

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

In the Matter of the Second Amended
Accusation Against:

FINAL LEGACY FAMILY FUNERAL
PARLOR, LARRY DARNELL MORRIS,
MANAGER,
Funeral Establishment License No. FD 2173,

LARRY DARNELL MORRIS,
Funeral Director License No. FDR 2062,

ANA M. BELCHER,
Funeral Director License No. FDR 3515,

Respondents.

Case No. A1 2014 191

OAH No. 2016010501

DECISION AFTER REJECTION OF PROPOSED DECISION

Thomas Y. Lucero, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on May 31, June 1, 2, 9, 10, and December 12, 13, and 14, 2016, in Los Angeles, California.

Lisa M. Moore, complainant, was represented by Shawn P. Cook, Deputy Attorney General.

Final Legacy Family Funeral Parlor, Larry Darnell Morris, and Ana Belcher, respondents, were represented by Eric C. Morris, Attorney at Law.

Oral and documentary evidence was received. The record was left open until January 6, 2017 for submission of closing briefs. "Respondents Trial-Closing-Argument Brief (Reply Brief)," was filed on January 3, 2017 and marked for identification as Exhibit G.

"Complainant's Closing Argument Reply" was filed on January 6, 2017 and marked for identification as Exhibit 22.

The matter was submitted for decision on January 6, 2017.

The Administrative Law Judge issued his Proposed Decision on February 8, 2017. After due consideration thereof, a Deputy Director, on behalf of the Director of the Department of Consumer Affairs (Director), declined to adopt said proposed decision and thereafter on March 3, 2017, issued an Order of Rejection of the Proposed Decision. On April 5, 2017, the parties were notified of the opportunity to submit written argument; the deadline for submission of written arguments expired on May 5, 2017. Written argument having been received from both the Complainant and Respondents, and the time for filing written argument in this matter having expired, and the entire record, including the transcript of said hearing having been read and considered, the Director pursuant to Section 11517 of the Government Code hereby makes the following decision:

FACTUAL FINDINGS

1. Complainant brought the accusation in her official capacity as the Bureau Chief of the Cemetery and Funeral Bureau (Bureau), Department of Consumer Affairs, State of California. The accusation seeks revocation of licenses based on irregularities in handling the disposition of remains of several decedents over a period of years. Each respondent filed a timely request for hearing. The initial Accusation was filed on September 16, 2015 and later amended on February 1, 2016. A Second Amended Accusation was filed on April 19, 2016, with an amendment to that Accusation filed on May 20, 2016. By letter filed on May 23, 2016, complainant withdrew the twenty-second cause for discipline alleged in the second amended accusation (accusation). Lines 12 through 15 on page 23 of the accusation were struck.

Licensure

2. On July 19, 2013, the Bureau issued Funeral Establishment license number FD 2173 to Final Legacy Family Funeral Parlor (Mortuary). The license is set to expire on July 31, 2017. (Exhibit 2.) Larry Darnell Morris, respondent, is the sole proprietor of the Mortuary. The Mortuary and Mr. Morris are collectively referred to as Final Legacy.

3. On July 12, 2012, the Bureau issued Funeral Director license number FDR 3515 to respondent Ana M. Belcher. The license is set to expire on July 31, 2017. (Exhibit 2.)

4. On December 10, 1999, the Bureau issued Funeral Director license number FDR 2062 to respondent Larry Darnell Morris. The license expired on December 31, 2016. (Exhibit 2.)

5. The Bureau may pursue disciplinary proceedings after the expiration of Mr. Morris's license. (Bus. & Prof. Code § 118, subd. (b).)

6. On June 30, 1998, the Bureau issued Funeral Director license number FDR 1346 to Kenneth B. Pitchford. The Bureau revoked the license on December 4, 2001 based

upon violations of the funeral laws, including for fraud and misrepresentation. (Exhibit 2.)

Summary

7. Mr. Morris, the Mortuary's principal, put undue trust in a rogue employee, Kenneth B. Pitchford. The Mortuary and Mr. Morris are responsible for several instances of Mr. Pitchford's gross negligence and other misconduct, subjecting their licenses to discipline.

8. Ms. Belcher's license is not subject to discipline. She is responsible for two minor acts of negligence, but they were *de minimis* in light of the allegations sustained against Mr. Morris, the person in control of the Mortuary.

Investigation on Behalf of the Bureau

9. Theodis (Ted) Mims investigated the facts underlying the causes for discipline alleged against respondents. Since December 2003, Mr. Mims has acted as a Field Representative for the Bureau. He is licensed as an embalmer and as a funeral director. He also holds a Peace Officer's Standards Training Certificate, having worked in law enforcement from late 1979 through mid-2003. Among other positions, he was a detective sergeant and supervised other detectives as well as patrol officers.

10. Mr. Mims started as an apprentice embalmer at a mortuary in San Diego, California, in 1970. He graduated from the California College of Mortuary Science in 1972, after which he obtained his embalmer license. He worked as a staff embalmer at an embalming center until late 1975, and then worked as a forensic embalmer until late 1979. He has conducted hundreds of investigations on behalf of the Bureau and qualifies as an expert witness in mortuary and funeral practices.

11. Mr. Mims periodically conducts unannounced inspections at cemeteries and mortuaries. He also monitors licensees on probation throughout California. Mr. Mims has investigated misconduct by Kenneth B. Pitchford before, including at two funeral establishments before he became associated with the Mortuary. Mr. Mims was aware when investigating the Mortuary that Mr. Pitchford's license had been revoked. Mr. Mims also investigated the license applications for both Mr. Morris and the Mortuary prior to the Bureau issuing those licenses. While conducting that investigation, he met with Mr. Morris and discussed the employment of Mr. Pitchford. Mr. Morris assured Mr. Mims that he was the sole owner of the Mortuary and Mr. Pitchford would not be involved in any way in meeting with families or handling money. Mr. Mims recalled that Mr. Morris signed a declaration stating Mr. Pitchford would have no ownership, be meeting with families or be involved in any way financially with the Mortuary. Mr. Morris confirmed that he provided a declaration dated July 15, 2013, wherein he stated to the Bureau that Kenneth Pitchford will not be working "counseling with the family." (Exhibit 19.) In a June 4, 2014 interview with Mr. Mims regarding a complaint, Mr. Morris admitted that he had failed to notify the Bureau that Mr. Pitchford would be making funeral arrangements for the Mortuary (Exhibit 4, p. 6). At hearing, Mr. Morris testified that Mr. Pitchford was a subcontractor, who he pays \$1,800 a

month to run the business.

12. Mr. Mims explained the common practice among mortuaries of accepting insurance or pre-need trust to pay for their services. Generally money is available from such an entity within 24 to 48 hours of a mortuary's application for funds on behalf of a decedent's family or survivors. The insurer or funding entity charges a commission, the balance of funds being released to the mortuary. A funeral director license is not necessary to handle such transactions. Any mortuary personnel may do so.

13. In his investigative reports and at hearing, Mr. Mims opined that in performing services for each of the decedents described below, the Mortuary engaged in an extreme departure from the standard of care, acted unprofessionally, and at times made false statements to or defrauded decedents' family members, customers of the Mortuary, and third-party cemeteries.

Mr. Morris's Start-Up Mortuary

14. In 1992, Mr. Morris earned a B.A. from a Baptist seminary and an M.S. degree in 1998. In 1992 he was retained by the UCLA School of Medicine as an assistant teacher of anatomy. Between 1992 and 1996, he performed approximately five or six hundred autopsies at UCLA. During this period he also worked at several mortuaries. After leaving UCLA, Mr. Morris worked as a funeral director for several years until 2013, when he established the Mortuary.

15. Mr. Morris perceived an unmet need among families of modest means. He set up the Mortuary as a low-cost alternative to larger funeral establishments in the Los Angeles area. The Mortuary's prices are typically 25 percent lower than other Los Angeles area mortuaries, and as much as 50 percent lower than large, well-advertised companies like Forest Lawn Memorial-Parks & Mortuaries.

16. In starting up the Mortuary, Mr. Morris sought experienced personnel because, although he knew funeral practices, he lacked business acumen. He had heard industry rumors about Kenneth Pitchford, who had a long track record in the industry which included, however, discipline by the Bureau. Mr. Morris agreed to employ Mr. Pitchford with a plan to supervise him carefully, which did not happen, as described below.

17. The Mortuary owns its equipment. Mr. Pitchford is the Mortuary's landlord. The rent is \$1,800 per month. Mr. Morris did not know how much Mr. Pitchford paid for the property.

18. Mr. Morris shares control of the Mortuary's funds with Mr. Pitchford. Mr. Morris authorized Mr. Pitchford to sign checks drawn on the Mortuary's bank account. Mr. Pitchford has used that authorization to pay Ms. Belcher. Mr. Morris denied that Mr. Pitchford is a partner, however, he admitted that he is a "subcontractor" of the Mortuary. The Mortuary pays Mr. Pitchford and Ms. Belcher as independent contractors and reports

payments to the Internal Revenue Service on form 1099.

Decedent Arlene Williams

19. Arlene Williams died on January 24, 2014. (Exh. 4, p. 28.) Her family authorized release of her remains to the Mortuary the day she died. (Exh. 4, p. 27.)

20. Mr. Williams's pastor recommended that Mr. Williams, the decedent's husband, speak to Mr. Pitchford for the funeral arrangements. The two never actually met in person. One of Mr. Williams's adult daughters acted as go-between.

21. The January 27, 2014 contract between Mr. Williams and the Mortuary shows that Mr. Williams paid Final Legacy a total of \$13,246.74, of which \$5,743.50 was for burial at Forest Lawn Cemetery in Long Beach, California. Mr. Pitchford signed the contract on the Mortuary's behalf. (Exh. 4, p. 22-23.)

