

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

**In the Matter of the Funeral  
Establishment License of**

**HOFSESS-OLSON, LLC,  
dba MYRTLE CREEK FAMILY  
FUNERAL HOME,**

**Respondent**

**Notice of Proposed Disciplinary  
Action (License Revocation and  
Civil Penalty)  
and Opportunity for a Hearing**

**CASE NOS.: 04-1006A and 04-1028A**

Pursuant to ORS 692.320, the Oregon Mortuary & Cemetery Board (Board) proposes to take disciplinary action against the Respondent in the form of revocation of Respondent's license and civil penalties on the grounds noted below. For statutory and rule violations the Board may impose one or more of the following sanctions: reprimand; license revocation; civil penalty of up to \$1000 for each violation; or other sanctions as authorized by law. ORS 692.180(1)

**1.** At all times mentioned herein, Hofsess-Olson LLC dba Myrtle Creek Family Funeral Home (Respondent) was licensed by the Oregon Mortuary & Cemetery Board (Board) as a funeral establishment. (OMCB License #FE-8419)

**2.** At all times mentioned herein, Fred S. Olson (Olson) was the manager of Myrtle Creek Family Funeral Home and licensed by the Board as a Funeral Service Practitioner and Embalmer. (OMCB License #CO-3601)

**3.**

**3a.** The Federal Trade Commission Funeral Rule (Funeral Rule) requires that the funeral establishment give a printed or typewritten price list, with the caption "General Price List," for retention to persons who inquire in person about funeral goods, funeral services or prices of

funeral goods or services offered by the funeral provider. The funeral provider must give the list to a person upon beginning discussion of the prices of funeral goods or funeral services, upon beginning discussion of the overall type of funeral service or disposition, or upon beginning discussion of the specific funeral goods or funeral services offered by the funeral provider. The General Price List must have an effective date. 16 CFR 453.2(b)(4)(i)

**3b.** The General Price List must include the current retail prices of funeral goods and services offered including, but not limited to: The direct cremations offered by the funeral provider; a separate price for each direct cremation offered including an alternative container; a description of the services and container included in each direct cremation price; and transportation of remains to the funeral home. 16 CFR 453.2(b)(4)(ii)

**3c.** An alternative container is an unfinished wood box or other non-metal receptacle or enclosure, without ornamentation or a fixed interior lining, which is designed for the encasement of human remains for cremation, and which is made of fiberboard, pressed-wood, composition materials (with or without an outside covering) or like materials. 16 CFR 453.2(1)(a)

**3d.** On the funeral establishment's relevant General Price Lists, the alternative container is described as a "fiberboard container." On the funeral establishment's relevant contracts, Respondent uses the words "cremation tray" when describing the alternative container.

**3e.** The funeral establishment must give an itemized written statement for retention to each person who arranges a funeral or other disposition of human remains, at the conclusion of the discussion of arrangements. The statement must include at least the following information: The funeral goods and funeral services selected by that person and the prices to be paid for each of them; the total cost of the goods and services selected. 16 CFR 453.2(5)

**3f.** At all times mentioned herein, the foregoing itemized statement is called the Statement of Funeral Goods and Services Selected (SFGSS) or contract.

**Grounds for Disciplinary Action, Case No. 04-1006A**

**4.**

**4a.** On or about November 13, 2003, Respondent's manager, Fred Olson, met with consumer, C. Smith, to make final disposition arrangements for her deceased spouse, A. Smith. C. Smith selected a direct cremation with alternative container as the method of final disposition.

**4b.** The facility's General Price List in effect at the time final disposition arrangements were made, dated September 1, 2003, states that the price of a direct cremation with alternative container is \$870.00.

**4c.** On the Statement of Funeral Goods and Services Selected, Respondent charged C. Smith \$875.00 for a direct cremation with alternative container, overcharging her \$5.00.

**4d.** Respondent, therefore, engaged in misrepresentation in the conduct of doing business and fraudulent and dishonest conduct with a consumer when misstating the correct price for a direct cremation with alternative container which is cause for disciplinary action under ORS 692.180(1)(a) and ORS 692.180(1)(b).

**5.**

**5a.** At the final arrangements meeting with C. Smith, Respondent's manager, Olson, failed to give to C. Smith, for retention, a Statement of Funeral Goods and Services Selected.

**5b.** The foregoing failure by Respondent to provide an itemized statement of funeral goods and services selected to the consumer is a violation of 16 CFR 453.2(5), and cause for disciplinary action under ORS 692.180(1)(h).

**6.**

**6a.** In December, 2003, Respondent submitted a Statement of Funeral Goods and Services Selected (SFGSS) to the Oregon Department of Veteran's Affairs (VA) for consideration of benefits for the final disposition of A. Smith. The SFGSS included a charge of \$875.00 for a direct cremation with an alternative container.

**6b.** According to the effective General Price List, dated September 1, 2003, a direct cremation with a fiberboard container is \$870.00, not \$875.00.

**6c.** Respondent, therefore, engaged in misrepresentation in the conduct of doing business and fraudulent and dishonest conduct with the VA when Respondent misstated the correct price for a direct cremation with an alternative container on the SFGSS. The foregoing is cause for disciplinary action under ORS 692.180(1)(a) and ORS 692.180(1)(b).

**7.**

**7a.** The SFGSS that Respondent submitted to the VA for consideration of benefits toward the final disposition of A. Smith also included a charge of \$250.00 for the cremation process.

**7b.** The General Price List in effect at the time final disposition arrangements were made for A. Smith dated September 1, 2003, states that a direct cremation with alternative container includes the cremation process.

