

STATE MORTUARY AND CEMETERY BOARD

STATE OF OREGON

<p>In the Matter of the cemetery authority change of principal application of CIVIL BEND CEMETERY ASSOCIATION,</p> <p>LICENSEE</p>	<p>Notice of Proposed Denial of Application and Opportunity for a Hearing</p> <p>CASE NO. 09-1022A</p>
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Pursuant to ORS 692.180 the Oregon Mortuary & Cemetery Board proposes to deny your application for change of principal naming Ben C. Agee as the manager of Civil Bend Cemetery Association on the grounds noted below.

Grounds for Denial of Application:

1.

1a. On April 14, 2009, the Oregon Mortuary & Cemetery Board (the "Board") received an application for change of principal from Civil Bend Cemetery Association (OMCB License No. CE-0481, hereafter "Licensee"). Application and a background investigation for the manager are required pursuant to ORS 692.025(7), ORS 692.160(1), and ORS 692.275. The Application proposed Ben C. Agee ("Agee") as the new manager of Licensee cemetery.

1b. The Application's Background Information section, Question #3, asks Agee, "*Have you ever been arrested, charged or cited for anything other than traffic violations?*" Agee wrote "No."

1c. The Application's Background Information section, Question #4, asks Agee, "*Have you ever been convicted of, or are you currently charged with, committing a crime whether or not adjudication was withheld?*" Agee wrote "No."

1d. The Application's Background Information section, Question #5, asks Agee, "*Have you ever entered into a diversion agreement?*" Agee wrote "No."

1e. On or about February 10, 1984, Agee was arrested by the Roseburg Police Department in Oregon for Driving Under the Influence of Intoxicants. In Roseburg Municipal Court, adjudication was withheld under terms of a diversion agreement and dismissed on March 12, 1985.

1f. On or about October 16, 1991, Agee was arrested by the Springfield Police Department for Driving Under the Influence of Intoxicants.

1g. On or about September 1, 2003, Agee was arrested, cited and lodged by the Winston Police Department in Douglas County, Oregon, for Disorderly Conduct. He was convicted on or about October 21, 2003 in Winston Municipal Court, and ordered by the court to pay a \$200.00 fine.

1h. Agee, therefore, misrepresented his criminal history on an application and failed to answer truthfully and completely in violation of OAR 830-050-0050(2), OAR 830-050-0050(9), OAR 830-030-0090(2)(c)(D), and OAR 830-030-0090(2)(d)(B), and ORS 692.180(1)(g). Agee also violated ORS 692.180(1)(a) and ORS 692.180(1)(b).

2.

2a On April 15, 2009, the Board received a fax from Agee. Agee stated that he enrolled in a program with the Department of Veterans' Affairs on February 8, 2008.

2b. Pursuant to OAR 830-011-0050(1), on or about June 2, 2009, the Board asked Agee to provide written documentation confirming his participation in this program, which may have been considered mitigating circumstances. Agee did not submit the documentation to the Board prior to the date of this Notice.

2c. The foregoing failure to provide the documentation is a violation of OAR 830-011-0050(1), OAR 830-030-0090(2)(d)(A) and OAR 830-030-0090(2)(d)(B).

3.

3a. OAR 830-011-0050(2) provides that the Board may deny or refuse to issue a license when conditions exist in relation to any principal of a licensed facility, which constitutes grounds for refusing to issue or renew a license or certificate or for suspension of a license. Therefore, the foregoing conduct by Agee, as described above in Sections 1 and 2, is grounds for refusing to issue a certificate of authority to operate a cemetery naming Agee as the cemetery manager.

4.

Definitions that may be relevant to this notice are listed in ORS 692.010 and OAR 830-011-0000.

Rights and Procedures

You are entitled to a hearing as provided by the Administrative Procedures Act (ORS Chapter 183) and ORS 692.265(1). If you want a hearing, you must file a written request for hearing with the State Mortuary & Cemetery Board (the “Board”) within 60 days from the date this notice was mailed. If a request for hearing is not received by the Board within this 60-day period, your right to a hearing shall be considered waived. Hearing requests may be mailed to the Oregon Mortuary and Cemetery Board, 800 NE Oregon St., Suite 430, Portland, Oregon 97232-2195.

If you request a hearing, you will be notified of the time and place of the hearing. You may be represented by an attorney at the hearing. Parties are ordinarily and customarily represented by counsel. You are not required to be represented by counsel, unless you are an agency, trust, corporation or association. A Notice of Contested Case Rights and Procedures is enclosed with this Notice of Proposed Disciplinary Action. If you do not request a hearing within 60 days, or if you withdraw a hearing request, notify the Board or hearing officer that you will not appear or fail to appear at a scheduled hearing, the Board may issue a final order by default imposing the discipline 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 ___17th___ day of March, 2010

STATE MORTUARY AND CEMETERY BOARD

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