22. During Mr. Pitchford's visit to the Williams' home, Mr. Williams signed over benefits under a life insurance policy rather than pay cash. The Mortuary in turn assigned the benefits to Ford Acceptance Corporation (Ford). (Exh. 3, p. 24.) Ford charged a small percentage fee, advanced the balance in cash to the Mortuary, and did the work of collecting the insurance benefits, according to common practice for the Mortuary and for the funeral industry in Southern California generally. Mr. Williams testified that it was his expectation based upon the agreement with the Mortuary, and in conversations with Mr. Pitchford, that his wife would be buried at the cemetery after the service and that the Mortuary would pay Forest Lawn with the funds from the insurance policy.

23. On February 7, 2014, a viewing and burial service was conducted to the satisfaction of Mr. Williams. A few days later, however, he and family members returned to the cemetery and discovered that there had been no burial. Cemetery personnel informed the family that, because the Mortuary had presented an incorrect burial permit, no burial could take place. The permit named a cemetery in Cypress, California, a city a few miles away in Los Angeles county, not the one the family chose in Long Beach. Each cemetery was commonly known as Forest Lawn, because each is operated by the same business, Forest Lawn Memorial-Parks & Mortuary.

24. The family also learned that the cemetery had not been paid. Family members called Mr. Pitchford, who reassured them the permit would be corrected quickly and all would be resolved.

25. Mr. Morris testified that the Mortuary acted quickly to rectify its mistake. The funeral service was scheduled on Friday, February 7, 2014. By the time the Mortuary was advised that the burial permit was incorrect, the weekend had arrived and no government offices were open. The corrected permit was obtained Monday February 10 and the burial took place the next day, Tuesday February 11, 2014.

26. About two weeks after the burial, the cemetery mailed Mr. Williams an invoice. Since the Mortuary had accepted payment for the burial, Mr. Williams thought the invoice was a mistake that would be corrected after a lag in processing paperwork. But more invoices came. Mr. Williams called the cemetery and learned that the Mortuary had given the cemetery a check with insufficient funds. He was informed by a representative from the cemetery that they would be pursuing him for the payment.

27. Mr. Williams telephoned Mr. Pitchford about the failure to pay the cemetery and the invoices he was receiving, leaving some voicemails before they spoke. Mr. Pitchford reassured Mr. Williams that all was paid and all would be resolved. Because he continued to receive invoices, however, Mr. Williams continued to call Mr. Pitchford. After five or six conversations, Mr. Pitchford stopped returning calls. On May 21, 2014, Mr. Williams filed a complaint with the Bureau, stating that Mr. Pitchford had "assured my family that the cost of the burial plot as an advance against the insurance policy was no problem." The complaint further indicated that after four months, the cemetery had not been paid and the cemetery "is preparing to sue." (Ex. 4, p. 19.)

28. On May 22, 2014, Mr. Williams went to the Mortuary's office in person on the chance he might meet Mr. Pitchford there. He spoke to Mr. Morris instead, who was unaware of any problem. He said he would investigate and report back to Mr. Williams.

29. Shortly afterwards, Mr. Pitchford told Mr. Morris the problem in paying the cemetery started when he used a check to buy supplies. He said he did not realize that he left the checking account with insufficient funds to cover the check he later gave Forest Lawn. Mr. Pitchford promised he would pay the cemetery promptly, a promise Mr. Morris relayed to Mr. Williams. On May 28, 2014, Doretha Cooper paid the cemetery \$2,000 by credit card toward the cost of the burial, with a promise that the balance would be paid within a week. Ms. Cooper was not employed by the Mortuary. She and Mr. Pitchford had been business partners previously in a funeral establishment by the name of Eternal Rest Mortuary Directors.

30. On June 4, 2014, the Mortuary paid the cemetery in full. Mr. Mims testified from his extensive experience that good practice in the funeral industry is that a cemetery be paid by the Mortuary promptly, usually no later than the day of any funeral ceremony. When a cemetery is not paid for an extended period of months, as in this case, it tends to cause anguish and uncertainty for the family and friends of a decedent, who are already under stress from the death. However, from February 2014 to May 28, 2014, Forest Lawn remained unpaid.

31. Nina Scott Williams, daughter of the decedent and Mr. Williams, testified with emphatic and convincing demeanor that the death of her mother was devastating for her father after their marriage of nearly 50 years. She talked to Mr. Pitchford, who said that the funeral home would accept a life insurance policy as payment for all services, including cemetery burial. She testified honestly and emotionally that the Mortuary's failure to obtain a permit for the correct cemetery and the protracted uncertainty over when the Mortuary would pay the

cemetery caused the family anguish when they were at their most vulnerable.

32. Mr. Mims testified that it was an extreme departure from the standard of care and unprofessional for the Mortuary to not inform the family that the burial permit was not obtained and misleading the family to believe that their loved one was buried in the cemetery, when in fact, the remains were returned to the Mortuary. In his investigative report, Mr. Mims opined that the gross negligence and unprofessional conduct charges for the failure to communicate with the family and retaining burial proceeds for four months without paying the third party cemetery were substantiated against both Mr. Morris and the Mortuary (Exhibit 9, p. 7-8). Mr. Mims also testified that the standard of care for a funeral director and establishment is that when you receive cash advances from the consumer, you are expected to pay expenses due to third parties immediately. He testified specifically, that “[t]he consumer is paying the funeral establishment to pay the entities; so they should have been paid immediately.” The retention of the funds for four months was an extreme departure from the standard of care and unprofessional. Mr. Morris testified that he managed the banking accounts with Mr. Pitchford together, so in Mr. Mims opinion, during the four-month delay in paying the cemetery, Mr. Morris should have known that the check delivered on behalf of the Smith family was insufficient.

Decedent Angel Manriquez

33. A premature baby, Angel Manriquez, died soon after birth at Harbor UCLA Medical Center in Torrance, California, on February 14, 2014. On February 19, 2014, a physician signed the death certificate.

34. On February 20, 2014, Filemon Manriquez, the decedent’s father, went to Final Legacy to make funeral arrangements. He met Mr. Pitchford, but because he spoke limited English, Mr. Pitchford asked respondent Ana Belcher to counsel Mr. Manriquez in Spanish.

35. Ms. Belcher was working occasionally at the Mortuary, a few hours per day, not full time. Before Mr. Manriquez, she had not counseled anyone on funeral arrangements. Though she was a licensed funeral director, her duties at the Mortuary were clerical, such as answering the office telephone, checking and filing paperwork, and taking deliveries. Mr. Pitchford and Mr. Morris had laptop computers which they used to conduct the business of the Mortuary, including accessing the California Electronic Death Registration System (EDRS). Ms. Belcher had no access to any computers at the Mortuary and no access to EDRS.

36. Ms. Belcher was aware that, before reaching any agreement on funeral arrangements, the Mortuary was required by law to provide Mr. Manriquez a copy of the Bureau’s “Consumer Guide to Funeral and Cemetery Purchases.” She looked for a copy, but there were none available. She told Mr. Manriquez that she would send him one by mail next day, which she did.

37. Ms. Belcher did not ask Mr. Manriquez his wife’s last name. Mr. Manriquez

told Ms. Belcher the decedent's name was Angel Manriquez, so that is the name she put on the paperwork at the Mortuary. (Exhibit 7, pp. 52, 56, 58, 60, & 62-64.)

38. During the counseling, Ms. Belcher had Mr. Manriquez sign a form declaration, the Declaration for Disposition of Cremated Remains. (Exhibit 7, p. 52.) Ms. Belcher was aware that by law the form declaration must be filled in and signed by both a person authorized to control the disposition of remains and the funeral director who conducts counseling. Ms. Belcher admitted at hearing that she neglected to sign the form. It was signed some time later by Mr. Morris, when he noticed the omission during a routine review of records designed to catch such omissions.

39. Mr. Pitchford told Ms. Belcher that the Mortuary would charge Mr. Manriquez a total of \$183: \$150 for cremation plus \$33 for a death certificate and cremation permit. Mr. Manriquez agreed and paid \$183. Ms. Belcher sent Andre Pitchford, a member of Kenneth B. Pitchford's family, for the remains and they were picked up and stored at the Mortuary that day, February 20, 2014. She told Mr. Manriquez that the Mortuary would call him shortly so that he could pick up the remains following cremation.

40. Ms. Belcher saw Andre Pitchford in the office approximately two weeks later and asked him about the cremation. He said the cremation had not taken place because of a problem obtaining the death certificate, but that he and Kenneth B. Pitchford would take care of the problem.

41. Ms. Belcher knew that the Mortuary did not promptly take care of the problem. She called Mr. Manriquez on a few occasions in February or March 2014. He told her each time that he had not been provided the remains.

42. In addition to his telephone conversations with Ms. Belcher, Mr. Manriquez telephoned and left messages for Kenneth B. Pitchford asking for the cremated remains. At first after a few of these messages, Mr. Pitchford called back, reassuring Mr. Manriquez but providing no definite date or information. Mr. Manriquez continued to call. There was a period of several weeks in April and May 2014 during which Mr. Manriquez heard nothing from anyone at the Mortuary.

43. Mr. Manriquez was distressed by the uncertainty. He did not know what had happened to his child's remains and he did not know what to do to force the Mortuary to pay attention to his plight. He turned for help to Alberto Perez, his sister's boyfriend. On June 17, 2014, Mr. Perez telephoned the Mortuary and left a message with the answering service that if he did not get a call back soon regarding Angel Manriquez, the Manriquez family would file a complaint with the Bureau. About 15 minutes after this call, Mr. Morris called Mr. Perez back and said that he would make sure the cremation took place and that the remains could be picked up by June 20, 2014.

44. In asking for transfer of the death certificate, Kenneth Pitchford told hospital personnel the decedent's last name was Marquez, rather than Manriquez. When Mr. Morris

used the correct last name on June 17, 2014, the death certificate was transferred the same day to the Mortuary.

45. On June 18, 2014, the Mortuary delivered the remains to Evergreen Memorial Park and Crematory in Los Angeles, California. They were cremated on June 19, 2014 and made available to Mr. Manriquez that day.

