BEFORE THE
OREGON STATE MORTUARY AND CEMETERY BOARD

IN THE MATTER OF:	)	**FINAL ORDER**
	)	
FRED S. OLSON	)	OAH Case No.: 125514
	)	Agency Case Nos.: 04-1006B and 04-1028B

This matter came before the State Mortuary and Cemetery Board (MCB) during its regularly scheduled meeting of May 22, 2007 to consider the Proposed Order issued in this case by Administrative Law Judge David K. Gerstenfeld. Fred S. Olson filed exceptions to the Proposed Order. The Board heard oral argument on Olson's exceptions on May 17, 2007. After considering the matter, the Board now issues this Final Order. The Board adopts the ALJ's Findings of Fact and Conclusions of Law. The Board also adopts the ALJ's reasoning, except where indicated otherwise, and has reduced the amount of the civil penalties assessed as explained below.

HISTORY OF THE CASE

On December 2, 2005, the MCB issued a Notice of Proposed Disciplinary Action (Revocation and Civil Penalty) and Opportunity for a Hearing (Notice) regarding Fred S. Olson (Olson).[1] On December 15, 2005, Olson requested a hearing.

On December 22, 2005, the MCB referred the hearing request to the Office of Administrative Hearings (OAH). ALJ Catherine P. Coburn was assigned to preside over the matter. Prehearing conferences were held on March 13, June 14 and June 29, 2006, to discuss discovery, the case status and other issues. On July 31, 2006 the case was reassigned to ALJ David K. Gerstenfeld who presided over the remainder of the matter including the hearing. Another prehearing conference was held on September 18, 2006 to address remaining discovery issues, hearing logistics and related matters.

A hearing was held on October 24, 2006, in Portland, Oregon. Olson appeared through his counsel, Charles F. Lee, and testified as a witness. The MCB was represented by Assistant Attorney General Raul Ramirez. MCB Compliance Manager, Lynne Nelson, was present throughout the hearing as the MCB representative. MCB Executive Director, David Koach, observed part of the hearing but did not testify or participate in the proceedings. Lynne Nelson testified for MCB and LaVerne Campbell, Diana Dickey, Nellie James and Carol M. Black

[1] Also on December 2, 2005, the MCB issued a Notice of Proposed Disciplinary Action (License Revocation and Civil Penalty) and Opportunity for a Hearing regarding Hofsess-Olson, LLC, dba Myrtle Creek Family Funeral Home (MCB case numbers 04-1006A and 04-1028A, OAH case number 125515). Those matters were consolidated for hearing due to the significant similarity in legal and factual issues, but separate Proposed Orders are being issued in each case.

testified for MCB by telephone. At hearing, and without objection, MCB withdrew allegation 15ee from the Notice and replaced allegations 14i through 14pp with the allegations contained in Exhibit 22A. The hearing was continued to November 7, 2006, at which time it reconvened by telephone and additional evidence was taken. The evidentiary record closed at that time and a schedule was set for counsel to submit written closing arguments.

The MCB, in footnote 27 of its Closing Argument, amended paragraphs 5b and 3e of the Notice to cite to 16 CFR §453.2(b)(5). Olson was given an opportunity, but declined, to reopen the evidentiary record or extend the time period for closing arguments to address this amendment. The hearing record closed at 5:00 p.m. on January 16, 2007.

ISSUES

1. Whether Olson made misrepresentations in conducting business as an embalmer or funeral service practitioner. ORS 692.180(1)(a).

2. Whether Olson engaged in fraudulent or dishonest conduct bearing a demonstrable relationship to funeral service or embalming practice or to the operation of cemeteries or crematoriums. ORS 692.180(1)(b).

3. Whether Olson violated any provision of ORS Chapter 692 or any administrative rules adopted thereunder. ORS 692.180(1)(g). This includes whether Olson: (1) failed to keep detailed, accurate and permanent records of all transactions performed for the care, preparation and final disposition of human remains as required by OAR 830-040-0000(6); (2) failed to preserve permanent records for inspection by MCB in violation of OAR 830-040-0000(9)(a); (3) altered, canceled or obliterated entries in a permanent record for the purpose of falsifying any record required to be made, maintained or preserved in violation of OAR 830-040-0000(9)(b); or (4) altered a funeral service, cemetery or crematory record to mislead the reader of the record in violation of OAR 830-030-0090(2)(b)(C).

4. Whether Olson violated any provision of ORS 97.929, 97.937 or regulations adopted by the Federal Trade Commission regulating funeral industry practices. ORS 692.180(1)(h) This includes: (1) whether Olson violated 16 CFR 453.2(b)(5) by failing to give a consumer an itemized statement of funeral goods and services selected; and (2) whether he violated 16 CFR 453.3(d)(1) by falsely representing that state law required the purchase of particular funeral goods when selling or offering to sell funeral goods or services.

5. Whether Olson is subject to civil penalties regarding his activities as a licensee of the MCB. ORS 692.180(1).

6. Whether Olson is subject to having his embalmer and funeral service practitioner license revoked. ORS 692.180(1).

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EVIDENTIARY RULING

Exhibits A1 through A35, offered by the MCB, were admitted into evidence without objection.[2] Exhibit R1, offered by Respondents, was admitted over the hearsay and unreliability objection of MCB.

EXCEPTIONS

Olson filed exceptions to the Proposed Order. The MCB has considered these exceptions and finds that they are not well taken. Some of Olson's exceptions consist of legal arguments that he previously made (1-3). Other exceptions address the use of discretion by the ALJ (4 and 5) The remaining exceptions are arguments regarding what the evidence in the records shows or fails to show. The MCB finds Olson's legal arguments to be unpersuasive and therefore finds that exceptions 1-3 are not well taken. The MCB finds that the ALJ properly exercised his discretion in the Proposed Order in making recommendations to the MCB regarding its authority to enter a Final Order. Consequently, exceptions 4 and 5 are not well taken. Lastly, the MCB rejects exceptions 6 to 9. Olson's disagreement over what certain evidence shows or fails to show has been considered and is not persuasive.

FINDINGS OF FACT

1. Fred Olson has held an embalmer license from the MCB since 1972. He worked in the forest products industry, not primarily in the funeral service industry, until the 1990's. Olson served his apprenticeship as a funeral service practitioner between 1992 and 1994 and since 1994 has held a funeral service practitioner license from the MCB. Olson's combined license number is OMCB License #CO-3601. (Ex. A2; Testimony of Olson.)

