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

In the Matter of the Accusation Against: SIERRA VALLEY MORTUARY Brian Coates – Manager and Partner Charles Coates – Partner Peggy Coates – Partner Rodney Knight – Partner Mary F. Knight – Partner Leslie Knight – Partner Funeral Establishment License No. FD 2004 BRIAN COATES Funeral Director No. FDR 1726 Petitioner.	File No. A1 2013 95 OAH No. 2014040755

ORDER OF REJECTION OF PROPOSED DECISION AND ORDER UNSEALING DOCUMENTS

Pursuant to Section 11517 of the Government Code, the Proposed Decision of the Administrative Law Judge in the above-entitled matter is rejected.

The Director will decide the case upon the record, including the transcript, exhibits and written argument of the parties, without taking additional evidence. The Cemetery and Funeral Bureau (Bureau) will order a transcript and upon transcript availability, the parties will be informed as to the date for submission of written argument. The Director is particularly interested in arguments directed to whether the penalty is appropriate given the nature of the misconduct.

In addition, on May 1, 2015, Laurie R. Pearlman, the Administrative Law Judge who heard the above-captioned matter, pursuant to Complainant's unopposed March 25, 2015, Request for Protective Order Sealing Confidential Records, issued a Protective Order Sealing Confidential Records. As a result of this rejection of the Proposed Decision, the Director, hereby, orders that all exhibits placed under seal be unsealed in their entirety for all purposes related to this matter, and shall not become disclosable public records under the provisions of Government Code section 6250 et seq.

IT IS SO ORDERED this 3rd day of June, 2015.

Doreathea Johnson

DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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

In the Matter of the Accusation Against: SIERRA VALLEY MORTUARY Brian Coates - Manager and Partner Charles Coates - Owner and Partner Peggy S. Coates - Partner Rodney A. Knight - Partner Mary F. Knight - Partner Leslie S. Coates - Partner Funeral Establishment License NO. FD 2004, BRIAN COATES Funeral Director License No. FDR 3283, Respondents.	Case No. A1 2013 95 OAH No. 2014040755

PROPOSED DECISION

Laurie R. Pearlman, Administrative Law Judge, Office of Administrative Hearings, heard this matter in Bakersfield on January 7 and 8, 2015. On March 4, 2015, ALJ Pearlman conducted an additional day of hearing in Los Angeles.

Zachary T. Fanselow, Deputy Attorney General, represented complainant Lisa M. Moore, Chief, Cemetery and Funeral Bureau (Bureau), Department of Consumer Affairs, State of California.

Todd J. Bloomfield, Attorney at Law, represented respondents Sierra Valley Mortuary and Brian Coates.

Oral and documentary evidence was received. The record was left open until April 1, 2015 for Complainant to submit a Request for Protective Order Sealing Confidential Records, which was received on March 25, 2015. It was unopposed. The Request for Protective Order was marked as Exhibit 22 for identification and was admitted into evidence. A Protective Order Sealing Confidential Records was issued on May 1, 2015. The record was closed and the matter was submitted on April 1, 2015.

FACTUAL FINDINGS

The Administrative Law Judge makes the following Factual Findings:

1. Complainant brought the Accusation in her official capacity as Bureau Chief on March 18, 2014. Respondents filed a timely notice of defense and this matter ensued.

2. On March 5, 2009, the Bureau issued Funeral Establishment License No. FD 2004 to Sierra Valley Mortuary (Mortuary), with Brian Coates as a partner and the manager, Charles Coates as the owner and a partner, and Peggy S. Coates, Rodney A. Knight, Mary F. Knight and Leslie S. Coates as partners (collectively Respondents). The Funeral Establishment License will expire on March 31, 2015, unless renewed.

3. On October 5, 2010, the Bureau issued Funeral Director License Number FDR 3283 to Brian Coates ("Respondent Coates"). The Funeral Director License will expire on October 31, 2015, unless renewed.

Sierra Valley Mortuary

4. The Mortuary is located in Lake Isabella, Kern County, California. It provides funeral services, prepares decedents for burial, and provides cremation services. The Mortuary began doing business in August 2003. It expanded its operations in February 2006 by purchasing Lake Isabella Valley Mortuary, another business in the area.