46. Ms. Belcher was not asked to help resolve any problem with the remains. She did not learn that the Mortuary was asking for the death certificate with the wrong name. Being Hispanic, Ms. Belcher was aware that a person of Hispanic descent may have more than one surname, which can cause confusion. However, no one asked her to help on any problem involving the decedent's name.

47. Only after June 19, 2014, did Ms. Belcher learn that Mr. Morris had cleared up the confusion over the decedent's last name and had transferred the death certificate to the Mortuary, which had then had the remains cremated the next day.

48. The \$183 that the Mortuary charged Mr. Manriquez was lower by at least \$100 than its costs for the service. The Mortuary charged modestly in this and other instances, below what other mortuaries charged, as part of its founding purpose to provide discounted services as a benefit to the community.

49. In his investigative report and at hearing, Mr. Mims opined that the gross negligence and unprofessional conduct charges were substantiated against Respondents Morris and the Mortuary (Exhibit 5, pp. 8-10). He testified that it was unprofessional conduct to misrepresent or provide untrue statements to a decedent's family about a reason for a delay in completing disposition of the remains for several months. The Mortuary's agents represented that the delay in getting the cremated remains was because an attending physician had not signed the death certificate when in fact, the doctor signed the death certificate just five days after the baby died. Mr. Mims also testified that in his opinion, the Mortuary should have put forth the minimal effort of having the hospital transfer the death certificate to the Mortuary in order to handle this case properly. Instead, there was a four-month delay. The delay and the family's repeated requests were only addressed when Mr. Morris was informed by Mr. Perez that a complaint would be filed with the Bureau.

Decedent Karen Swan

50. On January 17, 2015, Karen Lynn Swan died in Lancaster, California. On January 26, 2015, the decedent's father, Garland Smith, met Kenneth B. Pitchford and signed a contract for funeral services to be provided by the Mortuary. The charges totaled \$9,800, including \$4,412.46 in "cash advances" to Lancaster Cemetery.

51. When he signed the contract, Mr. Smith assigned \$20,000 in insurance benefits to the Mortuary to cover both Mortuary and cemetery fees.

52. Some days later, the decedent's family went to the cemetery, which is operated by the Lancaster Cemetery District. They selected a grave and told the cemetery they had turned over to the Mortuary insurance money sufficient to pay the cemetery.

53. On January 29, 2015, Mr. Pitchford sent an Order of Interment to Dayle DeBry, the manager at the cemetery. (Exhibit 6, p. 16.) Mr. Pitchford gave the cemetery a check for \$4,245.

54. On January 30, 2015, the Mortuary conducted the funeral service at a church about a mile from the cemetery. The burial at Lancaster Cemetery followed immediately afterwards.

55. Soon afterwards, the check Mr. Pitchford used to pay the cemetery was returned for insufficient funds. (Exhibit 6, pp. 12-13, 15.)

56. Ms. DeBry telephoned the Mortuary about the bad check at least a dozen times over several weeks. Messages resulted in no call back or payment. On March 10, 2015, Ms. DeBry filed a complaint with the Bureau. That same day Kenneth Pitchford left a message for Ms. DeBry (who was away from the office) apologizing and saying that the Mortuary's promise of payment would be kept by Friday of that week. Ms. DeBry telephoned once more after payment was not forthcoming as stated in Mr. Pitchford's message.

57. Hearing nothing further from the Mortuary, Ms. DeBry complained to the Bureau. The Mortuary paid the cemetery on April 3, 2015.

58. In investigating the nonpayment, Ted Mims, the Bureau's investigator, found that the Mortuary overcharged Mr. Smith by \$496.78.

A. According to the contract, the Mortuary charged Mr. Smith \$300 for two motorcycle escorts. There had been no motorcycle escorts. Under the Mortuary's General Price List (GPL), it states: "Motorcycle escorts (1 required per 10 cars) . . . \$150." (Exhibit 6, p. 25.) No motorcycle escorts are required at the Lancaster Cemetery.

B. The Mortuary charged improperly for "processing fees." The contract shows a charge of \$250 for "Processing of Insurance per Company." There is a separate charge of \$724 for "8% insurance." (Exhibit 6, p. 32.) The \$250 fee is not in the GPL. There are two references to processing fees in the GPL: "Processing of Insurance Assignments . . . 8% of Funeral" (Exhibit 6, p. 25) and a paragraph entitled "Insurance Processing Fee," which states in part:

Families choosing to use insurance policies/assignments to pay for funeral services and merchandise will be a 8% insurance processing on the total amount of insurance proceeds being used. . . . The 8% processing fee will be included on your contract as a Cash Advance item.

The processing fee was listed under "Merchandise," not under "Cash Advances." (Exhibit 6, p. 32.) Eight percent of the total contract price of \$9,800 is \$784. Mr. Smith paid processing fees totaling \$974 (\$250 plus \$724). Accordingly, there was an overcharge \$190 (\$974 minus \$784) for processing.

C. Under the contract, merchandise was taxed at 9.5 percent, a total of \$455.46. The eight percent processing fee should not have been included in merchandise. Because it was, Mr. Smith was overcharged \$68.78 (.9.5 percent of \$724).

Decedent Betty France

59. On December 7, 2013, Rose Clark, daughter of decedent Berry France, contracted with the Mortuary for a crypt for entombment of the decedent and for use of the cemetery's chapel. Kenneth B. Pitchford, her counselor, traveled to Fresno to meet Ms. Clark and have her sign the contract with the Mortuary. The contract price was \$15,486.12 and included a charge for \$7,300 for Inglewood Park Cemetery. (Exhibit 7, pp. 16-17.)

60. Ms. Clark signed over to the Mortuary an insurance policy which was to pay benefits of approximately \$15,000. In addition, Ms. Clark paid an extra \$486.12 in cash at Mr. Pitchford's request.

61. The entombment took place on December 12, 2013. Ms. Clark had no complaint about the funeral service.

62. The Mortuary wrote the cemetery a check on December 12, 2013 for \$7,253.50, but later that month the check was held up by the bank for uncollected funds.

63. Some months later, in mid-2014, Cheryl Lewis, Vice President of Family Services at the cemetery, telephoned Ms. Clark about the lack of payment. Ms. Clark told Ms. Lewis that the family had paid by signing over insurance benefits to the Mortuary, so that it could pay the cemetery. Ms. Clark also spoke to Mr. Pitchford, telling him that the cemetery said it had not been paid. Mr. Pitchford told her not to speak further with the cemetery because he would take care of the problem.

64. On March 2, 2015, Ms. Lewis filed a complaint with the Bureau. The Mortuary had made no payment to the cemetery at the time of hearing.

65. In investigating the issues, Ted Mims, the Bureau's investigator, found inaccuracies in the Mortuary's contract, which resulted in the Mortuary's overcharging Ms. Clark by \$399.61.

A. The Mortuary charged improperly for "processing fees." The contract shows a charge of \$295 for "Processing of Insurance per Company." There is a separate charge of \$1,147 for "8% insurance." (Exhibit 7, p. 16.) The \$295 fee is not in the GPL. There are two

references to processing fees in the GPL: "Processing of Insurance Assignments . . . 8% of Funeral" (Exhibit 7, p. 23) and a paragraph entitled "Insurance Processing Fee," which states in part:

Families choosing to use insurance policies/assignments to pay for funeral services and merchandise will be a 8% insurance processing on the total amount of insurance proceeds being used. . . . The 8% processing fee will be included on your contract as a Cash Advance item.

The processing fee was listed under "Merchandise," not under "Cash Advances." (Exhibit 7, p. 16.) Eight percent of the total contract price of \$15,486.12 is \$1,238.89. Ms. Clark paid processing fees totaling \$1,442 (\$295 plus \$1,147), so that for processing she was overcharged \$203.11 (\$1,442 minus \$1,238.89).

B. Under the contract, the Mortuary charged \$200 for decedent's care after an autopsy, instead of \$150 as stated in the GPL. Ms. Clark was overcharged \$50 for this service. (Exhibit 7, p. 20.)

C. The Mortuary charged \$400 for a funeral coach and driver, instead of \$300 for a hearse, as stated in the GPL. This is an overcharge of \$100. (Exhibit 7, p. 22.)

D. The contract charged Ms. Clark \$7,300 for the cemetery, though the actual cemetery charge was \$7,253.50. This is an overcharge of \$46.50. (Exhibit 7, p. 10.)

E. The contract incorrectly states the method of payment was a Visa charge card. (Exhibit 7, p. 16.)

Decedent Ramon Kahn

66. Ramon Kahn died on August 11, 2015. (Exhibit 10, p. 35.) His remains were sent the same day for an autopsy by the Los Angeles County Department of Medical Examiner-Coroner. Following autopsy, the remains were released to the Mortuary at approximately 10:00 p.m. on August 20, 2015.

67. Cheronda Kahn, the decedent's wife, had contracted with the Mortuary on August 14, 2015. The remains were to be embalmed and prepared for shipment to St. Louis, Missouri. Funeral ceremonies were to be conducted in St. Louis under the direction of William C. Harris Funeral Service (HFS). The Mortuary charged Mrs. Kahn a total of \$8,853.18 (Exhibit 10, p. 36-37), which included charges for services to be rendered by HFS. With funds supplied by Roosevelt Kahn, the decedent's father, Mrs. Kahn paid the Mortuary \$5,000 in cash. The balance was to be paid from insurance benefits assigned to the Mortuary. The Mortuary agreed to pay HFS.

68. Barry Reed was a part-time trade embalmer for the Mortuary. Trade embalmers are independent contractors who work for more than one funeral establishment.

On August 20, 2015, Mr. Morris telephoned Mr. Reed to ask that he embalm the remains of the decedent, Mr. Kahn. Mr. Morris informed Mr. Reed that the body had undergone an autopsy. In an autopsy, the remains are cut through and disassembled in order to allow scrutiny of inner organs. That makes the remains harder to put back into their natural configuration, such as by stitching up cuts, which is part of the embalmer's task. Mr. Reed agreed he would perform the embalming the next day for \$250, the higher price he generally charged the Mortuary to embalm bodies following an autopsy.

