

Notice of Proposed Denial of Application

STATE MORTUARY AND CEMETERY BOARD STATE OF OREGON

<p>In the Matter of the Preneed Salesperson Registration Certificate Application of</p> <p>DONALD JAMES MERLINO,</p> <p>APPLICANT</p>	<p>Notice of Proposed Denial of an Application And Opportunity for a Hearing</p> <p>CASE NO. 11-1009</p>
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Pursuant to ORS 692.180, ORS 97.931 or ORS 670.280 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 or about February 1, 2011, the Oregon Mortuary & Cemetery Board (“Board”) received a completed application for a Preneed Salesperson Registration Certificate (“Application”) from Donald James Merlino (“Applicant”).

2. Application and a background investigation for preneed salespersons are required or permissible pursuant to ORS 97.931, OAR 830-011-0070(2) and ORS 692.180(1).

3.

3a. 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 “yes”. If the answer is “yes” Applicant is required to provide a detailed, complete and accurate written account of the facts and circumstances of each arrest or cite, including any dismissals.

3b. 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?" Applicant answered "Yes." If the answer is "Yes" Applicant is required to provide a signed, dated, written statement explaining the circumstances of each incident and include a copy of the charging documents and a copy of the official documents which demonstrated the resolution of the charges or any final judgments.

3c. The Application's Background Information section, Question #5, asks Applicant, "Have you ever entered into a diversion agreement?" The applicant answered "no."

3d. With the application, Applicant provided a two-page description of the following history of arrests and convictions:

DATE OF ARREST	CHARGE	ARRESTING AGENCY	STATUS	COURT DATE
5/7/2009	DELIVERY OF METH	TIGARD POLICE	NO COMPLAINT FILED	8/19/2009
5/17/2009	POSSESSION OF METH	TIGARD POLICE	CONVICTED OF A MISDEMEANOR 3 YRS PROBATION AND \$442 FINE	8/19/2009

3e. In his explanation of the above drug-related charges and conviction, the applicant referred to a third charge, however, Applicant was evasive and did not completely or accurately describe the offense. (See Section 4a, below).

3f. A background investigation revealed at least the following criminal history for Applicant:

DATE OF ARREST	CHARGE	ARRESTING AGENCY	STATUS	COURT DATE
4/25/1993	DUII	OREGON STATE POLICE	DIVERSION 1 YEAR AND \$312 FINE	5/17/1993
5/17/2009	DELIVERY OF METH	TIGARD POLICE	NO COMPLAINT FILED	8/19/2009
5/17/2009	POSSESSION OF METH	TIGARD POLICE	CONVICTED OF A MISDEMEANOR. 3 YRS PROBATION AND \$442 FINE	8/19/2009
5/17/2009	PROSTITUTION	TIGARD POLICE	NO COMPLAINT FILED	8/19/2009

8/6/2009	FAIL TO APPEAR, 1ST DEGREE	WA. CO. S.O.	NO COMPLAINT FILED	NONE LISTED
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3g. Therefore, Applicant failed to disclose completely and accurately at least the following arrests and diversion in his Application:

DATE OF ARREST	CHARGE	ARRESTING AGENCY	STATUS	COURT DATE
4/25/1993	DUII	OREGON STATE POLICE	DIVERSION 1 YEAR AND \$312 FINE	5/17/1993
5/17/2009	PROSTITUTION	TIGARD POLICE	NO COMPLAINT FILED	8/19/2009
8/6/2009	FAIL TO APPEAR, 1ST DEGREE	WA. CO. S.O.	NO COMPLAINT FILED	NONE LISTED

3h. Failing to disclose the foregoing arrests or diversions on the Application are violations of OAR 830-050-0050(2), OAR 830-050-0050(9), OAR 830-030-0090(2)(c)(D), or 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).

4.

4a. During the background investigation, the Board investigator asked Applicant to explain why he did not include the prostitution charge on his Application. Applicant argued he had disclosed that charge on his Application when he stated it was one of the charges that was dropped. Applicant was evasive and misled the reader on his Application by failing to state he was charged with prostitution. Therefore, when telling the Board investigator that he disclosed the prostitution charge on his Application, Applicant concealed or misstated a material fact or failed to answer truthfully and completely matters within the Board’s jurisdiction.

4b. The Board investigator asked the Applicant to explain the circumstances surrounding the Delivery of Methamphetamine arrest and the Possession of Methamphetamine conviction. Applicant stated he was giving a ride to a friend, and the

friend had drugs in his belongings in the back of Applicant's truck. However, both the police report and the police officer confirmed there was no friend with Applicant when Applicant was arrested and charged with delivery and possession of methamphetamine. Therefore when telling the investigator he was giving a ride to a friend that had drugs in his truck at the time of his arrest, Applicant concealed or misstated a material fact and misrepresented the facts and circumstances of an arrest and conviction.

4c. As described in Sections 4a and 4b above, Applicant misrepresented his criminal history and failed to answer truthfully and completely to the Board investigator in violation of OAR 830-040-0010(3), OAR 830-050-0050(2), OAR 830-050-0050(9), OAR 830-030-0090(2)(c)(D), or OAR 830-030-0090(2)(d)(B). The foregoing are cause for denial of an application under ORS 692.180(1)(g). Applicant also violated ORS 692.180(1)(a) and ORS 692.180(1)(b).

5.

Applicant's conduct and conviction of delivery 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 certificate pursuant to OAR 830-050-0050(3), 830-050-0050(9), ORS 692.180(1)(a)(b)(g) & (i), ORS 692.180(1)(i), or ORS 670.280(3).

6.

For the foregoing reasons, and pursuant to OAR 830-011-0080, ORS 97.931, ORS 692.180(1) or ORS 670.280, 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.

Opportunity for Hearing

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 __3rd__ day of _____ May _____

STATE MORTUARY AND CEMETERY BOARD

_<s> Lynne Nelson
Designee: Lynne Nelson
Compliance Manager