

Final Order by Default

Mortuary and Cemetery Board

State of Oregon

In the Matter of the Funeral Establishment License of Oakridge Chapel of the Woods; Kent Franklin and Carolyn (Franklin) Hardman, Joint Proprietors, Licensee	FINAL ORDER by DEFAULT CASE NO. 06-1015A
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On February 4, 2008, the Oregon Mortuary & Cemetery Board (OMCB, Board) properly served a Notice of Proposed Disciplinary Action (Civil Penalty) in OMCB Case No. 06-1015A to Kent Franklin and Carolyn (Franklin) Hardman, Joint Proprietors dba Oakridge Chapel of the Woods, License No. FE-8356 ("Licensee") that proposed to impose civil penalties for violations of ORS 692.180(1)(a), ORS 692.180(1)(b), ORS 692.180(1)(h), OAR 830-030-0090(1)(c), OAR 830-050-0050(8) and ORS 692.180(1)(g). The Notice offered Licensee an opportunity for a hearing if requested within 21 days from the date the Notice was mailed. The Notice designated the Board's file on this matter as the record for purposes of default. Licensee did not request a hearing. On January 21, 2009 the Board properly served an *Amended* Notice of Proposed Disciplinary Action (Civil Penalty) in OMCB Case No. 06-1015A to Kent Franklin and Carolyn (Franklin) Hardman, Joint Proprietors dba Oakridge Chapel of the Woods, License No. FE-8356 ("Licensee"). The Notice designated the Board's file on this matter as the record for purposes of default. Licensee did not request a hearing.

NOW THEREFORE, after considering the Board's file relating to this matter, the Board enters the following:

FINDINGS OF FACT

1. At all relevant times mentioned herein, Oakridge Chapel of the Woods ("Licensee") was licensed by the Oregon Mortuary & Cemetery Board as a funeral establishment.
2. At all relevant times mentioned herein, Kent J. Franklin was licensed as a funeral service practitioner and embalmer (OMCB License No. CO-3638); and Kent J. Franklin was the assigned manager of Licensee funeral establishment.
3. At all relevant times mentioned herein Carolyn J. Franklin, now known as Carolyn J. Hardman ("Hardman"), was working at and representing the funeral establishment.
4. From October 10, 2001 to August 1, 2005, Hardman was licensed as a funeral service practitioner apprentice (OMCB License No. AF-1782) and Hardman's apprenticeship supervisor was Kent J. Franklin. On or about August 1, 2005, Kent J. Franklin had moved to another state, therefore, Hardman's apprenticeship certificate became null and void. OAR

5. From on or about June 5, 2002 to October 8, 2002, Licensee, through the actions of Hardman, filed with Forethought Life Insurance Company (Forethought) five claims each misrepresenting that a specified individual had died, that Licensee had provided mortuary, funeral, cremation, or burial goods and services, or some combination thereof, for the individual, that such goods and services cost a specified amount; and that Licensee was entitled to payment for providing such goods and services pursuant to a life insurance policy issued to the individual by Forethought.

6. At all relevant times, the foregoing individuals had not died, Licensee had not provided any such goods and services, and thus, Licensee was not entitled to any payment from Forethought. The date of the claim, the name of the insured individual, the policy number, and the amount claimed and received by Licensee, in each of the five instances is as follows:

<u>Date Claim Filed</u>	<u>Insured</u>	<u>Policy No.</u>	<u>Amount</u>
6/4/02	E. Peterson	5069967	\$5,949.83
8/8/02	R. Morris	793593	\$7,855.13
9/5/02	R. Jones	894399	\$6,571.84
9/23/02	L. Short	5070100	\$3,243.23
10/8/02	M. Hickox	3020586	<u>\$10,130.28</u>
Total			\$33,750.31

7. As referred to above, on or about October 8, 2002, Licensee, through the actions of Hardman, filed with Forethought a claim misrepresenting that M. Hickox (Hickox) of Roseburg, Oregon had died on October 6, 2002, that Licensee had provided mortuary, funeral, cremation, or burial goods and services, or some combination thereof, for Hickox, that such goods and services cost \$11,749.00; and Licensee was entitled to payment for providing such goods and services pursuant to a life insurance policy, number 3020586, issued by Forethought to Hickox.

8. On or about October 25, 2002, Forethought sent to Licensee checks totaling \$10,130.28 as payment for life insurance policy number 3020586. Hardman deposited or cashed the checks.

9. On November 7, 2005, Hickox died. Subsequently, Licensee, through Hardman, made at-need final disposition arrangements for cremation with J. Mather (Mather), Hickox' niece, conservator, and the beneficiary under the policy. When making these arrangements with Mather, Hardman was not licensed as funeral service practitioner or funeral service practitioner apprentice.

