

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

<p>In the Matter of the funeral establishment license of Eternal Hills Memorial Gardens & Funeral Home, Inc. dba ETERNAL HILLS FUNERAL HOME,</p> <p style="text-align: center;">LICENSEE</p>	<p>Notice of Proposed Disciplinary Action And Opportunity for a Hearing</p> <p style="text-align: center;">CASE NO. 09-1001C</p>
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Pursuant to ORS 692.180(1), the Oregon Mortuary & Cemetery Board (“OMCB”, “Board”) proposes to take disciplinary action against your funeral establishment license 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.

1a. At all times mentioned herein, Eternal Hills Memorial Gardens & Funeral Home, Inc. dba Eternal Hills Funeral Home was licensed by the Board as a funeral establishment (OMCB License No. FE-8239, hereafter “Licensee”).

1b. From January 31, 2006 to October 13, 2008, Tricia A. Kading (hereafter “Kading”) was licensed by the Board as an apprentice funeral service practitioner for Licensee (OMCB License No. AF-1934).

1c. Kading’s supervisor during her apprenticeship period was Tim C. Lancaster, (hereafter “Lancaster”). At all times mentioned herein, Lancaster was a licensed funeral service practitioner and embalmer (OMCB License No. CO-3224), and Lancaster was the manager of Licensee funeral establishment.

2.

2a. An individual is entitled to an FSP license if the applicant submits a complete application form, passes the FSP exam administered under ORS 692.070, and “successfully completes practical experience as a funeral service practitioner’s apprentice under ORS 692.190.” ORS 692.045, OAR 830-020-0000(3). A person practices as an FSP if she or he receives payment for directly or indirectly supervising or otherwise controlling transportation, care, preparation, processing and handling of dead human bodies. ORS 692.025(1).

2b. One FSP apprentice at a time is authorized to operate under or in connection with each FSP practicing in this state for purposes of learning the functions of an FSP. The duration of the required apprenticeship is 12 months. An individual may serve as an FSP apprentice for an aggregate of not more than 48 months. ORS 692.190(2), (4), (5).

2c. Apprentice funeral service practitioners must work a minimum of 30 hours per week during normal business hours, excluding 30 days of vacation leave per year, and must assist in the planning of at least 25 funerals or dispositions per year through some form of direct contact with the family or representative of the deceased. See OAR 830-011-0020(4).

2d. Additionally, a log book shall be kept, on the premises, showing all arrangements made or participated in by the apprentice and be available upon request. The log book shall include the following: (a) Name of deceased; (b) Date and place of death; (c) Date arrangements were made; (d) Apprentice participation with family; and (e) Number of days and hours worked per week. See OAR 830-011-0020(4).

2e. Further, the licensee who supervises an apprentice must be working and located in the same licensed facility as the apprentice that he or she is supervising. See OAR 830-011-0020(1).

3.

3a. On January 14, 2009, the Board received a completed Funeral Service Practitioner (FSP) Apprenticeship Completion Form (Application) signed by Kading and Lancaster on January 7, 2009. This Application is an application for a FSP license.

3b. On page one of the Kading Application, in response to a request for a list of all residences within the past ten years and dates of residence, Kading stated:

1/98 – 1/09 417 Mary Grove, Claremont, CA 91740

2/06 – 10/08 4711 Hwy. 39, Klamath Falls, OR 97603

3c. 4711 Hwy. 39, Klamath Falls, OR 97603 is the address of Eternal Hills.

3d. On page three of the Application, Kading checked the box next to the following statement:

I have been an apprentice for 12 months and have worked a minimum of 30 hours a week, excluding up to 30 days of vacation leave per year. Under the personal supervision of a licensed FSP, I have assisted in the planning of at least 25 funerals or dispositions through some form of direct contact with the family or representative of the deceased.

3e. Lancaster co-signed the Application on page 3 below the statement set forth in paragraph 3d above.

3f. On page 4 of the Application, Kading signed a certification that states in part, “I understand that any misrepresentation or omission of fact on my application or supplementary background materials shall be cause for refusal to issue an Oregon License or Certificate.” Kading further certified, “I certify that all statements I have made on this application and other supplementary materials are true and correct to the best of my knowledge and belief.”

