

## Notice of Proposed Denial of Application

### STATE MORTUARY AND CEMETERY BOARD

### STATE OF OREGON

In the Matter of the Preneed Salesperson Registration Application of <b>CRYSTAL NEWHAM (WOOD)</b> ,  <b>APPLICANT</b>	Notice of Proposed Denial of an Application And Opportunity for a Hearing  <b>CASE NO. 07-1035</b>
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Pursuant to ORS 692.180 and ORS 97.931, the Oregon Mortuary & Cemetery Board proposes to deny your application for Preneed Salesperson Registration on the grounds noted below.

#### Grounds for Application Denial:

1. On or about August 27, 2007, the Oregon Mortuary & Cemetery Board (the "Board") received an Application for a Preneed Salesperson Registration from Applicant Crystal Newham ("Applicant").
2. On November 30, 2000, in Board Case No. 00-1030, the Board issued a Final Order by Default to Applicant in which the Board refused to issue a Preneed Salesperson Certificate of Registration because Applicant had been convicted of crimes whose facts and circumstances have a demonstrable bearing on the standards of practice in the funeral business.
3. In 1998, Applicant was convicted in Oregon of a Class A misdemeanor for Theft.
4. In the 2007 Application, Applicant's Background Information, Section 5, Question #2, asks Applicant, "As a licensee (or applicant) have you ever received a reprimand,

warning, violation, suspension, fine, cancellation (or denial) by any city, county or state licensing agency?" Applicant's response is, "No."

5. In the Application, Applicant certified that she understood that any misrepresentation or omission of fact on her application or supplementary background materials shall be cause for refusal to issue a Preneed Salesperson Registration.

6. Therefore, in her Application to the Board, Applicant failed to disclose that her 2000 Preneed Salesperson Registration Application was denied. A false statement is grounds for denial of the Application.

7. In the 2007 Application, Applicant disclosed two additional convictions in Oregon since her 2000 Application: a 2002 Theft II conviction under ORS 164.045, a Class A misdemeanor and a 2002 Forgery (Fraud-Credit Card) conviction, under ORS 165.055, a Class A misdemeanor.

8. The conduct and crimes described in paragraphs 3 and 7 have a demonstrable bearing upon the standards of the profession. A Preneed Salesperson Registration would allow Applicant to have contact with clients and access to their preneed payments, which may include cash, check or credit card; with which Applicant's behavior would be inappropriate.

9. The foregoing misrepresentation on an Application, thefts, and convictions that have a demonstrable bearing upon the standards of the profession are each cause for refusal to grant a license under ORS 97.931(3), 670.280(2), (3), 692.180(1)(a) and (i) and OAR 830-011-0080(2), and 830-050-0050(2), (3) and (9).

10. Definitions that may be relevant to this notice are listed in ORS 97.923 and 692.010 and OAR 830-011-0000.

#### **Opportunity for Hearing**

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 Oregon Mortuary & Cemetery Board (the "Board") at 800 NE Oregon Street, Suite 430, Portland, OR 97232, within 60 days from the date this notice was mailed. If a request for hearing is not received within this 60-day period, your right to a hearing shall be considered waived.

If you request a hearing, you will be notified of the time and place of the hearing. A Notice of Contested Case Rights and Procedures is enclosed with this Notice of Proposed Denial of Application. If you do not request a hearing within 60 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 denying your Application. If the Board issues a final order by default, it designates its file on this matter as the record.

DATED this 6<sup>th</sup> day of November, 2007

STATE MORTUARY AND CEMETERY BOARD



Lynne Nelson  
Compliance Manager

## NOTICE OF CONTESTED CASE HEARING RIGHTS AND PROCEDURES (Individual)

1. **Law that Applies.** The matter set for hearing is a contested case. The hearing will be conducted as provided in Chapter 183 Oregon Revised Statutes, Chapter 692 Oregon Revised Statutes, the administrative rules of the State Mortuary and Cemetery Board (the "Board") and Oregon Administrative Rule Chapter 137.
2. **Right to Attorney.** You may be represented by an attorney at the hearing. Most persons are represented by counsel. You are not required to be represented by counsel. If you are not represented at the hearing and during the hearing you determine that representation by an attorney is necessary, you may request a recess to allow you an opportunity to secure the services of an attorney. The hearing officer will decide whether to grant such a request. The Board will be represented by an attorney.
3. **Hearing Officer.** The person presiding at the hearing is known as the hearing officer. The hearing officer will rule on all matters that arise at the hearing, subject to agency consideration of matters certified for agency decision under OAR 137-003-0635 or matters subject to agency review under OAR 137-003-0640. The hearing officer will be assigned by the Chief Hearing Officer from the Hearing Officer Panel. The Hearing Officer Panel consists of employees of the Employment Department and independent contractors with the Hearing Officer Panel. The hearing officer does not have the authority to make the final decision in the case. The final determination will be made by the Board.
4. **Witnesses.** A witness must testify under oath or affirmation to tell the truth. The Board will issue subpoenas for witnesses on your behalf upon a showing that their testimony is relevant to the case and is reasonably needed by you to establish your position. If you are represented by an attorney, your attorney may issue subpoenas. Payment of witness fees and mileage to the person subpoenaed is your responsibility.
5. **Order of Evidence.** A hearing is similar to a court proceeding but is less formal. Its general purpose is to determine the facts and whether the Board's proposed action is appropriate. The order of presentation of evidence is normally as follows:
  - a. Testimony of witnesses and other evidence of the Board in support of its proposed action.
  - b. Testimony of your witnesses and your other evidence.
  - c. Rebuttal evidence by the Board and by you.
6. **Burden of Presenting Evidence.** The burden of presenting evidence to support an allegation or position rests upon the proponent of the allegation or position. You should approach the hearing prepared to present the testimony of witnesses, including yourself, and other evidence that will support your position. All witnesses are subject to cross-examination and also to questioning by the hearing officer.
7. **Admissible Evidence.** Evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs is admissible and will be received. Hearsay evidence is not automatically excluded. Rather, the fact that it is hearsay generally affects how much reliance the Board will place on it in reaching a decision.

There are four kinds of evidence: