

## Final Order by Default

### State Mortuary and Cemetery Board

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| In the matter of the denial of the funeral service practitioner and embalmer Applications of <b>LESLIE W. LIPPITT,</b><br><b>APPLICANT</b> | <b>FINAL ORDER</b><br><b>CASE NO. 09-1028</b> |
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On October 12, 2009, the Oregon Mortuary & Cemetery Board (Board) properly served a Notice of Proposed Denial of Applications to Applicant that proposed to deny his applications for funeral service practitioner license and embalmer license. The Notice offered Applicant an opportunity for a hearing if requested within 60 days from the date the Notice was mailed. The Notice was mailed to Applicant, certified mail with return receipt requested to Applicant's current address listed on the Board's records. The Board received a signed Receipt for certified mail. Applicant did not request a hearing within this 60-day period or otherwise. The Notice designated the Board's file on this matter as the record for purposes of default.

NOW THEREFORE, after considering the Board's file relating to this matter, the Board enters the following:

#### **FINDINGS OF FACT**

1. Applicants for a reciprocal funeral service practitioner or reciprocal embalmer licensure must apply on a form provided by the Board and the Board must be satisfied that the applicant has the requisite qualifications including licensure in good standing in another state for three of the past five years immediately preceding the application date. ORS 692.140 and OAR 830-020-0030(1)
2. Applicants represent by signature on the application, that all statements made on the application and other supplementary materials are true and correct to the best of their knowledge and belief, and acknowledge that any misrepresentation or omission is cause for refusal to issue a license.
3. By application received on May 13, 2009, Applicant applied to the Board for "Embalmer License by Reciprocity & Funeral Service Practitioner License by Reciprocity" (hereafter "Application 1").

4. Applicants for funeral service practitioner licensure by reciprocity are required to take an examination by the Board. OAR 830-020-0030(2)
5. By application received on May 13, 2008, the Applicant applied to take the funeral service practitioner examination (hereafter "Exam Application").
6. On page 4 of Application 1, Question 5a asks, in part, "Have you been licensed and actively practicing as an embalmer and a funeral director for three of the five years immediately preceding the application date: Yes/No:\_\_\_\_\_". Applicant responded, "Yes."
7. On page 4 of Application 1, Question 5 asks Applicant for the "State of Reciprocal License:" In response, Applicant wrote the state of Washington. Question 5 also asks the "Date Licensed:" and Applicant wrote "July 2003."
8. On page two of Application 1, applicants are required to list information about all previous employers within the last ten years, including "dates of employment." In response, Applicant stated he worked at a Washington funeral establishment (Neptune Society) from June 2003 to April 2005.
9. Applicant does not meet the requirements for licensure under ORS 692.140(2) because he did not provide proof he was licensed and actively practicing as either a funeral service practitioner or embalmer for three of five years in the state of reciprocal license.
10. On May 13, 2009, the Board staff advised Applicant by phone that, according to the length and period of time he was employed at a funeral establishment (Neptune Society) in Washington, he did not meet the "three of the past five years" reciprocity requirement in his Application 1.
11. Applicant typed the words: "Please add Texas as a reciprocal State to my application" on the Exam Application that he emailed to the Board on May 13, 2009.
12. With Application 1, Applicant submitted a letter from a Human Resources Manager for the Neptune Society, dated May 11, 2009. The letter states: "This letter is to confirm that Leslie Lippitt is employed with us since June 2003 on a full time basis as a licensed Funeral Director and Embalmer with all the duties and responsibilities related with the profession."
13. Neptune Society does not offer embalming at any location. Applicant did not practice as an embalmer while employed full-time with Neptune Society. Therefore, Applicant did not practice as an embalmer for three of the past five years in any state.
14. Applicant then submitted Application 2 for an embalmer license based on past practice as a licensed embalmer in Oregon. ORS 692.105(3), ORS 692.190(9) and OAR 830-011-0020(11)
15. On page 5 of Application 1, Question #3, Background Information, asks Applicant, "Have you ever been arrested, charged, or cited for anything other than traffic violations? Yes or No:\_\_\_\_\_ " Applicant wrote, "No."

