

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

In the Matter of the Accusation against:

LAWRENCE ALVA DYER  
Funeral Director License No. FDR 583

Respondent.

Case No. A1 2013 340

OAH No. 2014020598

**DECISION**

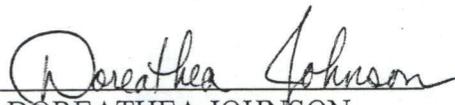
The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Director of Consumer Affairs as the Decision in the above entitled matter except that, pursuant to Government Code section 11517(c)(2)(C), the following technical is made on page 1, paragraph 1, is therefore changed to read:

"1. One April 7, 1997, the Cemetery and Funeral Bureau (Bureau), Department of Consumer Affairs, State of California, issued Funeral Director License No. FDR 583 to respondent Lawrence Alva Dyer. Funeral Director License No. FDR expired on April 30, 2013, and has not been renewed. There is no history of any prior discipline having been imposed against Funeral Director License No. FDR 583."

The technical change made above does not affect the factual or legal basis of the Proposed Decision.

This Decision shall become effective December 31, 2014.

IT IS SO ORDERED DEC 08 2014.

  
DOREATHEA JOHNSON  
Deputy Director, Legal Affairs  
Department of Consumer Affairs

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

In the Matter of the Accusation Against:

LAWRENCE ALVA DYER,

Respondent.

Case No. A1 2013 340

OAH No. 2014020598

**PROPOSED DECISION**

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on October 28, 2014, in San Diego, California.

Karen L. Gordon, Deputy Attorney General, Department of Justice, State of California, represented complainant, Lisa M. Moore, Chief, Cemetery and Funeral Bureau, Department of Consumer Affairs, State of California.

No appearance was made by or on behalf of respondent, Lawrence Alva Dyer.

On October 28, 2014, the matter was submitted.

**FACTUAL FINDINGS**

*License History*

1. On April 30, 2013, the Cemetery and Funeral Bureau (Bureau), Department of Consumer Affairs, State of California, issued Funeral Director License No. FDR 583 to respondent, Lawrence Alva Dyer. Funeral Director License No. FDR 583 expired on April 30, 2013, and has not been renewed. There is no history of any prior discipline having been imposed against Funeral Director License No. FDR 583.

*Jurisdictional Matters*

2. On November 15, 2013, complainant signed Accusation A1 2013 340, which sought the revocation of Funeral Director License No. FDR 583 based upon respondent's June 23, 2011, felony convictions for stalking and making criminal threats. Complainant also sought an order directing respondent to pay costs of investigation and enforcement.

Accusation A1 2013 340 was served on respondent, who timely filed a Notice of Defense. Respondent set forth a mailing address in the Notice of Defense and stated that he was represented by Attorney Jeffrey Estes.

On February 20, 2014, respondent and Attorney Estes were properly served with a Notice of Hearing that set the administrative hearing in this matter for Tuesday, October, 28, 2014, at the Office of Administrative Hearings, 1350 Front Street, Suite 3005, San Diego, CA 92101, to commence at 9:00 a.m.

On October, 28, 2014, at 9:00 a.m., this matter was called for hearing. No appearance was made by respondent or on his behalf. Telephone calls were placed to Attorney Estes's office and cell phone, but he did not answer them. After waiting for more than 30 minutes, the record was opened; jurisdictional documents were presented; documentary evidence was produced; official notice was taken of the Cemetery and Funeral Bureau's disciplinary guidelines; counsel for complainant gave a brief closing argument; the record was closed; and the matter was submitted. All jurisdictional requirements were met.

#### *Respondent's Convictions*

3. On June 27, 2011, in the Superior Court of California, County of San Diego, in Case No. CD 2333239, respondent was convicted, on his plea of guilty, of violating Penal Code section 646.9, subdivision (a) (stalking)<sup>1</sup>, and Penal Code section 422 (making violent threats)<sup>2</sup>, each a felony conviction. In a written change of plea form that respondent signed

---

<sup>1</sup> Penal Code section 646.9, subdivision (a), provides:

Any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family is guilty of the crime of stalking, punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment, or by imprisonment in the state prison.

<sup>2</sup> Penal Code section 422, subdivision (a), provides:

(a) Any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement, made verbally, in writing, or by means of an electronic communication device, is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and

on June 23, 2011, he admitted: "On or about 12/31/2010 through 3/28/2010 [sic] I unlawfully, willfully & maliciously followed & harassed [victim's name deleted] & made credible threats with intent to put fear in her . . . . On or about 3/31/2011 I threatened to commit a crime that would result in great bodily injury to [victim's name deleted.]"

