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

In the Matter of the Accusation Against: GUADALUPANA MEMORIAL CHAPEL & MORTUARY 2601 Imperial Avenue San Diego, CA 92102 Funeral Establishment License No. FD 1425, JOSE M. CHAVEZ 2601 Imperial Avenue San Diego, CA 92102 Funeral Director License No. FDR 750, Respondents.	Case No. A1 2008 253 OAH No. 2009040367

DECISION

The attached Stipulated Settlement entitled "Stipulated Revocation of Licenses and Order" and Disciplinary Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matters.

This Decision shall become effective July 10th, 2010.

IT IS SO ORDERED this 10th day of June, 2010.

Doreathea Johnson

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

EDMUND G. BROWN JR.
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General
ANTOINETTE B. CINCOTTA
Deputy Attorney General
State Bar No. 120482
110 West "A" Street, Suite 1100
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2095
Facsimile: (619) 645-2061
Attorneys for Complainant

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

In the Matter of the Accusation Against: GUADALUPANA MEMORIAL CHAPEL & MORTUARY 2601 Imperial Avenue San Diego, CA 92102 Funeral Establishment License No. FD 1425 JOSE M. CHAVEZ 2601 Imperial Avenue San Diego, CA 92102 Funeral Director License No. FDR 750 Respondents.	Case No. A1 2008 253 OAH No. 2009040367 **STIPULATED REVOCATION OF LICENSES AND ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties in this proceeding that the following matters are true:

PARTIES

1. Richard L. Wallinder, Jr. (Complainant) is the Bureau Chief of the Cemetery and Funeral Bureau. He brought this action solely in his official capacity and is represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California, by Antoinette B. Cincotta, Deputy Attorney General.

2. Jose M. Chavez, Funeral Director, and owner of Guadalupana Memorial Chapel & Mortuary, is representing himself and Guadalupana Memorial Chapel & Mortuary (Respondents) in this proceeding and has chosen not to exercise his right to be represented by counsel.

3. On or about November 30, 1984, the Cemetery and Funeral Bureau issued Funeral Establishment License No. FD 1425 to Respondent Guadalupana Memorial Chapel & Mortuary. The Funeral Establishment license was in full force and effect at all times relevant to the charges brought in the First Amended Accusation No. A1 2008 253, and expired on November 30, 2009.

4. On or about May 8, 1997, the Cemetery and Funeral Bureau issued Funeral Director License No. FDR 750 to Respondent Jose M. Chavez. At all times relevant to the charges brought in the First Amended Accusation No. A1 2008 253, the Funeral Director license was in full force and effect and Respondent Jose M. Chavez was the designated managing licensed funeral director of Respondent Guadalupana Memorial Chapel & Mortuary, a licensed Funeral Establishment. The Funeral Director license will expire on May 31, 2010, unless renewed.

JURISDICTION

5. First Amended Accusation No. A1 2008 253 was filed before the Director of Consumer Affairs (Director), for the Cemetery and Funeral Bureau (Bureau), and is currently pending against Respondents. The First Amended Accusation and all other statutorily required documents were properly served on Respondents on September 4, 2009. Respondents timely filed a Notice of Defense contesting the Accusation. A copy of First Amended Accusation No. A1 2008 253 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondents have carefully read, and understand the charges and allegations in First Amended Accusation No. A1 2008 253. Respondents also have carefully read, and understand the effects of this Stipulated Revocation of Licenses and Order.

7. Respondents are fully aware of their legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at Respondents' own expense; the right to confront and cross-examine the witnesses against Respondents; the right to present evidence and to testify on Respondents' own behalf; the right to

the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondents voluntarily, knowingly, and intelligently waive and give up each and every right set forth above.

CULPABILITY

9. Respondents understand that the charges and allegations in First Amended Accusation No. A1 2008 253, if proven at a hearing, constitute cause for imposing discipline upon Respondent Jose M. Chavez's Funeral Director License and Respondent Guadalupana Memorial Chapel & Mortuary Funeral Establishment License.

10. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondents agree that, at a hearing, Complainant could establish a factual basis for the charges in the First Amended Accusation and that those charges constitute cause for discipline. Respondents, and each of them, hereby give up the right to contest that cause for discipline exists based on those charges.

11. Respondents understand that by signing this stipulation Respondents enable the Director to issue an order accepting the Revocation of Respondent Jose M. Chavez's Funeral Director License and Respondent Guadalupana Memorial Chapel & Morturary Funeral Establishment License without further process.

