

Notice of Proposed Denial of Application

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

In the Matter of the Funeral Service Practitioner and Embalmer Applications of LESLIE W. LIPPITT, APPLICANT	Notice of Proposed Denial of Applications And Opportunity for a Hearing CASE NO. 09-1028
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Pursuant to ORS 692.180, ORS 670.280, and ORS 692.140, the Oregon Mortuary & Cemetery Board (“Board,” “OMCB”) proposes to deny your applications for a funeral service practitioner and embalmer license on the grounds noted below.

Grounds for Application Denial:

1.

1a. On May 13, 2009, the Board received Applicant’s complete application for Embalmer License by Reciprocity & Funeral Service Practitioner (FSP) License by Reciprocity (hereafter “Application 1”). This form is a combined application for two licenses – the FSP license and the embalmer license.

1b. On May 13, 2009, Applicant sent an application to take the funeral service practitioner examination (hereinafter “Exam Application”) that he emailed to the Board on May 13, 2009. Examination by the Board is required for reciprocal licensing.

1c. On June 9, 2009, Applicant submitted a non-reciprocal Embalmer License Application (hereinafter “Application 2”).

2.

ORS 692.140(2) provides that an applicant for funeral service practitioner or embalmer licensure by reciprocity shall apply to the board and shall include with the application proof

satisfactory to the board that the applicant is licensed in good standing in another state and has practiced as a funeral service practitioner or an embalmer who was licensed and in good standing in another state for three of the five years immediately preceding the application date. See also OAR 830-020-0030(1)

3.

3a. On page 4 of Application 1, Question 5a asks, in part, “Have you been licensed and actively practicing as an embalmer and a funeral director for three of the five years immediately preceding the application date: Yes/No:___”. Applicant responded, “Yes.”

3b. On page 4 of Application 1, Question 5 asks Applicant for the “State of Reciprocal License:”. In response, Applicant wrote the state of Washington. Question 5 also asks the “Date Licensed:” and Applicant wrote “July 2003.”

3c. On page two of Application 1, applicants are required to list information about all previous employers within the last ten years, including “dates of employment.” In response, Applicant stated he worked at a Washington funeral establishment (Neptune Society) from June 2003 to April 2005.

3d. Applicant does not meet the requirements for licensure under ORS 692.140(2) because he did not provide proof he was licensed and actively practicing as either an FSP or embalmer for three of five years in the state of reciprocal license.

4.

4a. On page 7 of Application 1, Applicant signed a certification stating that, “I certify that all statements I have made on this application and other supplementary materials are true and correct to the best of my knowledge and belief.”

4b. On May 13, 2009, the Board staff advised Applicant by phone that, according to the length of time he was employed at a funeral establishment (Neptune Society) in Washington, he did not meet the “three of the past five years” reciprocity requirement in

his Application 1.

4c. Applicant typed the words: "Please add Texas as a reciprocal State to my application" on the Exam Application that he emailed to the Board on May 13, 2009.

5.

5a. With Application 1, Applicant submitted a letter from a Human Resources Manager for the Neptune Society, dated May 11, 2009. The letter states: *"This letter is to confirm that Leslie Lippitt is employed with us since June 2003 on a full time basis as a licensed Funeral Director and Embalmer with all the duties and responsibilities related with the profession."*

5b. Neptune Society does not offer embalming at any location. Applicant did not practice as an embalmer while employed full-time with Neptune Society. Therefore, Applicant did not practice as an embalmer for three of the past five years in any state.

5c. When board staff brought this issue to Applicant's attention, he stated that he performed embalming for some other funeral home in Washington State. When asked for specific information about that work, Applicant said that he would see if he could meet the licensing requirements another way.

5d. Applicant then submitted Application 2 for an embalmer license based on past practice as a licensed embalmer in Oregon. ORS 692.105(3), ORS 692.190(9) and OAR 830-011-0020(11)

6.

6a. On page 5 of Application 1, Question #3, Background Information, asks Applicant, "Have you ever been arrested, charged, or cited for anything other than traffic violations? Yes or No:". Applicant wrote, "No."

6b. On or about October 15, 1993, in Clatsop County, Applicant was charged with Theft II, a Class A misdemeanor, for unlawfully substituting an alternative container for a

more expensive casket at a crematory in Astoria, Oregon on June 4, 1993. Applicant pleaded not guilty. On March 14, 1994, the court dismissed the charge of Theft II, allowing a civil compromise.

7.

7a. Aggravating circumstances exist in this matter. On or about December 1, 1994, in Board Case No. 93-1034, the Board issued an Amended Notice of Proposed Disciplinary Action to Applicant. (Applicant was licensed as an FSP and embalmer by the Board at that time). In the Notice, the Board alleged Applicant sold a \$395.00 casket for cremation, but then, prior to the cremation, substituted a minimum cremation container worth substantially less, and resold the more expensive casket to another client for the financial benefit of his employer.

7b. On or about January 25, 1995, a Final Order by Consent against Applicant became effective that imposed discipline on Applicant. In the Final Order, Applicant admitted to the foregoing facts alleged in the Notice and to the following violations of the Board's 1993 administrative rules:

- i. Misrepresentation in the conduct of business: specifically, a sales practice which concealed or misstated a material fact in violation of OAR 830-30-100(9), OAR 830-30-090(3) and ORS 692.180(1)(a);
- ii. Fraudulent or dishonest conduct in providing funeral services in violation of OAR 830-30-090(2) and ORS 692.180(1)(b);
- iii. Failure to meet a high moral and service standard in violation of OAR 830-30-090(2);
- iv. Failure to meet a high standard of competence in the conduct of a service, in violation of OAR 830-30-090(3); and
- v. Unfair competition and a failure to adhere to sound business practices in violation of OAR 830-30-090(4).

8.

The Board, therefore, proposes to deny Applications 1 and 2 based on the following:

1. Misrepresentation, fraud or deceit in the application process pursuant to OAR 830-030-0090(2)(c)(D), failure to cooperate or answer truthfully and completely board inquiries

under OAR 830-030-0090(2)(d)(B), and making false or misleading statements in applying to the Board under OAR 830-050-0050(2) which are cause for disciplinary action including denial of an application under ORS 692.180(1)(g); and a violation of ORS 692.180(1)(a);

2. Applicant conduct that bears a demonstrable relationship to death care industry practices or operations pursuant to OAR 830-050-0050(5), ORS 670.280(3) and ORS 692.180(1)(b) or (g); and

3. Failure to meet the requirements for licensure under ORS 692.140(2).

9.

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 __12th____day of October 2009.

STATE MORTUARY AND CEMETERY BOARD

____<s> Lynne Nelson_____

Designee: Lynne Nelson, Compliance Manager