5. The Mortuary is organized as a general partnership, with six general partners. Charles Coates and his wife, Peggy Coates, own 40 percent. Their son, Brian Coates and his former wife, Leslie Coates, each own 15 percent. Charles Coates' sister, Mary Knight, and her husband, Rodney Knight, own the remaining 30 percent.

6. Brian Coates is the Mortuary's licensed funeral director. He has a full-time job as the manager of a gas station in Bakersfield and does not work at the Mortuary every day. Charles Coates handles the Mortuary's day-to-day operations.

Pre-need Contracts

7. A pre-need contract is a contract between a funeral establishment and a client to guarantee the costs of the final disposition of a dead human body or for funeral services, in the future, in exchange for a fixed sum of money.

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8. The Mortuary does not accept money in advance of providing services. Instead, Respondents enter into pre-need life contracts with clients who purchase a funeral insurance policy from an insurance company to cover the cost of the services set out in the pre-need contract.

9. Brenda Cary purchased pre-need contracts with the Mortuary on behalf of D.C. and P.W.,[1] using their Social Security funds. Cary chose not to purchase these pre-need contracts from any of the funeral homes located in Bakersfield, where D.C. and P.W. were living.[2] Cary is the niece of Charles Coates. At the time she purchased these pre-need contracts, Cary was an employee of Elder Connection. Elder Connection is a representative payee organization appointed by the Social Security Administration to receive and manage the Social Security benefits of individuals deemed unable to manage or direct the management of their own funds. In that role, Cary was authorized to spend a beneficiary's social security benefits to meet his or her day-to-day needs and to insure that the beneficiary did not accumulate assets in excess of $2,000, which would put the beneficiary in jeopardy of losing Medi-Cal eligibility.[3] Cary also had authority to purchase a pre-paid funeral contract with a beneficiary's benefits, so long as Cary did not have any conflict of interest in doing so. Cary did not have authority to sign legal documents on behalf of a beneficiary. Utilizing funds to transact business with a Mortuary owned and run by Cary's relatives constitutes a conflict of interest. Accordingly, Cary was not authorized to enter into a contract to purchase pre-need funeral services for D.C. or P.W.

Decedent D.C.

10. D.C. lived alone in her own home until 2008 when Kern County Adult Protective Services arranged to have D.C., who was suffering from dementia, moved into a skilled nursing facility in Bakersfield. Elder Care and Cary served as her representative payees. Medicare and then Medi-Cal paid for her care in the skilled nursing facility.

11. On February 18, 2008, Cary purchased a pre-need contract on behalf of D.C., using D.C.'s funds. The pre-need contract provided for embalming and a full burial at a cost of $9,000. D.C. was with Cary and Charles Coates at the Mortuary,

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[1] The initials of decedents and their family members are used herein to protect their privacy.

[2] Lake Isabella is located nearly an hour away from Bakersfield.

[3] Pre-need funeral arrangements are an exempt asset. As such, they are not counted in determining eligibility for government assistance. Ownership of the life insurance funding the pre-need contract is irrevocably assigned to the funeral home named in the contract.

"but she was not able to sign." Cary signed the pre-need contract on D.C.'s behalf and arranged for D.C. to purchase funeral insurance from Homesteaders Life Company (Homesteaders) to fund the contract.

12. A few months later, D.C. accumulated an excess of assets which put her in danger of losing her Medi-Cal eligibility. In October 2008, Cary purchased additional pre-need funeral arrangements from the Mortuary, adding an obituary, a better quality casket, and a headstone. Once again, Cary signed the pre-need contract on D.C.'s behalf and arranged for D.C. to purchase funeral insurance from Homesteaders to fund the contract. For reasons unknown to the Mortuary, Homesteaders refunded $1,050 to D.C. shortly after the second pre-need contract was signed. As a result, the second pre-need contract was not fully funded.

13. On February 14, 2013, D.C. passed away in Bakersfield at age 91 and the Mortuary picked up her body. Charles Coates reported D.C.'s death to Homesteaders, which issued payment to the Mortuary for its policy amount, plus appreciation in the amount of $11,267.78. In addition, a Fore Thought Insurance policy had also been purchased, which paid $3,227.41 to the Mortuary. The Mortuary received a total of $14,495.19.

