Final Order by Default

State Mortuary and Cemetery Board

In the Matter of the funeral service practitioner apprenticeship certificate of **Carolyn R. (Franklin) Hardman**, **RESPONDENT**		**FINAL ORDER** **CASE NO. 06-1015B**

On February 4, 2008, the Oregon Mortuary & Cemetery Board ("OMCB," "Board") properly served a Notice of Proposed Disciplinary Action (Civil Penalty) in OMCB Case No. 06-1015B to Carolyn R. (Franklin) Hardman, that proposed to impose civil penalties for violations of ORS 692.180(1)(a), (b) and (i), OAR 830-050-0050(3), OAR 830-050-0050(5), ORS 692.025(1), OAR 830-030-0004(1), OAR 830-030-0090(2)(c)(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 certified to the addresses registered with the Board, but were returned unable to forward and unclaimed. The Notice designated the Board's file on this matter as the record for purposes of default. On January 21, 2009 the Board properly served an *Amended* Notice of Proposed Disciplinary Action (Civil Penalty) in OMCB Case No. 06-1015B to Carolyn (Franklin) Hardman, ("Respondent"). The Notice designated the Board's file on this matter as the record for purposes of default. Licensee 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. On February 13, 1997, the OMCB licensed Oakridge Chapel of the Woods ("Oakridge") as a funeral establishment, Kent J. Franklin and Carolyn R. Franklin, proprietors (OMCB License No. FE-8356).

2. On or about October 10, 2001 Carolyn R. Franklin, now known as Carolyn R. Hardman (hereafter "Respondent"), became certified by the Board as a funeral service practitioner apprentice (OMCB License No. AF-1782). Respondent's apprenticeship supervisor was Kent J. Franklin (OMCB License No. CO-3638, hereafter "Franklin") until on or about August 1, 2005, when Franklin moved to another state, causing Respondent's funeral service practitioner apprenticeship certificate to become null and void. OAR 830-011-0020(1) and (9)

3. At all relevant times, Franklin was the assigned manager of Oakridge and Respondent worked at and represented Oakridge.

4. From on or about June 5, 2002 to October 8, 2002, Respondent filed with Forethought

Life Insurance Company ("Forethought") five claims each misrepresenting that a specified individual had died, that Oakridge had provided mortuary, funeral, cremation, or burial goods and services, or some combination thereof, for the individual, that such goods and services cost a specified amount; and that Oakridge was entitled to payment for providing such goods and services pursuant to a life insurance policy issued to the individual by Forethought.

5. However, the foregoing individuals had not died, Oakridge had not provided any such goods and services, and thus, neither Oakridge nor Respondent was entitled to any payment from Forethought. The date of the claim, the name of the insured individual, the policy number, and the amount claimed and received by Oakridge and Respondent, in each of the five instances, is as follows:

Date Claim Filed	Insured	Policy No.	Amount
6/04/02	E. Peterson	5069967	$5,949.83
8/08/02	R. Morris	793593	$7,855.13
9/05/02	R. Jones	894399	$6,571.84
9/23/02	L. Short	5070100	$3,243.23
10/08/02	M. Hickox	3020586	$10,130.28
Total			$33,750.31

6. As referred to above, on or about October 8, 2002, Respondent filed with Forethought a claim misrepresenting that M. Hickox (Hickox) of Roseburg, Oregon had died on October 6, 2002, that Oakridge had provided mortuary, funeral, cremation, or burial goods and services, or some combination thereof, for Hickox, that such goods and services cost $11,749.00; and Oakridge was entitled to payment for providing such goods and services pursuant to a life insurance policy, number 3020586, issued by Forethought to Hickox.

7. On or about October 25, 2002, Forethought sent to Oakridge checks totaling $10,130.28 as payment for life insurance policy number 3020586. Respondent deposited or cashed the checks.

8. On November 7, 2005, Hickox died. Subsequently, Respondent made at-need final disposition arrangements for cremation with J. Mather (Mather), Hickox' niece, conservator, and the beneficiary under the policy. When making these arrangements with Mather, Hardman was not licensed as funeral service practitioner or funeral service practitioner apprentice.