69. Mr. Reed arrived at the Mortuary premises at about 6:30 p.m. on August 21, 2015. The remains were on a gurney, not in the refrigerator, exposed to the warm weather. Warm weather accelerates a body's decomposition. Mr. Reed observed signs of decomposition, noted in the "Embalming Case Report" he prepared that day. (Exhibit 10, pp. 43-44.) Decomposition is the decay caused by microorganisms that naturally inhabit human bodies living and dead. The remains gave off a strong odor of decay. There were also areas of skin slip, visible as patches of white or gray. Skin slip is part of the process of decay, occurring when the pigmented epidermis, the outer layer of skin, detaches from the dermis, a lower layer of skin with no pigment.

70. Embalmers employ a few techniques to counteract or slow decomposition, though it cannot be halted entirely. Mr. Reed used a chemical stronger than usual, as he reported in his "Embalming Case Report" and as he set out in his February 10, 2016 declaration, a declaration prepared at the request of Mr. Mims and the Bureau. (Exhibit 10, p. 42.) He also used a face-pack, a sort of porous, temporary mask infused with strong chemicals, which is placed on the face, so that the embalming fluids are transferred onto the skin directly. Generally remains so embalmed are not refrigerated unless funeral ceremonies are to be significantly delayed. In this case the remains of decedent Mr. Kahn were not refrigerated.

71. The remains were shipped by air to St. Louis, Missouri, on August 29, 2015 (Exhibit 10, p. 23), where they came under the care of HFS and its Chief Executive Officer, Mr. Harris. Mr. Harris's license as a funeral director in Missouri is in good standing and has never been subject to discipline. He has at times taught funeral practices to other professionals. He has served as an officer of a trade association and continues to be associated with several.

72. Personnel of HFS received the remains at the St. Louis airport on August 29, 2015. Mr. Pitchford had promised Mr. Harris, the principal of HFS, that the Mortuary would collect the money the decedent's family had agreed to pay HFS, \$2,680.58, and send payment with the remains. Mr. Pitchford did not keep the promise. Mr. Harris then contacted the family, who confirmed they had entrusted the payment to HFS to the Mortuary. Shortly afterwards, having been contacted by the decedent's family, Mr. Pitchford telephoned Mr. Harris and provided him the number of an American Express card. Using the number, Mr. Harris had the funds deposited in an HFS bank account.

73. On August 31, 2015, however, the transaction was reversed. (Exhibit 10, p.

25.) American Express advised Mr. Harris that the cardholder did not recognize the charges. Mr. Harris then tried to contact Mr. Pitchford. Despite the messages he left on several days, his calls were not returned. In the same period, Mr. Harris explained his right to payment to American Express. It conducted an investigation and then returned the funds to HFS's account.

74. In October 2015, American Express advised Mr. Harris that the transaction had been reversed again, because, as before, the cardholder was disputing the charge. Mr. Harris again sought to know who the cardholder was, but American Express refused to give him that information and, as before, Mr. Harris and HFS received no help or information from Mr. Pitchford or the Mortuary. Mr. Harris obtained from the decedent's family a copy of the contract with the Mortuary, which he showed American Express in pursuing payment. The dispute was resolved in favor of HFS on December 17, 2015. (Exhibit 10, p. 27.)

75. During the months that it was not paid, HFS tried to mitigate the remains' poor condition on their arrival in St. Louis. It provided supplies and expended efforts, mostly for additional embalming, beyond its contract, and for which it sought no additional payment from the decedent's family. Mr. Harris, Roosevelt Kahn, and Cheronda Kahn all testified credibly that the remains had obvious signs of decomposition, including a bad odor and discoloration and slipping of the skin. In addition, there were gnats. These conditions would have been prevented if the remains had been properly handled by the Mortuary.

76. Mr. Morris admitted at hearing he had little knowledge of the handling of the remains or any dispute regarding funds or payment by American Express. He left matters to Mr. Pitchford.

77. The Mortuary overcharged \$100: it charged \$250 for "Post Autopsy/Donor Repair and Restoration," for which, according to the Mortuary's General Price List (GPL), it usually charged \$150. (Exhibit 10, p. 31.) Comparing other items in the contract and the GPL, there was an overcharge \$100 for a funeral coach and driver, an overcharge of \$55 for a register book, an overcharge of \$39.42 for fees charged by the cemetery in St. Louis, and an overcharge for sales taxes of \$251.75.

78. Roosevelt Kahn attended the funeral ceremonies in St. Louis. Despite extensive cosmetic efforts by HFS, he was distressed by the poor condition of his son's remains.

79. At hearing, Mr. Mims opined that the Mortuary's handling of this body constituted an extreme departure from the standard of care for a licensed embalmer or funeral director, with respect to preserving a body from decomposition. He testified that the body was left on a gurney without refrigeration. He inferred based upon the statements of Mr. Reed at hearing and evidence obtained during investigation, that the body "stayed someplace all day long" without refrigeration and by 6:30 a.m. the next morning, the body would have decomposed.

Decedent Sadie Ramsey and Others Cremated at Odd Fellows Cemetery

80. Aida Bobadilla is the manager of the Odd Fellows Cemetery in Los Angeles, California. The cemetery began cremations for several decedents at the request of Kenneth B. Pitchford and the Mortuary in the first half of 2013. The cemetery was paid for those services.

81. At the request of the Mortuary the cemetery cremated the remains of 12 people at different times in late 2013 through mid-2014. The Mortuary several times promised to pay the cemetery for these services, but did not do so until after the first accusation in this matter was filed; a payment by certified check was made on March 11, 2016. The details of the 12 instances of the Mortuary's delayed payment to the cemetery, starting with the most recent months:

	Decedent:	Date of Invoice:	Amount Owed: Exh. #, page:
(1)	Sadie Ramsey	June 16, 2014	\$188.55 Exh. 8, p. 11
(2)	Martha Langford	February 14, 2014	214.50Exh. 8, p. 17
(3)	Marco Gabrielli	February 27, 2014	155.85Exh. 8, p. 24
(4)	Beautiful Salazar	November 1, 2013	70.75Exh. 8, p. 30
(5)	Mary Adkins	November 1, 2013	139.50Exh. 8, p. 36
(6)	Lottie Battles	November 13, 2013	139.50Exh. 8, p. 43
(7)	Norma Meadows	November 20, 2013	139.50Exh. 8, p. 49
(8)	Barbara Conway	October 15, 2013	120.50Exh. 8, p. 55
(9)	Ronnie Vaults	October 17, 2013	139.50Exh. 8, p. 61
(10)	Jessie Rivas	October 28, 2013	139.50Exh. 8, p. 67
(11)	Dora Dawson	October 28, 2013	139.50Exh. 8, p. 73
(12)	Jefferson McCoy, Jr.	October 29, 2013	90.00Exh. 8, p. 80

82. On June 22, 2015, Ms. Bobadilla filed a complaint with the Bureau on the cemetery's behalf:

It's apparent that the Families paid – cash advances to the Mortuary [Final Legacy] for services. Therefore no excuse for not paying this Crematory. The Mortuary had the monies to pay for my services. Instead, reneged on his promised payments. FRAUD Requested Resolution: Make payment in full. The amount is \$1,542.10 I'm not asking for interest. I just want to be paid in full.

(Exh. 8, p. 8.)

83. Usually the cemetery is paid at the time a body is delivered for cremation. Ms. Bobadilla was flexible because she understood that sometimes a family will not have paid a mortuary. About a week after the Mortuary should have paid the cemetery, Ms. Bobadilla

called and left a message saying that she was looking for payment but would work with the mortuary if it was having difficulties. She also had invoices sent by fax to the Mortuary, and sent new invoices regularly when old invoices were not paid. There was no payment or response to her telephone messages until approximately December 2013. Ms. Bobadilla spoke to Mr. Morris who said that payment would be sent in January 2014.

84. Because the Mortuary paid no invoices in January 2014, Ms. Bobadilla left a telephone message at the Mortuary that if it was unable to make full payment, the cemetery would accept installment payments. There was no response. Therefore, at some point in mid-2014, Ms. Bobadilla advised that the cemetery would no longer do business with the Mortuary.

85. Some days later, Ms. Bobadilla complained to the Bureau. Mr. Mims initiated his investigation on behalf of the Bureau on July 20, 2015 with an email to the Mortuary's counsel. Mr. Mims asked for the Mortuary's contracts with respect to each decedent. He also requested interviews with the Mortuary's knowledgeable personnel. The Mortuary's counsel did not respond to Mr. Mims's email. The Mortuary did not furnish copies of the contracts or allow interviews. From paperwork Ms. Bobadilla provided Mr. Mims, he was able to confirm the amounts of money the Mortuary owed the cemetery.

Decedent Mary Thomas-Smith

86. On June 1, 2015, two days after the May 30, 2015 death of his wife, Mary Thomas-Smith, Vincent Thomas spoke to Kenneth Pitchford and signed the Mortuary's form contract regarding her funeral arrangements, which also included cremation. Mr. Thomas and his family paid the Mortuary a total of \$3,554 for merchandise and services prior to Mary Thomas-Smith's viewing and funeral service. Mr. Smith testified that Mr. Pitchford told him that his wife's remains would be returned to the family after "two or three weeks."

87. Among other forms Mr. Thomas signed on June 1, 2015 was a "Notification to Rental Casket Purchaser/Renter," which stated that rental caskets are exempt from legal prohibitions on the reuse of caskets:

provided that the purchaser/renter is notified, in writing, that the rental casket selected is designed to be reused and may have been previously used, and provided that the purchaser/renter acknowledge the notification and does not object to the previous use and/ reuse [*sic*].

I, the undersigned purchaser/renter understand the above statement and I do not object to the use or reuse of a rental casket.