14. The Mortuary determined that it could not fulfill D.C.'s pre-need contract because it had not been signed by D.C. or an individual authorized to sign on her behalf. Charles Coates telephoned the Kern County Public Administrator (Administrator) for assistance in locating a family member who could direct disposition of D.C.'s remains.[4] In the interim, the Mortuary placed D.C.'s body in refrigeration. On March 13, 2013, the Administrator reported that it could not locate a family member who was willing to sign authorization for disposal of D.C.'s remains.

15. The Mortuary refrigerated D.C.'s remains for a total of 44 days. During that time, her body had significantly deteriorated and there was skin slippage and tissue gas. Because of the effects of the deterioration, and because the pre-need contract had not been fully funded, the mortuary chose not to embalm the body, perform cosmetology services, or perform dressing services.

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[4] If no family member can be located, the public administrator may control disposition of the remains, pursuant to Health and Safety Code section 7100, subdivision (a)(9). If the administrator fails to act within seven days of receipt of written notice of the facts from a funeral director, a funeral director has complete authority to control disposition of the body, under Health and Safety Code section 7100, subdivision (c)(2).

16. In March 2013, the Mortuary provided a graveside service for D.C., the upgraded casket called for in the pre-need contract, flowers, memorial books and folders. It paid Greenlawn Memorial Park $3,887.76 for D.C.'s burial vault, internment fee, the California regulatory fee and sales tax.

17. On March 14, 2013, the Bureau received a complaint from the Kern County Coroner's Officer after the Mortuary asked the Administrator to sign a pre-need contract on behalf of D.C. The Mortuary told the Coroner's Office that D.C. had entered into a contract for pre-need funeral services, but passed away prior to signing the contract. The Coroner's Office became suspicious because the contract was dated in 2008 and D.C. did not pass away until 2013. The Coroner's Office believed that D.C. had had ample time to sign the contract.

18. On March 29, 2013, Bureau investigators reviewed the two pre-need contracts between D.C. and the mortuary. The purchased services included placing an obituary, dressing and cosmetizing the body, purchase of an "upgrade casket", and a "family request" for embalming. The two contracts totaled $11,500.

19. On July 25, 2013, D.C.'s body was disinterred. She was dressed in her hospital gown with a towel covering her face. A licensed embalmer confirmed that D.C. had not been embalmed and that no cosmetology had been performed on the body. Photographs were taken and D.C. was returned to her grave.

20. The Mortuary and Respondent Coates did not place an obituary for D.C., did not embalm D.C., did not perform cosmetology services for D.C., and did not perform dressing services for D.C., although Respondents had accepted payment for all of these services.

Decedent P.W.

21. P.W. had multiple sclerosis and dementia. She lived in a skilled nursing home in Bakersfield and received Medi-Cal benefits. She had three adult daughters. Two live outside of California and the other lives several hours from Bakersfield. For several years prior to her death, P.W. no longer recognized her daughters. The Social Security Administration appointed Elder Connection and Cary to provide assistance to P.W. in managing her financial affairs.

22. P.W. was accumulating excess assets and was in jeopardy of losing Medi-Cal benefits. On April 3, 2007, Cary signed a pre-need contract with the Mortuary, which provided for embalming and a traditional burial at a cost of $9,000. Cary entered into a funeral insurance contract with Homesteaders to fund the pre-need contract.

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23. P.W. passed away on January 6, 2009, at age 85. Upon her death, the Mortuary took possession of the body. Upon notification of death, Homesteaders sent the funeral insurance proceeds to the designated beneficiary, Sierra Valley Mortuary, in the amount of $9,226.13.

24. Because P.W. had not signed the pre-need document, and Cary lacked authority to direct the disposition of her remains, the Mortuary began a search for relatives and successfully located P.W.'s daughters. When the daughters learned of P.W.'s death, they conferred and decided to have their mother cremated.

