

1 **BEFORE THE MORTUARY AND CEMETERY BOARD**
2 **- OF THE STATE OF OREGON**

4 IN THE MATTER OF:)
5 Patricia Chamberlan,)
6 Applicant.) FINAL ORDER
) OAH Case No. 134913
) Agency Case No. 07-1004
)

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9 The Mortuary and Cemetery Board (Board) adopts and incorporates by reference the
10 attached proposed order, dated September 24, 2007. Upon review of the record in this matter, the
11 Board adopts the proposed order in its entirety.

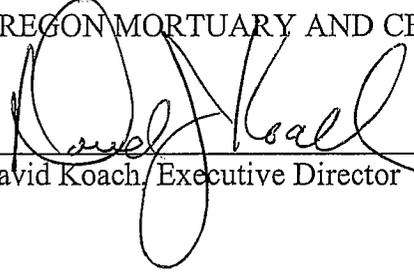
12 **ORDER**

13 Applicant's application for a preneed salesperson registration is hereby denied.

14 **NOTICE OF OPPORTUNITY FOR JUDICIAL REVIEW (COURT OF APPEALS)**

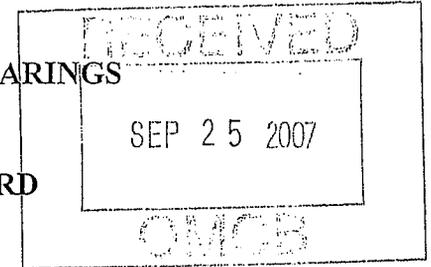
15 You are entitled to judicial review of this Final Order pursuant to ORS 183.482. Judicial
16 Review may be initiated by filing a petition for review with the Oregon Court of Appeals within 60
17 days from the date this Order was mailed to you.

18 Dated this 5th day of December, 2007

19 OREGON MORTUARY AND CEMETERY BOARD
20 
21 _____
22 David Koach, Executive Director

23
24 Date of Service: December 5, 2007

BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
STATE MORTUARY AND CEMETERY BOARD



In the Matter of the Denial of the Pre-Need) PROPOSED ORDER
Salesperson Registration Application of:)
)
Patricia Chamberlan) OAH Case No.: 134913
) Agency Case Nos.: 07-1004
APPLICANT

HISTORY OF THE CASE

On April 9, 2007 the State Mortuary and Cemetery Board (MCB) issued a Notice of Proposed Denial of Application and Opportunity for a Hearing (Notice) to Patricia Chamberlan (applicant) that denied her application for registration as a pre-need salesperson of death care services. On May 4, 2007 applicant requested a hearing. On May 9, 2007 MCB referred applicant's request for hearing to the Office of Administrative Hearings (OAH).

On July 9, 2007 a telephone pre-hearing conference was held to discuss discovery, the case status and other issues. On July 9, 2007 a hearing was set to occur on August 10, 2007. On August 10, 2007, a hearing was held at the State Office Building, 1st Floor, Conference Room 1A, 800 NE Oregon Street, Portland, Oregon 97232. Administrative Law Judge (ALJ) Jonathan Micheletti presided. Applicant appeared, testified, and represented herself. Jeff Musgrove and Paul Heinrich appeared and testified on behalf of applicant. Assistant Attorney General Johanna Matanich represented the MCB. Lynne Nelson, a compliance manager with the MCB, and Brandy Cochrane, an investigator with the MCB, appeared and testified on behalf of the MCB.

On August 10, 2007 MCB submitted an Amended Notice of Proposed Denial of Application, which provided additional grounds for the denial of the application. The record closed on August 10, 2007.

ISSUES

Whether the applicant made false or misleading statements when applying to the MCB for a certificate of registration as a pre-need salesperson of death care services. And if so, whether on that basis the MCB may deny her application for a certificate of registration. Oregon Revised Statute (ORS) 692.180(a) and Oregon Administrative Rule (OAR) 830-050-0050(2).

EVIDENTIARY RULING

Exhibits A1 through A12, offered by the MCB, were admitted into evidence without objection. Exhibit R1, offered by the applicant, was admitted over the hearsay and relevancy objection of MCB. Additionally, the pleadings marked PL1 through PL6 were made part of the record without objection.

