

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

<p>In the Matter of the funeral establishment license of Alternative Burial & Cremation of Oregon, Inc. (OMCB License No. FE-8530),</p> <p style="text-align: center;">RESPONDENT</p>	<p>Notice of Proposed Disciplinary Action (Civil Penalty) And Opportunity for a Hearing</p> <p style="text-align: center;">AMENDED</p> <p style="text-align: center;">CASE NO. 06-1010B</p>
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Pursuant to ORS 692.180 the Oregon Mortuary & Cemetery Board (Board) proposes to impose civil penalties against you in the amount of \$8000.00, because you violated ORS Chapter 692 and the Board rules as noted below. For statutory and rule violations the Board may impose one or more of the following sanctions: License denial, license revocation; civil penalty of up to \$1000 for each violation; reprimand; or other sanctions as authorized by law.

1.

1a. At all times mentioned herein, Alternative Burial & Cremation of Oregon, Inc. (Respondent) was licensed as a funeral establishment (OMCB License No. FE-8530).

1b. At all times mentioned herein, Robert Baker (Baker) was licensed by the Board as a funeral service practitioner and embalmer (OMCB License No. CO-3023); and Baker was the manager of Respondent funeral establishment.

1c. At all times mentioned herein, James Riggleman (Riggleman) was licensed as an embalmer (OMCB License No. EM-2195); and Riggleman was an employee of Respondent funeral establishment.

1d. At all relevant times mentioned herein, Riggleman was not a licensed funeral service practitioner or funeral service practitioner apprentice.

Grounds for Disciplinary Action

2.

2a. 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. See also OAR 830-030-0004(1), (4). Based on the following additional facts, Riggleman has repeatedly practiced, or is practicing, as a funeral service practitioner, without a license, in violation of ORS 692.025(1) or OAR 830-030-0004(1):

i. From approximately January 9, 2006 through August 25, 2006 Riggleman, on behalf of Respondent, worked directly with families to arrange for the at-need disposition of at least three (3) decedents who died in Oregon. Riggleman met with the families of three decedents, prepared documents and made arrangements for the transportation, care, preparation, processing or handling of the remains before the bodies underwent cremation, entombment or burial. The decedents are identified by the following Oregon State identification numbers, partial names and dates of death (DOD):

- A. #428322; Robert B.; DOD January 9, 2006;
- B. #428320; Douglas J.; DOD January 14, 2006;
- C. #472434; Rodney D.; DOD August 19, 2006.

ii. As of June 14, 2007, Respondent's website identifies Bob Baker and Jim Riggleman as "The Directors". On at least one occasion, September 10, 2006, Respondent placed an advertisement in the Bulletin for the St. Francis Catholic Church in Sherwood Oregon, which stated:

Funeral Directors
Robert Baker
Jim Riggleman

iii. Either a funeral service practitioner or "person acting as a funeral service practitioner" as that term is defined in ORS 432.005(11), submits the certificate of death to Oregon's Department of Human Services, Center for Health Statistics (Vital Records). ORS 432.307(1), (2). From approximately January 1, 2006 through February 1, 2006, Riggleman, while in the employ of Respondent, signed four certificates of death that were submitted to Vital Records, Riggleman signed certificates for the following four decedents:

- A. #428322; Robert B.; DOD January 9, 2006; (yes)
- B. #428320; Douglas J.; DOD January 14, 2006;
- C. #428327; Mildred D.; DOD January 1, 2006;
- D. #428448; Paul C.; DOD January 27, 2006.

2b. Violation of ORS 692.025(1) or OAR 830-030-0004(1) is grounds for discipline of Riggleman under ORS. 692.180(1)(g).

2c. Respondent allowed Riggleman, an unlicensed individual, to perform the duties of a licensed funeral service practitioner, in the instances described above.

2d. The board proposes to impose civil penalties of \$4000 for allowing the foregoing violations of OAR 692.025(1) or OAR 830-030-0004(1).

3.

3a. OAR 830-030-0010(3) provides that no embalmer shall embalm a human remains without obtaining written or oral permission of a person who has the right to control the disposition of the remains under ORS 97.130. When oral permission is received to embalm, written documentation/confirmation of the oral permission is required and must be documented by separate signature specifically authorizing embalming either on the "Statement of Funeral Goods and Services Selected" or on a separate embalming authorization form.