25. Charles Coates initially communicated with daughter J.A., who arranged with the Mortuary to have P.W.'s remains cremated. Subsequently, daughter N.B. took over the handling of the funeral arrangements because J.A. was distraught at her mother's death. Daughter N.B. telephoned Charles Coates and asked him about the cost of the cremation. He assured her that most of the cost would be covered by the State of California. J.A. paid $300 to $500 by money order to Charles Coates to have their mother's remains cremated and shipped. P.W.'s daughters were never told by the Mortuary that a funded pre-need contract existed and that embalming and a full burial could be provided for their mother in Bakersfield without cost to the family. P.W.'s remains were cremated and shipped to her daughter J.A. by the Mortuary, in place of embalming and the traditional burial set out in the pre-need contract.

26. The value of the services rendered to P.W. by the Mortuary was $1,958.00, leaving $7,268.13 in unused fees.

27. On September 10, 2013, the Kern Country Sheriff's Office served a search warrant on the Mortuary in connection with the D.C. investigation. During the service of the search warrant, P.W.'s records were seized.

28. Charles Coates and Cary had entered into a pre-need contract for P.W. The contract, in the amount of $9,000, was for embalming and a full burial at Union Cemetery. Following her death, Homesteaders Life Insurance had paid the Mortuary $9,226.13 for P.W.'s full burial. P.W.'s death certificate, filed with the county of Kern, shows that P.W. was not buried. Instead, the Mortuary had arranged to have her cremated. Once P.W. had been cremated, the Mortuary sent her cremated remains to daughter J.A., although Charles Coates had been asked to send the remains to daughter N.B.

29. On September 10, 2013, a Bureau investigator contacted Union Cemetery which confirmed that P.W. had not been buried there.

30. On or about February 19, 2014, a Bureau investigator spoke to daughter N.B. who told the investigator that neither she nor her sisters had been informed by the Mortuary that a fully funded pre-need contract existed for embalming and full

burial for her mother. When N.B. spoke to the Mortuary by telephone from out-of-state, "Chuck"[5] offered N.B. cremation services for her mother at a minimal cost and told her that the "State" would help cover the costs of the cremation. She was never informed that Homesteaders Life Insurance had paid the Mortuary $9,226.13 to cover embalming and a full burial for P.W.

Respondents' Evidence

31. Charles Coates testified at the hearing and was respectful of the proceedings. He and his relatives have owned and operated the Mortuary since August 2003. Charles Coates handles the day-to-day operations. He is supervised by his son, Brian Coates,[6] who is at the Mortuary "more or less than once a month." Charles Coates is on the phone with Brian Coates at least once a week.

32. In all of the cases with which Charles Coates has been involved, the Public Administrator has always been able to locate next of kin. He stated that "we are good people" and that the Mortuary has a reputation in the community for honesty, integrity and good quality work, which is very important to him. He maintains that he "did nothing wrong" regarding D.C. and P. W.

33. As for decedent D.C., when he realized that Cary did not have authority to sign the pre-need contract or to control disposition, Charles Coates telephoned the Administrator for direction, but he did not provide written notice. Charles Coates did not explain why he failed to provide written notice to the Administrator, as set out in the Health and Safety Code. Had he done so, he could have lawfully acted within seven days, rather than waiting 44 days to dispose of D.C.'s remains, at which point advanced decomposition had occurred. Charles Coates continued to be in almost daily contact with the Administrator's office regarding this matter.

34. Charles Coates stated that Cary was not an employee of the Mortuary and he could not control her actions. In 2010, Elder Connection no longer allowed its employees to sign pre-need contracts on behalf of their clients. Charles Coates did not recognize that utilizing the decedents' funds to transact business with a Mortuary owned and operated by Cary's relatives constitutes a conflict of interest or, at the very least, creates the appearance of impropriety. This is particularly so in light of the fact that the Mortuary was located nearly an hour away from Bakersfield, where D.C. and P.W. resided, resulting in additional costs for picking up the bodies.

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[5] Charles Coates, the Mortuary's owner and a partner, is also known as "Chuck".

[6] Brian Coates did not testify at the hearing.

35. Charles Coates admitted that the Mortuary had not embalmed D.C.'s body, performed cosmetology services, performed dressing services, or provided an obituary. He asserted that the Mortuary could not embalm, put on cosmetics, or dress the body because it had decomposed after 44 days of refrigeration.