2. Since September 10, 1999, Hofsess-Olson, LLC (Hofsess-Olson) has been licensed by the MCB to operate the Myrtle Creek Family Funeral Home (Myrtle Creek FFH) (license number FE-8419) in Myrtle Creek, Oregon, as a funeral establishment with Olson as the manager of that establishment. (Ex. A1 at 26; Testimony of Olson.)

3. Olson, Brenda Olson who was then his wife, Larry Hofsess and Laura Jo Hofsess were the owners of Hofsess-Olson. Until 2000, the Hofsesses were actively involved with the Myrtle Creek FFH. From that point on, Olson was primarily responsible for meeting potential consumers and the daily operations of the business. The Olsons and Hofsesses discussed dissolving Hofsess-Olson around this time but did not actually do so. (Testimony of Olson.)

4. From 2003 through 2005, Brenda Olson served her funeral service practitioner apprenticeship at Myrtle Creek FFH. When she completed her apprenticeship, she and Olson were not getting along and they have since divorced. (Testimony of Olson.)

5. Since starting its operations in 1999, Myrtle Creek FFH has maintained general price lists (GPLs) with lists of prices for commonly provided services, a brief description of those

[2] Exhibit A35 was misidentified as Exhibit A33, an exhibit number already used, during the hearing. It has been correctly identified and numbered as Exhibit A35 in this order.

services and the effective date of the general price lists. (Ex. A3; Testimony of Olson and Lynne Nelson.) These GPLs had the effective dates and costs for services indicated below:

Type of Service	Effective 11/10/1999	Effective 1/1/2001	Effective 1/1/2002	Effective 3/1/2003	Effective 9/1/2003
Basic prof. services of funeral director and staff	$525	$525	$525	$595	$625
Refrigeration	$60	$60	$60	$95	$95 per day
Vehicle for transfer from place of death	$245 for up to 25 miles	$245 for up to 50 miles	$245 for up to 50 miles	$245 for up to 50 miles	$245 for up to 50 miles
Service vehicle	$150 for up to 25 miles	$150 for up to 50 miles	$150 for up to 50 miles	$150 for up to 50 miles	$150 for up to 50 miles
Additional per mile cost for vehicle transfer from place of death or service vehicle	$1.25 for distances greater than 25 miles	$1.25 for distances greater than 50 miles	$1.25 for distances greater than 50 miles	$1.25 for distances greater than 50 miles	$1.25 for distances greater than 50 miles
Container for cremation and temporary container	$50	$50	$50	$75	$75
Graveside service only	$215	$215	$215	$250	$250
Memorial service with no casket present	$215	$215	$215	$250	$295
Funeral service	$250	$250	$250	$295	$350
Viewing or visitation	$95	$95	$95	$125	$125
Cremation Process	$200	$140	$140	$250	$250
Shipping of cremated remains with shipping container	$45	$45	$45	$45	$45
Direct cremation with container provided by purchaser	$745	$745	$745	$745	$795
Direct cremation with container provided by funeral home	$795	$795	$795	$795	$870

(Ex. A3.)

6. All of these GPLs, except the one effective 11/10/1999, described the direct cremation as a cremation, without formal viewing or ceremony with the body present, and included basic care and handling of the remains, the cremation process, removal from the place of death within 50 mile radius, a temporary cardboard container for the cremated remains and other specified goods and services. An additional $1.25 per mile was charged for removal from the place of death for each mile beyond 50. The 11/10/1999 GPL was the same, except it referred to 25 miles instead of 50 for the removal of the remains. (Ex. A3.)

7. The standard container Myrtle Creek FFH provided for a "direct cremation with container provided by the Funeral Home" was an inexpensive plastic one. Customers could

purchase a fancier container for an additional cost and could purchase additional services not included with the direct cremation for an additional cost. (Testimony of Olson.)

8. Laura Jo Hofsess created the 11/10/1999 GPL. Subsequent GPLs were created by Olson. He kept the language almost identical to prior GPLs other than changing the prices. (Ex. A3; Testimony of Olson.)

9. In addition to the services Myrtle Creek FFH provided, it also advanced funds for certain goods or services provided by others, such as paying the cost to have an obituary run in a newspaper and paying for death certificates. Myrtle Creek FFH then passed those costs on to the customer, designating them "cash advances." (Ex. A22; Testimony of Olson.)

10. On November 13, 2003, Clara Smith met with Olson to make arrangements for the cremation of her husband, Albert Smith, who had passed away the prior day. Clara Smith's daughter, Diana Dickey, was present during this meeting. Clara Smith knew that because Albert Smith was a veteran, there were Veterans Administration (VA) benefits available to help pay for his cremation. She mistakenly believed those VA benefits would be enough to pay for the entire cost of the cremation. Olson had Clara Smith sign a Statement of Funeral Goods and Services Selected (SFGSS), a form used to detail the services and goods provided by a funeral home and the amounts being charged. (Ex. A5; Testimony of Olson and Dickey.)

11. Olson wrote a charge of $875 for "Direct Cremation" on the SFGSS. He also included items in addition to those included in a direct cremation and some cash advances. The SFGSS showed a "complete total" of $1,094. (Ex. A5.) Olson did not give a copy of the SFGSS to Clara Smith when she signed it. (Testimony of Olson and Dickey.)

12. Before submitting the SFGSS to the VA for payment, Olson added a charge of $250 for the cremation process and another $250 charge for transportation of Albert Smith's remains, crossed out the $1,094 complete total figure and wrote $1,594 as the balance due. Those changes were not on the SFGSS when it was shown to Clara Smith and Diane Dickey. (Ex. A5; Testimony of Olson and Dickey.)

13. The transportation involved with Albert Smith was all within 50 miles of the Myrtle Creek FFH. The $500 charge for transportation and cremation process was already included in the "Direct Cremation" charge on the SFGSS. At the time Olson submitted the SFGSS to the VA for payment, he knew that those charges were double billed on the SFGSS. (Testimony of Olson.) Olson completed an application for burial benefits to receive payment from the VA and listed the total amount of expenses as $1,594, a total that included the transportation and cremation costs being billed twice. (Ex. A6.)

14. The VA paid Myrtle Creek FFH $550 towards the goods and services provided regarding Albert Smith. The VA provided Clara Smith a statement indicating what amount it was paying Myrtle Creek FFH and a copy of the SFGSS Olson had submitted to the VA. Clara Smith and Dickey saw that additional charges had been added to the SFGSS since they had last seen it. Dickey contacted the MCB and complained about charges being added. (Testimony of Dickey and Nelson.)

