

## Final Order on Default

### State Mortuary and Cemetery Board

In the Matter of the Funeral Service Practitioner License of <b>JEROME G. COX-TANNER</b>  Respondent	<b>FINAL ORDER</b>  <b>CASE Nos. 10-1059B; 10-1063B; and 11-1012B</b>
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On April 15, 2011, the Oregon Mortuary & Cemetery Board (OMCB, Board) properly served a Notice of Proposed Disciplinary Action (License Revocation) in OMCB Case Nos. 10-1059B; 10-1063B; and 11-1012B to Jerome G. Cox-Tanner (Respondent) that proposed to revoke his Funeral Service Practitioner License No. FS-0382 for violating ORS 97.931, ORS 97.941, OAR 441-931-0310, ORS 692.180(1)(b), OAR 830-030-0090(1)(e), OAR 830-050-0000(2), OAR 830-050-0050(8), OAR 830-050-0050(6), OAR 830-030-0090(2)(d)(A), OAR 830-030-0090(2)(d)(B), OAR 830-050-0050(6) and ORS 692.180(1)(g). The Notice offered Respondent an opportunity for a hearing if requested within 21 days from the date the Notice was mailed. The Notice designated the Board's file on this matter as the record for purposes of default. The Notice was sent by certified mail to the address listed on Respondent's records with the Board. The Notice was returned unclaimed on June 7, 2011.

NOW THEREFORE, after considering the Board's file relating to this matter, the Board enters the following:

#### **FINDINGS OF FACT**

1. At all times mentioned herein, unless otherwise noted, Respondent Jerome G. Cox-Tanner was the sole proprietor of Cox & Cox Funeral Chapel, a funeral establishment in Portland (OMCB License No. FE-8582) and Respondent was the manager of the funeral establishment; and at all times mentioned herein, Jerome Cox-Tanner was a licensed funeral service practitioner (FSP) (OMCB License No. FS-0382).
2. At all relevant times mentioned herein, Schawna K. Tanner (Tanner) was the spouse of Respondent, and Tanner worked at and represented the funeral establishment. At all times mentioned herein, Tanner was not a licensed funeral service practitioner, funeral service practitioner apprentice, embalmer, embalmer apprentice or preneed salesperson.
3. Respondent has been disciplined by the Board in the following two Orders:
  - a. On May 20, 2007, the Board issued a Final Order by Default against Respondent Jerome Cox-Tanner in Case No. 06-1022B pursuant to ORS 692.180(1)(g). In the Order, the Board imposed a civil penalty of \$1500 against Respondent for the following violations:

- i. Respondent Jerome Cox-Tanner violated OAR 830-050-0050(8) on eight occasions when he allowed Tanner, an unlicensed individual, to perform the duties of a licensed funeral service practitioner in a funeral establishment under his direction and management when she arranged funeral services for eight decedents.
    - ii. Respondent Jerome Cox-Tanner engaged in unprofessional conduct in violation of OAR 830-050-0000(2) by directly or indirectly causing Tanner to be in violation of OAR 830-030-0090(1)(b), OAR 830-030-0090(2)(b)(B), OAR 830-030-0090(2)(c)(C), OAR 830-030-0004(1) and ORS 692.025(1) in a total of 215 instances while she was acting on behalf of a funeral establishment under his direction and management.
    - iii. Respondent Jerome Cox-Tanner violated OAR 830-030-0090(1)(e) by failing to assign persons to perform functions for which they are licensed and which are within their scope of practice/scope of duties when he, as an agent for Cox and Cox Funeral Chapel, did not assign a licensed funeral service practitioner to perform the duties Tanner performed in a total of 215 instances.
  - b. On September 21, 2010, a Settlement Agreement and Consent Order became effective in OMCB Case Nos. 07-1048A, B & C; 08-1073A, B & C; 08-1075A, B & C; 10-1023, and 10-1031. In the Order, the funeral establishment license of Cox & Cox Funeral Chapel, FE-8582, was revoked, and Respondent Jerome Cox-Tanner and Schawna Tanner were civilly penalized \$20,000 for actions that include the following:
    - i. Respondent violated ORS 97.931, ORS 97.941 and OAR 441-931-0310 when he failed to deposit money paid to the funeral establishment for prearranged funeral goods and services into a trust fund. The foregoing was cause for disciplinary action by the Board under ORS 692.180(1)(b), OAR 830-030-0090(1), 830-030-0090(1)(a), OAR 830-030-0100(6), or OAR 830-050-0050(8).
    - ii. Respondent Jerome Cox-Tanner violated OAR 830-050-0000(2) and (8) and OAR 830-030-0090(1)(e) when he allowed Tanner to engage in the unlicensed practice of making a pre-arrangement sale.
    - iii. Respondent Jerome Cox-Tanner violated OAR 830-030-0000(7) in 42 instances when he failed to pay death certificate filing fees.
4. In the foregoing 2010 Settlement Agreement and Consent Order, Respondent and Tanner agreed to at least the following settlement conditions:
- a. Respondent Jerome Cox-Tanner shall, within 21 days of the effective date of the Order, transfer all of Cox & Cox Funeral Chapel's permanent records, including at-need arrangement records and all prearrangement records, to a funeral establishment in Oregon that is licensed by the Board, is registered as a Certified Provider with the Oregon Department of Consumer & Business Services, and agrees to accept the records. Respondent Jerome Cox-Tanner is liable for costs to a consumer that may be associated with any prearrangement records of Cox & Cox Funeral Chapel that are not transferred to another funeral establishment.