36. Charles Coates asserted that the Mortuary did not have either the authority or the obligation to provide the services listed in the pre-need contract. However, he also posited that, under Health and Safety Code section 7100, subdivision (c), Respondent Coates, as funeral director, had complete authority to control disposition of D.C.'s remains because neither the family nor the administrator was willing to act to control disposition.

37. Charles Coates stated that the Mortuary had actually been underpaid $2,585.57 for the services it provided to D.C. He claimed that the Mortuary had received a total of $14,495.19 in insurance payments on behalf of D.C., but that the Mortuary provided $17,080.76 in services to D.C. Charles Coates arrived at this amount by adding up the reasonable and customary charges for each service rendered to D.C., including 44 days of refrigeration, out-of-area removal fee, graveside service, upgraded casket, flowers, memorial books and folders, in addition to the $3,887.76 the Mortuary paid Greenlawn Memorial Park for D.C.'s burial vault, internment fee, regulatory fees, and sales tax. He acknowledged that the services in D.C.'s pre-need contract had been discounted because the items had been purchased as a package. In calculating the amount of the supposed underpayment, the Mortuary did not apply a package discount to the items it provided to D.C.

38. Charles Coates told investigators that he did not place an obituary because there was not enough money to cover that, since D.C.'s pre-need contract had not been fully funded. At the hearing, he stated that that he did not prepare an obituary because the Mortuary did know enough about the decedent to write one. He did cause a death notice to be placed in the newspaper.

39. Regarding decedent P.W., Charles Coates testified that he never spoke with N.B. and that he did inform J.A. that P.W. had a fully funded pre-need agreement with the Mortuary that would cover a full-burial. He stated that he sent her all the pre-need documents. He insisted that he never asked for, or received, any money from J.A.

40. The value of the services rendered to P.W. by the Mortuary was $1,958. Because the insurance company paid the Mortuary for the cost of a full-burial, rather than a cremation, the Mortuary was left with an overpayment in the amount of $7,268.13. The Mortuary did not initially plan to retain the excess funds, but has held on to them because it is not certain what to do with the $7,268.13.[7]

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[7] The Mortuary suggested at hearing that since ownership of the life insurance funding the pre-need contract is irrevocably assigned to the Mortuary, it may be

41. Initially, Charles Coates contacted Cary to inquire what to do with the excess funds. She told him that he should not return the money to Elder Connection, but did not provide any other direction as to what to do with the funds. Charles Coates than contacted the Kern County Public Administrator to inquire what to do. The Public Administrator indicated that the Mortuary should not send the funds to it, but did not offer further guidance. On December 4, 2014, the Mortuary sent a letter to the Bureau, stating that it was still holding onto the excess funds and did not know what to do with them. Counsel for the Bureau suggested that perhaps the money should be sent to P.W.'s daughters, but was not certain if that was the correct course of action.

42. Dale Cornell, the pastor at the church attended by Charles Coates, testified on his behalf. Charles Coates served as a church deacon for several terms. Cornell described him as a man of character and integrity, who serves as a church usher and assists with the sick and with hospital calls. Cornell refers families in need to the Mortuary and has seen that Charles Coates has "a spiritual emphasis" in his manner of conducting business. Cornell is not aware of the specifics of the allegations against Respondents.

43. Charles Coates serves as a board member for his church, belongs to the Lion's Club, and has done volunteer work as a committee chair for the Kern County Chamber of Commerce.

Costs

44. Complainant established that the actual costs of investigation and prosecution incurred by the Bureau in this matter are $11,817.50. This amount is reasonable.

LEGAL CONCLUSIONS

1. Business and Professions Code[8] section 7686 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.

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entitled to retain the excess funds. It also argued that the Bureau's consumer guide provides that a funeral home can keep any funds remaining after the arrangements of a pre-need contract have been carried out.

[8] All section references are to the Business and Professions Code unless otherwise indicated.

2. Section 7692 states that misrepresentation or fraud in the conduct of the business of a funeral director constitutes grounds for disciplinary action.

