

STATE MORTUARY AND CEMETERY BOARD

STATE OF OREGON

<p>In the Matter of the funeral establishment license of LAFOLLETTE, LLC., dba BURNS MORTUARY of PENDLETON,</p> <p style="text-align: center;">LICENSEE A</p> <p>And</p> <p>In the Matter of the funeral service practitioner and embalmer license of BRIAN LAFOLLETTE,</p> <p style="text-align: center;">LICENSEE B</p>	<p>Notice of Proposed Disciplinary Action And Opportunity for a Hearing</p> <p>CASE NOS. 09-1033A & B and</p> <p>CASE NOS. 09-1041A & B</p>
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Pursuant to ORS 692.180, the Oregon Mortuary & Cemetery Board (“OMCB”, “Board”) proposes to take disciplinary action against LaFollette, LLC. dba Burns Mortuary of Pendleton and against Brian LaFollette 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.

1.

1a. At all times mentioned herein, LaFollette, LLC dba Burns Mortuary of Pendleton (hereafter “Licensee A”) was licensed by the Board as a funeral establishment in Pendleton (OMCB License No. FE-8561); and at all times mentioned herein, Brian LaFollette (hereafter “Licensee B”) was licensed as a funeral service practitioner (OMCB License No. CO-3220), and Licensee B was the assigned manager and an owner of Licensee A funeral establishment.

1b. At all times mentioned herein Licensees A and B employed Brian Abell, who is licensed as a funeral service practitioner and embalmer (OMCB License No. CO-3002, hereafter “Abell”); and at all times mentioned herein Licensees A and B employed Allison Ashbeck, an Oregon notary public who does not hold a license with this Board (hereafter “Ashbeck”).

1c. For the following violations, the Board proposes to impose civil penalties and a reprimand:

2.

2a. On or about March 4, 2008, Licensee B and Abell went to another licensed funeral establishment in Pendleton and presented seven (7) consumer file transfer requests. Each request is stamped with Ashbeck’s notary stamp and contains her signature as a notary affirming the signature of the consumer in her presence. The requests are identified by initials: D.P., A.H. & J.H., R.B. & E.B., L.S. & P.S..

2b. With respect to at least one of the foregoing seven transfer requests, Ashbeck did not notarize the consumer’s signature on Licensees’ transfer request form at the time of the consumer’s signature.

2c. With respect to at least one of the foregoing seven transfer requests, the consumer did not sign the form in Ashbeck’s presence.

2d. With respect to at least one of the foregoing seven transfer requests, Ashbeck failed to verify it was the true signature of the consumer on the form she notarized.

3.

3a. Licensees A and B are responsible for the practices of employees. OAR 830-030-0100(8).

3b. Licensees’ employees acted contrary to the legal standards for notarization of documents. See ORS 194.166(11), (13); ORS 194.505; ORS 194.515; ORS 194.575. The conduct of Licensee’s employees, as described above in Section 2, violates OAR

830-030-0100(9), OAR 850-050-0050(9), or OAR 830-030-0090(2)(b)(B) which are cause for disciplinary action under ORS 692.180(1)(g) and violates ORS 692.180(1)(a) or (b).

3c. Further, the conduct described in Section 2 is considered unprofessional conduct, a failure to abide by the minimum accepted standards of the death care industry, and inaccurate record-keeping which are violations of OAR 830-030-0090, OAR 830-030-0090(2)(b)(A), OAR 830-030-0090(2)(b)(C), OAR 830-040-0000(9)(b) or OAR 830-040-0000(6). The foregoing are cause for disciplinary action under ORS 692.180(1)(g).

4.

4a. As described in Section 2 above, Licensees also failed to maintain proper supervision of Ashbeck. The foregoing is a violation of OAR 830-030-0090(1)(f) which is cause for disciplinary action under ORS 692.180(1)(g).

4b. Further, as described in Section 2 above, Licensees aided, abetted, or assisted an individual to violate or circumvent a law, rule or regulation intended to guide the conduct of the death care industry, or directed a person to falsify a death care document. The foregoing is a violation of OAR 830-030-0090(2)(a)(F) or OAR 830-030-0090(2)(b)(E) which are cause for disciplinary action under ORS 692.180(1)(g).

5.

5a. On or about May 22 and May 23, 2009, Licensees A and B ran an advertisement in the East Oregonian newspaper. The two advertisements, which contained an American flag drawing and the funeral establishment name and physical address, stated: "Burns Mortuary of Pendleton is proud to announce that we are Umatilla County(s) Exclusive Provider for Veterans & Family Memorial Care. Ask us about our veterans discount on pre-paid arrangements."

5b. Licensee A is not the only funeral establishment in Umatilla County that provides funeral goods, funeral services or memorial care for veterans or their families. Licensees A and B violated OAR 830-040-0050(5) or OAR 830-030-0100(9) in at least two instances which are cause for disciplinary action under ORS 692.180(1)(g); and Licensees A and B violated ORS 692.180(1)(a).

5c. Further, Licensees' advertisements failed to include the required disclaimer, in bold type, that states: *"This program is not financed or connected in any manner with any government agency or veteran's or other organization."* Licensees A and B, therefore, violated OAR 830-030-0100(11) in at least two instances which are cause for disciplinary action under ORS 692.180(1)(g).

6.

Definitions that may be relevant 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 21 days from the date this notice was mailed. If a request for hearing is not received by the Board within this 21-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 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 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 ___20th___ day of January, 2011

STATE MORTUARY AND CEMETERY BOARD

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