15. In December 2003 and again in February 2004, Olson sent letters to Clara Smith indicating that after the $550 payment from the VA, there was a remaining balance owed by Clara Smith of $1,044. (Exs. A11 and A12; Testimony of Olson.)

16. On April 1, 2004, based on Dickey's complaint, Lynne Nelson went to Myrtle Creek FFH and inspected some of its records. Nelson did not reveal that any complaint had been filed or what, if any, particular issues she was looking into. (Testimony of Nelson.) The next day, Nelson made a written request asking for copies of some files she had not been able to fully review the prior day. Albert Smith's file was among those she requested. (Ex. A15.)

17. On April 8, 2004, Nelson received a copy of the requested file. Among the documents she received was a copy of the SFGSS for Albert Smith. That SFGSS had been altered by Olson. The "complete total" that had originally been $1,094, and was then crossed out before the SFGSS was submitted to the VA for payment, had been covered with correction fluid and "$1344.00" was written in as a new figure. The $250 cremation process charge Olson had added to the SFGSS had been covered with correction fluid and replaced with "Paid from VA 550.00." The balance due had also been altered, using correction fluid, and showed a balance due of $794. (Ex. A16; Testimony of Olson and Nelson.)

18. When Nelson later asked Olson about these changes, Olson responded by saying: "I removed cremation process with white out because in your general inspection in April you told my wife to get the unclosed files in order to your specifications." (Ex. A34.)

19. About 15 percent of the time, Olson had customers sign the SFGSS before he had put the cost information on it. (Testimony of Olson.)

20. In the following instances, Myrtle Creek FFH charged more for particular services than was listed as the cost for those services on the applicable GPL. In each case, Olson prepared the SFGSSs that had the higher prices.

Decedent	Date of SFGSS	Effective date of GPL	Goods or services at issue	Price charged on SFGSS	Price on GPL	Amount overcharged
Humphrey	8/3/01	1/1/01	Cremation process	$175	$140	$35
Bales	3/23/02	1/1/02	Cremation process Refrigeration	$200 $75	$140 $60	$60 $15
Ferguson	3/28/02	1/1/02	Cremation process	$200	$140	$60
Hadwen	10/7/02	1/1/02	Cremation process	$200	$140	$60
Hard	11/10/02[3]	1/1/02	Cremation process	$200	$140	$60
Hesslegrave	6/30/02	1/1/02	Cremation process Refrigeration	$200 $75	$140 $60	$60 $15
Johnson	12/13/01	1/1/01	Cremation process	$175	$140	$35
Knight	10/21/02	1/1/02	Cremation process	$200	$140	$60

[3] This SFGSS does not show a date of death or date of statement. It does, however, have a note showing that it was paid in full on November 10, 2002. More likely than not, this SFGSS was entered into shortly before it was paid, meaning the applicable GPL was the one effective 1/1/2002.

Lent	8/2/02	1/1/02	Cremation process	$200	$140	$60
Long	2/11/02	1/1/02	Cremation process	$175	$140	$35
Reinke	8/19/02	1/1/02	Cremation process	$250	$140	$110
McDevitt	1/31/02	1/1/02	Cremation process	$175	$140	$35
Stephens	1/11/02	1/1/02	Cremation process Refrigeration	$200 $75	$140 $60	$60 $15
Brown	10/2/01	1/1/01	Cremation process	$175	$140	$35
Turner	7/20/02	1/1/02	Memorial service Cremation process Refrigeration	$250 $200 $75	$215 $140 $60	$35 $60 $15
Cason	12/31/02	1/1/02	Memorial service Cremation process	$250 $200	$215 $140	$35 $60
Mejia	3/21/02	1/1/02	Cremation process	$200	$140	$60
Gardiner	2/26/02	1/1/02	Refrigeration Graveside service	$75 $250	$60 $215	$15 $35
Rigsby	3/11/02	1/1/02	Cremation process Viewing/visitation	$175 $175	$140 $95	$35 $80
Wilbur	10/22/00	11/10/99	Viewing/visitation	$195	$95	$100
Benton	2/9/03	1/1/02	Cremation process	$250	$140	$110
Adams	6/10/03	3/1/03	Direct cremation	$845	$795[4]	$50
Zemcik	9/17/03	9/1/03	Transfer of remains to funeral home	$395	$245	$150
Halley	12/20/01	1/1/01	Cremation process	$175	$140	$35
Jackson	2/6/04	9/1/03	Basic services of funeral director and staff	$695	$625	$70

(Ex. A22.)

21. On July 28, 2003, Olson entered into an agreement to provide cremation services and related goods for Vee Bayliss. In the SFGSS, Olson charged $75 for a cremation tray and made the notation "Required by State." Olson was not required by any state law to provide a cremation tray for this transaction. (Ex. A25 at 5; Testimony of Nelson.)

22. Olson entered into agreements with Anderson, Atkeson, Adams and Ernest Francis to provide direct cremation services with the Myrtle Creek FFH providing the containers. In each instance, the applicable GPL cost for a direct cremation with alternative container was $795. The SFGSS for Anderson, Atkeson and Francis showed a charge for a direct cremation with an alternative container of $795. The SFGSS for Adams showed a charge of $845 for a direct cremation with alternative container. Each SFGSS also showed a charge for the cremation process (of either $200 or $250, depending on the particular SFGSS) and a charge for a cremation tray ($50 or $75, depending on the SFGSS). (Ex. A18.) The cremation tray and cremation process are included in the direct cremation with alternative container package price. (Ex. A3; Testimony of Olson.)

[4] This price assumes the funeral home provided the container. If not, the applicable price from the GPL was $745, resulting in a larger overpayment of $100.

23. On February 1, 2004, Olson entered into an agreement to provide cremation and related goods and services for Edward Rider who passed away on January 22, 2004. The SFGSS for this transaction showed that Myrtle Creek FFH charged $320 to transfer Edward Rider's remains to the funeral home. The funeral home was approximately 19 miles from Roseburg where Edward Rider's remains were placed to rest. (Exs. A19 and A32.)

24. On April 1, 2004, Nelson obtained a copy of the SFGSS regarding Rider from Myrtle Creek FHH. This SFGSS included a $625 charge for basic services of funeral director and staff, $320 charge for transfer of remains to funeral home, $125 for refrigeration, $300 for the cremation process and $20 for a black plastic urn. The total funeral home charges were shown as $1,390, before cash advances were added. This SFGSS was signed by Olson. (Ex. A28; Testimony of Nelson.)

