

Final Order on Default

State Mortuary and Cemetery Board

In the Matter of the Preneed Salesperson Registration Certificate of MICHAEL BACKES, Respondent	FINAL ORDER CASE No. 10-1009D
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On September 7, 2011, the Oregon Mortuary & Cemetery Board (OMCB, Board) properly served a Notice of Proposed Disciplinary Action (Reprimand and Civil Penalty) in OMCB Case No. 10-1009D to Michael Backes (Respondent) who held OMCB Preneed Salesperson Registration Certificate No. PN-8683, now expired. The Notice alleged Respondent violated ORS 97.220, ORS 692.180(1)(j), OAR 830-030-0090, OAR 830-030-0090(1)(d), OAR 830-040-0000(6), OAR 830-030-0090(2)(b)(A), and ORS 692.180(1)(g). The Notice offered Respondent an opportunity for a hearing if requested within 21 days from the date the Notice was mailed. The Notice designated the Board's file on this matter as the record for purposes of default. The Notice was sent by certified mail to the address listed on Respondent's records with the Board. The certified return receipt for mailing the Notice to the Respondent was returned signed and dated as received on November 29, 2011. The Respondent did not respond to the Notice, and did not request a hearing.

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

FINDINGS OF FACT

1. At all times mentioned herein, JP Finley and Son Mortuary, Inc. dba Sunset Hills Memorial Park was licensed as a cemetery authority in Portland (OMCB License No. CE-0504), hereafter "Sunset Hills."
2. At all times mentioned herein, unless otherwise noted, Respondent Michael Backes, hereafter "Respondent" was licensed by the Board as a preneed sales person (OMCB License No. PN-8683); and at all times mentioned herein, Respondent was employed by and worked at Sunset Hills.
3. On or about August 29, 2008, Respondent completed a work order authorizing the disinterment of the cremated remains of decedent "ORR" without informing the family or obtaining a written authorization from a person with the right to control disposition of the cremated remains.
4. On or about September 2, 2008, upon Respondent's direction via the work order, Sunset Hill's employees disinterred the cremated remains of "ORR."

5. After the disinterment, Respondent allowed a funeral service practitioner to remove a portion of the cremated remains from the urn. Respondent did not obtain authorization for this removal from a person with the right to control the disposition of the cremated remains.
6. After the removal of a portion of the cremated remains from the urn, Respondent directed the re-interment of the urn without obtaining authorization for re-interment from a person with the right to control the disposition of the cremated remains.
7. Sunset Hill's 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.

ULTIMATE FINDINGS of FACT

8. Respondent failed to abide by the accepted minimum standards of the death care industry by not contacting a family prior to disinterment of cremated remains, and Respondent permitted disinterment of remains without obtaining written authorization from a person with the right to control disposition of the remains as described in Findings of Fact Sections 3, 4, 5 and 6.
9. Respondent failed to maintain detailed and accurate records regarding the disinterment, removal, and re-interment of the cremated remains in the permanent records of "ORR," as described in Findings of Fact Section 7.

CONCLUSIONS OF LAW

10. By failing to contact the family prior to completing a work order for disinterment of the remains of "ORR" Respondent violated OAR 830-030-0090 which is cause for discipline under ORS 692.180(1) (g).
11. By directing the disinterment of the remains of "ORR" without first obtaining the written consent for disinterment from the person having the right to control final disposition of the cremated remains pursuant to ORS 97.130(2)(a), (b) or (c), Respondent violated ORS 97.220 and OAR 830-030-0090 which is cause for discipline under ORS 692.180(1)(g) and (j).
12. By allowing a portion of the cremated remains of "ORR" to be removed from the urn at the cemetery by a funeral service practitioner, Respondent violated OAR 830-030-0090 which is cause for discipline under ORS 692.180(1)(g).
13. By directing 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, Respondent violated OAR 830-030-0090 which is cause for discipline under ORS 692.180(1)(g).
14. By failing to maintain complete, detailed and accurate permanent records of "ORR" regarding the disinterment of the remains, removal of a portion of the remains, and re-interment of the remains; Respondent violated *former* OAR 830-040-0000(6) (2004) and *former* OAR 830-030-0090(2)(b)(A) (2004) which is cause for discipline under ORS 692.180(1)(g).
15. Civil penalties of up to \$1,000 for each violation is appropriate. ORS 692.180(1)

ORDER

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

1. Respondent shall pay a civil penalty of \$500.00.
2. This Final Order shall become effective when signed by the Executive Director of the Board.

DATED and ENTERED this ____2nd ____ day of August, 2012

____<s> Michelle Gaine_____
Michelle Gaines, Executive Director
Oregon Mortuary & Cemetery Board

Date of Mailing: ____08/02/2012_____

Notice: Civil penalty amounts are established in Oregon Revised Statutes 692.180. Interest will accrue in accordance with Oregon Laws 1991, chapter 734, section 2 and ORS 82.010. If unpaid, civil penalties may be recorded and filed with county clerks as liens against property 10 days after the expiration of the statutory appeals period. If you have any question about payment, please call (971) 673-1503. Make checks payable to the Oregon Mortuary & Cemetery Board.

NOTICE OF OPPORTUNITY FOR JUDICIAL REVIEW (COURT OF APPEALS)

You are entitled to judicial review of this Final Order pursuant to ORS 183.482. Judicial Review may be initiated by filing a petition for review with the Oregon Court of Appeals within 60 days from the date this Order was mailed to you.