STATE OF OREGON
for the
STATE MORTUARY AND CEMETERY BOARD

IN THE MATTER OF:	) OAH Case No.: 1403980
	) Agency Case Nos.: 11-1011B, 12-1015B,
TIM LANCASTER, CO-3224	) 12-1021B, 12-1040B, 12-1054B, 13-1001C,
	) 13-1012B, 13-1030B, 13-1034B, 14-1007B,
Respondent	) 14-1008B, 14-1013C
	)
	) **FINAL ORDER**

HISTORY OF THE CASE

On November 5, 2014, the Oregon Mortuary and Cemetery Board (Board) issued a Notice of Proposed Disciplinary Action (Revocation of License & Civil Penalty) and Opportunity for a Hearing (Notice) to Tim Lancaster (Respondent). The Notice alleged Respondent violated various statutes and administrative rules and proposed to revoke Respondent's combined funeral service provider and embalmer license and to impose a $1,000 per violation civil penalty. On November 20, 2014, Respondent requested a contested case hearing. The Board referred this matter, along with three other related cases, to the Office of Administrative Hearings (OAH) on December 4, 2014.[1] The OAH assigned the case to Senior Administrative Law Judge (ALJ) Monica A. Whitaker.

On January 12, 2015, the Board filed a Motion for Protective Order and Request for Closed Hearing. On January 20, 2015, ALJ Whitaker issued a Ruling and Order on Motion for Protective Order and Request for Closed Hearing.

ALJ Whitaker convened a telephone prehearing conference on February 12, 2015. Senior Assistant Attorney General Johanna Riemenschneider and Assistant Attorney General Tyler Anderson represented the Board. Attorney Gerald A. Martin represented Respondent. ALJ Whitaker scheduled deadlines for the Board to file a motion for summary determination, for Respondent to file a response, and for the Board to file a reply. ALJ Whitaker and the parties agreed to convene an in-person hearing from October 19 through 23, 2015.

On July 14, 2015, the Board filed a Motion for Summary Determination.[2] Also on July 14, 2015, the Board issued an Amended Notice of Proposed Disciplinary Action (Revocation of Licenses & Civil Penalties) and Opportunity for a Hearing (Amended Notice) to Respondent.

On August 4, 2015, Respondent's attorney requested a 60-day extension of time within which to file a response. ALJ Whitaker convened a status conference on August 12, 2015 to address the request for an extension. ALJ Whitaker granted Respondent until September 28,

[1] The four cases were consolidated for purposes of the hearing.
[2] The motion was originally due on July 13, 2015. On July 13, 2015, the Board requested a one-day extension within which to file the motion. ALJ Whitaker granted the Board's request and extended the deadline to July 14, 2015.

2015 to file a response, and the Board until October 16, 2015 to file a reply. ALJ Whitaker also rescheduled the hearing for December 7 through 11, 2015.

Respondent filed a Response to Board's Motion for Summary Determination (Response) on September 28, 2015. On October 2, 2015, ALJ Whitaker received a Motion for Withdrawal of Counsel, Affidavit of Counsel, and Order on Motion for Withdrawal of Counsel from Mr. Martin. By letter dated October 5, 2015, ALJ Whitaker acknowledged receipt of the Motion for Withdrawal of Counsel and notified the parties that in accordance with OAR 137-003-0520(7), Mr. Martin had been removed as counsel of record. Also by letter dated October 5, 2015, ALJ Whitaker notified Respondent that pursuant to OAR 137-003-0550(2), corporations and limited liability companies must be represented by an attorney, except as provided in OAR 137-003-0555 or as otherwise authorized by law. The ALJ advised that the corporation and limited liability company would be held in default if they were not represented by an attorney at the scheduled hearing.

The Board filed a Reply to Response to Motion for Summary Determination (Reply) on October 16, 2015.

ALJ Whitaker closed the record on October 19, 2015 and took the matter under advisement. Thereafter, on October 28, 2015, the Board filed a Corrected Motion for Summary Determination (Corrected Motion) and a Corrected Agency Reply to Response to Motion for Summary Determination (Corrected Reply). ALJ Whitaker reopened the record to accept these documents.

On November 16, 2015, Respondent requested an extension of time within which to file Respondent's witness list and hearing exhibits. Respondent also requested a postponement of the scheduled hearing. ALJ Whitaker convened a telephone prehearing conference on November 16, 2015 to address the request. Mr. Anderson and Ms. Riemenschneider represented the Board. Attorney Jennifer Schade represented Respondent. ALJ Whitaker denied Ms. Schade's request to postpone the hearing, but extended the witness list and exhibit filing deadline to November 30, 2015.

On November 18, 2015, ALJ Whitaker issued a Ruling on Motion for Summary Determination granting the Board's Motion. However, because the Ruling did not resolve all issues raised in the Board's Amended Notice, the Ruling concluded that the hearing would convene as scheduled.

On November 30, 2015, the Board issued a Second Amended Notice of Proposed Disciplinary Action and Opportunity for Hearing (Second Amended Notice). The Second Amended Notice withdrew the remaining issues not resolved by way of the November 18, 2015 Ruling.

On December 7, 2015, ALJ Whitaker convened a telephone status conference. Mr. Anderson and Ms. Riemenschneider represented the Board. Attorney Diane Cady represented Respondent. In light of the Second Amended Notice, the Board renewed its Motion. Ms. Cady did not object.

On December 8, 2015, ALJ Whitaker issued a Ruling on Motion for Summary Determination and Proposed Order (Proposed Order) on the renewed Motion. On January 7, 2016, Respondent submitted a request to supplement the record and/or reopen the hearing and written exceptions to the Proposed Order to the Board. To the extent Respondent offered new evidence for consideration, the Board reviewed that request under the standard set forth by ORS 183.482(5). The Board found Respondent's a request to supplement the record and/or reopen the hearing and written exceptions to be without merit.

The Board adopts the Proposed Order's History of the Case, Issues, Documents Considered, Findings of Fact, Conclusions of Law, Opinion, and Ruling as set forth in the Proposed Order; and issues the following Order.

ISSUES

1. Whether, pursuant to OAR 137-003-0580, the Board is entitled to a favorable ruling as a matter of law on the following issues:

a. Purchaser A

i. Whether Respondent failed to follow through with agreed upon arrangements, in violation of *former* OAR 830-030-0090(1)(d)(2007) and OAR 830-030-0090(1)(b).

ii. Whether Respondent misrepresented the order or placement status of the marker to Purchaser A and the Board, in violation of ORS 692.180(1)(a) or (b).

iii. Whether Respondent made a false or misleading statement or used misrepresentation regarding the order and placement status of the marker, in violation of ORS 692.180(1)(a) or (b) and OAR 830-030-0090(5)(d) and (g).

b. Decedent B

i. Whether Respondent assessed a finance charge in violation of ORS 692.180(1)(a) or (b).

ii. Whether Respondent failed to follow through with agreed upon arrangements for placing the marker on Decedent B's grave and maintenance of the grave site, in violation of OAR 830-030-0090(1)(b).

iii. Whether Respondent failed to keep accurate and complete records for Decedent B's arrangements and final disposition in violation of OAR 830-030-0090, *former* OAR 830-040-0000(6) and (9)(2011).[3]

iv. Whether Respondent provided false or misleading information to the Board in

[3] OAR 830-040-0000(6)(2011) renumbered to OAR 830-040-0000(7)(OMBC Order 1-2012). OAR 830-040-0000(9)(2011) renumbered to OAR 830-040-0000(10)(OMCB Order 1-2012).

violation of OAR 830-040-0010(3) or OAR 830-030-0090(5)(d).

v. Whether Respondent failed to provide requested documents to the Board in violation of OAR 830-040-0010(4) and (5) and OAR 830-030-0090(5)(f).

vi. Whether Respondent's handling of arrangements for Decedent B failed to abide by the accepted standards of the death care industry, in violation of OAR 830-030-0090.

c. Decedent C

i. Whether Respondent sent an invoice to Decedent C's daughter without an underlying contract and charged for embalming of Decedent C when the service was not provided, in violation of ORS 692.180(1)(a) or (b) and OAR 830-030-0090(4)(h).

Alternatively, whether Respondent embalmed Decedent C when embalming was not authorized, in violation of OAR 830-030-0090(1)(b) and *former* OAR 830-040-0000(6)(2011).

ii. Whether Respondent's handling of arrangements for Decedent C failed to abide by accepted standards of the death care industry, in violation of OAR 830-030-0090.

iii. Whether Respondent failed to keep accurate and complete records for Decedent C's arrangements and final disposition, in violation of OAR 830-030-0090(4), *former* OAR 830-040-0000(6) and (9)(2011).

d. Decedent D

i. Whether Respondent failed to record the reason for embalming on the SFGSS, in violation of 16 CFR § 453.5(b) and ORS 692.180(1)(h).

ii. Whether Respondent failed to include in its permanent record for Decedent D the signature of the licensee on the cremation authorization, a signed statement from the person making the cremation arrangements specifying the action to be taken regarding the delivery of the cremated remains, and the signature of the licensee on the receipt for the cremated remains. OAR 830-040-0000(7), (8), and (9).

e. Decedent E

i. Whether Respondent failed to follow through with contractual arrangements or engaged in misrepresentation or fraudulent or dishonest conduct related to ordering and placement of a marker for Decedent E, in violation of OAR 830-030-0090, *former* OAR 830-030-0090(1)(d)(1997), and OAR 830-030-

0090(1)(b), or ORS 692.180(a) or (b).

ii. Whether Respondent engaged in misleading business practices, misrepresentation and fraudulent and dishonest conduct when communicating with Decedent E's family and the Board about the marker order and the refund, in violation of ORS 692.180(1)(a) or (b) and OAR 830-030-0090(5)(d) or (g).

iii. Whether Respondent's handling of arrangements for Decedent E failed to meet the minimum standards of the industry, in violation of OAR 830-030-0090.

f. Decedent F

i. Whether Respondent failed to comply with applicable laws and regulations relating to operation of the cemetery by disinterring and interring remains without appropriation authorization under ORS 97.130(2). ORS 97.220 and OAR 830-030-0100(3).

Alternatively, whether Respondent failed to provide the Board with documents and information, in violation of OAR 830-030-0090(5)(f) or (g).

ii. Whether Respondent failed to respect a client's dignity and rights, in violation of OAR 830-030-0090(1)(f) or caused emotional discomfort to a client, in violation of OAR 830-030-0090(4)(b).

iii. Whether Respondent failed to keep accurate and complete records with regard to burials in its cemetery, in violation of ORS 97.720 and *former* OAR 830-040-0000(6)(2009),[4] OAR 830-040-0000(10)(a), or OAR 830-030-0090(4)(g).

iv. Whether Respondent failed to provide the Board with requested documents and information and failed to cooperate or answer truthfully and completely inquiries from the Board, in violation of OAR 830-030-0090(5)(f) or (g).

g. Decedent G

i. Whether Respondent failed to implement and follow through with contractual arrangements for Decedent G's final disposition, in violation of OAR 830-030-0090(1)(b).

ii. Whether Respondent made false or misleading statements to Decedent G's mother and to the Board, and engaged in dishonest conduct, in violation of OAR 830-030-0090(5)(d), OAR 830-040-0010(3), and ORS 692.180(1)(a) or (b).

iii. Whether Respondent failed to provide the Board with requested documents and information and failed to cooperate or answer truthfully or completely inquiries from the Board with regard to Decedent G, in violation of OAR 830-

[4] OAR 830-040-0000(6)(2009) renumbered to OAR 830-040-0000(7)(OMCB Order 1-2012).

030-0090(5)(f) and (g).

h. Decedent H

i. Whether Respondent failed to timely implement or follow through with contractual arrangements, in violation of OAR 830-030-0090(1)(b).

ii. Whether Respondent failed to provide the Board with requested documents or information and failed to cooperate or answer truthfully or completely inquiries from the Board, in violation of ORS 692.180(1)(a) or (b), OAR 830-030-0090(5)(f) and (g), and OAR 830-040-0010(3).

i. Decedent I

i. Whether Respondent failed to provide the Board with requested documents or information and failed to cooperate or answer truthfully or completely inquiries from the Board, in violation of ORS 692.180(1)(a) or (b) and OAR 830-030-0090(5)(d), (f), and (g).

ii. Whether Respondent interred human remains without prior written authorization by the owner of such space or interment rights and removed human remains from a space without written consent of the person with authority to direct disposition of remains, in violation of ORS 97.220.

iii. Whether Respondent failed to keep detailed, accurate, and permanent records of transactions that are performed for the care, preparation, and final disposition of human remains, in violation of OAR 830-040-0000(7) and ORS 97.720.

j. Decedent J

i. Whether Respondent's handling of arrangements for Decedent J failed to abide by the accepted standards of the industry, in violation of OAR 830-030-0090.

ii. Whether Respondent failed to timely implement or follow through with contractual arrangements when it did not install the name plaque, in violation of OAR 830-030-0090(1)(b).

iii. Whether Respondent failed to provide the Board with requested documents or information and failed to cooperate or answer truthfully or completely inquiries from the Board, in violation of ORS 692.180(1)(a) or (b) and OAR 830-030-0090(5)(f) and (g).

k. Decedent L

i. Whether Respondent engaged in misleading business practices and misrepresentation, in violation of ORS 692.180(1)(a), (b), or (h) and OAR 830-

030-0100(1).

ii. Whether Respondent's handling of arrangements for Decedent L failed to meet the minimum standards of the industry, in violation of OAR 830-030-0090.

iii. Whether Respondent failed to keep detailed, accurate, and permanent records in violation of OAR 830-040-0000(7) and OAR 830-030-0090(4)(g), or ORS 97.720.

iv. Whether Respondent failed to provide the Board with requested documents or information and failed to cooperate or answer truthfully or completely inquiries from the Board, in violation of ORS 692.180(1)(a) or (b) and OAR 830-030-0090(5)(d), (f), and (g).

l. Business Practices – Facility Management

Unidentified Remains

i. Whether Respondent's FSP failed to attach to the remains, or to the receptacle containing the remains, the Oregon State ID Tag of three human remains (Decedents EE, FF, and GG) that were located in the refrigeration unit. ORS 692.405 and OAR 830-030-0000(4).

Unsanitary Conditions

ii. Whether Respondent failed to maintain a sanitary preparation room in violation of OAR 830-040-0010(1) and OAR 830-040-0020(4) or (5).

Mismanagement of Cremated Remains

iii. Whether Respondent failed to ensure that all residual of the cremation process undergoes final processing and that the entire processed cremated remains are placed in a cremated remains container. OAR 830-030-0050(2) or (3).

m. Business Practices – Recordkeeping

i. Whether Respondent failed to maintain complete and accurate permanent records for decedents GG and HH, and JJ, in violation of OAR 830-030-0090(4)(g), OAR 830-040-0000(7), and ORS 97.720.

n. Business Practices – Responsiveness to Board Requests

i. Whether Respondent failed to provide the Board with apprenticeship logs for Brittney Rice and Zachary Gordon.

2. If the Board is entitled to a favorable ruling on any or all of the above allegations,

whether the Board may revoke Respondent's combined funeral service provider and embalmer license and impose a civil penalty in the amount of $1,000 per violation against Respondent.

DOCUMENTS CONSIDERED

The following documents were considered in reaching this ruling: the Board's Motion and its supporting Exhibits 1 through 147; the Board's Corrected Motion; Respondent's Response and its supporting Exhibits 1 through 3; the Board's Reply and its supporting Exhibits 1 through 3; and the Board's Corrected Reply.

FINDINGS OF FACT

Relevant Background

1. Timothy Clinton Lancaster (Lancaster/Respondent) was issued a combination funeral service practitioner and embalmer license, number CO-3224 on September 10, 1979. Respondent is currently licensed by the Board through December 31, 2015. (Ex. 144 at 2.)

2. On July 12, 1985, the Board issued Eternal Hills Memorial Gardens Crematorium license CR-0057. The Board issued Eternal Hills Memorial Gardens Crematorium a new license, number CR-0131, on December 22, 1986. (Ex. 144 at 2.)

3. The Board issued Eternal Hills Memorial Gardens license, number CE-0130, on December 22, 1986. (Ex. 144 at 2.)

4. The Board issued Eternal Hills Memorial Gardens, dba Eternal Hills Funeral Home, a license, number FE-8239, on September 25, 1990. (Ex. 144 at 2.)

5. On March 31, 1999, the Board reissued a license because the corporate owner name was changed from Eternal Hills Memorial Gardens, Inc., to Eternal Hills Memorial Gardens & Funeral Home, Inc. (Respondent). (Ex. 144 at 2.)

6. The Board issued Klamath Tribute Center a funeral establishment license, number FE-8725, on March 30, 2011. Klamath Tribute Center is currently licensed as a funeral establishment by the Board through December 31, 2016. (Ex. 144 at 3.)

7. Lancaster has been a corporate officer for Eternal Hills since 1992. Lancaster has been the assigned manager in the Board's records for all of three licensed facilities since 1990. (Ex. 144 at 3.)

8. Robert Alan Gordon, Sr. (Gordon) was issued an Oregon Funeral Services Practitioner License FS-0422 on July 29, 1998 after applying for reciprocity and passing the Funeral Service Practitioner Examination. Gordon has been licensed in Oregon since 1998 and is currently licensed by the Board through December 31, 2015. Gordon has been an owner, shareholder, and corporate officer of Eternal Hills since December 22, 1986. Gordon became Eternal Hills' 100 percent stockholder on October 18, 2000. (Ex. 144 at 2.)

9. Brittney Rice (Rice) was issued an Apprenticeship Embalmer (AE) certificate of registration, AE-3293, on March 29, 2012 under the supervision of Eleanor L. Olson. The Board reissued Rice's AE certificate on July 1, 2013 under the supervision of Lancaster. The AE certificate was renewed for 2014, effective January 1, 2014. (Ex. 144 at 3.)

10. The Board issued Rice an Apprenticeship Funeral Service Practitioner (ASFP) certificate of registration, AF-2153, on March 29, 2012 under Lancaster's supervision. Rice's AFSP certificate of registration was re-issued on August 20, 2013 under the supervision of John Harrison (Harrison). The ASFP certificate of registration was terminated on September 30, 2013. (Ex. 144 at 3.)

11. The Board issued Zachary Gordon (Z. Gordon) an AE certificate of registration, AE-3328, on August 20, 2013 under the supervision of Harrison. The AE was terminated on September 30, 2013. (Ex. 144 at 3.) The Board reissued Z. Gordon's AE certificate of registration on June 26, 2014 under the supervision of Harrison. The AE certificate of registration was terminated on July 6, 2014. (*Id.* at 4.) The Board reissued Z. Gordon's AE certificate of registration on August 12, 2014 under the supervision of Lancaster. The AE certificate of registration was renewed for 2015, and then terminated on March 31, 2015. (*Id.*)

12. The Board issued Z. Gordon an ASFP certificate of registration, AF-2204, on August 20, 2013 under the supervision of Lancaster. The ASFP certificate of registration was renewed for 2014 and 2015. (Ex. 144 at 4.)

Purchaser A

13. On August 3, 2007, Respondent[5] entered into a purchase agreement with Purchaser A and his spouse for the placement of a granite marker for Purchaser A and his spouse at Eternal Hills Cemetery. (Ex. 3 at 5.) Purchaser A and his spouse purchased a "Back to Nature" rock marker with the specific emblems to be placed on the rock to be determined. (*Id.*) The total price for the rock marker was $3,825, but after discounts of $300 and $70.50 were applied, Purchaser A and his spouse owed $2,954.50. (*Id.*) Purchaser A paid a $500 deposit. (Exs 1; 3 at 5; 12 at 2 and 5.)

14. Also in August 2007, Purchaser A and his spouse make pre-arrangements with Respondent for cremation and inurnment beneath the memorial rock for a total price of $3,924. (Ex. 16 at 3 and 4.)

15. On or about August 20, 2008, Purchaser A paid Respondent a balance due of $6,628.50 with a U.S. Bank card. (Ex. 12 at 4.)

16. Purchaser A and his spouse signed a proof for the marker in or about March 2008. (Ex. 3 at 9.) Both signed a second purchase agreement for the "Back to Nature" rock marker on May 30, 2008 with the same terms as the August 3, 2007 agreement, with the exception of a notation stating "See Attached Proof." (*Id.* at 8.) The second purchase agreement noted payments of $500 and $2,704 and noted that there was no unpaid balance owed. The second

[5] "Respondent," as used in this Ruling, refers to Lancaster, Eternal Hills, and Klamath Tribute Center.

agreement is signed by Purchaser A, his spouse, and Lancaster. (*Id.*)

17. On February 6, 2011, Purchaser A examined the site where he expected to see the "Back to Nature" marker he had ordered and paid for. Instead, he found a light weight replica of a rock marker. (Ex. 2.) That same day, Purchaser A spoke to Lancaster and understood from their conversation that the granite marker would be placed the first week of April 2011. (Exs. 4 at 1-2; 5.)

18. A marker is typically produced, delivered, and set in a three to six week timeframe. (Ex. 145.)

19. On June 9, 2011, the Board's Compliance and Education Manager, Lynne Nelson, sent an email to Lancaster asking for the status of Purchaser A's marker, noting that Purchaser A said the marker would be placed by April 1, 2011. (Ex. 4 at 2.) On June 10, 2011, Lancaster responded that he had put a sandstone rock marker at the site because it would accommodate the surface emblems Purchaser A and his wife wanted, but "he [Purchaser A] did not like that so we went back to the nature rock." (*Id.* at 1.)

20. On June 16, 2011, Lancaster executed an addendum to the contact with Purchaser A and his spouse, noting that the memorial type was a "30 x 24" at no charge. (Ex. 6 at 2.) Purchaser A and his spouse signed the addendum on June 21, 2011. (*Id.*)

21. On October 2, 2012, Board investigator Robert Magill inquired as to the status of the marker. (Ex. 7 at 3.) In an October 10, 2012 email to Lancaster, Nelson reminded Lancaster that Respondent needed to respond to the inquiry regarding Purchaser A's marker status. The email provided Respondent until October 18, 2012 to respond, and noted that Respondent needed to cooperate with the Board's investigation. (*Id.* at 1.)

22. On November 6, 2012, Magill again requested Lancaster provide an update regarding Purchaser A's marker. Lancaster responded that the marker size had been changed "to accommodate his [Purchaser A's] selections of emb[lems] and picture – it is in production." (Ex. 8.)

23. On December 5, 2012, Purchaser A signed off on a proof of the marker from Oregon Memorials, which Respondent faxed to the Board. (Ex. 9 at 1-3.)

24. On December 19, 2012, a representative of Oregon Memorials, Jeanne "Jack" Jackson advised Respondent's employee, David Hinton, that Oregon Memorials needed the signed proof and a payment of $3,700 to get started on the order. (Ex. 10 at 1.) Jackson also acknowledged receipt of a $1,000 down payment from Respondent and noted a remaining balance due of $3,235 which would be due to start the Lazer and Glass Art work on the marker. (*Id.*)

25. In January 2013, Nelson corresponded with Lancaster to confirm that Respondent would send the signed proof and both payments to Oregon Memorials. (Ex. 11 at 1.) On March 25, 2013, Nelson spoke with Lancaster via telephone. At that time, Respondent had not paid the

$3,700 to Oregon Memorials to get the order started. Lancaster informed Nelson that Purchaser A had only paid about $1,800 toward something that would cost Respondent a lot more. Nelson reminded Lancaster that Respondent needed to pay Oregon Memorials the $3,700 and would still owe the balance of $3,235 for the order to be completed. (Ex. 13.)