25. The Edward Rider documents were among those Nelson requested from Myrtle Creek FFH on April 2, 2004. (Ex. A15.) On April 8, 3004, Myrtle Creek FFH provided Nelson with requested documents, including a copy of an SFGSS for Rider. This version of the SFGSS was signed by Olson but was different from the one in Myrtle Creek FFH's files on April 1. Instead of showing several individual charges for basic services, transfer of remains, refrigeration, cremation process and the urn, it showed single charge of $870 for a direct cremation. It also had a note that said "Agreed to do for VA Benefits with family." (Ex. A30; Testimony of Nelson.)

26. If a person asked for a direct cremation or the lowest cost cremation, and did not then request additional services, Olson generally gave the customer the direct cremation price listed on the applicable GPL. If the customer added additional items, or if the customer asked for a cremation but did not specifically say he or she wanted the lowest cost cremation, Olson sometimes, but not always, charged for each part of the direct cremation process individually. This resulted in a higher cost than if those same services were provided as part of the direct cremation package price. (Exs. A24 and A25; Testimony of Olson.)

27. Although the GPL does not list refrigeration as being included in the services provided in the direct cremation, Hofsess-Olson did include refrigeration at no charge as part of the direct cremation as long as refrigeration was not required for more than about three days. (Testimony of Olson.)

28. In making arrangements for the following 37 people, Olson and Myrtle Creek FFH, instead of charging the applicable GPL price for a direct cremation package, charged the consumers individually for each service and therefore charged more than the listed price for a direct cremation. In many of these cases, there were cash advances or other services or goods that were also included on the SFGSS besides those that constituted a direct cremation:

Dobbins	Bates	VanGinkle	Long
James	Pool	Brown	McDevitt
Kuphal	Wilson	Halley	Reinke
Benton	Bigelow	Humphrey	Stephens
Bayliss	Bingham	Williams	Jackson
Campbell	Kilpatrick	Bales	Cason

Zemcik	Silliphant	Ferguson	Springer, Harold
Jones	Smith	Hadwen	
Rider	Springer, Helen	Hard	
Greathouse	Trotter	Lent	

(Ex. A25; Testimony of Olson, Nelson and Campbell.)

29. Olson and LaVerne Campbell are both members of the Independent Association of Oddfellows Lodge. Campbell asked Olson to prepare papers for disposition of her remains. All discussions between Olson and Campbell about the agreement were held at the Oddfellows lodge. Campbell trusted Olson. After about two months of intermittent discussions, on September 4, 2003, Olson brought a SFGSS to Campbell at the lodge and she signed the agreement. It included a charge for professional services of $525, transfer of remains to funeral home of $245, $150 for service/utility vehicle, $75 for refrigeration, $200 for the cremation process, $50 for a cremation tray, $20 for a mailing urn and $25 for postage to mail the urn. Campbell wanted her remains to be sent to Illinois for final resting. At the time this agreement was entered into, Olson did not know where Campbell would be when she passed away, so did not know how far Campbell's body would need to be transported to get to Myrtle Creek FFH. Olson did not give Campbell a copy of a GPL during any of their interactions. (Ex. A20 at 6; Testimony of Olson and Campbell.)

30. On September 29, 2003, Olson entered into an agreement with Carol Black for services related to Black's father, Orlan Dale Silvers, who passed away the day before. Other than cash advances, Olson listed only a single charge of $1,625 for "Memorial Service with cremation." (Ex. A20; Testimony of Olson and Black.)

31. Many of the consumers dealing with Myrtle Creek FFH, especially those doing so in an "at need" situation when someone has passed away and funeral or related services are needed, are very upset and are vulnerable. Olson assumes his customers are looking for the lowest price possible for the services they want. (Testimony of Olson.)

32. When determining the level of disciplinary action to take when it believes the laws it enforces have been violated, the MCB looks at any prior history of discipline by the licensee, the number of violations, whether those actions could also be criminal conduct, the severity of the violations, the level of intent involved with the violations and the amount of harm caused to family members or other consumers by the violations. (Testimony of Nelson.)

33. The MCB has not previously imposed discipline against Olson or Hofsess-Olson. (Testimony of Nelson.)

CONCLUSIONS OF LAW

1. Olson made misrepresentations in conducting business as an embalmer or funeral service practitioner.

2. Olson engaged in fraudulent or dishonest conduct bearing a demonstrable relationship to funeral service or embalming practice or to the operation of cemeteries or crematoriums.

3. Olson violated provisions of ORS Chapter 692 or administrative rules adopted thereunder by: (1) not keeping detailed, accurate and permanent records of all transactions performed for the care, preparation and final disposition of human remains; and (2) altering a funeral service, cemetery or crematory record to mislead the reader of the record.

4. Olson violated provisions of ORS 97.929, 97.937 or regulations adopted by the Federal Trade Commission regulating funeral industry practices by: (1) failing to give a consumer an itemized statement of funeral goods and services selected; and (2) falsely representing that state law required the purchase of particular funeral goods when selling or offering to sell funeral goods or services.

5. Olson is subject to civil penalties regarding his activities as a licensee of the MCB.

6. Olson is subject to having his embalmer and funeral service practitioner license revoked.

OPINION

A. Violations

MCB alleged that Olson and Hofsess-Olson engaged in several types of misconduct involving several different consumers and seek sanctions for those actions under various provisions of the law. I address the issues in the order they are alleged in MCB's Notice of Proposed Disciplinary Action.

1. Misrepresentation Regarding Albert Smith Direct Cremation Cost (Paragraph 4)

MCB alleged Olson charged $875 for direct cremation services for Albert Smith when the applicable GPL showed the actual cost was to be only $870. Olson acknowledged this at hearing, but indicated this $5 overcharge was due to an error or oversight.

ORS 692.180 provides, in part:

> (1) * * * If [MCB] find 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 or crematoriums.

By showing a cost of $875 on the SFGSS for Albert Smith, Olson falsely indicated that as the actual cost for a direct cremation when, in fact, the applicable GPL shows that the cost was $870. Although this was inaccurate information, merely putting the wrong figure on the SFGSS was not, in and of itself, making a representation to anyone. Olson did not give Clara Smith, the consumer in that transaction, a copy of the SFGSS so he did not communicate that incorrect cost to her at that time.