RESERVATION

12. The admissions made by Respondents herein are only for the purposes of this proceeding, or any other proceedings in which the Director of Consumer Affairs, Cemetery and Funeral Bureau or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

13. This stipulation shall be subject to approval by the Director of Consumer Affairs or his designee. Respondents understand and agree that counsel for Complainant and the staff of the Cemetery and Funeral Bureau may communicate directly with the Director and staff of the

Department of Consumer Affairs regarding this stipulation and Revocation, without notice to or participation by Respondent. By signing the stipulation, Respondents understand and agree that Respondents may not withdraw this agreement or seek to rescind the stipulation prior to the time the Director considers and acts upon it. If the Director fails to adopt this stipulation as the Decision and Order, the Stipulated Revocation and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Director shall not be disqualified from further action by having considered this matter.

14. The parties understand and agree that facsimile copies of this Stipulated Revocation of Licenses and Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

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

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

ORDER

IT IS HEREBY ORDERED that Funeral Director No. FDR 750, issued to Respondent Jose M. Chavez, and Funeral Establishment License No. FD 1425, issued to Respondent Guadalupana Memorial Chapel and Mortuary, are revoked by the Director of Consumer Affairs.

17. The revocation of Respondent Jose M. Chavez's Funeral Director license and Respondent Guadalupana Memorial Chapel's Funeral Establishment license by the Bureau shall constitute the imposition of discipline against Respondents. This stipulation constitutes a record of the discipline and shall become a part of Respondents' license history with the Bureau.

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18. Respondent Jose M. Chavez shall lose all rights and privileges as a Funeral Director and Respondent Guadalupana Memorial Chapel & Mortuary shall lose all rights and privileges as a Funeral Establishment in California as of the effective date of the Director's Decision and Order.

19. Respondents shall cause to be delivered to the Bureau both the Funeral Director License and the Funeral Establishment License wall license certificate and, if one was issued, pocket licenses on or before the effective date of the Decision and Order.

20. If either Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Bureau shall treat it as a petition for reinstatement. Respondents must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in First Amended Accusation No. A1 2008 253 shall be deemed to be true, correct and admitted by Respondents when the Director determines whether to grant or deny the petition.

21. Respondents shall pay the Bureau its costs of investigation and enforcement in the amount of $5,000.00 prior to issuance of a new or reinstated license.

22. Respondents shall immediately cease all advertising on behalf of Jose M. Chavez, Funeral Director, and Guadalupana Memorial Chapel & Mortuary, Funeral Establishment, on or before the effective date of the Decision and Order.

23. Respondents shall disconnect all telephone numbers used by Respondent Guadalupana Memorial Chapel & Mortuary, and Jose M. Chavez, Funeral Director, including, but not limited to (619) 544-9333 on or before the effective date of the Decision and Order.

24. Respondents comply with California Code of Regulations, Title 16, section 1269 by filing with the Bureau a written, verified or audited report, on form 21 P-4A (1/94) prescribed and furnished by the Bureau, pertaining to funds received and held under any pre-need arrangements, contracts or plans described in and subject to the provisions of Article 9, Chapter 12, Division 3 of the Business and Professions Code (also known as Pre-Need Funeral Trust Funds) on or before the effective date of the Decision and Order, if applicable.

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ACCEPTANCE

I have carefully read the Stipulated Revocation of Licenses and Order. I understand the stipulation and the effect it will have on my Funeral Director, and Funeral Establishment. I enter into this Stipulated Revocation of Licenses and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

DATED: 04/07/2010

JOSE M. CHAVEZ, Individually and Authorized Agent for and on behalf of GUADALUPANA MEMORIAL CHAPEL & MORTUARY
Respondents

ENDORSEMENT

The foregoing Stipulated Revocation of Licenses and Order is hereby respectfully submitted for consideration by the Director of Consumer Affairs.

Dated: 5/12/2010

Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General

ANTOINETTE B. CINCOTTA
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

First Amended Accusation No. A1 2008 253

EDMUND G. BROWN JR., Attorney General
of the State of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General
ANTOINETTE B. CINCOTTA, State Bar No. 120482
Deputy Attorney General
110 West "A" Street, Suite 1100
San Diego, CA 92101

P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2095
Facsimile: (619) 645-2061

Attorneys for Complainant

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STATE OF CALIFORNIA

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Complainant alleges:

PARTIES

1. Richard L. Wallinder (Complainant) brings this First Amended Accusation solely in his official capacity as the Bureau Chief of the Cemetery and Funeral Bureau, Department of Consumer Affairs.[1]

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

2. On or about November 30, 1984, the Cemetery and Funeral Bureau issued Funeral Establishment License No. FD 1425 to Respondent Guadalupana Memorial Chapel & Mortuary. The Funeral Establishment license was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2009, unless renewed.

