

Notice of Proposed Denial of Application

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

In the Matter of the combination Embalmer Apprenticeship Certificate and Funeral Service Practitioner Apprenticeship Certificate Application of NICOLAS C. DURHAM, APPLICANT	Notice of Proposed Denial of an Application And Opportunity for a Hearing CASE NO. 11-1040
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Pursuant to ORS 692.180(1) Oregon Mortuary & Cemetery Board proposes to deny your combination application for Embalmer Apprenticeship Certificate and Funeral Service Practitioner Apprenticeship Certificate on the grounds noted below.

Grounds for Application Denial:

1. On June 16, 2011 the Oregon Mortuary & Cemetery Board (“Board”) received a combination application for Embalmer Apprenticeship Certificate and Funeral Service Practitioner Apprenticeship Certificate (“Application”) from Nicolas C. Durham (“Applicant”) in the office of the Board. At this time, the Board Staff investigator advised Applicant that failure to fully disclose all criminal, civil or administrative history would be cause for denial of the Application. Applicant stated that the only history he had was two DUII convictions and one Felony Forgery conviction.

2. Application and a background investigation for embalmer apprentice certificate and funeral service practitioner (FSP) apprenticeship are required pursuant to OAR 830-011-0050(1) and ORS 692.190.

3.

3a. The combination embalmer/FSP Application’s Background Information section, Question #2, asks Applicant, “As a licensee (or applicant) have you **ever** received a revocation, reprimand, warning, violation, suspension, fine, cancellation (or denial) by any city, county or

state licensing agency?” If the answer is “Yes” Applicant is required to provide a detailed, complete and accurate written account of the facts and circumstances of each event. Applicant answered “Yes” to this question and disclosed that on October 24, 1998 his Oregon driver’s license was suspended for failing to submit to a urinalysis test.

3b. Applicant failed to disclose that on March 14, 2008, the State of Oregon Construction Contractor’s Board (OCCB) fined Applicant’s construction company, Aspen Enterprises, LLC (OCCB #157883) a civil penalty of \$1,000.00 for hiring an unlicensed subcontractor.

3c. Applicant also failed to disclose that his Oregon driver’s license was suspended for failing to submit to a urinalysis test on October 24, 1998.

4.

4a. The combination embalmer/FSP Application’s Background Information section, Question #3, asks Applicant, *“Have you ever been arrested, charged or cited for anything other than traffic violations?”* If the answer is “Yes” Applicant is required to provide a detailed, complete and accurate written account of the facts and circumstances of each arrest or cite, including any dismissals. Applicant answered “Yes” to this question.

4b. The Application’s Background Information section, Question #4, asks Applicant, *“Have you ever been convicted of, or are you currently charged with, committing a crime whether or not adjudication was withheld?”* If the answer is “Yes” Applicant is required to provide a signed, dated, written statement explaining the circumstances of each incident and include a copy of the charging documents and a copy of the official documents which demonstrated the resolution of the charges or any final judgments. Applicant answered “Yes” to this question.

4c. With the application, Applicant provided a written explanation of the facts and circumstances of the following history of arrests and convictions in Oregon:

DATE OF ARREST	CHARGE	ARRESTING AGENCY	COURT #/DATE	STATUS
12/17/94	DUII	Gresham Police Dept.	Multnomah County Court Case #A235638	Convicted, Suspended license

09/24/95	DUII, Reckless Driving, Failing to Perform Duties of a Driver	Gresham Police Dept.	Multnomah County Court, 10/13/1996	Convicted of all charges; probation and DUI Treatment.
07/26/99	Forgery 1st Degree	Clackamas County Sheriff's Office	Clackamas County Court 09/27/89	Convicted; \$500 fine, 18 mos. Probation

4d. In the Application, Applicant provided the following arrest dates, offenses and court case numbers, but did not include a complete, accurate and detailed written explanation of the facts and circumstances of the arrests:

DATE OF ARREST	CHARGE	ARRESTING AGENCY	COURT #/DATE	STATUS
01/24/93	Assault 4 th Degree	Unknown	Multnomah District Court #0294930	Closed
04/11/93	Assault 4 th Degree	Unknown	Multnomah District Court #DA492408	Closed

4e. A background investigation revealed at least the following criminal history for Applicant:

DATE OF ARREST	CHARGE	ARRESTING AGENCY	COURT #/DATE	STATUS
01/24/93	Assault 4 th Degree	Gresham Police Dept.	Multnomah County #0294930, 11/01/25/93	Dismissed
04/11/93	Assault 4 th Degree	Gresham Police Dept.	Multnomah County Court #DA492408	Dismissed, civil compromise
12/17/94	DUII	Gresham Police Dept.	Multnomah County Court #A235638	Convicted, Suspended license
09/24/95	DUII, Reckless Driving, Failing to Perform Duties of a Driver	Gresham Police Dept.	Multnomah County Court 10/13/1996	Convicted of all charges; probation and DUI Treatment.
07/26/99	Forgery 1st Degree	Clackamas County Sheriff's Office	Clackamas County Court 09/27/89	Convicted; \$500 fine, 18 mos. Probation
7/15/02	Assault 4 th Degree	Gresham Police Dept.	Multnomah County Court #020847767	Dismissed

4f. Therefore, Applicant failed to disclose at least the following 2002 arrest/charge or include a written detailed, complete and accurate explanation of the facts and circumstances of the following three arrests/charges in his Application:

DATE OF ARREST	CHARGE	ARRESTING AGENCY	COURT #/DATE	STATUS
01/24/93	Assault 4 th Degree	Gresham Police Dept.	Multnomah County #0294930	Dismissed
04/11/93	Assault 4 th Degree	Gresham Police Dept.	Multnomah County Court #DA492408	Dismissed, civil compromise
7/15/02	Assault 4 th Degree	Gresham Police Dept.	Multnomah County Court #020847767	Dismissed

5.

5a. The Application’s Background Information section, Question #6, asks Applicant, *“Do you have any charges or legal matters that are currently unresolved?”* Applicant answered *“No”* to this question. If the answer is *“Yes”* the applicant must provide a detailed, complete and accurate written account of the facts and circumstances of each matter currently unresolved.

5b. On September 3, 2002, a Stalking Protective Order (Case# 020807803) was issued against Applicant in Multnomah County District Court. The Order is still in effect.

5c. On April 4, 2011, a civil lawsuit was filed against Applicant in Clackamas County Circuit Court (Case # LV11040596) for recovery of an unpaid debt of \$1,380.48. At the time the Board received the Application, the case was unresolved.

6.

6a. As described in Sections 1, 3, 4 and 5 above, Applicant failed to cooperate or answer truthfully or completely and made false or misleading statements on his Application or to the Board in violation of OAR 830-030-0090(5)(d) and OAR 830-030-0090(5)(g). Applicant also violated ORS 692.180(1)(a).

6b. For the foregoing reasons, and pursuant to ORS 692.180(1), the Board proposes to deny Applicant’s combination application for Embalmer Apprenticeship Certificate and Funeral Service Practitioner Apprenticeship Certificate.

7.

Definitions that may be related to this notice are listed 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 State Mortuary & Cemetery Board (the “Board”) within 60 days from the date this notice was mailed. If a request for hearing is not received by the Board within this 60-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. 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 an agency, trust, corporation or association. 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 60 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 the discipline as determined by the Board. If the Board issues a final order by default, it designates its file on this matter as the record for purposes of establishing a prima facie case.

DATED this __7th__ day of September, 2011

STATE MORTUARY AND CEMETERY BOARD

__<s> Lynne Nelson_____
Lynne Nelson, Interim Executive Director