FINDINGS OF FACT

1. On December 6, 1987 the Department of Motor Vehicles suspended applicant's Oregon Driver License. (Exs. A6 and A7 at1.) On April 5, 1988, applicant was stopped in Coos County Oregon while operating a motor vehicle on Highway 101. During the stop, the police officer cited applicant for driving with a suspended license, which is a traffic infraction. The police officer also cited applicant for providing a false name to a police officer, which is a misdemeanor crime. (Exs. A4 and A5.)

2. On May 16, 1988 applicant appeared in court, waived her right to an attorney, and pleaded guilty to providing false information to a police officer. The court imposed a fine of \$160 and sentenced applicant to one year bench probation. The fine was reduced to \$50 and the terms of applicant's probation required her to pay a fine, comply with all laws, and comply with terms the court order. (Ex. A4 at 3.)

3. On January 26, 2007 applicant submitted an Application For Pre-need Salesperson Registration (the application) to MCB. On the line requesting the applicant's driver's license number she entered "ODL 0698070." Applicant's Oregon Driver License number is actually 1698070. (Ex. A1 at 1; test. of applicant.)

4. Line 3 of the application asks; "Have you been arrested charged or cited for anything other than traffic violations? Yes or No." Claimant wrote "No." Line 4 of the Application asks; "Have you ever been convicted of a crime: felony or misdemeanor offense? Yes or No." Applicant wrote "No." (Ex. A1 at 3.)

5. The MCB processed the application and conducted a background check on applicant. The background check revealed the misdemeanor conviction for providing false information to a police officer in May 1988. (Test. of Cochrane) On January 30, 2007 Brandy Cochrane, an investigator for the MCB, contacted the Coos County Clerk. She also contacted applicant to discuss the omission of this fact on her application. Applicant told Ms. Cochrane that she did not recall the citation or guilty plea regarding the providing false information to the police that had occurred approximately 19 years prior. Applicant did recall being cited for a traffic violation but she did not specifically recall that she had been convicted of a misdemeanor offense in connection with the stop. (Test. of Cochrane; applicant; Ex. A10.) Applicant submitted a written response to MCB indicating that she recalled the event to be a traffic infraction. (Exs. A2 and A3)

6. The MCB reviewed the application and the information gathered during the background investigation and concluded that applicant provided false information to the MCB. (Test. of Nelson.) On April 9, 2006 the MCB issued a Notice of Proposed Denial of Application that denied applicant's request for registration as a pre-need salesperson on the ground that she falsely stated she had not been arrested or convicted of a misdemeanor crime. (PL1.) On May 4, 2007 applicant requested a hearing. (PL3.) On August 10, 2007, the MCB amended its denial adding the allegation that the applicant provided a false Oregon Driver License number on her application. (PL1; *amended 8-10-07.*)

CONCLUSIONS OF LAW

Applicant provided false information on her application for a certificate of registration as a pre-need salesperson. The MCB may deny applicant's application for registration as a pre-need salesperson of death care for providing false information on her application.

OPINION

MCB is required to create and maintain a registry of individuals registered to sell pre-arrangement death care services. ORS 97.931 provides, in part:

(1) A salesperson may not engage in prearrangement sales made by endowment care cemeteries under ORS 97.929 or in preconstruction sales or prearrangement sales unless the salesperson is registered with the State Mortuary and Cemetery Board[.] The board by rule shall:

(a) Establish procedures for issuing salesperson registrations under this subsection;

(b) Establish standards for determining whether a salesperson registration should be issued[.]

(2) The board may conduct a background check of any salesperson applying for registration under subsection (1) of this section. The background check may include information solicited from the Department of State Police. After consideration of information obtained from any background check and any other information in its possession, the board shall determine whether to register the salesperson.

(3)(a) The board may impose a civil penalty of up to \$1,000 per violation or suspend, revoke or refuse to issue or renew the registration of a salesperson described in subsection (1) of this section upon a determination that the applicant or holder has not complied with the provisions of ORS 97.923 to 97.949 or ORS chapter 692, or any rules adopted thereunder[.]

The MCB asserts that the applicant's request for a certificate of registration as a pre-need salesperson of death care services should be denied on the ground that she provided false information to the MCB when applying for registration. The burden of proving a fact or position rests with the proponent. ORS 183.450(2). As the proponent of the position that applicant's request for registration be denied, the MCB bears the burden of proving by a preponderance of evidence that applicant provided false information in her application, and that the MCB may deny her application on that basis. The MCB relies on ORS 692.180, which provides in part:

(1) Upon complaint or upon its own motion, the State Mortuary and Cemetery Board may investigate any complaint concerning any person, licensee or holder of a certificate of authority made by any person or by the board. If the board finds

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[.]