- b. Respondent Jerome Cox-Tanner shall, within six months of the effective date of the Order, pay all outstanding death certificate filing fees to Oregon Department of Human Services, Vital Records (“DHS”).
  - c. Respondent Jerome Cox-Tanner shall comply with all laws and rules applicable to the death care industry. If Respondent violates any provision of the Order, or any provision of ORS Chapter 692 or OAR Chapter 830, the Board may revoke his license and impose any additional discipline the Board finds appropriate.
5. After the 2010 Order was effective, the Board determined the following:
  - a. On or about December 11, 2006, a consumer, J.V. met with and paid Tanner \$9373.00 for final disposition prearrangements that included funeral goods and services for burial at Willamette National Cemetery. Respondent did not place the monies into a master trustee account within the required 5 days, or otherwise.
  - b. On or about April, 21, 2008, a consumer, P.K. made funeral and cemetery prearrangements for burial with Tanner and gave Tanner personal check No. 1300, in the amount of \$4,500.00. On or about April 25, 2008, P.K. gave Tanner a cashier’s check in the amount of \$5,221.00 for final disposition prearrangements. Tanner gave P.K. a receipt for \$9,721.00 signed: “*Shawna Tanner, For Prearrangements f.h./Gravespace/Cemetery.*” Respondent did not place any of the required monies into a master trustee account within the required five days, or otherwise.
  - c. On or about December 11, 2009, a consumer, W.M., made prearrangements for final disposition with Tanner and gave Tanner cashier’s check #109688 in the amount of \$1,500.00. Respondent did not place any of the required monies into a master trustee account within the required five days, or otherwise.
  - d. None of the foregoing prearrangement records were transferred to the designated certified provider funeral establishment, Neal’s Compassionate Heart Funeral Home.
6. Between October 19, 2010, and February 14, 2011, the Board sent approximately seven (7) letters, either certified or by regular mail, to the Respondent at the address listed on the Board’s records or to the funeral establishment listed as Respondent’s employer, Neal’s Compassionate Heart Funeral Home (OMCB License No. FE-8704). Each letter requested Respondent provide a written response to the allegations of failure to trust prearrangement monies in one or more of the foregoing final disposition prearrangements and requested copies of permanent records pertaining to at least two of the foregoing consumers. Respondent did not respond to the Board’s requests.
7. On February 22, 2011, Board staff hand-delivered a subpoena to Respondent. The subpoena required Respondent to appear at the Board Office at 9:00am on March 1, 2011, to testify in the Board’s investigation of cases involving W.M., P. K., and J. V.; and to bring for inspection and copying the entire permanent records of the foregoing subjects. Upon receiving the subpoena, Respondent admitted receiving the monies from the aforementioned persons and admitted that he did not properly deposit the monies into a trust account as required by law. Respondent stated that he spent the money to pay outstanding bills. On March 1, 2011, Respondent did not appear as directed by the subpoena.