**7c.** Respondent, therefore, engaged in misrepresentation in the conduct of doing business, and fraudulent and dishonest conduct with the VA when Respondent charged twice for the cremation process on the SFGSS. The foregoing is cause for disciplinary action under ORS 692.180(1)(a) and ORS 692.180(1)(b).

**8.**

**8a.** On the foregoing SFGSS submitted to the VA, Respondent also included a charge of \$250.00 for "Transfer of Remains From Hospital and cremains back to cemetery," in addition to the charge of \$875.00 for a direct cremation with alternative container.

**8b.** The General Price List in effect at the time final disposition arrangements were made for A. Smith, dated September 1, 2003, states that a direct cremation with alternative container includes removal from the place of death within 50 mile radius (beyond the 50 miles, add \$1.25 per mile round trip).

**8c.** The distance from the hospital in Roseburg, where A. Smith died, to Myrtle Creek Family Funeral Home is approximately nineteen (19) miles, one way.

**8d.** In April, 2004, Respondent's manager, Olson, stated he does not charge consumers for the delivery of cremated remains to a cemetery, unless it is a very long distance.

**8e.** On or about November 11, 2003, the funeral establishment delivered the cremated remains of A. Smith to the Roseburg National Cemetery for inurnment. The distance from the funeral establishment to the cemetery is approximately nineteen (19) miles, one way.

**8f.** Respondent, therefore, engaged in misrepresentation in the conduct of doing business and fraudulent and dishonest conduct with the VA when Respondent charged twice for the transfer of remains from the place of death to the funeral home on the SFGSS. The foregoing is cause for disciplinary action under ORS 692.180(1)(a) and ORS 692.180(1)(b).

**9.**

**9a.** On or about December 11, 2003, Respondent's manager, Olson, mailed a letter to C. Smith advising her that the VA had allowed benefits of \$550.00 for the final disposition of her deceased spouse, and the amount owed by C. Smith was \$1044.00.

**9b.** In the letter, Olson stated that the original amount owed by C. Smith, prior to subtracting the VA benefit, was \$1594.00. This amount corresponds to the total amount owed on the foregoing SFGSS which Respondent submitted to the VA. The letter, therefore, incorporated the following charges to C. Smith:

1. Direct cremation with "cremation tray included" (\$875.00);
2. The cremation process (\$250.00);
3. "Transfer of Remains From Hospital and cremains back to cemetery," (\$250.00);
4. Acknowledgment cards and Memory Folders (\$110.00);
5. Two (2) Death Certificates (\$27.00);
6. Oregon State Filing Fee (\$7.00);
7. Newspaper Notice (\$75.00).

**9c.** According to the effective General Price List, dated September 1, 2003, the correct price of a "direct cremation with a fiberboard container" is \$870.00; not \$875.00.

**9d.** According to the effective General Price List, dated September 1, 2003, the description of goods and services included in a direct cremation with alternative container includes the cremation process and the removal from the place of death within 50 mile radius (beyond the 50 miles, add \$1.25 per mile round trip).

**9e.** The distance from the hospital in Roseburg, where A. Smith died, to Myrtle Creek Family Funeral Home is approximately nineteen (19) miles, one way.

**9f.** In April, 2004, Respondent's manager stated he does not charge consumers for the delivery of cremated remains to a cemetery, unless it is a very long distance.

**9g.** On or about November 11, 2003, Respondent delivered the cremated remains of A. Smith to the Roseburg National Cemetery for inurnment. The distance from the funeral establishment to the cemetery is approximately nineteen (19) miles, one way.

**9h.** Respondent, therefore, in the letter dated December 11, 2003, to C. Smith, charged C. Smith twice for the cremation process and twice for the transfer of remains to the funeral home; and Respondent charged C. Smith a higher, incorrect price for a direct cremation with alternative container. The foregoing specifications are misrepresentations in the conduct of doing business, and fraudulent and dishonest conducts. The foregoing are cause for disciplinary actions under ORS 692.180(1)(a) and ORS 692.180(1)(b).

## **10.**

**10a.** On or about February 10, 2004, Respondent mailed another letter to C. Smith. In the letter, Respondent's manager, Olson, claims the final disposition arrangements for her spouse totaled \$1594.00. This amount corresponds to the foregoing SFGSS which was submitted to the VA, and therefore, incorporates the following charges:

1. Direct cremation with "cremation tray included" (\$875.00);
2. The cremation process (\$250.00);
3. "Transfer of Remains From Hospital and cremains back to cemetery," (\$250.00);
4. Acknowledgment cards and Memory Folders (\$110.00);
5. Two (2) Death Certificates (\$27.00);
6. Oregon State Filing Fee (\$7.00);

7. Newspaper Notice (\$75.00).

**10b.** In the letter, Olson indicated that the VA had paid a benefit of \$550.00 to Respondent. The letter stated, "Enclosed is the balance of funeral service charges for A. Smith," and "\$1044.00 Balance Due, Respectfully, Fred Olson."

**10c.** According to the effective General Price List, dated September 1, 2003, the correct price of a "direct cremation with a fiberboard container" is \$870.00; not \$875.00.

**10d.** According to the effective General Price List, dated September 1, 2003, the description of goods and services included in this direct cremation with alternative container package includes, "the cremation process" and the "removal from the place of death within 50 mile radius (beyond the 50 miles, add \$1.25 per mile round trip."

**10e.** The distance from the hospital in Roseburg, where A. Smith died, to Myrtle Creek Family Funeral Home is approximately nineteen (19) miles, one way.