(g) Violation of any of the provisions of this chapter or any rules adopted under this chapter[.]

MCB also relies on OAR 830-050-0050(2), which provides:

The following circumstances may be considered grounds for reprimand, assessment of civil penalty, or refusal to grant, refusal to renew, revocation, or suspension of an applicant's or a licensee's license, certificate, or registration[.]

(2) Making false or misleading statements in applying to the Board for licensure, certificate of authority, certificate of registration, or apprenticeship[.]

The MCB established that applicant provided false or misleading information in her application for registration as a pre-need salesperson of death care services. In her application, applicant indicated that she had not been arrested or convicted of a misdemeanor crime other than a traffic infraction. Applicant's assertion was false. Moreover, applicant provided false information when she provided an incorrect driver license number.

Applicant argued that she should not be refused registration, because she did not make false statements with the intent to deceive or mislead the MCB. Applicant asserted that she simply forgot about the nature of the conviction that had occurred 19 years prior. She also asserted that the incorrect driver license number was a typographical error. Applicant's testimony was credible.

However, the Oregon Court of Appeals addressed whether a heightened mental state is required in *Pierce v. Dept. of Public Safety Standards and Training*, 196 Or. App. 190 (2004). In that case, DPSST revoked a police officer's certification when DPSST discovered the officer provided false information on an application for certification. On appeal, the officer argued that the false information was not presented with the intent to deceive, and therefore, should not result in the revocation of his certification under the statute, because he did not have the requisite mental state of "intent to deceive." The Court concluded that intent to deceive was not a required mental state unless the statute expressly stated so. (*Id.* at 196) In the instant case, the legislature did not expressly impose a heightened mental state of knowledge, intent, deliberateness or willfulness in the language of ORS 692.180. Hence, the intent to deceive is not required to deny applicant's registration.

It is within the MCB's authority under ORS 97.931(3)(a), ORS 692.180(1) and OAR 830-050-0050(2) to refuse applicant's request for registration, because applicant made false

statements to the MCB when applying for registration as a pre-need salesperson of death care services.

ORDER

I propose that the State Mortuary and Cemetery Board deny applicant's request for a certificate of registration as a pre-need salesperson of death care services.

Jonathan Micheletti

Jonathan Micheletti
Administrative Law Judge
Office of Administrative Hearings

ISSUANCE AND MAILING DATE:

September 24, 2007

EXCEPTIONS

This is a proposed order. The Board will issue the final order in this case. You have the right to file written exceptions to this proposed order before the Board issues the final order. Exceptions are written objections to the Administrative Law Judge's findings or recommendations. If you file timely written exceptions, you may request to appear personally before the Board and provide oral argument regarding your written exceptions. The Board will notify you when your matter is scheduled to appear before the Board. If you fail to file timely written exceptions, you will waive your right to present oral argument before the Board. To be considered timely, written exceptions must be filed with the Board within thirty (30) days from the date of this proposed order at the following address:

Oregon Mortuary and Cemetery Board
State Office Building, Suite 430
800 NE Oregon Street, Box #19
Portland OR 97232-2162

APPENDIX A
LIST OF EXHIBITS CITED

- Ex. A1: Application for Pre-Need Salesperson Registration
- Ex. A2: Copy of Letter from Patricia Chamberlan to MCB dated January 30, 2007
- Ex. A3: Copy of Letter from Patricia Chamberlan to MCB dated February 26, 2007
- Ex. A4: Copy of Citation and Judgment, Coos County District Court Case Number 88-CR-0750
- Ex. A5: Copy of Microfiche Record, Citation Number U19567
- Ex. A6: Letter from DMV to Patricia Chamberlan dated November 6, 1987
- Ex. A7: Archived DMV Driving Record for Patricia Chamberlan
- Ex. A10: Notes of Brandy Cochrane recording interview with Coos County Clerk and Patricia Chamberlan on January 30, 2007

CERTIFICATE OF MAILING

On September 24, 2007, I mailed the foregoing Proposed Order in OAH Case No. 700060/134913.

By: First Class Mail

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Lynne Nelson
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