

**BEFORE THE MORTUARY AND CEMETERY BOARD  
OF THE STATE OF OREGON**

<p>In the Matter of the Funeral Establishment License of <b>Oakridge Chapel of the Woods; Kent Franklin and Carolyn (Franklin) Hardman, Joint Proprietors</b></p> <p style="text-align: center;"><b>RESPONDENT</b></p>	<p>Notice of Proposed Disciplinary Action (Civil Penalty) And Opportunity for a Hearing</p> <p style="text-align: center;"><b>AMENDED</b></p> <p style="text-align: center;"><b>CASE NO. 06-1015A</b></p>
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Pursuant to ORS 692.320 and ORS 692.180, the Oregon Mortuary & Cemetery Board (Board, OMCB) proposes to take disciplinary action in the form of a civil penalty against your funeral establishment license on the grounds noted below.

**Grounds for Disciplinary Action**

**1a.** At all times mentioned herein, Kent J. Franklin and Carolyn R. Franklin (joint proprietors) dba Oakridge Chapel of the Woods ("Respondent") was licensed by the Oregon Mortuary & Cemetery Board as a funeral establishment (OMCB License No FE-8356).

**1b.** At all relevant times mentioned herein, Kent J. Franklin ("Franklin") was licensed as a funeral service practitioner and embalmer (OMCB License No. CO-3638); and Franklin was the assigned manager of Respondent funeral establishment.

**1c.** At all relevant times mentioned herein Carolyn J. Franklin, now known as Carolyn J. Hardman ("Hardman"), was working at and representing the Respondent funeral establishment.

**1d.** From October 10, 2001 to August 1, 2005, Hardman was licensed as a funeral service practitioner apprentice (OMCB License No. AF-1782) and Hardman's apprenticeship supervisor was Kent J. Franklin. On or about August 1, 2005, Franklin had moved to another state, therefore, Respondent's apprenticeship certificate became null and void. OAR 830-011-0020(1) and (9)

**1e.** Definitions that may be relevant to this notice are contained in OAR 830-011-0000 and ORS 692.010.

**2.**

**2a.** From on or about June 5, 2002 to October 8, 2002, Respondent, through the actions of Hardman, filed with Forethought Life Insurance Company (Forethought) five claims each misrepresenting that a specified individual had died, that Respondent had provided mortuary, funeral, cremation, or burial goods and services, or some combination thereof, for the individual, that such goods and services cost a specified amount; and that Respondent was entitled to payment for providing such goods and services pursuant to a life insurance policy issued to the individual by Forethought.

**2b.** At all relevant times, the individuals had not died, Respondent had not provided any such goods and services, and thus, Respondent was not entitled to any payment from Forethought. The date of the claim, the name of the insured individual, the policy number, and the amount claimed and received by Respondent, in each of the five instances is as follows:

<u>Date Claim Filed</u>	<u>Insured</u>	<u>Policy No.</u>	<u>Amount Paid</u>
6/4/02	E. Peterson	5069967	\$5,949.83
8/8/02	R. Morris	793593	\$7,855.13
9/5/02	R. Jones	894399	\$6,571.84
9/23/02	L. Short	5070100	\$3,243.23
10/8/02	M. Hickox	3020586	<u>\$10,130.28</u>
Total			\$33,750.31

**2c.** The foregoing five instances of Respondent filing false claims to Forethought are five specifications of misrepresentation in the conduct of business and fraudulent and dishonest conduct in violation of ORS 692.180(1)(a) and (b).

**3.**

**3a.** As referred to above, on or about October 8, 2002, Respondent, through the actions of Hardman, filed with Forethought a claim misrepresenting that M. Hickox (Hickox) of Roseburg, Oregon had died, that Respondent had provided mortuary, funeral, cremation, or burial goods

and services, or some combination thereof, for Hickox, that such goods and services cost \$11,749.00; and Respondent was entitled to payment for providing such goods and services pursuant to a life insurance policy, number 3020586, issued by Forethought to Hickox.

**3b.** As of the date the claim was filed, Hickox had not died, Respondent had not provided any such goods and services, and thus Respondent was not entitled to any payment. On October 9, 2002, Forethought issued five checks totaling \$10,130.28, representing the total death benefit payable pursuant to the Hickox policy. From October 16, 2002 to October 25, 2002, Respondent deposited the checks into one of two Respondent bank accounts.

**3c.** In September or October 2002, J. Mather (Mather), Hickox' conservator and the beneficiary under the policy, called Hardman to discuss changing some of the goods and services to be provided when Hickox died. In August 2005, Mather called and informed Hardman that Hickox may soon pass away due to her declining health.

**3d.** On November 17, 2005, Hickox died. Subsequently, Respondent, *through Hardman*, made at-need final disposition arrangements for cremation with Mather. *At the time Hardman made these arrangements with Mather, she was not licensed as a funeral service practitioner or funeral service practitioner apprentice.* In January 2006, Mather called and spoke to Hardman about not having received a death certificate, an itemized billing statement for the goods and services provided, and a refund of the different between the cost of such goods and services provided and the death benefit of the policy. Hardman told Mather that she would soon send an itemized statement and refund.

**3e.** On March 2, 2006, Mather received the death certificate but did not receive an itemized billing or refund, so Mather called and left a voice mail message for Hardman, again requesting an itemized statement and refund.

