



BEFORE THE IOWA INSURANCE COMMISSIONER

IN THE MATTER OF)	Division Case No. 103385
)	
ANDREW W. JOYCE,)	SUMMARY CEASE AND
Preneed Sales Agent License No.)	DESIST ORDER
000456,)	
DOB 08/24/XXXX,)	
)	
JOYCE FUNERAL HOME, INC.)	
Preneed Seller License No. 000214,)	
)	
and)	
)	
JOYCE-ALESCH FUNERAL HOME)	
Preneed Seller License No. 000314,)	
)	
Respondents)	

On October 17, 2019, Compliance Attorney Johanna Nagel on behalf of the Iowa Insurance Division (“Division”) submitted a petition requesting the issuance of a summary cease and desist order.

NOW THEREFORE, the Commissioner of Insurance, Douglas M. Ommen, pursuant to the provisions of Iowa Code chapter 523A—Cemetery and Funeral Merchandise and in consideration of the petition for summary cease and desist filed in this matter, does hereby make and issue the following findings of facts, conclusions of law, and summary cease and desist order (“Order”):

I. PARTIES AND JURISDICTION

1. The Commissioner of Insurance, Douglas M. Ommen, directly and through his designees, administers and enforces Iowa Code chapter 523A—Cemetery and Funeral Merchandise and Funeral Services and Iowa Administrative Code chapter 191—100 pursuant to Iowa Code § 505.8 and 523A.801.

2. Andrew W. Joyce (“Joyce”) is an individual with a last-known mailing address of 10126 Church St., Truckee, CA 96161.
3. Joyce became licensed in the state of Iowa as a preneed sales agent on August 11, 1999.
4. Joyce did business as Joyce Funeral Home, Inc. (“JFH”) with a last-known business address of 2302 23rd St., Emmetsburg, Iowa 50536.
5. Joyce was owner, president, and director of JFH, a for-profit business, incorporated in Iowa. Joyce was the registered agent for JFH.
6. JFH became licensed as a preneed seller in the state of Iowa on October 18, 2000.
7. JFH was dissolved by the Iowa Secretary of State on August 2, 2004 for failing to deliver its 2004 Biennial Report, as required by Iowa Code § 490.1622.
8. Joyce-Alesch Funeral Home (“Joyce-Alesch”) has a last-known mailing address of 2302 23rd St., Emmetsburg, Iowa 50536.
9. There are no business records on file with the Iowa Secretary of State for Joyce-Alesch.
10. Joyce-Alesch became licensed as a preneed seller in the state of Iowa on September 17, 2012.
11. Pursuant to Iowa Code § 505.28, Respondents have consented to the jurisdiction of the Commissioner of Insurance by committing acts governed by Iowa Code chapter 523A.
12. From on or about November 9, 2001 to present, Respondents engaged in acts and practices within the state of Iowa constituting cause for a summary order to cease and desist from engaging in such acts or practices and any other corrective action the Commissioner deems necessary and appropriate pursuant to Iowa Code § 505.8(10) and Iowa Code chapter 523A and rules adopted pursuant to this chapter.

II. FINDINGS OF FACT

13. Joyce was licensed as a preneed sales agent in the state of Iowa from August 11, 1999 until April 15, 2019. Joyce has been licensed under preneed sales agent license number 000456 since December 3, 2007.

14. Joyce was previously licensed as a preneed sales agent in the state of Iowa under preneed sales permit numbers SP00-2843, SP05-3170, SP11-5117, and SP99-99637.

15. JFH was licensed as a preneed seller in the state of Iowa from October 18, 2000 until December 31, 2011 under preneed seller license number 000214.

16. JFH operated in the state of Iowa as an unlicensed preneed seller since at least as early as January 1, 2012.

17. Joyce-Alesch was licensed as a preneed seller in the state of Iowa from September 17, 2012 until April 15, 2019 under preneed seller license number 000314.

18. Joyce-Alesch is an equal partnership jointly owned by Joyce and Cody N. Alesch. Joyce is listed as the primary contact person and location manager for this entity.

19. Joyce owns, maintains, and utilizes personal and business checking accounts at Iowa Trust & Savings Bank and Bank Plus, collectively referred to as "Checking Accounts." The Checking Accounts are used by Joyce to pay for personal and business expenses such as payments for credit cards, cell phone, business property loan, property taxes, auto loans, personal insurance, and dining expenses.

Purchase Agreements

20. A purchase agreement is defined in Iowa Code § 523A.102(22) as "...an agreement to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof

when performance or delivery may be more than one hundred twenty days following the initial payment on the account.”

21. Respondents entered into agreements to sell and provide or deliver cemetery merchandise, funeral merchandise, funeral services, or a combination thereof when performance or delivery may have been more than one hundred twenty days after initial payment with at least eight Iowa consumers:

- a. Ms. JM;
- b. Ms. SM;
- c. Married couple, Mrs. JN and Mr. DN
- d. Mr. LC;
- e. Ms. VB;
- f. Ms. HB;
- g. Ms. DG; and
- h. Ms. PH.

