

Amended Notice of Proposed Denial of Application

STATE MORTUARY AND CEMETERY BOARD STATE OF OREGON

<p>In the Matter of the combination Embalmer Apprenticeship Certificate and Funeral Service Practitioner Apprenticeship Certificate Application of KELLY S. POWER,</p> <p style="text-align: center;">APPLICANT</p>	<p>Amended Notice of Proposed Denial of Application And Opportunity for a Hearing</p> <p style="text-align: center;">AGENCY CASE NO. 12-1018</p>
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Pursuant to ORS 692.180(1), the Oregon Mortuary & Cemetery Board proposes to deny your application for a combination Embalmer Apprenticeship Certificate and Funeral Service Practitioner Apprenticeship Certificate on the grounds noted below.

Grounds for Application Denial:

1. On April 11th, 2012 the Oregon Mortuary & Cemetery Board (“Board”, “OMCB”) received an application for a combination Embalmer Apprenticeship Certificate and Funeral Service Practitioner Apprenticeship Certificate (“Application”) from Kelly S. Power (“Applicant”).
2. Application and a background investigation are required for embalmer apprentice certificate and funeral service practitioner (FSP) apprenticeship certificate pursuant to ORS 692.190(1) and OAR 830-011-0050(1).
3.
 - 3a. Question three on the background information section of the application asks “Have you ever been arrested, charged or cited for anything other than traffic violations?” Applicant circled “NO” on the application.
 - 3b. Question four on the background information section of the application asks “Have you ever been convicted of, or are you currently charged with, committing a crime, whether or not adjudication was withheld?” Applicant circled “NO” on the application.

3c. Section three of the application says, in part “You are REQUIRED to provide ALL FULL-TIME and PART-TIME employment information for the last ten years.” Applicant listed two health establishments and a southwest Portland funeral establishment.

3d. On December 31st, 1996 Applicant was charged with Criminal Assault in the Tacoma Municipal Court. The charge arose out of a disturbance the Tacoma Police Department responded to on December 30th, 1996. The charges were dismissed on July 20th, 2001 after Applicant complied with court requirements.

3e. A Board Investigator contacted Applicant on April 11th, 2012 and asked if she had correctly answered the background questions on her application. Applicant said “yes.” The Board Investigator told her she had a criminal history and asked if she remembered anything further. Applicant stated she did not recall ever having criminal charges against her. After the Board Investigator described the Criminal Assault charge, Applicant admitted she was required to appear in court, and had to complete anger management classes in order to have the charge dismissed.

3f. On May 24th, 1994 Applicant was charged with Misdemeanor “Driving Without a License” by the Tacoma Police Department. Applicant pled guilty on January 13th, 1997 in the Tacoma Municipal Court. Applicant was given a 90 day jail sentence (suspended) and was fined \$100.

3g. A Board Investigator contacted Applicant on May 9th, 2012 and asked if she remembered being charged with Misdemeanor “Driving Without a License” on May 24th, 1994 2012, by the Tacoma Police Department. Applicant stated she did not remember the incident.

3h. The Board investigation found that Applicant had been employed at a northeast Portland crematory and funeral establishment, Portland Mortuary Services and Portland Cremation Center, LLC (PMS/PCC) (OMCB License Nos. FE-8536 and CR-0694) from October 1st, 2008 to March 15th, 2009. On her Application, Applicant failed to disclose this employment.

3i. A Board Investigator contacted Applicant on April 26th, 2012 and asked if her employment history was correct. Applicant stated it was. When the Investigator asked if she had worked at PMS/PCC, she ultimately confirmed the employment, but stated that she had “wiped it from her memory banks.”

4.

On April 7th, 2008, Applicant had submitted an Oregon Mortuary & Cemetery Board Application for internship as a funeral service student with Mt. Hood Community College. On that application, Applicant also failed to disclose the arrests or convictions described above in Section 3.

5.

5a. As described in Sections 3a, b, d, and f above, Applicant misrepresented her criminal background on her 2012 Application by not disclosing her arrest for Criminal Assault or her arrest and conviction for Misdemeanor Driving Without a License.

5b. As described in Section 3h above, Applicant misrepresented her employment history on her 2012 Application by not disclosing her employment with PMS/PCC.

5c. As described in Section 4 above, Applicant misrepresented her criminal background on her 2008 application by not disclosing her arrest for Criminal Assault or her arrest and conviction for Misdemeanor Driving Without a License.

5d. The foregoing misrepresentations are violations of OAR 830-030-0090(5)(d), (f) and (g) and OAR 830-050-0050(2), which are cause for denial of a license under ORS 692.180(1)(g); and the foregoing are violations of ORS 692.180(1)(a) and (b)..

6.

6a. As described above in Sections 3e and 3i, Applicant told a Board Investigator she had answered certain questions on the Application correctly when she had not. As described above in Section 3e Applicant told the Board Investigator she did not remember the charges or conviction history. As described above in Section 3i she told the Board

Investigator she failed to remember a five and a half month employment with a Board licensee when completing her Application.

6b. The foregoing conduct with the Board Investigator is untruthful, inaccurate, misleading or evasive and therefore substantially related to the fitness and ability of the Applicant to engage in the activity for which the license is required, specifically, remembering significant events or facts, working under persons in authority and making funeral and preneed funeral arrangements with persons in vulnerable conditions. The foregoing is cause for denial under OAR 830-040-0010(3) and OAR 830-030-0090(5)(d) and (g) which is cause for denial under ORS 692.180(1)(g). The foregoing conduct is also cause for denial under ORS 670.280(3) and ORS 692.180(1)(a), (b) and (g).

7.

For the foregoing reasons, and pursuant to ORS 692.180(1)(a), (b) and (g) and ORS 670.280(3) the Board proposes to deny Applicant's Application for a combination Embalmer Apprenticeship Certificate and Funeral Service Practitioner Apprenticeship Certificate.

8.

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 Denial of Application. 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 __28th__ day of June, 2012

STATE MORTUARY AND CEMETERY BOARD

__<s> Lynne Nelson_____
Lynne Nelson, Compliance Manager