

## CONSENT ORDER

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### BEFORE THE MORTUARY AND CEMETERY BOARD OF THE STATE OF OREGON

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| <p>In the Matter of the combination funeral service practitioner and embalmer license of</p> <p style="text-align: center;"><b>ALLAN S. NEWBERRY,</b><br/><b>LICENSEE</b></p> | <p><b>Agency Case No. 12-1012B</b></p> <p><b>CONSENT ORDER</b></p> |
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The Oregon Mortuary and Cemetery Board (Board) issued a Notice of Proposed Disciplinary Action and Opportunity for Hearing (Notice) on July 29, 2013 in the above-referenced matter. Respondent is aware of his right to a hearing but has not requested a hearing. The parties wish to settle this matter without an administrative hearing or judicial review, pursuant to ORS 183.417(3). This Consent Order constitutes the final resolution of this contested case proceeding.

The parties therefore agree as follows:

1. Licensee stipulates to the findings of fact as set forth in the Notice, and incorporated herein by reference.
2. Licensee stipulates that the conduct of Respondent as set forth in the Notice was in violation ORS 692.180(1)(a) and (b), and *former* OAR 830-030-0100(9) (2012) renumbered to OAR 830-030-0100(1), OAR 830-030-0090 and *former* OAR 830-030-0090(2)(a)(B) (2012) renumbered to OAR 830-030-0090(4)(b), and *former* OAR 830-030-0100(9) (2012) renumbered to OAR 830-030-0100(1), *former* OAR 830-040-0000(6) (2012) renumbered to OAR 830-040-0000(7), and *former* OAR 830-040-0090(2)(b)(d) (2012) renumbered to OAR 830-030-0090(4)(j) and grounds for discipline under ORS 692.180(1)(g).
3. Licensee hereby acknowledges that it has read, understands, and agrees to the terms of this Consent Order. Respondent hereby waives any and all rights to a hearing, appeal or other legal challenge to this Consent Order.
4. Licensee acknowledges that this Consent Order is a public document.
5. Licensee agrees that the Board may enter the following order, which shall be effective on the date it is signed by the Board:

**ORDER**

NOW THEREFORE IT IS ORDERED:

1. Licensee is hereby reprimanded.
2. Licensee shall pay civil penalties in the amount of \$1000.00.

**It is so stipulated.**

\_\_\_<s> Allan Newberry\_\_\_\_\_  
Allan S. Newberry

\_\_\_11.12.13\_\_\_\_\_  
Date

DATED this \_\_18\_\_ day of November, 2013.

OREGON STATE MORTUARY AND  
CEMETERY BOARD

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

**Notice of Proposed Disciplinary Action**

State Mortuary and Cemetery Board  
State of Oregon

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| In the matter of the combined funeral service practitioner and embalmer license of:<br><br><b>ALLAN S. NEWBERRY,</b><br><br><b>Respondent.</b> | Notice of Proposed Disciplinary Action<br>and<br>Opportunity for a Hearing<br><br><b>CASE NO. 12-1012B</b> |
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Pursuant to ORS 692.180(1), the Oregon Mortuary & Cemetery Board (hereafter "OMCB" or "Board") proposes to take disciplinary action in the form of a reprimand and \$5,000 in civil penalties against Allan S. Newberry (hereafter "Licensee") on the grounds noted below.

**Ground for Disciplinary Action:**

**1.**

At all times mentioned herein, Licensee was licensed as a funeral service practitioner and embalmer (OMCB License No. CO-3374) and Licensee worked at Andreason's Cremation & Burial Services, Inc., doing business as Andreason's Cremation & Burial Service, Springfield (OMCB License No. FE-8676) (hereafter "Andreason's").

**2.**

**2a.** On or about February 23, 2012, Licensee wrote a letter to Decedent A's son regarding the charges for Decedent A's arrangements. Licensee wrote,

The boss is bugging me because I forgot to charge for submitting an obituary on our statement. So please drop a check in the mail when the evil bookkeeper sends you an invoice ☺

I hope you're doing okay, my friend. Call me if you have any questions.