Similarly, merely putting the inaccurate information on the SFGSS is not, necessarily, fraudulent or dishonest conduct. The MCB alleged that putting this information on the SFGSS was a violation, but also alleged that each time it was communicated to others was a violation. Submitting this inaccurate information to others constitutes dishonest or fraudulent conduct, but just putting the wrong number on the SFGSS, which is what is alleged in paragraph 4, is not by itself a violation of ORS 692.180(1)(a) or (b).

2. Failure to Give Clara Smith a Completed SFGGS (Paragraph 5)

Olson acknowledged that he did not give Clara Smith a completed copy of the SFGSS when he entered into the agreement for services with her. ORS 692.180(1)(h) permits the MCB to impose disciplinary action for a "Violation of any provision of ORS 97.929 or 97.937 or regulations adopted by the Federal Trade Commission regulating funeral industry practices."

The Federal Trade Commission promulgated 16 CFR 453.2 which 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 a funeral provider to fail to furnish accurate price information disclosing the cost to the purchaser for each of the specific funeral goods and funeral services used in connection with the disposition of deceased human bodies, including at least the price of embalming, transportation of remains, use of facilities, caskets, outer burial containers, immediate burials, or direct cremations, to persons inquiring about the purchase of funerals. Any funeral provider who complies with the preventive requirements in paragraph (b) of this section is not engaged in the unfair or deceptive acts or practices defined here.
> (b) Preventive requirements. To prevent these unfair or deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in Sec. 453.4(b)(1), funeral providers must:
> * * * * *
> (5) Statement of funeral goods and services selected. (i) Give an itemized written statement for retention to each person who arranges a funeral or other disposition of human remains, at the conclusion of the discussion of arrangements. The statement must list at least the following information:
> (A) The funeral goods and funeral services selected by that person and the prices to be paid for each of them;
> (B) Specifically itemized cash advance items. * * * and
> (C) The total cost of the goods and services selected.

Olson and Hofsess-Olson argue that this regulation does not require a funeral service provider to give out an SFGSS, but that it is merely part of the safe-harbor provision in that rule that would allow the funeral service provider to demonstrate that it is not engaging in unfair or deceptive acts or practices. Some of the language of 16 CFR 453.2(a) seems to support this conclusion by stating that "Any funeral provider who complies with the preventative requirements in paragraph (b) of this section is not engaged in the unfair or deceptive acts or practices defined here." However, paragraph (b) then states that "To prevent these unfair or deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in Sec. 453.4(b)(1), funeral providers **must**" (emphasis added) provide an SFGSS to consumers. Similarly, 16 CFR 453.2(b)(6) provides that "Funeral providers may give persons any other price information, in any other format, **in addition to that required by Sec. 453.2(b)(2), (3), and (4) so long as the statement required by Sec. 453.2(b)(5) is given when required by the rule.**" (Emphasis added.) These provisions of the regulation show that it does, in fact, require funeral service providers to provide a GPL and SFGSS to consumers and that failure to do so constitutes an unfair or deceptive act or practice.

Even were the reading of this rule posited by Olson and Hofsess-Olson correct, it would not avail them in this case. As discussed above, Olson was engaged in dishonest conduct when he charged more than the applicable cost for the services he provided and intentionally double charged for some of those costs. Not giving Clara Smith a completed SFGSS as required was part of the entire transaction in this case in which Olson overcharged Clara Smith and the VA for the services provided. These were unfair and deceptive acts or practices. Olson's failure to give Clara Smith a completed SFGSS violated 16 CFR 453.2(b)(5) and so also violated ORS 692.180(1)(h).

3. Overcharging the VA for Albert Smith's Direct Cremation (Paragraph 6)

Olson submitted the SFGSS regarding Albert Smith to the VA to receive at least partial payment for those services. As discussed above, Olson misrepresented the applicable charge for a direct cremation regarding Albert Smith, but merely putting the inaccurate number on the SFGSS was not in itself a violation of ORS 692.180(1)(a) or (b). When Olson submitted the SFGSS to the VA, however, he was representing to the VA that the correct charge for Albert Smith's direct cremation was $875 when it was actually $870. This was a misrepresentation by Olson in the conduct of his business. Regardless of whether Olson overcharged intentionally or as a result of an error, this was a misrepresentation in the conduct of business and violated ORS 692.180(1)(a).

ORS 692.180(1)(b) addresses "fraudulent or dishonest conduct," something which requires a showing that Olson was acting with an intent to be dishonest. Olson's assertion that overcharging $5 for the direct cremation was merely a mistake is not reliable. On several other transactions, Olson overcharged for services compared to the applicable GPL price. On this same transaction, Olson later added charges, double billing for transportation and cremation process fees, then altered the documents when MCB asked for copies of them. Olson's testimony about his intent regarding this transaction was not credible. He testified that he did not intend to double charge Clara Smith for those costs, yet he twice sent her letters trying to get her to pay for those double billed services. This was not an oversight, but one of several examples of

Olson deciding to charge a customer more than the applicable GPL price, something directly part of his funeral practice business. Olson's conduct in charging more than the applicable price for the direct cremation was dishonest and violated ORS 692.180(1)(b).

4. Submission of $250 Charge for Cremation Process to the VA (Paragraph 7)

Olson included a charge for $250 for the cremation process on the SFGSS regarding Albert Smith despite that amount being included in the cost for the direct cremation package. Olson acknowledged at hearing that this was a double billing for the cremation process work. Olson misrepresented to the VA that there was an additional charge of $250 owed for the cremation process in addition to the direct cremation charge of $870 in violation of ORS 692.180(1)(a). Olson also acknowledged that he knew, when the SFGSS was sent to the VA, that it included this double billing of the cremation process. By billing the VA twice for the same cremation process work for Albert Smith, Olson engaged in dishonest conduct in violation of ORS 692.180(1)(b).

5. Submission of $250 Charge for Transfer of Remains to the VA (Paragraph 8)

Just as Olson's double billing the VA for the cremation process violated ORS 692.180(1)(a) and (b), so, too, did his double billing for the transfer of Albert Smith's remains. Olson acknowledged that he also double billed for those services on the SFGSS for Albert Smith.

6. December 11, 2003 Letter to Clara Smith (Paragraph 9)

In December 2003, Olson sent a letter to Clara Smith indicating that the total cost for the cremation and related goods and services for Albert Smith was $1,594 and that after the VA payment of $550 to Myrtle Creek FFH, it left a remaining balance owed by Clara Smith of $1,044. This representation was based on Olson double billing $500 for the cremation process and transfer of Albert Smith's remains and overcharging $5 for the direct cremation price itself. Olson misrepresented the actual total cost of services and goods provided regarding Albert Smith and, consequently, the remaining amount owed by Clara Smith. Despite Olson's testimony that he did not intend to double charge Clara Smith, this December 2003 letter clearly asked Clara Smith to pay for this double billing. This December 2003 letter from Olson constituted both a misrepresentation in the conduct of his business in violation of ORS 692.180(1)(a) and dishonest conduct related to the funeral service practice in violation of ORS 692.180(1)(b).