10. On or about March 13, 2006, Licensee submitted to Forethought a copy of an at-need Statement of Funeral Goods and Services Selected (hereafter "SFGSS"), prepared by Hardman, charging for goods, services and cash advances purportedly provided by Licensee for the final disposition of M. Hickox. The total amount charged on the SFGSS for goods, services and cash advances was \$8,647.32.

11.

11a. 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)

11b. In addition, the Funeral Rule provides that funeral establishments must give an itemized written statement to each person who arranges a funeral at the conclusion of the discussion of arrangements, such statement containing at least the funeral goods and funeral services selected by that person and the prices to be paid for each of them, and the total cost of goods and services selected. This statement is generally titled the "Statement of Funeral Goods and Services Selected" (hereafter "SFGSS"). 16 CFR 453.2(b)(5)

11c. The Federal Trade Commission's Funeral Rule, 16 CFR 452.2, provides that it is unfair and deceptive practice to fail to furnish accurate prices to persons making final disposition arrangements.

12. According to the prices stated on the Licensee's effective General Price List (dated September 8, 2002), the facility's Urn Price List, and the cemetery charges list, the SFGSS completed for the final disposition arrangements of M. Hickox that Hardman submitted to Forethought contained inaccurate, higher charges for goods and services than the prices that were provided as described:

13. Licensee's General Price List, Urn Price List and cemetery charges state the following prices for goods and services:

- Basic Services Fee - \$1070.00;
- Transfer of Remains to Funeral Home - \$245.00;
- Transportation of Remains to Autopsy - \$245.00;
- Graveside Services - \$325.00;
- Overtime for Saturday Graveside Service - \$325.00;
- Cremation - \$295.00;
- Cultured Marble Urn (\$175.00)

(Total accurate amount to be charged for some items provided - \$2,680.00).

14. However, on the SFGSS for M. Hickox, Licensee over-charged for goods and services by charging the following prices:

- Basic Services Fee - \$1200.00;
- Transfer of Remains to Funeral Home - \$350.00;
- Transportation of remains to and from Autopsy - \$700.00;
- Use of Equipment & Staff for Graveside Service - \$480.00;
- Overtime for Saturday Graveside Service - \$420.00;
- Cremation - \$400.00;
- Cultured Marble Urn - \$325.00

(Total amount charged on SFGSS for some items provided - \$3,875.00).

15. Licensee, therefore, in at least seven instances, misrepresented the facility's prices for the goods and services provided, and therefore, fraudulently and dishonestly charged a total of approximately \$1,195.00 over the facility's accurate and listed prices.

16. Further, the SFGSS for M. Hickox contained charges for the following items that were not provided:

- Cherry Wood Casket for cremation - \$1975.00;

Presidential Urn Vault - \$525.00;
Headstone emblem with engraved last date lettering - \$425.32;
Acknowledgement cards - \$10.00; and
Register Book - \$50.00
(Total amount charged on SFGSS for items not provided - \$2,985.32)

17. Licensee, therefore, in at least five instances, misrepresented the items provided and therefore fraudulently and dishonestly charged approximately \$2,985.32 on the SFGSS for goods and services not provided.
18. Licensee was not entitled to any payment from Forethought from October 25, 2002 to on or about November 7, 2005, and when Licensee became entitled to payment on or about November 7, 2005, Licensee was entitled to only about \$4,384.50, but had received \$10,130.28. Licensee, therefore, fraudulently and dishonestly withheld the balance owing to the rightful beneficiary of the life insurance policy, J. Mather, the amount of \$5,745.78.

ULTIMATE FINDINGS OF FACT

1. In 2002, as described in Findings of Fact 5 and 6, Licensee filed five claims totaling \$33,750.31 to Forethought Insurance Company, in each case claiming the insured was deceased when they were not. The foregoing false claims are five specifications of misrepresentation in the conduct of business and fraudulent and dishonest conduct.
2. In March of 2006, as described in Findings of Fact 10 through 16, Licensee submitted to Forethought a copy of a Statement of Funeral Goods and Services Selected for M. Hickox that included at least seven inaccurate and higher charges for goods and services than as stated on Licensee's price lists, and included at least five instances where Licensee charged for goods or services that Licensee did not provide.
3. The foregoing Statement charging a total of \$8,647.32, therefore, contained twelve specifications of fraudulent and dishonest over-billing of approximately \$4,180.32.
4. Because Licensee retained the entire amount of the \$10,130.28 insurance check from Forethought, and the actual cost of goods and services provided should have been \$4,384.50, Licensee fraudulently and dishonestly withheld the \$5,745.78 balance owing to the rightful beneficiary of the life insurance policy, J. Mather.
5. Carolyn Hardman, a representative and owner of Licensee funeral establishment, performed the duties of a licensed funeral service practitioner or funeral service practitioner apprentice without a license, as described in Findings of Fact 9 and 10. Licensee, therefore, allowed Carolyn Hardman to perform the duties of a licensed funeral service practitioner or funeral service practitioner apprentice without a license in at least one instance.