9. On or about March 13, 2006, Respondent submitted to Forethought a copy of an at-need Statement of Funeral Goods and Services Selected (hereafter "SFGSS"), prepared by Respondent, charging for goods, services and cash advances purportedly provided by Oakridge for the final disposition of M. Hickox. The total amount charged on the SFGSS for goods, services and cash advances was $8,647.32.

10.

10a. The Federal Trade Commission Funeral Rule (Funeral Rule) requires that the funeral establishment give a printed or typewritten price list, with the caption "General Price List," for retention to persons who inquire in person about funeral goods, funeral services or prices of funeral goods or services offered by the funeral provider. The funeral provider must give the list to a person upon beginning discussion of the prices of funeral goods or funeral services, upon beginning discussion of the overall type of funeral service or disposition, or upon beginning discussion of the specific funeral goods or funeral services offered by the funeral

provider. The General Price List must have an effective date. 16 CFR 453.2(b)(4)(i)

10b. In addition, the Funeral Rule provides that funeral establishments must give an itemized written statement to each person who arranges a funeral at the conclusion of the discussion of arrangements, such statement containing at least the funeral goods and funeral services selected by that person and the prices to be paid for each of them, and the total cost of goods and services selected. This statement is generally titled the "Statement of Funeral Goods and Services Selected" (hereafter "SFGSS"). 16 CFR 453.2(b)(5)

10c. The Federal Trade Commission's Funeral Rule, 16 CFR 452.2, provides that it is unfair and deceptive practice to fail to furnish accurate prices to persons making final disposition arrangements.

11. According to the prices stated on Oakridge's effective General Price List (dated September 8, 2002), the facility's Urn Price List, and the cemetery charges list, the SFGSS completed and submitted by Respondent to Forethought for the final disposition arrangements of M. Hickox contained inaccurate, higher charges for goods and services than the prices that were provided as described:

12. Oakridge's General Price List, Urn Price List and cemetery charges state the following prices for goods and services:

Basic Services Fee - $1,070.00;
Transfer of Remains to Funeral Home - $245.00;
Transportation of Remains to Autopsy - $245.00;
Graveside Services - $325.00;
Overtime for Saturday Graveside Service - $325.00;
Cremation - $295.00;
Cultured Marble Urn ($175.00); and
(Total accurate amount to be charged for some items provided - $2680.00).

13. However, on the SFGSS for M. Hickox, Respondent over-charged for goods and services by charging the following prices:

Basic Services Fee - $1,200.00;
Transfer of Remains to Funeral Home - $350.00;
Transportation of remains to and from Autopsy - $700.00;
Use of Equipment & Staff for Graveside Service - $480.00;
Overtime for Saturday Graveside Service - $420.00;
Cremation - $400.00;
Cultured Marble Urn - $325.00; and
(Total amount charged on SFGSS for some items provided - $3,875.00).

14. Respondent, therefore, in at least seven instances, misrepresented the facility's prices for the goods and services provided, and fraudulently and dishonestly charged a total of approximately $1,195.00 *over* the facility's listed prices.

15. Further, the SFGSS for M. Hickox contained charges for the following items that were not provided:

Cherry Wood Casket for cremation - $1,975.00;
Presidential Urn Vault - $525.00;
Headstone emblem with engraved last date lettering - $425.32;
Acknowledgement cards - $10.00; and
Register Book - $50.00
(Total amount charged on SFGSS for items not provided - $2,985.32)

16. Respondent, therefore, in at least five instances, misrepresented the items provided and therefore fraudulently and dishonestly charged approximately $2,985.32 on the SFGSS for goods and services not provided.

17. Oakridge was not entitled to any payment from Forethought from October 25, 2002 to on or about November 7, 2005, and when Oakridge became entitled to payment on or about November 7, 2005, Oakridge was entitled to only about $4,384.50, but had received $10,130.28. Respondent, therefore, fraudulently and dishonestly withheld the balance owing to the rightful beneficiary of the life insurance policy, J. Mather, the amount of $5,745.78.

18. On January 8, 2007, Respondent was convicted of five counts of Forgery 1st Degree and five counts of Theft 1st Degree related to the conduct described above in Findings of Fact 5 through 8 and 18.