MCB alleged that this constituted three separate pairs of violations: one by including the $5 overcharge for the direct cremation, another for including the double billing for the cremation process and the third for including the double billing for the transfer of remains. The letter, however, did not itemize the charges owed, it stated the total cost of services and goods provided and the remaining balance. Those figures, the later of which was mathematically determined by the former, were inaccurate. Although premised on three separate improper charges, it did not itemize those charges but instead contained just the total of all of those improper charges, as well as some proper ones. The December 2003 letter constituted one violation each of ORS 692.180(1)(a) and (b), but not three distinct violations.

7. February 10, 2004 Letter to Clara Smith (Paragraph 10)

The February 2004 letter Olson sent to Clara Smith, like the December 2003 letter, misrepresented the total charges for the services and goods regarding Albert Smith and was also a dishonest attempt to collect charges that were not owed. It did not itemize the direct cremation, cremation process or transfer of remains charges. The February 2004 letter, like the December 2003 letter, constituted a single violation each of ORS 692.180(1)(a) and ORS 692.180(1)(b).

8. Alteration of Permanent Records Regarding Albert Smith (Paragraph 11)

ORS 692.180(1)(g) allows MCB to impose sanctions for "Violation of any of the provisions of this chapter or any rules adopted under this chapter." ORS 692.180(1)(h) allows the imposition of sanctions for "Violation of any provision of ORS 97.929 or 97.937 or regulations adopted by the Federal Trade Commission regulating funeral industry practices."

OAR 830-030-0090 is a rule promulgated by the MCB under ORS Chapter 692 and provides, in part:

> Every licensee or agent of a licensed facility of 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.
> * * * * *
> (2) Conduct unacceptable under the Board's "Standards of Practice".
> * * * * * *
> (b) Conduct related to communication and record keeping:
> * * * * *
> (C) Altering a funeral service, cemetery or crematory record; including but not limited to, changing words/letters/numbers from the original document to mislead the reader of the record;
> * * * * *
> (E) Directing another person to falsify, alter or destroy any death care document.

Myrtle Creek FFH altered the records regarding Albert Smith. One of its employees used correction fluid to remove the $250 charge for the cremation process and to change the total charges it made regarding Albert Smith from $1,594 on the SFGSS it sent to the VA (and corresponding to the amount it charged Clara Smith) to $1,344. Olson testified that Brenda Olson made these changes and that it was done to address concerns Nelson raised with Myrtle Creek FFH about the propriety of its charges and paperwork. As far as the purpose of the changes, Olson's testimony is not reliable. The change had the affect of removing a charge that should not have been on the invoice to begin with. Nelson had not yet told Olson, Brenda Olson, or anyone else at Myrtle Creek FFH, what the concerns of MCB were regarding its practices, so the changes could not have been made to address those concerns. The changes to the Albert Smith records were done to mislead the reader.

Although Olson testified that Brenda Olson made the changes to these records, he responded to an inquiry from Nelson about those changes by stating "I removed cremation process with white out because in your general inspection in April you told my wife to get the unclosed files in order to your specifications." (Ex. A34.) In this letter, written closer in time to when the events occurred, Olson indicated he himself altered the records. The fact that in the same sentence he refers to "my wife" shows that when he said "I removed cremation process with white out" he was referring to doing so himself, and not Brenda Olson making the alterations. Olson violated OAR 830-030-0090(2)(b)(C) by altering the records regarding Albert Smith to mislead the MCB.

OAR 830-040-0000 is another rule adopted by the MCB under ORS Chapter 692. It provides, in 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 cremated (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 or crematory 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 funeral establishment operator, immediate disposition company operator, cemetery authority or crematory authority 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.

Olson's alteration of Albert Smith's records also violated OAR 830-040-0000(9)(a). Although Olson altered records regarding services provided for Albert Smith, the information he altered was not any of the information required by OAR 830-040-0000(6), so his actions did not

violate that rule section. Olson did violate rules adopted under ORS chapter 692, however, and so he violated ORS 692.180(1)(g). Olson's alteration of the Albert Smith records provided to MCB also constituted a violation of ORS 692.180(1)(b) because it was dishonest conduct related to funeral service practice.

9. Indicating Cremation Tray was Required by Law on Bayliss Transaction (Paragraph 12)

ORS 692.180(1)(h) permits the MCB to impose sanctions for "Violation of any provision of ORS 97.929 or 97.937 or regulations adopted by the Federal Trade Commission regulating funeral industry practices." The MCB alleged Olson misstated on the Bayliss SFGSS that the cremation tray was required by the State and by doing so violated 16 CFR 453.3(d)(1). That federal regulation, adopted by the Federal Trade Commission to regulate funeral industry practices, provides that:

> General provisions on legal and cemetery requirements--(1) Deceptive acts or practices. In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for funeral providers to represent that federal, state, or local laws, or particular cemeteries or crematories, require the purchase of any funeral goods or funeral services when such is not the case.

The State of Oregon does not require the use of a cremation tray, yet Olson put "required by state" next to his charge for cremation tray on the Bayliss transaction. (Ex. A25 at 5.) Olson falsely represented that the state required the use of a cremation tray and so violated 16 CFR 453.3(d)(1). This false statement was also a misrepresentation in the conduct of his business and dishonest conduct, and therefore also violated ORS 692.180(1)(a) and (b).