26. On March 27, 2013, Respondent prepared a check payable to Oregon Memorials in the amount of $3,725.00, a copy of which Respondent sent to the Board. (Ex. 14 at 2.) Oregon Memorials received the payment on April 2, 2013 and on April 9, 2013, ordered the granite stock for Purchaser A's marker. (Ex. 15 at 3.)

27. On October 29, 2013, Nelson inquired with Respondent and with Oregon Memorials about the status of Purchaser A's marker. (Ex. 15 at 1-2.) In a written response, Jackson indicated:

> Attached you will find a color copy of the proof along with a signed copy of the proof. I know that this has been a long and distressing ordeal for the family. I do need to get a picture of [Purchaser A and his spouse] that they want to use for this marker and don't want to have to go through the funeral home. Is there any way you can get in touch with the family directly and ask them to send me the picture that they would like to use. Normally I would have the funeral home handle this but I'm not sure that the family really wants to deal with anyone there. * * * * *.

(*Id.* at 1.) Nelson asked Lancaster to provide Oregon Memorials with a photo and to pay any outstanding balance owed to Oregon Memorials. (*Id.* at 2.) Lancaster responded that he had sent a photo and would send it again. (*Id.*)

28. In a January 8, 2014 email, Jackson informed Lancaster that "We [Oregon Memorials] still need to receive the balance of payment on this order." (Ex. 15 at 3.) Jackson noted a balance due of $3,210 and stated that "We cannot proceed with the work until we receive the balance." (*Id.*)

29. On March 10, 2014, Nelson contacted Lancaster by email and again asked if Respondent could make the final payment to Oregon Memorials and have the marker delivered that week. Lancaster responded by acknowledging that the marker was done and "we will send the money." (Ex. 17.) Oregon Memorials did not deliver the marker to Respondent until December 23, 2014. (Ex. 18.)

Decedent B

30. Decedent B passed away on October 30, 2011. His funeral service was held at Davenport Chapel of the Good Shepherd on November 12, 2011. (Ex. 25 at 1.) On November 9, 2011, Decedent B's mother (Mother) entered into a Statement of Funeral Goods and Services Selected (SFGSS) agreement for final arrangement services for Decedent B with Respondent. (Ex. 22 at 3.) The total balance on the SFGSS for Decedent B's final arrangements was $2,435. (*Id.*)

31. On November 9, 2011, Respondent prepared an Agreement Confirmation for Mother. The Agreement Confirmation lists a base price of $2,635.00, a transfer allowance of $200, a finance charge of $381.54, and a total payment due of $2,816.54. (Ex. 22 at 8.)

32. Respondent also prepared a Promissory Note dated November 9, 2011 indicating an annual percentage rate of 18 percent, a finance charge of $381.54, a total amount financed of $2,435, and that the total amount that would be paid after finance charges was $2,816.54. (Ex. 22 at 5.) Mother did not sign the Promissory Note.[6] (*Id.*; Ex. 22 at 2.)

33. Mother received a billing statement from Respondent with a due date of January 9, 2012. The billing statement noted a contract balance of $1,616.54 and a monthly payment due of $148.24.[7] (Ex. 19 at 2.)

34. Mother received a billing statement from Respondent with a due date of February 9, 2012. The billing statement noted a payment of $50 on January 5, 2012 and a contract balance of $1,566.54.[8] (Ex. 19 at 4.) Mother noted on the bill that she paid $50 on February 7, 2012. (*Id.*)

35. Mother received a billing statement from Respondent with a due date of March 10, 2012.[9] The billing statement noted a contract balance of $340.28 and a payment due of $40.89. (Ex 19 at 3.)

36. In a May 8, 2012 letter, the Board notified Respondent that it was investigating a complaint alleging concerns regarding the final arrangements for Decedent B. The Board provided Respondent until May 18, 2012 to respond to the allegations raised in the complaint. (Ex. 22 at 1.) On October 11, 2012, Lancaster responded to the complaint, explaining, in part:

> At the time of the arrangements [Mother] signed the agreement and was given a copy by Paul Giacomelli. She could not pay for the services so it was set up for a 2 year payment plan for which there was a finance charge of $381.54 and a monthly payment of $148.24 per month, however the promissory note was not signed. In addition at the time of agreement entry into the computer, [Mother] was given a discount of $200. She made an installment payment of $1200 on 11/6/2011, then paid on 1/5/12 - $50; 2/10/12 - $50; 3/13/12 - $150; 6/8/12 - $600; and a payoff of $628.85 on 7/9/12.
>
> The result of this is that [Mother] was charged $43.85 in finance charge[s] for the period of 11/9[/11] to 7/9/12. She was sent a statement every month

[6] When Respondent faxed a copy of the Promissory Note to the Board, a document stating "Please have [Mother] sign the agreement and the promissory note" was attached thereto. (Ex. 22 at 6.)
[7] Decedent B's mother, not Respondent, provided a copy of this document to the Board in April 2012. (*See* Ex. 19 at 2.)
[8] Decedent B's mother, not Respondent, provided a copy of this document to the Board in April 2012. (*See* Ex. 19 at 4.)
[9] Decedent B's mother provided a copy of this document to the Board in April 2012. (*See* Ex. 19 at 3.)

and had an accounting of it. * * * * *.

(*Id.* at 2.)

37. Respondent's accounting statement reflects the following payments from Mother:

$1,200	November 16, 2011
$50	January 5, 2012
$50	February 10, 2012
$150	March 13, 2012
$600	June 8, 2012
$137.69	July 9, 2012
$628.85	July 9, 2012

(Ex. 22 at 4.)

38. On March 14, 2012, Mother completed a Cemetery Service Request form, which she submitted to Respondent.[10] On the request, Mother noted that Decedent B's "[g]rave is suncken [*sic*] in." (Ex. 19 at 1.) On October 13, 2012, Respondent's employee, Rene McAlmon, completed a Customer Service & Maintenance Request and noted "Level grave, please put new sod in dead area. Need to get rid of clover." (Ex. 22 at 9.) The request contains an additional notation from McAlmon that on "9/6/12 – still not completed as promised. Please notify me when completed." (*Id.*)

39. Mother had originally ordered a marker for herself with a pre-need arrangement, but when Decedent B died, she told Lancaster that she would use the marker for Decedent B. In August 2012, Respondent entered into an agreement with Mother to order and place a marker for Decedent B for an additional $283, which Mother paid in full in September 2012. (Ex. 23 at 2.) Mother signed a proof for the marker in August 2012. (Ex. 24 at 1.) Respondent ordered the marker in October 2012 and received it in November 2012. (Ex. 27.) Respondent did not place the marker at Decedent B's grave until 2014. (Ex. 24 at 1.)

40. In a May 8, 2012 letter, Magill informed Respondent that the Board was investigating a complaint regarding the final arrangements for Decedent B. The letter outlined the complaints the Board had received and provided Respondent until May 18, 2012 to provide a written response to the allegations. (Ex. 20.) Respondent did not respond by May 18, 2012. (Ex. 21.)

41. On October 10, 2012, Nelson emailed Lancaster and reminded him of the importance of cooperating and responding to the Board investigator's requests in a timely manner and attached the May 8, 2012 letter from Magill. Nelson provided Respondent until October 18, 2012 to respond to the Board's requests for information. (Ex. 21 at 1 and 2.)

42. On October 11, 2012, the Board received a response to the May 8, 2012 request for

[10] The Board received this document from Decedent B's mother. In addition, Decedent B's mother also provided the Board with a copy of Decedent B's memorial service information. (*See* Ex. 19.)

information from Respondent. In a letter dated September 26, 2012, Lancaster addressed the allegations, and included the following documents: an SFGSS; Transaction History report; the Promissory Note; a document noting that the agreement and Promissory Note needed to be signed by the mother; the November 8, 2011 Cemetery Service Request; the Agreement Confirmation; and the August 13, 2012 Customer Service & Maintenance Report. (Ex. 22.)

43. In February 2014, McAlmon provided the Board with a copy of Decedent B's marker proof. (Ex. 24 at 1.)

44. On June 19, 2014, Board investigator Merill Creagh sent an email to Lancaster asking for a clear copy of Mother's complete permanent record. (Ex. 26 at 2.) Creagh asked that the documents be submitted no later than noon on June 20, 2014. (*Id.*) Lancaster responded on June 23, 2014 that he had just received the email and that it would be difficult to provide the requested documents in less than 24 hours. Creagh replied on June 23, 2014, again requesting a copy of Mother's permanent record, as well as the order form for the marker ordered, paid for, and placed on Decedent B's grave. Lancaster responded that "[t]his was sent again – sent on [February] 2014[.] They did not purchase a marker from us it was purchased elsewhere." (Ex. 26 at 1.)

Decedent C

45. In 1992, Respondent entered into prearrangements for final disposition with Decedent C and his spouse. (Ex. 34 at 2.) Decedent C filled out and signed a Cremation Authorization form on January 27, 1992 in which he authorized Eternal Hills Memorial Gardens & Crematory to cremate and process his remains. (*Id.* at 9.) In 1995, Decedent C's spouse passed away. At that time, he filled out a Funeral Service Instructions and Information form with Respondent that noted "direct cremation" and final disposition in lot 109C, Space 1 in the Peace Section. (*Id.* at 8.)

46. Decedent C passed away on November 11, 2011. (Ex. 29 at 1.) On November 19, 2011, Respondent prepared an SFGSS for Decedent C listing the total amount due as $3,388.00. The SFGSS was not signed or dated. (Ex. 34 at 4.)

47. Decedent C's son picked up his cremated remains on November 25, 2011. (Ex. 34 at 2.) On February 1, 2012, Decedent C's daughter received an invoice from Respondent in the amount of $3,777.19, which amount included late charges and finance charges. (Ex. 29 at 1, 3.)

48. On or about May 1, 2012, Decedent C's daughter sent a letter to Lancaster formally requesting a review of Decedent C's records to determine if Decedent C had made an advance payment of $1,295 in 2003 for his cremation services; requesting copies of relevant documents; and requesting a revised invoice without finance charges or late fees, based on the 2003 rates for basic cremation. (Ex. 29 at 2.)

49. On September 6, 2012, Decedent C's daughter sent Lancaster a letter in which she referenced an August 22, 2012 discussion wherein Lancaster agreed to charge $1,350 for Decedent C's direct cremation, plus an additional $50 for the death certificates, for a total charge

of $1,400. (Ex. 32 at 3.) In the letter, Decedent C's daughter asked Lancaster to provide an official revised invoice which itemized the charges. Decedent C's daughter noted that "[u]pon payment of the $1,400, the account will be PAID IN FULL." (*Id.*; emphasis in original.)

50. On September 19, 2012, Magill sent a letter to Lancaster to inform him that the Board was investigating a complaint against Respondent, including an allegation that referenced a missing 2003 pre-arrangement file for Decedent C and an allegation related to Decedent C's daughter's repeated attempts to receive a revised billing statement from Respondent's staff members. (Ex. 33.) In the letter, Magill requested that Respondent provide the Board with a written response to the allegations, with a complete copy of the permanent records for Decedent C, and with the written statement of persons having direct involvement or knowledge regarding the allegations. (*Id.*)

51. On September 26, 2012, Lancaster sent a response letter to the Board in which he addressed some, but not all, of the Board's questions outlined in the September 19, 2012 letter. (Ex. 34 at 2.) Lancaster discussed the details of Decedent C's prearrangement from 1992 and 1995, but did not discuss the 2003 prearrangement. (*Id.*) Lancaster also explained, in part:

> The initial amount of the services included the placement in the space[;] however[,] the son picked up the cremated remains on November 25, 2011. This then meant the charges would be removed to that reducing the cost to $1450 as I assured [Decedent C's daughter]. In addition I told her she would not be responsible for this and that it should be the Weyco policy as discussed. To date there has been no payment on this account and it has been adjusted to meet the services rendered.

(*Id.*)

52. On October 6, 2012, Decedent C's daughter received an SFGSS from Respondent that stated the amount due was $1,400. (Ex. 35 at 1, 3-5.) The SGFSS listed a $195 additional charge for embalming services. (*Id.* at 4.) In his prearrangements, Decedent C requested a direct cremation, not embalming services. (Ex. 34 at 8.)

53. On March 5, 2013, Magill sent Lancaster a letter requesting that Respondent provide the Board with the following documents for Decedent C: 1) a copy of the embalming authorization; 2) a copy of the SFGSS signed by the person with the right to control final disposition; 3) a copy of the embalming report; 4) a statement as to whether Decedent C was embalmed; 5) what actions Respondent had taken, if any, to correct the errors on the death certificate (specifically, the place of death and cause of death). (Ex. 36 at 1.) Magill requested that Respondent provide the requested documents to the Board no later than March 8, 2013. (*Id.*)

54. Lancaster responded to Magill's request on March 10, 2013. In his response, Lancaster stated that Decedent C was refrigerated, not embalmed, but that embalming was listed on the SFGSS because embalming was less expensive than refrigeration. Lancaster acknowledged that the SFGSS was not signed by Decedent C's daughter, but that she did authorize the cremation, that there was no embalming report, and that there was an affidavit to

correct the errors on Decedent C's death certificate.[11] (Ex. 36 at 2.)

Decedent D

55. On May 24, 2012, Respondent entered into an agreement with Decedent D's sister for final arrangements, including cremation, for Decedent D. (Ex. 37 at 4.) On September 20, 2012, Magill sent Respondent a letter explaining that the Board was investigating a complaint regarding allegations concerning the final arrangements made for Decedent D. Magill asked for a complete copy of Decedent D's permanent record. (*Id.* at 1.)

56. Lancaster responded to the Board's letter on September 26, 2012. In the permanent records provided to the Board, the SFGSS dated May 24, 2012 listed a $95 fee for embalming, but the SFGSS does not list the reason for embalming. (Ex. 37 at 4.) The form reads "Reason for embalming: Family Request/Other: _____." (*Id.*) "Family Request" is not circled or otherwise marked, and the line after "Other" is left blank. (*Id.*)

57. The Cremation Authorization and Disposition Form Respondent provided to the Board is not signed by Respondent or an authorized agent. (Ex. 37 at 5 and 6.)

58. The Final Disposition document is not signed by the person making the cremation arrangements and does not specify the action to be taken regarding delivery of Decedent D's cremated remains. (Ex. 37 at 7 and 8.) In addition, Respondent's representative did not sign for receipt of Decedent D's cremated remains. (*Id.* at 10.)

Decedent E

59. On May 11, 1996, Decedent E and his spouse entered into a pre-need purchase agreement with Respondent. The agreement included the purchase of a memorial marker. Respondent prepared an order for the marker, which was to be purchased from Granite Bronze. (Ex. 42 at 2.) On May 17, 1996, Respondent entered the marker into a pre-need price protection for four years. (*Id.*)

60. Decedent E paid the balance for the marker in full on March 8, 1997. (Exs. 38; 42 at 2.) Respondent should have ordered the marker when Decedent E paid the balance in full, but did not. (Ex. 42 at 2.)

61. Respondent should have received a notice that the marker price protection was set to expire on or about May 17, 2000. By then, Respondent still had not ordered the marker. As a result, Granite Bronze presumably eliminated the order, as it had not received payment for the marker from Respondent. (Ex. 42 at 2.)

62. Decedent E passed away on November 19, 2010. (Ex. 40 at 4.) Prior to Decedent E's death, his daughter met with Lancaster to work out the details of Decedent E's burial. She learned that the marker order had never been placed. Lancaster informed Decedent E's daughter

[11] The death certificate listed the incorrect place of death and incorrectly identified Decedent C's mother's maiden name. (Ex. 36 at 1-2.)

that Granite Bronze was no longer making markers and that Respondent was in the process of finding a new source for purchasing markers. (Ex. 39 at 3.) One year after Decedent E's death, Respondent placed the marker. (*Id.*; Ex. 42 at 2.)

63. By September 2012, the marker had come unglued from its base. (Exs. 39 at 3; 40; 42 at 2.) During a September 2012 meeting with Respondent's representatives, Decedent E's daughters learned that Granite Bronze was still in business and was still making the marker Decedent E had ordered. (Ex. 39 at 4.) On October 25, 2012, Decedent E's daughter received the proof for the Granite Bronze marker. (Ex. 39 at 2.)

64. By letter dated January 3, 2012,[12] Magill explained to Respondent that the Board was investigating a complaint regarding allegations concerning Decedent E's grave marker. The letter set forth the allegations and requested that Respondent submit a written response to the allegations, including the name of the company the original marker was ordered from and the current status of the marker on order; a complete copy of Decedent E's permanent record; and the written statement of persons having direct involvement or knowledge regarding the allegations. Magill provided Respondent until January 16, 2013 to provide the requested information. (Ex. 41.)

65. The Board received a response from Lancaster on January 21, 2013. In the response, Lancaster stated that he told Decedent E's daughter that Respondent would be refunding $995 to her and giving her a certificate of credit. (Ex. 42 at 2.)

66. On January 13, 2013, Respondent finalized the marker order with Granite Bronze. (Ex. 42 at 2.) In early March 2013, the marker was placed. (Ex. 43.) By June 2013, Decedent E's daughter had not received a refund from Respondent. (Ex. 43.)

67. On January 6, 2014, Nelson emailed Lancaster and asked for a status of the refund. (Ex. 45 at 2.) Lancaster replied that he never heard back from his bookkeeper and that he would let Nelson know the status of the refund by 10:00 a.m. that day. (*Id.*) On January 7, 2014, Nelson again emailed Lancaster regarding the status of the refund. Lancaster replied that the bookkeeper would issue a check that day if she had not already done so. (*Id.*) On January 9, 2014, Nelson requested a copy of the check that Respondent should have issued to Decedent E's daughter. Respondent did not respond to Nelson's request. (*Id.*)

68. On April 1, 2014, Nelson emailed Lancaster and asked for the status of the refund check. On April 4, 2014, Lancaster responded that the he was still working on refunding Decedent E's daughter. (Ex. 45 at 1.)

Decedent F

69. On November 13, 1969, Decedent F's Grandfather, Clyde Raymond Hartley (herein Raymond Hartley), granted his spouse, Carol Hartley, the deed to cemetery lots located in Eternal Hills Memorial Gardens, Inc., and designated as grave numbers 1, 2, 3, and 4 in Lot 37 C

[12] The date on this letter appears to be in error. The correct date is presumably January 3, 2013, as the letter sets a response deadline of January 16, 2013.

in the Garden of Serenity (herein after referred to as space numbers, 1, 2, 3, and 4.).[13] (Ex. 59 at 2.)

70. In July 1998, Raymond and Carol Hartley purchased companion lawn crypts at Eternal Hills Memorial Gardens and Funeral Home. (Ex. 53 at 9-12.) The "Before Need Purchase Agreement" indicates that Raymond and Carol Hartley have interment rights, but does not specify which lots or spaces are included in those rights.[14] (*Id.*)

71. Randy Lee Coleman[15] and Brittney Elain Mathis[16] were both previously buried in space number 1. (Exs. 52 at 2; 56 at 12.)

72. Raymond Hartley passed away in 2010. His remains were placed in space number 3. (Ex. 52 at 2.)

73. On February 19, 2013, Decedent F passed away. He was divorced at the time of his death. (Exs. 47; 52 at 2.)

74. The Interment Authorization form signed and dated April 3, 2013 by Carol Hartley states that Decedent F was to be interred in space number 1.[17] (Ex. 53 at 3.) According to Respondent, Respondent only allows two remains per space, so Decedent F's remains were instead interred in space number 4.[18] (Ex. 52 at 2.)

75. On March 2, 2013, Carol Hartley filled out a Satisfaction of Survey for the services Respondent provided for Decedent F. (Ex. 56 at 28-29.) On the survey, she noted she had to request a receipt three times before receiving it. She also noted that the person with whom she had spoken to at Eternal Hills was rude to her and informed her that Lancaster would call her. Carol Hartley noted that she waited most of the day for Lancaster to return her call, but he never did. (*Id.*)

76. On April 3, 2013, McAlmon completed a Customer Service & Maintenance Request noting the current cemetery location as 37 C-1 (space number 1) and noting that the remains needed to be moved to space number 4. (Ex. 56 at 23.) The form lists Carol Hartley as the requestor, but Respondent has no documentation to support that Carol Hartley had knowledge that Decedent F was never interred in space number 1. (*Id.*)

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[13] Raymond Hartley had purchased the four spaces on May 14, 1961. He married Carol Hartley in 1967. (Ex. 52 at 2.)

[14] In correspondence to the Board, Lancaster asserted that Raymond and Carol Hartley's companion lawn crypt and companion memorial was for space number 3. (Ex. 52 at 2.)

[15] Randy Lee Coleman is the granddaughter of Raymond and Carol Hartley, and the daughter of Gerry Coleman Doyle. Gerry Coleman is Raymond Hartley's daughter. (Ex.52 at 2.)

[16] Brittany Mathis is the great granddaughter of Raymond and Carol Hartley. She is the child of Mr. Hartley's grandson, Brent Mathis. (Ex. 52 at 2.)

[17] The Interment Authorization identifies Carol Hartley as the "person with the right to control disposition." (Ex. 53 at 3.) It also identified Carol Hartley as the owner of space number 1. (*Id.*)

[18] According to Respondent, Raymond Hartley gave space number 4 to Jim Mathis. Jim Mathis is Decedent F's father and Raymond Hartley's son. (Ex. 52 at 2.)

77. On August 22, 2013, Respondent provided Gerry Doyle a Deed for Entitlement to Interment for burial space number 2, Lot 1D, in the Inspiration Section. (Ex. 49.) Also on August 22, 2013, Respondent provided Jim Mathis a Deed for Entitlement to Interment for burial space 3, Lot 1D, in the Inspiration Section. (Ex. 50.)

78. On January 15, 2014, Creagh notified Lancaster that the Board had received a complaint that Respondent failed to notify Carol Hartley when remains were interred and disinterred from her plots; that Respondent's agents ignored Carol Hartley's complaints regarding the matter; that the headstone purchased by Raymond and Carol Hartley was not the same quality as the one they ordered and paid for; that Respondent dropped Raymond Hartley's casket; and that Carol Hartley had purchased a lifetime photo for her father's grave that was not of the same quality as the one she had ordered and paid for. Creagh requested Lancaster provide the Board with clear copies of any and all documents supporting Carol Hartley's right of interment in four plots; clear copies of the complete permanent records of any and all remains interred and disinterred from the four plots; the location of the four plots owned by Carol Hartley, along with a copy of the section of the plat map showing the location; photos of the four plots; a clear close-up photo of Raymond Hartley's headstone; photos of other headstones and/or markers on the plots owned by Carol Hartley; and copies of any and all documents and proofs regarding the photo Carol Hartley ordered for her father's headstone. Creagh requested Lancaster provide the documentation no later than January 22, 2014. (Ex. 52 at 3-4.)

79. Lancaster responded in writing to the Board's request on January 26, 2014.[19] Lancaster's response did not contain all of the documents requested, including Carol Hartley's right to interment in the four plots; the permanent records of those interred and disinterred from the four plots; and embalming or cremations authorizations. (*See* Ex. 52.)

