

Notice of Proposed Denial of Application

State Mortuary and Cemetery Board
State of Oregon

<p>In the Matter of the funeral establishment license application of Cox & Cox Funeral Chapel, Inc.</p> <p style="text-align: center;">Applicant.</p>	<p>Notice of Proposed Denial of Application and Opportunity for a Hearing</p> <p style="text-align: center;">CASE NO. 10-1031</p>
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Pursuant to ORS 692.025, ORS 692.146, ORS 692.148, ORS 692.180(1), and ORS 692.260 the Oregon Mortuary & Cemetery Board (Board) proposes to deny your application for change of ownership and location for a license to operate a funeral establishment.

Grounds for Disciplinary Action:

1.

1a. On or about May 14, 2010, the Board received a change of ownership application and change of location (Application) from Cox & Cox Funeral Chapel, Inc. The application requests approval of a change the ownership of a funeral establishment (FE-8582) from Jerome Cox-Tanner dba Cox & Cox Funeral Chapel, sole proprietor, to a corporate entity: Cox & Cox Funeral Chapel, Inc. The Application lists the proposed new location of the facility as 328 NE Failing Street, Suite 102, Portland, Oregon.

1b. For the following reasons, the Board proposes to deny the Application:

2.

2a. From approximately February 1, 2007 to the date of this notice, Jerome Cox-Tanner doing business as Cox & Cox Funeral Chapel held a funeral establishment license issued by the Board for the establishment located at 2736 NE Rodney Avenue, Portland, Oregon 97212.

2b. Cox & Cox Funeral Chapel, Inc. was incorporated in Oregon in May 2007. The corporate president and registered agent is Jerome Cox-Tanner. The Application lists Jerome Cox-Tanner as the owner of the corporate applicant. After Cox & Cox Funeral Chapel Inc. was formed, the corporation did not submit a change of ownership application to the Board until May 14, 2010.

2c. Jerome Cox-Tanner's State registration for the assumed business name of Cox & Cox Funeral Chapel has been inactive since May 2007.

2d. Each facility must be registered with the Board by its true corporate, firm, or individual name. OAR 830-040-0030.

2e. If there is a proposed change of ownership or principals of a licensed funeral establishment, the establishment must apply to the State Mortuary and Cemetery Board for a new license and all principals of the proposed new owner are subject to a background check. ORS 692.025(4), (8); ORS 146(1), (3); ORS 692.148(1), (2); OAR 830-040-0000(4), (5); OAR 830-040-0040 and OAR 830-040-0040(1) to (5).

2f. The ownership or principals of the funeral establishment has changed without prior Board approval. The corporate Applicant has operated the funeral establishment without an appropriate license. The Board proposes to deny the Application for violation of the statutes and rules listed in paragraph 2e above and ORS 692.180(1)(a) or (g).

3.

3a. Alternatively, in Final Orders effective May 30, 2007, the Board imposed discipline against the funeral establishment license of Charlene Cox and Jerome Cox-Tanner (joint proprietors) dba Cox & Cox Funeral Chapel and the funeral service practitioner (FSP) license of Jerome Cox-Tanner for violating OAR 830-050-0050(8), OAR 830-050-0000(2), and OAR 830-030-0090(1)(e). Jerome Cox-Tanner is a principal of the corporate applicant. See OAR 830-011-0000(33).

3b. Also alternatively, in Agency Case Numbers 07-1048A&B, 08-1073A&B, 08-1075A&B, the Board issued *an Amended* Notice of Proposed License Revocation and Civil Penalties against the funeral establishment license of Jerome Cox-Tanner dba Cox & Cox Funeral Chapel and the funeral service practitioner license of Jerome Cox-Tanner. The Board re-alleges the grounds for discipline in those matters as grounds to deny the pending Application based on the charges against a principal of the corporate applicant:

i. From approximately October 1, 2007 through March 31, 2009, while unlicensed, Schawna Tanner (Tanner) performed a task, while working at and representing the funeral establishment, that only a licensed funeral service practitioner or funeral service practitioner apprentice may perform with respect to the disposition of at least one of the following twelve (12) decedents, as identified by the Oregon State identification numbers: #490909; #430905; #430943; #430923; #447053; #447095; #447077; #447088; #404041; #544332; #544329; and #544323.

ii. Therefore, in at least one of the final disposition arrangements for the foregoing decedents, Tanner performed the duties of a funeral service practitioner or funeral service practitioner apprentice, without a license, in violation of OAR 830-030-0004(1) or ORS 692.025(1).

iii. Jerome Cox-Tanner dba Cox & Cox Funeral Chapel and as an FSP knew or should have known of Tanner's actions described in the foregoing paragraphs, at the time or soon after Tanner performed the duties of a licensed funeral service practitioner or funeral service practitioner apprentice when she was not licensed to do so.

iv. In at least one of the final disposition arrangements for the foregoing decedents, Jerome Cox-Tanner dba Cox & Cox Funeral Chapel and as an FSP allowed Tanner, an unlicensed individual, to perform the duties of a licensed funeral service practitioner or funeral service practitioner apprentice, including but not limited to, making arrangements with at least one family. The foregoing is a violation of OAR 830-050-0050(8).