**10f.** In April, 2004, Olson stated he does not charge consumers for the delivery of cremated remains to a cemetery, unless it is a very long distance.

**10g.** On or about November 11, 2003, Respondent delivered the cremated remains of A. Smith to the Roseburg National Cemetery for inurnment. The distance from the funeral establishment to the cemetery is approximately nineteen (19) miles, one way.

**10h.** Respondent, therefore, in the letter dated February 10, 2004, to C. Smith, charged C. Smith twice for the cremation process and twice for the transfer of remains to the funeral home; and charged C. Smith an incorrect, higher price for a direct cremation with alternative container.

**10i.** The foregoing specifications of charging twice for the cremation process, charging twice for the transfer of remains and charging an incorrect, higher price for a direct cremation with alternative container are misrepresentations in the conduct of doing business, and fraudulent and dishonest conducts. The foregoing are cause for disciplinary actions under ORS 692.180(1)(a) and ORS 692.180(1)(b).

**11.**

**11a.** All licensed facilities and funeral service practitioners shall keep detailed, accurate and permanent records of all transactions that are performed for the care and preparation and final disposition of human remains. OAR 830-040-0000(6)

**11b.** On April 2, 2004, the Board requested a copy of the permanent record for the final disposition of A. Smith from Respondent.

**11c.** On April 8, 2004, the Board received a copy of the Statement of Funeral Goods and Services Selected (SFGSS) for the final disposition arrangements of A. Smith from Respondent.

**11d.** On the SFGSS, Respondent had used white-out to obliterate the \$250.00 charge for the cremation process; and Respondent used white out to alter the total amount owed for goods and services from \$1594.00 to \$1344.00.

**11e.** The foregoing altering of a client's funeral service record to mislead the reader of record, failure to preserve a permanent record, and obliteration of entries in the permanent record for the purpose of falsifying the record which is required to be maintained is a violation of OAR 830-030-0090(2)(b)(C), OAR 830-040-0000(9)(a), and OAR 830-040-0000(9)(b) which is cause for disciplinary action under ORS 692.180(1)(g); and the foregoing is fraudulent and dishonest conduct which is cause for disciplinary action under ORS 692.180(1)(b).

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**12.**

**12a.** The Funeral Rule provides that it is a deceptive act or practice in selling or offering to sell funeral goods or funeral services to represent that federal, state or local laws, or particular cemeteries or crematories, require the purchase of any funeral goods when such is not the case.

16 CFR 453.3(d)(1)

**12b.** On or about July 28, 2003, Respondent's manager, Olson, made arrangements for the final disposition of decedent, V. Bayliss. On the Statement of Funeral Goods and Services Selected (SFGSS), Respondent wrote the words "Required by State" next to the words "Cremation Tray, \$75.00."

**12c.** Neither Oregon Administrative Rules or Oregon Revised Statutes state that cremation trays or containers are required when cremating remains.

**12d.** The foregoing statement that a cremation tray is required by the state is misrepresentation in the conduct of doing business, fraudulent and dishonest conduct, and a violation of FTC Rules which is cause for disciplinary action under ORS 692.180(1)(a), ORS 692.180(1)(b) and ORS 692.180(1)(h).

**13.**

**13a.** On the following four (4) at need or pre-need Statements of Funeral Goods and Services Selected (contracts), the consumers selected a direct cremation with an alternative container package as the method of final disposition.

**13b.** The two General Price Lists in effect at the time the following four contracts were written contain the effective dates of January 1, 2002 and March 1, 2003. Both of these General Price Lists state that the price of a direct cremation with alternative container is \$795.00.

**13c.** Both of the aforementioned General Price Lists state that the cremation process is included in the \$795.00 package of a direct cremation with alternative container (cremation tray).

**13d.** In each of the following four Statements of Funeral Goods and Services Selected, Respondent additionally charged the consumers for the alternative container (written as "cremation tray" on the contracts) and the cremation process:

|             | Name of decedent | Date of contract | Effective GPL- Price of a direct cremation with container | Direct cremation with fiberboard container price written on the SFGSS | Item listed on the SFGSS which should have been included in the package price of a direct cremation with alternative container | Amount double-billed to the consumer on the SFGSS |
|-------------|------------------|------------------|---|---|--|---|
| <b>13e.</b> | Anderson         | 09/25/02         | \$795.00  | \$795.00  | <b>Cremation Process</b>   | \$250.00  |
| <b>13f.</b> |                  |                  |   |   | <b>Cremation Tray</b>  | \$50.00   |
| <b>13g.</b> | Atkeson          | 05/27/03         | \$795.00  | \$795.00  | <b>Cremation Process</b>   | \$200.00  |
| <b>13h.</b> |                  |                  |   |   | <b>Cremation Tray</b>  | \$75.00   |
| <b>13i.</b> | Adams            | 06/10/03         | \$795.00  | \$845.00  | <b>Cremation process</b>   | \$250.00  |
| <b>13j.</b> |                  |                  |   |   | <b>Cremation tray</b>  | \$75.00   |
| <b>13k.</b> | Francis          | 08/07/03         | \$795.00  | \$795.00  | <b>Cremation Process</b>   | \$250.00  |
| <b>13l.</b> |                  |                  |   |   | <b>Cremation Tray</b>  | \$50.00   |

**13m.** The foregoing eight (8) specifications where Respondent charged the consumer twice for the goods and services of a cremation tray or the cremation process are misrepresentations in the conduct of doing business, and are fraudulent and dishonest conducts which are cause for disciplinary actions under ORS 692.180(1)(a) and ORS 692.180(1)(b).