22. These contracts are purchase agreements as defined by Iowa Code § 523A.102(22).

23. Respondents entered into agreements to provide future cemetery and funeral merchandise and/or services for Ms. SM and married couple, Mrs. JN and Mr. DN. Respondents did not specify the method of funding for these agreements. Respondents collected the preneed money but failed to submit the money received to an insurer for the issuance of an insurance policy or deposit the money into a trust account or certificate of deposit. Instead, the money was deposited into the Checking Accounts.

Purchase Agreements Funded by Insurance Policies

24. On at least one occasion, JFH entered into a purchase agreement and represented to the consumer, Ms. HB, that the purchase agreement would be funded by an insurance policy purchased from National Prearranged Services, Inc. (“NPS”).

25. In connection with this sale, Joyce signed an insurance application as agent, but he was not a licensed insurance producer at that time.

26. JFH and Joyce accepted Ms. HB’s insurance premium payment and instructed Ms. HB to make the check payable to JFH instead of having the premium paid directly to NPS.

27. Despite the representations made to Ms. HB regarding the funding of her purchase agreement, JFH and Joyce failed to submit either the preneed insurance application or the premium money received to NPS. Consequently, no insurance policy for Ms. HB was issued by NPS.

28. Neither Joyce, nor any individual on behalf of JFH, deposited any of the money received from Ms. HB into a trust account or a certificate of deposit. Instead, the money was deposited into the Checking Accounts.

Purchase Agreements Specifying Deposit into Trust Fund

29. Respondents entered into purchase agreements that specified that the money remitted by the consumers was to be deposited into a trust fund in the purchaser’s name at a financial institution for the following consumers:

- a. Ms. JM;
- b. Mr. LC;
- c. Ms. DG;
- d. Ms. PH; and

e. Ms. VB.

30. The agreements for three of the consumers identified above in paragraph 29 specified that the funds would be deposited in a trust at a financial institution through the Iowa Prepaid Funeral Trust (“IPFT”) program. IPFT (formerly known as Iowa Master Trust) is administered by Funeral Services of Iowa, a subsidiary of the Iowa Funeral Directors Association. Individuals must enter into a signed written agreement with Funeral Services of Iowa in order to deposit prepaid funeral funds into the trust. Respondents do not have, or have ever had, an oral or signed written agreement with Funeral Services of Iowa to participate in the IPFT program. Therefore, consumer funds could not be deposited as indicated by the purchase agreements and, in fact, were never submitted to the IPFT.

31. Instead of depositing the money into a trust fund, as specified, Joyce deposited the money into the Checking Accounts.

Purchase Agreement Disclosures

32. The purchase agreements failed to include, to the specified consumer listed, the following information:

- a. Ms. JM: no preneed sales agent license number and no valid preneed seller license number is listed. Additionally the agreement incorrectly identifies the seller as JFH, an entity dissolved by the Iowa Secretary of State and with no active preneed seller license;
- b. Ms. SM: no preneed sales agent name or license number and no valid preneed seller license number is listed. Additionally the agreement incorrectly identifies the seller as JFH, an entity dissolved by the Iowa Secretary of State and with no active preneed seller license;

- c. Mr. LC: no preneed sales agent license number and no valid preneed seller license number is listed. Additionally the agreement incorrectly identifies the seller as JFH, an entity dissolved by the Iowa Secretary of State and with no active preneed seller license;
 - d. Ms. VB: no preneed sales agent license number and no preneed seller license number is listed;
 - e. Ms. HB: no valid preneed sales agent license number and no valid preneed seller license number is listed;
 - f. Ms. DG: incorrectly identifies the seller as JFH, an entity dissolved by the Iowa Secretary of State and with no active preneed seller license; and
 - g. Ms. PH: no preneed sales agent name or license number is listed.
33. In at least four instances, Joyce failed to provide the consumer with a copy of the completed purchase agreement at the time of signature or at any time thereafter.

Bank Transactions

34. Joyce deposited money received for preneed merchandise and/or services into the Checking Accounts where the money became commingled with other funds.
35. Joyce regularly used these accounts, seemingly interchangeably, to pay for his personal and business expenditures.
36. These accounts often had negative balances and overdraft charges.
37. Consumers' money entrusted to Joyce for preneed merchandise and/or services was used to pay for expenses not included in, or anticipated by, their respective purchase agreements.

Unlicensed Activity

38. JFH did not have an active preneed seller's license when selling cemetery merchandise, funeral merchandise, funeral services, or a combination thereof for the following Iowa consumers:

- a. Ms. JM;
- b. Ms. SM;
- c. Mrs. JN and Mr. DN;
- d. Mr. LC; and
- e. Ms. DG.

39. JFH did not have an active preneed seller's license when Joyce instructed Ms. PH to make a check payable to JFH for preneed merchandise and/or services and accepted her payment.