3. On or about May 8, 1997, the Cemetery and Funeral Bureau issued Funeral Director License No. FDR 750 to Respondent Jose M. Chavez. At all times referenced herein, Respondent Jose M. Chavez was the designated managing licensed funeral director of Respondent Guadalupana Memorial Chapel & Mortuary, a licensed funeral establishment. The Funeral Director license was in full force and effect at all times relevant to the charges brought herein and will expire, unless renewed, on May 31, 2010.

JURISDICTION AND STATUTORY AUTHORITY

4. This Accusation is brought before the Director of Consumer Affairs (Director) for the Cemetery and Funeral Bureau, under the authority of the following laws. All section references are to the Business and Professions Code ("Code") unless otherwise indicated.

5. Code section 118 provides in relevant part:

". . . (b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

"(c) As used in this section, 'board' includes an individual who is authorized by any provision of this code to issue, suspend, or revoke a license, and 'license' includes 'certificate,' 'registration,' and 'permit.'"

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the Cemetery and Funeral Programs. Effective January 1, 2001, the regulatory agency is designated as the Cemetery and Funeral Bureau.

6. Code section 7686 provides:

"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. The proceedings under this article shall be conducted in accordance with Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code, and the bureau shall have all the powers granted therein.

7. Code section 7702 provides:

"Using any casket or part of a casket which has previously been used as a receptacle for, or in connection with the burial or other disposition of, human remains constitutes a ground for disciplinary action; provided, however, this section shall not apply to exterior casket hardware which is not sold to the purchaser, or where same is reserved by contract."

8. Code section 7703 provides:

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

9. Section 7704 of the Code states that violation of any state law or municipal or county ordinance or regulation affecting the handling, custody, care or transportation of human remains constitutes a ground for disciplinary action.

10. Health and Safety Code section 103050 provides in relevant part:

"(a) No person shall dispose of human remains unless both of the following has occurred:

"(1) There has been obtained and filed with a local registrar a death certificate, as provided in Chapter 6 (commencing with Section 102775).

"(2) There has been obtained from a local registrar a permit for disposition. . . ."

11. Health and Safety Code section 103055 provides in relevant part:

"(a) If the certificate of death is properly executed and complete, the local registrar of births and deaths shall issue a permit for disposition . . . ."

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12. Health and Safety Code section 103075 provides in relevant part:

". . . the permit shall accompany the body to its destination, where, if within this state, it shall be delivered to the person in charge of the place of interment."

13. Code section 7692 provides:

"Misrepresentation or fraud in the conduct of the business or the profession of a funeral director or embalmer constitutes a ground for disciplinary action."

14. California Code of Regulations, title 16, section 1204 provides in relevant part:

"(a) Any person, association, partnership, corporation or other organization licensed and conducting business as a funeral establishment shall designate a licensed funeral director to manage the establishment, and shall report the designation to the Board within 10 days of the effective date of the designation.

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

". . . .

"(d) A funeral director who advertises his or her services . . . shall include his or her license number, the name and license number of the funeral establishment at which he or she is employed . . . on any . . . print advertising including, but not limited to, telephone and other directory listings, and newspaper and magazine advertisements."

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15. California Code of Regulations, title 16, section 1211, subsection (a) provides:

"(a) A funeral establishment shall include its name and license number, exactly as shown by the Board's records, and city or community where located in all television and print advertisements, including but not limited to telephone and other directory listings, television, newspaper and magazine advertisements."

16. California Code of Regulations, title 16, section 1214 provides:

"Except as otherwise provided in Health and Safety Code Section 7304, human remains shall not be embalmed without the express authorization of a person having the legal right to control disposition of the remains. Such authorization shall be secured by use of the form prescribed by the Board, attached hereto as Exhibit 1, and made a part of this regulation. The form shall be used in the exact form set forth below, without additions, substitutions, or amendments.

"EXHIBIT 1

"AUTHORIZATION FOR DISPOSITION WITH

"OR WITHOUT EMBALMING

"TO: _____ (Funeral Establishment Name)

"RE: _____ (Decedent) I, _____

"do __ do not __ (check one) request embalming, which I understand is the addition to, or the "replacement of, body fluids by chemical preservatives or the application of chemical "preservatives for the temporary preservation of the body. I understand that embalming is not "required by law.

"I understand that for storage or embalming purposes the decedent may be transported to the "following licensed funeral establishment:

"_____

"(name and address of funeral establishment)

"then returned for funeral services. I understand I may be charged an additional fee for transport.

"The undersigned hereby represents that he/she has the legal right to control disposition of the

"remains of the decedent.