(Exhibit 10, p. 24.)

88. As the contract states, Mr. Thomas paid \$1,395 for a casket, described as “Cloth Raise Light Purple.” (Exhibit 10, p. 48.) For the decedent’s viewing ceremony on June 11, 2015, the Mortuary provided a metal casket, a model called a “Clair Silver” manufactured by Astral Industries. It was of light-colored metal and had a white or off-white lining. According to the Mortuary’s Casket Price List (CPL), such a casket could be purchased for \$1,725. Rental caskets, however, cost \$1,000 according to the CPL.

89. Jessie A. Altamirano, warehouse manager at National Casket Company, testified knowledgeably and credibly that the Clair Silver casket his company distributes is not a rental casket. Rental caskets have features, visible from the outside, and absent from the Clair Silver casket, that allows a removable lining to be placed inside. The lining of the Clair Silver casket is not removable. In consequence, once remains have been placed inside, it is improper to reuse the casket for another person’s remains.

90. Mr. Thomas’s contract states he was charged \$895 for “minimum services of funeral director and staff.” (Exhibit 10, p. 48.) Under the Mortuary’s general price list (GPL), the minimum charge for cremation of an adult’s remains is \$70 lower: \$825. The GPL states: “The Basic Service Fee is already included in the Direct Cremation cost for the basic services of the funeral director, staff and overhead, . . . and delivery van to local crematory at our convenience.” (*Ibid.*, p. 29.) The second page of the GPL has another section similar to that regarding cremation. It states that the Mortuary will charge \$895 for “Basic Services of Funeral Director, Staff and Overhead.” (Exhibit 10, p. 30.) The section includes this explanation for the \$895: “This fee is already included in our charges for direct cremation . . . and forwarding or receiving remains.” (*Id.*, Exhibit 10, p. 30.)

91. For other services under the contract, the Mortuary charged Mr. Thomas \$300 for the decedent’s transfer to the funeral home when the Mortuary’s General Price List (GPL) shows the charge should be \$200; and, a cremation fee of \$395, when the GPL shows that the charge should have been \$225. (Exhibits 10, p. 48 and 9, pp. 25, 30, and 31.) In addition, Mr. Thomas was charged for \$400 for a “Funeral coach and driver,” when the GPL for a “Hearse and Driver” is \$300. He was charged \$45 for a “Register Book,” when the GPL lists \$35 for a “Memorial Book.” Finally, he was charged \$1,995 for total merchandise, when the items on the contract actually totaled \$1,985.

92. A viewing ceremony took place on June 11, 2015. The “clair silver” casket the Mortuary furnished for the event was somewhat larger than average, because the decedent was large, weighing over 300 pounds. Mr. Thomas and his family who attended were satisfied with the viewing ceremony. However, during the months that followed Mr. Smith testified that he called Mr. Pitchford about five or six times regarding his wife’s remains. Mr. Smith was always told that Mr. Pitchford would call him back, but he never did. Nearly seven months after his wife’s death, on December 21, 2015, he received his wife’s remains, but only after he had complained to a representative at the Ventura County Health Department and the Bureau. Mr. Smith and his family found the delay upsetting.

93. Instead of the casket that Mr. Smith had contracted for, the decedent was

delivered to the crematory in an airtray, a combustible box, usually much less expensive than a casket, designed to hold remains for cremation.

94. Mr. Smith's contract with the cemetery included his purchase of two death certificates. These, however, were never delivered to him until after he complained to the Bureau on December 21, 2015. (Exhibit 9, p. 15.) At about this time, Mr. Smith drove to an office in Ventura, California, in order to obtain the death certificates himself.

95. When Mr. Morris was advised of the complaint, he immediately called Mr. Smith and promised that he would the next day give Mr. Smith the death certificates he had ordered. Mr. Morris kept the promise, and actually delivered in person four death certificates to Mr. Smith (one for each of Mr. Smith's daughters), without charge for the extra two certificates.

96. In his investigative report, Mr. Mims opined that the gross negligence and unprofessional conduct charges were substantiated against Mr. Morris and the Mortuary (Exhibit 9, pp. 7 and 8). At hearing, Mr. Mims testified that Mr. Morris' and the Mortuary's handling of Mrs. Thomas-Smith's remains and their interaction with the decedent's family was an extreme departure from the standard of care. He testified that arrangements were made for funeral service and cremation in June and a funeral service was held in July. Indeed, the record showed that the death was not registered until more than one month after the death occurred, which exceeded the legal requirement that deaths must be registered with the county health department within eight days. And even after Mrs. Thomas-Smith's remains went to the crematory, and the cremated remains were released back to the Mortuary, she was held there for over five months. No attempts were made to release her to the next of kin, to contact the next of kin, or take any of the phone calls that Mr. Smith made. According to Mr. Mims, as the funeral director and supervisor, Mr. Morris should have been aware of what was going on at the Mortuary for six months.

Twentieth and Twenty-First Causes for Discipline (Refusal to Allow Inspection)

97. Mr. Mims attempted to inspect the Mortuary's premises on January 20, 2016 as part of his duty to conduct unannounced inspections of all funeral establishments in the state. He arrived in the morning and spoke to a Mortuary employee, a son of Kenneth B. Pitchford, who said he was unable to provide access to the parts of the premises not open to the public. Mr. Mims waited about an hour until Mr. Morris arrived. When Mr. Mims explained that he was there for a routine inspection, Mr. Morris said that Mr. Mims must first speak to counsel for the Mortuary, Eric Morris (who is no family relation to respondent Morris).

98. Counsel spoke to Mr. Mims by speakerphone. He said that no inspection was allowed and that no inspection would be allowed without advance notice. Counsel told Mr. Mims that he must leave the premises and if he did not, counsel would call the police to make sure that he did. Mr. Mims documented the Mortuary's refusal to allow the inspection in a written report, Exhibit 11.

Costs

99. The Bureau incurred costs, reporting \$4,128.83 for investigation and \$20,853.83 for prosecution. (Exhibit 3.)

100. There is a discrepancy of \$150 in prosecution amounts reported as billed to the Bureau: \$16,725 reported by complainant as opposed to \$16,575 reported by counsel for complainant. The Administrative Law Judge found the lower amount reasonable.

101. The Administrative Law Judge found it reasonable to add the certified investigation costs, \$4,128.83, to the prosecution costs, for a total of \$20,703.83, for which respondents Mr. Morris and the Mortuary should reimburse the Bureau.

LEGAL CONCLUSIONS

1. The Bureau has the burden of proof. Its evidence must be "clear and convincing." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) The evidence must be so clear as to leave no substantial doubt and strong enough to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478, 487.)

2. In cases where experts are needed to establish negligence, their testimony sets the standard of care, and is said to be "conclusive." "Ordinarily, where a professional person is accused of negligence in failing to adhere to accepted standards within his profession the accepted standards must be established only by qualified expert testimony [citations] unless the standard is a matter of common knowledge. [Citation.] However, when the matter in issue is within the knowledge of experts only and not within common knowledge, expert evidence is conclusive and cannot be disregarded." (*Osborn v. Irwin Memorial Blood Bank* (1992) 5 Cal.App.4th 234, 277.)

3. It is not necessary to show harm to impose license discipline. To prohibit license discipline until the licensee harms a consumer disregards the purposes of an administrative disciplinary proceeding; it is far more desirable to discipline before a licensee harms any consumer than after harm has occurred. (*Griffiths v. Super. Ct.* (2002) 96 Cal.App.4th 757, 772.)

4. The purpose of an administrative proceeding concerning the revocation or suspension of a license is not to punish the individual. The purpose is to protect the public from dishonest, immoral, disreputable or incompetent practitioners. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

Pertinent Statutes and Regulations

5. Business and Professions Code section 7601.1 provides that public protection is

the highest priority for the Bureau in exercising its licensing, regulatory, and disciplinary functions.

6. Business and Professions Code section 7615 provides that a funeral director is a person engaged in or conducting, or holding himself or herself out as engaged in various acts, including “[p]reparing for the transportation or burial or disposal, or directing and supervising for transportation or burial or disposal of human remains” and “[m]aintaining an establishment for the preparation for the transportation or disposition or for the care of human remains.”

7. Business and Professions Code section 7686 gives the Bureau authority to suspend or revoke licenses.

8. Business and Professions Code section 7692 states that misrepresentation or fraud in the conduct of the business of a funeral director constitutes grounds for disciplinary action.

9. Business and Professions Code section 7703 provides that violation of any of the provisions of law regulating mortuaries or funeral directors constitutes grounds for disciplinary action.

10. Business and Professions Code section 7704 provides:

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.

11. Business and Professions Code section 7707 provides that gross negligence, gross incompetence, or unprofessional conduct in the practice of funeral directing constitutes grounds for disciplinary action.

12. Health and Safety Code section 102775 provides:

Each death shall be registered with the local registrar of births and deaths in the district in which the death was officially pronounced or the body was found, within eight calendar days after death and prior to any disposition of the human remains.

13. 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.

First Cause for Discipline (Arlene Williams)

14. Cause exists to discipline the licenses of respondent Morris and the Mortuary for misrepresentation with respect to how the Mortuary dealt with the family and with the remains of Arlene Williams. The pleading of the first cause for discipline generally includes the following allegations: (i) failure to obtain a proper burial permit, (ii) the writing of a check to the cemetery that bounced, causing a delay in paying the cemetery, and, (iii) failures to communicate with the decedent's family for four months while the cemetery was unpaid. As discussed below, Mr. Morris and the Mortuary were, through their agent, both responsible for the misrepresentations.

15. Civil Code section 3294, subdivision (c)(3), states:

“Fraud” means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury.

16. “[F]alse representations made recklessly and without regard for their truth in order to induce action by another are the equivalent of misrepresentations knowingly and intentionally uttered.” (*Yellow Creek Logging Corp. v. Dare* (1963) 216 Cal.App.2d 50, 55.) A misrepresentation may be verbal, written or implied by conduct.” (*Thrifty-Tel, Inc. v. Bezenek* (1996) 46 Cal.App.4th 1559, 1567.)

