

Final Order by Default

State Mortuary and Cemetery Board

**In the Matter of the Preneed
Salesperson Registration
Certificate Application of:**

John J. Poland,

Applicant

Case No.: 09-1061

FINAL ORDER

On April 12, 2010, the Oregon Mortuary & Cemetery Board (Board) properly served a Notice of Proposed Denial of Application and Opportunity for Hearing (Notice) on John J. Poland (Applicant) that it intended to deny his application for a Preneed Salesperson Registration Certificate for violation of ORS 692.180(1)(a) and (b), OAR 830-050-0050(2) and (9) and OAR 830-030-0090(2).

The Notice offered Applicant an opportunity for a hearing if requested within 60 days from the date the Notice was mailed. 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 Final Order by Default:

FINDINGS OF FACT

1. Applicants for Preneed Salesperson Registration must apply on a form provided by the Board and consent to a background check. OAR 830-011-0070; ORS 97.931.
2. Applicants are informed by means of written notice on the application, that any misrepresentation or omission is cause for refusal to issue a certificate.
3. By application received on November 4, 2009, Applicant applied to the Board for a Preneed Salesperson Registration certificate.
4. The Application's first page asks whether the Applicant has ever used or been known by any other names.
5. Applicant answered "No."

6. A background investigation revealed that Applicant was born in 1974 with the legal name of John Fuget. Applicant's surname was changed to Poland in 1994.
7. The Application's Background Information section, Question #3, asks Applicant, "Have you **ever** been arrested, charged or cited for anything other than traffic violations?"
8. Applicant answered "No."
9. Applicant did not disclose four charges or arrests: (1) On December 2, 1995, in Myrtle Creek, Oregon, Applicant was charged with Contempt of Court, a Class B Misdemeanor; (2) On November 26, 1997, in Douglas County, Oregon, Applicant was arrested for Disorderly Conduct, a Class B Misdemeanor; (3) On May 1, 2004, in Myrtle Creek, Oregon, Applicant was arrested on charges of Reckless Driving, a Class A Misdemeanor; and (4) On July 1, 2005, in Myrtle Creek Oregon, Applicant was arrested for Assault Third Degree, a Class C Felony, and Criminal Trespass, a Misdemeanor.
10. The Application's Background Information section, Question #4 asks Applicant, "Have you **ever** been convicted of, or are you currently charged with, committing a crime whether or not adjudication was withheld?" If the answer is "Yes," the Applicant is required to provide a signed, dated, written statement explaining the circumstances of each incident.
11. Applicant wrote "No," but crossed it out and answered "Yes."
12. Applicant provided a written statement describing a July 5, 2005, conviction for Assault Fourth Degree, a Class A Misdemeanor.
13. Applicant did not disclose three Class B Misdemeanor convictions: (1) a December 4, 1995 conviction in Myrtle Creek Municipal Court for Contempt of Court; (2) a January 5, 1998 conviction, in Roseburg, for Disorderly Conduct; and (3) an October 4, 2004 conviction, in Myrtle Creek Municipal Court, for Disorderly Conduct.

CONCLUSIONS OF LAW

1. In applying to the Board for licensure, Applicant misrepresented his prior name, his arrest history and his criminal conviction history. Making a misrepresentation to obtain licensing is grounds for license denial pursuant to ORS 692.180(1)(a) and OAR 830-050-0050(2).
2. In applying to the Board for licensure, Applicant's actions were fraudulent or dishonest with respect to his prior names, arrest history and conviction history. Fraudulent or dishonest conduct related to a sales or business practice is grounds for license denial. ORS 692.180(1)(b), OAR 830-050-0050(9). Using fraud, misrepresentation, or deceit during the application process for licensure,

certification or registration is grounds for license denial. OAR 830-030-0090(2)(c)(D).

3. Violation of a Board rule is grounds for denial of an application pursuant to ORS 692.180(1)(g).

4. Violation of a provision of ORS chapter 692 or any rule adopted thereunder is grounds for denial of a Preneed Salesperson Registration application. ORS 97.931(3) and OAR 830-011-0080(2).

5. Denial of Applicant's license Application is appropriate under the circumstances.

ORDER

1. Applicant's Preneed Salesperson Registration Application is hereby denied.
2. This Final Order shall become effective when signed by the Executive Director of the Board.

DATED and ENTERED this __22nd__ day of November, 2010.

__<s> Michelle Gaines_____
Michelle Gaines
Executive Director
Oregon Mortuary & Cemetery Board

Date of Service: __November 22, 2010_____

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.