**14.**

**14a.** On the following at-need or prearrangement contracts or Statements of Funeral Goods and Services Selected (SFGSS) with consumers, Respondent charged consumers incorrect prices for goods and services, according to the prices of those goods and services as stated on the General Price Lists in effect on the date of the arrangements.

**14b.** On the SFGSS for the final disposition arrangements of decedent, E. Rider, dated February 1, 2004, Respondent charged the consumer \$320.00 for "Transfer of Remains to Funeral Home." The General Price List in effect at the time arrangements were made, dated September 1, 2003, states that the item, "Vehicle for Transfer from Place of Death (beyond 50

miles, add \$1.25 per mile" is \$245.00. E. Rider died in Roseburg, approximately nineteen (19) miles from Myrtle Creek Family Funeral Home. Respondent, therefore, overcharged the consumer \$75.00.

**14c.** The foregoing charging of an incorrect, higher price for goods and services to the consumer, by Respondent, is misrepresentation in the conduct of doing business and fraudulent and dishonest conduct which is cause for disciplinary action under ORS 692.180(1)(a) and ORS 692.180(1)(b).

**14d.** On the SFGSS dated September 29, 2003, for the final disposition arrangements of decedent, O. Silvers, Respondent charged the consumer "\$1625" for "Memorial Service with Cremation." According to the General Price List in effect at that time, dated September 1, 2003, Respondent did not offer a package that includes a direct cremation with memorial service. As stated on the General Price List, the price of a direct cremation with fiberboard container (\$870.00) together with a memorial service (\$295.00), is \$1165.00. By charging the consumer \$1625.00 for these services, Respondent overcharged the consumer \$460.00.

**14e.** The foregoing charging of an incorrect, higher price for goods and services to the consumer is misrepresentation in the conduct of doing business and fraudulent and dishonest conduct which is cause for disciplinary action under ORS 692.180(1)(a) and ORS 692.180(1)(b).

**14f.** On the SFGSS for the final disposition arrangements of decedent, D. Dobbins, dated January 29, 2003, Respondent charged the consumer \$250.00 for the cremation process. According to the General Price List in effect at that time, dated January 1, 2002, the price stated for the cremation process was \$140.00. Respondent, therefore, overcharged the consumer \$110.00.

**14g.** The foregoing charging of an incorrect, higher price for goods and services to the consumer is misrepresentation in the conduct of doing business and fraudulent and dishonest

conduct which are cause for disciplinary action under ORS 692.180(1)(a) and ORS 692.180(1)(b).

**14h.** In like manner, as summarized in the following table, Respondent charged the consumers incorrect, higher prices for goods and services according to the prices of those goods and services as stated on the General Price Lists in effect on the date of the arrangements.

