **Vallejo, CA 94590**
14 **Funeral Director License No. FDR 2703**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

Respondent.

15 **FINDINGS OF FACT**

16 1. On or about December 30, 2011, Complainant Bev Augustine, in her official capacity
17 as the Bureau Chief of the Cemetery and Funeral Bureau, Department of Consumer Affairs,^{1/}
18 filed Petition to Revoke Probation No. D1-2010-79 against Daniel A. Mandel (Respondent)
19 before the Director of Consumer Affairs. (Petition to Revoke Probation attached as Exhibit A.)

20 2. On or about September 20, 2005, the Cemetery and Funeral Bureau (Bureau) issued
21 Funeral Director License No. FDR 2703 to Respondent. The Funeral Director License expired on
22 September 30, 2011, and has not been renewed.

23 3. On or about January 5, 2012, Respondent was served by Certified and First Class
24 Mail copies of the Petition to Revoke Probation No. D1-2010-79, Statement to Respondent,

25 _____
26 ^{1/} Effective January 1, 1996, the Department of Consumer Affairs succeeded to, and
27 was vested with, all the duties, powers, purpose, responsibilities and jurisdiction of the
28 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.

1 Notice of Defense, and Request for Discovery at Respondent's address of record which, pursuant
2 to Business and Professions Code section 971 and California Code of Regulations, title 16,
3 section 2304, is required to be reported and maintained with the Bureau, which was and is:
4 2325 Sonoma Blvd. Vallejo, CA 94590. These documents were also served, by Certified and
5 First Class mail, to Respondent's former address or record, which was 2325 Sonoma Blvd.,
6 Vallejo, California, 94590.

7 4. Service of the Petition to Revoke Probation was effective as a matter of law under the
8 provisions of Government Code section 11505, subdivision (c) and/or Business & Professions
9 Code section 124.

10 5. Government Code section 11506 states, in pertinent part:

11 (c) The respondent shall be entitled to a hearing on the merits if the respondent
12 files a notice of defense, and the notice shall be deemed a specific denial of all parts
13 of the accusation not expressly admitted. Failure to file a notice of defense shall
14 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
15 may nevertheless grant a hearing.

16 6. Respondent failed to file a Notice of Defense within 15 days after service upon him
17 of the Petition to Revoke Probation, and therefore waived his right to a hearing on the merits of
18 Petition to Revoke Probation No. D1-2010-79.

19 7. California Government Code section 11520 states, in pertinent part:

20 (a) If the respondent either fails to file a notice of defense or to appear at the
21 hearing, the agency may take action based upon the respondent's express admissions
22 or upon other evidence and affidavits may be used as evidence without any notice to
23 respondent.

24 8. Pursuant to its authority under Government Code section 11520, the Director finds
25 Respondent is in default. The Director will take action without further hearing and, based on the
26 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
27 taking official notice of all the investigatory reports, exhibits and statements contained therein on
28 file at the Director's offices regarding the allegations contained in Petition to Revoke Probation
No. D1-2010-79, finds that the charges and allegations in Petition to Revoke Probation No. D1-
2010-79, are separately and severally, found to be true and correct by clear and convincing
evidence.

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DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Daniel A. Mandel has subjected his Funeral Director License No. FDR 2703 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Director of Consumer Affairs is authorized to revoke Respondent's Funeral Director License based upon the following violations alleged in the Petition to Revoke Probation which are supported by the evidence contained in the Default Decision Evidence Packet in this case:

- a. Failure to obey all laws (new DUI violation);
- b. Failure to file required quarterly reports;
- c. Failure to pay costs recovery;
- d. Failure to comply with criminal probation requirements; and
- e. Failure to maintain professional license.

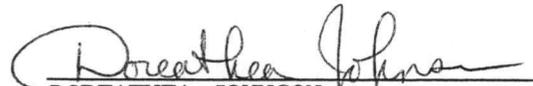
ORDER

IT IS SO ORDERED that Funeral Director License No. FDR 2703, heretofore issued to Respondent Daniel A. Mandel, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on June 18, 2012.

It is so ORDERED MAY 18 2012


DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

Attachment:
Exhibit A: Petition to Revoke Probation

Exhibit A

Petition to Revoke Probation

1 KAMALA D. HARRIS
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2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JONATHAN D. COOPER
Deputy Attorney General
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Attorneys for Complainant

7 **BEFORE THE**
8 **DEPARTMENT OF CONSUMER AFFAIRS**
9 **FOR THE CEMETERY AND FUNERAL BUREAU**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation and Petition to
12 Revoke Probation Against:

Case No. D1-2010-79

PETITION TO REVOKE PROBATION

13 **DANIEL A. MANDEL**
14 **2325 Sonoma Blvd.**
Vallejo, CA 94590
Funeral Director License No. FDR 2703

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Bev Augustine (Complainant) brings this Petition to Revoke Probation solely in her
20 official capacity as the Bureau Chief of the Cemetery and Funeral Bureau, Department of
21 Consumer Affairs.¹

22 2. On or about September 20, 2005, the Cemetery and Funeral Bureau issued Funeral
23 Director License Number FDR 2703 to Daniel A. Mandel (Respondent). The Funeral Director
24 License expired on September 30, 2011, and has not been renewed.

