

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

<p>In the Matter of the Preneed Salesperson Registration Certificate of <b>DAVID A. PERLMAN,</b></p> <p style="text-align: center;"><b>RESPONDENT</b></p>	<p>Notice of Proposed Disciplinary Action (Revocation of Preneed Salesperson Registration and Civil Penalty) And Opportunity for a Hearing</p> <p style="text-align: center;"><b>AMENDED</b></p> <p style="text-align: center;"><b>CASE NO. 08-1013B</b></p>
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Pursuant to ORS 692.180(1) and ORS 97.931(3), the Oregon Mortuary & Cemetery Board proposes to take disciplinary action against you in the form of revocation of your Preneed Salesperson Registration and civil penalties on the grounds noted below. For statutory and rule violations the Board may impose one or more of the following sanctions: License revocation; civil penalty of up to \$1000 for each violation; or other sanctions as authorized by law.

**Grounds for Discipline:**

**1.**

**1a.** At all times mentioned herein David A. Perlman (hereafter “Respondent”) was licensed by the Oregon Mortuary and Cemetery Board (hereafter “OMCB” or “Board”) as a Preneed Salesperson (OMCB Preneed Salesperson Registration No. PN-8568).

**1b.** At all times mentioned herein, Respondent was employed as the Preneed Regional Sales Manager for various StoneMor Oregon funeral establishments and cemeteries, including Memory Gardens Memorial Park (OMCB License No. CE-0734, hereafter “Memory Gardens”) in Medford.

**1c.** At all times mentioned herein, Memory Gardens was a Certified Provider registered with the State of Oregon Department of Consumer and Businesses Services (DCBS) to sell

trust-funded prearrangements for cemetery goods and services, Registration Nos. CP-0284 and CP-0292.

**1d.** At all times mentioned herein, Cameron R. Stewart (hereafter “Stewart”) was registered by the Board as a Preneed Salesperson (OMCB License No. PN-8650); and at all times mentioned herein, Robert I. Diaz (hereafter “Diaz”) was registered by the Board as a Preneed Salesperson (OMCB License No. PN-8682).

**1e.** At all times mentioned herein, Diaz and Stewart were employed at Memory Gardens.

**2.**

**2a.** In 1991, Keith T. and Betty T., husband and wife, purchased two rights of interment in urn garden plots in the “Savior Scatter Garden”, two urns, two outer burial containers and a nameplate from Memory Gardens.

**2b.** In early August of 2007, *a person identifying himself as Robert Diaz* contacted Keith T. or Betty T. by phone and made an appointment to come to their home for the purpose of selling additional cemetery or goods and services. At that time, Keith T. was 86 years old and Betty T. was 81.

**2c.** On or about August 10, 2007, Respondent, Diaz and Stewart went to Keith T. and Betty T.’s home. During the sales meeting, the couple agreed to purchase two prearranged ‘opening and closings’ for the urn garden plots. According to Memory Garden’s price list in effect at that time, the cost for each opening and closing in that section was \$95.00. Therefore, the total price the couple should have paid for opening and closing the two plots should have been \$190.00.

**2d.** Keith T. and Betty T. were charged the amount of \$495.00 for each opening and closing for a total of \$990.00.

**2e.** In addition, though Stonemor’s practice at that time was not to charge a processing fee on opening/closing-only sales or only charge the fee on purchases over \$500.00, Keith T. and Betty T. were also charged a \$75.00 processing fee, and therefore overpaid by \$875.00.

**2f.** Diaz and Stewart, under the supervision of Respondent, completed the prearrangement contract for this sale. Keith T. and Betty T. gave the men a check for \$1,065.00 at the sales meeting.

**2g.** After the sales meeting, Respondent submitted the contract and the check for \$1065.00 to the Memory Garden office staff for processing. When staff called Respondent's attention to the incorrect overcharges on the contract, Respondent did not indicate a mistake had been made and did not attempt to stop processing of this inaccurately priced contract.