"Signed: _____, Relationship _____

"Executed this ____ day of _____, _____, at City _____, State _____.

"To Be Completed by funeral establishment if Authorization to Embalm and Notification to

"Transport Is Obtained Orally (by Telephone):

"The above statement of authorization and notification was read to

"_____(Relationship _____, who did __ did not __ (check one) authorize

"embalming at the above named funeral establishment. City _____, State ___, Phone

"(_____)

"Date and time authorization granted:_____

"Signature of funeral establishment representative accepting authorization.

"I declare under penalty of perjury that the foregoing is true and correct.

"Executed this _____ day of _____, _____, at City _____, State _____.

"(s) _____"

17. California Code of Regulations, title 16, section 1216, subsection (a) provides:

"All preparation, embalming or storage room shall, at all times, be kept and maintained in a clean and sanitary condition."

18. Health and Safety Code section 102778 provides:

"(a) On or before January 1, 2005, the department shall implement an Internet-based electronic death registration system for the creation, storage, and transfer of death registration information.

"(b) The electronic death registration system implemented pursuant to this section shall protect the proper use of the death registration information created, stored, and transferred within the system.

"(c) The electronic death registration system that is implemented pursuant to this section shall be subject to any limitation placed on the accessibility and release of personally

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identifying information contained in those death records by any other provision of law or subsequently enacted legislation."

19. Health and Safety Code section 102780 provides:

"A funeral director, or person acting in lieu thereof, shall prepare the certificate and register it with the local registrar."

20. Health and Safety Code section 102795 provides in relevant part:

"The medical and health section data and the time of death shall be completed and attested to by the physician and surgeon last in attendance, or in the case of a patient in a skilled nursing or intermediate care facility at the time of death, by the physician and surgeon last in attendance . . . ."

COST RECOVERY

21. Section 125.3 of the Code provides, in pertinent part, that the [Bureau] may request the administrative law judge to direct a licentiate 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.

FIRST CAUSE FOR DISCIPLINE

(Wilful Transportation of Decedent to Mexico for Burial Without Death Certificate)

22. Respondent Guadalupana Memorial Chapel & Mortuary and Respondent Jose Chavez are subject to disciplinary action under Code section 7704 for violations of Health and Safety Code sections 103050, 10355, and 103075 in that Respondents wilfully transported the body of a deceased person to the international border of Mexico for transfer to a Tijuana mortuary for burial without a properly executed and completed death certificate or a disposition permit issued by a local registrar. The circumstances are as follows:

23. On or about July 9, 2008, Respondent Jose Chavez admitted to the Bureau's investigator that on July 2, 2008, he had, on behalf of Respondent Guadalupana Memorial Chapel & Mortuary, taken the body of a deceased person, J.P., to the international border of Mexico for transfer to Tijuana funeral home known as Funeraria Gonzalez without a signed death certificate and a properly executed disposition permit.

SECOND CAUSE FOR DISCIPLINE

(Misrepresentation or Fraud)

24. Respondent Guadalupana Memorial Chapel & Mortuary and Respondent Jose Chavez are subject to disciplinary action under Code section 7692 for misrepresentation or fraud in providing false information required by Health and Safety Code section 102795. The circumstances are as follows:

a. On or about October 22, 2007, Respondent Jose Chavez on behalf of Respondent Guadalupana Memorial Chapel & Mortuary attested to the cause of death of a deceased person, I.D.R. using the electronic death registration system by posing as the decedent's physician without that physician's knowledge or consent;

b. On or about February 27, 2007, Respondent Jose Chavez on behalf of Respondent Guadalupana Memorial Chapel & Mortuary attested to the cause of death of a deceased person, R.R. using the electronic death registration system by posing as the decedent's physician without that physician's knowledge or consent;

c. On or about February 27, 2007, Respondent Jose Chavez on behalf of Respondent Guadalupana Memorial Chapel & Mortuary attested to the cause of death of a deceased person, M.G.R. using the electronic death registration system by posing as the decedent's physician without that physician's knowledge or consent;

d. On or about April 18, 2008, Respondent Jose Chavez on behalf of Respondent Guadalupana Memorial Chapel & Mortuary attested to the cause of death of a deceased person, A.J.C. using the electronic death registration system by posing as the decedent's physician without that physician's knowledge or consent;

e. On or about May 2, 2008, Respondent Jose Chavez on behalf of Respondent Guadalupana Memorial Chapel & Mortuary attested to the cause of death of a deceased person, A.D. using the electronic death registration system by posing as the decedent's physician without that physician's knowledge or consent;

