

Final Order on Default

State Mortuary and Cemetery Board
State of Oregon

In the Matter of the Application
for Preneed Salesperson Registration
Certificate of

DONALD MERLINO,

Applicant

Case No.: 11-1009

FINAL ORDER on DEFAULT

On May 3, 2011, the Oregon Mortuary & Cemetery Board (OMCB, Board) properly served a Notice of Proposed Denial of Application and Opportunity for Hearing (Notice) on Donald Merlino (Applicant) that it intended to deny his application for Preneed Salesperson Registration Certificate for violation of OAR 830-050-0050(2), OAR 830-050-0090(9), OAR 830-030-0090(2)(c)(D) or OAR 830-030-0090(2)(d)(B), OAR 830-040-0010(3) and pursuant to OAR 830-011-0080, ORS 692.180(1)(a), ORS 692.180(1)(b), ORS 692.180(1)(g), ORS 670.280(3) and ORS 97.931.

The Notice offered Applicant an opportunity for a hearing if requested within 60 days from the date the Notice was mailed. Applicant did not request a hearing within this 60-day period or otherwise. The Notice designated the Board's file on this matter as the record for purposes of default.

NOW THEREFORE, after considering the Board's file relating to this matter, the Board enters the following Final Order on Default:

FINDINGS OF FACT

1. Applicants for Preneed Salesperson Registration must apply on a form provided by the Board and consent to a background check. OAR 830-011-0070; ORS 97.931(3).
2. Applicants are informed by means of written notice on the application, that any misrepresentation or omission is cause for refusal to issue a certificate.
3. By application received on February 1, 2011, Applicant applied to the Board for Preneed Salesperson Registration.
4. The Application's Background Information section requires Applicant to disclose all arrests, charges, cites, and convictions and provide a detailed and accurate explanation of the facts and circumstances of each. Applicant disclosed an arrest on May 17, 2009 by Tigard Police, Oregon, charging Applicant with Delivery of Methamphetamines and Possession of Methamphetamines; and Applicant disclosed a 2009 conviction in Washington County Court for

Possession of Methamphetamines, a Class A Misdemeanor.

5. The Application's Background Information also asks Applicant, "Have you ever entered into a diversion agreement?" Applicant answered "No" to this question.

6. A background investigation revealed that, in addition to the above methamphetamine-related arrests and conviction, Applicant was arrested, convicted or charged with at least the following:

- i. Arrested April 25, 1993 by Oregon State Police for Driving Under the Influence of Intoxicants. 1993, Douglas County District Court, Diversion.
- ii. Arrested May 17, 2009 for Prostitution by Tigard Police Department, Oregon.
- iii. Charged with Fail to Appear, 1st Degree, in August 2009 by Washington County Sheriff's Office.

7. Therefore, Applicant failed to disclose at least the foregoing arrests, conviction or diversion on the Application 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), which are cause for denial of an application under ORS 692.180(1)(g). Applicant also violated ORS 692.180(1)(a) or ORS 692.180(1)(b).

8. In the Application, Applicant also misrepresented the facts and circumstances of his arrest for Delivery and Possession of Methamphetamine and conviction of Possession of Methamphetamine when he wrote he was giving a ride to a friend and the friend had drugs in his belongings when he was pulled over, searched and both were arrested. Applicant was alone when he drove to the home of a police "internet sting operation" for prostitution, his truck was searched, and he was arrested and charged with prostitution, delivery of methamphetamine and possession of methamphetamine.

CONCLUSIONS OF LAW

1. In applying to the Board for a preneed salesperson registration certificate, Applicant misrepresented his arrest, conviction criminal history and diversion, and Applicant failed to answer truthfully and completely regarding his criminal history to the Board investigator. Making a misrepresentation to obtain a certificate is grounds for certificate denial pursuant to OAR 830-030-0090(2)(c)(D), OAR 830-030-0090(2)(d)(B), OAR 830-040-0010(3), OAR 830-050-0050(2), OAR 830-050-0050(9), ORS 692.180(1)(g), ORS 692.180(1)(a) and ORS 692.180(1)(b).

2. Applicant's conduct, and conviction for possession of methamphetamine, have a demonstrable bearing upon the standards of the funeral service practice of preneed sales, and are cause for refusal to grant a preneed salesperson registration certificate pursuant to OAR 830-050-0050(3), 830-050-0050(9), ORS 692.180(1)(a)(b)(g) & (i), and ORS 670.280(3).

3. For the foregoing reasons, and pursuant to OAR 830-011-0080, ORS 97.931, ORS 692.180(1) and ORS 670.280, denial of Applicant's Application for Preneed Salesperson Registration Certificate is appropriate.

ORDER

1. Applicant's Application for Preneed Salesperson Registration Certificate is hereby denied for violations of or pursuant to OAR 830-011-0080, OAR 830-040-0010(3), OAR 830-050-0050(2), OAR 830-050-0050(3), OAR 830-050-0050(9), OAR 830-030-0090(2)(c)(D), OAR 830-030-0090(2)(d)(B), ORS 692.180(1)(a) and ORS 692.180(1)(b), ORS 692.180(1)(g), ORS 692.180(1)(i), ORS 97.931 and ORS 670.280(3).
2. This Final Order shall become effective when signed by the Executive Director of the Board.

DATED and ENTERED this __21st____ day of July, 2011.

____<s> Michelle Gaines_____

Michelle Gaines
Executive Director
Oregon Mortuary & Cemetery Board

Date of Service: __July 21, 2011_____

Appeal Rights: You are entitled to judicial review of this order in accordance with ORS Chapter 183.482. You may request judicial review by filing a petition with the Court of Appeals in Salem, Oregon within 60 days from the date of service of this order.