10. Double Charging for Cremation Tray and Cremation Process (Paragraph 13)

Myrtle Creek FFH entered into agreements to provide direct cremation services regarding Anderson, Atkeson and Adams. Olson completed and signed the SFGSSs for each of these cases. In each case, the cost of a direct cremation from the applicable GPL was $795. Olson charged Anderson and Atkeson $795 for the direct cremation and charged Adams $845 for hers. Olson also, however, charged each of them an additional amount for the cremation process ($250 for Anderson and Adams, $200 for Atkeson) and for a cremation tray ($50 for Anderson and $75 for Atkeson and Adams). Both the cremation process and the cremation tray are included in the direct cremation package price. By charging for those items separately and also charging the direct cremation package price, Olson double charged each of these consumers for the cremation process and cremation tray. These were misrepresentations to the consumers about the cost of those services, inaccurately representing that cremation process and cremation tray were not included in the direct cremation cost. For Anderson, this also was a misrepresentation of the cost of the cremation process. Olson charged $250 for the cremation process when the applicable GPL showed it was $140.[5] By double charging for the cremation process and cremation tray, and overcharging Anderson for the amount of the second billing on the cremation process, Olson

[5] Olson charged Atkeson $200 for the cremation process when the applicable GPL price $250. Charging less than the GPL amount is not misleading to the consumer so does not constitute a misrepresentation or dishonest practice.

engaged in dishonest conduct regarding his funeral service practice and misrepresentations. Olson violated ORS 692.180(1)(a) and (b) as to Anderson, Atkeson and Adams. Because Olson made two discreet misrepresentations (one regarding the cremation tray and one regarding the cremation process) regarding each person, it constitutes a total of six violations.

Olson also entered into an agreement for the direct cremation of Ernest Francis, but this included a memorial service. The applicable GPL had direct cremation cost of $795 and a memorial service cost of $250. Olson followed these prices and charged $1,045 for the direct cremation with memorial service. He also, however, charged $50 for a cremation tray and $250 of the cremation process, items that were already included in the charge for the direct cremation. Accordingly, as with Anderson, Atkeson and Adams, Olson misrepresented the cost of the services provided and engaged in dishonest conduct regarding his funeral service practice, thereby twice violating ORS 692.180(1)(a) and (b).

11. Overcharging for Services (Paragraph 14)

MCB alleged Olson overcharged for goods and services provided on several contracts compared to the prices in the applicable GPLs. There are several instances of Olson charging more than is indicated on the applicable GPL. Olson asserted that each consumer and each transaction are different, so different prices sometimes apply. There may be circumstances where the types of goods or services being sought are different enough from the norm that varying from the GPL list is warranted. For instance, someone might want a very elaborate memorial service with thousands of guests and special food, seating and other arrangements. In such a situation, the type of service being provided is not the type anticipated on the GPL so some change in the price would not necessarily constitute charging more than the applicable GPL cost. Olson, however, charged more than indicated on the GPL in many transactions, but did not show that the types of services provided in any of those instances were beyond the scope of what was anticipated in the GPL list.

MCB alleged Olson overcharged Rider for transferring his remains to Myrtle Creek FFH because the applicable GPL indicated the charge for such transfers was $245 for up to 50 miles and $1.25 per mile for each additional mile and despite Rider being placed to rest in Roseburg, 19 miles from Myrtle Creek FFH, Olson charged $320 for the transfer. The record, however, does not contain evidence of where Rider died or how far his remains had to travel to arrive at Myrtle Creek FFH. Accordingly, MCB did not establish that the transfer fee charged was more than the proper charge using the formula in the applicable GPL. Similarly, MCB did not establish how far Zemcik's remains had to be transported to arrive at Myrtle Creek FFH, so it did not prove its allegation that the transfer fee Olson charged was more than provided for in the applicable GPL.

Olson charged Humphrey, Johnson, Brown and Halley $175 each for the cremation process. All of these contracts were entered into at times when the 1/1/2001 GPL was in effect and the cost for the cremation process on that GPL was $140. For each of these four people, Olson misrepresented the cost of the cremation process and engaged in a dishonest conduct in his funeral services practice by overcharging consumers for the cremation process. These constitute four violations of ORS 692.180(1)(a) and (b).

Similarly, the 1/1/2002 GPL showed the cost of the cremation process as $140, yet Olson charged between $175 and $250 each for the cremation process for Dobbins, Bales, Ferguson, Hadwen, Hard, Hesslegrave, Knight, Lent, Long, Reinke, McDevitt, Stephens, Turner, Cason, Mejia, Rigsby and Benton when the 1/1/2002 GPL applied to each of those contracts. Those actions constitute 17 violations of ORS 692.180(1)(a) and (b).

In a similar fashion, Olson charged Turner and Cason each $250 for a memorial service when the applicable GPL price was $215, and charged Gardiner $250 for a graveside service when the applicable GPL price was $215. These are three further violations of ORS 692.180(1)(a) and (b). Olson charged $695 for basic services of funeral director and staff for Jackson instead of the $625 price from the applicable GPL. The applicable GPL listed the price for a viewing or visitation as $95, yet Olson charged Rigsby $175 and Wilbur $195. These are three more violations of ORS 692.180(1)(a) and (b). Olson again violated those provisions by charging $845 for the direct cremation of Adams when the applicable GPL showed the cost as $795 even if Myrtle Creek FFH provided the container.

MCB also alleged that in a similar fashion, Olson overcharged Bales, Hesslegrave, Stephens, Turner and Gardiner for refrigeration by charging $75 when the GPL price was $60. In none of these cases, however, does the record show how long Myrtle Creek FFH refrigerated the remains. Although the 9/1/03 GPL showed the refrigeration on a per day basis, prior to that, Myrtle Creek FFH had just a flat fee for refrigeration. Olson charged more than the applicable flat fee in each of these five instances, violating ORS 692.180(1)(a) and (b).

Olson charged $1,625 for "memorial service with cremation" for Silvers. (Ex. A20.) The applicable GPL was the one effective 9/1/03 and showed the cost for a memorial service as $295 and the cost of a direct cremation as $870 when the funeral home provides the container. The GPL cost for the cremation and memorial service was thus $1,165, some $460 less than Olson charged on the SFGSS. No other services are indicated on the SFGSS to account for that price difference and Olson testified he did not know how he arrived at the $1,625 he charged. It is more likely than not that Olson, as in the several other instances discussed above, charged more for the memorial service and direct cremation than the applicable GPL cost, and so again violated ORS 692.180(1)(a) and (b).

The MCB alleged Olson committed 36 violations of ORS 692.180(1)(a) and (b) in paragraph 14 of the Notice of Proposed Disciplinary Action. Because it did not prove violations alleged regarding Zemcik or Rider, 34 violations have been substantiated.

12. Itemizing Instead of Charging for Direct Cremation (Paragraph 15)

The MCB alleged that as to 37 transactions,[6] Olson improperly itemized charges to consumers for services and goods that were actually part of the direct cremation process. Olson acknowledged that in some instances if the consumer did not ask specifically for a "direct cremation" or say that they wanted the cheapest cremation, he charged them for the individual goods and services provided rather than the direct cremation package cost. He also, however,

[6] The 37 transactions involved are those listed in Finding of Fact 27.

testified that he assumed consumers were seeking the lowest possible price for the services they wanted. Charging for the component goods and services from a direct cremation individually resulted in higher costs to the consumers. Doing this merely because the consumer did not specifically say they wanted the lowest possible price or a "direct cremation" is dishonest and a misrepresentation to the consumer of the actual price of those services. Myrtle Creek FFH charged a package price for the direct cremation, yet misrepresented to consumers that the items were charged individually, thereby increasing the cost to the consumers.