f. On or about May 15, 2008, Respondent Jose Chavez on behalf of Respondent Guadalupana Memorial Chapel & Mortuary attested to the cause of death of a

deceased person, M.O.B. using the electronic death registration system by posing as the decedent's physician without that physician's knowledge or consent;

g. On or about February 27, 2007, Respondent Jose Chavez on behalf of Respondent Guadalupana Memorial Chapel & Mortuary attested to the cause of death of a deceased person, R.R. using the electronic death registration system by posing as the decedent's physician without that physician's knowledge or consent;

h. On or about May 14, 2008, Respondent Jose Chavez on behalf of Respondent Guadalupana Memorial Chapel & Mortuary attested to the cause of death of a deceased person, F.R. using the electronic death registration system by posing as the decedent's physician without that physician's knowledge or consent;

i. On or about November 9, 2007, Respondent Jose Chavez on behalf of Respondent Guadalupana Memorial Chapel & Mortuary attested to the cause of death of a deceased person, S.R. using the electronic death registration system by posing as the decedent's physician without that physician's knowledge or consent;

j. On or about May 15, 2008, Respondent Jose Chavez on behalf of Respondent Guadalupana Memorial Chapel & Mortuary attested to the cause of death of a deceased person, M.S.D. using the electronic death registration system by posing as the decedent's physician without that physician's knowledge or consent.

THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Sanitary Embalming Room)

25. Respondent Guadalupana Memorial Chapel & Mortuary and Respondent Jose Chavez are subject to disciplinary action under Code section 7703 for violation of California Code of Regulations, title 16, section 1216, subsection (a) for failing to maintain a clean and sanitary embalming room. The circumstances are as follows:

26. On or about April 2, 2009, during an inspection of Respondents' facility, the Board's investigator discovered the embalming room in an unclean and unsanitary condition while the bodies of four deceased persons who had been embalmed were still on the premises. A cabinet had fallen off the wall due to years of water damage and neglect. Dry wall debris littered

the floor. Large areas of the walls contained obvious water damage and were missing plaster and paint. The flourescent light dangled precariously from the ceiling from a large gaping hole. The ceiling was missing many tiles. The floor was dirty and missing many tiles. The embalming table and sump were both dirty.

FOURTH CAUSE FOR DISCIPLINE

(Failure of a Funeral Director to Comply with Advertising Requirements)

27. Respondent Jose Chavez is subject to disciplinary action under Code section 7703 for violation of California Code of Regulations, title 16, section 1204, subsection (d), for failing to comply with requirements when advertising his services. The circumstances are as follows:

28. On or about April 2, 2009, during an inspection of Respondents' facility, the Board's investigator picked up one of Respondent's business cards from the front office. On that card, Respondent failed to provide his license number and license number of the funeral establishment.

FIFTH CAUSE FOR DISCIPLINE

(Failure of a Funeral Establishment to Comply with Advertising Requirements)

29. Respondents are subject to disciplinary action under Code section 7703 for violation of California Code of Regulations, title 16, section 1211, subsection (a), for failing to comply with requirements when advertising the funeral establishment's services. The circumstances are as follows:

30. On or about April 2, 2009, during an inspection of Respondents' facility, the Board's investigator picked up one of Respondent's business cards from the front office. On that card, Respondents failed to provide the establishment's license number.

SIXTH CAUSE FOR DISCIPLINE

(Failure to Use the Correct Form for the Authorization for Disposition of a Body)

31. Respondents are subject to disciplinary action under Code section 7703 for violation of California Code of Regulations, title 16, section 1214 for failing to use the Board's prescribed form for the disposition of a body. The circumstances are as follows:

32. On or about April 2, 2009, during an inspection of Respondents' facility, the Board's investigator discovered that Respondents failed to use the Board's prescribed form for the disposition of two bodies.

SEVENTH CAUSE FOR DISCIPLINE

(Reusing a Casket)

33. Respondents are subject to disciplinary action under Code section 7702 for reusing a casket for as a receptacle for, or in connection with the burial or other disposition of, human remains. The circumstances that on or about July 16, 2009, during a routine follow up compliance inspection it was discovered that Respondent was reselling used caskets.

DISCIPLINE CONSIDERATIONS

34. To determine the degree of discipline, if any, to be imposed on Respondent Jose M. Chavez, Complainant alleges that on or about February 21, 2003, in a prior action, the Cemetery and Funeral Bureau issued Citation Number IC 2003 28 and ordered Respondent to pay a fine of $1,502.00 for violation of Code section 7707, and California Code of Regulation, title 16, section 1204(b). That Citation is now final. Respondent paid the fine on or about December 15, 2003.