80. On January 30, 2014, Creagh emailed Lancaster to notify him that the January 26, 2014 response was incomplete. The email outlined, in detail, the information the Board needed Respondent to provide. (Ex. 54 at 1-3.)

81. Creagh renewed his request to Lancaster on February 12, 2014. Creagh requested the information be submitted no later than February 14, 2014. (*Id.* at 1.)

82. On February 12, 2014, Lancaster responded, stating that "I have the file for Jim [Mathis], but not the important file for Ray & Carol Hartley[.]" (Ex. 54 at 1.)

83. On February 18, 2014, Creagh emailed Lancaster to inform him that the Board was still waiting for the requested documents. In response, Lancaster stated that he would "forward the agreement from nexus our computer and what I have, still looking [for] the file[.]" (Ex. 56 at 1.)

Decedent G

84. Respondent, through Lancaster, made arrangements with Cheryl Fox (Fox) for the

[19] Lancaster's letter is dated September 26, 2012. It addressed some, but not all, of the allegations raised in the Board's January 15, 2014 letter and bears a fax date of January 26, 2014. (Ex. 52 at 1-2.)

final disposition of the remains of her daughter, Decedent G, after Decedent G's death on April 9, 2013. (Ex. 147 at 3.) Fox signed a Statement of Funeral Goods and Services Selected (SFGSS) for Decedent G's arrangements on April 12, 2013. (*Id.* at 58.) Respondent gave Fox a blank Cremation Authorization and Disposition form at the time of the arrangements. (*Id.* at 59.)

85. Fox received a billing statement dated April 16, 2013 from Respondent. (Ex. 147 at 55-56.) The statement lists the beneficiary of the contract as Decedent G and the amount due as $4,524.00, the same amount listed on the SFGSS. (Ex. 147 at 55-58.) The total due included $250 for two "Thumbies;" $145 for securing/recording vital statistics; $45 for memorial folders; $15 for a celebration of life CD; $295 for an Event by Wire;[20] approximately $145 for an urn; and other charges for embalming, cremation, and services. (*Id.* at 58.) Fox paid the amount due. (*See id.*)

86. On June 25, 2013, Fox emailed Respondent to address the issues and mistakes that took place during Decedent G's final arrangements and disposition. In response, Lancaster replied to each of the complaints with an explanation. On certain issues, Lancaster stated that Respondent would refund the amount charged. (Ex. 147 at 46-49.) Specifically, Lancaster agreed that Respondent would refund Fox $95 for the funeral folder that incorrected read "graveside service" rather than "chapel service;" $95 for the celebration of life CD that did not play in its entirety during the service; $195 for the Event by Wire live web stream that did not work during the service; $20 for the death certificate that contained the incorrect date of Decedent G's death and the incorrect spelling of Decedent G's father's name; and $250 for the "Thumbies" product Lancaster admitted Respondent never ordered. (*Id.*)

87. In the June 25, 2013 email, Fox also noted that Decedent G's urn was not engraved as agreed upon. (Ex. 147 at 49.) In his response, Lancaster stated that the urn distributer told him the urn could not be engraved. (*Id.*) Engraving on this type of urn is feasible. (*Id.* at 26.)

88. In a June 26, 2013 email to Respondent, Fox requested that Respondent let her know when she could expect the refund and an explanation regarding how the death certificate could be changed. (Ex. 147 at 45.) Respondent did not directly respond to this inquiry. (*See* Ex. 147 at 31-50.)

89. In a second June 26, 2013 communication, Fox inquired about obtaining Decedent G's fingerprints. Fox stated that although she did not have the Thumbies, she and her oldest daughter wanted to obtain Decedent G's fingerprints. Fox stated that Lancaster had previously told her that the fingerprints were held on file. Fox requested Lancaster let her know when she could expect the refund, when the death certificate would be corrected, and how the fingerprints could be obtained. (Ex. 147 at 45.)

90. Also on June 26, 2013, Lancaster responded to some of Fox's inquiries. Lancaster stated that "I will still get the [T]humbies for you but will refund the money that way you will have both[.]" (Ex. 147 at 44.)

91. On June 29, 2013, Fox again contacted Lancaster and asked when she could expect

[20] Event by Wire is a live internet broadcast feed. (Ex. 147 at 2.)

the refund they had discussed. Lancaster responded that same day that the refund check would be available on Monday[, July 1, 2013]. Lancaster stated he would call Fox when the check was ready to be picked up. (Ex. 147 at 44.)

92. On August 17, 2013, Fox emailed Lancaster and asked about the status of the Thumbies and whether the death certificate had been corrected. Lancaster responded on August 20, 2013 that he was "looking into it today." (Ex. 147 at 43.) Neither Lancaster nor another representative for Respondent followed-up in response to Fox's August 17, 2013 email. (*See* Ex. 147.)

93. On August 31, 2013, Fox again followed-up with Lancaster. Fox explained that she had received a refund check from Respondent that was written out for six hundred dollars but that the numeric amount had been written for $650. Fox explained that as a result, she experienced difficulty cashing the check with her bank. Fox also informed Lancaster that it had been nearly six months since Decedent G's death and that she still did not have a corrected death certificate or the Thumbies she had ordered. (Ex. 147 at 42.) Lancaster did not respond to the email. (*See id.*)

94. On September 7, 2013, Fox emailed Lancaster to notify him that it was her final attempt to contact him before she would seek legal advice. (Ex. 147 at 42.) Fox emailed Gordon on September 14 and 20, 2013 regarding the issues she had communicated to Lancaster. (*Id.* at 6-7.)

95. On September 21, 2013, Gordon responded, stating that he had "reviewed with Tim [Lancaster] your daughter['s] file along with the refunds he granted, also I've talked with the manufacturer of the Thumbie[s]and have been assured that your daughter['s] Thumbie[s] will be here next Friday." (Ex. 147 at 7.) When Fox responded, she noted to Gordon that she still did not have a corrected death certificate. Gordon responded, "Tim[,] get Mrs. Fox and me an answer on the correct DC Monday!" (*Id.* at 6-7.)

96. On October 3, 2013, Lancaster responded, stating that Fox would be refunded the entire amount owed and that the death certificate affidavit "was completed, photo copies are available to you if you desire." (Ex. 147 at 42.)

97. On October 9, 2013, Eternal Hills issued Fox a check in the amount of $3,924.00 "for reimbursement." (Ex. 147 at 24.) That same day, Fox went to the Respondent's office to pick up Decedent G's Thumbies. Respondent told Fox the thumbprints had not been taken. (*Id.* at 31.)

98. By letter dated January 9, 2014, the Board notified Respondent that it was investigating a complaint regarding Decedent G. The complaint included the following allegations:

> Incorrect obituary information
> Failing to respond to email correspondence
> Incorrect funeral folder information

> Failure to provide adequate CD operation
> Web streaming ordered but not available
> Death certificate incorrectly filled out and filed
> Urn not available and not engraved
> "Thumbies" were never ordered
> Ignoring numerous attempts to communicate either by phone or email
> Incorrect amount of refund check

(Ex. 147 at 12.) The letter requested Respondent respond to the allegations in writing no later than January 23, 2014. (*Id.*)

99. On or about January 26, 2014, the Board received Respondent's written response to the January 9, 2014 letter.[21] (Ex. 147 at 15.) In the letter, Lancaster wrote, in part:

> [Decedent G] died on April 9, 2013 * * *. Arrangements were then made by Tim Lancaster at the Klamath Tribute Center. * * * * *. We then provided her [Fox] with a complete and full payment totaling $4229.00 returned to her. This was over [a] period of several months that she continued to converse with us until a final payment was made.
>
> 1) Obit – it was written by me at the time and then corrected, I explained to them that I will take the information down, go out and type it up and then have them proof it[,] [w]hich they did and then we sent it to herald and news. Her complaint was that she needed to make corrections on it. They we[re] difficult to understand since they were in the middle of their grief over a difficult loss[.]
>
> 2) We did not fail to correspond by email[,] it was just not as quick as she would have wanted and many times was redundant as to what I told her[.]
>
> 3) The memorial folder said graveside rather than chapel service, this was corrected and more copies [were] given to the family corrected.
>
> 4) The dvd stopped after ¾ completion during the service[.] [W]e don't know why, it worked find in [*sic*] when we tested it. Corrected copies were given to the family.
>
> 5) The Event by [W]ire also did not work, so I set up an external camera but it started after the service had started but it was available.
>
> 6) On the death certificate the father's name was misspelled – Maarten Fontyn we had Maartin Fountyn, however he was not listed in the obit per request of Mrs. Fox so we had no verification. The date of death was also corrected from April 9, 2012 to the correct April 9, 2013.

[21] The letter is dated September 26, 2012, but contains a facsimile date of January 26, 2014. (*See* Ex. A5 at 3.) The date of September 26, 2012 appears to be erroneous.

> 7) The urn was one that Mrs. Fox found [online] and asked that we get it rather than one from one of our companies. I finally located the company and had it shipped to us[.] [W]e paid $140.85 including shipping and she was charged [$]145. She selected it on her own off the internet and we paid for it for her. According to the company that makes it, it was not engravable. I told this to Mrs. Fox.
>
> 8) Thumbies were never ordered due to the fact it was a medical examiner case and we could not touch her [the deceased] until she was released, so we could not get finger prints. We thought we could get the finger prints from the investigating officer[;] however[,] since she had no criminal record they did not take any. I told Mrs. Fox that we could get her a thumbies but it would be a generic finger[]print but she said no.
>
> 9) The [r]efund was in full, the first check was not wrong but the final check was for the complete balance so Mrs. Fox was not charged for any of the services period.

(*Id.*) Respondent did not provide the Board with a copy of the SFGSS, the death certificate, any amendments to the death certificate, or statements by persons with any involvement or knowledge of the matter. (*Id.*)

100. On May 15, 2014, the Board's investigator requested that Respondent provide a complete copy of Decedent G's permanent record. (Ex. 147 at 21.) The Board's investigator requested that Respondent either fax or scan the requested documents no later than May 16, 2014. (*Id.*) Lancaster sent the Board investigator some, but not all, of Decedent G's permanent record, including the corrected death certificate, a copy of an invoice for an urn, and a copy of an online photo of an urn. (*Id.* at 17-20.)

Decedent H

101. Decedent H passed away on September 23, 2012. (Ex. 62 at 6.) On September 25, 2012, Respondent entered into an agreement with Decedent H's son for Decedent H's final arrangements. (Ex. 62 at 9.) The agreement included the placement of a name plaque on the mausoleum niche containing Decedent H's remains and a veteran's plaque. (Exs. 61 at 2; 62 at 1.)

102. Respondent placed the order for Decedent H's veteran's plaque with the Department of Veterans Affairs on May 29, 2013.[22] (Ex. 62 at 5.) Respondent received the veteran's plaque on or about June 20, 2013. (Ex. 66 at 12.)

103. On September 19, 2013, Lancaster texted Decedent H's son a photo that showed the

[22] In a January 26, 2014 correspondence to the Board, Lancaster stated that this was the second order submission for the veteran's plaque. (Ex. 62 at 1.) The May 29, 2013 order does not contain any notations that it is the second request. (*See id.* at 5.)

niche name plate had not been placed. (Ex. 60 at 1 and 2.)

104. On January 16, 2014, Decedent H's son spoke to Lancaster, who informed the son that the name plate would be ordered. Lancaster had previously made this representation to Decedent H's son in November 2013. (*Id.* at 1.)

105. The niche name plate could not be made because the manufacturer, Oregon Brass, was no longer in business and another company, Matthews, no longer carried the product. (Ex. 62 at 1.) Respondent ordered a less expensive niche plaque and refunded Decedent H's son for the price difference. (*Id.*) The niche plate was placed sometime before May 15, 2014. (Ex. 67.)

106. In a January 23, 2014 letter, Creagh informed Lancaster that the Board was investigating a complaint concerning Decedent H. The complaint alleged Respondent and Lancaster failed to order Decedent H's veteran's plaque; failed to order the marker for Decedent H's crypt; failed to place the crypt marker on the correct crypt; and failed to return phone calls from Decedent H's family. (Ex. 61 at 2.) Creagh requested Lancaster provide a clean copy of Decedent H's permanent record, including the front, back, and inside of Decedent H's permanent folder, pre-need folder, and loose notes and phone notes contained in the file; the exact location of Decedent H's remains; a clean copy of any and all proofs and orders for Decedent H's veteran's plaque and crypt marker; the date the Veterans Administration delivered the plaque and the date it was installed; and the name(s) of any and all witnesses with first-hand knowledge regarding the matter. Creagh provided Lancaster until January 30, 2014 to respond to the Board's request. (*Id.*)

107. Lancaster responded to Creagh's letter on January 26, 2014. (Ex. 62.) His response included some, but not all, of the requested information. Lancaster did not submit Decedent H's permanent record; records regarding the location of Decedent H's remains; or a complete proof of ordering and delivery of the veteran's plaque. (Ex. 62.)

108. On April 30, 2014, Creagh emailed Lancaster and identified the information Lancaster had failed to provide in the January 26, 2014 response. Creagh listed eight documents Lancaster needed to submit to the Board. (Ex. 63.) Lancaster responded to Creagh's request on May 15, 2014, but failed to include numerous documents Creagh had requested.[23] (Ex. 66.)

Decedent I

109. Decedent I passed away on January 22, 2012. On January 24, 2012, Respondent made arrangements with Decedent I's family for final disposition and placement in a family-owned crypt. (Ex. 69 at 2.) Decedent I's funeral service was held on February 1, 2012, during which time she was placed in a crypt. (*Id.* at 12.)

110. Respondent incorrectly placed Decedent I in her grandfather's crypt. Upon learning

[23] For example, Creagh requested, and Lancaster failed to provide, a complete copy of Decedent H's pre-need arrangement; a copy of the order for the replacement niche plaque; a copy showing Respondent sent a refund to Decedent H's son; proof of delivery of the veteran's name plaque; and a copy of the crematory log. (Exs. 63-66.)

of the error, Respondent moved Decedent I to her mother's crypt. (Ex. 70 at 3.) When Nelson asked Lancaster if Respondent had obtained a written disinterment authorization before disinterring Decedent I's remains, Lancaster responded that "there was no disinterment because the crypt was not sealed[.] [T]he mistake was noticed as soon as the family left [and] she was placed in the correct crypt[.]" (*Id.* at 2-3.) When Nelson responded by noting "You can't do that without a disinterment authorization," Lancaster replied that "She was only placed into the crypt during the crypt side service and then placed into her crypt – probably 30 min[utes]. It was never sealed[] or closed – this is a mausoleum crypt." (*Id.* at 1.) Lancaster also asserted that internment or entombment is not complete until it is sealed and closed. (*Id.*)

111. On May 30, 2014, in response to a complaint the Board received, Nelson requested Respondent provide details showing in which crypt number Decedent I had been placed, which one she needed to go into, the authorizations for the original interment, and the complete permanent records for Decedent I and an explanation of what occurred with Decedent I's placement. (Ex. 70 at 2.)

112. Respondent provided some, but not all, of the information and documentation Nelson requested. Respondent did not provide a complete copy of Decedent I's permanent record; the crypt number where her remains were placed in error; a copy of the original interment authorization; a disinterment permit, if any; a written authorization by the owner of the crypt where Decedent I's remains were eventually interred; or an explanation of why Decedent I's remains were placed in the wrong crypt. (*See* Exs. 68-70.)

Decedent J

113. In 1961, Decedent J and her husband made pre-need arrangements with Respondent's predecessor. The Contract for Deed into which Decedent J and her husband entered stated that the deed included two interment spaces and services at Eternal Hills Memorial Gardens, Inc. (Ex. 71 at 13-16.)

114. On May 26, 2005, Decedent J entered into a pre-arrangement SFGSS for embalming, a death certificate, direct cremation, an outer burial container, a setting and interment, entombment, and inurnment with Respondent. (Ex. 71 at 10.)

115. In July 2013, Decedent J's niece spoke with Lancaster to review Decedent J's arrangements. Lancaster told Decedent J's niece that Decedent J had a prepaid funeral package that exceeded $5,000. Lancaster also stated that any excess amount paid would be refunded to Decedent J's niece. (Ex. 71 at 6.) In September 2013, Respondent informed Decedent J's niece that Decedent J did not have the plan Lancaster had identified in July 2013. The niece made numerous requests that Lancaster provide her with copies of Decedent J's paperwork. Lancaster did not provide the requested paperwork to the niece. (*Id.*)

116. On September 20, 2013, Decedent J's niece spoke with Lancaster and confirmed that because another mortuary handled the cremation, the balance would be $595 for placing the remains in Decedent J's prepaid site, $140 for the urn vault, and $60 for setting the stone plaque (for a total of $795). (Ex. 71 at 7.) On September 20, 2013, Respondent faxed Decedent J's

niece a copy of the pre-arrangement contract with circles drawn around the numbers $140, $60, and $595. (*Id.* at 7 and 10.)

117. After Decedent J passed away on October 9, 2013, Decedent J's niece contacted Respondent and left numerous messages. (Ex. 71 at 7.) The niece requested Respondent provide her with a copy of a final statement showing the fees charged, but did not receive a statement from Respondent until on or about December 26, 2013. (*Id.* at 6 and 20.) A December 26, 2013 invoice prepared by Respondent showed an amount due of $1,390.00 and a past due amount of $59.75, for a total of $1,449.75. (*Id.* at 20.)

118. In February 2014, Decedent J's niece received a Transaction History report from Respondent dated November 25, 2013. (Ex. 71 at 9, 21.) The Transaction History showed that the niece had financed $1,390.00, entered into a monthly payment plan, and had incurred late fees of $113.62. (*Id.* at 21.) Decedent J's niece never entered into a payment plan with Respondent. (*Id.* at 6.)

119. On March 7, 2014, Decedent J's niece received a phone call from Respondent's representative, Becky, to discuss the unpaid balance. After the niece questioned the charges, Becky discovered overcharges on the account. Respondent had charged the account for a complete, not partial, cremation burial. (Ex. 72.)

120. Respondent did not order the name plaque until March 17, 2013. (Ex. 77 at 5.) Respondent did not place the name plaque on Decedent J's marker until sometime just before May 30, 2014.[24] (Exs. 73; 77.)

121. By letter dated April 16, 2014, Creagh informed Lancaster that the Board had received a complaint regarding the final disposition arrangements for Decedent J. The letter outlined the complaint in detail. Creagh requested Lancaster provide the following: a written response to each of the allegations, along with documents to support each response; a copy of Decedent J's complete permanent records; any and all funeral home and cemetery records for Decedent J, including contracts, invoices, statements, the certificate of death, hand written notes, and emails; a copy of the prearrangements made by Decedent J and her spouse; written statements by employees or agents having direct involvement or knowledge regarding Decedent J's arrangements; and documentation that Respondent deposited all monies received by Decedent J's family into a trust account. Creagh provided Lancaster until April 21, 2014 to submit the requested documentation. (Ex. 74.)

122. In response, on April 21, 2014, Lancaster provided the Board with a written statement. The statement indicated that Decedent J's name plaque had been ordered, but not placed. (Ex. 75 at 3.) Lancaster did not provide the Board with a complete copy of Decedent J's permanent record with his report. (Ex. 75.) Lancaster's response included a copy of the SGFSS dated May 26, 20015 with a slash across the pre-arrangement service and merchandise worksheet section and the word "cancelled" written across it. (*Id.* at 11.)

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[24] Decedent J's niece received Decedent J's remains from Washburn-McReavy Nokomis Park Chapel in Minnesota on October 23, 2013. (Ex. 78.)

123. On April 23, 2014, Creagh requested Lancaster send him a complete copy of Decedent J and her husband's cemetery records and a copy of the receipt of cremated remains or other documents to support the date Decedent J's remains were delivered to Respondent. (Ex. 76.) Neither Respondent nor Lancaster responded to Creagh's request. (*Id.*)

Decedent L

124. Decedent L passed away on September 29, 2013. Decedent L's daughter and family members met with Lancaster to make arrangements for her mother's funeral service. During the meeting with Lancaster, the family kept explaining that they did not want to purchase a package. Lancaster gave Decedent L's family the impression that they had to purchase a package. (Ex. 86 at 1-2.)

125. During the September 29, 2013 meeting, Lancaster showed Decedent L's family examples of caskets, none of which the family liked. Respondent's staff made the family feel as though they had to choose from one of the example caskets, but eventually provided the family with a sheet of other casket options. (Ex. 86 at 2.)

126. Before leaving the meeting, Decedent L's daughter signed an SFGSS and paid a down payment of $2,385 with a credit card. Respondent gave Decedent L's daughter only the first page of the SFGSS. (Exs. 86 at 2; 86A.)

127. Decedent L's family and Respondent agreed to a funeral service with a Celebration of Life DVD, burial at Eternal Hills, a Memorial Tablet, and the setting of the Memorial Tablet on Decedent L's grave. (Ex. 86 at 2; 86A at 1.)

128. Respondent promised Decedent L's family that it would run a full obituary on its website free of charge. Respondent never posted Decedent L's obituary to its website. (Ex. 86 at 2.)

129. Decedent L's funeral service was held on October 5, 2013. Decedent L's daughter provided Respondent with physical and electronic copies of photos to use for the Celebration of Life DVD. Respondent cropped several of the photos for the DVD without Decedent L's permission, causing the photos to lose their purpose. (Ex. 86 at 2-3.)

130. Respondent played the wrong music at the conclusion of Decedent L's service. (Ex. 86 at 3.)

131. Following the service, Decedent L's daughter made several phone calls to Respondent to find out why she had not received Decedent L's death certificate and the Celebration of Life DVD. Respondent informed the daughter that the certificate and DVD would be ready in a day or two. At the end of October 2013, Decedent L received an unsealed manila envelope with Decedent L's death certificate and DVDs that were wrapped in newspaper. (Ex. 86 at 3.)

132. At the end of October 2013, Decedent L's daughter asked Respondent for the

remaining balance owed on the account. Respondent told the daughter the balance was $1,865. Decedent L's daughter explained that this amount was less than she was previously told. Respondent could not explain the discrepancy in the balance amount. When Decedent L's daughter asked Respondent to send her a receipt and closing statement, she received receipts for three payments: $2,385, $20, and $1,865. The receipts and statement do not include a $50 payment gathered by people from Decedent L's town and given to Lancaster to apply towards the service. (Exs. 86 at 3; 86D.)

133. Approximately one month after Decedent L's service, the daughter's sister reported that the marker had not been set on Decedent L's grave and that the grass surface looked terrible. By late December 2013, Decedent L's grave was still unmarked. Decedent L's daughter called Respondent on December 26, 2013 to discuss these issues. Respondent's staff told Decedent L's daughter that she probably needed to sign a marker proof/order form. Respondent's staff said the form would be emailed to the daughter. When Decedent L's daughter did not receive the form by email, she contacted Lancaster, who said he would have a temporary marker placed on the grave. Lancaster also reported that he could not find Decedent L's file. (Ex. 86 at 4.) Later, Lancaster emailed Decedent L's daughter saying he "will send the diagram of the memorial. (Ex. 86E at 2.)

134. In March 2014, Decedent L's daughter found the grave site a "mess" and unmarked. (Ex. 86 at 4.) The daughter repeatedly called Respondent and traveled to Oregon to meet with Lancaster on March 24, 2014. Lancaster gave Decedent L's daughter a copy of a "rush order" for the marker. (Exs. 86 at 4; 86G.) Respondent also placed a temporary marker on the grave. (Ex. 84 at 4.)

