

STATE MORTUARY AND CEMETERY BOARD

STATE OF OREGON

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| <p>In the Matter of the Preneed Salesperson Registration Certificate of DAVID ARTHUR MCJANNET,</p> <p>LICENSEE</p> | <p>Notice of Proposed Disciplinary Action And Opportunity for a Hearing</p> <p>CASE NO. 09-1054A</p> |
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Pursuant to ORS 692.180, the Oregon Mortuary & Cemetery Board (“OMCB”, “Board”) proposes to take disciplinary action against you on the grounds noted below. For statutory and rule violations the Board may impose one or more of the following sanctions: Reprimand, license revocation, civil penalty of up to \$1000 for each violation, or other sanctions as authorized by law.

1.

1a. At all times mentioned herein, David Arthur McJannet (hereafter “Licensee”) was licensed as a preneed salesperson (OMCB License No. PN-8516), and Licensee was the area sales manager for Stonemor Oregon LLC licensed facilities and worked at Stonemor Oregon, LLC. dba Restlawn Memory Gardens & Mausoleum (hereafter “Restlawn”) a cemetery in Salem (OMCB License No. CE-0735).

1b. At all times mentioned herein David Perlman was licensed as a preneed salesperson (OMCB License No. PN-8568, license revoked January 13, 2011), and Perlman was employed by and worked at Restlawn, and was supervised by Licensee.

1c. In a Board Consent Order effective October 8, 2008 (OMCB Case No. 08-1019A) Licensee was disciplined for violating ORS 692.180(1)(a), ORS 692.180(1)(b), ORS 692.180(1)(g), OAR 830-030-0090(2)(c)(D), OAR 830-030-0090(2)(d)(B), and OAR 830-050-0050(2) and OAR 830-050-0050(9). Licensee failed to disclose an arrest on his

OMCB Background Information Questionnaire, and made false and misleading statements regarding the facts and circumstances of the arrest and failed to answer truthfully and completely inquiries by the Board about the arrest.

1d. For the following violations, the Board proposes to impose civil penalties and a reprimand:

2.

2a. On various occasions just prior to July 10, 2009, a consumer, "AC" (female, 71), discussed arrangements for a memorial park bench and placement plot at Restlawn with preneed salesperson David A. Perlman (hereafter "Perlman").

2b. On or about Friday, July 10, 2009 "AC", called Restlawn to make an appointment with Perlman to further or finalize the arrangements. Licensee took the call and told "AC" that Perlman no longer worked at Restlawn and would not be returning as he was being transferred to another facility closer to his residence. Licensee told "AC" she should make an appointment with Licensee the following day in order to take advantage of a reduced price that would not be available after Saturday, July 11th. "AC" made the appointment to meet with Licensee at 8:00am July 11, 2009.

2c. During the appointment on July 11, 2009, Licensee again told "AC" that Perlman would not be coming back to Restlawn. Licensee also told "AC" she needed to get the memorial bench designed now, and although he would do a better job for her, he would give Perlman the credit for the sale.

2d. The foregoing statements made by Licensee on July 10 and July 11 to "AC" about Perlman's employment status at Restlawn, and his statement about giving Perlman the credit for the sale, were false or misleading statements. Perlman was still employed by and working at Restlawn. Licensee did not assign the credit or commission

to Perlman until directed to do so by Stonemor's Vice President of Sales, Western Sales Region, David Gellar.

2e. The foregoing repeated misrepresentations by concealing or misstating material facts to a client are violations of OAR 830-030-0100(9) which are cause for discipline under ORS 692.180(1)(g), and violations of ORS 692.180(1)(a) and ORS 692.180(1)(b).

3.

3a. During the foregoing arrangement meeting with "AC", Licensee sold to her a memorial bench/placement plot #44 in the Sunset area. Plot #44 had already been sold to another consumer ("LL") on July 6, 2009.

3b. The foregoing sale of an unavailable plot to "AC" is conduct that fails to abide by the accepted minimum standards of the death care industry in violation of OAR 830-030-0090 which is cause for discipline under ORS 692.180(1)(g), and misrepresentation and dishonest or fraudulent conduct in violation of ORS 692.180(1)(a) and ORS 692(1)(b).

3c. Further, the foregoing failure to ensure availability of a plot prior to double-selling the plot caused inaccurate cemetery records in violation of OAR 830-040-0000(6) or OAR 830-030-0090(2)(b)(A) which is cause for discipline under ORS 692.180(1)(g); and a violation of ORS 97.720(2) which is cause for discipline under ORS 692.180(1)(j).

4.

4a. During the Board's investigation, Licensee denied telling "AC" that Perlman was no longer working at Restlawn. In Licensee's written response to the Board, Licensee wrote the following (verbatim):

- i. *"I told her that Mr Perlman was not in today and would be not in the office until some time next week.";* and
- ii. *"I told her that I was Mr Perlmans immediate supervisor and could look after her arrangements for her or she could wait until the next time he was in the office.";* and
- iii. *"...I told her we had a %10 discount on property and merchandise until the following Monday.";* and

- iv. *“...I told her that i would follow this through with her as MR Perlman at that time was only driving to Salem a couple of times a week and had made a recent request to work in Portland...”*

4b. The foregoing statements made by Licensee in his response to the Board were false or misleading. Perlman was still employed by and working at Restlawn, and Licensee told “AC” that the discount sale ended Saturday, July 11th, not the following Monday. Licensee, therefore, made at least four false or misleading statements to the Board and failed to cooperate or answer truthfully or completely inquiries regarding matters within the Board’s jurisdiction.

4c. The foregoing false or misleading statements and failing to cooperate with the Board by answering truthfully and completely are violations of OAR 830-030-0090(2)(d)(B) or OAR 830-040-0010(3) which is cause for discipline under ORS 692.180(1)(g), and violations of ORS 692.180(1)(a) and ORS 692.180(1)(b).

5.

5a. During the Board’s investigation, the Board requested Licensee provide the reason he sold “AC” a memorial bench plot that was already sold to another consumer. In his written response to the Board, Licensee made evasive statements about current practices, and wrote: *“The problem in the past is that some families were allowed to pick a site and we would have them surveyed at a later date which caused some confusion.”*

5b. The double-sale of plot #44 was a result of not following proper Restlawn procedure by checking to see if that plot had already been sold in the cemetery’s plot book, which contained the original purchaser’s name.

5c. Licensee, therefore, in his response to the Board, failed to cooperate and answer truthfully or completely inquiries regarding matters within the Board’s jurisdiction. The foregoing is a violation of OAR 830-030-0090(2)(d)(B) which is cause for discipline under ORS 692.180(1)(g).

6.

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 21 days from the date this notice was mailed. If a request for hearing is not received by the Board within this 21-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 21 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 18th day of August, 2011

STATE MORTUARY AND CEMETERY BOARD

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