3b. On Saturday, December 2, 2006, at about 11:00 AM, Riggleman embalmed the remains of Kelly B. pursuant to an oral authorization Riggleman obtained from the person with the right to control final disposition of the remains, the decedent's wife, Abigail B.

However, Respondent failed to obtain for the permanent record the required written documentation to confirm the oral permission.

3c. The foregoing failure to include in the permanent record a written documentation/confirmation of oral permission pursuant to OAR 830-030-0010(3) is a violation of OAR 830-040-0000(6)(g) for which the Board may take disciplinary action under ORS 692.180(1)(g).

4.

4a. 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)

4b. The General Price List must include, among other items, the price for direct cremations offered by the funeral provider; a separate price for each direct cremation offered including an alternative container; a separate price for each direct cremation offered where the purchaser provides the container, a description of the services and container (if applicable) included in each price. 16 CFR 453.2(b)(4)(ii)

4c. The funeral establishment must 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 include at least the following information: The funeral goods and funeral services selected by that person and

the prices to be paid for each of them; the total cost of the goods and services selected.

16 CFR 453.2(5)

4d. At all times mentioned herein, the foregoing itemized statement is called the Statement of Funeral Goods and Services Selected (SFGSS) or contract.

4e. On or about August 21, 2006, Christine D. contracted with Respondent to perform the final disposition arrangements for her deceased spouse, Rodney D. Christine D. selected a direct cremation with alternative container as the method of final disposition.

4f. The facility's General Price List in effect at the time final disposition arrangements were made, dated December 28, 2005, states that the price of a direct cremation with alternative container is \$445.00 and includes the cremation process.

4g. On the Statement of Funeral Goods and Services Selected for the final disposition of Robert D., Respondent charged Christine D., among other items, \$300.00 for a direct cremation, \$50.00 for an alternative container and \$200.00 for the cremation process. Added together, the family was charged \$550.00 for a direct cremation with an alternative container.

4h. Therefore, the decedent's family paid \$550.00 for the goods and services of a direct cremation with alternative container when Respondent's General Price List, with an effective date of December 28, 2005 states that direct cremation with alternative container is \$445.00 and includes the following:

"The service of the funeral director, administrative and professional staff for obtaining and filing legal documents and processing necessary paperwork, removal of deceased from the place of death to the funeral home, (within a 50 mile radius), refrigeration, sanitary care of the remains, use of facilities for sheltering of remains, faxing obituary to the newspaper, assistance with any Life Insurance claims, processing application to the Veterans Administration, (where applicable), transportation of the deceased to the crematory and the cremation process."

4i. Respondent engaged in misrepresentation in the conduct of doing business or fraudulent and dishonest conduct, or both, which is cause for disciplinary action under ORS 692.180(1)(a) or ORS 692.180(1)(b) or both.

4j. In the alternative, Respondent's General Price List did not comply with the requirements listed in 16 CFR 453.2(b)(4), which is cause for disciplinary action under ORS 692.180(1)(h).

4k. Respondent's assigned manager, Baker, told the Board's investigator that the reason the Rodney D. family was charged \$200.00 for the cremation process on the SFGSS was because the decedent weighed over 300 pounds, for which the crematory charged an additional fee. However, the crematory did not charge Respondent an additional fee, nor did Robert D. weigh over 300 pounds.

4l. The foregoing is a violation of OAR 830-030-0090(2)(d)(B).

5.

5a. Respondent's advertisement was printed in the "St. Francis Catholic Church Bulletin" in Sherwood Oregon, on September 10, 2006. Respondent's advertisement stated the following:

Funeral Directors
Robert Baker
Jim Riggelman

5b. As of June 14, 2007, Respondent's website for Alternative Burial identifies Bob Baker (Respondent) and Jim Riggelman as "The Directors."

5c. Riggelman has not been a funeral director or funeral service practitioner since November 21, 2005.

5d. Respondent's advertisement therefore conceals or misstates a material fact. This fact is material as it may be relevant to a consumer's decision to engage Respondent's services.

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

6.

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

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 are 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 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 civil penalties 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 14th day of May, 2008

STATE MORTUARY AND CEMETERY BOARD

<s> Lynne Nelson _____
Designee: Lynne Nelson, Compliance Manager