135. In April, May, and June 2014, Decedent L's daughter continued to contact Respondent to determine when the marker would be placed. She also had an attorney send Respondent a letter to determine when the marker would be placed. When Decedent L's daughter called Respondent in June 2014, Respondent's representative said that the marker would be placed in three weeks. When the daughter asked why the marker had not been ordered, Respondent's representative said that this marker would arrive sooner than orders that had also not been ordered. (Ex. 86 at 4.)

136. At 7:38 a.m. on May 20, 2014, Creagh emailed Lancaster and requested a copy of Decedent L's complete permanent record. Creagh detailed that this included, but was not limited to, all service requests, photos, marker proofs and orders, emails, letters, phone messages, the certificate of death, embalming reports, the cremation authorization, and financial records. Creagh requested that the documentation be submitted no later than noon that day. (Ex. 80 at 4.)

137. Lancaster provided a partial response to Creagh's request on May 27, 2014. (Exs. 80; 82.) Respondent did not provide the Board with a copy of any embalming authorization form with a signature or any notes about receiving a verbal authorization for the embalming. (*Id.*) In addition, the SFGSS Respondent provided in the response differed significantly from the SFGSS Decedent L's daughter received. Specifically, the copy Respondent provided to the Board does not contain the daughter's signature; has no discount or credit price noted; contains no amount as the "total balance due;" and does not reflect the $2,385 payment Decedent L's

daughter made. (Compare Exs. 80 at 6 and 86A.)

Embalming and Cremation Authorizations

Decedent HH

138. Respondent's cremation authorization records for Decedent HH do not contain a statement of delivery for cremated remains, or the name of the funeral service practitioner or facility representative obtaining the authorization. (Ex. 116.)

Decedent GG

139. Respondent's cremation authorization records for Decedent GG do not contain a statement of delivery for cremated remains, or the name of the funeral service practitioner or facility representative obtaining the authorization. (Exs. 118; 119.)

Decedent JJ

140. Respondent's cremation authorization and disposition form for Decedent JJ do not contain the time the authorization was obtained. (Ex. 120.)

Requests for Apprenticeship Logs

141. On August 12, 2014, Nelson requested Lancaster provide the Board with the FSP and embalming apprenticeship logs for Zachary Gordon and Brittney Rice by August 14, 2014. (Ex. 137 at 1.) On August 15, 2014, Lancaster responded to Nelson's email, stating that "Brittney Rice is no longer employed at Eternal Hills[] (do you still want the logs?)." (Ex. 138 at 3.) Nelson renewed her request for Respondent to provide the apprenticeship logs for Zachary Gordon and Brittney Rice on August 16, 2014 and again on August 24, 2014. (Ex. 138 at 1.) Lancaster responded in part to Nelson's August 24, 2014 email, but did not provide the FPS and embalming apprenticeship logs. (*Id.*)

Other

142. On December 26, 2013, Nelson conducted an inspection at Respondent's facility. During the inspection, Nelson observed and photographed the remains of three decedents – EE, FF, and GG – in Respondent's cooler. These remains in the cooler did not have State ID Tags attached to them. Nelson located the State ID tags for the three decedents in their respective permanent record file jackets, which were in Respondent's office. (Exs. 98; 100; 104; 145 at 5.)

143. Nelson reviewed other decedent's files, including those for Decedents XX and YY. Decedent XX's interment records reflect a date of disposition by burial in Eternal Hills Cemetery on January 29, 2011. The State ID Tag for Decedent XX was attached to the permanent record file jacket. (Exs. 106; 145 at 6.)

144. Interment records for Decedent YY show that the remains were shipped to

California for interment on April 16, 2010. The State ID Tag for Decedent YY was attached to the permanent record file jacket. (Exs. 107; 145 at 6.)

145. During the inspection at the Eternal Hills crematory facility, Nelson discussed the cremation process with one of Respondent's employees. During the conversation, Nelson observed a sealed envelope that contained a State ID Tag and documents lying on a table near the door to the cremation chamber. (Exs. 110; 111; 145 at 6-7.) The employee told Nelson that the State ID tag in the envelope belonged to Decedent HH, and that the employee had not verified the number on the State ID Tag for Decedent HH's remains by comparison to the number on the Final Disposition Authorization. (Exs. 108; 109; 145 at 7.)

146. During the inspection, Nelson observed that the vacuum cleaner at the crematory facility contained what she believed were a large amount of cremated remains. The vacuum cleaner also contained other debris that were not cremated remains residue, including leaves, sticks, and paper. (Exs. 114; 115; 145 at 7.) Based on Nelson's experience, she believed that the gray and white particles in the vacuum were those of cremated remains, including bone fragments. (Ex. 145.)

147. During an inspection of Respondent's preparation room,[25] Nelson observed unsanitary instruments, waste spilling out of uncovered waste cans, and spots of reddish-brown matter visible on head and arm blocks, the floor, and the embalming table. There were no human remains present in the room. Based on Nelson's experience, the reddish-brown matter was the residue from preparing human remains for their final disposition through cremation or burial. (Ex. 145 at 8.)

CONCLUSIONS OF LAW

1. Pursuant to OAR 137-003-0580, the Board was entitled to a favorable ruling as a matter of law on the following issues:

a. Purchaser A

i. Respondent failed to follow through with agreed upon arrangements, in violation of *former* OAR 830-030-0090(1)(d)(2007).

ii. Respondent misrepresented the order or placement of the marker to Purchaser A and the Board, in violation of ORS 692.180(1)(a) and (b).

iii. Respondent made a false or misleading statement or used misrepresentation regarding the order and placement status of the marker, in violation of OAR 830-030-0090(5)(d) and (g).

b. Decedent B

i. Respondent assessed a finance charge in violation of ORS 692.180(1)(a) and

[25] A preparation room is used for the preparation of human remains for final disposition. (Ex. 145 at 8.)

(b).

ii. Respondent failed to follow through with agreed upon arrangements for placing the marker on Decedent B's grave and maintenance of the grave site, in violation of OAR 830-030-0090(1)(b).

iii. Respondent failed to keep accurate and complete records for Decedent B's arrangements and final disposition in violation of OAR 830-030-0090, *former* OAR 830-040-0000 (6) and (9)(2011).

iv. Respondent provided false or misleading information to the Board in violation of OAR 830-040-0010(3) and OAR 830-030-0090(5)(d).

v. Respondent failed to provide requested documents to the Board in violation of OAR 830-040-0010(4) and (5) and OAR 830-030-0090(5)(f).

vi. Respondent's handling of arrangements for Decedent B failed to abide by the accepted standards of the death care industry, in violation of OAR 830-030-0090.

c. Decedent C

i. Respondent sent an invoice to Decedent C's daughter without an underlying contract and charged for embalming of Decedent C when the service was not provided, in violation of ORS 692.180(1)(a) and (b) and OAR 830-030-0090(4)(h).

ii. Respondent's handling of arrangements for Decedent C failed to abide by accepted standards of the death care industry, in violation of OAR 830-030-0090.

iii. Respondent failed to keep accurate and complete records for Decedent C's arrangements and final disposition, in violation of OAR 830-030-0090(4), and *former* OAR 830-040-0000(6) and (9)(2011).

d. Decedent D

i. Respondent failed to record the reason for embalming on the SFGSS, in violation of 16 CFR § 453.5(b) and ORS 692.180(1)(h).

ii. Respondent failed to include in its permanent record for Decedent D the signature of the licensee on the cremation authorization, a signed statement from the person making the cremation arrangements specifying the action to be taken regarding the delivery of the cremated remains, and the signature of the licensee on the receipt for the cremated remains.

e. Decedent E

i. Respondent failed to follow through with contractual arrangements or engaged in misrepresentation or fraudulent or dishonest conduct related to ordering and placement of a marker for Decedent E, in violation of OAR 830-030-0090, *former* OAR 830-030-0090(1)(d)(1997), and OAR 830-030-0090(1)(b), or ORS 692.180(a) or (b).

ii. Respondent engaged in misleading business practices, misrepresentation and fraudulent and dishonest conduct when communicating with Decedent E's family and the Board about the marker order and the refund, in violation of ORS 692.180(1)(a) and (b) and OAR 830-030-0090(5)(d) and (g).

iii. Respondent's handling of arrangements for Decedent E failed to meet the minimum standards of the industry, in violation of OAR 830-030-0090.

f. Decedent F

i. Respondent failed to comply with applicable laws and regulations relating to operation of the cemetery by disinterring and interring remains without appropriation authorization under ORS 97.130(2).

ii. Respondent failed to respect a client's dignity and rights, in violation of OAR 830-030-0090(1)(f).

iii. Respondent failed to keep accurate and complete records with regard to burials in its cemetery, in violation of ORS 97.720 and *former* OAR 830-040-0000(6)(2009) and OAR 830-030-0090(4)(g).

iv. Respondent failed to provide the Board with requested documents and information and failed to cooperate or answer truthfully and completely inquiries from the Board, in violation of OAR 830-030-0090(5)(f) and (g).

g. Decedent G

i. Respondent failed to implement and follow through with contractual arrangements for Decedent G's final disposition, in violation of OAR 830-030-0090(1)(b).

ii. Respondent made false or misleading statements to Decedent G's mother and to the Board, and engaged in dishonest conduct, in violation of OAR 830-030-0090(5)(d), OAR 830-040-0010(3), and ORS 692.180(1)(a) and (b).

iii. Respondent failed to provide the Board with requested documents and information and failed to cooperate or answer truthfully or completely inquiries from the Board with regard to Decedent G, in violation of OAR 830-030-

0090(5)(f) and (g).

h. Decedent H

i. Respondent failed to timely implement or follow through with contractual arrangements, in violation of OAR 830-030-0090(1)(b).

ii. Respondent failed to provide the Board with requested documents or information and failed to cooperate or answer truthfully or completely inquiries from the Board, in violation of ORS 692.180(1)(a) and (b), OAR 830-030-0090(5)(f) and (g), and OAR 830-040-0010(3).

i. Decedent I

i. Respondent failed to provide the Board with requested documents or information and failed to cooperate or answer truthfully or completely inquiries from the Board, in violation of ORS 692.180(1)(a) and (b) and OAR 830-030-0090(5)(d), (f), and (g).

ii. Respondent interred human remains without prior written authorization by the owner of such space or interment rights and removed human remains from a space without written consent of the person with authority to direct disposition of remains, in violation of ORS 97.220.

iii. Respondent failed to keep detailed, accurate, and permanent records of transactions that are performed for the care, preparation, and final disposition of human remains, in violation of OAR 830-040-0000(7) and ORS 97.720.

j. Decedent J

i. Respondent's handling of arrangements for Decedent J failed to abide by the accepted standards of the industry, in violation of OAR 830-030-0090.

ii. Respondent failed to timely implement or follow through with contractual arrangements when it did not install the name plaque, in violation of OAR 830-030-0090(1)(b).

iii. Respondent failed to provide the Board with requested documents or information and failed to cooperate or answer truthfully or completely inquiries from the Board, in violation of ORS 692.180(1)(a) and (b) and OAR 830-030-0090(5)(f) and (g).

k. Decedent L

i. Respondent engaged in misleading business practices and misrepresentation, in violation of ORS 692.180(1)(a), (b), and (h) and OAR 830-030-0100(1).

ii. Respondent's handling of arrangements for Decedent L failed to meet the minimum standards of the industry, in violation of OAR 830-030-0090.

iii. Respondent failed to keep detailed, accurate, and permanent records in violation of OAR 830-040-0000(7) and OAR 830-030-0090(4)(g), or ORS 97.720.

iv. Respondent failed to provide the Board with requested documents or information and failed to cooperate or answer truthfully or completely inquiries from the Board, in violation of ORS 692.180(1)(a) or (b) and OAR 830-030-0090(5)(d), (f), and (g).

l. Business Practices – Facility Management

Unidentified Remains

i. Respondent's FSP failed to attach to the remains, or to the receptacle containing the remains, the Oregon State ID Tag of three human remains that were located in the refrigeration unit.

Unsanitary Conditions

ii. Respondent failed to maintain a sanitary preparation room in violation of OAR 830-040-0010(1) and OAR 830-040-0020(4) and (5).

Mismanagement of Cremated Remains

iii. Respondent failed to ensure that all residual of the cremation process underwent final processing and that the entire processed cremated remains were placed in a cremated remains container.

m. Business Practices – Recordkeeping

i. Respondent failed to maintain complete and accurate permanent records for decedents GG and HH, and JJ, in violation of OAR 830-030-0090(4)(g), OAR 830-040-0000(7), and ORS 97.720.

n. Business Practices – Responsiveness to Board Requests

i. Respondent failed to provide the Board with apprenticeship logs for Brittney Rice and Zachary Gordon.

2. The Board may revoke Respondent's funeral establishment license, cemetery license, and crematory license and impose a civil penalty in the amount of $63,000 against Respondent.

OPINION

Standard of Review for Motion for Summary Determination

OAR 137-003-0580 addresses motions for summary determination. It provides, in relevant part:

> (6) The administrative law judge shall grant the motion for a summary determination if:
>
> (a) The pleadings, affidavits, supporting documents (including any interrogatories and admissions) and the record in the contested case show that there is no genuine issue as to any material fact that is relevant to resolution of the legal issue as to which a decision is sought; and
>
> (b) The agency or party filing the motion is entitled to a favorable ruling as a matter of law.
>
> (7) The administrative law judge shall consider all evidence in a manner most favorable to the non-moving party or non-moving agency.
>
> (8) Each party or the agency has the burden of producing evidence on any issue relevant to the motion as to which that party or the agency would have the burden of persuasion at the contested case hearing.
>
> * * * * *
>
> (12) If the administrative law judge's ruling on the motion resolves all issues in the contested case, the administrative law judge shall issue a proposed order in accordance with OAR 137-003-0645 incorporating that ruling * * *.

The Board moves for summary determination, arguing that there are no genuine issues of material fact and that it is entitled to a favorable ruling as a matter of law that Respondent engaged in the alleged violation, should be assessed a $1,000 per violation civil penalty, and that Respondent's licenses should be revoked.

The Board bears the burden of proving its allegations by a preponderance of the evidence. ORS 183.450(2) and (5); *Reguero v. Teachers Standards and Practices Commission*, 312 Or 402, 418 (1991) (burden is on Commission in disciplinary action); *Cook v. Employment Div.,* 47 Or App 437 (1980) (in the absence of legislation adopting a different standard, the standard of proof in administrative hearings is preponderance of the evidence). Proof by a preponderance of the evidence means that the fact finder is convinced that the facts asserted are more likely true than false. *Riley Hill General Contractor v. Tandy Corp*., 303 Or 390, 402 (1987).

In considering the Board's Motion, ALJ Whitaker reviewed the Motion and Corrected

Motion, the Response, the Reply and Corrected Reply, and all of the supporting exhibits. ALJ Whitaker considered the facts of the case in a light most favorable to Respondent, the non-moving party. For the reasons that follow, ALJ Whitaker found that the Board established that it was entitled to a favorable ruling as a matter of law.

Applicable Law

ORS 692.180 provides, in part:

> (1) Upon complaint or upon its own motion, the State Mortuary and Cemetery Board may investigate a complaint made by any person or by the board. If the board finds any of the causes described in this section in regard to any person, licensee or applicant or the holder of a certificate of authority, the board may impose a civil penalty of not more than $1,000 for each violation, suspend or revoke a license to practice or to operate under this chapter or refuse to grant or renew a license. The causes are as follows:
>
> (a) Misrepresentation in the conduct of business or in obtaining a license.
>
> (b) Fraudulent or dishonest conduct, when the conduct bears a demonstrable relationship to funeral service practice, embalming practice or the operation of cemeteries, crematoriums or other facilities for final disposition of human remains.
>
> * * * * *
>
> (h) Violation of any provision of ORS 97.929 or 97.937 or regulations adopted by the Federal Trade Commission regulating funeral industry practices.

ORS 692.405 provides:

> The funeral service practitioner or person acting as such shall be responsible for causing to be affixed to each receptacle, as defined by rule of the State Mortuary and Cemetery Board, in which a dead human body is contained an identifying metal disc, of a design to be approved by rule of the State Mortuary and Cemetery Board, that shall remain attached to the receptacle in which the body is contained and shall bear a corresponding number that is also in the report of death and the final disposition permit. In the event of cremation, the disc shall stay with the cremated remains.

16 CFR § 453.5 provides, in part:

> (a) ***Unfair or deceptive acts or practices.*** In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for any provider to embalm a deceased human body for a fee unless:

> **(1)** State or local law or regulation requires embalming in the particular circumstances regardless of any funeral choice which the family might make; or
>
> **(2)** Prior approval for embalming (expressly so described) has been obtained from a family member or other authorized person; or
>
> **(3)** The funeral provider is unable to contact a family member or other authorized person after exercising due diligence, has no reason to believe the family does not want embalming performed, and obtains subsequent approval for embalming already performed (expressly so described). In seeking approval, the funeral provider must disclose that a fee will be charged if the family selects a funeral which requires embalming, such as a funeral with viewing, and that no fee will be charged if the family selects a service which does not require embalming, such as direct cremation or immediate burial.
>
> **(b)** ***Preventive requirement.*** To prevent these unfair or deceptive acts or practices, funeral providers must include on the itemized statement of funeral goods and services selected, required by § 453.2(b)(5), the statement: "If you selected a funeral that may require embalming, such as a funeral with viewing, you may have to pay for embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial. If we charged for embalming, we will explain why below."

(Bold in original.)

ORS 97.130 provides, in part:

> (2) A person within the first applicable listed class among the following listed classes that is available at the time of death, in the absence of actual notice of a contrary direction by the decedent as described under subsection (1) of this section or actual notice of opposition by completion of a written instrument by a member of the same class or a member of a prior class, may direct any lawful manner of disposition of a decedent's remains by completion of a written instrument:
>
> (a) The spouse of the decedent.
>
> (b) A son or daughter of the decedent 18 years of age or older.
>
> (c) Either parent of the decedent.
>
> (d) A brother or sister of the decedent 18 years of age or older.
>
> (e) A guardian of the decedent at the time of death.

(f) A person in the next degree of kindred to the decedent.

(g) The personal representative of the estate of the decedent.

(h) The person nominated as the personal representative of the decedent in the decedent's last will.

(i) A public health officer.

ORS 97.220 provides:

(1) The remains of a deceased person interred in a plot in a cemetery may be removed from the plot with the consent of the cemetery authority and written consent of:

(a) The person under ORS 97.130 (2)(a), (b) or (c) who has the authority to direct disposition of the remains of the deceased person; or

(b) If the remains are cremated remains, the person who had possession of the cremated remains and authorized the interment of the cremated remains.

(2) If the consent of a person described in subsection (1) of this section or of the cemetery authority cannot be obtained, permission by the county court of the county where the cemetery is situated is sufficient. Notice of application to the court for such permission must be given at least 60 days prior thereto, personally or by mail, to the cemetery authority, to the person not consenting and to every other person or authority on whom service of notice is required by the county court.

(3) If the payment for the purchase of an interment space is past due for a period of 90 days or more, this section does not apply to or prohibit the removal of any remains from one plot to another in the same cemetery or the removal of remains by the cemetery authority from a plot to some other suitable place.

(4) This section does not apply to the disinterment of remains upon order of court or if ordered under the provisions of ORS 146.045 (3)(e).

ORS 97.720 provides:

(1) The person in charge of any premises on which interments or cremations are made shall keep a record of all remains interred or cremated on the premises under the person's charge, in each case stating the name of each deceased person, the date of interment or cremation, and the name and address of the funeral service practitioner. The interment records shall be open to inspection by survivors of the decedent during the customary office hours of the cemetery authority.

(2) A record shall be kept of the ownership of all plots in the cemetery which have been conveyed by the cemetery authority and of all transfers of plots in the cemetery.

OAR 830-011-0000(40) provides:

(40) "Principal" Principal means a person who has controlling authority over the licensed facility, including but not limited to:

(a) Managers or other persons who have decision-making authority and whose primary duties include control over the operation of the licensed facility;

(b) Officers or directors who have some degree of responsibility for the operation of the licensed facility;

(c) General Partners, limited and joint ventures;

(d) Sole proprietors;

(e) Stockholders holding a majority of outstanding shares of stock; and

(f) Members of a Limited Liability Company.

OAR 830-030-0000[26] provides, in part:

(4) It is the responsibility of the funeral service practitioner or person acting as a funeral service practitioner as that term is defined in ORS Chapter 432.005(11) to ensure that an identifying metal disc with a number assigned by the State Registrar's Office imprinted on the disc is attached to the casket or other receptacle containing human remains, or is attached to the remains if there is no receptacle.

(a) When human remains are to be cremated the identifying metal disc must be secured to the head end of the receptacle, or to the remains if no

[26] The Second Amended Notice also alleged violations of *former* OAR 830-030-0000(2010), which provided, in part:

(4) It shall be the responsibility of the Crematory Authority to see that the identifying metal disc shall accompany remains through the cremation process.
(5) It shall be the responsibility of the Cemetery Authority or Crematory Authority to see that the identifying metal disc is properly secured to each receptacle containing human remains when remains are delivered to the Cemetery Authority or Crematory Authority and that the number on the identifying metal disc is the number recorded on the final disposition permit. The Cemetery Authority or Crematory Authority shall sign the final disposition permit verifying this fact prior to accepting the remains. At no time shall the Cemetery Authority or Crematory Authority accept remains without an identifying metal disc unless death occurred in a state other than Oregon.

receptacle is used, at all times until the remains are placed in the cremation chamber.

(b) When human remains are going to be buried or entombed, the identifying metal disc must be attached to the head end of the casket or receptacle, or to the remains if no receptacle is used.

(c) The number on the identifying metal disc must be written or typed on the certificate of death and final disposition permit by the responsible funeral service practitioner or person acting as a funeral service practitioner as that term is defined in ORS Chapter 432.005(11).

(5) It is the responsibility of the Crematory Authority to see that the identifying metal disc accompanies human remains through the cremation process.

(6) It is the responsibility of the Cemetery Authority or Crematory Authority to see that the identifying metal disc is properly secured to each receptacle containing human remains, or, when no receptacle is used, to the remains, when remains are delivered to the facility and that the number on the identifying metal disc is the number recorded on the final disposition permit. The Cemetery Authority or Crematory Authority must sign the final disposition permit verifying this fact prior to accepting the remains. The Cemetery Authority or Crematory Authority may not accept remains without the proper identifying metal disc unless death occurred in a state other than Oregon.

(7) If, when the human remains are delivered to the crematory, cemetery or alternative disposition facility, no metal disc is attached to the receptacle or remains as required, or the disc number does not match the permit number as required, the funeral service practitioner or person acting as a funeral service practitioner as that term is defined in ORS Chapter 432.005(11) must retain responsibility for the proper care and storage of the remains until the correct disc is obtained and ensure it is affixed to the receptacle or remains. If the discrepancy cannot be resolved prior to any scheduled service, the funeral service practitioner or person acting as a funeral service practitioner as that term is defined in ORS Chapter 432.005(11), must take responsibility for notifying the person with the legal right to control final disposition that the disposition is postponed.

(8) If human remains or partial human remains, other than processed cremated remains, are discovered in a presumed unoccupied grave or crypt when opening the grave or crypt for purposes of an interment, the following is the responsibility of the cemetery authority:

(a) The cemetery authority must report the discovery to the Board on a form that has been approved by the Board.

(b) The cemetery authority must exercise diligence under the circumstances to identify the human remains.

(c) If positive identification of the remains is made, and if disinterment is not authorized pursuant to ORS 97.220 or 146.045, the human remains must not be further disturbed, the interment space must be immediately closed and the cemetery authority must update the cemetery records for that grave or crypt to include all relevant information known to the cemetery authority regarding the human remains, as outlined in OAR 830-040-0000 and ORS 97.720.

(d) If the human remains cannot be identified, and if disinterment is not authorized pursuant to ORS 97.220 or 146.045, the human remains must not be further disturbed, the interment space must be immediately closed, and the cemetery records must reflect that the interment space is occupied by unidentified remains, the date of discovery, and indicate that the space is not available for further interments.

(e) If the human remains are positively identified as remains that were originally interred in a grave adjacent to the opened grave but entered the opened grave during excavation or due to the operation of natural forces underground, the cemetery authority must make a reasonable effort to return all soil, human remains, and funerary objects to the interment space from which the material originated. The cemetery authority, if feasible, may then proceed with opening the unoccupied grave for interment.

(9) If processed cremated remains are discovered in a presumed unoccupied grave, crypt or niche when opening the grave, crypt or niche the following is the responsibility of the cemetery authority:

(a) The cemetery authority must report the discovery to the Board on a form that has been approved by the Board.

(b) If the cremated remains are identified, the cemetery authority must use reasonable diligence under the circumstances to determine if such cremated remains were placed with the permission of the cemetery authority. If no such permission was given, the cemetery authority must attempt to deliver the cremated remains to a person within the first applicable listed class in ORS 97.130(2).

(c) If the cremated remains cannot be identified or if the cemetery authority is unable to deliver the cremated remains to a person within a listed class under ORS 97.130(2), the cemetery authority must hold the cremated

> remains indefinitely and at a minimum, place the cremated remains in a common grave, crypt or niche, and record the specific location of the remains therein.
>
> (d) The cemetery authority must retain a permanent record of the known circumstances of the cremated remains including at a minimum: The original location where the cremated remains were discovered, the steps taken to identify and deliver the cremated remains, and the ultimate re-disposition of the cremated remains.
>
> (10) When a licensee arranges for the scattering of cremated remains, the licensee must include in the licensee's permanent records the final location of the cremated remains and make the identifying metal disc a part of the licensee's permanent record.

OAR 830-030-0030[27] provides, in relevant part:

> (1) In accordance with the identifying requirements established in ORS 692.405, the Crematory Authority must, immediately upon taking custody of human remains, verify that the human remains bear a means of identification attached as described in OAR 830-030-0000(4), (5), (6) and (7). A Crematory Authority must not cremate human remains without an identifying metal disc unless death occurred in a state other than Oregon.

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[27] The Second Amended Notice also alleged violations of *former* OAR 830-030-0030(2011), which provided, in relevant part:

> (1) In accordance with the identifying requirements established in ORS 692.405, the crematory authority shall, immediately upon taking custody of human remains, verify that the human remains bear a means of identification attached thereto as described in OAR 830-030-0000(3), (4)(a) and (b). A crematory authority shall not cremate human remains without an identifying metal disc unless death occurred in a state other than Oregon.
> (2) Documents identifying the human remains placed in the custody of a crematory authority prior to cremation shall contain the following information:
> (a) Name of deceased;
> (b) Date of death;
> (c) Place of death;
> (d) Name and relationship of authorizing agent; and
> (e) Name of authorizing agent or firm engaging crematory services.
> (3) If the crematory authority takes custody subsequent to the human remains being placed within a cremation container, the crematory authority shall satisfy itself that identification has been made as described in section (2) of this rule, and thereafter shall place a similar appropriate identification upon the exterior of the cremation container.

(2) Documents identifying the human remains placed in the custody of a Crematory Authority prior to cremation must contain the following information:

(a) Name of deceased;

(b) Date of death;

(c) Place of death;

(d) Name and relationship of authorizing agent; and

(e) Name of authorizing agent or firm engaging crematory services.

(3) If the Crematory Authority takes custody subsequent to the human remains being placed within a cremation container, the Crematory Authority must satisfy itself that identification has been made as described in section (2) of this rule, and thereafter must place a similar appropriate identification upon the exterior of the cremation container.

OAR 830-030-0040(6) provides:

Immediately prior to being placed within the cremation chamber, the identification of the human remains must be verified by the Crematory Authority staff. For Oregon deaths, confirmation includes verification that the number on the identifying metal disc is the number recorded on the final disposition permit. The identifying metal disc must be attached to the outside of the cremation chamber where it must remain until the cremation process is complete.

OAR 830-030-0050 provides, in relevant part:

In order to protect the public's interests and to prevent any misrepresentation in the conduct of doing business, the crematory authority must process cremated remains in the following manner:

* * * * *

(2) All residual of the cremation process must undergo final processing;

(3) The entire processed cremated remains must be placed in a cremated remains container. The identifying metal disc must be placed on or in the container. The cremated remains must not contain any other object unrelated to the cremation process unless specific authorization has been received from the authorizing agent[.]

(5) The unauthorized simultaneous cremation of more than one human remains within the same cremation chamber is specifically forbidden. It may be done only when authorized as provided in section (7) of this rule.

OAR 830-030-0090[28] provides, in part:

Every licensee or agent of a licensed facility of the Oregon Mortuary and Cemetery Board (Board) must abide by the accepted standards of the Death Care Industry and the minimum standards, including but not limited to the following standards of practice set forth by the Board. Violations of the following may be cause for Board action.

(1) Every licensee or agent of a licensed facility must:

(a) Comply with Oregon Revised Statutes relating to death care in ORS Chapters 97, 432 and 692; and comply with the Oregon Public Health Laws;

(b) Implement and follow through with contractual arrangements with the person with the legal right to control final disposition;

* * * * *

(g) Respect the dignity of dead human remains by appropriate handling, including but not limited to, transporting, refrigerating, embalming, dressing or performing final disposition.

(2) Principals are responsible for the actions of employees related to the operation of a licensed facility;

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[28] The Second Amended Notice also alleged violations of *former* OAR 830-030-0090(2007), which provided, in relevant part:

> Every licensee or agent of a licensed facility or the Oregon State Mortuary and Cemetery Board (Board) shall abide by the accepted standards of the Death Care Industry and the minimum standards, including but not limited to the following standards of practice set forth by the Board. Violations of the following may be cause for Board action:
>
> (1) Required Conduct related to safety and integrity:
>
> * * * * *
>
> (d) Implementation and/or follow through of agreed upon arrangements as designated by the responsible party[.]

The Second Amended Notice also asserted a violation of *former* OAR 830-030-0090(1997). The 1997 version is not materially different than the 2007 version.

(3) A licensed embalmer or embalmer apprentice must supervise and be responsible for the required sanitizing of the preparation room or holding room including, but not limited to, embalming tables, work surfaces, sinks, floors, instruments, and disposal of contaminated waste. A preparation room or holding room must be sanitized after the use of the room.

(4) Unacceptable conduct by a licensee or agent of a licensed facility includes:

(b) Abusing a client. The definition of abuse includes, but is not limited to, causing physical or emotional discomfort or intimidating, threatening or harassing a client;

* * * * *

(g) Inaccurate or incomplete record keeping as required by the Board;
(h) Providing false information on facility records including, but not limited to, filling in another person's omissions without consent, signing another person's name or on their behalf without authority, recording services or merchandise not provided or that a party did not agree to, or falsifying data;
(i) Altering a facility record including but not limited to changing the words, letters, or numbers from the original document except in the case of a contract modified in accord with the terms of the contract;

* * * * *

(5) No licensee may:

* * * * *

(d) Make false or misleading statements or use fraud or misrepresentation in communications with the Board.

* * * * *

(f) Fail to provide the Board with requested documents or information within the Board's jurisdiction;

(g) Fail to cooperate or answer truthfully or completely inquiries regarding matters within the Board's jurisdiction[.]

OAR 830-030-0100 provides, in part:

The following practices are prohibited and are considered misrepresentation in the conduct of doing business:

> (1) Any sales presentation or practice that conceals or misstates a material fact is considered a misrepresentation in the conduct of doing business.
>
> * * * * *
>
> (3) Any use of interment space used for the interment of human remains including cremated remains, other than those of the owner of that space or interment rights thereto, or placement of other materials belonging to a person other than the owner, without the prior written authorization by the owner of such space or interment rights. If the person authorizing such interment or placement of materials represents that he or she has authority to direct the interment or placement, a licensee is not in violation of this rule if, after due diligence, the licensee reasonably believes such person may direct the interment or placement of materials.

OAR 830-040-0000[29] provides, in part:

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[29] The Second Amended Notice also alleged violations of OAR 830-040-0000(2011), which provided, in relevant part:

> (6) All licensees, licensed facilities and funeral service practitioners shall keep a detailed, accurate, and permanent record of all transactions that are performed for the care and preparation and final disposition of human remains. The record shall set forth as a minimum:
> (a) Name of decedent and the identifying metal disc number provided by Vital Statistics;
> (b) Date of death;
> (c) Name of purchaser of professional services and relationship;
> (d) Name of place wherein remains are to be interred or created (in cemetery records the exact location of the interment of remains by crypt, niche, or by grave, lot and plot);
> (e) The name of the funeral service practitioner or cemetery personnel responsible for making the arrangements;
> (f) The name of the embalmer responsible for embalming (does not apply to cemetery or crematorium records); and
> (g) Written documentation of permission to embalm or cremate a human remains is required from the person who has the right to control disposition of the remains pursuant to ORS 97.130(1) and (2). The record of such authorization shall be made to include as a minimum: The name of the authorizing individual and relationship to the deceased, date and time contacted, phone number and name of the licensee or funeral home representative acquiring the authorization (does not apply to cemetery or crematorium records).
>
> * * * * *
>
> (9) No licensee or operator of a licensed facility or a licensee's agent shall:
> (a) Fail to preserve permanent records for inspection by the Board; or
> (b) Alter, cancel or obliterate entries in permanent records for the purpose of falsifying any record required by this chapter to be made, maintained or preserved.

The Second Amended Notice also alleged violations of *former* OAR 830-040-0000(6)(2009), which was not materially different than the version cited above.

(1) Every licensee is responsible for complying with the provisions of ORS Chapter 692 and rules adopted thereunder, and any other law pertaining to the duties and responsibilities of the funeral service practitioner or the operation or licensing of funeral establishments, immediate disposition companies, cemeteries, crematoriums and alternative disposition facilities.

* * * * *

(7) All licensees and licensed facilities must keep a detailed, accurate, and permanent record of all transactions that are performed for the care, preparation and final disposition of human remains. The record must set forth as a minimum:

(a) Name of decedent and, when applicable, the identifying metal disc number provided by the State Registrar's office;

(b) Date of death;

(c) Name of person arranging for delivery of goods and services and the person authorizing the final disposition;

(d) Name of place of disposition. In cemetery records, the "name of place" means exact location of the interment of human remains by crypt, niche, or by grave, lot and plot;

(e) The name of the funeral service practitioner, cemetery, crematory or alternative disposition facility personnel responsible for making and executing the arrangements pertaining to the delivery of goods and services;

(f) The name of the embalmer and funeral establishment responsible for embalming (applies only to funeral establishment records); and

(g) Written permission for embalming, final disposition and scattering services from the person who has the right to control disposition of the human remains pursuant to ORS 97.130(1) and (2). The record of such authorization must include at a minimum: printed name, signature and phone number of the authorizing agent and relationship to the deceased, date and time permission was obtained, and printed name and signature of the licensee or facility representative acquiring the authorization.

(8) In the case of cremation, the licensee responsible for making the cremation arrangements must require the authorizing agent making the cremation arrangements to provide the licensee with a signed statement specifying the action to be taken regarding delivery of the cremated remains. A copy of this statement must be retained in the permanent records of the responsible licensee.

(9) If cremated remains are not retained by the licensee accepting initial responsibility for the remains, the licensee must, upon delivery of such cremated remains to another individual, obtain a signed receipt from that individual. The receipt must include as a minimum: printed name of the individual receiving the cremated remains, the name of the deceased, and the date of delivery of the cremated remains, the receiving individual's signature and the printed name and signature of the licensee or the licensee's representative releasing the cremated remains.

(10) No licensee or operator of a licensed facility or a licensee's agent may:

(a) Fail to preserve required records for inspection by the Board; or

(b) Alter, cancel or obliterate entries in records required by law to be made, maintained or preserved.

(11) After human remains are released to the Cemetery Authority, they must be placed in their designated grave, crypt or vault within 24 hours after taking possession unless exigent circumstances exist. After human remains are released to the Crematory Authority, those remains must be cremated and processed within 48 hours unless exigent circumstances exist. In such exigent circumstances, the facility must notify both the funeral service practitioner responsible for the arrangements and the office of the Board. The licensed facility, funeral service practitioner, or person acting as the funeral service practitioner under ORS Chapter 432, responsible for the arrangements for that deceased, must notify the family of such exigent circumstances and, at the request of the cemetery or crematory, pick up and arrange for proper storage of the remains within 24 hours of notification.

* * * * *

(14) Every Cemetery Authority, Crematory Authority and Alternative Disposition Facility Authority must keep the Board's office informed of the location of their permanent records. These records must be made available for random inspections by the Board at any reasonable time.

OAR 830-040-0010 provides, in part:

(1) Facilities must keep their premises sanitary at all times.

* * * * *

(3) No licensee or employee of a licensed facility may give false or misleading information to an inspector, investigator or any other member of the Board while investigating a possible violation of law or administrative rules.

> (4) Every licensee must provide the Board inspector or investigator a copy of all documents as requested relevant to the inspection or investigation.
>
> (5) No person, licensee, or agent of a licensee, may interfere with any inspection or investigation conducted by an agent of the Board.

OAR 830-040-0020 provides, in part:

> (4) Instruments used during an embalming or other preparation must be cleaned and sterilized (either in a steam sterilizer or by chemicals) after each embalming or preparation. Instruments must be free of stains and foreign particles.
>
> (5) The preparation room or holding room must be kept in a sanitary condition at all times.

OAR 830-040-0030 provides:

> Each licensed facility shall be registered with the State Mortuary and Cemetery Board by its true corporate, firm or individual name. In addition, one assumed business name, as registered with the Secretary of State Corporation Division, may be used by such licensed facility and shall be promptly reported to the Board.

Respondent's responsibilities as a Principal of Eternal Hills and an agent of Klamath Tribute Center

At all relevant times, Respondent was the assigned manager and a corporate officer of Eternal Hills. Pursuant to OAR 830-011-0000(40), he is a principal. As a licensee working at a licensed facility, Respondent is responsible for compliance with the death care industry laws. *See* OAR 830-030-0090(1). Pursuant to OAR 830-030-0090(2), principals are responsible for the actions of employees related to the operation of a licensed facility. Therefore, Respondent is liable for violations committed by Eternal Hills, whether due to his own actions or the actions of others working on behalf of Eternal Hills and Klamath Tribute Center. The term "Respondent," as used throughout this Ruling, refers to Lancaster, Eternal Hills, and Klamath Tribute Center.

a. Purchaser A

i. Failure to follow through with agreed upon arrangements

The Board contended Respondent violated *former* OAR 830-030-0090(1)(d)(2007) by failing to follow through with agreed upon arrangements for Purchaser A. Respondent contended that "Purchase[r] A paid only $2,255 toward a $7,000 marker that does not include the final cost of transportation for the marker and setting the marker, all of which will be paid by Eternal Hills." (Ex. R1 at 2.) Respondent did not dispute the factual allegations raised by the Board – specifically, that it entered into an agreement with Purchaser A and his spouse for a

specific rock, for which they paid within weeks. In 2008, Purchaser A and his spouse signed a proof for the marker, but the marker was never installed. It was not until Purchaser A visited the cemetery in 2011 that he learned the marker was not installed.

In June 2011, Respondent executed an addendum to the contract with Purchaser A and his spouse. Respondent agreed to order a different marker that would suit Purchaser A's needs at no additional expense. Respondent did not pay Oregon Memorials the initial payment of $3,700 for the order until late March 2013. Oregon Memorials did not receive the balance owed on the account until sometime after March 2014, one year later. The marker was not delivered to Respondent until December 23, 2014.

Respondent argued that Purchaser A was not satisfied with the marker once it was ordered and that Respondent ultimately paid more for the final marker than Purchaser A had paid Respondent. The cost to Respondent is immaterial. Respondent offers no evidence to support the undue delay – one of more than seven years – to show that it followed through with its responsibilities under the agreement. Based on applicable law and the facts presented, the Board established that Respondent failed to follow through with agreed upon arrangements with Purchaser A, in violation of *former* OAR 830-030-0090(1)(d)(2007).

ii. Misrepresentation of the order or placement of the marker to Purchaser A and the Board

The Board contended Respondent violated ORS 692.180(1)(a) and (b) by misrepresenting the status of the order to Purchaser A, and by making fraudulent or dishonest misrepresentations to the Board with regard to the ordering and placing of the marker. Respondent did not specifically address these allegations in its Response. Respondent only asserted that "Eternal Hills went through three additional marker manufacturers before a marker was located with which he was satisfied." (Ex. R2 at 1-2.) Respondent did not address why there was a seven year delay in ordering and placing the marker, or why Respondent represented to Purchaser A that the marker would be placed by April 2011, but was not placed until sometime after December 2014.

In October 2012, the Board's investigator asked Respondent about the order status and placement of the marker. On November 8, 2012, Respondent's representative told the Board that the marker was in production. The evidence established that this was not true. The marker company did not receive a signed proof until December 2012, and even then, the marker company had not received payment for the order. On January 18, 2013, Lancaster emailed the Board, saying "Here is the proof and the marker being made for [Purchaser A]." (Ex. 11 at 2.) The Board's investigator learned from the manufacturer that the marker was not in production. Respondent did not send the first payment to the manufacturer until March 2013. Even then, Respondent had not paid the balance for the order in full. In March 2014, Respondent told the Board that the final payment would be sent to the marker company, but did not provide the Board with a date upon which that payment would be made. The marker was not delivered to Respondent until December 2014.

Respondent made representations to Purchaser A that the marker would be placed by a certain time, but the placement was delayed by more than three years. Respondent made false representations to the Board that the marker had been ordered, when in fact the order had not been placed. Respondent misrepresented the status of the order to both Purchaser A and the Board. Respondent's conduct bears a demonstrable relationship to funeral service practice, embalming practice or the operation of cemeteries, crematoriums or other facilities for final disposition of human remains.

Based on applicable law and the facts presented, the Board established that Respondent violated ORS 692.180(1)(a) and (b).

iii. Making false or misleading statements, in violation of OAR 890-030-0090(5)(d) and (g)

As previously discussed, Respondent made false or misleading statements to the Board with regard to the status of Purchaser A's marker order. There were no genuine issues of material fact in dispute with regard to this issue. The Board has established by a preponderance of the evidence that Respondent violated OAR 890-030-0090(5)(d) by making false or misleading statements or misrepresentation in communications with the Board. Respondent violated OAR 890-030-0090(5)(g) by failing to answer truthfully or completely inquiries regarding matters within the Board's jurisdiction. Based on applicable law and the facts presented, the Board established that Respondent violated OAR 890-030-0090(5)(d) and (g).

iv. Sanction

It is within the Board's discretion to impose the sanctions listed in ORS 692.180. The Board has proven the allegations with regard to Purchaser A, as set forth above. Considering Respondent's egregious conduct and the violations in which Respondent engaged, the Board has established that revocation of Respondent's licenses is appropriate. The Board has also established that the imposition of a civil penalty is appropriate. The Board imposes a $1,000 civil penalty per violation, for a total of $5,000 for the violations proven with respect to Purchaser A, computed as follows: $1,000 for Respondent's failure to follow through with agreed upon arrangements; $1,000 for Respondent's misrepresentation of the order or placement of the marker to Purchaser A; $1,000 for Respondent's misrepresentation of the order or placement of the marker to the Board; $1,000 for making false or misleading misrepresentations in communications with the Board; and $1,000 for failing to answer truthfully or completely inquiries regarding matters within the Board's jurisdiction.

b. Decedent B

i. Assessing a finance charge

The Board contended Respondent violated ORS 692.180(1)(a) and (b) by assessing finance charges to Decedent B's mother, even though she never signed the Promissory Note. In its Response, Respondent stated that "As suggested in the Board's motion for summary determination, she [mother] was **not** charged $300 for a promissory note. She was sent a

detailed monthy statement for each month that a balance remained outstanding." Response at 3; emphasis in original.

If, as Respondent contended, Decedent B's mother was not assessed a finance charge, then Respondent collected sums in excess of the balance owed under the agreement. Under the SFGSS, the total balance owed for Decedent B's final arrangements was $2,435. Respondent prepared an Agreement Confirmation for the mother to sign, showing a total owed of $2,816.54. Later, Respondent prepared a Promissory Note indicating an annual percentage rate of 18 percent, a finance charge of $381.54, and a total amount financed of $2,435, for a total owed of $2,816.54. Decedent B's mother never signed the Agreement Confirmation or the Promissory Note.

The undisputed evidence establishes that Respondent assessed finance charges to Decedent B's mother, even though she never signed the Promissory Note. Depending on which of Respondent's figures are used to determine the amount Respondent collected from Decedent B's mother, Respondent either received a total of $2,678.85 or $2,816.54 in payments. These sums exceed the amount Decedent B's mother agreed to pay pursuant to the SFGSS.

Respondent made misrepresentations in the conduct of business when it assessed finance charges on the balance owed. Respondent also engaged in dishonest conduct when it assessed these finance charges, particularly when Respondent knew Decedent B's mother had not agreed to or signed the Agreement Confirmation or the Promissory Note. Such conduct bears a demonstrable relationship to funeral service practice. The public must have confidence that a licensee with whom it does business can be trusted and that the licensee will be forthright and honest in communicating with the public. Respondent's conduct demonstrates otherwise.

Based on applicable law and the facts presented, the Board established that Respondent violated ORS 692.180(1)(a) and (b).

ii. Failure to follow through with agreed upon arrangements

The Board contended Respondent violated OAR 830-030-0090(1)(b) by failing to timely place the marker on Decedent B's grave and by failing to promptly maintain the grave. Respondent argued that it received two maintenance and repair requests – on August 13, 2012 and September 2, 2012 – and that maintenance and repairs were thereafter completed. Respondent asserts that "The grave had first been opened and closed the preceding November, when the grass was not growing and the August heat affected the sodding which needed to be replaced." Ex. R1 at 2. Respondent also contended that "There was no marker included in the [SFGSS] which [Mother] signed, because she elected to use a monument which she had arranged for herself and that monument was placed on the gravesite." *Id.*

The undisputed evidence established that Decedent B's mother completed a Cemetery Service Request form on March 14, 2012, at which time she noted that the grave was sunken in. As of September 6, 2012, Respondent still had not completed the maintenance on the grave as requested by Decedent B's mother. On October 13, 2012, the mother again requested maintenance on the grave. Respondent's contention that the maintenance and repairs were

completed after receiving the requests is contrary to the undisputed evidence in the record. Respondent offered no evidence to support its contention that it did in fact perform maintenance on the grave in a prompt manner.

In August 2012, Respondent entered into an agreement with Decedent B's mother to order and place a marker for the grave for an additional $283. The mother paid for the marker in full in September 2012. Respondent ordered the marker in October 2012, but did not place it on Decedent B's grave until 2014. Respondent's assertions that a marker was not included in the SFGSS does not address the undisputed evidence that Respondent and Decedent B's mother thereafter agreed that Respondent would order and place the marker. Respondent offers no explanation regarding the delay of approximately two years to place the marker on the grave.

The preponderance of the evidence established that Respondent failed to implement and follow through with contractual arrangements with Decedent B's mother. Respondent failed to maintain Decedent B's grave in a prompt manner and failed to promptly place Decedent B's marker.

Based on applicable law and the facts presented, the Board established that Respondent violated OAR 830-030-0090(1)(b).

iii. Failure to keep accurate and complete records for arrangements and final disposition

The Board alleged Respondent failed to keep accurate and complete records for Decedent B's final disposition, in violation of OAR 830-030-0090 and *former* OAR 830-040-0000(6) and (9)(2011). In its Response, Respondent argued that "As in many instances when the Respondent has provided records to the Board, the Board remained silent and did not suggest that the records provided complied with the Board's request. The Respondent has all required records for Decedent B." Response at 4.

Respondent failed to address the material facts regarding this issue – primarily that Decedent B's mother provided the Board with documents that Respondent did not. In Response to Magill's May 8, 2012 letter to Respondent, Respondent provided the Board with a copy of the SFGSS; the Transaction History report; the Promissory Note; a document noting that the agreement and promissory note needed to be signed by the mother; the November 8, 2011 Cemetery Service Request; the Agreement Confirmation; and the August 13, 2012 Customer Service & Maintenance Report.

Decedent B's mother provided the Board with a copy of the March 14, 2012 Cemetery Service Request; January 9, 2012 billing statement; February 9, 2012 billing statement; March 10, 2012 billing statement; and a copy of Decedent B's memorial service information.

Of the documents Respondent provided to the Board, none of the documents Decedent B's mother provided to the Board were included. Respondent did not address this in its Response, and provided no evidence to support a finding that it did in fact provide the Board with a detailed, accurate, and permanent record of all transactions there were performed with

regard to Decedent B.

The preponderance of the evidence established that Respondent failed to keep detailed, accurate, and permanent records of all transactions that were performed for the preparation and final disposition of Decedent B. Based on applicable law and the facts presented, the Board established that Respondent violated OAR 830-030-0090, *former* OAR 830-040-0000(6) and (9)(2011).

iv. Providing false or misleading information to the Board

The Board alleged Respondent violated OAR 830-030-0090(5)(d) and OAR 830-040-0010(3) by making false and misleading statements and misrepresenting the facts surrounding the status of Decedent B's marker. Respondent contended that "It is clear from information provided to the Board by Respondent that there was no marker provided by the Respondent for Decedent B. * * *. There was no marker proof for Decedent B." Response at 4-5.

The uncontroverted evidence established that in August 2012, Respondent entered into an agreement with Decedent B's mother to order and place a marker for an additional cost, which the mother paid. Respondent ordered the marker in October 2012, and placed it in 2014. The uncontroverted evidence established also that in February 2014, Respondent's employee, Rene McAlmon, provided the Board with Decedent B's marker proof.

The Board established by a preponderance of the evidence that Respondent made false and misleading statements regarding the status of the marker. Respondent also gave false or misleading information regarding the marker to the Board during the investigation. Based on applicable law and the facts presented, the Board established that Respondent violated OAR 830-030-0090(5)(d) and OAR 830-040-0010(3).

v. Failure to provide requested documents to the Board

The Board contended Respondent failed to provide requested documents. Respondent alleged that "There was delay on the part of Eternal Hills in providing records to the [Board] which were requested on May 8, 2012, but that letter was misplaced and the records were not provided until a later time. Response at 3.

The undisputed evidence established that the Board's investigator asked Respondent to provide a written response to allegations no later than May 18, 2012. Respondent did not provide a response. On October 10, 2012, the Board again requested Respondent respond to the allegations. On October 11, 2012, Respondent addressed the allegations in writing. In June 2014, the Board's investigator asked Respondent to provide a clear copy of Decedent B's mother's complete permanent record. The investigator renewed the request on June 23, 2014. Respondent never provided the Board with a copy of the complete permanent record and stated that the marker had been purchased elsewhere.

There is no factual dispute that Respondent failed to provide the Board with all requested documents, in violation of OAR 830-040-0010(4) and (5) and OAR 830-030-0090(5)(f).

vi. Failure to abide by the accepted standards of the death care industry

OAR 830-030-0090 requires every licensee or agent of a licensed facility to uphold the minimum standard of the industry. This requirement includes implementing and following through with agreed upon arrangements as designated by the responsible party. Examples of unacceptable conduct included inaccurate record keeping in client records. As discussed above, Respondent failed to keep accurate records for Decedent B, did not promptly respond to Decedent B's mother's requests to maintain her son's grave, and did not promptly set the marker on Decedent B's grave. Based on applicable law and the facts presented, the Board established that Respondent failed to meet the minimum standards set forth in OAR 830-030-0090.

vii. Sanction

It is within the Board's discretion to impose the sanctions listed in ORS 692.180. The Board has proven the allegations with regard to Decedent B, as set forth above. Considering Respondent's egregious conduct and the violations in which Respondent engaged, the Board has established that revocation of Respondent's licenses is appropriate. The Board has also established that the imposition of a civil penalty is appropriate. The Board imposes a $1,000 civil penalty per violation, for a total of $6,000 for the violations proven with respect to Decedent B, computed as follows: $1,000 for failing to abide by the accepted standards of the death care industry; $1,000 for assessing a finance charge in violation of ORS 692.180(1)(a) and (b); $1,000 for failing to follow through with agreed upon arrangements for placing the maker on Decedent B's grave and maintenance of the grave site; $1,000 for failing to keep accurate and complete records for Decedent B's arrangements and final disposition; $1,000 for providing false or misleading information to the Board; and $1,000 for failing to provide requested documents to the Board.

Decedent C

i. Charging for embalming when the service was not provided

The Board alleged Respondent sent Decedent C's daughter an invoice without an underlying contract and charged for embalming of Decedent C when the service was not provided. This, the Board contended, is a violation of ORS 692.180(1)(a) or (b) and OAR 830-030-0090(4)(h). Respondent concedes that Decedent C's daughter did not sign the SFGSS. Respondent contended that the daughter "insisted that [Decedent C] had prepaid for the services. In fact, he had not." (Ex. R1 at 2.)

The uncontroverted evidence established that Respondent prepared a contract for the charges associated with Decedent C's final disposition, but no party signed it. Respondent assessed late charges and finance charges and sent Decedent C's daughter an invoice as if she had signed the contract and agreed to its terms.

In October 2012, Decedent C's daughter received an SFGSS from Respondent that listed a charge for embalming services, even though Decedent C had requested a direct cremation, not embalming services. Lancaster reported to the Board that embalming was listed on the revised

SFGSS because embalming was less expensive than refrigeration.

The preponderance of the evidence established that Respondent assessed charges to which Decedent C's daughter did not agree. This type of conduct constitutes a misrepresentation in the conduct of business and is dishonest. Respondent's dishonest conduct bears a demonstrable relationship to funeral service practice, as the public and the Board must be able to trust Respondent to conduct itself in an honest and forthright manner. Respondent has demonstrated an inability to do so.

Based on applicable law and the facts presented, the Board established that Respondent violated ORS 692.180(1)(a) and (b) and OAR 830-030-0090(4)(h).

ii. Handling of arrangements and failure to abide by accepted standards of the death care industry

The Board contended that Respondent's handling of arrangements for Decedent C failed to abide by accepted standards of the death care industry, in violation of OAR 830-030-0090, which generally requires a licensee to uphold the minimum standards of the industry. OAR 830-030-0090(1)(b) specifically provides that every licensee or agent of a licensed facility must implement and follow through with contractual arrangements with the person with the legal right to control final disposition. OAR 830-030-0090(4) lists examples of the unacceptable conduct by a licensee or agent of a licensed facility, which includes inaccurate or incomplete record keeping as required by the Board; providing false information on facility records including, but not limited to, filling out another person's omissions without consent, signing another person's name or on their behalf without authority, recording services or merchandise not provided or that a party did not agree to, or falsifying data. OAR 830-030-0090(4)(g) and (h).

Respondent did not respond to this alleged violation other than to allege the OAR 830-030-0090(4) does not prohibit charging a financing fee. Response at 6. The evidence established that Respondent had no contractual relationship with Decedent C's daughter. If no next of kin agree to be financially responsible, Respondent's recourse is as provided in ORS 97.130(6). Respondent sought to collect charges, late fees, and interest charges from Decedent C's daughter – none of which she had agreed to. The Board has established that assigning the obligation of a contract to which a consumer was not a party is unacceptable conduct and fails to meet the minimum acceptable standards of the death care industry.

In addition, Respondent recorded embalming on the SFGSS, but informed the Board that Decedent C was not embalmed. Respondent recorded false information on facility records, in violation of OAR 830-030-0090(4)(h).

Based on applicable law and the facts presented, the Board established that Respondent's handling of arrangements for Decedent C failed to abide by the accepted standards of the death care industry.

iii. Failure to keep accurate and complete records for arrangements and final disposition

The Board contended that Respondent failed to keep accurate and complete records for Decedent C's arrangements and final disposition, in violation of OAR 830-030-0090(4).

The undisputed evidence established that in February 2012, Respondent sent an invoice to Decedent C's daughter in the amount of $3,777.19, several months after Decedent C's son picked up Decedent C's remains following cremation. Thereafter, in October 2012, Respondent sent Decedent C's daughter a revised SFGSS for $1,400.00. Respondent did not provide an explanation for the discrepancy between the two invoices.

Additionally, Respondent incorrectly listed the information for the place of death and incorrectly identified Decedent C's mother's maiden name on Decedent C's death certificate. Respondent admitted in its response to the Board that the death certificate contained incorrect information and stated that an affidavit had been submitted to correct the errors.

As already discussed, Respondent provided false information on facility records when it recorded embalming services that were never provided on the SGFSS.

Finally, by letter dated September 19, 2012, the Board requested Respondent provide a complete copy of Decedent C's permanent records and for Respondent to provide a written statement of other persons having direct involvement or knowledge regarding specific allegations addressed in the letter. Respondent did not provide a complete copy of Decedent C's records. For example, Respondent did not provide the Board with the 2003 pre-arrangement file for Decedent C or with a written statement from any persons having direct involvement or knowledge regarding the allegations. Respondent failed to preserve required records for inspection by the Board, in violation of *former* OAR 830-040-0000(9)(2011).

Based on applicable law and the facts presented, the Board established that Respondent violated OAR 830-030-0090(4)(g) and (h) and *former* OAR 830-040-0000(9)(2011).

iv. Sanction

It is within the Board's discretion to impose the sanctions listed in ORS 692.180. The Board has proven the allegations with regard to Decedent C, as set forth above. Considering Respondent's egregious conduct and the violations in which Respondent engaged, the Board has established that revocation of Respondent's licenses is appropriate. The Board has also established that the imposition of a civil penalty is appropriate. The Board imposes a $1,000 civil penalty per violation, for a total of $3,000 for the violations proven with respect to Decedent C, computed as follows: $1,000 for sending an invoice without an underlying contract and charging for embalming when the service was not provided; $1,000 for failing to abide by the accepted standards of the death care industry; and $1,000 for failing to keep accurate and complete records.

Decedent D

i. Failure to explain charge for embalming

The Board alleged Respondent violated the Federal Trade Commission's Funeral Rule, 16 § 453.5, which is grounds for discipline under ORS 692.180(1)(h). Specifically, the Board alleged that Respondent failed to list the reason for embalming on Decedent D's SFGSS. Respondent argued that "The statement of goods and services selected does clearly set forth that embalming was completed at family request. The fact that "other" is left blank, together with the authorization for disposition with embalming or refrigeration, makes it absolutely clear that this was requested by a family member, namely the sister of the decedent[.]" Response at 7. In his affidavit, Lancaster asserts that "The family authorized embalming because Oregon law requires embalming or refrigeration if human remains are held longer than 24 hours. The authorization says that the approval was by family or other with a blank line following other. The blank line was not filled out and it is clear that the request for embalming was by family." Ex. R1 at 3.

Respondent's argument is unpersuasive. Respondent used a pre-printed SFGSS that lists the reason for embalming as family request or "other," with a blank line following "other." Decedent D's SFGSS contains no information and states no reason for embalming. Contrary to Respondent's argument, there is nothing clear about the reasons for embalming on Decedent D's SFGSS. This is a violation of 16 § CFR 453.5, and is grounds for discipline by the Board under ORS 692.180(1)(h).

ii. Failure to include required information in Decedent D's permanent record

The Board alleged Respondent failed to include required information in Decedent D's permanent record, in violation of OAR 830-040-0000(7), (8) and (9). Specifically, the Board argued that Decedent D's permanent records fails to include the signature of the licensee on the cremation authorization, a signed statement from the person making the cremation arrangement specifying the action to be taken regarding delivery of the cremated remains, and the signature of the licensee on the receipt for the cremated remains. In its Response, Respondent contended that it did not violate OAR 830-040-0000(7) or (8) because those provisions of the rule do not require the signature of a licensee.

OAR 830-040-0000(7) provides that licensees and licensed facilities must keep a detailed, accurate, and permanent record of all transactions that are performed for the care, preparation, and final disposition of human remains. At minimum, the record must set forth a) the name of the decedent and, when applicable, the identifying metal disc number; b) the date of death; c) the name of the person arranging for delivery of goods and services and the person authorizing the final disposition; d) the name of the place of disposition; e) the name of the funeral service practitioner, cemetery, crematory, or alternative disposition facility personnel responsible for making and executing the arrangements pertaining to the delivery of goods and services; f) the name of the embalmer and funeral establishment responsible for embalming; and g) written permission for embalming, final disposition of the human remains from the person who has the right to control disposition of the human remains.

OAR 830-040-0000(8) provides that, in the case of cremation, the licensee responsible for making the cremation arrangements must require the authorizing agent making the cremation arrangements to provide the licensee with a signed statement specifying the action to be taken regarding delivery of the cremated remains. A copy of this statement must be retained in the permanent records of the responsible licensee.

OAR 830-040-0000(9) provides that if cremated remains are not retained by the licensee accepting initial responsibility for the remains, the licensee must, upon delivery of such cremated remains to another individual, obtain a signed receipt from the individual. The receipt must include, at minimum, the printed name of the individual receiving the cremated remains; the name of the deceased; the receiving individual's signature; and the printed name and signature of the licensee or the licensee's representative releasing the cremated remains.

In the permanent records Respondent provided to the Board, the signature of a licensee was not on the cremation authorization dated May 29, 2012. There was no signed statement on the Final Disposition document from the person making the cremation arrangements specifying the action to be taken regarding delivery of the remains. Finally, there was no signature of the licensee on the receipt for Decedent D's cremated remains.

The undisputed evidence establishes that Respondent violated OAR 830-040-0000(7), (8), and (9).

iii. Sanction

It is within the Board's discretion to impose the sanctions listed in ORS 692.180. The Board has proven the allegations with regard to Decedent D, as set forth above. Considering Respondent's egregious conduct and the violations in which Respondent engaged, the Board has established that revocation of Respondent's licenses is appropriate. The Board has also established that the imposition of a civil penalty is appropriate. The Board imposes a $1,000 civil penalty per violation, for a total of $2,000 for the violations proven with respect to Decedent D, computed as follows: $1,000 for failing to explain the charge for embalming; and $1,000 for failing to include the required information in Decedent D's permanent record.

Decedent E

i. Failure to follow through with contractual arrangements

The Board argued Respondent violated *former* OAR 830-030-0090(1)(d)(1997) by failing to place Decedent E's marker in a prompt manner. Respondent conceded that on May 14, 1996, a marker order was completed by its staff and that Decedent E paid the contractual balance in full. Respondent also conceded that the "marker should have been ordered at that time, but for unknown reasons, it was not ordered." Ex. R1 at 3. Respondent did not place the marker order until January 2013 and the marker was not placed until March 2013.

Respondent's assertion that it refunded the cost of the marker to Decedent E's family is immaterial to the Board's allegation. Respondent had a duty to promptly order and place the

marker. Respondent offers no explanation as to why it took approximately 16 years to order and place the marker. Respondent failed to follow through with agreed upon arrangements for Decedent E, in violation of *former* OAR 830-030-0090(1)(d)(1997).

ii. Engaging in misleading business practices, misrepresentation, and fraudulent and dishonest conduct when communicating with Decedent E's family and the Board

When Decedent E passed away in 2011, Respondent told Decedent E's daughter that Granite Bronze was no longer making the type of marker Decedent E had selected. This information was untrue, as Decedent E's daughter was able to order the marker one year later.

Respondent did not address this matter in its Response, except to assert that "It would not have been possible to get a marker in that timeframe except through a local supplier, so a marker was ordered from a local supplier." Ex. R1 at 3. Respondent does not address why it represented to Decedent E's daughter that the marker could no longer be ordered through Granite Bronze when, in fact, the marker was ordered through that company.

The Board has established by a preponderance of the evidence that Respondent engaged in dishonest conduct which bears a demonstrable relationship to funeral service practice. The public and the Board must trust that Respondent will be honest and forthright in its communications. Respondent was not honest in its representations about the marker to Decedent E's daughter. Respondent made a misrepresentation to Decedent E's daughter while in the conduct of business. Based on applicable law and the facts presented, the Board established that Respondent violated ORS 692.180(1)(a) and (b).

The Board also alleged Respondent made several statements to the Board, in violation of OAR 830-030-0090(5)(d), and that Respondent failed to cooperate and answer truthfully or completely inquiries by the Board, in violation of OAR 830-030-0090(5)(g). Respondent did not address these violations in its Response.

The uncontroverted evidence establishes that in January 2013, Lancaster told the Board that Respondent would be refunding $995 to Decedent E's daughter. When the Board inquired about the status of the refund in January 2014, Respondent replied that he would advise the Board of the status later in the day. On January 7, 2014, Respondent told the Board that its bookkeeper would issue a check that day if she had not already done so. When the Board's investigator asked for a copy of the check, Respondent did not respond to the request.

The Board has established by a preponderance of the evidence that Respondent made false statements to the Board about the status of the refund. The refund was not issued to Decedent E's daughter in January 2013, as reported by Respondent to the Board. In addition, Respondent failed to respond to the Board's request for the copy of the check.

Based on applicable law and the facts presented, the Board established that Respondent violated OAR 830-030-0090(5)(d) and (g).

iii. Failure to meet the minimum standards of the industry in the handling of arrangements

As previously discussed, Respondent failed to place the marker on Decedent E's grave for a period of 16 years. As such, Respondent failed to follow through with contractual arrangements for Decedent E, in violation of OAR 830-030-0090(1)(b). Such failure is a violation OAR 803-030-0090, which requires a licensee to uphold the minimum standard of the industry.

iv. Sanction

It is within the Board's discretion to impose the sanctions listed in ORS 692.180. The Board has proven the allegations with regard to Decedent E, as set forth above. Considering Respondent's egregious conduct and the violations in which Respondent engaged, the Board has established that revocation of Respondent's licenses is appropriate. The Board has also established that the imposition of a civil penalty is appropriate. The Board imposes a $1,000 civil penalty per violation, for a total of $4,000 for the violations proven with respect to Decedent E, computed as follows: $1,000 for failing to follow through with contractual arrangements; $1,000 for engaging in misleading business practices with Decedent E's family; $1,000 for making false statements to the Board; and $1,000 for failing to cooperate and answer truthfully or completely inquiries by the Board.

Decedent F

i. Interring and disinterring remains without appropriate authorization

The Board argued Respondent failed to comply with applicable laws and regulations relating to operation of the cemetery by disinterring and interring remains without appropriate authorization under ORS 97.130(2), and in violation of OAR 830-030-0100(3).

Pursuant to ORS 97.130(2), Decedent F's father, Jim Mathis, is Decedent F's next of kin and had the right to control Decedent F's final disposition of his remains. The authorization by Decedent F's grandmother is not from a member under the authorized class set forth in ORS 97.130(2). Respondent did not address this allegation in its Response, and provided no explanation regarding this issue.

OAR 830-030-0100(3) provides that "any use of interment space used for the interment of human remains * * * without prior written authorization by the owner of such space or interment rights" is prohibited. Carol Hartley owns the cemetery space where Decedent F was interred. Respondent had Carol Hartley fill out and sign the Interment Authorization form for Decedent F, indicating she was the person with the right to control Decedent F's disposition; she gave her permission to have Decedent F interred in her cemetery space; and her name is listed as the property owner of the cemetery space number 1 on that form. There is no evidence Respondent obtained written authorization from Carol Hartley for the interment and disinterment of human remains from her plots.

Respondent is not absolved from this violation under OAR 830-030-0100(3). Respondent did not verify the proper party that had authorization for interment or placement for Decedent F and failed to obtain written documentation from the proper authority. Respondent had Carol Hartley fill out and sign the Interment Authorization for Decedent F, yet acknowledged in a letter to the Board that Carol Hartley was not the next of kin on the property, but that Jim Mathis was.

Based on applicable law and the facts presented, the Board established that Respondent disinterred and interred remains without appropriate authorization under ORS 97.130(2), and in violation of OAR 830-030-0100(3).

ii. Failure to respect a client's dignity and rights, causing emotional discomfort to a client

The Board contended Respondent failed to respect Decedent F's dignity and rights by interring and disinterring human remains of family members that were buried in cemetery plots owned by Carol Hartley without obtaining her authorization or informing her. Respondent does not deny this allegation, but argued that it did this "to satisfy somewhat diverse desires of the family." R1 at 4.

The evidence established that Respondent interred and disinterred human remains without obtaining authorization or informing Carol Hartley. Carol Hartley had authorized the interment of Decedent F in space number 1, but Respondent interred Decedent F in space number 4 and failed to inform Carol Hartley of this change.

Moreover, Carol Hartley indicated on her Satisfaction Survey that she had "hurt feelings" after dealing with Respondent's staff. She expressed that the person with whom she spoke on the phone from Eternal Hills was rude. She was also told Lancaster would call her back, but he never did.

The Board has established that Respondent violated OAR 830-030-0090(1)(f) by failing to respect the dignity of clients.

iii. Failure to keep accurate and complete records with regard to burials in its cemetery

On April 3, 2013, Respondent or Respondent's FSP obtained Carol Hartley's authorization to inter Decedent F's remains in space number 1 and identified Carol Hartley as the person with the right to control disposition. However, under ORS 97.130(2) at the time of Decedent F's death, Jim Mathis was the person with the right to control disposition.

Respondent informed the Board that according to its records, Raymond Hartley gave space number 4 to Jim Mathis, but Respondent did not provide any records to support its claim. Respondent also told the Board that it did not have the file for Raymond and Carol Hartley.

On January 15, 2014, the Board requested that Respondent indicate on a map the location

of the four plots owned by Carol Hartley, along with a copy of the section of the plot map showing the location. The Board also asked Respondent to highlight on the map the location of the four plots. Respondent provided the Board with a Locator Map of Eternal Hills that had an illegible name written over several of the plot lines.