**2b.** Andreason's was not "bugging" Licensee about an obituary charge. Licensee's letter violates ORS 692.180(1)(a) and (b), and *former* OAR 830-030-0100(9) (2012) renumbered to OAR 830-030-0100(1).

**2c.** Licensee's letter also constitutes unacceptable conduct in violation of OAR 830-030-0090 and *former* OAR 830-030-0090(2)(a)(B) (2012) renumbered to OAR 830-030-0090(4)(b).

**3.**

**3a.** On or about February 29, 2012, Licensee wrote Decedent B's daughter a letter informing the daughter that there was a balance on the account for her father's arrangements, due immediately. Licensee states in the letter:

Heads up!

The bookkeeper tells me the trust only paid [a certain amount]. Your dad never finished paying for his preneed and there is a balance [ ] on the account, due immediately.

Brenda (the bookkeeper) says she had been sending statements but nobody has responded. This is bad. The boss is a hard-ass and won't hesitate to send you to collections. And then you'll have mean people who couldn't care less harassing you day and night, and your credit rating will take a big hit. I don't want this to happen. I like you. Please take care of this right away.

**3b.** Andreason's asked Licensee for a copy of the letter that Licensee wrote to Decedent B's daughter and states that it was company practice to keep such documentation in decedent files. Licensee did not keep a hard or electronic copy of this letter.

**3c.** Licensee's letter misrepresents and is dishonest regarding Andreason's' collection policies and practices. Licensee's letter violates ORS 692.180(1)(a) and (b), and *former* OAR 830-030-0100(9) (2012) renumbered to OAR 830-030-0100(1).

**3d.** Licensee's letter also constitutes unacceptable conduct in violation of OAR 830-030-0090 and *former* OAR 830-030-0090(2)(a) (2012) renumbered to and amended in OAR 830-030-0090(4)(b).

**3e.** Licensee's failure to preserve a copy of the letter to Decedent B's daughter is a failure to keep a detailed, accurate and permanent record of all transactions, in violation of *former* OAR 830-040-0000(6) (2012) renumbered to OAR 830-040-0000(7) and destruction of the letter is a violation of *former* OAR 830-040-0090(2)(b)(d) (2012) renumbered to OAR 830-030-0090(4)(j).

**4.**

Violations of the Board's rules are cause for disciplinary actions under ORS 692.180(1)(g).

**5.**

Therefore, the Board proposes to take disciplinary action in the form of a reprimand and civil penalties of \$1,000 for each of the violations described above against Licensee. ORS 692.180(1). The maximum penalty the Board may impose includes reprimand, a civil penalty of \$1,000 for each violation, license suspension, license revocation, and refusal to renew any license. ORS 692.180(1).

**6.**

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

**NOTICE OF OPPORTUNITY FOR HEARING**

**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 by the Board within this 21-day period, your right to a hearing shall be considered waived. Hearing requests may be mailed to the Oregon Mortuary and Cemetery Board, 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. As an individual, you may be represented by an attorney at the hearing. Parties are ordinarily and customarily represented by counsel. You are not required to be represented by counsel, unless you**

are not an individual. A Notice of Contested Case Rights and Procedures is enclosed with this Notice of Proposed Disciplinary Action. Any hearing will be conducted by an administrative law judge from the Office of Administrative Hearings. ORS 183.635.

If you do not request a hearing within 21 days, or if you withdraw a hearing request, notify the Board or administrative law judge that you will not appear or fail to appear at a scheduled hearing, the Board may issue a final order by default imposing the discipline as determined by the Board. If the Board issues a final order by default, it designates the relevant portions of its file on this matter as the record for purposes of establishing a prima facie case.

DATED this \_\_\_29th\_\_\_ day of July, 2013

STATE MORTUARY AND CEMETERY BOARD

\_\_\_\_<s> Lynne Nelson\_\_\_\_\_  
Designee: Lynne Nelson, Compliance Manager