

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

<p>In the Matter of the funeral establishment license of Laura Jo Hofsess and Larry Allen Hofsess dba <b>Myrtle Grove Funeral Service – Bay Area (FE-8513)</b></p> <p style="text-align: center;"><b>RESPONDENT</b></p>	<p>Notice of Proposed Disciplinary Action And Opportunity for a Hearing</p> <p style="text-align: center;"><b>CASE NOS. 05-1053A and 06-1028A</b></p>
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Pursuant to ORS 692.180, the Oregon Mortuary & Cemetery Board (“Board” and “OMCB”) proposes to take disciplinary action against you on the grounds noted below. For statutory and rule violations the Board may impose one or more of the following sanctions: Reprimand; license suspension or revocation; civil penalty of up to \$1000 for each violation; or other sanctions as authorized by law.

**Case 05-1053A, Grounds for Disciplinary Action:**

1. At all times mentioned herein Respondent was licensed by the Oregon Mortuary and Cemetery Board as a funeral establishment (OMCB License No. FE-8513).
2. Respondent’s advertisement ran in the “The World Newspaper” on September 27, 2005. Respondent’s advertisement described its facility as having “Lowest cremation prices.”
3. The Federal Trade Commission Funeral Rule requires that funeral establishments maintain a general price list with an effective date; and that the General Price List contain accurate retail prices and other information including, if offered, a separate price for a direct cremation where the purchaser provides the cremation container and a description of the services included in each price. 16 CFR 453.2(a) and (b)(4)

4. Respondent's General Price List, effective September 15, 2005, lists the lowest-price of a direct cremation with container provided by the purchaser as \$695.00, and the description of the services included describe the following: removal of the remains, the cremation fee and the minimum services of staff.

5. The General Price Lists of other licensed facilities in Respondent's geographical area list the following lowest-prices of a direct cremation with container provided by the purchaser, and includes removal, cremation fee and minimum services of staff:

A. The General Price List for North Bend Chapel Cremation and Burial Service (OMCB License No. FE-8549), effective September 14, 2005, states the price as \$600.00;

B. The General Price List for Coos Bay Chapel Cremation and Funeral Service (OMCB License No. FE-8550); effective September 14, 2005, states the price as \$600.00.

C. The General Price List for Nelson's Bay Area Mortuary (OMCB License No. FE-8285), effective March 1, 2005, states the price as \$655.00.

6. Respondent's price for a direct cremation is not the lowest priced cremation.

7. Respondent's advertisement therefore conceals or misstates a material fact: Respondent does not have the lowest cremation prices. This fact is material as it may be relevant to a consumer's decision to engage Respondent's services.

8. The foregoing is a violation of OAR 830-040-0050(5) and OAR 830-030-0100(9), which is cause for disciplinary action under ORS 692.180(1)(a) and (g).

9. On October 7, 1998 the Board issued a Letter of Warning to Respondent reminding Respondent that advertising may not be misleading to the consumer.

10. Definitions that may be relevant to this notice are contained in ORS 692.010 16 CFR 453.1 and OAR 830-011-0000.

**Case 06-1028A, Grounds for Disciplinary Action:**

**1.**

**1a.** At all times mentioned herein Respondent was licensed by the Board as a funeral establishment (OMCB License No. FE-8513).

**1b.** At all times mentioned herein Laura Jo Hofsess ("Hofsess") was the assigned manager of Respondent funeral establishment.

**1c.** At all times mentioned herein Donna Schmidt (OMCB License No. AF-1905) was employed at Respondent funeral establishment as an apprentice funeral service practitioner; and Hofsess was her apprenticeship supervisor.

**2.**

**2a.** Funeral establishments are required to have a General Price List, with an effective date, stating the specific funeral goods or funeral services offered by the funeral provider together with the price of each item. 16 CFR 453.2(b)(4)

**2b.** Respondent's General Price List, effective May 31, 2006, states that the price for the use of facilities and staff for viewing/visitation remains is \$150.00; and the price for washing/disinfecting the remains is \$90.00. The General Price List also states, "No public or private funeral service, or public viewing will be held over the remains of an unwashed deceased human body."

**2c.** Oregon law does not require washing and disinfecting of remains for a private family viewing.

**2d.** Definitions that may be relevant to this notice are contained in OAR 830-011-0000, 16 CFR 453.1, and ORS 692.010.

**3.**

**3a.** On June 26, 2006, "Roger P." died.

**3b.** On or about June 26 and 27, 2006, Roger P.'s adult children, "Solomon P." and "Amy P.", and the decedent's ex-wife, Debbie S., spoke with Schmidt to make final disposition arrangements by cremation. When the family requested a brief, private, family viewing of the remains prior to direct cremation, Schmidt provided a price of \$695 for direct cremation or \$1275 for cremation with a viewing.

**3c.** When the family objected to the cost of a viewing, Schmidt informed the family they could receive a discount in the form of \$240.00 added to the direct cremation: Specifically, this charge included a \$150.00 charge for the *use of facilities and staff for viewing/visitation*, and a charge of \$90.00 for *washing/disinfecting of the remains*. Schmidt conferred with Hofsess who confirmed that the family would have to pay for washing/disinfecting of the remains; and Schmidt informed the family that both charges were necessary for the private family viewing.

**3d.** The family did not have a private family viewing.

**3e.** Misstating a material fact, specifically, stating that washing or disinfecting remains is necessary or required for a private family viewing when it was not, is a sales presentation or practice that is considered misrepresentation in the conduct of doing business.

**3f.** Therefore, Respondent, through Donna Schmidt, engaged in misrepresentation in violation of OAR 830-030-0100(9) which is cause for disciplinary action under ORS 692.180(1)(g). Misrepresentation in the conduct of business is also cause for disciplinary action under ORS 692.180(1)(a).

**4.**

**4a.** The FTC Funeral Rule provides that a funeral provider cannot condition the furnishing of any funeral good or funeral service upon the purchase of any other funeral good or funeral service except as required by law or as otherwise permitted by this part.

Items allowed to be charged by a funeral director are the basic services fee, items required to be purchased or items selected by the purchaser. 16 CFR 453.4(b)(1)(i)

**4c.** Decedent Roger P.'s family requested a direct cremation and a limited, private viewing; and the family did not request any preparation of the remains.

**4d.** Respondent initially indicated the family was required to pay \$1275 for a price package that included an item the family did not request and is not required – washing/disinfecting of remains.

**4e.** Respondent subsequently offered a “discount” that required the family to pay for direct cremation (\$695), viewing (\$150), and washing/disinfecting of the remains prior to viewing (\$90), which includes an item the family did not request and is not required – washing/disinfection of remains.

**4f.** Respondent, therefore, violated 16 CFR 453.4(b)(1)(i) by conditioning a private family viewing upon the purchase of washing/disinfecting the remains when it was not required which is cause for disciplinary action under ORS 692.180(1)(h).

### **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 20 days from the date this notice was mailed. If a request for hearing is not received within this 20-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 may, but are not required to, 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 20 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 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 \_\_22nd\_\_ day of March, 2007

**STATE MORTUARY AND CEMETERY BOARD**

\_\_\_\_<s> Lynne Nelson\_\_\_\_\_  
Designee: Lynne Nelson, Compliance Manager