

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

<p>In the Matter of the cemetery authority license of Southern Curry Maintenance District dba WJ Ward Memorial Cemetery,</p> <p style="text-align: center;">RESPONDENT</p>	<p>Amended Notice of Proposed Disciplinary Action And Opportunity for a Hearing</p> <p>CASE NO. 07-1030A</p>
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Pursuant to ORS 692.180, the Oregon Mortuary & Cemetery Board ("OMCB," "Board") proposes to take disciplinary action against your cemetery license 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.

Grounds for Disciplinary Action:

1.

1a. At all times mentioned herein Southern Curry Maintenance District dba WJ Ward Memorial Cemetery (hereafter "Respondent") was licensed by the Board as a cemetery in Brookings (OMCB License No. CS-0171).

1b. At all times mentioned herein Genie Cavin (hereafter "Cavin") was a cemetery representative and a board member of Respondent cemetery district.

1c. At all times mentioned herein, Redwood Memorial Chapel (hereafter "Redwood") was licensed as a funeral establishment in Brookings (OMCB License No. FE-8491).

1d. Definitions that may be relevant to this notice are contained in OAR 830-011-0000, ORS 692.011 and ORS 97.010.

2.

2a. Redwood is a representative of Respondent that is authorized to conduct sales transactions with consumers who purchase rights of interment (lots), liners, and services of opening and closing from Respondent. Respondent's standard practice is to convey lots to purchasers in succession, on a "first-come" basis.

3.

3a. On or about February 14, 2007, Richard S. died. The decedent's sister, Virginia K. was the person with the right to control final disposition pursuant to ORS 97.130(2).

3b. Virginia K. contacted Redwood to handle the final disposition arrangements.

3c. On or about February 16, 2007, Virginia K. gave \$2,298.00 to Redwood for purchase of the following cemetery items: Rights of interment in two side-by-side, single-depth lots in Respondent's cemetery at \$714.00 each; a grave opening and closing for the interment of her brother's remains for \$420.00; and an outer burial container for her brother's casketed remains for \$450.00.

3d. Redwood forwarded the \$2,298.00 payment to Respondent cemetery and advised representative Cavin that the purchaser wanted two side-by-side lots.

3e. On or about February 19, 2007, Cavin completed two hand-written receipts numbered 1804 and 1805. Virginia K. received a copy of these receipts on or about April 9, 2007. The receipts are for the purchase of the following:

i. #1804: Receipt of \$1,584.00 for the right of interment of Richard S.'s remains (\$714.00); the grave opening and closing (\$420.00); and the outer burial container, a liner (\$450.00). On the receipt, Cavin wrote that there was a zero balance due.

ii. #1805: Receipt of \$714.00 for "lot for Virginia S. K. 5th Addition, Block 2, Row 14, Lot 3." On the receipt, Cavin wrote that the amount of the account was \$714, and there was a zero balance due.

3f. Other than the receipts numbered 1804 and 1805, Respondent did not provide a certificate of ownership to Virginia K. for lot 2 or 3 in the 5th Addition, Block 2, Row 14.

3g. On or about February 19, 2007, the Respondent interred the remains of Richard S. in 5th Addition, Block 2, Row 14, Lot 2.

3h. On or about March 13, 2007, Respondent's cemetery sexton mistakenly interred the remains of decedent Eva N. in the lot next to the remains of Richard S. - 5th Addition, Block 2, Row 14, Lot 3. Virginia K. discovered there was no remaining room next to Richard S. when visiting the cemetery in June 2007.

3i. On or about April 5, 2007, Respondent informed Virginia K. that she must pay an additional \$126.00 for her lot before a deed would be issued because she was not a cemetery district resident. On or about January 22, 2008, Respondent informed Virginia K. that if she did not pay an additional \$166, the purchase price for her lot would increase to \$1300. In addition, Respondent informed Virginia K. that if she wished to disinter the remains of Richard S. and have them moved to a new lot with an adjoining lot, opening and closing fees of \$1,500 would be charged.

4.

4a. OAR 830-030-0100(5) provides that it is prohibited practice and considered misrepresentation in the conduct of doing business to use an interment space for the unauthorized interment of cremains, remains or other materials without the written authorization by the owner or representative of the owner of such space or interment rights.

4b. Virginia K. was the owner of 5th Addition, Block 2, Row 14, Lot 3. Prior to interring the remains of Eva N. in 5th Addition, Block 2, Row 14, Lot 3, Respondent did not obtain written authorization from Virginia K.

4c. Therefore, Respondent violated OAR 830-030-0100(5) which is cause for discipline under ORS 692.180(1)(g).

5.

5a. OAR 830-030-0090(1)(d) provides that every licensee shall abide by the accepted standards of the Death Care Industry and the minimum standards including implementation

and/or follow through of agreed upon arrangements as designated by the responsible party. Violation of OAR 830-030-0090(1)(d) is cause for discipline under ORS 692.180(1)(g).

5b. Respondent failed to abide by the accepted minimum standards of the death care industry when it failed to properly and with reasonable care reserve Lot 3 in the 5th Addition, Block 2, Row 14 for Virginia K.

5c. Respondent further failed to abide by the accepted minimum standards of the death care industry when it failed to issue certificates of ownership to Virginia K. for Lot 2 or Lot 3.

6.

6a. OAR 830-030-0090 provides that licensees shall abide by the accepted standards of the Death Care Industry and the minimum standards including implementation and/or follow through of agreed upon arrangements as designated by the responsible party. Misrepresentation in the conduct of business is grounds for discipline. ORS 692.180(1)(a).

6b. By accepting \$714.00 as payment in full for Virginia K.'s lot, but subsequently informing Virginia K. that payment of either \$166 or \$1300 was required to complete the transaction, Respondent violated either OAR 830-030-0090(1)(d) which is cause for discipline under ORS 692.180(1)(g) or ORS 692.180(1)(a).

6c. By informing Virginia K. that payment of either \$166 or \$1300 was required to complete the purchase transaction after Respondent interred Eva N. in the lot purchased by Virginia K., and interment would therefore not be possible except as provided in ORS 97.220, Respondent violated OAR 830-030-0090(1)(d) which is cause for discipline under ORS 692.180(1)(g).

6d. Further, by requiring payment of \$1,500 to correct Respondent's error and provide Virginia K. with a lot adjoining Richard S., Respondent violated OAR 830-030-0090(1)(d) which is cause for discipline under ORS 692.180(1)(g).

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 within this 21-day period, your right to a hearing shall be considered waived. Hearing requests may be mailed to State Office Building, 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 must be represented by legal counsel at a hearing. 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 15th day of April, 2008

STATE MORTUARY AND CEMETERY BOARD

<s> Lynne Nelson

Designee: Lynne Nelson, Compliance Manager