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

In the Matter of the Petition to Revoke Probation Against: **THOMAS MATTHEW BARTEL** **6335 Sunrise Blvd.** **Citrus Heights, CA 95610** **Embalmer License No. EMB 8761** **Funeral Director License No. FDR 3616** Respondent.	Case No. A1 2014 150 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about July 19, 2016, Complainant Lisa M. Moore, in her official capacity as the Bureau Chief of the Cemetery and Funeral Bureau, Department of Consumer Affairs[1], filed Petition to Revoke Probation No. A1 2014 150 against Thomas Matthew Bartel (Respondent) before the Director of Consumer Affairs. (Petition to Revoke Probation attached as Exhibit A.)

[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.

2. On or about February 19, 2002, the Cemetery and Funeral Bureau (Bureau) issued Embalmer License No. EMB 8761 to Respondent. The Embalmer License expired on February 29, 2016, and has not been renewed. This lapse in licensure, however, pursuant to Business and Professions Code section 118(b) does not deprive the Bureau of its authority to institute or continue this disciplinary proceeding.

3. On or about May 16, 2013, the Cemetery and Funeral Bureau issued Funeral Director License No. FDR 3616 to Respondent. The Funeral Director License expired on May 31, 2016, and has not been renewed. This lapse in licensure, however, pursuant to Business and Professions Code section 118(b) does not deprive the Bureau of its authority to institute or continue this disciplinary proceeding.

4. On or about July 8, 2015, the Stipulated Settlement and Disciplinary Order for Accusation No. A1-2014-150 against Respondent was adopted by the Director of Consumer Affairs, effective August 7, 2015. Under the Stipulated Settlement and Disciplinary Order, Embalmer License No. EMB 8761 and Funeral Director License No. FDR 3616 were revoked, with the revocation stayed and Respondent placed on probation for three (3) years subject to terms and conditions of probation.

5. On or about July 20, 2016, Respondent was served by Certified and First Class Mail copies of the Petition to Revoke Probation No. A1 2014 150, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to California Code of Regulations, title 16, section 1203, is required to be reported and maintained with the Bureau. Respondent's address of record was and is:

6335 Sunrise Blvd.
Citrus Heights, CA 95610.

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

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7. On or about September 16, 2016, the aforementioned documents were returned by the U.S. Postal Service marked "Attempted Not Known."

8. Government Code section 11506(c) states, in pertinent part:

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

9. Respondent failed to file a Notice of Defense within 15 days after service upon him of the Petition to Revoke Probation, and therefore waived his right to a hearing on the merits of Petition to Revoke Probation No. A1 2014 150.

10. California Government Code section 11520(a) states, in pertinent part:

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

11. Pursuant to its authority under Government Code section 11520, the Director finds Respondent is in default. The Director will take action without further hearing and, based on the relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the Director's offices regarding the allegations contained in Petition to Revoke Probation No. A1 2014 150, finds that the charges and allegations in Petition to Revoke Probation No. A1 2014 150, are separately and severally, found to be true and correct by clear and convincing evidence.

12. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement are $1,632.50 as of September 21, 2016. In addition, there were previously assessed costs of investigation and enforcement under the Stipulated Settlement and Disciplinary Order in the amount of $7,375.54. The total cost recovery is $9,008.04.

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DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Thomas Matthew Bartel has subjected his Embalmer License No. EMB 8761 and Funeral Director License No. FDR 3616 to discipline.

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

3. The Director of Consumer Affairs is authorized to lift the stay and to revoke Respondent's Embalmer License and 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. Respondent failed to comply with probation condition 1, "Obey All Laws," in that Respondent did not comply with conditions of probation 2, 8, 9, and 10.

b. Respondent failed to comply with probation condition 2, "Quarterly Reports," in that Respondent did not submit any quarterly reports.

c. Respondent failed to comply with probation condition 8, "Cost Recovery," in that Respondent did not make any payments under the cost recovery payment plan.

d. Respondent failed to comply with probation condition 9, "Limitation of Duties," in that Respondent did not submit a plan to the department to implement the restriction on his duties.

e. Respondent failed to comply with probation condition 10, "Ethics," in that Respondent did not submit an ethics course to the department for prior approval.

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ORDER

IT IS SO ORDERED that Embalmer License No. EMB 8761 and Funeral Director License No. FDR 3616, heretofore issued to Respondent Thomas Matthew Bartel, are 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 November 11, 2016.

It is so ORDERED October 11, 2016

Doreathea Johnson

DOREATHEA JOHNSON
Deputy Director
Division of Legal Affairs
Department of Consumer Affairs

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DOJ Matter ID:SA2016102114

Attachment:
Exhibit A: Petition to Revoke Probation