40. Joyce did not have an active sales agent license when he spoke with Ms. DG about making changes to the purchase agreement regarding the location of her funds.

Annual Reports

41. As a preneed seller, JFH filed the annual preneed seller report with the Commissioner for year 2011. In such filing, JFH failed to include purchase agreement for Ms. VB.

42. Nor did Joyce disclose, in the annual preneed seller reports he filed on behalf of Joyce-Alesch for years 2012-2014, 2016, and 2017, the purchase agreements for Ms. JM, Ms. SM, Mrs. JN and Mr. DN, Mr. LC, Ms. HB, Ms. DG, and Ms. PH.

43. Joyce, on behalf of JFH and Joyce-Alesch, completed and submitted every annual preneed seller report that was filed with the Division.

44. Neither Joyce, nor anyone else on behalf of Joyce-Alesch, filed an annual preneed seller report for 2018.

45. Nor did Joyce, or any other sales agent working on behalf of JFH or Joyce-Alesch, disclose the purchase agreements sold to Ms. JM, Ms. SM, Mrs. JN and Mr. DN, Mr. LC, Ms. VB, Ms. DG, and Ms. PH in the annual sales agent reports for years 2011-2014, 2016, and 2017.

46. Joyce did not file an annual sales agent report with the Commissioner for his 2018 preneed sales activity.

Current Business Status

47. On May 31, 2019, the Division received an inquiry from Ms. JM regarding the funding of a preneed burial agreement transfer.

48. Upon confirmation with the relevant financial institution that the preneed trust funds had not been trusted, the Division opened an investigation.

49. A subpoena, requesting preneed files From January 2010 until June 2019, was provided to Joyce on June 20, 2019.

50. In response to the subpoena, Joyce provided limited files by FedEx to the Division.

51. Joyce also provided an empty file for Ms. JM.

52. Joyce failed to any provide files or documentation for Ms. SM, Mrs. JN and Mr. DN, Mr. LC, Ms. VB, Ms. HB, Ms. DG, and Ms. PH.

53. On June 21, 2019, Division staff conducted an on-site inspection of JFH. Division staff could not locate an individual or any staff at JFH and observed that the business garage was empty, with no funeral vehicles present.

54. A search by Division investigators of JFH uncovered empty filing cabinets and boxes of preneed files stacked haphazardly in a utility closet. The files were in disarray and often missing the required documentation.

55. Division staff communicated with Joyce telephonically regarding the status of the business. Joyce advised that he was living and conducting business in California and that he no longer owned any of the business's funeral vehicles.

56. Subsequent to this conversation, Division staff contacted the California Department of Consumer Affairs, Cemetery and Funeral Bureau who advised that Joyce was currently associated with Truckee-Tahoe Mortuary in Truckee, California as a funeral director.

57. Respondents did not notify the Commissioner before selling all funeral vehicles, relocating to California, and ceasing the preneed business operations.

58. Respondents have not repaid all trust funds, including interest or income, to the consumers who provided Joyce payment for preneed merchandise and/or services.

59. Joyce still owns, maintains, and utilizes all of the personal and business Checking Accounts, except for the Joyce-Alesch account. These remaining accounts have fluctuating balances.

60. The business checking account for Joyce-Alesch was closed on July 17, 2019 for lack of funds.

61. The Iowa Attorney General's Office filed a petition on September 16, 2019 to establish a receivership of JFH and Joyce-Alesch trust assets. If approved by Polk County District Court, the request for receivership would appoint the Iowa Insurance Division as receiver.

III. CONCLUSIONS OF LAW

COUNT ONE

Failure to Establish a Trust Fund or Fund a Purchase Agreement

62. Iowa Code § 523A.201 provides that preneed sellers offering preneed purchase agreements must establish trust funds at a financial institution unless proceeding under sections 523A.401, 523A.402, or 523A.403. The trust fund must be established prior to advertising, selling, promoting, or offering cemetery merchandise, funeral merchandise, funeral services, or a combination thereof. Pursuant to Iowa Code § 523A.202(1), funds must be deposited with a financial institution within fifteen (15) days of receiving the funds. Furthermore, under Iowa Code § 523A.201(2), if the services may be performed more than one hundred twenty days following the initial payment, then the payments shall be placed and remain in trust until the beneficiary dies.

63. As an alternative to establishing a trust fund, Iowa Code §§ 523A.401, 523A.402, 523A.403, and 523A.405 provide that preneed purchase agreements may be funded with insurance proceeds, annuity proceeds, a certificate of deposit, or may be secured by a surety bond filed with the Commissioner.

64. With regard to the eight consumers discussed herein, Respondents failed to *ever* deposit the amounts paid by consumers for future funeral merchandise, funeral services, or a combination thereof into individual trust accounts or a master trust fund. Respondents further failed to fund the purchase agreements with an insurance policy, annuity, or certificate of deposit.