25
26 ¹ Effective January 1, 1996, the Department of Consumer Affairs succeeded to, and was
27 vested with, all the duties, powers, purpose, responsibilities and jurisdiction of the Cemetery
28 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.

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FIRST CAUSE TO REVOKE PROBATION

(Failure to Obey All Laws and Probation Terms)

7. At all times after the effective date of Respondent's probation in Case No. A1 2010 79, **Condition One** stated, in pertinent part:

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

8. Respondent's probation in Case No. A1 2010 79 is subject to revocation because he failed to comply with Probation Condition One, referenced above, as follows:

a. On or about October 24, 2011, in Sacramento, California, Respondent drove a motor vehicle while under the influence of alcohol and with a blood alcohol level in excess of the legal limit (Respondent's blood alcohol level was .21%), in violation of California Vehicle Code sections 23152(a) and 23152(b).

b. In addition to violating the law, Respondent's conduct on October 24, 2011, violated the terms and conditions of his probation in Solano Superior Court Case No. VCR206242.

SECOND CAUSE TO REVOKE PROBATION

(Failure to File Quarterly Report)

9. At all times after the effective date of Respondent's probation in Case No. A1 2010 79, **Condition Two** stated, in pertinent part:

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

10. Respondent's probation in Case No. A1 2010 79 is subject to revocation because he failed to comply with Probation Condition Two, referenced above, as follows:

a. Respondent has failed to submit a Quarterly Report for the reporting period of August 5, 2011, to November 5, 2011.

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THIRD CAUSE TO REVOKE PROBATION

(Failure to Pay Cost Recovery)

11. At all times after the effective date of Respondent's probation in Case No. A1 2010 79, **Condition Eight** stated, in pertinent part:

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

12. Respondent's probation in Case No. A1 2010 79 is subject to revocation because he failed to comply with Probation Condition Eight, referenced above, as follows:

a. Respondent has failed to submit Cost Recovery payments that were due on October 5, 2011 and November 5, 2011.

FOURTH CAUSE TO REVOKE PROBATION

(Failure to Comply With and Prove Compliance With Criminal Probation Requirements)

13. At all times after the effective date of Respondent's probation in Case No. A1 2010 79, **Condition Eleven** stated, in pertinent part:

Proof of Compliance with Criminal Probation Requirements.

Respondent Mandel shall provide proof to the Bureau of compliance of the probation requirements resulting from the criminal conviction set forth in the Accusation.

14. Respondent's probation in Case No. A1 2010 79 is subject to revocation because he failed to comply with Probation Condition Eleven, referenced above, as follows:

a. Respondent has failed to submit any documentation to show proof of his compliance with criminal probation requirements.

b. On or about October 24, 2011, in Sacramento, California, Respondent drove a motor vehicle while under the influence of alcohol and with a blood alcohol level in excess of the legal limit (Respondent's blood alcohol level was .21%), in violation of California Vehicle Code sections 23152(a) and 23152(b).

c. In addition to violating the law, Respondent's conduct on October 24, 2011, violated

1 the terms and conditions of his probation in Solano Superior Court Case No. VCR206242.

2 **FIFTH CAUSE TO REVOKE PROBATION**

3 (Failure to Maintain Current License)

4 15. At all times after the effective date of Respondent's probation in Case No. A1 2010
5 79, **Condition One** stated, in pertinent part:

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

9 16. Respondent's probation in Case No. A1 2010 79 is subject to revocation because he
10 failed to comply with Probation Condition One, referenced above, as follows:

11 a. Respondent has failed to maintain a valid license, and has allowed his license to
12 expire, in violation of the Bureau's regulations.

13 **PRAYER**

14 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
15 Petition to Revoke Probation, and that following the hearing, the Director of Consumer Affairs
16 issue a decision:

17 1. Revoking the probation that was granted by the Cemetery and Funeral Bureau in Case
18 No. A1-2010-79 and imposing the disciplinary order that was stayed thereby revoking Funeral
19 Director License No. FDR 2703 issued to Daniel A. Mandel;

20 2. Revoking or suspending Funeral Director License No. FDR 2703, issued to Daniel A.
21 Mandel;

22 3. Taking such other and further action as deemed necessary and proper.

23 DATED: 12/30/11


24 BEV AUGUSTINE

25 Bureau Chief

26 Cemetery and Funeral Bureau

27 Department of Consumer Affairs

28 State of California

Complainant