|              | Date of Contract (SFGSS) | Effective date of GPL | Name of Decedent | Goods or Service with the price as written on the SFGSS  | Price on the GPL | Amount Over-charged |
|--------------|--------------------------|-----------------------|------------------|--|------------------|---------------------|
| <b>14i.</b>  | 08/03/01                 | 01/01/01              | Humphrey         | Cremation, process, \$175.00                             | \$150.00         | \$35.00             |
| <b>14j.</b>  | 03/23/02                 | 01/01/02              | Bales            | Cremation process, \$200.00                              | \$150.00         | \$60.00             |
| <b>14k.</b>  | 03/23/02                 | 01/01/02              | Bales            | Refrigeration, \$75.00                                   | \$60.00          | \$15.00             |
| <b>14l.</b>  | 03/28/02                 | 01/01/02              | Ferguson         | Cremation process, \$200.00                              | \$150.00         | \$60.00             |
| <b>14m.</b>  | 10/07/02                 | 01/01/02              | Hadwen           | Cremation process, \$200.00                              | \$150.00         | \$60.00             |
| <b>14n.</b>  | 11/08/02                 | 01/01/02              | Hard             | Cremation process, \$200.00                              | \$150.00         | \$60.00             |
| <b>14o.</b>  | 06/30/02                 | 01/01/02              | Hesslegrave      | Cremation process, \$200.00                              | \$150.00         | \$60.00             |
| <b>14p.</b>  | 06/30/02                 | 01/01/02              | Hesselgrave      | Refrigeration, \$75.00                                   | \$60.00          | \$15.00             |
| <b>14q.</b>  | 12/13/01                 | 01/01/01              | Johnson          | Cremation process, \$175.00                              | \$150.00         | \$35.00             |
| <b>14r.</b>  | 10/21/02                 | 01/01/02              | Knight           | Cremation process, \$200.00                              | \$150.00         | \$60.00             |
| <b>14s.</b>  | 08/02/02                 | 01/01/02              | Lent             | Cremation process, \$200.00                              | \$150.00         | \$60.00             |
| <b>14t.</b>  | 02/11/02                 | 01/01/02              | Long             | Cremation process, \$175.00                              | \$150.00         | \$35.00             |
| <b>14u.</b>  | 08/19/02                 | 01/01/02              | Reinke           | Cremation process, \$250.00                              | \$150.00         | \$110.00            |
| <b>14v.</b>  | 01/31/02                 | 01/01/02              | McDevitt         | Cremation process, \$175.00                              | \$150.00         | \$35.00             |
| <b>14w.</b>  | 01/11/02                 | 01/01/02              | Stephens         | Cremation process, \$200.00                              | \$150.00         | \$60.00             |
| <b>14x.</b>  | 01/11/02                 | 01/01/02              | Stephens         | Refrigeration, \$75.00                                   | \$60.00          | \$15.00             |
| <b>14y.</b>  | 10/02/01                 | 01/01/01              | Brown            | Cremation process, \$175.00                              | \$150.00         | \$35.00             |
| <b>14z.</b>  | 07/20/02                 | 01/01/02              | Turner           | Memorial Service, \$250.00                               | \$215.00         | \$35.00             |
| <b>14aa.</b> | 07/20/02                 | 01/01/02              | Turner           | Cremation process, \$200.00                              | \$150.00         | \$60.00             |
| <b>14bb.</b> | 07/20/02                 | 01/01/02              | Turner           | Refrigeration, \$75.00                                   | \$60.00          | \$15.00             |
| <b>14cc.</b> | 12/31/02                 | 01/01/02              | Cason            | Memorial Service, \$250.00                               | \$215.00         | \$35.00             |
| <b>14dd.</b> | 12/31/02                 | 01/01/02              | Cason            | Cremation process, \$200.00                              | \$150.00         | \$60.00             |
| <b>14ee.</b> | 03/21/02                 | 01/01/02              | Mejia            | Cremation process, \$200.00                              | \$150.00         | \$60.00             |
| <b>14ff.</b> | 10/02/01                 | 01/01/01              | Brown            | Cremation process, \$175.00                              | \$150.00         | \$35.00             |
| <b>14gg.</b> | 02/26/02                 | 01/01/02              | Gardiner         | Refrigeration, \$75.00                                   | \$60.00          | \$15.00             |
| <b>14hh.</b> | 02/26/02                 | 01/01/02              | Gardiner         | Graveside Service, \$250.00                              | \$215.00         | \$35.00             |
| <b>14ii.</b> | 03/11/02                 | 01/01/02              | Rigsby           | Cremation process, \$175.00                              | \$150.00         | \$35.00             |
| <b>14jj.</b> | 03/11/02                 | 01/01/02              | Rigsby           | Facilities and Staff for Viewing, Visitation, \$175.00   | \$95.00          | \$80.00             |
| <b>14kk.</b> | 10/22/00                 | 11/10/99              | Willbur          | Facilities and Staff for Viewing, Visitation, \$195.00   | \$95.00          | \$100.00            |
| <b>14ll.</b> | 02/02/03                 | 01/01/02              | Benton           | Cremation process, \$250.00                              | \$150.00         | \$110.00            |
| <b>14mm</b>  | 06/10/03                 | 03/01/03              | Adams            | Direct cremation with an alternative container, \$845.00 | \$795.00         | \$50.00             |
| <b>14nn.</b> | 01/17/03                 | 09/01/03              | Zemcik           | Transfer of Remains to Funeral Home, \$395.00            | \$245.00         | \$150.00            |

|              | Date of Contract (SFGSS) | Effective date of GPL | Name of Decedent | Goods or Service with the price as written on the SFGSS | Price on the GPL | Amount Over-charged |
|--------------|--------------------------|-----------------------|------------------|---|------------------|---------------------|
| <b>14oo.</b> | 12/13/01                 | 01/01/01              | Halley           | Cremation process, \$175.00                             | \$150.00         | \$35.00             |
| <b>14pp.</b> | 02/06/04                 | 09/01/03              | Jackson          | Basic Services of Funeral Director and Staff, \$695.00  | \$625.00         | \$70.00             |

**14qq.** The foregoing specifications where Respondent charged consumers incorrect, higher prices are misrepresentations in the conduct of doing business and fraudulent and dishonest conducts which are cause for disciplinary actions under ORS 692.180(1)(a) and ORS 692.180(1)(b).

**15.**

**15a.** The following three General Price Lists mentioned in this section contain the effective dates of: January 1, 2002; March 1, 2003; and September 1, 2003. In each of these three General Price Lists, Respondent offers a direct cremation with an alternative container.

**15b.** In each of the three General Price Lists mentioned in this section, the goods and services that are included in the package price of a direct cremation with alternative container are described as:

1. A proportionate care of overhead costs
2. The basic care and handling of the remains
3. 24-hour availability
4. The cremation process
5. Removal from the place of death, beyond 50 mile radius add \$1.25 per mile round trip
6. Securing and recording the death certificate and disposition permit
7. Clerical assistance in the completion of various forms
8. Temporary cardboard container included for cremated remains

**15c.** In April, 2004, Respondent's manager, Olson, stated that the transportation of remains to and from the nearby crematory or to the local cemetery is included in the price of a direct cremation. None of the facility's three General Price Lists mentioned herein list a description and charge for transportation of remains to a local crematory or cemetery.

**15d.** In April, 2004, Olson stated that although refrigeration is not included in the written description of a direct cremation package on the General Price Lists, refrigeration is included in

the price of a direct cremation unless remains were held for an unreasonable amount of time. Respondent defined an unreasonable amount of time as "over four or five days."

**15e.** In April, 2004, Olson stated that the General Price List item called "service vehicle" (\$150.00) is not charged for transportation of remains, but is charged when consumers request delivery of items such as flowers to a church or cemetery for funeral or memorial services.

**15f.** The FTC Funeral Rule defines "direct cremation" as a disposition of human remains by cremation, without formal viewing, visitation, or ceremony with the body present (other than a graveside service). 16CFR 453.1(g)

**15g.** The following at-need or preneed final disposition arrangements do not include formal viewing, visitation or ceremony with the body present; do not include transportation of flowers to a funeral or memorial service; and do not include the preparation of remains such as dressing, cosmetics or embalming.