CONCLUSIONS OF LAW

1. ORS 692.180(1)(a) provides that misrepresentation in the conduct of business is grounds for disciplinary action. ORS 692.180(1)(b) provides that fraudulent or dishonest conduct, when the conduct bears a demonstrable relationship to funeral service practice is grounds for disciplinary action. ORS

692.180(1)(h), OAR 830-030-0090(1)(c) and ORS 692.180(1)(g) provides that violations of the Federal Trade Commission Funeral Rule is grounds for disciplinary action.

2. By submitting five false claims to Forethought, in each case claiming the insured had died when they had not, Licensee engaged in misrepresentation and fraudulent and dishonest conduct in violation of ORS 692.180(1)(a) and (b).

3. By charging higher prices than as stated on the facility's price lists in seven instances, Licensee engaged in misrepresentation and fraudulent and dishonest conduct in violation of ORS 692.180(1)(a) and (b); and Licensee violated 16 CFR 452.2 which is a violation of ORS 692.180(1)(h), OAR 830-030-0090(1)(c) and ORS 692.180(1)(g).

4. By charging for goods and services that were not provided on the Statement of Funeral Goods and Services Selected in five instances, Licensee engaged in misrepresentation and fraudulent and dishonest conduct in violation of ORS 692.180(1)(a) and (b); and Licensee charged for items not provided in violation of 16 CFR 452.2 which is a violation of ORS 692.180(1)(h), OAR 830-030-0090(1)(c) and ORS 692.180(1)(g).

5. By intentionally withholding a refund of approximately \$5,745.78 from J. Mather since on or about November 7, 2005, Licensee engaged in misrepresentation and fraudulent and dishonest conduct in violation of ORS 692.180(1)(a) and (b).

6. ORS 692.025(1) provides that an individual may not practice as a funeral service practitioner unless the individual is licensed as a funeral service practitioner under ORS 692.045. An individual practices as a funeral service practitioner if the individual for payment is engaged directly or indirectly in supervising or otherwise controlling the transportation, care, preparation, processing and handling of dead human bodies before the bodies undergo cremation, entombment or burial, or before the bodies are transported out of the State of Oregon.

7. OAR 830-030-0004(1) provides that only a funeral service practitioner or funeral service practitioner apprentice shall: (a) Work directly with at need persons to arrange for the disposition of human remains; and (b) Coordinate and direct the various tasks associated with performing funeral services for at need persons including but not limited to: taking all vital information on the deceased for the purpose of filing the death certificate; arranging for transportation of the remains; coordinating the services for final disposition; supervising or otherwise controlling the care, preparation, processing and handling of human remains.

8. OAR 830-030-0090(2)(c)(A) provides that it is unacceptable standards of the Death Care Industry to practice without an appropriate, Oregon license/certificate or registration.

9. OAR 830-050-0050(8) provides that allowing an unlicensed, uncertificated or non-registered individual to perform the duties of licensed individuals including but not limited to, making arrangements with families is grounds for disciplinary action.

10. By allowing Carolyn (Franklin) Hardman, an unlicensed, uncertificated or non-registered individual, to perform the duties of a licensed funeral service practitioner or funeral service practitioner apprentice Licensee violated OAR 830-050-0050(8) which is cause for disciplinary action under ORS 692.180(1)(g).

11. Civil penalties of \$19,000 are appropriate for: Six violations of ORS 692.180(1)(a) and (b) when filing five false insurance claims and when withholding a refund due to a consumer; twelve violations of ORS 692.180(1)(a) and (b) when wrongly charging for items on the contract; and one violation of OAR 830-050-0050(8) when allowing someone to perform the duties of a licensee when they were not licensed.

ORDER

NOW THEREFORE, after considering the Board's file relating to this matter, the Board enters the following Final Order by Default:

1. Licensee is ordered to pay a civil penalty in the amount of \$19,000 within 10 days after the date this order is entered, or, if appealed, within 10 days after the order is sustained on appeal. Failure to pay the civil penalty within the time prescribed constitutes grounds for which the Board may take additional disciplinary action.
2. This Final Order shall become effective when signed by the Executive Director of the Board.

DATED and ENTERED this ___1st___ day of ___April_____, 2009

<s> Michelle Gaines
Michelle Gaines, Executive Director
Oregon Mortuary & Cemetery Board

Date of Mailing: _____ April 6, 2009 _____

NOTICE OF OPPORTUNITY FOR JUDICIAL REVIEW (COURT OF APPEALS)

You are entitled to judicial review of this Final Order pursuant to ORS 183.482. Judicial Review may be initiated by filing a petition for review with the Oregon Court of Appeals within 60 days from the date this Order was mailed to you.