65. Joyce knew or should have known of the trusting requirements because he was a licensed preneed sales agent, was the primary contact for preneed sellers JFH and Joyce-Alesch, and

Respondents had established individual burial trust accounts at both financial institutions for some of its other clients.

66. Additionally, Respondents never filed a surety bond with the Commissioner in connection with any of the eight sales or satisfied any of the trusting alternatives specified in Iowa Code §§ 523A.401, 523A.402, or 523A.403.

67. Under Iowa Administrative Code rule 191—100.41(4)(d), a person with a restricted or expired license is subject to disciplinary action, injunctive action, criminal sanctions, and any other legal remedies available for violations of Iowa Code chapter 523A or any rules adopted pursuant to this chapter.

68. Under Iowa Code § 523A.805, the Commissioner may issue a summary cease and desist order or take other necessary affirmative action when the Commissioner determines that a person has engaged, is engaging, or is about to engage in any act or practice that is a violation of Iowa Code chapter 523A.

69. Respondents' acts and practices have been in violation of Iowa Code §§ 523A.201, 523A.202, or 523A.405, subjecting Respondents to an order requiring Respondents to cease and desist from engaging in such acts or practices and any other corrective action the Commissioner deems necessary and appropriate pursuant to Iowa Code §§ 505.8, 523A.805 and 523A.807, and Iowa Administrative Code rule 191—100.41.

COUNT TWO
Failure to Pay Premiums within Thirty Days
After Execution of Purchase Agreements

70. Under Iowa Code § 523A.401(4), if a new insurance policy is purchased to fund the purchase agreement, “the premiums of any new insurance policy shall be paid within thirty days after execution of the purchase agreement or, with respect to a purchase agreement that provides

for periodic payments, the premiums shall be paid directly by the purchaser to the insurance company issuing the policy.”

71. Respondents failed to pay the premium collected from Ms. HB to NPS within thirty days of the execution of the purchase agreement. In fact, Respondents never submitted Ms. HB’s premium money to NPS.

72. Under Iowa Administrative Code rule 191—100.41(4)(d), a person with a restricted or expired license is subject to disciplinary action, injunctive action, criminal sanctions, and any other legal remedies available for violations of Iowa Code chapter 523A or any rules adopted pursuant to this chapter.

73. Under Iowa Code § 523A.805, the Commissioner may issue a summary cease and desist order or take other necessary affirmative action when the Commissioner determines that a person has engaged, is engaging, or is about to engage in any act or practice that is a violation of Iowa Code chapter 523A.

74. Respondents’ acts and practices have been in violation of Iowa Code § 523A.401, subjecting Respondents to an order requiring Respondents to cease and desist from engaging in such acts or practices and any other corrective action the Commissioner deems necessary and appropriate pursuant to Iowa Code §§ 505.8, 523A.805 and 523A.807, and Iowa Administrative Code rule 191—100.41.

COUNT THREE
Unlicensed Preneed Seller

75. Iowa Code § 523A.102(26) provides, in part:

“Seller” or “preneed seller” means a person doing business within this state, including a person doing business within this state who sells insurance, who advertises, sells, promotes, or offers to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination

thereof when performance or delivery may be more than one hundred twenty days following the initial payment on the account.

76. Under Iowa Code § 523A.501(1), a person is prohibited from advertising, selling, promoting, or offering to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof when performance or delivery may be more than one hundred twenty days following the initial payment on the account without a preneed seller's license. (See also Iowa Administrative Code rule 191—100.11).

77. Joyce has never been licensed as a preneed seller and JFH has not been licensed as a preneed seller since December 31, 2011.

78. Joyce and JFH acted as preneed sellers by entering into purchase agreements with at least 5 consumers for future cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, during a period of time in which they were not properly licensed.

79. Joyce and JFH acted as preneed sellers by accepting advance payment from at least 5 consumers for future cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, during a period of time in which they were not properly licensed.

80. Under Iowa Administrative Code rule 191—100.41(4)(d), a person with a restricted or expired license is subject to disciplinary action, injunctive action, criminal sanctions, and any other legal remedies available for violations of Iowa Code chapter 523A or any rules adopted pursuant to this chapter.

81. Under Iowa Code § 523A.805, the Commissioner may issue a summary cease and desist order or take other necessary affirmative action when the Commissioner determines that a person has engaged, is engaging, or is about to engage in any act or practice that is a violation of Iowa Code chapter 523A.

82. Respondents' acts and practices have been in violation of Iowa Code § 523A.501, subjecting Respondents to an order requiring Respondents to cease and desist from engaging in such acts or practices and any other corrective action the Commissioner deems necessary and appropriate pursuant to Iowa Code §§ 505.8, 523A.805 and 523A.807, and Iowa Administrative Code rule 191—100.41.

COUNT FOUR
Unlicensed Sales Agent

83. Iowa Code § 523A.502(1) requires a person to have a sales license and be a sales agent of a licensed preneed seller to advertise, sell, promote, or offer to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof when performance or delivery may be more than one hundred twenty days following initial payment. (See also Iowa Administrative Code rule 191—100.11).