**15h.** In the following arrangement contracts with consumers, Respondent charged consumers for the individual goods and services described in a direct cremation instead of merely charging the consumer for the package price of a direct cremation with alternative container.

**15i.** On the Statement of Funeral Goods and Services for the final disposition arrangements of D. Dobbins, dated 01/29/03, the individual goods and services Respondent charged to the consumer are:

|                                 |                 |
|---------------------------------|-----------------|
| <b>Basic Services,</b>          | <b>\$525.00</b> |
| <b>Transfer of Remains,</b>     | <b>\$245.00</b> |
| <b>Service/Utility Vehicle,</b> | <b>\$150.00</b> |
| <b>Refrigeration,</b>           | <b>\$60.00</b>  |
| <b>Cremation Process,</b>       | <b>\$250.00</b> |
| <b>Cremation Tray,</b>          | <b>\$50.00</b>  |
| Ceramic Urn,                    | \$295.00        |
| Death Certificates (12),        | \$157.00        |
| State Filing Fee,               | \$7.00          |

The total balance Respondent charged to the Dobbins family is \$1729.00.

**15j.** The effective General Price List, dated January 1, 2002, states that a direct cremation with fiberboard container package is \$795.00. The individual goods and services which comprise a direct cremation with alternative container are in bold type in the prior subsection. Those individual items total \$1280.00.

**15k.** By itemizing the goods and services of a direct cremation with alternative container, instead of merely charging the consumer for a direct cremation with alternative container, Respondent overcharged the consumer \$485.00.

**15l.** Respondent's manager, Olson, told the Board that the reason he charged the Dobbins family individual prices of a direct cremation instead of the direct cremation package price was because the consumer, "Never said, 'Direct Cremation' during our arrangements or asked for a direct pricing."

**15m.** The foregoing demonstrates that Respondent engaged in a sales presentation or practice which concealed or misstated the material fact that a lower price was available to the consumer for the goods and services of a direct cremation in violation of OAR 830-030-0100(9) which is cause for disciplinary action under ORS 692.180(1)(1g); and the foregoing demonstrates that Respondent engaged in misrepresentation in the conduct of doing business and fraudulent and dishonest conducts which is cause for disciplinary actions under ORS 692.180(1)(a) and ORS 692.180(1)(b).

**15n.** On the Statement of Funeral Goods and Services for the preneed final disposition arrangements of M. James, dated 03/04/03, the individual goods and services Respondent charged to the consumer are:

|                                 |                 |
|---------------------------------|-----------------|
| <b>Basic Services,</b>          | <b>\$525.00</b> |
| <b>Transfer of Remains,</b>     | <b>\$245.00</b> |
| <b>Service/Utility Vehicle,</b> | <b>\$150.00</b> |
| <b>Refrigeration,</b>           | <b>\$75.00</b>  |
| <b>Cremation Process,</b>       | <b>\$200.00</b> |
| <b>Cremation Tray,</b>          | <b>\$50.00</b>  |
| <b>Brown Plastic Urn,</b>       | <b>\$20.00</b>  |
| <b>Newspaper Notice</b>         | <b>\$65.00</b>  |

|                          |         |
|--------------------------|---------|
| Death Certificates (12), | \$63.00 |
| State Filing Fee,        | \$7.00  |

The total balance Respondent charged to the consumer on the SFGSS is \$1500.00.

**15o.** The effective General Price List, dated March 1, 2003, states that a direct cremation with fiberboard container package is \$795.00. The individual goods and services which comprise a direct cremation with alternative container are in bold type in the prior subsection. Those individual items total \$1265.00.

**15p.** By itemizing the goods and services of a direct cremation with alternative container, instead of merely charging the consumer for a direct cremation with alternative container, Respondent overcharged the consumer \$470.00.

**15q.** Respondent's manager, Olson, told the Board that the reason he charged the consumer the individual prices of a direct cremation instead of the direct cremation package price was because the "Family did not ask for Direct Cremation."

**15r.** The foregoing demonstrates that Respondent engaged in a sales presentation or practice which concealed or misstated the material fact that a lower price was available to the consumer for the goods and services of a direct cremation in violation of OAR 830-030-0100(9) which is cause for disciplinary action under ORS 692.180(1)(1g); and the foregoing demonstrates that Respondent engaged in misrepresentation in the conduct of doing business and fraudulent and dishonest conducts which is cause for disciplinary actions under ORS 692.180(1)(a) and ORS 692.180(1)(b).

**15s.** In like manner, the following table specifies additional final disposition arrangements in which the consumer made no request for formal viewing, visitation or ceremony with the body present, preparation of remains, or transportation of flowers to a funeral or memorial service.

