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BEFORE THE MORTUARY AND CEMETERY BOARD

OF THE STATE OF OREGON

In the Matter of the funeral establishment license of Patrick W. Sweeney and Patricia A. Sweeney dba Sweeney Mortuary (FE-8174), in Condon, Oregon **RESPONDENT**		Notice of Proposed Disciplinary Action And Opportunity for a Hearing **CASE NO. 07-1038A**

Pursuant to ORS 692.180, the Oregon Mortuary & Cemetery Board ("Board," "OMCB") proposes to take disciplinary action against your funeral establishment on the grounds noted below. For statutory and rule violations the Board may impose one or more of the following sanctions: Reprimand; license revocation; civil penalties of up to $1000 for each violation; or other sanctions as authorized by law.

1. At all times mentioned herein Patrick W. Sweeney and Patricia A. Sweeney dba Sweeney Mortuary (hereinafter "Respondent") was licensed by the OMCB as a funeral establishment (OMCB License No. FE-8174) located in Condon.

2. At all times mentioned herein, Patrick W. Sweeney (hereafter "Sweeney") was licensed as a funeral service practitioner and embalmer (OMCB License No. CO-3473), and at all times mentioned herein Sweeney was the manager of Respondent funeral establishment.

Grounds for Disciplinary Action:

3. The Federal Trade Commission's Funeral Rule ("FTC Rule") provides that funeral providers must give a printed or typewritten price list, with effective date, for retention to persons who inquire in person about the funeral goods, funeral services and prices of funeral goods or services offered by the funeral provider. This price list must be headed "General Price List" (hereafter "GPL") 16 CFR 453.2(b)(4)

4. The FTC Rule provides that funeral providers may charge consumers for only the goods or services expressly selected by the consumer, those goods or services required by law, and the 'non-declinable' basic services fee. The basic services fee includes services that are common to virtually all forms of disposition or arrangements offered, including conducting the arrangements conference, securing the necessary permits, preparing the notices, sheltering of remains, and coordinating the arrangements with the cemetery, crematory, or other third parties. 16 CFR 453.4(ii)(2)(A);16 CFR 453.2(b)(4)(iv)

5. The FTC Rule expressly states that the basic services fee is the only non-declinable fee allowed for services, facilities, or unallocated overhead, unless state or local law requires otherwise. Other than the basic services fee, funeral providers cannot charge any separate fee for overhead. Moreover, funeral providers cannot list fees for "additional services" of the funeral director and staff, if those fees should be included in the basic services fee, or in one of the other items required to be listed on the GPL. 16 CFR 453.2(b)(4)(iv)

6. Pursuant to 16 CFR 453.2(b)(4)(ii) and (iii), in addition to the basic services fee, other items required to be listed on the GPL, if offered for sale, include:

a. Use of facilities and staff for viewing
b. Use of facilities and staff for funeral ceremony

7. In addition to the basic services fee listed on the GPL effective April 15, 2006, Respondent itemized an additional services fee. Specifically, the GPL contains the following items:

a. "Minimum Services Fee - $1395.00" *(hereafter, "Basic Services")* that includes: "minimum service of staff, 24-hour availability, securing and recording vital statistics and obtaining permits;"
b. "Additional Services of Funeral Director & Staff - $458.00" *(hereafter, "Additional Services")* that includes: "the arrangement conference and caring for details; Funeral Director and attendants for service or visitation; floral and memorial care; and assistance with benefits...;" and,
c. "Use of Chapel for ceremony OR EQUIPMENT AND STAFF TO [AT] CHURCH OR OTHER FACILITY FOR SERVICES -- $459.00;" *(hereafter "Use of Chapel)*;"

8. When making final disposition arrangements for at least three decedents Respondent charged a second non-declinable fee in the following manner:

a. Decedent: George L.. - On or about January 17, 2007, Respondent charged the family $1395.00 for Basic Services, $458.00 for Additional Services, and $359.00 for Use of Chapel for funeral ceremony.

b. Decedent John R. - On or about March 4, 2007, Respondent charged the family $1395.00 for Basic Services, $458.00 for Additional Services, and $359.00 for Use of Chapel for funeral ceremony.

c. Decedent Andrew L. - On or about April 21, 2007, Respondent charged the family $1395.00 for Basic Services, $458.00 for Additional Services, and $359.00 for Use of Chapel for funeral ceremony.

9. Therefore, in each of the three foregoing instances, Respondent charged two non-declinable services fees when only one is permitted pursuant to 16 CFR 453.2(b)(4)(iii) and (iv). The foregoing is cause for disciplinary action under ORS 692.180(1)(h), ORS 692.180(1)(g) and OAR 830-030-0090(1)(c).

10. The Board previously warned Respondent that funeral providers may only charge one non-declinable services fee to consumers:

a. In an Inspection follow-up letter sent to Respondent, dated February 5, 1991, Inspector Robert Belcher (Belcher) noted two non-declinable fees on Respondent's effective General Price List and advised Respondent that according to FTC the only non-declinable charge permissible is for the basic services of funeral director and staff.

b. At the February 14, 2003 facility inspection, Investigator Irene Zentner (Zentner) noted two non-declinable fees on Respondent's General Price List, effective October 15, 2001. Zentner advised Respondent via an Inspection Receipt dated February 14, 2003 and a follow-up later dated March 14, 2003, that pursuant to 16CFR 453.2(b)(4)(iii)(C) and (iv), the only non-declinable fee allowable is the Basic Services Fee.

12. Definitions that may be relevant to this notice are contained in ORS 692.010, 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 have the right 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 discipline as imposed 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 8th day of August, 2008

STATE MORTUARY AND CEMETERY BOARD

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