This evidence supports the Board's allegation that Respondent failed to maintain accurate and complete records with regard to Decedent F and his family members. Based on applicable law and the facts presented, the Board established that that Respondent violated OAR 830-030-0090(4)(g) and *former* OAR 830-040-0000(6)(2009).

iv. Failure to provide the Board with requested documents and information, failure to cooperate or answer truthfully and completely inquiries from the Board

On January 15, 2014, Creagh notified Lancaster that the Board had received a complaint with regard to the handling of Decedent F's arrangements. Creagh requested Lancaster provide specific documents. When Lancaster responded, he failed to include documentation showing Carol Hartley's right to interment in the four plots, the permanent records of those interred and disinterred from the four plots, and embalming or cremation authorizations. Thereafter, Creagh informed Lancaster that the response was incomplete and renewed the request for information. Lancaster responded that he had the file for Jim Mathis, but not for Raymond and Carol Hartley. Creagh again renewed the request for information on February 18, 2014, but Respondent did not supply the Board with the requested documents.

The evidence established that Respondent failed to provide the Board with requested documents and information and failed to cooperate with inquiries from the Board, in violation of OAR 830-030-0090(5)(f) and (g). Based on applicable law and the facts presented, the Board established that committed these violations.

v. Sanction

It is within the Board's discretion to impose the sanctions listed in ORS 692.180. The Board has proven the allegations with regard to Decedent F, as set forth above. Considering Respondent's egregious conduct and the violations in which Respondent engaged, the Board has established that revocation of Respondent's licenses is appropriate. The Board has also established that the imposition of a civil penalty is appropriate. The Board imposes a $1,000 civil penalty per violation, for a total of $5,000 for the violations proven with respect to Decedent F, computed as follows: $1,000 for interring and disinterring remains without appropriate authorization; $1,000 for failing to respect a client's dignity and rights; $1,000 for failing to keep accurate and complete records; $1,000 for failing to provide the Board with requested documents and information; and $1,000 for failing to cooperate with the Board's investigation.

Decedent G

i. Failure to implement and follow through with contractual arrangements for Decedent G's final disposition

The Board contended that Respondent failed to implement and follow through with its contractual arrangements for Decedent G's final disposition by incorrectly stating "graveside service" in the funeral folder; failing to play the entire tribute CD during the service; failing to broadcast on the Event by Wire; making two errors on the death certificate; never ordering the Thumbies; and failing to obtain the agreed-upon engraving on the urn. The Board contended that these failures constitute six separate violations of OAR 830-030-0090(1)(b).

In its Response, Respondent did not dispute that the CD and the Event by Wire broadcast did not work. Rather, Respondent argued that these were electronic failures that occurred for unknown reasons. Respondent does not dispute that Decedent G's funeral folder contained an error, but rather argued that "[c]orrected memorial folders were provided." Response at 15. Finally, Respondent does not dispute that the Thumbies were never provided to Fox.

The material facts regarding these allegations are not in dispute. It is undisputed that the funeral folder incorrectly identified a graveyard service. It is undisputed that the tribute CD did not play in its entirety and that the Event by Wire broadcast never occurred. It is undisputed that the death certificate contained errors, that the Thumbies were never ordered, and that Respondent never obtained agreed-upon engraving on the urn. Respondent's argument that these were errors that were either corrected or for which Fox received reimbursement does not negate the fact that Respondent and Fox contractually arranged for Respondent to provide services which Fox never received.

Based on applicable law and the facts presented, the Board established that Respondent engaged in six separate violations of OAR 830-030-0090(1)(b).

ii. Making false or misleading statements to Decedent G's mother and to the Board; engaging in dishonest conduct

The Board alleged Respondent made false or misleading statements to Decedent G's mother and to the Board, and engaged in dishonest conduct, in violation of OAR 830-030-0090(5)(d), OAR 830-040-0010(3), and ORS 692.180(1)(a) or (b).

The Board contended that Respondent's representative, Lancaster, misrepresented the status of the Thumbies order and the urn product to Fox. The Board also contended that Gordon's statement to Fox regarding the status of the Thumbies was fraudulent or dishonest. The Board further alleged that Respondent made false statements when Respondent told the Board that $4,229 had been returned to Fox. The Board maintained that Respondent's representation to the Board's investigator that a complete copy of Decedent G's permanent record had been faxed to the Board was also false.

Respondent argued that it "withheld nothing from the Board and acknowledged that there

had been errors and malfunctions in connection with the service." Response at 16. However, the Board did not allege that Respondent did not acknowledge the errors and malfunctions in connection with the service. Rather, the Board called into question the veracity of Respondent's statements regarding the issues related to Decedent G's arrangements.

The evidence established that Respondent told Fox that on June 26, 2013, the Thumbies would be ordered. In August 2013, Respondent said he would look into the Thumbies order, but did not thereafter follow-up with Fox. In September 2013, Respondent's representative, Gordon, informed Fox that the Thumbies would be arriving the following week. When Fox went to Respondent's location on October 9, 2013 to pick-up the Thumbies, she was told Decedent's thumbprints had not been taken. This evidence established that Respondent misrepresented the status of the Thumbies order to Fox.

The evidence also established that Respondent failed to have the urn for Decedent G engraved, as agreed upon and for which Fox initially paid Respondent.

The evidence also established that Respondent informed the Board that Fox had been refunded $4,229, when in fact Fox received two refunds from Respondent, one for $650 and one for $3,924, for a total of $4,574. In addition, Respondent's representative, Lancaster, advised the Board's investigator that a complete copy of Decedent G's permanent record had been faxed to the Board. However, Respondent never provided the Board with the SFGSS, records of communications with Fox, embalming or cremation records, or billing records.

Based on applicable law and the facts presented, the Board established that Respondent made false or misleading statements to Fox, in violation of ORS 690.180(1)(a) and (b). Specifically, Respondent engaged in the misrepresentation in the conduct of business and engaged in dishonest conduct which bears a demonstrable relationship to funeral service practice. Fox had a reasonable right to rely on Respondent's representations for services it would provide. Respondent repeatedly made untrue statements to Fox regarding the status of the Thumbies, the status of her refund, and whether or not the urn could be engraved. Such conduct is egregious and unreasonable.

Based on applicable law and the facts presented, the Board established that Respondent violated OAR 830-030-0090(5)(d) and OAR 830-040-0010(3) because Respondent made false or misleading statements to the Board and gave false or misleading information to an investigator.

iii. Failure to provide Board with requested documents and information and failure to cooperate or answer truthfully or completely inquiries from the Board

The Board alleged Respondent failed to provide it with requested documents and information and failed to cooperate or answer truthfully or completely inquiries from the Board.

On January 9, 2014, the Board's investigator requested a complete copy of Decedent G's permanent file. Respondent sent the investigator a copy of Decedent G's funeral service folder, but did not provide the Board with the SFGSS, records of communications with Fox, embalming or cremation records, or billing records. Respondent did not address this specific allegation in its

Response. Therefore, these material facts are not in dispute. The evidence established that Respondent failed to provide the Board with requested documents and failed to cooperate with the Board during its investigation.

Based on applicable law and the facts presented, the Board established that Respondent violated OAR 830-030-0090(5)(f) and (g).

iv. Sanction

It is within the Board's discretion to impose the sanctions listed in ORS 692.180. The Board has proven the allegations with regard to Decedent G, as set forth above. Considering Respondent's egregious conduct and the violations in which Respondent engaged, the Board has established that revocation of Respondent's license is appropriate. The Board has also established that the imposition of a civil penalty is appropriate. The Board imposes a $1,000 civil penalty per violation, for a total of $12,000 for the violations proven with respect to Decedent G, computed as follows: $6,000 for engaging in six separate violations of OAR 830-030-0090(1)(b); $1,000 for violating ORS 692.180(1)(a); $1,000 for violating ORS 692.180(1)(b); $1,000 for violating OAR 830-030-0090(5)(d); $1,000 for violating OAR 830-040-0010(3); $1,000 for violating OAR 830-030-0090(5)(f); and $1,000 for violating OAR 830-030-0090(5)(g).

Decedent H

i. Failure to timely implement or follow through with contractual arrangements

The Board contended Respondent failed to timely implement or follow through with contractual arrangements, in violation of OAR 830-030-0090(1)(b).

Decedent H passed away on September 23, 2012. On September 25, 2012, Respondent and Decedent H's son entered into an agreement which provided Respondent would order and place a niche name plaque on the mausoleum and a veteran's name plate on the veteran's wall. Respondent did not place the order for Decedent H's veteran's plaque with the Department of Veterans Affairs until May 29, 2013. Respondent received the plaque on or about June 20, 2013. As of September 19, 2013, Respondent had not placed the name plaque on the mausoleum niche. On January 16, 2014, Decedent H's son spoke to Respondent, who informed the son that the name plaque would be ordered. Lancaster had previously made this representation to Decedent H's son in November 2013. The niche name plaque was not placed until sometime before May 15, 2014, almost two years after Respondent entered into the agreement with Decedent H's son.

Respondent contended that Oregon Brass, the company that manufactured the plaque for the niche, was no longer in business and that Respondent's staff did not know where to obtain the plaque. Respondent alleged that "After some time, we were able to obtain a plaque and it was placed on the niche in May[] 2014. According to the company which made the plaque, the plaque was not made until the company received our third order. The previous orders had been misplaced." Ex. R1 at 4.

Even if, as Respondent contended, Oregon Brass was no longer in business, Respondent had a duty to secure a name plaque in a timely manner. In the alternative, Respondent could have notified Decedent H's son that it could not secure a name plaque and refund him the money for the plaque. Whether Respondent eventually ordered the plaque with another company does not negate the fact that Respondent did not act promptly in doing so, and failed to fulfill its contractual agreement in a timely manner.

Respondent did not address the matter of the veteran's name plate in its Response. Respondent offers no explanation as to why it did not place the name plate on the veteran's wall until May 2014.

Based on applicable law and the facts presented, the Board established that Respondent violated OAR 830-030-0090(1)(b) by failing to timely implement or follow through with contractual arrangements for Decedent H.

ii. Failure to provide the Board with requested documents or information and failure to cooperate or answer truthfully or completely inquiries from the Board

In a January 23, 2014 letter, Creagh informed Respondent that the Board was investigating a complaint concerning Decedent H. The letter outlined the nature of the complaint and requested Lancaster provide specific documents to the Board. Respondent's response contained some, but not all, of the requested information. Respondent failed to submit Decedent H's permanent record; records regarding the location of Decedent H's remains; or a complete proof of ordering and delivery of the veteran's plaque. On April 30, 2014, Creagh notified Respondent of the documents he had failed to submit. Respondent responded, but failed to include numerous documents Creagh had requested, including a copy of Decedent H's pre-need arrangement; a copy of the order for the replacement niche plaque; a copy showing Respondent sent a refund to Decedent H's son; proof of delivery of the veteran's name plaque; and a copy of the crematory log.

Respondent contended that:

> [T]he only problems were with the plaques, yet the Board requested all records pertaining to the decedent. It must be conceded that requests of information from the Board should be reasonable. It is questionable why the Board should be permitted to request the Respondent to prove that a company is out of business or that another company no longer carries the product which was in part involved in the situation.

Response at 11. Respondent's argument is unpersuasive. The Board has the authority to investigate complaints. The Board's requests were limited to arrangements for Decedent H and were reasonable.

Based on applicable law and the facts presented, the Board established that Respondent told the Board that it had submitted the veteran's plaque order twice, but failed to specify the date upon which it placed the first submission or provide any documentation in support of this

assertion. Respondent informed the Board that the reason the niche name plaque on the mausoleum had been delayed was because Oregon Brass was no longer in business and Respondent had to find a cheaper replacement niche name plaque. However, when the Board requested permanent and complete records from Respondent, Respondent failed to provide documents in support of its claim. The Board has established that Respondent engaged in misrepresentation and dishonest conduct, in violation of ORS 692.180(1)(a) and (b).

iii. Sanction

It is within the Board's discretion to impose the sanctions listed in ORS 692.180. The Board has proven the allegations with regard to Decedent H, as set forth above. Considering Respondent's egregious conduct and the violations in which Respondent engaged, the Board has established that revocation of Respondent's licenses is appropriate. The Board has also established that the imposition of a civil penalty is appropriate. The Board imposes a $1,000 civil penalty per violation, for a total of $3,000 for the violations proven with respect to Decedent H, computed as follows: $1,000 for failing to timely implement and follow through with contractual arrangements; $1,000 for failing to provide the Board with requested documents or information; and $1,000 for failing to answer truthfully or completely inquiries from the Board.

Decedent I

i. Failure to provide the Board with requested documents or information; failure to cooperate or answer truthfully or completely inquiries from the Board

The Board contended Respondent failed to provide requested documents or information and failed to cooperate or answer truthfully or completely inquiries from the Board. Nelson inquired whether Respondent obtained a disinterment authorization from the person with the right to control final disposition before disinterring Decedent I's remains, and whether Respondent obtained an interment authorization. In response, Respondent asserted that there was no disinterment because the crypt was not sealed and Decedent I was placed in the correct crypt as soon as the family left.

Respondent argued the Board misinterprets the meaning of "interment." Pursuant to ORS 97.010(1), "burial" means the placement of human remains in a grave or law crypt. Pursuant to ORS 97.010(15), "crypt" or "vault" means a space in a mausoleum of sufficient size used, or intended to be used, to entomb uncremated human remains. "Entombment" means the placement of human remains in a crypt of vault, and "interment" means the disposition of humans remains by interment, entombment, or burial. ORS 97.010(18) and (24).

Respondent's argument that remains are not interred or disinterred unless the crypt is either sealed or unsealed is unpersuasive. The above-referenced statutes support the Board's position that a burial, entombment, or interment took place once human remains were placed in a grave or crypt. Therefore, Respondent was required to obtain disinterment authorization for the moving of Decedent I from one crypt to another.

The Board requested that Respondent provide a complete copy of Decedent I's permanent records; the crypt number where remains were erroneously placed; a copy of the original interment authorization; a disinterment permit, if any; a written authorization by the owner of the crypt where Decedent I's remains were eventually interred; and an explanation of why the remains were placed in the wrong crypt. Respondent provided some, but not all, of the requested information.

The Board has established that Respondent failed to provide requested documents or information, in violation of OAR 830-030-0090(5)(f). The Board has also established that Respondent was less than forthright in providing the Board with an explanation of how Decedent I was placed in the wrong crypt. The Board has established that Respondent violated OAR 830-030-0090(5)(g) by failing to cooperate or answer completely inquiring from the Board. Based on applicable law and the facts presented, the Board established that Respondent violated OAR 830-030-0090(5)(f) and (g).

ii. Interring human remains without prior written authorization; removing human remains from a space

OAR 830-030-0100(3) prohibits the use of interment space for the interment of human remains without prior written authorization by the owner of such space or interment rights. ORS 97.220 provides that interred remains may be removed from a particular plot with the consent of the cemetery authority and the written consent of the person with the right to control the disposition of the remains. Here, Respondent failed to provide the Board with evidence that it obtained written authorization for the original interment authorization, the disinterment permit, written authorization by the owner of the crypt where Decedent I's remains were eventually interred, and an explanation of why Decedent I's remains were initially placed in the wrong crypt.

As previously discussed, Respondent's argument that the Board's interpretation of the meaning of "interment" is unpersuasive. The Board has established Respondent interred human remains without prior written authorization, and that Respondent disinterred remains without authorization.

iii. Failure to keep detailed, accurate, and permanent records of transactions

The Board alleged Respondent failed to keep detailed, accurate, and permanent records of transactions that were performed for the care, preparation, and final disposition of Decedent I's remains, in violation of OAR 830-040-0000(7) or ORS 97.720. Respondent did not address the Board's allegation in its Response.

The evidence established that the Board asked Respondent to provide specific documentation regarding Decedent I. Respondent failed to provide the Board with a complete copy of Decedent I's record; the crypt number where her remains were placed in error; a copy of the original interment authorization; a disinterment permit; a written authorization of the owner of the crypt where Decedent I's remains were eventually interred; or an explanation of why Decedent I's remains were placed in the wrong crypt.

OAR 830-040-0000(7) sets for the minimum standards for all licensees and licensed facilities in keeping detailed, accurate, and permanent records of all transactions that are performed for the care, preparation, and final disposition of human remains. ORS 97.720 provides that the person in charge of any premises on which interments are made shall keep records of all remains interred on the premises. Respondent offered no evidence to support a finding that it kept detailed, accurate, and permanent records with regard to Decedent I. Respondent offers no evidence of records regarding Decedent I's interment. Based on applicable law and the facts presented, the Board established that violated OAR 830-040-0000(7) and ORS 97.720.

iv. Sanction

It is within the Board's discretion to impose the sanctions listed in ORS 692.180. The Board has proven the allegations with regard to Decedent I, as set forth above. Considering Respondent's egregious conduct and the violations in which Respondent engaged, the Board has established that revocation of Respondent's licenses is appropriate. The Board has also established that the imposition of a civil penalty is appropriate. The Board imposes a $1,000 civil penalty per violation, for a total of $4,000 for the violations proven with respect to Decedent I, computed as follows: $1,000 for failing to provide the Board with requested documents; $1,000 for failing to cooperate or answer truthfully or completely inquiries from the Board; $1,000 for interring and disinterring human remains without authorization; and $1,000 for failing to keep detailed, accurate, and permanent records of transactions.

Decedent J

i. Failure to abide by the accepted standards of the industry in handling of arrangements

The Board alleged Respondent's handling of arrangements for Decedent J failed to abide by the accepted standards, in violation of OAR 830-030-0090. Respondent's Response did not address this allegation.

The evidence established that Respondent initially told Decedent J's niece that Decedent J had a prepaid funeral package that exceeded $5,000. Several months later, Respondent informed Decedent J's niece that Decedent J did not have such a plan. In September 2013, Decedent J's niece and Lancaster spoke and he confirmed that the total amount owed would be $795. However, in December 2013, Decedent J's niece received an invoice prepared by Respondent that showed an amount due of $1,390 and a past due amount of $59.75. In February 2014, Decedent J's niece received a Transaction History report from Respondent that showed the niece had financed $1,390, entered into a monthly payment plan, and had incurred late fees. However, Decedent J's niece never entered into a payment plan with Respondent. It was not until March 2014 that Respondent's representative discovered overcharges on the account.

In addition, Respondent did not place the name plaque on Decedent J's marker until sometime just before May 30, 2014, more than seven months after Decedent J passed away.

Respondent's conduct in handling Decedent J's arrangements is below the accepted standards of OAR 830-030-0090. Respondent did not keep clear and accurate records with regard to the charges for the services provided. Additionally, Respondent failed to place the name plaque on Decedent J's marker in a prompt manner. Based on applicable law and the facts presented, the Board established that Respondent's handling of arrangements for Decedent J failed to abide by the accepted standards, in violation of OAR 830-030-0090.

ii. Failure to timely implement or follow through with contractual arrangements

The Board argued Respondent violated OAR 830-030-0090(1)(b) by failing to implement and follow through with contractual arrangements with the person with the legal right to control final disposition. Specifically, the Board contended that Respondent delayed in ordering and placing Decedent J's name plaque. Respondent did not address this allegation in its Response.

In September 2013, Decedent J's niece spoke with Lancaster and confirmed, among other things, the price for setting the stone name plaque. Respondent did not order the name plaque until March 2014, more than five months later. Respondent did not place the plaque until May 2014. Based on applicable law and the facts presented, the Board established that Respondent failed to follow through with its contractual arrangements with regard to ordering and placing the name plaque in a prompt manner, in violation of OAR 830-030-0090(1)(b).

iii. Failure to provide the Board with requested documents or information; failure to cooperate or answer truthfully or completely inquiries from the Board

The Board contended Respondent failed to provide requested documents or information and failed to cooperate or answer truthfully or completely inquiries from the Board, in violation of OAR 830-030-0090(5)(f), OAR 830-030-0090(5)(g), or ORS 692.180(1)(a) or (b). Respondent did not address this allegation in its Response.

On April 16, 2014, the Board's investigator requested specific documents from Respondent, in addition to a written response to each of the allegations outlined in the investigator's letter. Respondent provided a written statement, but did not provide the Board with a complete copy of Decedent J's permanent record. On April 23, 2014, the investigator requested Respondent sent him a complete copy of Decedent J and her husband's cemetery records and a copy of the receipt of cremated remains or other documents to support the date Decedent J's remains were delivered to Respondent. Respondent did not respond to the request.

A licensee has a duty to provide the Board with requested documents or information within the Board's jurisdiction and to cooperate and answer completely inquiries regarding matters within the Board's jurisdiction. Respondent failed to provide the Board with requested documents and failed to answer completely inquiries from the Board, in violation of OAR 830-030-0090(5)(f) and (g). Respondent's crossing out the original SFGSS with the word "cancelled" without any evidence that Respondent notified the consumer or obtained the consumer's authorization before doing so, also establishes that Respondent engaged in dishonest conduct. Based on applicable law and the facts presented, the Board established that Respondent failed to provide requested documents or information and failed to answer completely inquiries

from the Board.

iv. Sanction

It is within the Board's discretion to impose the sanctions listed in ORS 692.180. The Board has proven the allegations with regard to Decedent J, as set forth above. Considering Respondent's egregious conduct and the violations in which Respondent engaged, the Board has established that revocation of Respondent's licenses is appropriate. The Board has also established that the imposition of a civil penalty is appropriate. The Board imposes a $1,000 civil penalty per violation, for a total of $4,000 for the violations proven with respect to Decedent J, computed as follows: $1,000 for failing to abide by the accepted standards of the industry; $1,000 for failing to timely implement and follow through with contractual arrangements; $1,000 for failing to provide requested documents or information to the Board; and $1,000 for failing to answer completely or truthfully inquiries from the Board.

Decedent L

i. Engaging in misleading business practices and misrepresentation

The Board alleged Respondent's representative made representations to Decedent L's daughter that a package needed to be purchased and that she needed to purchase a casket from those on display. Eventually, Respondent provided the family with a sheet of other casket options.

Respondent argued that "[a]ll required documents were presented to her [Decedent L's daughter] when she came to Eternal Hills to make arrangements. These included a GPL, casket price list, urn price list and an OBC price list." Ex. R1 at 5.

Respondent's response failed to address whether it offered the family the casket price list before beginning discussions, as required by 16 CFR § 453.2(b)(2)(i). Respondent generally denies that it failed to provide the casket price sheet before beginning discussions and showing caskets. However, Respondent's general denial does not overcome the uncontroverted evidence that Respondent showed caskets to Decedent L's family before providing a price list. Therefore, the Board is entitled to a favorable ruling as a matter of law that Respondent violated 16 CFR § 453.2(b)(2)(i) and, consequently, that Respondent is subject to discipline under ORS 692.180(1)(h).

In addition, the Board argued that Respondent misrepresented to Decedent L's daughter the status of the marker. In December 2013, Respondent's representative informed Decedent L's daughter that a temporary marker would be placed on the grave. In March 2014, Decedent L's daughter found the grave unmarked. In March 2014, Respondent gave Decedent L's daughter a copy of a "rush order" for the marker and placed a temporary marker on the grave. In June 2014, Respondent's representative informed Decedent L's daughter that the marker would be placed in three weeks.