**15t.** In each of the following contracts written for the final disposition arrangements, Respondent charged consumers for the itemized prices of the individual goods and services of a

simple direct cremation instead of charging the lower, package price of a direct cremation with alternative container:

|       | Name and Date on the SFGSS | Price of Direct Cremation w/Alt. Cont. on effective GPL | Price charged by itemizing the goods and services of a direct cremation with alternative container | Discount applied, if any | Amount consumer is overcharged | Manager's statement, if any   |
|-------|----------------------------|---|--|--------------------------|--------------------------------|---|
| 15u.  | Kuphal, 02/06/04           | \$870.00  | \$1570.00  | 0                        | \$600.00                       | Not all are Direct Cremation  |
| 15v.  | Benton, 02/09/03           | \$795.00  | \$1300.00  | 0                        | \$505.00                       | Never said, 'Direct Cremation' during our arrangements or asked for a direct pricing. |
| 15w.  | Bayliss, 07/28/03          | \$795.00  | \$1375.00  | 0                        | \$580.00                       | Didn't ask for Direct Cremation.  |
| 15x.  | Campbell, no date          | \$870.00  | \$1265.00  | 0                        | \$395.00                       | Didn't ask for Direct Cremation.  |
| 15y.  | Zemcik, 09/17/03           | \$870.00  | \$1595.00  | 0                        | \$625.00                       | Didn't ask for Direct Cremation.  |
| 15z.  | Jones, 12/05/03            | \$870.00  | \$1535.00  | 0                        | \$665.00                       | Family didn't ask for Direct Cremation.   |
| 15aa. | Rider, 02/01/04            | \$870.00  | \$1390.00  | 0                        | \$520.00                       | Not all Cremations are Direct.  |
| 15bb. | Greathouse, 3/01/04        | \$870.00  | \$1245.00  | 0                        | \$375.00                       | Not all are Direct Cremation.   |
| 15cc. | Bates, 03/05/04            | \$870.00  | \$1570.00  | 0                        | \$600.00                       | Not always a Direct Cremation.  |
| 15dd. | Pool, 03/24/04             | \$870.00  | \$1025.00  | 0                        | \$155.00                       | Didn't ask for Direct Cremation.  |
| 15ee. | Willbur, 03/05/04          | \$870.00  | \$1570.00  | 0                        | \$600.00                       | <i>No Statement</i>   |
| 15ff. | Wilson, 03/19/03           | \$795.00  | \$1225.00  | 0                        | \$430.00                       | <i>No Statement</i>   |
| 15gg. | Bigelow, 11/30/99          | \$795.00  | \$1180.00  | 375.00                   | \$10.00                        | <i>No Statement</i>   |
| 15hh. | Bingham, 09/30/00          | \$795.00  | \$1180.00  | 375.00                   | \$10.00                        | <i>No Statement</i>   |
| 15ii. | Kilpatrick, 03/15/00       | \$795.00  | \$1180.00  | 0                        | \$385.00                       | <i>No Statement</i>   |
| 15jj. | Silliphant, 01/24/00       | \$795.00  | \$1115.00  | 0                        | \$320.00                       | <i>No Statement</i>   |
| 15kk. | Smith, 5/30/00             | \$795.00  | \$920.00   | 0                        | \$125.00                       | <i>No Statement</i>   |
| 15ll. | Springer, 11/20/00         | \$795.00  | \$1230.00  | 0                        | \$435.00                       | <i>No Statement</i>   |
| 15mm. | Springer, 02/12/00         | \$795.00  | \$1230.00  | 0                        | \$435.00                       | <i>No Statement</i>   |
| 15nn. | Trotter, 03/10/00          | \$795.00  | \$1180.00  | 375.00                   | \$10.00                        | <i>No Statement</i>   |

|        | Name and Date on the SFGSS | Price of Direct Cremation w/Alt. Cont. on effective GPL | Price charged by itemizing the goods and services of a direct cremation with alternative container | Discount applied, if any | Amount consumer is overcharged | Respondent's statement, if any       |
|--------|----------------------------|---|--|--------------------------|--------------------------------|--------------------------------------|
| 15oo.  | VanGinkle, 11/12/00        | \$795.00  | \$1125.00  | 0                        | \$330.00                       | No Statement                         |
| 15pp.  | Brown, 10/02/01            | \$795.00  | \$1205.00  | 0                        | \$410.00                       | No Statement                         |
| 15qq.  | Halley, 10/20/01           | \$795.00  | \$1205.00  | 0                        | \$410.00                       | No Statement                         |
| 15rr.  | Humphrey, 08/03/01         | \$795.00  | \$1055.00  | 0                        | \$260.00                       | No Statement                         |
| 15ss.  | Williams, 01/03/02         | \$795.00  | \$1205.00  | 0                        | \$410.00                       | No Statement                         |
| 15tt.  | Bales, 03/23/02            | \$795.00  | \$1245.00  | 0                        | \$450.00                       | No Statement                         |
| 15uu.  | Ferguson, 03/28/02         | \$795.00  | \$1180.00  | 0                        | \$385.00                       | No Statement                         |
| 15vv.  | Hadwen, 10/07/02           | \$795.00  | \$1230.00  | 0                        | \$435.00                       | No Statement                         |
| 15ww.  | Hard, 11/08/02             | \$795.00  | \$1080.00  | 0                        | \$285.00                       | No Statement                         |
| 15xx.  | Lent, 08/02/02             | \$795.00  | \$1230.00  | 0                        | \$435.00                       | No Statement                         |
| 15yy.  | Long, 02/11/02             | \$795.00  | \$1205.00  | 375.00                   | \$35.00                        | No Statement                         |
| 15zz.  | McDevitt, 01/31/02         | \$795.00  | \$1205.00  | 375.00                   | \$35.00                        | No Statement                         |
| 15aaa. | Reinke, 08/19/02           | \$795.00  | 1280.00  | 0                        | \$485.00                       | No Statement                         |
| 15bbb. | Stephens, 01/11/02         | \$795.00  | 1245.00  | 0                        | \$450.00                       | No Statement                         |
| 15ccc. | Jackson, 2/06/04           | \$870.00  | \$1365.00  | 0                        | \$495.00                       | Was not asked for a Direct Cremation |
| 15ddd. | Cason, 12/31/02            | \$795.00  | 1080.00  | 0                        | \$285.00                       | No Statement                         |

15eee. The foregoing specifications of over-charging consumers demonstrate that Respondent engaged in a sales presentation or practice which concealed or misstated the material fact that a lower price was available to the consumer for the goods and services of a direct cremation in violation of OAR 830-030-0100(9) which are cause for disciplinary action under ORS 692.180(1)(1g); and are misrepresentations in the conduct of doing business and fraudulent and dishonest conducts which are cause for disciplinary actions under ORS 692.180(1)(a) and ORS 692.180(1)(b).