**3.**

**3a.** Respondent, therefore, engaged in fraudulent or dishonest conduct by overcharging for two opening/closings and by charging a processing fee, in violation of ORS 692.180(1)(b) and OAR 830-050-0050(9) which is cause for disciplinary action under ORS 692.180(1)(g).

**3b.** Respondent engaged in sales practices that concealed or misstated material facts in violation of OAR 830-030-0100(9) which is cause for disciplinary actions under ORS 692.180(1)(g); and Respondent made misrepresentations in the conduct of business which are violations of ORS 692.180(1)(a). See also OAR 441-930-0290(2), (3)

**4.**

**4a.** Also, during the foregoing sales meeting, Respondent told Keith T. and Betty T. that a change in state law required them to make their purchase.

**4b.** Oregon law does not require a cemetery to charge for opening/closing, nor does Oregon law require a cemetery to charge consumers a processing fee.

**4c.** Respondent's statement is dishonest and fraudulent in violation of ORS 692.180(1)(b), a sales practice that conceals or misstates material facts in violation of OAR 830-030-0100(9), which is cause for disciplinary action under ORS 692.180(1)(g), and misrepresentation in violation of ORS 692.180(1)(a). See also OAR 441-930-0290(3)

**5.**

Based on the foregoing paragraphs, Respondent failed to respect the dignity and rights of two clients, Keith T. and Betty T, regardless of age, which is a violation of OAR 830-030-0090(1)(h) and cause for disciplinary action under ORS 692.180(1)(g).

**6.**

**6a.** As described above, Stewart and Diaz also engaged in fraudulent or dishonest conduct, misrepresentation, and failed to respect the dignity and rights of clients in violation of ORS 692.180(1)(a), (b) (g), OAR 830-030-0090(1)(h), OAR 830-030-0100(9) and OAR 830-050-0050(9).

**6b.** As the trainer, lead salesperson, or Preneed Regional Sales Manager for Diaz and Stewart, Respondent aided, abetted, or assisted Stewart and Diaz in the violation of a law, rule or regulation intended to guide the conduct of the death care industry, which is a violation of OAR 830-030-0090(2)(a)(F) which is cause for disciplinary action under ORS 692.180(1)(g).

**7.**

**7a.** During the Board's investigation of the foregoing incidents, Respondent discussed the contract with his supervisor before talking to the Board's investigator. When talking to the Board's investigator, Respondent failed to cooperate or answer truthfully and completely when asked about the sales meeting with Keith T. and Betty T., and the resulting contract. Instead, Respondent made the following statements to the Board's investigator:

- i. When the Board showed him a copy of the contract, Respondent stated, "This is the first time I looked at it."
- ii. "I do not recall seeing or reviewing the contract; I had nothing to do with it, I was not responsible for it, and I am not tied to it. If Diaz completed it then Stewart is responsible for it, not me."
- iii. "Diaz and Stewart are responsible for its contents."
- iv. "I was not involved in training Diaz and Stewart at the meeting; I only accompanied them to Keith and Betty's home because it is more fun when we go together, and we can help each other out."
- v. Perlman later stated, "There might have been 'some training' involved because I have more experience."
- vi. "I do not remember discussing any possible overcharges on the contract with any Memory Garden staff."

**7b.** Respondent failed to cooperate or answer truthfully and completely inquires regarding matters within the Board's jurisdiction in violation of OAR 830-030-0090(2)(d)(B), or gave false or misleading information to an investigator in violation of OAR 830-040-0010(3). The foregoing violations are cause for disciplinary action under ORS 692.180(1)(g).

**8.**

**8a.** *On or about June 18, 2009, DW and LW, husband and wife, met with Respondent to purchase their interment rights at Restlawn Memorial Gardens & Mausoleum in Salem (OMCB License No. CE-0735, hereafter "Restlawn").*

**8b.** *During the meeting, DW and LW told Respondent they wanted to purchase a granite park bench near or in the Garden of Prayer plotted section of the cemetery, as close to DW's mother's grave as possible. At Restlawn, the granite park bench is used as a monument that is placed over ground that is used for the interment or scattering of cremated remains.*