**3f.** On March 7, 2006, Mather called Forethought. Forethought informed Mather that Forethought had paid the death benefit for M. Hickox in October 2002. Mather faxed to Forethought a copy of the death certificate showing that Hickox died on November 7, 2005.

**3g.** Later that same day, March 7, 2006, Hardman called Mather to say that Forethought had called Hardman about the circumstances. Hardman told Mather that in October 2002 a “M. Hicks” had died and blamed Forethought for getting “the files mixed up and sent Respondent the [Hickox’] money by mistake.” Hardman claimed she had put the check into a client trust account and [Mather] had a total of \$10,750.32 [in the] account.

**3h.** Mather asked Hardman to fax a copy or read the billing statement to Mather. Hardman said her fax machine was broken and the bill was too long to read but Hardman stated she would mail the statement and refund to Mather by March 10, 2006. Mather did not receive any further communication from Respondent.

**3i.** On or about March 13, 2006, *Forethought requested, and* Respondent submitted to Forethought, a copy of a billing statement for the goods and services purportedly provided by Respondent for Hickox. This statement is commonly called the Statement of Funeral Goods and Services Selected (SFGSS, *Statement*). The SFGSS stated that the total cost for the final disposition of M. Hickox was \$8,647.32. However, the Statement included charges of \$2,985.32 for *at least five* goods that were not provided (*Cherry wood casket, Presidential Urn Vault, Headstone emblem with last date lettering, acknowledgement cards and register book*). In addition, according to the effective General Price List for Respondent funeral establishment, Respondent also charged \$1,195.00 over the facility’s prices for *at least seven* goods and services that were provided (*basic services fee, transfer of remains to funeral home, transportation for autopsy, graveside services, overtime for Saturday services, cremation fee, and cultured marble urn*). The Statement, therefore, contained a total over-billing of \$4180.32.

**3j.** The foregoing *12 instances of over-charging* on a Statement of Funeral Goods and Services Selected is fraudulent and dishonest conduct in violation of ORS 692.180(1)(b); and *violations* of Funeral Rule 16 CFR 452.2 which *are violations* of ORS 692.180(1)(h) and OAR 830-030-0090(1)(c) which *are* cause for disciplinary action under ORS 692.180(1)(g).

**4.**

**4a.** Hardman had completed a Statement of Funeral Goods and Services Selected which Respondent filed with Forethought a claim for \$11,749.00 on or about October 8, 2002 and received \$10,130.28 by October 25, 2002. Respondent was not entitled to any payment from October 25, 2002 to on or about November 7, 2005, and when Respondent became entitled to payment on or about November 7, 2005 Respondent was entitled to only about \$4,384.50.

**4b.** Therefore, Respondent also engaged in fraudulent and dishonest conduct, and misrepresentation, when subsequently submitting to Forethought a billing misrepresenting the goods and services that Respondent provided and the costs of such goods and services, intentionally withheld \$10,130.28 from Forethought from October 25, 2002 to on or about November 7, 2005, and of that amount intentionally withheld a refund of approximately \$5,745.78 from Mather since on or about November 7, 2005.

**4c.** The foregoing is fraudulent and dishonest conduct, and misrepresentation in violation of ORS 692.180(1)(a) and (b).

**5.**

**5a.** Performing the duties of a licensed funeral service practitioner or funeral service practitioner apprentice, when not licensed to do so, is a violation of ORS 692.025(1), OAR 830-030-0004(1) and OAR 830-030-0090(2)(c)(A). A violation of ORS 692.025(1) is also a misdemeanor crime pursuant to ORS 692.990.

**5b.** On or about November 5, 2005, M. Hickox died and Hardman made at-need final disposition arrangements with J. Mather for the final disposition of M. Hickox.

**5c.** Respondent, therefore, allowed Hardman, an unlicensed, uncertificated or non-registered individual, to perform the duties of a licensed funeral service practitioner. The foregoing is a violation of OAR 830-050-0050(8) which is cause for disciplinary action under ORS 692.180(1)(g).

**Rights and Procedures**

Respondent is entitled to a hearing as provided by the Administrative Procedures Act (ORS Chapter 183) and ORS 692.265(1). If Respondent wants a hearing, Respondent must file a written request for hearing with the State Mortuary & Cemetery Board (the "Board") within 21 days from the date this notice was mailed. If a request for hearing is not received within this 21-day period, Respondent's right to a hearing shall be considered waived. Hearing requests may be mailed to State Office Building, 800 NE Oregon St., Suite 430, Portland, Oregon 97232-2195.

If Respondent requests a hearing, Respondent will be notified of the time and place of the hearing. Respondent has the right to be represented by legal counsel at a hearing. A Notice of Contested Case Rights and Procedures is enclosed with this Notice of Proposed Disciplinary Action. If Respondent does not request a hearing within 21 days, or if Respondent withdraws a hearing request, notifies the Board or hearing officer that Respondent will not appear or fails to appear at a scheduled hearing, the Board may issue a final order by default imposing the discipline of civil penalties as determined by the Board. If the Board issues a final order by default, it designates its file on this matter as the record for purposes of establishing a prima facie case.

DATED this 21<sup>st</sup> day of *January, 2009*

STATE MORTUARY AND CEMETERY BOARD

<s> Lynne Nelson  
Designee: Lynne Nelson, Compliance Manager