

SETTLEMENT AGREEMENT & CONSENT ORDER

State Mortuary and Cemetery Board State of Oregon

<p>In the Matter of the combination Funeral Service Practitioner Apprenticeship Certificate and Embalmer Apprenticeship Certificate Application of</p> <p>KELLY S. POWER,</p> <p>APPLICANT</p>	<p>Agency Case No. 12-1018</p> <p>SETTLEMENT AGREEMENT & CONSENT ORDER</p>
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On June 28, 2012, the Oregon Mortuary and Cemetery Board (Board) issued an Amended Notice of Proposed Denial of Application to Kelly S. Power (hereafter "Applicant") in Case No. 12-1018. Applicant timely requested an administrative hearing on this Notice. This Notice is attached to this Settlement Agreement and Consent Order and is incorporated by reference.

The Parties wish to settle these matters without any hearing or judicial review by entering this Settlement Agreement and Consent Order, pursuant to ORS 183.417(3).

SETTLEMENT AGREEMENT

The Board and Applicant agree to resolve these matters informally on the following terms:

1. Applicant stipulates to the following:
 - a. Applicant was charged with Criminal Assault in the Tacoma Municipal Court on December 31st, 1996. The charge arose out of a disturbance the Tacoma Police Department responded to on December 30th, 1996. The charges were dismissed on July 20th, 2001 after Applicant complied with court requirements. Applicant failed to disclose this charge and dismissal on her 2008 Oregon Mortuary & Cemetery Board Application for internship as a funeral service student with Mt. Hood Community College and on her Board 2012 Application for a combination Funeral Service Practitioner Apprenticeship Certificate and Embalmer Apprenticeship Certificate.
 - b. Applicant was charged with Misdemeanor "Driving without a License" by the Tacoma Police Department on May 24th, 1994. Applicant pled guilty on January 13th, 1997 in the Tacoma Municipal Court. Applicant was given a 90 day jail sentence (suspended) and was fined \$100. Applicant failed to disclose this charge and conviction on her 2008 Oregon Mortuary & Cemetery Board Application for internship as a funeral service student with Mt. Hood Community College and on her 2012 Board Application for a combination Funeral Service Practitioner Apprenticeship Certificate and Embalmer Apprenticeship Certificate.
 - c. Applicant had been employed at a northeast Portland crematory and funeral establishment, Portland Mortuary Services and Portland Cremation Center, LLC

(PMS/PCC) (OMCB License Nos. FE-8536 and CR-0694) from October 1st, 2008 to March 15th, 2009. On her 2012 Application with the Board for a combination Funeral Service Practitioner Apprenticeship Certificate and Embalmer Apprenticeship Certificate, Applicant failed to disclose this employment.

- d. On April 11th, May 9th and April 26th, 2012 a Board investigator asked Applicant if she had completed her application correctly in regards to her criminal history or employment. In each case she stated that she had answered correctly. After further questioning, Applicant admitted the criminal history and employment and stated she had difficulty remembering her arrests, dismissal, conviction and employment at licensed facilities.
 - e. The foregoing misrepresentations described in Sections 1a through 1c are violations of OAR 830-030-0090(5)(d), (f) and (g) and OAR 830-050-0050(2), which are cause for denial of a license under ORS 692.180(1)(g); and the foregoing are violations of ORS 692.180(1)(a) and (b).
 - f. Further, Applicant's conduct as described above in Section 1d was untruthful, inaccurate, misleading or evasive and has a demonstrable relationship to death care industry practices or operations, and her failure to remember significant facts related to her criminal history and employment history is substantially related to the fitness and ability of the Applicant to engage in the activity of a funeral service practitioner apprentice and embalmer apprentice which is grounds for denial of her application under OAR 830-040-0010(3) and OAR 830-030-0090(5)(d) and (g), ORS 670.280(3) and ORS 692.180(1)(a), (b) and (g).
 - g. The Board has grounds for denying Application for a combination Embalmer Apprenticeship Certificate and Funeral Service Practitioner Apprenticeship Certificate pursuant to ORS 692.180(1)(a), (b) and (g) and ORS 670.280(3).
2. Applicant agrees the Board may enter the Order set forth below.
 3. Applicant enters into this Settlement Agreement and Consent Order voluntarily and without any force or duress. Applicant acknowledges that no promises or representation not stated herein have been made to induce Applicant to sign this Settlement Agreement and Consent Order.
 4. Applicant is aware of the right to a hearing under ORS chapter 183, and fully and finally waives all right to hearing and any right to appeal or otherwise contest this Settlement Agreement and Consent Order.
 5. This Settlement Agreement and Consent Order is a public document.
 6. The parties agree this Settlement Agreement and Consent Order takes effect on the date it is signed by the Executive Director of the Board.

ORDER

The Board enters the following final order:

1. Applicant's application for a combination Funeral Service Practitioner Apprenticeship and Embalmer Apprenticeship Certificate is hereby approved under the following terms:
2. For violating OAR 830-030-0090(5)(d), (f) and (g), OAR 830-040-0010(3), OAR 830-050-0050(2), ORS 692.180(1)(a), (b) and (g) and ORS 670.280(3), upon the effective date of this Order, the Board shall immediately issue a combination Funeral Service Practitioner Apprenticeship Certificate and Embalmer Apprenticeship Certificate to Applicant. Applicant shall be placed on probation for twelve months apprenticeship period beginning the date her license is issued, subject to the following conditions:
 - a. Applicant will comply with Federal Law and all state statutes and rules applicable to the death care industry.
 - b. Applicant will disclose in writing to the Board any time she is arrested, convicted or issued a citation for anything other than a traffic violation (infraction) or parking ticket within 10 days of the arrest or citation.
 - c. Applicant will notify the Board, in writing, anytime her supervisor or supervisors, employer or employers change.
 - d. Applicant will provide a complete copy of this Consent Order to her current death care industry employer and to any other death care industry employer in Oregon that employs Applicant during the period of probation.
 - e. Applicant will provide three-month Reports from each employer regarding her conduct. Each Report must be received by the Board within ten days following the end of the three month period which will commence on the date of this Consent Order, and must include at a minimum:
 - i. The name and signature of Applicant's supervisor;
 - ii. Whether Applicant remains employed at this facility. If Applicant is no longer employed, the Report must provide the date Applicant was last employed and the reason for her departure; and
 - iii. Whether Applicant has received any discipline from the employer during the quarter. The Report must state the nature of the discipline and the reason for such discipline.
3. If at any time during the prescribed probationary period, Applicant violates any provision of this Order, or any provision of ORS Chapter 692 or OAR Chapter 830, the Board may revoke all licenses held by Applicant.
4. The Board shall determine satisfactory completion of the Applicant's probation based upon the Applicant's successful completion of the probationary period and criminal background checks.
5. Applicant shall pay to the Board civil penalties in the amount of \$250.00 within ten days of the effective date of this Order. An interest rate of 9% per annum will accrue on any outstanding civil penalties not paid in full on or before the date due. Failure to pay the civil penalties within ten days of the date of this Order is a violation of ORS

692.180(1)(m) and this Order, for which the Board may take additional disciplinary action.

DATED this ___28th___ day of ___September_____, 2012.

OREGON STATE MORTUARY AND CEMETERY
BOARD

By: _<s> Michelle Gaines _____
Michelle Gaines
Executive Director

It is so agreed.

___September 28, 2012___
Date

___<s> Kelly S. Power _____
Applicant, Kelly S. Power