**8c.** *Respondent showed DW and LW a space which Respondent identified as park bench Space #9. DW and LW agreed to purchase that space because that particular space was "right across from [DW's mother's] grave".*

**8d.** *However, Respondent failed to enter "Space #9" or any other space number on the contract prior to providing a copy of the contract to the clients. By failing to enter the space number on the purchaser's contract, Respondent failed to name the place where remains are to be interred by stating the exact location of the interment of remains by niche, lot or plot. The foregoing is a violation of OAR 830-040-0000(6)(d). Also, by failing to enter the space number on the contract prior to providing a copy to the clients, Respondent failed to abide by the minimum accepted standards of the death care industry in violation of OAR 830-030-0090(1). The foregoing are cause for disciplinary action under ORS 692.180(1)(g).*

**8e.** *Prior to turning the foregoing contract into Restlawn staff for processing, Respondent wrote "#9" on the contract in the field for recording the exact space number. Restlawn staff entered the sale into a cemetery log book, recording that DW and LW purchased "Bench -*

*Prayer #9” and Restlawn staff ultimately provided DW and LW a Certificate of Ownership for Space #9, Garden of Prayer, which includes two rights of interment.*

**8f.** *However, Space #9 had been sold to another consumer in 2003, as recorded in other records at the cemetery office.*

**8g.** *By failing to confirm whether the space chosen by the clients was an available space for purchase or that the space was correctly identified as “Space #9”, Respondent misstated or concealed a material fact which is misrepresentation in the conduct of business, or Respondent failed to abide by the accepted minimum standards of the death care industry, or Respondent failed to implement agreed upon arrangements with the clients. The foregoing is a violation of OAR 830-030-0090 or OAR 830-030-0090(1)(d) or OAR 830-030-0100(9) which are cause for disciplinary action under ORS 692.180(1)(g). See also ORS 692.180(1)(a).*

**8h.** *Further, by selling to DW and LW a space that had already been sold to another client, Respondent caused the cemetery records to be inaccurate in violation of OAR 830-040-0000(6) which is cause for disciplinary action under ORS 692.180(1)(g).*

## **9.**

**9a.** *During the foregoing meeting, Respondent showed DW and LW various color choices for the granite park bench. DW and LW preferred, and chose, a color shown to them titled “emerald green.” Respondent entered that color choice on the contract prior to providing a copy to the clients. However, “emerald green” was not an available choice for the granite park bench.*

**9b.** *By failing to confirm whether “emerald green” was an available color choice prior to the sale, Respondent misstated or concealed a material fact which is misrepresentation in the conduct of business, or Respondent failed to abide by the accepted minimum standards of the death care industry, or Respondent failed to implement agreed upon arrangements by providing the color chosen by the consumers. The foregoing is a violation of OAR 830-030-*

0090, or OAR 830-030-0090(1)(d), or OAR 830-030-0100(9) which are cause for disciplinary action under ORS 692.180(1)(g). See also ORS 692.180(1)(a).

**10.**

*On or about October 12, 2006 the Board advised Respondent in writing that it was considered concealing or misstating a material fact to fail to verify the availability of a gravesite prior to offering the gravesite to a consumer. In addition, the Board warned Respondent that it is considered misstating a material fact by misrepresenting the features of a lawn crypt. The Board's letter to Respondent included the relevant legal authorities: OAR 830-030-0100(9) or OAR 830-030-0090, OAR 830-030-0090(1)(d) and ORS 692.180(1)(a) and (g)*

**11.**

The Board therefore proposes to revoke Respondent's Preneed Salesperson Registration and impose civil penalties pursuant to ORS 692.180(1).

**12.**

Definitions that may be relevant to this Notice are contained in ORS 97.923, ORS 692.010, and OAR 850-011-0000.

**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 Oregon Mortuary & Cemetery Board (the "Board") at 800 NE Oregon Street, Suite 430, 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 Hearing Rights and Procedures is enclosed with this Notice of Proposed Disciplinary Action. 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 discipline. 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 \_\_\_6th\_\_\_\_\_ day of August, 2010

STATE MORTUARY AND CEMETERY BOARD

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