16. On or about October 15, 1993, in Clatsop County, Applicant was charged with Theft II, a Class A misdemeanor, for unlawfully substituting an alternative container for a more expensive casket at a crematory in Astoria, Oregon on June 4, 1993. Applicant pleaded not guilty. On March 14, 1994, the court dismissed the charge of Theft II, allowing a civil compromise.
17. On or about December 1, 1994, in Board Case No. 93-1034, the Board issued an Amended Notice of Proposed Disciplinary Action to Applicant. (Applicant was licensed as a funeral service practitioner and embalmer by the Board at that time). In the Notice, the Board alleged Applicant sold a \$395.00 casket for cremation, but then, prior to the cremation, substituted a minimum cremation container worth substantially less, and resold the more expensive casket to another client for the financial benefit of his employer.
18. On or about January 25, 1995, a Final Order by Consent against Applicant became effective that imposed discipline on Applicant. In the Final Order, Applicant admitted to the foregoing facts alleged in the Notice and to the following violations of the Board's 1993 administrative statutes and rules:
  - i. Misrepresentation in the conduct of business: specifically, a sales practice which concealed or misstated a material fact in violation of OAR 830-30-100(9), OAR 830-30-090(3) and ORS 692.180(1)(a);
  - ii. Fraudulent or dishonest conduct in providing funeral services in violation of OAR 830-30-090(2) and ORS 692.180(1)(b);
  - iii. Failure to meet a high moral and service standard in violation of OAR 830-30-090(2);
  - iv. Failure to meet a high standard of competence in the conduct of a service, in violation of OAR 830-30-090(3); and
  - v. Unfair competition and a failure to adhere to sound business practices, in violation of OAR 830-30-090(4).

### **ULTIMATE FINDINGS OF FACT**

1. Applicant misrepresented his work history and made false and misleading statements to the Board by claiming he was practicing as an embalmer for three of the past five years immediately prior to his application date.
2. Applicant misrepresented his criminal history and made false and misleading statements to the Board by failing to disclose the foregoing arrest.
3. Applicant did not meet the requirements of reciprocity in Application 1.
4. The disciplinary action imposed against Applicant in 1994 for the foregoing violations is grounds for refusing to issue a funeral service practitioner or embalmer license to Applicant.

### **CONCLUSIONS OF LAW**

1. In applying to the Board for licensure, Applicant misrepresented his work history and his criminal history, failed to cooperate or answer truthfully and completely board

inquiries, and made false or misleading statements on an application. The foregoing are violations of OAR 830-030-0090(2)(c)(D), OAR 830-030-0090(2)(d)(B), and OAR 830-050-0050(2) which are grounds for denial of an application for funeral service practitioner and embalmer license under ORS 692.180(1)(g); and the foregoing are grounds for denial of funeral service practitioner and embalmer license pursuant to ORS 692.180(1)(a).

2. Applicant failed to meet the requirements for licensure under ORS 692.140(2), which is grounds for denial of an application.

3. The disciplinary action against Applicant in 1994, for conduct that bears a demonstrable relationship to death care industry practices or operations, is grounds for refusing to issue a funeral service practitioner or embalmer license to Applicant pursuant to OAR 830-050-0050(5) and ORS 692.180(1)(g).

### ORDER

1. Applicant's Funeral Service Practitioner and Embalmer license Applications are hereby denied.
2. This Final Order shall become effective when signed by the Executive Director of the Board.

DATED and ENTERED this \_\_21st\_\_ day of December, 2009

\_\_\_\_<s> Michelle Gaines\_\_\_\_\_  
Michelle Gaines, Executive Director  
Oregon Mortuary & Cemetery Board

Date of Service: \_\_December 21, 2009\_\_\_\_\_

**Appeal Rights:** You are entitled to judicial review of this order in accordance with ORS Chapter 183.482. You may request judicial review by filing a petition with the Court of Appeals in Salem, Oregon within 60 days from the date of service of this order.