3g. Kading did not reside at Eternal Hills, did not work as an FSP apprentice a minimum of 30 hours per week. Kading did not work under the personal supervision of Lancaster, and she did not assist in the planning of at least 25 funerals or dispositions through some form of direct contact with the family or representative of the deceased.

3h. Therefore, Kading and Lancaster misrepresented Kading’s Application in at least three instances as stated above in violation of ORS 692.180(1)(a) and OAR 830-030-0090(2)(c)(D), OAR 830-030-0090(2)(d)(B), and OAR 830-050-0050(2) or (9).

3i. Licensee, through its representatives Kading and Lancaster, committed at least three violations of ORS 692.180(1)(a) or (b) and at least three violations of OAR 830-030-

0090(2)(c)(D), OAR 830-030-0090(2)(d)(B) and OAR 830-050-0050(2) or (9) which are cause for disciplinary action pursuant to ORS 692.180(1)(g).

4.

4a. On or about March 26, 2009, Kading's apprenticeship log book was submitted to the Board. In the log book, Kading alleges she participated in arrangements with the families of 31 decedents, each of which is separately identified in the log book. In one instance, Kading states her participation with the family was "family assist – file review." For the remaining 30 instances of participation with family, Kading describes her participation as "family assist." Next to each of the 31 apprenticeship log entries, Lancaster wrote his initials "TL".

4b. Also in the log book, Kading alleges that she worked as an FSP apprentice for 32 hours in July 2007, 32 hours in October 2007, 32 hours in May 2006, 32 hours in June 2006, 35 hours in January 2007, 35 hours in April 2007, 32 hours in May 2007, 32 hours in June 2007, 64 hours in November 2006, and 30 hours in December 2006. Next to each of the 31 apprenticeship log entries, Lancaster wrote his initials "TL".

4c. Kading's log book does not comply with OAR 830-011-0020(4), a violation of which is cause for disciplinary action pursuant to ORS 692.180(1)(g). The log book was not maintained to be available upon request nor does it list the number of days and hours worked per week.

4d. Kading resided in Claremont, California at all relevant times during her apprenticeship. Kading did not participate in final disposition arrangements with the families or representatives of the decedents listed in her log book, nor did Kading work as an FSP apprentice for the hours listed the log book.

4e. Licensee, through its representatives Lancaster and Kading, committed at least 31 violations of ORS 692.180(1)(a) or (b) and at least 31 violations of OAR 830-030-0090(2)(c)(D), OAR 830-030-0090(2)(d)(B), and OAR 830-050-0050(2) or (9) which are cause for disciplinary action pursuant to ORS 692.180(1)(g).

5.

5a. As described in detail in the preceding paragraphs, Licensee's representatives, Kading and Lancaster, co-signed an inaccurate Application and an inaccurate apprenticeship log book. Kading did not serve an apprenticeship that meets the Board's requirements under Lancaster's supervision.

5b. Licensee, therefore:

- i. Failed to abide by the accepted minimum standards of the death care industry in violation of OAR 830-030-0090(1) which is cause for disciplinary action pursuant to ORS 692.180(1)(g);
- ii. Failed to properly supervise an apprentice in violation of OAR 830-030-0090(1)(f) which is cause for disciplinary action pursuant to ORS 692.180(1)(g);
- iii. Aided, abetted or assisted an individual to violate or circumvent any law, rule or regulation intended to guide the conduct of the death care industry in violation of OAR 830-030-0090(2)(a)(F) which is cause for disciplinary action pursuant to ORS 692.180(1)(g);
- iv. Engaged in misrepresentation in violation of ORS 692.180(1)(a); and
- v. Made a false statement and failed to answer truthfully and completely in violation of OAR 830-030-0090(2)(c)(D), OAR 830-030-0090(2)(d)(B), and OAR 830-050-0050(2) or (9) which is cause for disciplinary action pursuant to ORS 692.180(1)(g); and a violation of ORS 692.180(1)(a) or (b).

6.

Definitions that may be relevant to this notice are contained 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 Disciplinary Action. 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 ___8th _____ day of October, 2009

STATE MORTUARY AND CEMETERY BOARD

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