Although sometimes consumers asked for additional services that took the transaction outside the realm of a direct cremation, in each of the 37 transactions alleged by the MCB, that was not the case. OAR 830-030-0100(9) provides that "Any sales presentation or practice which conceals or misstates a material fact shall be considered a misrepresentation in the conduct of doing business." Olson's repeated misrepresentation of prices by charging individually for items that were actually part of the direct cremation package, constituted 37 violations of ORS 692.180(1)(a) and (b). The MCB alleged those acts also violated ORS 692.180(1)(g) by violating OAR 830-030-0100(9). That rule did not impose any obligation on Olson or other licensees, it merely defined some specific types of conduct that constitute misrepresentations, and so constitute violations of ORS 692.180(1)(a).

13. Alteration of Permanent Records Regarding Rider (Paragraph 17)

Olson created an SFGSS regarding Rider on February 1, 2004 and then submitted it to the VA for payment. That SFGSS included itemized charges for professional services, transferring remains, refrigeration, the cremation process and an urn totaling $1,390. The MCB requested documents regarding the Rider transaction as well as several others. Myrtle Creek FFH provided a copy of an SFGSS regarding the Rider transaction, but it was significantly different from the one it submitted to the VA for payment. In place of the itemized charges, it instead showed a single charge of $870 for direct cremation. The total funeral home charges were reduced from the $1,390 on the version submitted to the VA for payment to $870 on the version provided to the MCB. Olson signed and created both of those SFGSS. By creating a second SFGSS, different from the first one which was actually used by Myrtle Creek FFH to seek payment from the VA, Olson altered the permanent records regarding the Rider transaction. Olson did not offer any plausible explanation for these changes, and the reasonable inference to be drawn is that he made the alterations to mislead the MCB about the amount he was charging for his services since they were in excess of the prices on the applicable GPL. This constituted a violation of ORS 692.180(1)(b) and (g).

B. Sanctions Imposed

Olson requested the hearing in this matter to contest the action that the MCB proposed taking in its Notice of Proposed Disciplinary Action (Revocation and Civil Penalty) and Opportunity for a Hearing. That notice of proposed action clearly indicated, by its title, that the MCB was seeking both to revoke Olson's license and to impose civil penalties. It did not, however, specify the amount of civil penalties the MCB proposed to impose. The Notice advised: "For statutory and rule violations, the [MCB] 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." (Pleading 10 at 1.) ORS 692.180(1) allows the MCB to impose civil penalties of up to $1,000 for each violation of certain provisions of the law.

At the hearing, the MCB indicated it was seeking the maximum civil penalty of $1,000 for each violation alleged. It also clarified that each reference in its Notice to alleged conduct being cause for disciplinary action was an allegation of a separate violation, warranting imposition of separate civil penalties. The MCB stated that several paragraphs, such as 9, 10, 13, 14 and 15, had several separate violations of the same type alleged and that the MCB was seeking a civil penalty for each violation alleged in those paragraphs. On October 26, 2006, the MCB clarified in writing that it was seeking a total of $95,000 in civil penalties against Olson using the methodology described during the hearing.

The MCB has not promulgated any administrative rules addressing how it determines what level of sanctions to impose for various violations by licensees, either in terms of taking action against the license itself or in determining the amount of civil penalties to be imposed. It did, however, present evidence of several factors it considers when making this determination, including any prior history of discipline by the licensee, the number of violations and the harm they caused to consumers, the amount of intent involved with those violations, how severe the violations were and whether they could also constitute criminal conduct.

As discussed above, the MCB did not establish the violations alleged in paragraph 4 of its Notice of Proposed Disciplinary Action. It did establish the single violations alleged in each of paragraphs 5, 6, 7, 8, 11, 12 and 17. It also established one of the three violations alleged in paragraph 9 and one of the three alleged in paragraph 10. The MCB established Olson committed the eight violations alleged in paragraph 13, 34 of the 36 violations alleged in paragraph 14 and all 37 violations alleged in paragraph 15. This is a total of 88 violations for which the MCB is authorized to impose civil penalties. This is a large number of violations, of various provisions of the law. Multiple consumers were overcharged, in many cases significant amounts. Some of those customers were quite vulnerable as they were dealing with the very recent death of loved ones. Olson acknowledged that on at least some of these occasions, he knew he was double billing for some services and that he knew he was charging more money by itemizing goods and services normally included in the direct cremation package. Despite the lack of prior disciplinary action against Olson, the MCB is entitled to impose penalties of $1,000 for each of these violations, resulting in total civil penalties of $88,000. In the present case, after considering the Proposed Order, the MCB has determined that a civil penalty of $500 for each violation is appropriate. In reducing the amount of the civil penalties, the MCB has considered the number of violations involved, the fact that the Board is revoking Olson's licenses, and that Hofsess-Olson LLC is also being penalized for the violations. The reduction in the civil penalty is not indicative of the seriousness of the violations involved.

Similarly, the MCB has the authority to revoke licenses it has issued for certain violations of the law and it has established that Olson engaged in 88 such violations. The MCB has established it is entitled to revoke Olson's license.

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ORDER

For the foregoing reasons, the Board hereby orders as follows:

1. The Funeral Service Practitioner and Embalmer license of Fred S. Olson (OMCB License #CO-3601) is revoked.

2. Civil penalties of $44,000 are imposed against Fred S. Olson for the violations identified above.

3. This Final Order takes effect 30 days after it is signed. Respondent is responsible for wrapping up pending business, or assisting pre-existing customers in making arrangements with another funeral service provider for any services beyond 30 days from the date of this Final Order.

IT IS SO ORDERED this 16th day of July, 2007.

MORTUARY AND CEMETERY BOARD
OF THE STATE OF OREGON

By: _____
David Koach, Executive Director
Oregon Mortuary and Cemetery Board

NOTICE: You are entitled to judicial review of this Final Order pursuant to the provisions of ORS 183.480. Judicial review may be obtained by filing a petition in the Oregon Court of Appeals. The petition must be filed within 60 days from the date of service of this Final Order.