17. Negligent misrepresentation is a form of deceit, the elements of which include: (1) a misrepresentation of a past or existing material fact, (2) without reasonable grounds for believing it to be true, (3) with intent to induce another's reliance on the fact misrepresented, and, (4) ignorance of the truth and justifiable reliance thereon by the party to whom the misrepresentation was directed . . . (*Fox v. Pollack* (1986) 181 Cal.App.3d 954, 962.)¹

18. When Mr. Morris applied for Final Legacy's licenses, Mr. Morris represented to the Bureau that Mr. Pitchford would not be meeting with families or handling money. The Mortuary's license and Mr. Morris's funeral director's license were issued based upon this representation (Factual Finding 11). Nevertheless, after the licenses were issued, Respondent Morris allowed Mr. Pitchford to negotiate contracts on behalf of the Mortuary and make representations regarding the services that would be provided by the Mortuary. By virtue of section 1204 of title 16 of the California Code of Regulations, Mr. Morris had “direct supervision and control” over the Mortuary, including the conduct of the establishment, its employees and agents. Mr. Morris testified that Mr. Pitchford was a subcontractor, who he pays \$1,800 a month to run the business. The liability of an employer for misconduct by one working for that employer is known as the doctrine of respondeat superior. In general, the employer's liability under the doctrine extends to malicious and intentional acts of a worker, so long as the misconduct was within the scope of the worker's duties. (*Martinez v. Hagopian* (1986) 182

¹ A showing of damages is not required for an administrative proceeding. See Legal Conclusion 3 above.

Cal.App.3d 1223, 1227.) As a result, Mr. Morris and the Mortuary are responsible for the misconduct by the Mortuary's employees or agents, including Mr. Pitchford.

19. Because the Mortuary left Mr. Pitchford in charge of all dealings with the cemetery and the decedent's family, he was acting within the scope of his duties.

20. The evidence did not establish, however, that anyone intentionally or negligently misrepresented where the decedent's burial would be permitted. Rather, someone at the Mortuary honestly confused two nearby cemeteries, both commonly called Forest Lawn, both operated by Forest Lawn Memorial-Parks & Mortuaries.

21. The evidence established that the Mortuary's failure to pay the cemetery promptly and Mr. Pitchford's subsequent false representations to the family that such efforts were done or being done constitute misrepresentation under Business and Professions Code section 7692. Mr. Morris left the matter to Mr. Pitchford, who negligently misrepresented to the decedent's family that the cemetery was already paid. The record reflects that there was no reasonable basis to believe that the cemetery would be paid anytime soon. Mr. Pitchford made no efforts from February 2014 to May 28, 2014 to pay Forest Lawn, as the Williams family was led to believe. The Mortuary kept money entrusted to it for approximately four months instead of paying Forest Lawn for the burial as expected. As a result, the Williams family was billed and threatened with legal action by the cemetery.

22. Mr. Pitchford did not testify in the administrative hearing, but his taking money for a cemetery burial was an implied representation that the Mortuary would pay the cemetery soon after the service and as expected. Mr. Pitchford made false representations to the families about payment being taken care of when in fact the initial check to the cemetery from the Mortuary bounced and the record shows that no payments to the cemetery were made for four months. Since both Mr. Pitchford and Mr. Morris had access to the Mortuary's bank account, these representations by the Mortuary were not reasonable. Mr. Pitchford made repeated false representations to Mr. Williams that the payment to the cemetery would be taken care of to appease Mr. Williams, when in fact he was ignoring Mr. Williams' requests and making no efforts to make such payment.

Other Causes for Discipline Based on Fraud and Misrepresentation (Several Decedents)

23. Cause exists to discipline the licenses of Mr. Morris and the Mortuary for other instances of misrepresentation. Fraud or misrepresentation is alleged as cause for discipline with respect to other decedents: (i) the eighth cause for discipline with respect to decedent Karen Swan, (ii) the tenth cause for discipline with respect to decedent Betty France, (iii) the twelfth cause for discipline with respect to a group of decedents whose remains were cremated at Odd Fellows Cemetery, Sadie Ramsey and others, (iv) the fifteenth cause for discipline with respect to decedent Mary Thomas-Smith, and, (v) the seventeenth cause for discipline with respect to decedent Ramon Kahn. The same considerations that lead to the conclusion that misrepresentation was proven in the first cause for discipline, with respect to decedent Arlene Williams, apply to these other causes with respect to other decedents.

A. Similar to the circumstances underlying the first cause for discipline are those underlying the eighth cause for discipline, alleging misrepresentation or fraud in respondents' dealing with decedent Karen Swan and her family. The evidence established that the Mortuary made false representations regarding payment and the ability to pay the Lancaster Cemetery according to their agreement with Mr. Garland Smith. Mr. Morris left the matter to Mr. Pitchford. Mr. Pitchford's taking money for a cemetery burial was an implied representation that the Mortuary would pay the cemetery timely, as Mr. Smith was led to believe. The evidence is sufficient to show that Mr. Pitchford and the Mortuary made false representations about payment without a reasonable basis for believing it to be true.² Instead, the Mortuary issued Lancaster Cemetery a check that implied that there was sufficient funds to pay the cemetery, but the check was returned due to insufficient funds. From February 9, 2015 to March 10, 2015, Respondent Mortuary failed to respond to inquiries from Lancaster Cemetery regarding the bounced check. In addition, Respondents Morris and the Mortuary overcharged Mr. Smith for processing Ms. Swan's insurance policy and charged for a motorcycle escort for Ms. Swan's funeral that was not provided. This misrepresentation was knowing or intentional. At a minimum, Respondents Morris and the Mortuary, through their agent Mr. Pitchford, made representations recklessly and without any regard for what Mr. Smith owed the Mortuary. This led to Mr. Smith overpaying on the contract by over \$500.

B. With respect to decedent Betty France:

(i) Similar to the Mortuary's delay in paying for the cremation of decedent Arlene Williams and the burial of decedent Karen Swan is the Mortuary's delay in paying Inglewood Cemetery for the entombment of decedent Betty France. The evidence established that the Mortuary made negligent misrepresentations regarding payment and the ability to pay Inglewood Park Cemetery according to their agreement with Rose Clark. Mr. Pitchford's taking money for a crypt was an implied representation that the Mortuary would pay the cemetery. The evidence is sufficient to show that Mr. Pitchford made false representations about timely payment. On December 12, 2013, the Mortuary issued Inglewood Park Cemetery a check without any reasonable belief³ that the funds were available to pay that cemetery; the check bounced. Respondents, through their agent Mr. Pitchford, made unfounded promises to Ms. Clark regarding the payment to the cemetery. Mr. Pitchford stated that "he would take care of the problem." As of the date of the hearing, no payment to the cemetery had been made.

(ii) The Mortuary overcharged Rose Clark in several ways, including for processing fees, for decedent's care after an autopsy, for a funeral coach and driver, and for the cemetery. The evidence established that the overcharges were the result of intentional misrepresentation, given the carelessness and recklessness in overcharging Ms. Clark. At a

² Again, both Mr. Pitchford and Mr. Morris had access to the Mortuary's bank account; therefore, these representations by the Mortuary were not reasonable.

³ See footnote 2, above.

minimum, Respondents Morris and the Mortuary, through their agent Mr. Pitchford, made representations recklessly and without any regard for what she truly owed in charging Ms. Clark. This led to Ms. Clark overpaying on the contract by \$399.61.

C. Similarly, respondents' delay in paying for the cremations of a group of 12 decedents at Odd Fellows Cemetery, most recently the cremation of decedent Sadie Ramsey, was shown clearly and convincingly to be negligent misrepresentation. Mr. Pitchford's repeatedly ordering cremations by Odd Fellows Cemetery constituted implied representations that the Mortuary would pay for the cremations timely. The evidence is sufficient to show that Mr. Pitchford made false representations about payment, without any reasonable basis for believing that payment would or could be made. In fact, payment was not made for years after the decedents were cremated.

D. With respect to decedent Mary Thomas-Smith:

(i) Cause for discipline exists with respect to Respondent Morris's and the Mortuary's intentional misrepresentations in dealing with decedent Mary Thomas-Smith and her family, as alleged in the fifteenth cause for discipline. Respondents, through their agent Mr. Pitchford, contracted to provide a "Cloth Raise Light Purple" casket for Mr. Smith's wife's service and cremation. Respondents Morris and the Mortuary intentionally misrepresented their services by falsely promising to provide one casket on the contract and providing a different casket for Thomas-Smith's viewing and funeral service. Respondent's agent, Mr. Pitchford, is presumed to know the Mortuary's CPL and GPL when he met with Mr. Smith; such a "Cloth Raise Light Purple" casket was not on the Mortuary's CPL or GPL. Nevertheless, he recklessly and without any regard for the truth, promised via the agreement, to provide such a casket to induce Mr. Smith to sign the agreement.

(ii) Respondents Morris and the Mortuary also misrepresented the services that were agreed to by the family when the decedent was removed from that casket and cremated in an airtray without the family's knowledge or prior consent. The Smith family was led to believe that they had paid for a casket for the decedent's cremation.

(iii) Finally, the evidence established that Respondents Morris and the Mortuary overcharged Mr. Smith. This misrepresentation was intentional. At a minimum, Respondents Morris and the Mortuary, through their agent Mr. Pitchford, made representations recklessly and without any regard for what Mr. Smith owed. This led to Mr. Smith overpaying on the contract, in excess of \$300.

