

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

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| <p>In the Matter of</p> <p>S.E. Acquisition of Oregon, Inc. dba<br/><b>Mountain View Memorial Chapel</b> (OMCB License No. FE-8327); and</p> <p>S.E. Acquisition of Myrtle Creek, Oregon, Inc. dba <b>Funeral Alternatives Crematory, Myrtle Creek</b> (OMCB License No. CR-0520); and</p> <p>Chapel of the Valley Funeral Home, Inc. dba <b>Roseburg Funeral Alternatives</b> (OMCB License No. IM-9056); and</p> <p>Chapel of the Valley Funeral Home, Inc. dba <b>Funeral Alternatives of Roseburg</b> (OMCB License No. FE-8389)</p> <p style="text-align: center;"><b>RESPONDENTS</b></p> | <p>Notice of Proposed Disciplinary Action<br/>and<br/>Opportunity for a Hearing</p> <p style="text-align: center;"><b>CASE NOS. 05-1008D, E, F &amp; G</b></p> |
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Pursuant to ORS 692.180, the Oregon Mortuary & Cemetery Board (hereafter "OMCB" or "Board") proposes to take disciplinary action against S.E. Acquisition of Oregon, Inc., S.E. Acquisition of Myrtle Creek, Oregon, Inc. and Chapel of the Valley Funeral Home, Inc. (hereafter "Respondents") 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.

**Grounds for Disciplinary Action:**

1. On December 27, 2002, the Board received renewal applications for the 2003/2004 licensing period from Respondents for the following facilities:

- I. S.E. Acquisition of Oregon, Inc. dba Mountain View Memorial Chapel (OMCB License No. FE-8327), a funeral establishment
- II. Chapel of the Valley Funeral Home, Inc. dba Roseburg Funeral Alternatives (OMCB License No. IM-9056), an immediate disposition company
- III. Chapel of the Valley Funeral Home, Inc. dba Funeral Alternatives of Roseburg (OMCB License No. FE-8389), a funeral establishment
- IV. S.E. Acquisition of Myrtle Creek, Oregon, Inc. dba Funeral Alternatives Crematory, Myrtle Creek (OMCB License No. CR-0520), a crematorium

2. On January 14, 2003, the Board issued licenses to the above facilities.
3. On July 29, 2004, Walter Hogan, president of HG Services, Inc. and West Properties II, Inc. (hereafter "Hogan") and Respondent's representative, Randall Stricklin, signed a "Management and Service Agreement" transferring the management and operation of the foregoing facilities to Hogan, to be effective on July 30, 2004.

4. Section 1 of the Management and Service Agreement reads:

*"West II does hereby agree to professionally and legally manage Mountain View Memorial Chapel and Roseburg Funeral Alternatives for a period commencing on July 30, 2004, and terminating on the Closing Date as defined in the Purchase Agreement in a professional manner in full compliance with all applicable laws and regulations for and in consideration of its receipt of all of the profits from the operation of Mountain View Memorial Chapel and Roseburg Funeral Alternatives during the period commencing on July 30, 2004 and ending on the Closing Date. "*

5. On July 29, 2004, Hogan began operating the foregoing four facilities, and employees of the facilities went to Hogan for his decision-making authority in business matters. Hogan, therefore, became a principal, of the foregoing facilities pursuant to OAR 830-011-0000(32).
6. ORS 692.148(1) provides that if the principals of a licensed funeral establishment or immediate disposition company change, the establishment or company shall apply to the State Mortuary and Cemetery Board for a new license.
7. Respondents did not apply for a new license when Hogan or his corporations became a principal. Respondents, therefore, violated ORS 692.148(1) which is cause for disciplinary action.
8. OAR 830-040-0000(5) provides that when there is a change in any principal of the licensed facility, the licensee shall provide the Board with the name of the new principal(s) on a

form provided by the Board within 30 days of the change. If the new principal is a corporation, the licensee shall provide the names of the principals of that corporation to the Board on a form provided by the Board.

9. Respondents did not provide the name of a new principal on a form provided by the Board within 30 days of the change. Respondents, therefore, violated OAR 830-040-0000(5) which is cause for discipline under ORS 692.180(1)(g).

10. OAR 830-040-0000(4) provides that Applications for all licensed facilities shall specify the names of all principals. If the principal is a corporation, the application shall include the names of all principals of that corporation.

11. On February 8, 2005, the Board received, from Respondents, four completed 2005/2006 Renewal Applications for the facilities referred to in Section 1. Neither Walter Hogan nor his corporations were named as principals on the four Applications.

12. Respondents, therefore, violated OAR 830-040-0000(5) which is cause for disciplinary action under ORS 692.180(1)(g).

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

### **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 Oregon Mortuary & Cemetery Board (the "Board") at 800 NE Oregon Street, Portland, OR 97232, 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 Denial of Application. 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 denying your Application. If the Board issues a final order by default, it designates its file on this matter as the record.

