

Notice of Proposed Denial of Application

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

In the Matter of the Preneed Salesperson Registration Certificate Application of JOHN J. POLAND, APPLICANT	Notice of Proposed Denial of an Application And Opportunity for a Hearing CASE NO. 09-1061
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Pursuant to ORS 692.180 and ORS 97.931, the Oregon Mortuary & Cemetery Board proposes to deny your application for Preneed Salesperson Registration Certificate on the grounds noted below.

Grounds for Application Denial:

1. On November 4, 2009, the Oregon Mortuary & Cemetery Board (“Board”) received an application for a Preneed Salesperson Registration Certificate (“Application”) from John J. Poland (“Applicant”).
2. Application and a background investigation for preneed salespersons are required pursuant to ORS 97.931, OAR 830-011-0070(2) and ORS 692.180(1).
3.
 - 3a. The Application’s first page asks Applicant, “Have you ever used or been known by any other name(s)?” Applicant answered “No.”
 - 3b. Applicant was born in 1974 with the legal name of John Fuget.
 - 3c. Applicant later explained that due to his adoption in 1994, Applicant’s name was legally changed to John Poland.
 - 3d. Applicant, therefore, misrepresented his known names on an application which is failure 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). Applicant also violated ORS 692.180(1)(a) and ORS 692.180(1)(b).

4.

4a. The Application's Background Information section, Question #3, asks Applicant, "*Have you **ever** been arrested, charged or cited for anything other than traffic violations?*" Applicant answered "*No.*"

4b. On December 2, 1995, in Myrtle Creek, Oregon, Applicant was charged with Contempt of Court, a Class B Misdemeanor.

4c. On November 26, 1997, in Douglas County, Oregon, Applicant was arrested for Disorderly Conduct, a Class B Misdemeanor.

4d. On May 1, 2004, in Myrtle Creek, Oregon, Applicant was arrested on charges of Reckless Driving, a Class A Misdemeanor.

4e. On July 1, 2005, in Myrtle Creek, Oregon, Applicant was arrested for Assault Third Degree, a Class C Felony, and Criminal Trespass, a Misdemeanor.

4f. Therefore, Applicant misrepresented his arrest history 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). Applicant also violated ORS 692.180(1)(a) and ORS 692.180(1)(b).

5.

5a. The Application's Background Information section, Question #4, asks Applicant, "*Have you **ever** been convicted of, or are you currently charged with, committing a crime whether or not adjudication was withheld?*" If the answer is "Yes" Applicant is required to provide a signed, dated, written statement explaining the circumstances of each incident. Applicant wrote, "*No,*" but crossed it out and answered "Yes."

5b. Applicant provided a written statement describing a July 5, 2005 conviction for Assault Fourth Degree, a Class A Misdemeanor.

5c. Applicant did not disclose the following three Class B Misdemeanor convictions:

(a) On December 4, 1995, in Myrtle Creek Municipal Court: Contempt of Court, in which he was sentenced to pay a \$75.00 fine;

(b) On January 5, 1998, in District Court in Roseburg: Disorderly Conduct, in which he was sentenced to one day community work crew;

(c) On October 4, 2004, in Myrtle Creek Municipal Court: Disorderly Conduct, in which he received a \$200.00 fine and a 10-day jail sentence (suspended).

5d. Therefore, Applicant 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). Applicant also violated ORS 692.180(1)(a) and ORS 692.180(1)(b).

6.

For the foregoing reasons, and pursuant to OAR 830-011-0080(2), ORS 97.931(3) and ORS 692.180(1)(g), the Board, proposes to deny Applicant's Application for Preneed Salesperson Registration Certificate.

7.

Definitions that may be relevant to this notice are listed in ORS 97.923, 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 April, 2010

STATE MORTUARY AND CEMETERY BOARD

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