

Notice of Proposed Disciplinary Action

**STATE MORTUARY AND CEMETERY BOARD
STATE OF OREGON**

In the Matter of the Preneed Salesperson Registration Certificate of MICHAEL BACKES, RESPONDENT	Notice of Proposed Disciplinary Action And Opportunity for a Hearing CASE NO. 10-1009D
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Pursuant to ORS 692.180, the Oregon Mortuary & Cemetery Board (“OMCB”, “Board”) proposes to take disciplinary action against you on the grounds noted below. For statutory and rule violations the Board may impose one or more of the following sanctions: Reprimand, license revocation, civil penalty of up to \$1000 for each violation, or other sanctions as authorized by law.

1.

1a. At all times mentioned herein, JP Finley & Son Mortuary, Inc. dba Sunset Hills Memorial Park was licensed as a cemetery authority in Portland (OMCB License No. CE-0504), hereafter “Sunset Hills”.

1b. At all times mentioned herein, Michael Backes was licensed by the Board as a preneed salesperson (OMCB License No. PN-8683); and at all times mentioned herein Michael Backes (hereafter “Respondent”) was employed by and worked at Sunset Hills.

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

2.

2a. On August 29, 2008 a scheduled graveside interment service occurred at Sunset Hills for the cremated remains of “ORR” as properly authorized by the person(s) with the right to control final disposition of the remains, the decedent’s children (hereafter “family”).

2b. Soon after the interment, the funeral service practitioner who had made the cremation arrangements with the family of “ORR” contacted Respondent to inquire about removing a portion of the cremated remains from the urn for placement into vials for the family. Respondent completed a work order for the disinterment of the cremated remains of “ORR” without informing the family. The foregoing failure to contact the family prior to completing a work order for disinterment of cremated remains, for the purpose of removing a portion of the cremated remains from the urn, is conduct failing to abide by the accepted minimum standards of the death care industry in violation of OAR 830-030-0090 which is cause for discipline under ORS 692.180(1)(g).

2c. On or about September 2, 2008, upon Respondent’s direction, Sunset Hills employees disinterred the cremated remains of “ORR” without obtaining a written consent for disinterment from a person having the right to control the disposition of the cremated remains pursuant to ORS 97.130(2)(a), (b) or (c). The foregoing is a violation of ORS 97.220 and cause for discipline under ORS 692.180(1)(j). Further, the foregoing unauthorized disinterment is conduct that fails to abide by the accepted minimum standards of the death care industry in violation of OAR 830-030-0090; and the foregoing unauthorized disinterment is failure to follow through with agreed upon arrangements for permanent interment of the cremated remains in violation of OAR 830-030-0090(1)(d). Violations of OAR 830-030-0090 and OAR 830-030-0090(1)(d) are cause for discipline under ORS 692.180(1)(g).

2d. After the disinterment, Respondent allowed the aforementioned funeral service practitioner to remove a portion of the cremated remains of “ORR” from the urn. Respondent did not obtain authorization from the family for the removal of a portion of the cremated remains from the urn at the cemetery. The foregoing is conduct that fails to

abide by the accepted minimum standards of the death care industry in violation of OAR 830-030-0090 which is cause for discipline under ORS 692.190(1)(g).

2e. After the foregoing removal of a portion of the cremated remains from the urn at the cemetery, Respondent directed the re-interment of the urn with the remainder of the cremated remains of “ORR” without first obtaining authorization for re-interment from the family. The foregoing is conduct that fails to abide by the accepted minimum standards of the death care industry in violation of OAR 830-030-0090 which is cause for discipline under ORS 692.190(1)(g).

3.

Sunset Hills’ permanent record for “ORR” does not contain a complete and accurate disinterment authorization, an authorization for removal of cremated remains from an urn, or a properly dated interment or a re-interment authorization in violation of OAR 830-040-0000(6) or OAR 830-030-0090(2)(b)(A) which is cause for discipline under ORS 692.180(1)(g).

4.

Definitions that may be relevant to this notice are listed in ORS 692.010, ORS 97.010 and OAR 830-011-0000.

Rights and Procedures

You are entitled to a hearing as provided by the Administrative Procedures Act (ORS Chapter 183) and ORS 692.265(1). If you want a hearing, you must file a written request for hearing with the State Mortuary & Cemetery Board (the “Board”) within 21 days from the date this notice was mailed. If a request for hearing is not received by the Board within this 21-day period, your right to a hearing shall be considered waived. Hearing requests may be mailed to the Oregon Mortuary and Cemetery Board, 800 NE Oregon St., Suite 430, Portland, Oregon 97232-2195.

If you request a hearing, you will be notified of the time and place of the hearing. You may be represented by an attorney at the hearing. Parties are ordinarily and customarily represented by counsel. You are not required to be represented by counsel, unless you are an agency, trust, corporation or association. A Notice of Contested Case Rights and Procedures is enclosed with this Notice of Proposed Disciplinary Action. If you do not request a hearing within 21 days, or if you withdraw a hearing request, notify the Board or hearing officer that you will not appear or fail to appear at a scheduled hearing, the Board may issue a final order by default imposing the discipline as determined by the Board. If the Board issues a final order by default, it designates its file on this matter as the record for purposes of establishing a prima facie case.

DATED this ___7th___ day of September, 2011

STATE MORTUARY AND CEMETERY BOARD

___<s> Lynne Nelson_____
Lynne Nelson, Interim Executive Director