35. To determine the degree of discipline, if any, to be imposed on Respondent Guadalupana Memorial Chapel & Mortuary, Complainant alleges that on or about February 21, 2003, in a prior action, the Cemetery and Funeral Bureau issued Citation Number IC 2003 27 and ordered Respondent to pay a fine of $2,500.00 for violation of Code section 7680, 7680(c), 7685, 7685(a), 7685.3 and California Code of Regulations, title 16, sections 1211, 1214, 1216, 1258.1(c), and 1258.1(c). That Citation is now final. Respondent paid the fine on or about December 15, 2003.

36. To determine the degree of discipline, if any, to be imposed on Respondent Guadalupana Memorial Chapel & Mortuary, Complainant alleges that on or about May 25, 2007, in a prior action, the Cemetery and Funeral Bureau issued Citation Number IC 2007 59 and ordered Respondent to pay a fine of $4,308.00 for violation of Code sections 7616(a)(2), 7635(a), 7635(a), (b), and California Code of Regulations, title 16, sections 1209,

1215(b), 1216(a), 1216(d), 1216(b)(a) and 1216(b)(b). Respondent paid the fine on or about December 10, 2007. That Citation is now final.

37. To determine the degree of discipline, if any, to be imposed on Respondent Guadalupana Memorial Chapel & Mortuary, Complainant alleges that on or about July 11, 2008, in a prior action, the Cemetery and Funeral Bureau issued Citation Number IC 2008 75 and ordered Respondent to pay a fine of $1,500.00 for violation of Code section 7685.1(a)(B), 7685(c)(b), and California Code of Regulations, title 16, sections 1258.1(a)(b), 1258.1(c)(1)(a), 1258.1(d)(b), 1258.1(e) and 1277.5 Respondent paid the fine on October 22, 2008. That Citation is now final.

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 No. FD 1425 issued to Guadalupana Memorial Chapel & Mortuary;

2. Revoking or suspending Funeral Director No. FDR 750 issued to Jose M. Chavez;

3. Ordering Respondent Guadalupana Memorial Chapel & Mortuary 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. Ordering Jose M. Chavez 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;

5. Taking such other and further action as deemed necessary and proper.

DATED: 9/1/09

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

EDMUND G. BROWN JR., Attorney General
of the State of California
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Telephone: (619) 645-2095
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FOR THE CEMETERY AND FUNERAL BUREAU
STATE OF CALIFORNIA

In the Matter of the Accusation Against: GUADALUPANA MEMORIAL CHAPEL & MORTUARY 2601 Imperial Avenue San Diego, CA 92102 Funeral Establishment License No. FD 1425 JOSE M. CHAVEZ 2601 Imperial Avenue San Diego, CA 92102 Funeral Director License No. FDR 750 Respondents.	Case No. A1 2008 253 **A C C U S A T I O N**

Complainant alleges:

PARTIES

1. Richard L. Wallinder (Complainant) brings this Accusation solely in his official capacity as the Bureau Chief of the Cemetery and Funeral Bureau, Department of Consumer Affairs.[1]

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

2. On or about November 30, 1984, the Cemetery and Funeral Bureau issued Funeral Establishment License No. FD 1425 to Respondent Guadalupana Memorial Chapel & Mortuary. The Funeral Establishment license was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2009, unless renewed.

3. On or about May 8, 1997, the Cemetery and Funeral Bureau issued Funeral Director License No. FDR 750 to Respondent Jose M. Chavez. At all times referenced herein, Respondent Jose M. Chavez was the designated managing licensed funeral director of Respondent Guadalupana Memorial Chapel & Mortuary, a licensed funeral establishment. The Funeral Director license was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2009, unless renewed.

JURISDICTION AND STATUTORY AUTHORITY

4. This Accusation is brought before the Director of Consumer Affairs (Director) for the Cemetery and Funeral Bureau, under the authority of the following laws. All section references are to the Business and Professions Code ("Code") unless otherwise indicated.

5. Code section 118 provides in relevant part:

". . . (b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

"(c) As used in this section, 'board' includes an individual who is authorized by any provision of this code to issue, suspend, or revoke a license, and 'license' includes 'certificate,' 'registration,' and 'permit.'"

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the Cemetery and Funeral Programs. Effective January 1, 2001, the regulatory agency is designated as the Cemetery and Funeral Bureau.

6. Code section 7686 provides:

"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. The proceedings under this article shall be conducted in accordance with Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code, and the bureau shall have all the powers granted therein.

7. Section 7704 of the Code states that violation of any state law or municipal or county ordinance or regulation affecting the handling, custody, care or transportation of human remains constitutes a ground for disciplinary action.

