

**ORDER NO. 2009-049**

**IN THE MATTER OF:**

**SAN PATRICIO MEMORIAL  
GARDENS, INC. DBA SAN PATRICIO  
MEMORIAL GARDENS  
(CERTIFICATE OF AUTHORITY  
NO. 153)**

**PORTLAND, TEXAS**

§ **BEFORE THE BANKING**  
§  
§  
§  
§ **COMMISSIONER OF TEXAS**  
§  
§  
§  
§ **AUSTIN, TRAVIS COUTY, TEXAS**

**ORDER TO CEASE AND DESIST FROM THE SALE OF MARKERS  
AND MONUMENTS AND FROM VIOLATING 7 TEXAS  
ADMINISTRATIVE CODE SECTION 26.4**

On this day, the matter of San Patricio Memorial Gardens, Inc. dba San Patricio Memorial Gardens (Respondent), located in Portland, Texas, was submitted to the Banking Commissioner (Commissioner) of the State of Texas, for consideration and action.

**I. Findings of Fact**

1. Respondent is a perpetual care cemetery (PCC) operating under permit number 153. It is located in Portland, Texas. Its president and manager is James L. Barber (Barber).
2. The Texas Department of Banking (Department) regulates PCCs under the authority of Texas *Health and Safety Code* Chapters 711 and 712.
3. The Texas Finance Commission has issued rules governing PCCs, which are located primarily in 7 Texas Administrative Code (TAC)Chapter 26.
4. 7 TAC § 26.4(b) requires Respondent to order markers within 21 days of having received (1) all sums due and (2) the customer's approval of the marker design and signed authorization.
5. 7 TAC § 26.12 requires Respondent to respond in writing to the consumer within 30 days of receiving a complaint, setting out what action Respondent plans to take in regard to the complaint.
6. Pursuant to *Texas Health and Safety Code* § 712.044, the Commissioner may examine PCCs annually or more often as he deems necessary to protect the interest of plot owners and efficiently administer and enforce *Texas Health and Safety Code* Chapter 712.
7. The Department scheduled a full scope examination of Respondent for September 15, 2009. Although duly notified, management was not present at the cemetery on September 15, 2009, but rather was in Arkansas. Therefore, the examiner was unable to review Respondent's records.
8. Since June 24, 2009, the Department has received fourteen written complaints from persons who purchased markers from Respondent that were not ordered and/or set in a timely manner. The

Department has forwarded these complaints to Respondent, but Respondent has failed, as of yet, to resolve any of these.

9. Pursuant to Texas *Health and Safety Code* § 712.0441(e), the Commissioner may issue an order to cease and desist if a “violation described in § 712.0441(a),” has not been corrected within 30 days after the receipt by the corporation of written notice from the Commissioner of the violation. Of the fourteen complaints the Department has received, the 30 day notice period has run as to four of them.
10. The four complaints referred to in the preceding paragraph were received from \_\_\_\_\_ on June 24, 2009, from \_\_\_\_\_ on June 30, 2009, from \_\_\_\_\_ on August 6, 2009, and from \_\_\_\_\_ on August 17, 2009. Respondent has had over thirty days written notice of the violations from the Department and has failed to correct the violations of either the rule regarding marker ordering (7 TAC § 26.4) or the rule requiring it to respond to complaints timely (7 TAC § 26.12)., Respondent has received over \$13,000.00 from these four customers and has held some of the funds for over three years without ordering and/or setting the markers as specified by the customers’ orders.
11. Barber has told Respondent’s customers and the Department’s examiner that Respondent is suffering severe cash flow problems and that he plans to sell the cemetery.

## **II. Conclusions**

Pursuant to Texas *Health and Safety Code* § 712.0441(e), the Commissioner may issue an order to cease and desist if a “violation described in § 712.0441(a),” has not been corrected within 30 days after the receipt by the corporation of written notice from the Commissioner of the violation.

A “violation described in § 712.0441(a)” may be either a violation of Texas *Health and Safety Code* Chapter 712, a violation of a final order of the Commissioner, or a violation of a rule of the Finance Commission of Texas. Texas *Health and Safety Code* § 712.0441(a)(1).

Respondent has violated the following rules of the Finance Commission of Texas: 7 TAC §§ 26.4(b) and 26.12(b).

The Department gave Respondent 30 days notice that it must correct the four marker violations and respond to the complaints filed against it.

Respondent has not corrected its marker violations or responded to the four complaints as demanded and more than 30 days have passed since it was given written notice of these violations.

The credible evidence of the above-described violations of 7 TAC §§ 26.4(b) and 26.12(b) is sufficient cause for issuance of a cease and desist order to Respondent under Texas *Health and Safety Code* § 712.0441(e).

### **III. Order**

In accordance with *Texas Health and Safety Code* § 712.0441(e), Respondent, San Patricio Memorial Gardens, Inc. is ORDERED to cease and desist from the sale of markers or monuments; and is further ORDERED to cease and desist from violating 7 TAC § 26.4; and is further ORDERED to cease from violating 7 TAC § 26.4(b); and is further ORDERED to order, within three days of the effective date of this Order, all markers that have not been ordered in accordance with 7 TAC § 26.4(b); and is further ORDERED to cease and desist from violating 7 TAC § 26.12(b); and is further ORDERED to write, within three days of the effective date of this Order, all complainants as required by that subsection and to send a copy of its response to the Department as required by that subsection.

### **IV. Effective Dates**

Pursuant to *Texas Health and Safety Code* § 712.0441(e), this Order to Cease and Desist will take effect on November 10, 2009, unless Respondent requests a hearing within 15 days of its receipt of this order pursuant to *Texas Health and Safety Code* § 712.0441(e).

### **V. Service**

This Order is served on San Patricio Memorial Gardens, Inc. by certified mail, return receipt requested and first class mail, sent on October 21, 2009 to:

Mr. James L. Barber  
President and Director  
P.O. Box 77  
Portland, Texas 78374

Signed on this 20th day of October 2009.

/s/ Stephanie Newberg  
Stephanie Newberg  
Deputy Banking Commissioner  
Texas Department of Banking