v. In at least one of the final disposition arrangements for the foregoing decedents, Jerome Cox-Tanner dba Cox & Cox Funeral Chapel engaged in unprofessional conduct by directly or indirectly causing Tanner to be in violation of OAR 830-030-0004(1) or ORS 692.025(1), as described above. The foregoing is a violation of OAR 830-050-0000(2).

vi. In at least one of the final disposition arrangements for the foregoing decedents, Jerome Cox-Tanner dba Cox & Cox Funeral Chapel and as an FSP failed to assign persons to perform functions for which they are licensed and which are within their scope of practice/scope of duties when he allowed Tanner to perform the duties of a funeral service practitioner, as described above. The foregoing is a violation of OAR 830-030-0090(1)(e).

3c. For the foregoing reasons, the Board intends to deny the Applicant's change of ownership application and change of location, under the statutes and rules listed in paragraph 3b above and ORS 692.025(4), (8); ORS 146(1), (3); ORS 692.148(1), (2); ORS 692.180(1)(g); OAR 830-011-0050(2) and OAR 830-040-0040 and OAR 830-040-0040(1) to (5).

4.

4a. *Also alternatively, on or about December 3, 2009, a consumer, B. H., called Respondent's funeral establishment, and discussed adding a memorial service and a viewing to existing funeral prearrangements she had made with Respondent in September 2009 for the final disposition of her father.*

4b. *Tanner is not registered as a pre-need salesperson with the Board under ORS 97.931.*

4c. *On or about December 9, 2009, Tanner met with B. H. at B. H.'s home. During their meeting, B. H. agreed to purchase a ceremony service, viewing, memorial folders, and a photo enlargement as part of her father's pre-arrangements. B. H. gave Tanner a check in the amount of \$931.00 for the amount due for these services.*

4d. *Shortly after the December 9, 2009 meeting, Respondent mailed B. H. a statement of the funeral goods and services she had purchased for \$931.00, which does not contain all of the information required by ORS 97.939(3) and ORS 97.941 for a prearrangement sales contract. See ORS 97.923(9).*

4e. *Respondent did not deposit the monies received from B. H. on or about December 9, 2009 into a proper trust account within five days of receipt, in violation of ORS 97.941(1), (2) and OAR 441-930-0310(6).*

4f. *The foregoing violations of ORS chapter 97 are violations of ORS 692.180(1)(b) OAR 830-030-0090(1), 830-030-0090(1)(a), OAR 830-030-0100(6), or OAR 830-050-0050(8), which are cause for denial of change of ownership and change of location under ORS 692.180(1)(g). See also OAR 830-011-0050(2)*

5.

5a. *It is the responsibility of the funeral establishment licensee who submits a death certificate to pay the death certificate filing fee to the State of Oregon within thirty (30) days after billing, and in no case, longer than ninety (90) days after billing. ORS 432.307(2); ORS 432.312(1), OAR 830-030-0000(7).*

5b. *Respondent failed to timely pay approximately \$841.00 in delinquent death certificate filing fees identified in the following invoices:*

i. Invoice #AI037916 with a date of billing of September 8, 2009. Charges for 6 death certificates were not timely paid;

ii. Invoice #AI038285 with a date of billing of October 10, 2009. Charges for 6 death certificates were not timely paid;

iii. Invoice #AI038953 with a date of billing of November 9, 2009. Charges for 6 death certificates were not timely paid;;

iv. Invoice #AI039396 with a date of billing of December 7, 2009. Charges for 7 death certificates were not timely paid;

v. Invoice #AI039868 with a date of billing of January 5, 2010. Charges for 8 death certificates were not timely paid; and;

vi. Invoice #AI040239 with a date of billing of February 5, 2010. Charges for approximately 7 - 9 death certificates were not timely paid.

5c. *Respondent failed to pay the foregoing death certificate filing fees within 90 days of billing in at least 39 instances, each of which is a violation of OAR 830-030-0000(7) and cause for denial of change of ownership and change of location under ORS 692.180(1)(g). See also OAR 830-011-0050(2).*

6.

Definitions that may be relevant to this notice are contained in ORS 97.010, ORS 97.923, ORS 692.010, and OAR 830-011-0000.

Rights and Procedures

Respondent is entitled to a hearing as provided by the Administrative Procedures Act (ORS Chapter 183) and ORS 692.265(1). If Respondent wants a hearing, Respondent

must file a written request for hearing with the State Mortuary & Cemetery Board (the "Board") within 60 days from the date this notice was mailed. If a request for hearing is not received within this 60-day period, Respondent's 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 Respondent requests a hearing, Respondent will be notified of the time and place of the hearing. Respondent must 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 Respondent does not request a hearing within 60 days, or if Respondent withdraws a hearing request, notifies the Board or hearing officer that Respondent will not appear or fails to appear at a scheduled hearing, the Board may issue a final order denying the application for a change of location as determined 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 ___16th ___ day of July, 2010.

STATE MORTUARY AND CEMETERY BOARD

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