84. Joyce has not been a licensed sales agent since April 15, 2019. On at least one occasion, Joyce had discussions with a consumer regarding the funding of preneed arrangements after the expiration of his sales agent license. Additionally, there was no licensed preneed seller at JFH or Joyce-Alesch under whom a sales agent could operate during this time period.

85. Under Iowa Administrative Code rule 191—100.41(4)(d), a person with a restricted or expired license is subject to disciplinary action, injunctive action, criminal sanctions, and any other legal remedies available for violations of Iowa Code chapter 523A or any rules adopted pursuant to this chapter.

86. Under Iowa Code § 523A.805, the Commissioner may issue a summary cease and desist order or take other necessary affirmative action when the Commissioner determines that a person has engaged, is engaging, or is about to engage in any act or practice that is a violation of Iowa Code chapter 523A.

87. Respondents' acts and practices have been in violation of Iowa Code § 523A.502, subjecting Respondents to an order requiring Respondents to cease and desist from engaging in such acts or practices and any other corrective action the Commissioner deems necessary and appropriate pursuant to Iowa Code §§ 505.8, 523A.805 and 523A.807, and Iowa Administrative Code rule 191—100.41.

COUNT FIVE
Fraudulent, Unethical, Harmful, or Detrimental Practices

88. Under Iowa Code § 523A.703(3), a person commits a fraudulent practice if they in connection with the sale of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, directly or indirectly makes an untrue statement of material fact or omits to state a material fact that is necessary to make the statements made, in light of the circumstances under which they were made, not misleading.
89. Under Iowa Code § 523A.704, a person is guilty of a class “D” felony for fraudulent practice if the person willfully violates section 523A.501(1) or section 523A.502(1).
90. Under Iowa Administrative Code rule 191—100.31(2), a preneed seller or sales agent is prohibited from engaging in any act or practice which may be harmful or detrimental to the public, regardless of whether actual harm occurs, while engaging in activities regulated by Iowa Code chapter 523A.
91. Consumers were led to believe that JFH was still a legally operating business entity, authorized to advertise, sell, promote, or offer to furnish cemetery merchandise, funeral merchandise, and/or funeral services when, in fact, JFH was dissolved by the Secretary of State in 2004 and ceased having an active preneed seller license in 2011.
92. Joyce instructed consumers to write checks payable to JFH even after the entity was dissolved and no longer had an active preneed seller license.

93. Respondents' false statements to consumers Mr. LC, Ms. DG, and Ms. PH, led these consumers to believe that their funds would be deposited in a trust at a financial institution through the IPFT program even though they never had the necessary agreement in place in order to deposit funds through IPFT.

94. Respondents' acts and practices constitute untrue statements or omissions of material fact causing misapprehension.

95. Respondents improperly withheld, misappropriated, or converted funds by depositing money received from consumers in connection with the purchase agreements into the Checking Accounts instead of funding those purchase agreements in a manner allowed by Iowa law. These acts were harmful and detrimental to consumers because without adhering to the regulatory safeguards, money might not have been available at time of need to cover funeral expenses, the seller could have invaded the trust principal, and consumers may not have received or been credited the proper amount of interest or other income earned on amounts that should have been deposited in trust.

96. These harmful and detrimental scenarios, did in fact, occur. The Checking Accounts often maintained a negative balance and one account has been closed due to lack of funds. The trust principal was invaded by Respondents and the prepaid money entrusted by consumers to Respondents for their future funeral related expenses was spent by Respondents on personal and business operating expenses such as payments for credit cards, cell phone, business property loan, property taxes, auto loans, personal insurance, and dining expenses. Consumers did not receive nor were they credited with the proper amount of interest or other income earned on amounts that should have been deposited in trust.

97. Joyce and JFH willfully violated Iowa Code §§ 523A.501(1) and 523A.502(1) by doing business as a preneed seller and sales agent without being properly licensed.

98. Under Iowa Administrative Code rule 191—100.41(4)(d), a person with a restricted or expired license is subject to disciplinary action, injunctive action, criminal sanctions, and any other legal remedies available for violations of Iowa Code chapter 523A or any rules adopted pursuant to this chapter.

99. Under Iowa Code § 523A.805, the Commissioner may issue a summary cease and desist order or take other necessary affirmative action when the Commissioner determines that a person has engaged, is engaging, or is about to engage in any act or practice that is a violation of Iowa Code chapter 523A.

100. Respondents' acts and practices have been in violation of Iowa Code §§ 523A.703, 523A.704, and Iowa Administrative Code rule 191—100.31 subjecting Respondents to an order requiring Respondents to cease and desist from engaging in such acts or practices and any other corrective action the Commissioner deems necessary and appropriate pursuant to Iowa Code §§ 505.8, 523A.805 and 523A.807, and Iowa Administrative Code rule 191—100.41 as well as any other remedy or penalty provided by Iowa Code §§ 714.16 and 523A.704.