19. The foregoing criminal convictions involve facts and circumstances that bear a demonstrable relationship to funeral service practice and upon the standards of the profession.

20. On September 26, 2006 the Oregon Insurance Division revoked Respondent's insurance producer license for violations of forgery and theft (Case No. 06-08-008). This action was based upon "Findings of Fact" related to fraudulent, coercive, or dishonest practices or demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of doing business in Oregon, and was based on the Respondent's conduct as described in this Order's Findings of Fact #5 through #8 and #18.

21. The disciplinary action taken relates solely to Respondent's actions when she either was licensed and performing the duties of a funeral service practitioner apprentice, or she was not licensed and unlawfully performing the duties of a licensed funeral service practitioner or funeral service practitioner apprentice.

22. As such, the disciplinary action was based on conduct which bears a demonstrable relationship to death care industry practices in violation of OAR 830-050-0050(5) which is cause for disciplinary action under ORS 692.180(1)(g).

ULTIMATE FINDINGS OF FACT

1. In 2002, as described in Findings of Fact 4, 5 and 6, Licensee filed five claims totaling $33,750.31 to Forethought Insurance Company, in each case claiming the insured was deceased when they were not. The foregoing false claims are five specifications of misrepresentation in the conduct of business and fraudulent and dishonest conduct.

2. In March of 2006, as described in Findings of Fact 10 through 16, Licensee submitted to Forethought a copy of a Statement of Funeral Goods and Services Selected for M. Hickox that included at least seven inaccurate and higher charges for goods and services than as stated on Licensee's price lists, and included at least five instances where Licensee charged for goods or services that Licensee did not provide.

3. The foregoing Statement for a total of $8,647.32, therefore, contained twelve specifications of fraudulent and dishonest over-billing of approximately $4,180.32.

4. Because Respondent retained the entire amount of the $10,130.28 insurance check

from Forethought, and the actual cost of goods and services provided should have been $4,384.50, Respondent fraudulently and dishonestly withheld the $5,745.78 balance owing to the rightful beneficiary of the life insurance policy, J. Mather. Respondent therefore, engaged in misrepresentation in the conduct of business and fraudulent and dishonest conduct.

5. Respondent performed the duties of a licensed funeral service practitioner or funeral service practitioner apprentice without a license, as described in Findings of Fact 8 and 9.

7. On January 8, 2007, Respondent was convicted of five counts of Forgery 1st Degree and five counts of Theft 1st Degree related to the actions described in Findings of Fact 4 through 9, 18 and 19. Criminal felony convictions involve facts and circumstances which have a demonstrable bearing upon the standards of the profession.

8. On September 26, 2006 the Oregon Insurance Division revoked Respondent's insurance producer license for violations of forgery and theft (Case No. 06-08-008). The revocation was based upon Respondent using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of doing business in Oregon.

9. The disciplinary action taken relates solely to Respondent's actions when she either was licensed and performing the duties of a funeral service practitioner apprentice, or she was not licensed and performing the duties of a licensed funeral service practitioner or funeral service practitioner apprentice. As such, the disciplinary action was based on conduct which bears a demonstrable relationship to death care industry practices.

CONCLUSIONS OF LAW

1. ORS 692.180(1)(a) provides that misrepresentation in the conduct of business is grounds for disciplinary action. ORS 692.180(1)(b) provides that fraudulent or dishonest conduct, when the conduct bears a demonstrable relationship to funeral service practice is grounds for disciplinary action

2. By submitting five false claims to Forethought, in each case claiming the insured had died when they had not, Respondent engaged in misrepresentation in the conduct of business in violation of ORS 692.180(1)(a), and Respondent engaged in fraudulent and dishonest conduct in violation of ORS 692.180(1)(b).

3. By charging higher prices than as stated on the facility's price lists in seven instances, Respondent engaged in misrepresentation in the conduct of business in violation of ORS 692.180(1)(a); and Respondent engaged in fraudulent and dishonest conduct in violation of ORS 692.180(1)(b).