The court placed respondent on formal probation. Terms and conditions of probation required respondent to serve time in custody and obey all laws.

4. On May 17, 2013, respondent admitted in court that he had violated the terms and conditions of his probation by unlawfully using a controlled substance. As a result of his probation violation, the court revoked formal probation and sentenced respondent to serve two years, eight months in state prison. Respondent was given credit for 386 days previously served. In addition, respondent was ordered to pay a restitution fine of \$400, which had been suspended pending his completion of probation.

#### *Substantial Relationship*

5. Purchasers of funeral services are often unable to make careful, informed decisions regarding funeral transactions. Funerals are extremely expensive, and decisions about funeral planning must be made under tight time pressure during very stressful times. Funeral consumers are highly vulnerable to unfair and deceptive trade practices; funeral providers may take advantage of their customers. (*Baudino v. SCI California Funeral Services, Inc.* (2008) 169 Cal.App.4th 773, 782, citing Federal Trade Commission findings.)

6. In California, the Cemetery and Funeral Bureau is responsible for regulating the funeral profession and industry. The Bureau applies the Funeral Directors and Embalmers Law, found at Business and Professions Code section 7600 et seq., in doing so. Protection of the public is the Bureau's highest priority in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount. (Bus. & Prof. Code, § 7601.1.)

7. A funeral director is a person engaged in or holding himself or herself out as engaged in any of the following: (a) preparing human remains for transportation, burial or disposal, or directing and supervising such activities; (b) maintaining an establishment for the preparation for the transportation, disposition or care of human remains; or (c) using the words "funeral director," or "undertaker," or "mortician," or any other title implying that he or she is a funeral director. (Bus. & Prof. Code, § 7615.)

---

an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison.

A funeral director must be licensed. (Bus. & Prof. Code, § 7622.2.) A funeral director must be at least 18 years of age, possess certain formal education, and be of good moral character. (Bus. & Prof. Code, § 7619.) Before a funeral director license is issued, an applicant must successfully pass an examination upon the following subjects: (a) the signs of death; (b) the manner by which death may be determined; (c) the laws governing the preparation, burial and disposal of human remains, and the shipment of bodies dying from infectious or contagious diseases; and (d) local health and sanitary ordinances and regulations relating to funeral directing and embalming. (Bus. & Prof. Code, § 7622.)

A licensed funeral establishment must employ a licensed funeral director to manage, direct, or control its business or profession. (Bus. & Prof. Code, § 7616.2.)

8. The conviction of a crime substantially related to the qualifications, functions and duties of a funeral director constitutes a ground for disciplinary action. The record of conviction, or a certified copy thereof, is conclusive evidence of such conviction. (Bus. & Prof. Code, § 7691.)

9. Convictions for stalking and making violent threats evidence a present and potential unfitness of a licensed funeral director, who must be intelligent, disciplined, emotionally sensitive, an effective communicator, and able to remain calm in the face of emotional turmoil. Respondent's convictions are inconsistent with these necessary personal characteristics. Respondent's violation of probation evinces an inability to comply with terms and conditions of probation and a lack of rehabilitation.

---

### *Rehabilitation*

10. No evidence in explanation, mitigation, or rehabilitation was presented.

### *Disciplinary Guidelines*

11. The Bureau published a manual of disciplinary guidelines used by licensees, attorneys, and judges. The Bureau recognizes that these are merely guidelines and that mitigating or aggravating circumstances may necessitate a deviation from them. If there is a departure from the guidelines, an explanation should be provided for it.

For a substantially related criminal conviction that constitutes grounds for discipline under Business and Professions Code section 490 and 7691, the guidelines recommend a maximum penalty of revocation and a minimum penalty of revocation, stayed and three years' probation.

### *Analysis*

12. Respondent suffered two felony convictions in June 2011, one for stalking and the other for making violent threats. These convictions are substantially related to the qualifications, functions and duties of a funeral director, and they demonstrate an unfitness to hold a funeral director's license. As a result of his convictions, the court placed respondent

on formal probation. Terms and conditions of probation required respondent to obey the law. Respondent violated probation by unlawfully using a controlled substance, which resulted in his commitment to state prison. No evidence in explanation, mitigation, or rehabilitation was provided.