COUNT SIX
Commingling of Trust Funds

101. Commingling of trust funds with other funds of the seller is prohibited under Iowa Code § 523A.201(7).

102. Payments received from the eight consumers for prepaid cemetery merchandise, funeral merchandise, funeral services, or a combination thereof were commingled with other funds in Respondents' Checking Accounts.

103. Under Iowa Administrative Code rule 191—100.41(4)(d), a person with a restricted or expired license is subject to disciplinary action, injunctive action, criminal sanctions, and any other legal remedies available for violations of Iowa Code chapter 523A or any rules adopted pursuant to this chapter.

104. Under Iowa Code § 523A.805, the Commissioner may issue a summary cease and desist order or take other necessary affirmative action when the Commissioner determines that a person has engaged, is engaging, or is about to engage in any act or practice that is a violation of Iowa Code chapter 523A.

105. Respondents' acts and practices have been in violation of Iowa Code § 523A.201(7), subjecting Respondents to an order requiring Respondents to cease and desist from engaging in such acts or practices and any other corrective action the Commissioner deems necessary and appropriate pursuant to Iowa Code §§ 505.8, 523A.805 and 523A.807, and Iowa Administrative Code rule 191—100.41.

COUNT SEVEN
Failure to Report Purchase Agreements

106. Under Iowa Code § 523A.204(1), preneed sellers must file an annual report with the Commissioner on a form prescribed by the Commissioner.

107. Under Iowa Administrative Code rule 191—100.15(1)(a), preneed sellers must file complete and accurate annual reports according to the form and manner prescribed by the Commissioner and available through the Division's website.

108. The form prescribed by the Commissioner requires the preneed seller to report all new, cancelled, serviced, and existing purchase agreements for the year along with the license number of the sales agent that sold the purchase agreement. The report must also identify the bank routing number or NAIC company code of the trust.

109. Under Iowa Code § 523A.502A(1), sales agents must file an annual report with the Commissioner on a form prescribed by the Commissioner listing each purchase agreement sold by the sales agent during the year.

110. Iowa Code § 523A.701 prohibits a person from making any statement of material fact which is false or misleading or from omitting to state a material fact necessary in order to make the statement not misleading in any document filed with the Commissioner.

111. Joyce completed and filed the preneed seller reports on behalf of JFH and Joyce-Alesch.

112. Joyce, on behalf of JFH, failed to include the purchase agreement for Ms. VB in the 2011 annual report. Therefore, the annual report filed with the Division is misleading.

113. Nor did Joyce disclose, in the annual reports he filed on behalf of Joyce-Alesch for years 2012-2014, 2016, and 2017, the purchase agreements for Ms. JM, Ms. SM, Mrs. JN and Mr. DN, Mr. LC, Ms. DG, and Ms. PH. Therefore, those annual reports filed with the Division are misleading.

114. Neither Joyce, nor anyone else on behalf of Joyce-Alesch, filed an annual preneed seller report for 2018.

115. Neither Joyce, nor any other sales agent working on behalf of JFH or Joyce-Alesch, disclosed the purchase agreements sold to any of the eight consumers during the relevant year's annual sales agent report.

116. Joyce did not file an annual sales agent report with the Commissioner for his 2018 preneed sales activity.

117. Under Iowa Administrative Code rule 191—100.41(4)(d), a person with a restricted or expired license is subject to disciplinary action, injunctive action, criminal sanctions, and any

other legal remedies available for violations of Iowa Code chapter 523A or any rules adopted pursuant to this chapter.

118. Under Iowa Code § 523A.805, the Commissioner may issue a summary cease and desist order or take other necessary affirmative action when the Commissioner determines that a person has engaged, is engaging, or is about to engage in any act or practice that is a violation of Iowa Code chapter 523A.

119. Respondents' acts and practices have been in violation of Iowa Code §§ 523A.204(1), 523A.701, and Iowa Administrative Code rule 191—100.15(1)(a), subjecting Respondents to an order requiring Respondents to cease and desist from engaging in such acts or practices and any other corrective action the Commissioner deems necessary and appropriate pursuant to Iowa Code §§ 505.8, 523A.805 and 523A.807, and Iowa Administrative Code rule 191—100.41.

COUNT EIGHT
Insufficient Disclosures and Failure to Furnish the Agreement

120. Under Iowa Code § 523A.601(1)(a), purchase agreements must identify the preneed seller by name and license number and the sales agent by name and license number.

121. Under Iowa Code § 523A.602, preneed sellers must provide purchasers with a completed copy of the purchase agreement at the time the agreement is signed.

122. Respondents failed to identify a valid preneed seller license number in the purchase agreements for Ms. JM, Ms. SM, Mr. LC, Ms. VB, Ms. HB and Ms. PH.