3. Section 7703 provides that violation of any of the provisions of law regulating mortuaries or funeral directors constitutes grounds for disciplinary action.

4. Section 7707 provides that gross negligence, gross incompetence or unprofessional conduct in the practice of funeral directing constitutes grounds for disciplinary action.

5. California Code of Regulations, title 16, section 1204 provides that a funeral establishment must designate a licensed funeral director to manage the establishment. He or she is responsible for exercising direct supervision and control over the conduct of the funeral establishment to ensure full compliance with the laws governing funeral establishments. Failure of the funeral director or the funeral establishment to exercise such supervision or control constitutes grounds for disciplinary action.

6. Code section 7601.1 provides that public protection is the highest priority for the Bureau in exercising its licensing, regulatory, and disciplinary functions.

7. Section 125.3 provides that the Bureau may request the administrative law judge to direct a licentiate found to have committed a violation of the licensing act to pay a sum not to exceed the Bureau's reasonable costs of investigation and enforcement.

8. In cases involving a professional license, Complainant must prove her case by clear and convincing proof to a reasonable certainty. *Mann v. Department of Motor Vehicles* (1999) 76 Cal.App.4th 312, 318-19; *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853; *Realty Projects, Inc. v. Smith* (1973) 32 Cal.App.3d 204, 212.

9. Cause exists to revoke or suspend Respondents' Funeral Establishment and Funeral Director licenses under section 7692, in that Respondents committed acts of fraud or misrepresentation by entering into a contract for D.C.'s burial and related services, accepting money for those services, and then failing to embalm, dress or perform cosmetology on D.C.'s body; failing to place an obituary; and entering into a pre-need contract with Brenda Cary using $11,500 of D.C.'s funds, despite the fact that Cary lacked legal authority to make the purchase on D.C.'s behalf, and despite the fact that utilizing D.C.'s funds to transact business with a Mortuary owned and run by Cary's relatives constitutes a conflict of interest, set out in Factual Findings 4-20.

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10. Cause exists to revoke or suspend Respondents' Funeral Establishment and Funeral Director licenses under section 7707 in that Respondents committed acts constituting gross negligence, gross incompetence, and unprofessional conduct in connection with their handling of funeral services for D.C. by entering into a contract for D.C.'s burial and related services, accepting money for those services, and then failing to embalm, dress or perform cosmetology on D.C.'s body; failing to place an obituary; and entering into a pre-need contract with Brenda Cary using $11,500 of D.C.'s funds, despite the fact that Cary lacked legal authority to make the purchase on D.C.'s behalf, and despite the fact that utilizing D.C.'s funds to transact business with a Mortuary owned and run by Cary's relatives constitutes a conflict of interest, set out in Factual Findings 4-20.

11. Cause exists to revoke or suspend Respondent Coates' Funeral Director license under section 7703 and California Code of Regulations, title 16, section 1204, in that Respondent Coates was solely responsible for the conduct of the establishment and he failed to exercise proper supervision and control over the funeral business practices of the funeral establishment, when Respondents committed acts constituting fraud and misrepresentation, gross negligence, gross incompetence, and unprofessional conduct in connection with their handling of funeral services for D.C., as set out in Factual Findings 4-31.

12. Cause exists to revoke or suspend Respondents' Funeral Establishment and Funeral Director licenses under section 7692 in that Respondents committed acts of fraud and misrepresentation, as set out in Factual Findings 4-9 and 21-30. Respondents entered into a contract for P.W.'s burial, charged P.W.'s insurance for the burial, and then never performed the prepaid funeral arrangements. Respondents demanded and accepted additional funds from P.W.'s daughters for cremation and shipment of her remains.

13. Cause exists to revoke or suspend Respondents' Funeral Establishment and Funeral Director licenses under section 7707 in that Respondents committed acts constituting gross negligence, gross incompetence, and unprofessional conduct, as set out in Factual Findings 4-9 and 21-30. Respondents entered into a contract for P.W.'s burial, charged P.W.'s insurance for the burial, and then never performed the prepaid funeral arrangements. Respondents demanded and accepted additional funds from P.W.'s daughters for cremation and shipment of her remains.