E. With respect to decedent Ramon Kahn:

(i) Respondents similarly delayed several months in paying for the St. Louis, Missouri, funeral services for decedent Ramon Kahn, even though they collected money from the decedent's father expressly for that purpose. The evidence was clear and convincing that the misconduct was negligent misrepresentation. Mr. Pitchford's representation by telephone to Mr. Harris that HFS would be paid upon delivery of the remains proved untrustworthy and false. The

evidence is sufficient to show that Mr. Pitchford made that representation without any reasonable basis for believing that payment would or could be made.⁴

(ii) The Mortuary overcharged decedent's father in several ways. The evidence established that the overcharges were the result of intentional misrepresentation. At a minimum, Respondents Morris and the Mortuary, through their agent Mr. Pitchford, made false representations recklessly and without any regard for the truth in charging Mrs. Kahn. This led to decedent's father, who actually paid for the services on Mrs. Kahn's behalf, overpaying on the contract, in excess of \$500.

Second Cause for Discipline, Gross Negligence (decedent Arlene Williams)

24. Cause exists to discipline the licenses of Mr. Morris and the Mortuary for gross negligence under Business and Professions Code sections 7686 and 7707, but only with respect to certain aspects of the Mortuary's care of the decedent Arlene Williams and her family.

25. Defined in Civil Jury Instruction 425 from the Judicial Council of California: Gross negligence is the lack of any care or an extreme departure from what a reasonably careful person would do in the same situation to prevent harm to oneself or to others.

A person can be grossly negligent by acting or by failing to act. Gross negligence is defined as "the want of even scant care or an extreme departure from the ordinary standard of conduct." (*Eastburn v. Regional Fire Protection Authority* (2003) 31 Cal.4th 1175, 1185-1186.)

26. As set forth in Legal Conclusion 18 above, as the owner of the Mortuary, Mr. Morris is responsible for any gross negligence in which the Mortuary engaged under the respondeat superior doctrine. As set out by the court in *Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164-165:

"If a licensee elects to operate his business through employees he must be responsible to the licensing authority for their conduct in the exercise of his license and he is responsible for the acts of his agents or employees done in the course of his business in the operation of the license." (*Arenstein v. California State Bd. of Pharmacy, supra*, [(1968)] 265 Cal. App. 2d 179, at p. 192.)

We view the duties of a licensee, including the ones breached here, to be nondelegable to either an independent contractor or to an employee (*Maloney v. Rath*, 69 Cal. 2d 442, 446)

⁴ Again, both Mr. Pitchford and Mr. Morris had access to the Mortuary's bank account; therefore, these representations by the Mortuary were not reasonable.

27. The evidence did not establish that there was gross negligence in failing to obtain the proper burial permit. As indicated above, it may be inferred that when the permit was requested there was confusion between two nearby Los Angeles area cities, in both of which a Forest Lawn cemetery was located. Such confusion was simple, not gross, negligence.

28. Mr. Mims opined that in performing services for the decedent, the Mortuary engaged in an extreme departure from what a reasonably careful person would do in the same situation. Gross negligence occurred because of the inordinately long time it took the Mortuary to pay the cemetery: over three months, from February 7, 2014, when the burial ceremony took place, until payment on June 4, 2014. As the daughter of the decedent testified, the uncertainty from such inordinate delay caused her anguish and made her family suffer through stress in addition to the stress of losing a close family member.

29. It was likewise gross negligence that the Mortuary failed to communicate with the decedent's family. Mr. Williams attempted to clear up any uncertainty over his deceased wife's resting place by calling the Mortuary repeatedly, but in the end the Mortuary stopped returning his calls and his family was forced to complain to the Bureau before there was any resolution of the uncertainty. This was an extreme departure from what a reasonably careful person in the funeral industry would do in the same situation to prevent harm to a family and to customers of a mortuary.

Third Cause for Discipline, Unprofessional Conduct (decedent Arlene Williams)

30. Cause exists to discipline the licenses of Mr. Morris and the Mortuary for unprofessional conduct under Business and Professions Code sections 7686 and 7707. The gross negligence of the Mortuary, as set out above, which is worse than mere negligence, constitutes unprofessional conduct.

Fourth Cause for Discipline, Compliance Failures (decedent Arlene Williams)

31. Under Business and Professions Code section 7686 and Title 16, California Code of Regulations section 1204, subdivision (b), cause exists to discipline the license of Mr. Morris for failure to exercise direct supervision and control over the Mortuary, including its agents, to ensure compliance with the Bureau's laws and regulations. Respondent Morris did not adequately supervise the conduct of Kenneth B. Pitchford. The result was misrepresentations in the conduct of the Mortuary and gross negligence, as described above, which encompassed respondents' failure to comply with the law (e.g., Business and Professions Code sections 7692 and 7707) governing funeral establishments. Failure to exercise such supervision or control constitutes grounds for disciplinary action under Section 1204, subdivision (b).

Fifth Cause for Discipline, Gross Negligence (decedent Angel Manriquez)

32. Cause exists to discipline the licenses of Mr. Morris and the Mortuary for gross negligence under Business and Professions Code sections 7686 and 7707. (Similar cause with

respect to Ms. Belcher does not exist, as set out below.) As set forth in Legal Conclusions 18 and 26 above, as the owner of the Mortuary, Mr. Morris is responsible for any gross negligence in which the Mortuary engaged under the respondeat superior doctrine. There are two distinct factual grounds for concluding that respondents Morris and the Mortuary are responsible for gross negligence: (i) the months of delay before the Mortuary obtained a permit for the final disposition of the decedent's remains, and (ii) failure to keep the decedent's family informed.

33. Mr. Mims opined that in performing services for the decedent, the Mortuary engaged in an extreme departure from what a reasonably careful person would do in the same situation. Personnel of the Mortuary spent over three months checking with the hospital where the decedent died and in those months never succeeded in obtaining the death certificate that would permit cremation until Mr. Morris was informed at the end of this period. Mr. Morris was able to resolve the problem quickly. Mr. Morris committed gross negligence because he was unaware of the problem for a months-long period. Personnel of the Mortuary committed gross negligence when they did not seek help from Ms. Belcher by, e.g., supplying her access to the California Electronic Death Registration System, or asking her to make further inquiries of the decedent's father, with whom she remained in contact for some weeks after the contract for disposition by cremation was signed. It was gross negligence that the Mortuary failed to effect a permitted cremation for months.

34. The Mortuary committed gross negligence when it stopped returning Mr. Manriquez's telephone calls inquiring about his son's remains. Mr. Manriquez was harmed because he was uncertain of what happened. At least some of that uncertainty and harm the Mortuary could have avoided by talking to Mr. Manriquez, and letting him know that his decedent was not forgotten or worse.

Causes for Discipline based on Unprofessional Conduct (decedent Angel Manriquez and others)

35. Unprofessional conduct is that conduct which breaches the rules or ethical code of a profession, or conduct which is unbecoming a member in good standing of a profession. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575. Cause exists to discipline the licenses of Mr. Morris and the Mortuary for unprofessional conduct under Business and Professions Code sections 7686 and 7707 for all instances of their gross negligence.

A. Respondent Morris's and the Mortuary's gross negligence in dealing with decedent Angel Manriquez and his family, constitutes unprofessional conduct, as alleged in the sixth cause for discipline. They committed gross negligence when the Mortuary failed to timely obtain and file a death certificate with the county health department as required by Health and Safety Code section 102775. They also did not obtain a cremation permit for months and as a result did not provide the decedent's father with the remains for several months and did not communicate with Mr. Manriquez despite repeated calls.

B. Respondent Morris's and the Mortuary's gross negligence in dealing with decedent Mary Thomas-Smith and her family constitutes unprofessional conduct, as alleged in

the fourteenth cause for discipline. Failing to return the decedent's cremated remains to her husband for more than six months and failure to return the husband's phone calls were an extreme departure from the standard of care.

C. Respondent Morris's and the Mortuary's gross negligence in dealing with decedent Ramon Kahn and his family constitutes unprofessional conduct, as alleged in the eighteenth cause for discipline. They committed gross negligence and unprofessional conduct when the Mortuary delayed embalming the remains and left the decedent's body unrefrigerated, causing undue and obvious decomposition.

Seventh Cause for Discipline, Failure to Exercise Direct Supervision and Control (decedent Angel Manriquez)

36. Under Business and Professions Code sections 7686 and California Code of Regulations, title 16, section 1204, subdivision (b), cause exists to discipline the license of respondent Morris for failure to exercise direct supervision and control to ensure compliance with the Bureau's laws and regulations. Respondent Morris did not directly supervise the conduct of Kenneth B. Pitchford and Andre Pitchford with regard to this decedent to ensure compliance with the Bureau's laws and regulations. He allowed Mr. Pitchford to directly counsel families and make arrangements without any direct oversight and was not aware of the "numerous calls" made by the family regarding the baby's remains. By the time he became involved in directly addressing the issues, four months had passed. His lack of direct supervision and control over Mr. Pitchford and other agents of the Mortuary resulted in violations of the Bureau's laws for gross negligence and unprofessional conduct, as described above (Legal Conclusions 32-35). Failure of the funeral director to exercise such direct supervision and control to ensure compliance with the Bureau's laws or regulation is grounds for discipline under Section 1204, subdivision (b).

Other Causes for Discipline, Failure to Exercise Direct Supervision and Control (Several Decedents)

37. Cause exists to discipline the license of respondent Morris, under Business and Professions Code sections 7686 and California Code of Regulations, title 16, section 1204, subdivision (b), for failure to exercise direct supervision and control to ensure compliance with the Bureau's laws and regulations. These compliance failures were with respect to decedents, as alleged in:

- A. The ninth cause for discipline with respect to decedent Karen Swan;
- B. The eleventh cause for discipline with respect to decedent Betty France;
- C. The thirteenth cause for discipline with respect to a group of 12 decedents whose remains were cremated at Odd Fellows Cemetery, Sadie Ramsey and others; and,
- D. The sixteenth with respect to decedent Mary Thomas-Smith, and the nineteenth cause for discipline with respect to decedent Ramon Kahn.