DATED this 30th day of January, 2008

STATE MORTUARY AND CEMETERY BOARD

<S> Lynne Nelson  
Designee: Lynne Nelson, Compliance Manager

## NOTICE OF CONTESTED CASE HEARING RIGHTS AND PROCEDURES (Corporate)

1. **Law that Applies.** The matter set for hearing is a contested case. The hearing will be conducted as provided in Chapter 183 Oregon Revised Statutes, Chapter 692 Oregon Revised Statutes, the administrative rules of the State Mortuary and Cemetery Board (the "Board") and Oregon Administrative Rule Chapter 137.
2. **Right to Attorney.** You must be represented by an attorney at the hearing. The Board will be represented by an attorney.
3. **Hearing Officer.** The person presiding at the hearing is known as the hearing officer. The hearing officer will rule on all matters that arise at the hearing, subject to agency consideration of matters certified for agency decision under OAR 137-003-0635 or matters subject to agency review under OAR 137-003-0640. The hearing officer will be assigned by the Chief Hearing Officer from the Hearing Officer Panel. The Hearing Officer Panel consists of employees of the Employment Department and independent contractors with the Hearing Officer Panel. The hearing officer does not have the authority to make the final decision in the case. The final determination will be made by the Board.
4. **Witnesses.** A witness must testify under oath or affirmation to tell the truth. The Board will issue subpoenas for witnesses on your behalf upon a showing that their testimony is relevant to the case and is reasonably needed by you to establish your position. Your attorney may also issue subpoenas. Payment of witness fees and mileage to the person subpoenaed is your responsibility.
5. **Order of Evidence.** A hearing is similar to a court proceeding but is less formal. Its general purpose is to determine the facts and whether the Board's proposed action is appropriate. The order of presentation of evidence is normally as follows:
  - a. Testimony of witnesses and other evidence of the Board in support of its proposed action.
  - b. Testimony of your witnesses and your other evidence.
  - c. Rebuttal evidence by the Board and by you.
6. **Burden of Presenting Evidence.** The burden of presenting evidence to support an allegation or position rests upon the proponent of the allegation or position. You should approach the hearing prepared to present the testimony of witnesses and other evidence that will support your position. All witnesses are subject to cross-examination and also to questioning by the hearing officer.
7. **Admissible Evidence.** Evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs is admissible and will be received. Hearsay evidence is not automatically excluded. Rather, the fact that it is hearsay generally affects how much reliance the Board will place on it in reaching a decision.

There are four kinds of evidence:

- a. Knowledge of the agency or hearing officer. The agency or hearing officer may take "official notice" of facts based on the agency's or hearing officer's knowledge in a specialized field. This includes notice of general, technical or scientific facts. The agency or hearing officer may also take "judicial notice" of a fact that is not subject to reasonable dispute in that it is generally known or is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. You will be informed if the agency or

hearing officer takes "official notice" or "judicial notice" of any fact and you will be given an opportunity to contest any facts so noticed.

- b. Testimony of witnesses. Testimony of witnesses who have knowledge of the facts will be received in evidence.
  - c. Writings. Written documents including letters, maps, diagrams and other written material will be received in evidence.
  - d. Experiments, demonstrations and similar means used to prove a fact. The results of experiments and demonstrations may be received in evidence.
8. **Objections to Evidence.** Objections to the admissibility of evidence must be made at the time the evidence is offered. Objections are generally made on one of the following grounds:
- a. The evidence is unreliable;
  - b. The evidence is irrelevant or immaterial and has no tendency to prove or disprove any issue involved in the case;
  - c. The evidence is unduly repetitious and duplicates evidence already received.
9. **Continuances.** There are normally no continuances granted at the end of the hearing for you to present additional testimony or other evidence. However, if you can show that the record should remain open for additional evidence, the hearing officer may grant you additional time to submit such evidence.
10. **Record.** A record will be made of the entire proceeding to preserve the testimony and other evidence for appeal. This will be done by use of a tape recorder or court reporter. The record is generally not transcribed, unless there is an appeal to the Court of Appeals. However, you may obtain a copy of the tape recording upon payment of the costs of making a copy of the tape. You may obtain a transcript of the court reporter's notes upon payment of a transcription fee.
11. **Proposed Order and Exceptions.** The hearing officer will issue a proposed order in the form of findings of fact, conclusions of law and recommended agency action. You will be provided with a copy and you will be given an opportunity to make written objections, called "exceptions", to the hearing officer's recommendations. You will be notified when exceptions to the proposed order must be filed. You will also be notified when you may appear and make oral argument to the Board.
12. **Final Order.** The Board will render the final order in this case. The Board may modify the proposed order issued by the hearing officer. If the Board modifies the proposed order in any substantial manner, the Board in its order will identify the modifications and will provide an explanation as to why it made the modifications. The Board may modify a proposed finding of "historical" fact only if the proposed finding is not supported by a preponderance of the evidence in the record.
13. **Appeal.** If you wish to appeal the final order, you must file a petition for review with the Oregon Court of Appeals within 60 days after the final order is served upon you. See Oregon Revised Statutes 183.480 *et seq.*

## Certificate of Service

I certify that on January 30, 2008 I served the attached Notice of Proposed Disciplinary Action in OMCB Case Nos. 05-1008D, 05-1008E, 05-1008F and 05-1008G and the attached Notice of Contested Case Rights and Procedures by mailing certified, return receipt requested, in a sealed envelope, with postage prepaid, a copy of thereof addressed as follows:

**Mr. Bill Farrar**  
**1176 Boulevard Way**  
**Walnut Creek, CA 94595**

CERTIFIED MAIL #7003-2260-0001-3347-3115

\_\_\_\_<s> Lynne Nelson \_\_\_\_\_  
Lynne Nelson  
Compliance Manager