4. By charging for goods and services that were not provided on the Statement of Funeral Goods and Services Selected in five instances, Respondent engaged in misrepresentation in the conduct of business in violation of ORS 692.180(1)(a); and Respondent engaged in fraudulent and dishonest conduct in violation of ORS 692.180(1)(b).

5. By intentionally withholding a refund of approximately $5,745.78 from J. Mather since on or about November 7, 2005, Respondent engaged in

misrepresentation in the conduct of business in violation of ORS 692.180(1)(a); and Respondent engaged in fraudulent and dishonest conduct in violation of ORS 692.180(1)(b).

6. ORS 692.025(1) provides that an individual may not practice as a funeral service practitioner unless the individual is licensed as a funeral service practitioner under ORS 692.045. An individual practices as a funeral service practitioner if the individual for payment is engaged directly or indirectly in supervising or otherwise controlling the transportation, care, preparation, processing and handling of dead human bodies before the bodies undergo cremation, entombment or burial, or before the bodies are transported out of the State of Oregon.

7. OAR 830-030-0004(1) provides that only a funeral service practitioner or funeral service practitioner apprentice shall: (a) Work directly with at need persons to arrange for the disposition of human remains; and (b) Coordinate and direct the various tasks associated with performing funeral services for at need persons including but not limited to: taking all vital information on the deceased for the purpose of filing the death certificate; arranging for transportation of the remains; coordinating the services for final disposition; supervising or otherwise controlling the care, preparation, processing and handling of human remains.

8. OAR 830-030-0090(2)(c)(A) provides that it is unacceptable standards of the Death Care Industry to practice without an appropriate, Oregon license/certificate or registration.

9. In at least one instance, Respondent performed the duties of a licensed funeral service practitioner or funeral service practitioner apprentice in violation of ORS 692.025(1) and a violation of OAR 830-030-0004(1) and OAR 830-030-0090(2)(c)(A) which is cause for disciplinary action under ORS 692.180(1)(g).

10. ORS 692.180(1)(i) provides that criminal convictions that involve facts and circumstances which have a demonstrable bearing upon the standards of the profession are cause for disciplinary action; OAR 830-050-0050(3) provides that conviction of a crime whose facts and circumstances have a demonstrable bearing upon the standards of the profession is grounds for discipline under ORS 692.180(1)(g).

11. Respondent's convictions for five counts of Forgery 1st Degree and five counts of Theft 1st Degree on January 8, 2007 related to the fraudulent and dishonest conduct are therefore cause for disciplinary action under ORS 692.180(1)(i), OAR 830-050-0050(3) and ORS 692.180(1)(g).

12. The revocation of Respondent's insurance producer license for violations of forgery and theft (Case No. 06-08-008) on September 26, 2006 was based on conduct which bears a demonstrable relationship to death care industry practices. Such disciplinary action by another state agency is a violation of OAR 830-050-0050(5) and cause for disciplinary action under ORS 692.180(1)(g).

13. Civil penalties of $19,000 are appropriate for: Six violations of ORS 692.180(1)(a) and (b) when filing five false insurance claims and when withholding a refund of money due to a consumer; twelve violations of ORS 692.180(1)(a) and (b) when wrongly charging for items on the contract; and one violation of ORS 692.025(1), OAR 830-030-0004(1) and OAR 830-030-0090(2)(c)(A) pursuant to

ORS 692.180(1)(g) when performing the duties of a funeral service practitioner or funeral service practitioner apprentice when not licensed; and for criminal convictions and discipline by another state agency.

ORDER

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

1. Carolyn R. (Franklin) Hardman is ordered to pay a civil penalty in the amount of $19,000 within 10 days after the date this order is entered, or, if appealed, within 10 days after the order is sustained on appeal. Failure to pay the civil penalty within the time prescribed constitutes grounds for which the Board may take additional disciplinary action.

2. This Final Order shall become effective when signed by the Executive Director of the Board.

DATED and ENTERED this ___1st___ day of ___April_____, 2009

_____<s> Michelle Gaines_____
Michelle Gaines, Executive Director
Oregon Mortuary & Cemetery Board

Date of Mailing: _____April 6, 2009_____

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.