The same considerations that lead to the conclusion that compliance failures were proven against the Mortuary as set forth in legal conclusion 23 apply to Mr. Morris. In each case respondent was responsible for directly supervising his agents and employees to ensure compliance with the Bureau's laws, but the record is devoid of any evidence that it actually occurred. It was established that Mr. Morris purposefully hired an employee that he knew had a history of discipline with the Bureau and despite representations to the contrary to the Bureau, allowed him to work independently and without direct supervision in arranging funerals with families. Morris was often unaware of the issues involving the complaints against his agents and often became involved only when the decedent's family member complained or threatened a complaint. (Factual Findings 11, 16, 18, 28, 32, 33, 43, 49, 76, 95, and 96.) This lack of direct supervision and control over his customers' funeral arrangements resulted in violations of the Bureau's laws, including gross negligence and misrepresentations in violation of Business and Professions Code sections 7692 and 7707.

Twentieth and Twenty-first Causes for Discipline for Refusal to Allow Inspection

38. Business and Professions Code section 7607 provides that "The bureau may inspect the premises in which the business of a funeral establishment, cemetery, or crematory is conducted, where embalming is practiced, or where human remains are stored."

39. Cause exists to discipline the licenses of Mr. Morris and the Mortuary for refusing to allow inspection of the Mortuary on January 20, 2016. The refusal was a violation of Business and Professions Code section 7607, as set out in the twentieth cause for discipline, as well as unprofessional conduct, as set out in the twenty-first cause for discipline. This is supported by Factual Findings 97-98.

Mitigation, Aggravation, and Rehabilitation

40. In order to determine the appropriate measure of discipline, it is necessary to weigh and balance Respondents' Morris and the Mortuary's violations of law as well as factors in mitigation, aggravation, and rehabilitation. In mitigation, Mr. Morris has no prior record of discipline. In mitigation of the misconduct of Mr. Morris and the Mortuary, Mr. Morris corrected improprieties in some instances. Within a day of being informed that the Mortuary had failed to obtain a permit for the cremation of Angel Manriquez, Mr. Morris caused a permit to be obtained and the remains were promptly cremated afterwards and provided to the decedent's father. Upon learning about the complaint to the Bureau by Mr. Thomas, with respect to his decedent, Mary Thomas-Smith, Mr. Morris apologized and immediately obtained four death certificates and made sure, by delivering them himself, that they were in Mr. Thomas's hands the next day.

41. It is a mitigating factor that Mr. Morris sought to provide low cost services to families of moderate income, and as a benefit to the community.

42. In aggravation of the misconduct, the facts indicate that Mr. Morris was aware

that he should have supervised Kenneth B. Pitchford carefully. Instead he left families to deal with Mr. Pitchford alone. Mr. Morris's correction of Ms. Belcher's mistake in neglecting to sign a document in the Mortuary's file regarding decedent Angel Manriquez, indicates that he regularly reviewed files of various decedents. He should have used the review process to prevent or correct the egregious and repeated misconduct in which Mr. Pitchford engaged, as set out above. Mr. Morris did not do so until the family of a decedent was forced to complain to the Bureau.

43. Instead of adopting business practices that might prevent Mr. Pitchford's misdeeds, Mr. Morris hired counsel to block the lawful efforts of Mr. Mims to investigate the Mortuary. In effect, he attempted to cover up the Mortuary's misconduct.

44. The Bureau's criteria for evaluating rehabilitation are set forth in title 16, California Code of Regulations, section 1253.5. Section 1253.5 includes the following relevant criteria: (1) the nature and severity of the acts or offenses; (2) the time that has elapsed since commission of the acts or offenses; and (3) evidence, if any, of rehabilitation submitted by the licensee. Application of the criteria shows that Respondents Mr. Morris and the Mortuary are not rehabilitated. The twenty-one causes for discipline that have been upheld are serious, involving gross negligence, unprofessional conduct, misrepresentation, and failure to directly supervise and control agents and employees to ensure compliance with the Bureau's laws and regulations with respect to multiple decedents and their families. Respondents also failed to allow Bureau inspection as permitted by law. Relatively little time has passed since the acts occurred. Protection of the public is the Bureau's highest priority. The Bureau fulfills its public mandate by, among other things, imposing discipline. It is very important that the Bureau's licensees are aware of and abide by the minimum standards of funeral establishment practice and applicable Bureau laws and regulations. These standards and laws exist to ensure that funeral establishments meet minimum standards for conducting a funeral business and deal honestly and fairly with consumers. The twenty-one causes for discipline proven demonstrate that Respondent Morris is either unable to comply with or refuses to abide by those standards and laws. Mr. Morris expressed little that might be taken as remorse or rehabilitation. There was no indication at hearing that he would change practices at the Mortuary in any significant way.

45. The Bureau maintains a "Manual of Disciplinary Guidelines for Funeral Establishments, Funeral Directors, Embalmers and Apprentice Embalmers," which is incorporated by reference at Title 16, California Code of Regulations section 1253.6. The minimum recommended penalty for violation of Business and Professions Code section 7692(misrepresentation) is revocation, stayed, and three years' probation; the maximum recommended penalty is revocation. The minimum recommended penalty for violation of Business and Professions Code section 7707 (gross negligence) is revocation, stayed, 30 days suspension, and five years' probation; the maximum recommended penalty is revocation. Based upon the foregoing Factual Findings and Legal Conclusions, it is not in the public interest for Respondents Mr. Morris and the Mortuary to retain their licenses. Final Legacy presents an ongoing danger to the public.

46. Business and Professions Code section 7685.5 provides:

(a) The bureau shall make available to funeral establishments and cemetery authorities a copy of a consumer guide for funeral and cemetery purchases for purposes of reproduction and distribution. The funeral and cemetery guide that is approved by the bureau, in consultation with the funeral and cemetery industries and any other interested parties, shall be made available in printed form and electronically through the Internet.

(b) A licensee shall prominently display and make available to any individual who, in person, inquires about funeral or cemetery purchases, a copy of the consumer guide for funeral and cemetery purchases, reproduced as specified in subdivision (a).

(c) Prior to the drafting of a contract for services, the licensee shall provide, for retention, the consumer with a copy of the consumer guide for funeral and cemetery purchases described in subdivisions (a) and (b).

47. Cause does not exist to discipline the license of respondent Ana Belcher, or any respondent, by reason of her failing to provide Filimon Manriquez, the father of decedent Angel Manriquez, a copy of the Bureau's Consumer Guide, in violation of Business and Professions Code section 7685.5. While there was a technical violation of the statute, it was simple negligence, not gross negligence as alleged in the fifth cause for discipline. In addition, the statutory violation was *de minimis*, given that Ms. Belcher told Mr. Manriquez about the consumer guide before he signed the contract with the Mortuary and she sent him a copy of the consumer guide the following day.

48. Cause does not exist to discipline the license of respondent Ana Belcher, or any respondent, by reason of her failing to sign the Declaration for Disposition of Cremated Remains. The failure was a simple oversight. The oversight was corrected when Mr. Morris noticed that the form had not been signed and he signed on behalf of the Mortuary.

49. Cause does not exist to discipline the license of respondent Ana Belcher by reason of unprofessional conduct, as alleged in the sixth cause for discipline. She was responsible for two instances of negligence, the failure to provide the Consumer Guide before Mr. Manriquez signed the contract with the Mortuary, and the failure to sign the Declaration for Disposition of Cremated Remains. Both instances of negligence were minor. The harm to Mr. Manriquez was caused not by Ms. Belcher, but by other persons employed by the Mortuary. In the circumstances, the negligence of Ms. Belcher does not constitute unprofessional conduct and, even were it deemed unprofessional conduct, it was not so substantial as to merit discipline.

50. The two causes for discipline against Ms. Belcher allege not only her conduct, but that of Mr. Morris and the Mortuary too. The evidence did not establish that she should share

responsibility for their wrongdoing. It was not shown by clear and convincing evidence that it was within Ms. Belcher's power or ability to obtain a permit for cremation of the remains of decedent Angel Manriquez, as it was in the power of Kenneth B. Pitchford and the Mortuary. Among other things, they had access to EDRS, as Ms. Belcher did not. In addition, Ms. Belcher was not informed of the Mortuary's months of fruitless inquiries regarding the decedent's death certificate. It was not shown that she had access to facts or systems that would have allowed her to correct the Mortuary's misconduct.

Costs

51. Under Business and Professions Code section 125.3, a licensee found to have committed a violation of the licensing act may be directed to pay a sum not to exceed the Bureau's reasonable costs of investigation and enforcement.

52. Because no cause for discipline of Ms. Belcher's license was established, she is not liable for costs.

53. The total of reasonable costs to the Bureau is \$20,703.83. Little of this amount is attributable to investigation of Ms. Belcher's conduct. Given all the facts, it is reasonable to attribute no more than five percent of costs to the Bureau's efforts regarding Ms. Belcher.

54. Because Mr. Morris managed the Mortuary and the misconduct is attributable to both, he and the Mortuary are appropriately liable jointly and severally to reimburse the Bureau 95 percent of the reasonable amount of costs, a total of \$19,668.63.

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ORDER

1. The Funeral Director license number FDR 2062 issued to respondent Larry Darnell Morris is revoked.

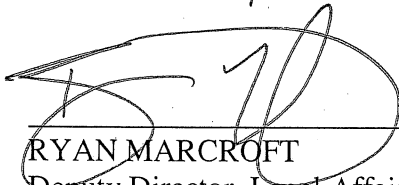
2. The Funeral Establishment license number FD 2173 issued to Final Legacy Family Funeral Parlor is revoked.

3. Respondents Larry Darnell Morris and Final Legacy Family Funeral Parlor shall be jointly and several liable to reimburse costs of the Cemetery and Funeral Bureau in the amount of \$19,668.63.

4. The second amended accusation as against respondent Ana Belcher is dismissed.

This Decision shall become effective on August 14, 2017

IT IS SO ORDERED this 14th day of July, 2017.



RYAN MARCROFT
Deputy Director, Legal Affairs
Department of Consumer Affairs