16.

16a. The following table contains information (survey data) from Statements of Funeral Goods and Services Selected in the funeral establishment's permanent files which demonstrate that Respondent charged some consumers correctly for the package price of a direct cremation with alternative container.

|      | Name and Date on SFGSS  | Direct Cremation Price on SFGSS | Relevant notes written on SFGSS by Respondent                                     | Comments by Investigator   |
|------|-------------------------|---------------------------------|---|--|
| 16b. | Barrows<br>01/10/2000   | \$795.00                        | "Cremation Tray included in Direct Cremation" "Acct. pd. In Full Neptune Society" | Veteran, died in Roseburg, no extra mileage charged  |
| 16c. | Francis<br>03/04/2000   | \$1010.00*                      | *Direct Cremation<br>"With/Memorial Service"                                      | On the GPL, the Memorial Service is \$215.00, leaving correct charge of \$795.00 for direct cremation with alternative container.                    |
| 16d. | Jensen<br>03/10/2000    | \$795.00                        | (No comments)   | Correctly priced direct cremation with alternative container   |
| 16e. | Young<br>03/19/2000     | \$795.00                        | (No comments)   | Correctly priced direct cremation with alternative container   |
| 16f. | Prager<br>10/09/2000    | \$795.00                        | "Cremation Tray Provided"<br>Cremation Urn - "Included - 0"                       | Correctly priced direct cremation with alternative container   |
| 16g. | Thornton<br>10/27/2000  | \$795.00                        | (No comments)   | Correctly priced direct cremation with alternative container   |
| 16h. | Roberts<br>11/05/2001   | \$795.00                        | (No comments)   | Correctly priced direct cremation with alternative container   |
| 16i. | Eiserman<br>05/21/2002  | \$695.00                        | (No comments)   | Correct GPL price is \$795.00, No reason given for discounted price  |
| 16j. | Claughton<br>11/26/2002 | \$750.00                        | "Prearranged - Prepaid"   | Unsure why price is \$750.00 when none of the Respondent's GPL's offer a direct cremation (with or without an alternative container) for this price. |

17.

17a. On or about February 6, 2004, Respondent submitted a copy of a Statement of Funeral Goods and Services Selected (SFGSS) to the VA, for consideration of payment of final disposition benefits for decedent, E. Rider. On the contract, dated February 1, 2004, Respondent's manager, Olson, wrote "Unclaimed Veteran." Respondent itemized the goods and services of a final disposition by direct cremation with alternative container and other fees as follows:

|                            |                  |
|----------------------------|------------------|
| <b>Basic Services</b>      | <b>\$625.00</b>  |
| <b>Transfer of Remains</b> | <b>\$320.00</b>  |
| <b>Refrigeration</b>       | <b>\$125.00</b>  |
| <b>Cremation Process</b>   | <b>\$300.00</b>  |
| <b>Black Plastic Urn</b>   | <b>\$ 20.00</b>  |
| Death Certificate          | \$ 20.00         |
| State Filing Fee           | \$ 7.00          |
| <b>BALANCE DUE, TOTAL</b>  | <b>\$1517.00</b> |

17b. On April 1, 2004, the Board made a copy of the foregoing Statement of Funeral Goods and Services Selected from Respondent's records.

17c. On April 2, 2004, the Board requested that Olson send the Board a copy of the permanent file for the final arrangements of E. Rider; to include a copy of the Statement of Funeral Goods and Services Selected.

17d. On April 8, 2004, the Board received from Respondent another, fabricated Statement of Funeral Goods and Services Selected, dated February 1, 2004, for the final disposition of E. Rider. On the contract, manager Olson wrote "Agreed to do for VA Benefits with family." The contract contained the following charges, without a total:

|                   |          |
|-------------------|----------|
| Direct Cremation  | \$870.00 |
| Death Certificate | \$ 20.00 |
| State Filing Fee  | \$ 7.00  |

17e. The foregoing altering and falsification of a permanent funeral service record to mislead the reader of record is a violation of OAR 830-030-0090(2)(b)(C) and OAR 830-040-0000(9)(b)

which is cause for disciplinary action under ORS 692.180(1)(g); and is fraudulent and dishonest conduct which is cause for disciplinary action under ORS 692.180(1)(b).

### **Rights and Procedures**

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 within this 21-day period, your right to a hearing shall be considered waived.

If you request a hearing, you will be notified of the time and place of the hearing. A Notice of Contested Case Rights and Procedures is enclosed with this Notice of Proposed Civil Penalty. If you do not request a hearing within 21 days, or if you withdraw a hearing request, notify the Board or hearing officer that you will not appear or fail to appear at a scheduled hearing, the Board may issue a final order by default imposing a civil penalty. If the Board issues a final order by default, it designates its file on this matter as the record.

DATED this \_\_\_2nd\_\_\_ day of December, 2005

STATE MORTUARY AND CEMETERY BOARD

\_\_\_<s> Lynne Nelson\_\_\_\_\_

Lynne Nelson  
Compliance Manager