123. Respondents identified JFH as the preneed seller even though JFH had been dissolved by the Iowa Secretary of State and no longer had an active preneed seller license in the purchase agreements for Ms. JM, Ms. SM, Mr. LC, and Ms. DG.

124. Respondents failed to identify a valid preneed sales agent license number in the purchase agreements for Ms. JM, Ms. SM, Mr. LC, Ms. VB, Ms. HB and Ms. PH.

125. Respondents failed to identify the name of the preneed sales agent in the purchase agreements for Ms. SM, Mr. LC, Ms. VB, Ms. HB, and Ms. PH.

126. Respondents failed to provide the purchaser with a copy of the completed purchase agreement at the time of signature, or at any time thereafter, in at least four instances.

127. Under Iowa Administrative Code rule 191—100.41(4)(d), a person with a restricted or expired license is subject to disciplinary action, injunctive action, criminal sanctions, and any other legal remedies available for violations of Iowa Code chapter 523A or any rules adopted pursuant to this chapter.

128. Under Iowa Code § 523A.805, the Commissioner may issue a summary cease and desist order or take other necessary affirmative action when the Commissioner determines that a person has engaged, is engaging, or is about to engage in any act or practice that is a violation of Iowa Code chapter 523A.

129. Respondents' acts and practices have been in violation of Iowa Code §§ 523A.601(1)(a) and 523A.602, subjecting Respondents to an order requiring Respondents to cease and desist from engaging in such acts or practices and any other corrective action the Commissioner deems necessary and appropriate pursuant to Iowa Code §§ 505.8, 523A.805 and 523A.807, and Iowa Administrative Code rule 191—100.41.

COUNT NINE
Records Maintenance

130. Pursuant to Iowa Administrative Code rule 191—100.33(1)(a), preneed sellers must maintain records from the date of the preneed seller's last examination by the Commissioner or for at least five years after the date of the death of the beneficiary, whichever is sooner.

131. A subpoena, requesting preneed files From January 2010 until June 2019, was provided to Joyce on June 20, 2019.

132. Joyce failed to comply with the Division's subpoena when he provided limited files by FedEx to the Division.

133. Joyce provided an empty file for Ms. JM.

134. Joyce failed to provide any files or documentation for Ms. SM, Mrs. JN and Mr. DN, Mr. LC, Ms. VB, Ms. HB, Ms. DG, and Ms. PH.

135. A search by Division investigators of the JFH building in Emmetsburg uncovered empty filing cabinets and boxes of preneed files stacked haphazardly in a utility closet. The files were in disarray and often missing the required documentation.

136. Under Iowa Administrative Code rule 191—100.41(4)(d), a person with a restricted or expired license is subject to disciplinary action, injunctive action, criminal sanctions, and any other legal remedies available for violations of Iowa Code chapter 523A or any rules adopted pursuant to this chapter.

137. Under Iowa Code § 523A.805, the Commissioner may issue a summary cease and desist order or take other necessary affirmative action when the Commissioner determines that a person has engaged, is engaging, or is about to engage in any act or practice that is a violation of Iowa Code chapter 523A.

138. Respondents' acts and practices have been in violation of Iowa Administrative Code rule 191—100.33(1)(a), subjecting Respondents to an order requiring Respondents to cease and desist from engaging in such acts or practices and any other corrective action the Commissioner deems necessary and appropriate pursuant to Iowa Code §§ 505.8, 523A.805 and 523A.807, and Iowa Administrative Code rule 191—100.41.

COUNT TEN
Cessation of Business Obligations

139. Under Iowa Code § 523A.201(10), sellers must notify the Commissioner at least thirty days before ceasing business operations.

140. Iowa Code § 523A.201(10) provides that a seller who voluntarily or involuntarily ceases doing business and whose obligations to provide merchandise or services have not be assumed by another licensed preneed seller, must repay all trust funds, including any accrued interest or income, to the purchaser within thirty days of ceasing business.

141. Respondents did not notify the Commissioner before selling all funeral vehicles, relocating to California, and ceasing business operations.

142. Respondents have not repaid all trust funds, including interest or income, to the purchasers.

143. Under Iowa Administrative Code rule 191—100.41(4)(d), a person with a restricted or expired license is subject to disciplinary action, injunctive action, criminal sanctions, and any other legal remedies available for violations of Iowa Code chapter 523A or any rules adopted pursuant to this chapter.

144. Under Iowa Code § 523A.805, the Commissioner may issue a summary cease and desist order or take other necessary affirmative action when the Commissioner determines that a person has engaged, is engaging, or is about to engage in any act or practice that is a violation of Iowa Code chapter 523A.

145. Respondents' acts and practices have been in violation of Iowa Code § 523A.201(10), subjecting Respondents to an order requiring Respondents to cease and desist from engaging in such acts or practices and any other corrective action the Commissioner deems necessary and

appropriate pursuant to Iowa Code §§ 505.8, 523A.805 and 523A.807, and Iowa Administrative Code rule 191—100.41.