14. Cause exists to revoke or suspend Respondent Coates' Funeral Director license under section 7703 and California Code of Regulations, title 16, section 1204, in that Respondent Coates was solely responsible for the conduct of the establishment and he failed to exercise proper supervision and control over the funeral business practices of the funeral establishment, when Respondents committed acts constituting fraud and misrepresentation, gross negligence, gross incompetence, and unprofessional conduct in connection with their handling of funeral services for P.W., as set out in Factual Findings 4-9 and 21-30.

15. Clients must be assured that they will receive the pre-need insurance policy they are purchasing. Respondents committed acts constituting fraud and misrepresentation, gross negligence, gross incompetence, and unprofessional conduct in connection with their handling of funeral services two vulnerable, elderly women with dementia, who had no family in the area. Respondents' licenses must be disciplined to protect the public. No evidence was presented of any prior consumer complaints or disciplinary actions against the licenses of the Mortuary or of Respondent Coates. Nor did it appear that Charles Coates sought to hide the fact of D.C.'s death, in that he did seek assistance from the Administrator in locating D.C.'s next-of-kin. The order that follows should be sufficient to protect the public.

16. Cause exists under Business and Professions Code section 125.3 to impose the reasonable costs of investigating and enforcing the case, as set forth in Factual Finding 44, in the sum of $11,817.50. Respondents did not present any evidence of financial inability to pay costs. Respondents shall be entitled to make monthly payments to the Bureau over a three-year period until this sum is paid in full.

ORDER

Wherefore, the following Order is hereby made:

Sierra Valley Mortuary's Funeral Establishment License and Respondent Brian Coates's Funeral Director's License are hereby revoked. However, said revocations are stayed for three years, under the following terms and conditions:

1. <u>Obey All Laws</u>

Respondents Brian Coates and Charles Coates 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.

2. <u>Quarterly Reports</u>

Respondent Brian Coates shall submit quarterly declarations under penalty of perjury, in a format designated by the department, stating whether or not respondents have been in compliance with all the conditions of probation. Respondent Brian Coates 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.

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3. **Interview with Department Representative**

As necessary, Respondent Brian Coates and Charles Coates shall appear in person for scheduled interviews with the Director or other designated representative for the purpose of monitoring compliance with the terms of this decision.

4. **Out-of-State Residence or Operation**

Should Respondent Brian Coates leave California to reside or operate outside this state, respondent must notify the department in writing of the dates of departure and return. Reporting in person may be waived if the respondent moves out of the state. However, respondent shall continue compliance with other terms of probation to retain California licensure. Periods of residency, business operation or employment outside California shall not reduce the probationary period.

5. **Completion of Probation**

Upon successful completion of probation, respondents' licenses will be fully restored.

6. **Violation of Probation**

Should respondents violate probation in any respect, the Director of the department, after giving respondents notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If an Accusation or Petition to Revoke Probation is filed against respondents during probation, the department shall have continuing jurisdiction until the matter is final, and the probation shall be extended until the matter is final.

7. **License Issued During Probation**

Any license or registration issued to respondents by the department during the period of probation shall be issued as a probationary license or registration and is subject to all the terms and conditions set forth herein. Respondents must comply with terms and conditions herein and demonstrate no cause for disciplinary action or denial of an application.

8. **Cost Recovery**

Respondents shall pay the department's actual and reasonable costs of investigation and enforcement of this matter in the amount of $11,817.50. Said amount shall be paid in monthly installments over a period of three years. Probation shall not terminate until full payment has been made. Respondents' licenses shall not be renewed until the cost recovery has been paid in full or respondents are otherwise in compliance with a payment plan approved by the department.

9. Restitution

Within 90 days of respondents' receipt of proof of the amount paid to the Mortuary by P.W.'s daughters, respondents shall make restitution to P.W.'s daughters for the full amount paid by them to the Mortuary.

10. Ethics

Within 90 days of the effective date of this decision, respondents Brian Coates and Charles Coates shall submit for prior Department approval a course of ethics which will be completed within the first year of probation.

May 1, 2015

LAURIE R. PEARLMAN
Administrative Law Judge
Office of Administrative Hearings