The only disciplinary measure that will protect the public is the outright revocation of respondent's funeral director's license. This discipline is consistent with the recommendation set forth in the Bureau's disciplinary guidelines.

#### *Costs of Investigation and Enforcement*

13. Complainant introduced a Certification of Prosecution Costs that included a declaration from the deputy attorney general who prosecuted this matter and a billing statement that contained the name of the individuals providing legal services, the date services were provided, the tasks performed, and the times spent. The time spent in the prosecution of this matter was reasonable. Attorney fees were billed at the rate of \$170 per hour, and paralegal fees were billed at the rate of \$120 per hour, which are reasonable billing rates. Reasonable enforcement costs total \$2,050.00

### LEGAL CONCLUSIONS

#### *Purpose of Disciplinary Action*

1. Administrative proceedings to revoke, suspend, or impose discipline on a professional license are noncriminal and nonpenal; they are not intended to punish the licensee, but rather to protect the public. (*Sulla v. Board of Registered Nursing* (2012) 205 Cal.App.4th 1195, 1206.)

#### *Burden and Standard of Proof*

2. The standard of proof required to revoke a professional license is clear and convincing evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

#### *Applicable Statutes*

3. Business and Professions Code section 490 provides in part:

A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea . . . of guilty. . . .

4. Business and Professions Code section 7691 provides in part:

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

*Substantial Relationship*

5. Business and Professions Code section 481 provides:

Each board under the provisions of this code shall develop criteria to aid it, when considering the denial, suspension or revocation of a license, to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates.

6. California Code of Regulations, title 16, section 1252 provides in part:

For the purposes of denial, suspension, or revocation of a license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a licensed funeral establishment, licensed funeral director, or licensed embalmer if to a substantial degree it evidences present or potential unfitness of a licensed funeral establishment, licensed funeral director, or licensed embalmer to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare . . . .

7. Respondent's June 27, 2011, conviction for violating Penal Code section 646.9, subdivision (a) (stalking) and Penal Code section 422 (making violent threats) are substantially related to the qualifications, functions, or duties of a funeral director.

*Cause Exists to Revoke Respondent's Funeral Director License*

8. Cause exists to revoke the funeral director's license issued to respondent, Lawrence Alva Dyer, under Business and Professions Code sections 480 and 7691. The clear and convincing evidence established that respondent was convicted of violating Penal Code section 646.9, subdivision (a) (stalking) and Penal Code section 422 (making violent threats) on June 27, 2011. The convictions are recent. Respondent violated the terms and conditions of his probation. No evidence of rehabilitation was presented. Respondent lacks the character required to hold the license at issue.

*Cause Exists to Direct Respondent to Pay Reasonable Enforcement Costs*

9. Business and Professions Code section 125.3 provides in part:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department . . . the administrative law judge may direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

[¶] . . . [¶]

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a) . . . .

10. California Administrative Code, title 1, section 1042, provides in part:

(b) Except as otherwise provided by law, proof of costs at the Hearing may be made by Declarations that contain specific and sufficient facts to support findings regarding actual costs incurred and the reasonableness of the costs, which shall be presented as follows:

(1) For services provided by a regular agency employee, the Declaration may be executed by the agency or its designee and shall describe the general tasks performed, the time spent on each task and the method of calculating the cost. For other costs, the bill, invoice or similar supporting document shall be attached to the Declaration.

[¶] . . . [¶]

(c) The proposed decision shall include a factual finding and legal conclusion on the request for costs and shall state the

reasons for denying a request or awarding less than the amount requested. Any award of costs shall be specified in the order.

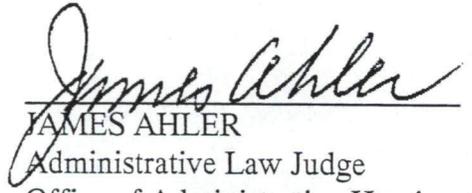
11. Cause exists to award the Bureau its reasonable costs of enforcement in the amount of \$2,050.00.

ORDER

Funeral Director License NO. FDR 583 issued to Lawrence Alva Dyer is revoked.

Lawrence Alva Dyer shall pay \$2,050.00 to the Cemetery and Funeral Bureau.

DATED: December 1, 2014

  
\_\_\_\_\_  
JAMES AHLER  
Administrative Law Judge  
Office of Administrative Hearings