IV. POLICY REASONS

146. It is contrary to public interest to permit Respondents to engage in the business of cemetery and funeral merchandise and/or services without holding valid licenses to do so.

147. It is contrary to public interest to permit Respondents to engage in the business of cemetery and funeral merchandise and/or services in a manner that is deceptive to consumers.

148. Respondents have a history of engaging in acts and practices that are harmful to consumers. These acts include misrepresenting to consumers that policies have been issued, collecting premium payments, and depositing the funds into the Checking Accounts instead of forwarding the payments to the insurance company. Respondents misrepresented to consumers that preneed money would be deposited into a trust fund at a financial institution, instructed consumers to make checks payable to JFH, and deposited the funds into general bank accounts used for both personal and business expenses instead of depositing the funds into trust funds at a financial institution. Furthermore, Respondents have commingled trust funds with other funds in the Checking Accounts and have used trust funds to pay unrelated personal and business expenses.

149. It is contrary to public interest to allow Respondents to offer or sell preneed merchandise and/or services when Joyce has closed his preneed business in this state and moved to California without providing prior notice to the Commissioner and without returning funds to all purchasers within thirty days of ceasing business.

150. Respondents engaged, are engaging, or are about to engage in any or all of these harmful acts in this state.

151. Respondents' aforementioned actions are contrary to the public interest and safety and constitutes an immediate danger to the public.

152. It is in the public interest and safety, and in furtherance of the consumer protection laws of this state, for the Commissioner to issue a summary cease and desist order prohibiting Respondents from engaging in such practices in this state.

V. ORDER

WHEREFORE IT IS ORDERED pursuant to the powers granted to the Commissioner of Insurance by Iowa Code chapter 523A:

A. Respondents, pursuant to Iowa Code § 523A.805, shall immediately cease and desist advertising, selling, promoting, or offering to furnish cemetery merchandise, funeral merchandise, funeral services or a combination thereof when performance or delivery may be more than 120 days following initial payment;

B. Respondents shall immediately cease and desist engaging in any practices requiring licensure as a preneed seller or preneed sales agent in the state of Iowa; and

C. Respondents shall immediately cease and desist engaging in the practices alleged herein.

SO ORDERED on the 17TH day of October, 2019.



DOUGLAS M. OMMEN
Iowa Insurance Commissioner

Copy to:
Andrew Joyce
10126 Church St.
Truckee, CA 96161
RESPONDENT

John Sandy
304 18th St.
P.O. Box 445
Spirit Lake, IA 51360
jmsandy@sandylawpractice.com
ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause, or their attorney, at their respective addresses disclosed on the pleadings on October 18, 2019.

By: First Class Mail Personal Service
 Restricted certified mail, return receipt Email, by consent
 Certified mail, return receipt _____

Signature: Hilary Foster
Hilary Foster

NOTICE OF RIGHT TO REQUEST HEARING

YOU ARE NOTIFIED that you may request a contested case proceeding and a hearing on this matter within thirty (30) days from the date that the order is issued according to Iowa Code § 523A.805. This request must be in writing and sent to the attention of the Enforcement Bureau, Iowa Insurance Division, 601 Locust St., 4th Floor, Des Moines, IA 50309.

If requested, a notice of the hearing shall be prepared by the Division and shall be issued no later than thirty (30) days from the date of receipt of a timely request for a contested case proceeding and hearing. The resulting hearing will be held in accordance with Iowa Administrative Code Chapter 191—3.

NOTICE OF FINAL ORDER AND FAILURE TO REQUEST A HEARING

If you fail to request a hearing within thirty (30) days of the date of this Cease and Desist Order, the Order shall become final by operation of law and shall be enforceable by the Commissioner of Insurance in an administrative or court proceeding.

**NOTICE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES AND RIGHT TO SEEK
JUDICIAL REVIEW**

The failure to request a hearing may constitute a failure to exhaust your administrative remedies and limit the issues subject to judicial review. You may seek judicial review of this Order pursuant to Iowa Code Chapter 17A after the Order becomes final.

NOTICE OF PENALTIES FOR VIOLATION OF THIS ORDER

YOU ARE NOTIFIED that a person or insurer who violates this Order shall be deemed in contempt of this Order. The Commissioner may petition the district court to hold a hearing to enforce the order as certified by the Commissioner. The district court may assess a civil penalty against you and may issue further orders as it deems appropriate.

NOTICE OF IMPACT OF FINAL ORDER

A final Cease and Desist Order may adversely affect existing business or professional licenses and may result in license revocation or disciplinary action.

Further notice is given that the Iowa Insurance Division may review this Cease and Desist Order for a potential license revocation or disciplinary action.

A final order in an administrative action does not resolve any potential criminal or civil violations or causes of action that might arise from the same or similar conduct that is the subject of this order. It may result in criminal law enforcement authorities, including the fraud bureau of the Iowa Insurance Division, pursuing a criminal investigation or prosecution of potential criminal law violations.