8. As of the date of this Order, Respondent has not paid any of the outstanding death certificate filing fees and Respondent owes \$1301.00 to DHS. See also OAR 830-030-0000(7)
9. Respondent failed to comply with the 2010 Settlement Agreement and Consent Order in the following manner:
  - a. Respondent did not transfer the prearrangement records of W.M., P.K. or J.V., as described above in Sections 4 and 5 to the designated funeral establishment and certified provider, Neal's Compassionate Heart Funeral Home; and
  - b. Respondent did not pay the outstanding death certificate filing fees of \$1,301.00 to the Department of Human Services as described above in Sections 4 and 9; and
  - c. Respondent failed to comply with all laws and rules applicable to the death care industry, as described above in Sections 4, 5d, 6, 7, and 8.

### **ULTIMATE FINDINGS OF FACT**

1. Respondent engaged in fraudulent and dishonest conduct when failing to properly deposit into trust fund money paid to the funeral establishment for prearranged funeral goods and services of three individuals, as described in Findings of Fact Section 5.
2. Respondent allowed Tanner, an unlicensed individual, to perform duties of licensed individuals in at least three instances, as described in Findings of Fact Section 5.
3. Respondent failed to comply with the 2010 Settlement Agreement and Consent Order as described in the Findings of Fact Sections 4, 5, 6, 7, 8 and 9.
4. Respondent has failed to pay \$1301.00 in outstanding death certificate filing fees.

### **CONCLUSIONS OF LAW**

1. By failing to properly deposit into a trust fund money paid to the funeral establishment for prearranged funeral goods and services, Respondent violated ORS 97.931, ORS 97.941, and OAR 441-931-0310 which is fraudulent and dishonest conduct and cause for revocation of his license under OAR 830-030-0090(1), 830-030-0090(1)(a), OAR 830-030-0100(6), ORS 692.180(1)(g) and ORS 692.180(1)(b).
2. By allowing Tanner, an unlicensed individual, to perform the duties of a licensed individual, Respondent violated OAR 830-030-0090(1)(e), OAR 830-050-0000(2) and OAR 830-050-0050(8) which is cause for revocation of his license under ORS 692.180(1)(g).
3. By violating a Board Order when failing to transfer all Cox and Cox Funeral Chapel's permanent records to a certified provider funeral establishment, and by failing to pay the outstanding death certificate filing fees within six months of the 2010 Order, Respondent violated OAR 830-050-0050(6) which is cause for revocation of his license under ORS 692.180(1)(g).
4. By failing to pay outstanding death certificate filing fees, Respondent violated 830-030-0000(7) which is cause for revocation of his license under ORS 692.180(1)(g).

5. By failing to respond to Board requests and failing to cooperate, Respondent violated OAR 830-030-0090(2)(d)(A) and (B) and OAR 830-050-0050(6) which is cause for revocation of his license under ORS 692.180(1)(g).

6. Revocation of Respondent's Funeral Service Practitioner's License No. FS-0382 is appropriate.

**ORDER**

NOW THEREFORE, after considering the Board's file relating to this matter, the Board enters the following Final Order on Default:

1. Respondent's Funeral Service Practitioner License No. FS-0382 is hereby revoked for violation of OAR 830-030-0090(1), 830-030-0090(1)(a), OAR 830-030-0090(1)(e), OAR 830-030-0090(2)(d)(A), OAR 830-030-0090(2)(d)(B), OAR 830-030-0100(6), OAR 830-050-0000(2), OAR 830-050-0050(6), OAR 830-050-0050(8), ORS 692.180(1)(g) and ORS 692.180(1)(b).
2. This Final Order shall become effective when signed by the Executive Director of the Board.

DATED and ENTERED this \_\_21st\_\_ day of July, 2011

\_\_<s> Michelle Gaines\_\_\_\_\_  
Michelle Gaines, Executive Director  
Oregon Mortuary & Cemetery Board

Date of Mailing: \_\_\_\_July 21, 2011\_\_\_\_\_

**NOTICE OF OPPORTUNITY FOR JUDICIAL REVIEW (COURT OF APPEALS)**

You are entitled to judicial review of this Final Order pursuant to ORS 183.482. Judicial Review may be initiated by filing a petition for review with the Oregon Court of Appeals within 60 days from the date this Order was mailed to you.