8. Health and Safety Code section 103050 provides in relevant part:

"(a) No person shall dispose of human remains unless both of the following has occurred:

"(1) There has been obtained and filed with a local registrar a death certificate, as provided in Chapter 6 (commencing with Section 102775).

"(2) There has been obtained from a local registrar a permit for disposition. . . ."

9. Health and Safety Code section 103055 provides in relevant part:

"(a) If the certificate of death is properly executed and complete, the local registrar of births and deaths shall issue a permit for disposition . . . ."

10. Health and Safety Code section 103075 provides in relevant part:

". . . the permit shall accompany the body to its destination, where, if within this state, it shall be delivered to the person in charge of the place of interment."

11. Code section 7692 provides:

"Misrepresentation or fraud in the conduct of the business or the profession of a funeral director or embalmer constitutes a ground for disciplinary action."

12. California Code of Regulations, title 16, section 1204(b) provides:

"(b) The designated managing licensed funeral director of a licensed funeral establishment shall be responsible for exercising such direct supervision and control over the conduct of said funeral establishment as is necessary to ensure full compliance with the Funeral

Directors and Embalmers Law, the provisions of this chapter and the applicable provisions of the Health and Safety Code. Failure of the designated managing licensed funeral director and/or the licensed funeral establishment to exercise such supervision or control, or failure of the holder of the funeral establishment license to make such designation shall constitute a ground for disciplinary action."

13. Health and Safety Code section 102778 provides:

"(a) On or before January 1, 2005, the department shall implement an Internet-based electronic death registration system for the creation, storage, and transfer of death registration information.

"(b) The electronic death registration system implemented pursuant to this section shall protect the proper use of the death registration information created, stored, and transferred within the system.

"(c) The electronic death registration system that is implemented pursuant to this section shall be subject to any limitation placed on the accessibility and release of personally identifying information contained in those death records by any other provision of law or subsequently enacted legislation."

14. Health and Safety Code section 102780 provides:

"A funeral director, or person acting in lieu thereof, shall prepare the certificate and register it with the local registrar."

15. Health and Safety Code section 102795 provides in relevant part:

"The medical and health section data and the time of death shall be completed and attested to by the physician and surgeon last in attendance, or in the case of a patient in a skilled nursing or intermediate care facility at the time of death, by the physician and surgeon last in attendance . . . ."

COST RECOVERY

16. Section 125.3 of the Code provides, in pertinent part, that the [Bureau] may request the administrative law judge to direct a licentiate found to have committed a

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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.

FIRST CAUSE FOR DISCIPLINE

(Wilful Transportation of Decedent to Mexico for Burial Without Death Certificate)

17. Respondent Guadalupana Memorial Chapel & Mortuary and Respondent Jose Chavez are subject to disciplinary action under Code section 7704 for violations of Health and Safety Code sections 103050, 10355, and 103075 in that Respondents wilfully transported the body of a deceased person to the international border of Mexico for transfer to a Tijuana mortuary for burial without a properly executed and completed death certificate or a disposition permit issued by a local registrar. The circumstances are as follows:

18. On or about July 9, 2008, Respondent Jose Chavez admitted to the Bureau's investigator that on July 2, 2008, he had, on behalf of Respondent Guadalupana Memorial Chapel & Mortuary, taken the body of a deceased person, J.P., to the international border of Mexico for transfer to Tijuana funeral home known as Funeraria Gonzalez without a signed death certificate and a properly executed disposition permit.

SECOND CAUSE FOR DISCIPLINE

(Misrepresentation or Fraud)

19. Respondent Guadalupana Memorial Chapel & Mortuary and Respondent Jose Chavez are subject to disciplinary action under Code section 7692 for misrepresentation or fraud in providing false information required by Health and Safety Code section 102795. The circumstances are as follows:

a. On or about October 22, 2007, Respondent Jose Chavez on behalf of Respondent Guadalupana Memorial Chapel & Mortuary attested to the cause of death of a deceased person, I.D.R. using the electronic death registration system by posing as the decedent's physician without that physician's knowledge or consent;

b. On or about February 27, 2007, Respondent Jose Chavez on behalf of Respondent Guadalupana Memorial Chapel & Mortuary attested to the cause of death of a