While Respondent's Response briefly addressed this allegation, Respondent provided no

affidavit or evidence to support its contention that the initial marker that was placed was not to Decedent L's daughter's satisfaction and that a larger marker had to be ordered. The uncontroverted evidence establishes that Respondent made numerous misrepresentations to Decedent L's daughter about the marker order status and its placement. The Board established that Respondent made misrepresentations in the conduct of business and that its dishonest conduct with respect to its communications with Decedent L's daughter bears a demonstrable relationship to other funeral service practice. The public and the Board must be able to trust that Respondent will be forthright and honest in its communications regarding, among other things, arrangements for the deceased. Respondent has shown that it cannot be trusted to make reliable and honest representations. Based on applicable law and the facts presented, the Board established that Respondent violated ORS 692.180(1)(a) and (b).

ii. Failure to abide by the accepted standards of the industry in handling of arrangements

Decedent L's family and Respondent agreed to a funeral service with a Celebration of Life DVD, burial at Eternal Hills, a Memorial Tablet, and the setting of the Memorial Tablet on Decedent L's grave. Respondent promised Decedent L's family that it would run a full obituary on its website free of charge. However, Respondent never posted Decedent L's obituary on its website. In addition, Respondent cropped several of the photos Decedent L's daughter had provided for the DVD without the daughter's permission, causing the photos to lose their purpose. Respondent played the wrong music at the conclusion of the service.

After the service, Decedent L's daughter had to make several phone calls to Respondent to find out why she had not received Decedent L's death certificate and the Celebration of Life DVD. Finally, as previously discussed, Respondent did not promptly order or place Decedent L's marker.

In its Response, Respondent alleged that "the Respondent was having trouble with its website and was unable to post the full obituary. Sending the death certificate and DVDs in an envelope which was inadvertently not sealed cannot be considered a violation of the cited OAR." Response at 14. Respondent's affidavit did not address any of these issues, with the exception of the marker issue, which Respondent attributes to Decedent L's daughter wanting to order in a different size.

Regardless of whether or not Respondent experienced difficulty with its website and could not post the full obituary, the uncontroverted evidence establishes that Respondent failed to meet minimum standards of the industry. At a minimum, Respondent needed to provide the services for which Decedent L's family contracted. Failing to post the obituary, timely provide the death certificate and DVD, playing the wrong music at the conclusion of the service, and cropping photos without authorization falls below the minimum standard a licensee should provide to a consumer. Based on applicable law and the facts presented, the Board established that Respondent violated OAR 830-030-0090.

iii. Failure to keep detailed, accurate, and permanent records

The Board alleged Respondent failed to keep detailed, accurate, and permanent records for Decedent L, in violation of OAR 830-040-0000(7), OAR 830-030-0090(4)(g), or ORS 97.720. Respondent argued that it "sent its records to the Board and the Board made no complaint at that time that the records it received were inadequate." Response at 14.

Respondent's argument is unpersuasive. It is not the Board's responsibility to apprise Respondent that its permanent records are not consistent with the requirements of the applicable statute and administrative rules. To the contrary, it is Respondent's responsibility to comply with the Board's record keeping requirements.

The undisputed evidence established that Respondent failed to produce Decedent L's permanent record to the Board; failed to provide a copy of a signed SFGSS in the permanent records; failed to obtain a signed embalming authorization and allowed inconsistencies in recordkeeping under the SFGSS. The Board established that Respondent failed to keep an accurate or complete record for Decedent L. Based on applicable law and the facts presented, the Board established that Respondent violated OAR 830-030-0090(4)(g).

iv. Failure to provide the Board with requested documents or information; failure to cooperate or answer truthfully or completely inquiries from the Board

On May 20, 2014, the Board's investigator requested Lancaster provide the Board with a copy of Decedent L's complete permanent record. The request detailed the documents the Board sought. Respondent did not provide a response by the deadline of May 20, 2014, and instead provided a partial response to the request on May 27, 2014. Respondent failed to provide the Board with a copy of any embalming authorization form with a signature or any notes about receiving a verbal authorization for the embalming. In addition, the SFGSS Respondent provided in response to the Board's request differed significantly from the SFGSS Decedent L's daughter had previously received from Respondent. Specifically, the copy Respondent provided to the Board does not contain the daughter's signature, has no discount or price noted, contains no amount as the total balance due, and does not reflect the payment Decedent L's daughter made to Respondent.

The facts regarding this issue established that Respondent failed to provide the Board with requested documents or information, and failed to answer completely inquiries from the Board. Based on applicable law and the facts presented, the Board established that Respondent violated OAR 830-030-0090(5)(f) and (g).

v. Sanction

It is within the Board's discretion to impose the sanctions listed in ORS 692.180. The Board has proven the allegations with regard to Decedent L, as set forth above. Considering Respondent's egregious conduct and the violations in which Respondent engaged, the Board has established that revocation of Respondent's licenses is appropriate. The Board has also established that the imposition of a civil penalty is appropriate. The Board imposes a $1,000

civil penalty per violation, for a total of $5,000 for the violations proven with respect to Decedent L, computed as follows: $1,000 for engaging in misleading business practices; $1,000 for failing to abide by the accepted standards of the industry; $1,000 for failing to keep detailed, accurate, and permanent records; $1,000 for failing to provide the Board with requested documents or information; and $1,000 for failing to cooperate or answer truthfully or completely inquiries from the Board.

Business Practices – Facility management

i. Failure to attach to the remains, or to the receptacle of remains, the Oregon State ID Tag

In the Second Amended Notice, the Board alleged that on or about December 26, 2013, Respondent's FSP failed to attach to the remains or to the receptacle containing the remains, the Oregon State ID Tag of three human remains – Decedents EE, FF, and GG – that were located in the refrigeration unit. In its Response, Respondent did not address the allegations with respect to Decedents EE, FF, or GG. Instead, Respondent stated that "[t]here were one or two tags which were inadvertently left in the file, but, when discovered, they were placed under the marker or space." Ex. R1 at 5.

On December 26, 2013, Nelson conducted an inspection at Respondent's facility and observed the remains of three decedents – EE, FF, and GG – in Respondent's cooler. The three decedents' remains did not have State ID Tags attached to them. Nelson located the three decedents' State ID Tags in their respective file jackets, which were in Respondent's office.

OAR 830-030-0000(4) requires Respondent to ensure that an identifying metal disc with a number assigned by the State Registrar's Office imprinted on the disc is attached to the casket or other receptacle containing human remains, or is attached to the remains if there is no receptacle. ORS 692.405 requires funeral service practitioners to affix to each receptacle in which a dead human body is contained to bear a corresponding number that is also in the report of death and the final disposition permit.

The undisputed evidence established that the State ID Tags for Decedents EE, FF, and GG were located in Respondent's office rather than attached to the remains or the receptacles containing their remains. Based on applicable law and the facts presented, the Board established that Respondent violated ORS 692.405 and OAR 830-030-0000(4).

It is within the Board's discretion to impose the sanctions listed in ORS 692.180. The Board has proven the allegations, as set forth above. Considering Respondent's egregious conduct and the violations in which Respondent engaged, the Board has established that revocation of Respondent's licenses is appropriate. The Board has also established that the imposition of a civil penalty is appropriate. The Board imposes a $1,000 civil penalty per violation. There are three proven violations here – Decedents EE, FF, and GG. Therefore, the Board may impose a $3,000 for these proven violations.

ii. Unsanitary Conditions

In its Second Amended Notice, the Board alleged Respondent's preparation room was not sanitary in both January 2013 and December 2013. The Board contended this is a violation of OAR 830-040-0010(1) and OAR 830-040-0020(4) or (5). Respondent argued that it "did maintain a clean and sanitary preparation room, except during one period when an employee did not maintain [the room] to an appropriate standard." Response at 16.

OAR 830-011-0000(46) defines "sanitary condition" as including, but not limited to, being clean from dirt, foreign particles, bloodstains, offensive odors, or insects. OAR 830-040-0010(1) provides that facilities must keep their premises sanitary at all times. OAR 830-040-0020(4) requires that instruments used during an embalming or other preparation must be cleaned and sterilized after each embalming or preparation, and that instruments must be free of stains and foreign particles. OAR 830-040-0020(5) provides that the preparation room or holding room must be kept in a sanitary condition at all times.

The evidence established that in December 2013, Nelson conducted an inspection of Respondent's preparation room, during which time she observed unsanitary instruments, waste spilling out of uncovered waste cans, and spots of reddish-brown matter visible on head and arm blocks, the floor, and the embalming table. Based on Nelson's experience, the reddish-brown matter was the residue from preparing human remains for their final disposition through cremation or burial. The Board presented no evidence with regard to the preparation room's condition in January 2013. However, the Board has established that Respondent failed to maintain a clean and sanitary preparation room in December 2013. Based on applicable law and the facts presented, the Board established that Respondent violated OAR 830-040-0010(1) and OAR 830-040-0020(4) and (5).

It is within the Board's discretion to impose the sanctions listed in ORS 692.180. The Board has proven the allegations, as set forth above. Considering Respondent's egregious conduct and the violations in which Respondent engaged, the Board has established that revocation of Respondent's licenses is appropriate. The Board has also established that the imposition of a $1,000 civil penalty for this violation is appropriate.

iii. Mismanagement of cremated remains

In the Second Amended Notice, the Board alleged that on or about December 26, 2013, the vacuum cleaner used by the crematory to remove any residue from the cremation chamber contained a large amount of cremated remains. The Board contended that Respondent failed to ensure that all residual of the cremation process underwent final processing and that the entire processed cremated remains were placed in a cremated remains container, in violation of OAR 830-030-0050(2) or (3). In its Response, Respondent asserted that "[i]f residual cremains [*sic*] were found, this was an unusual situation and normally a vacuum is used to remove all possible particles from the crematory and it is the practice of Eternal Hills to leave no residue behind." Response at 17.

The evidence established that during the inspection, Nelson saw that the vacuum cleaner

at the crematory facility contained what she believed were a large amount of cremated remains. Based on Nelson's experience, she concluded that the gray and white particles in the vacuum were those of cremated remains, including bone fragments. Respondent did not dispute Nelson's findings or refute them.

OAR 830-030-0050(2) requires that all residual of the cremation process must undergo final processing. OAR 830-030-0050(3) requires that the entire processed cremated remains must be placed in a cremated remains container. The cremated remains must not contain any other object unrelated to the cremation process unless specific authorization has been received from the authorizing agent. The evidence in this record establishes that the vacuum cleaner contained large amounts of cremated remains, in addition to leaves, sticks, and paper.

Based on applicable law and the facts presented, the Board established that Respondent violated OAR 830-030-0050(2) and (3).

It is within the Board's discretion to impose the sanctions listed in ORS 692.180. The Board has proven the allegations, as set forth above. Considering Respondent's egregious conduct and the violations in which Respondent engaged, the Board has established that revocation of Respondent's licenses is appropriate. The Board has also established that the imposition of a civil penalty is appropriate. For this proven violation, the Board imposes a $1,000 civil penalty.

Business Practices – Recordkeeping

i. Failure to maintain complete and accurate permanent records for decedents GG, HH, and JJ

The Board alleged Respondent failed to maintain complete and accurate permanent records for Decedents GG, HH, and JJ, thereby violating OAR 830-040-0000(7), OAR 830-030-0090(4)(g), or ORS 97.720. In its Response, Respondent asserted:

> Decedent GG had prearranged and the cremation authorization contains the FSP and the delivery to the niche location.
>
> [Decedent] JJ was a prearrangement * * * and the embalming and cremation authorization do not contain the time because the individuals are not deceased.

(Response at 17.)

With respect to Decedent GG, Respondent did not address the Board's allegations that the cremation authorization records do not contain a statement of delivery for cremated remains. Respondent does not address the allegations that the cremation authorization records do not contain the name of the funeral service practitioner or facility representative obtaining the authorization. The facts in this record established that Respondent's cremation authorization records for Decedent GG do not contain a statement of delivery for cremated remains, or the

name of the funeral service practitioner or facility representative obtaining the authorization.

With respect the Decedent JJ, Respondent did not dispute that the embalming and cremation authorization records do not contain the time the authorizations were obtained. Obtaining the time the authorizations were obtained is not impacted by the status of either party to the arrangements. A person may authorize his or her own cremation, and if these forms were part of the permanent records, they needed to be completed as required by the Board's rules. The facts in this record established that Respondent's cremation authorization and disposition form for Decedent JJ do not contain the time the authorization was obtained.

Finally, Respondent did not address the Board's allegations with respect to Decedent HH. The facts in this record established that Decedent HH's cremation authorization records do not contain a statement of delivery for cremated remains, or the name of the funeral service practitioner or facility representative obtaining the authorization.

OAR 830-040-0000(7) requires all licensees and licensed facilities to keep a detailed, accurate, and permanent record of all transactions that are performed for the care, preparation, and final disposition of human remains. At a minimum, the record must contain, among other things, the name of the funeral service practitioner or facility representative obtaining the authorization. Under OAR 830-030-0090(4)(g), it is unacceptable for a licensee to keep inaccurate or incomplete records. Finally, ORS 97.7201(1) provides that records shall be kept that includes, among other things, the name of the funeral service practitioner.

Based on applicable law and the facts presented, the Board established that Respondent failed to maintain complete and accurate permanent records for Decedents GG, HH, and JJ, thereby violating OAR 830-040-0000(7), OAR 830-030-0090(4)(g), and ORS 97.720(1).

It is within the Board's discretion to impose the sanctions listed in ORS 692.180. The Board has proven the allegations, as set forth above. Considering Respondent's egregious conduct and the violations in which Respondent engaged, the Board has established that revocation of Respondent's licenses is appropriate. The Board has also established that the imposition of a civil penalty is appropriate. The Board imposes a $1,000 civil penalty per violation. There are three proven violations here – Decedents GG, HH, and JJ. Therefore, the Board may impose a $3,000 civil penalty for these proven violations.

Business Practices – Responsiveness to Board Requests

i. Failure to provide the Board with apprenticeship logs

The Board alleged Respondent failed to provide a copy of the apprenticeship logs for Brittney Rice and Zachary Gordon. On August 12, 2014, Nelson requested Lancaster provide the Board with the FSP and embalming apprenticeship logs for Zachary Gordon and Brittney Rice. Nelson renewed her request for Respondent to provide the apprenticeship logs for Zachary Gordon and Brittney Rice on August 14, 2014 and again on August 24, 2014. Respondent did not provide the requested FSP and embalming apprenticeship logs.

It is within the Board's discretion to impose the sanctions listed in ORS 692.180. The Board has proven the allegations, as set forth above. Considering Respondent's egregious conduct and the violations in which Respondent engaged, the Board has established that revocation of Respondent's licenses is appropriate. The Board has also established that the imposition of a civil penalty is appropriate. The Board imposes a $1,000 civil penalty per violation. A $2,000 civil penalty is appropriate for Respondent's failure to provide the Board with the apprenticeship logs for either Brittney Rice or Zachary Gordon.

Conclusion

Based on the aforementioned, the Board has established that it is entitled to summary determination. For the proven violations, the Board revokes Respondent Tim Lancaster's Combined Funeral Service Provider and Embalmer License Number CO-3224. The Board also imposes a $63,000 civil penalty for these violations.

RULING

The Motion for Summary Determination, filed by the Oregon Mortuary and Cemetery Board, is GRANTED.

ORDER

The Oregon Mortuary and Cemetery Board issues the following order:

Purchaser A

i. Respondent failed to follow through with agreed upon arrangements, in violation of *former* OAR 830-030-0090(1)(d)(2007).

ii. Respondent misrepresented the order or placement of the marker to Purchaser A and the Board, in violation of ORS 692.180(1)(a) and (b).

iii. Respondent made a false or misleading statement or used misrepresentation regarding the order and placement status of the marker, in violation of OAR 830-030-0090(5)(d) and (g).

Decedent B

i. Respondent assessed a finance charge in violation of ORS 692.180(1)(a) and (b).

ii. Respondent failed to follow through with agreed upon arrangements for placing the marker on Decedent B's grave and maintenance of the grave site, in violation of OAR 830-030-0090(1)(b).

iii. Respondent failed to keep accurate and complete records for Decedent B's

arrangements and final disposition in violation of OAR 830-030-0090, *former* OAR 830-040-0000(6) and (9)(2011).

iv. Respondent provided false or misleading information to the Board in violation of OAR 830-040-0010(3) and OAR 830-030-0090(5)(d).

v. Respondent failed to provide requested documents to the Board in violation of OAR 830-040-0010(4) and (5) and OAR 830-030-0090(5)(f).

vi. Respondent's handling of arrangements for Decedent B failed to abide by the accepted standards of the death care industry, in violation of OAR 830-030-0090.

Decedent C

i. Respondent sent an invoice to Decedent C's daughter without an underlying contract and charged for embalming of Decedent C when the service was not provided, in violation of ORS 692.180(1)(a) and (b) and OAR 830-030-0090(4)(h).

ii. Respondent's handling of arrangements for Decedent C failed to abide by accepted standards of the death care industry, in violation of OAR 830-030-0090.

iii. Respondent failed to keep accurate and complete records for Decedent C's arrangements and final disposition, in violation of OAR 830-030-0090(4), and *former* OAR 830-040-0000(6) and (9)(2011).

Decedent D

i. Respondent failed to record the reason for embalming on the SFGSS, in violation of 16 CFR § 453.5(b) and ORS 692.180(1)(h).

ii. Respondent failed to include in its permanent record for Decedent D the signature of the licensee on the cremation authorization, a signed statement from the person making the cremation arrangements specifying the action to be taken regarding the delivery of the cremated remains, and the signature of the licensee on the receipt for the cremated remains.

Decedent E

i. Respondent failed to follow through with contractual arrangements or engaged in misrepresentation or fraudulent or dishonest conduct related to ordering and placement of a marker for Decedent E, in violation of OAR 830-030-0090, *former* OAR 830-030-0090(1)(d)(1997), and OAR 830-030-0090(1)(b), and ORS 692.180(a) and (b).

ii. Respondent engaged in misleading business practices, misrepresentation and

fraudulent and dishonest conduct when communicating with Decedent E's family and the Board about the marker order and the refund, in violation of ORS 692.180(1)(a) and (b) and OAR 830-030-0090(5)(d) and (g).

iii. Respondent's handling of arrangements for Decedent E failed to meet the minimum standards of the industry, in violation of OAR 830-030-0090.

Decedent F

i. Respondent failed to comply with applicable laws and regulations relating to operation of the cemetery by disinterring and interring remains without appropriation authorization under ORS 97.130(2).

ii. Respondent failed to respect a client's dignity and rights, in violation of OAR 830-030-0090(1)(f).

iii. Respondent failed to keep accurate and complete records with regard to burials in its cemetery, in violation of ORS 97.720 and *former* OAR 830-040-0000(6)(2009) and OAR 830-030-0090(4)(g).

iv. Respondent failed to provide the Board with requested documents and information and failed to cooperate or answer truthfully and completely inquiries from the Board, in violation of OAR 830-030-0090(5)(f) and (g).

Decedent G

i. Respondent failed to implement and follow through with contractual arrangements for Decedent G's final disposition, in violation of OAR 830-030-0090(1)(h).

ii. Respondent made false or misleading statements to Decedent G's mother and to the Board, and engaged in dishonest conduct, in violation of OAR 830-030-0090(5)(d), OAR 830-040-0010(3), and ORS 692.180(1)(a) and (b).

iii. Respondent failed to provide the Board with requested documents and information and failed to cooperate or answer truthfully or completely inquiries from the Board with regard to Decedent G, in violation of OAR 830-030-0090(5)(f) and (g).

Decedent H

i. Respondent failed to timely implement or follow through with contractual arrangements, in violation of OAR 830-030-0090(1)(b).

ii. Respondent failed to provide the Board with requested documents or information and failed to cooperate or answer truthfully or completely inquiries

from the Board, in violation of ORS 692.180(1)(a) and (b), OAR 830-030-0090(5)(f) and (g), and OAR 830-040-0010(3).

Decedent I

i. Respondent failed to provide the Board with requested documents or information and failed to cooperate or answer truthfully or completely inquiries from the Board, in violation of ORS 692.180(1)(a) and (b) and OAR 830-030-0090(5)(d), (f), and (g).

ii. Respondent interred human remains without prior written authorization by the owner of such space or interment rights and removed human remains from a space without written consent of the person with authority to direct disposition of remains, in violation of ORS 97.220.

iii. Respondent failed to keep detailed, accurate, and permanent records of transactions that are performed for the care, preparation, and final disposition of human remains, in violation of OAR 830-040-0000(7) and ORS 97.720.

Decedent J

i. Respondent's handling of arrangements for Decedent J failed to abide by the accepted standards of the industry, in violation of OAR 830-030-0090.

ii. Respondent failed to timely implement or follow through with contractual arrangements when it did not install the name plaque, in violation of OAR 830-030-0090(1)(b).

iii. Respondent failed to provide the Board with requested documents or information and failed to cooperate or answer truthfully or completely inquiries from the Board, in violation of ORS 692.180(1)(a) and (b) and OAR 830-030-0090(5)(f) and (g).

Decedent L

i. Respondent engaged in misleading business practices and misrepresentation, in violation of ORS 692.180(1)(a), (b), and (h) and OAR 830-030-0100(1).

ii. Respondent's handling of arrangements for Decedent L failed to meet the minimum standards of the industry, in violation of OAR 830-030-0090.

iii. Respondent failed to keep detailed, accurate, and permanent records in violation of OAR 830-040-0000(7) and OAR 830-030-0090(4)(g), or ORS 97.720.

iv. Respondent failed to provide the Board with requested documents or

information and failed to cooperate or answer truthfully or completely inquiries from the Board, in violation of ORS 692.180(1)(a) and (b) and OAR 830-030-0090(5)(d), (f), and (g).

Business Practices – Facility Management

Unidentified Remains

i. Respondent's FSP failed to attach to the remains, or to the receptacle containing the remains, the Oregon State ID Tag of three human remains that were located in the refrigeration unit.

Unsanitary Conditions

ii. Respondent failed to maintain a sanitary preparation room in violation of OAR 830-040-0010(1) and OAR 830-040-0020(4) or (5).

Mismanagement of Cremated Remains

iii. Respondent failed to ensure that all residual of the cremation process underwent final processing and that the entire processed cremated remains were placed in a cremated remains container.

Business Practices – Recordkeeping

i. Respondent failed to maintain complete and accurate permanent records for decedents GG and HH, and JJ, in violation of OAR 830-030-0090(4)(g), OAR 830-040-0000(7), and ORS 97.720.

Business Practices – Responsiveness to Board Requests

i. Respondent failed to provide the Board with apprenticeship logs for Brittney Rice and Zachary Gordon.

Sanction

For these violations, as of March 30, 2016, Respondent's Combined Funeral Service Provider and Embalmer License Number CO-3224 shall be revoked.

The Board imposes a $63,000 civil penalty for these violations.

OREGON MORTUARY AND CEMETERY BOARD

/s/ Michelle Sigmund-Gaines
Executive Director

Notice of Right to Appeal: You are entitled to seek judicial review of this order. Judicial review may be obtained by filing a petition for review with the Oregon Court of Appeals within 60 days from the service of this Final Order. Judicial review is pursuant to ORS 183.482.