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deceased person, R.R. using the electronic death registration system by posing as the decedent's physician without that physician's knowledge or consent;

c. On or about February 27, 2007, Respondent Jose Chavez on behalf of Respondent Guadalupana Memorial Chapel & Mortuary attested to the cause of death of a deceased person, M.G.R. using the electronic death registration system by posing as the decedent's physician without that physician's knowledge or consent;

d. On or about April 18, 2008, Respondent Jose Chavez on behalf of Respondent Guadalupana Memorial Chapel & Mortuary attested to the cause of death of a deceased person, A.J.C. using the electronic death registration system by posing as the decedent's physician without that physician's knowledge or consent;

e. On or about May 2, 2008, Respondent Jose Chavez on behalf of Respondent Guadalupana Memorial Chapel & Mortuary attested to the cause of death of a deceased person, A.D. using the electronic death registration system by posing as the decedent's physician without that physician's knowledge or consent;

f. On or about May 15, 2008, Respondent Jose Chavez on behalf of Respondent Guadalupana Memorial Chapel & Mortuary attested to the cause of death of a deceased person, M.O.B. using the electronic death registration system by posing as the decedent's physician without that physician's knowledge or consent;

g. On or about February 27, 2007, Respondent Jose Chavez on behalf of Respondent Guadalupana Memorial Chapel & Mortuary attested to the cause of death of a deceased person, R.R. using the electronic death registration system by posing as the decedent's physician without that physician's knowledge or consent;

h. On or about May 14, 2008, Respondent Jose Chavez on behalf of Respondent Guadalupana Memorial Chapel & Mortuary attested to the cause of death of a deceased person, F.R. using the electronic death registration system by posing as the decedent's physician without that physician's knowledge or consent;

i. On or about November 9, 2007, Respondent Jose Chavez on behalf of Respondent Guadalupana Memorial Chapel & Mortuary attested to the cause of death of a

deceased person, S.R. using the electronic death registration system by posing as the decedent's physician without that physician's knowledge or consent;

j. On or about May 15, 2008, Respondent Jose Chavez on behalf of Respondent Guadalupana Memorial Chapel & Mortuary attested to the cause of death of a deceased person, M.S.D. using the electronic death registration system by posing as the decedent's physician without that physician's knowledge or consent;

DISCIPLINE CONSIDERATIONS

20. To determine the degree of discipline, if any, to be imposed on Respondent Jose M. Chavez, Complainant alleges that on or about February 21, 2003, in a prior action, the Cemetery and Funeral Bureau issued Citation Number IC 2003 28 and ordered Respondent to pay a fine of $1,502.00 for violation of Code section 7707, and California Code of Regulation, title 16, section 1204(b). That Citation is now final. Respondent paid the fine on or about December 15, 2003.

21. To determine the degree of discipline, if any, to be imposed on Respondent Guadalupana Memorial Chapel & Mortuary, Complainant alleges that on or about February 21, 2003, in a prior action, the Cemetery and Funeral Bureau issued Citation Number IC 2003 27 and ordered Respondent to pay a fine of $2,500.00 for violation of Code section 7680, 7680(c), 7685, 7685(a), 7685.3 and California Code of Regulations, title 16, sections 1211, 1214, 1216, 1258.1(c), and 1258.1(c). That Citation is now final. Respondent paid the fine on or about December 15, 2003.

22. To determine the degree of discipline, if any, to be imposed on Respondent Guadalupana Memorial Chapel & Mortuary, Complainant alleges that on or about May 25, 2007, in a prior action, the Cemetery and Funeral Bureau issued Citation Number IC 2007 59 and ordered Respondent to pay a fine of $4,308.00 for violation of Code sections 7616(a)(2), 7635(a), 7635(a), (b), and California Code of Regulations, title 16, sections 1209, 1215(b), 1216(a), 1216(d), 1216(b)(a) and 1216(b)(b). Respondent paid the fine on or about December 10, 2007. That Citation is now final.

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23. To determine the degree of discipline, if any, to be imposed on Respondent Guadalupana Memorial Chapel & Mortuary, Complainant alleges that on or about July 11, 2008, in a prior action, the Cemetery and Funeral Bureau issued Citation Number IC 2008 75 and ordered Respondent to pay a fine of $1,500.00 for violation of Code section 7685.1(a)(B), 7685(c)(b), and California Code of Regulations, title 16, sections 1258.1(a)(b), 1258.1(c)(1)(a), 1258.1(d)(b), 1258.1(e) and 1277.5 Respondent paid the fine on October 22, 2008. That Citation is now final.

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 No. FD 1425 issued to Guadalupana Memorial Chapel & Mortuary;

2. Revoking or suspending Funeral Director No. FDR 750 issued to Jose M. Chavez;

3. Ordering Respondent Guadalupana Memorial Chapel & Mortuary 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. Ordering Jose M. Chavez 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;

5. Taking such other and further action as deemed necessary and proper.

DATED: 3/03/2009

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