

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

<p>In the Matters of the funeral establishment license of Jerome G. Cox-Tanner dba COX & COX FUNERAL CHAPEL, Sole Proprietor, and the funeral service practitioner license of JEROME G. COX-TANNER,</p> <p style="text-align: center;">RESPONDENT.</p>	<p>Notice of Proposed License Revocations and Civil Penalties and Opportunity for a Hearing</p> <p style="text-align: center;">AMENDED</p> <p>CASE NOS. 07-1048A & B; 08-1073A & B and 08-1075A & B</p>
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Pursuant to ORS 692.180(1), the Oregon Mortuary & Cemetery Board (Board) proposes to take disciplinary action against you in the form of revocation of your licenses and civil penalties on the grounds noted below. For statutory and rule violations the Board may revoke funeral establishment and funeral service practitioner licenses, and impose civil penalties of up to \$1000 for each violation.

Grounds for Disciplinary Action:

1.

1a. At all times mentioned herein, Jerome G. Cox-Tanner (Respondent) was the sole proprietor of Cox & Cox Funeral Chapel, a funeral establishment in Portland (OMCB License No. FE-8582,); and at all times mentioned herein, Jerome Cox-Tanner was a licensed funeral service practitioner (FSP) (OMCB License No. FS-0382), and Respondent was the FSP assigned as the manager of the funeral establishment.

1b. At all times mentioned herein, Schawna K. Tanner (hereafter "Tanner") was the spouse of Respondent, and Tanner worked at and represented the funeral establishment.

1c. At all times mentioned herein, except where specifically stated, Tanner was not a licensed funeral service practitioner, funeral service practitioner apprentice, or pre-need salesperson.

2.

2a. On or about April 12, 2005, Tanner was advised by the Board's staff that her funeral service practitioner apprenticeship certificate would soon expire and cautioned that if she met with families to arrange for final disposition, after her certificate expired, she would be considered practicing as a funeral service practitioner without a license.

2b. In a Final Order effective May 30, 2007, the Board imposed civil penalties of \$6,500.00 against Tanner for violations that included violations of ORS 692.025(1), OAR 830-030-0004(1).

2c. 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.

2d. Further, 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.

2e. In Final Orders effective May 30, 2007, the Board imposed civil penalties of \$6,500.00 against Respondent for his actions as an FSP and manager of the funeral establishment and

\$1500.00 against Respondent's funeral establishment for violations that included violations of OAR 830-050-0050(8), OAR 830-050-0000(2), and OAR 830-030-0090(1)(e).

2f. OAR 830-050-0050(8) provides that allowing an unlicensed individual to perform the duties of a licensed individual, including making arrangements with families, is cause for disciplinary action.

2g. OAR 830-050-0000(2) provides that it is considered unprofessional conduct for a licensee to directly or indirectly cause any licensee or other person to be in violation any applicable rule or statutes.

2h. OAR 830-030-0090(1)(e) provides that failing to assign persons to perform functions for which they are licensed and which are within their scope of practice/scope of duties is cause for disciplinary action.

3.

3a. From approximately October 1, 2007 through March 31, 2009 Tanner performed a task that only a licensed funeral service practitioner or funeral service practitioner apprentice may perform with respect to the disposition of at least one of the following *thirteen (13)* decedents, as identified by the Oregon State identification numbers listed in paragraph 3b below.

3b. The Oregon State ID numbers of the foregoing decedents are: #490909; #430905; #430943; #430922; #430923; #430948; #447053; #447095; #447077; #447088; #404041; #544332; #544329; and #544323.

3c. Therefore, in at least one of the final disposition arrangements for the foregoing decedents, Tanner performed the duties of a funeral service practitioner or funeral service practitioner apprentice, without a license, in violation of OAR 830-030-0004(1) or ORS 692.025(1).

4.

4a. Respondent allowed Tanner to engage in the actions described in the foregoing paragraphs.

4b. In at least one of the final disposition arrangements for the foregoing decedents, Respondent allowed Tanner, an unlicensed individual, to perform the duties of a licensed funeral service practitioner or funeral service practitioner apprentice, including but not limited to, making arrangements with at least one family. The foregoing is a violation of OAR 830-050-0050(8).

4c. In at least one of the final disposition arrangements for the foregoing decedents, Respondent engaged in unprofessional conduct by directly or indirectly causing Tanner to be in violation of OAR 830-030-0004(1) or ORS 692.025(1), as described above. The foregoing is a violation of OAR 830-050-0000(2).

4d. In at least one of the final disposition arrangements for the foregoing decedents, Respondent failed to assign persons to perform functions for which they are licensed and which are within their scope of practice/scope of duties when *he* allowed Tanner to perform the duties of a funeral service practitioner, as described above. The foregoing is a violation of OAR 830-030-0090(1)(e).

4e. The foregoing violations are cause for disciplinary action of license revocation and civil penalties of up to \$1000 for each violation under ORS 692.180(1)(g).

5.

5a. On or about December 3, 2009, a consumer, B. H., called Respondent's funeral establishment, and discussed adding a memorial service and a viewing to existing funeral prearrangements she had made with Respondent in September 2009 for the final disposition of her father.

5b. Tanner is not registered as a pre-need salesperson with the Board under ORS 97.931.

5c. On or about December 9, 2009, Tanner met with B. H. at B. H.'s home. During their meeting, B. H. agreed to purchase a ceremony service, viewing, memorial folders, and a photo enlargement as part of her father's pre-arrangements. B. H. gave Tanner a check in the amount of \$931.00 for the amount due for these services.

5d. Shortly after the December 9, 2009 meeting, Respondent mailed B. H. a statement of the funeral goods and services she had purchased for \$931.00, which does not contain all of the information required by ORS 97.939(3) and ORS 97.941 for a prearrangement sales contract. See ORS 97.923(9).

5e. Respondent did not deposit the monies received from B. H. on or about December 9, 2009 into a proper trust account within five days of receipt, in violation of ORS 97.941(1), (2) and OAR 441-930-0310(6).

5f. The foregoing violations of ORS chapter 97 are violations of ORS 692.180(1)(b) OAR 830-030-0090(1), 830-030-0090(1)(a), OAR 830-030-0100(6), or OAR 830-050-0050(8), which are cause for disciplinary action including license revocation and civil penalties under ORS 692.180(1)(g).

6.

6a. It is the responsibility of the funeral establishment licensee who submits a death certificate to pay the death certificate filing fee to the State of Oregon within thirty (30) days after billing, and in no case, longer than ninety (90) days after billing. ORS 432.307(2); ORS 432.312(1), OAR 830-030-0000(7).

6b. Respondent failed to timely pay approximately \$841.00 in delinquent death certificate filing fees identified in the following invoices:

- i. Invoice #AI037916 with a date of billing of September 8, 2009. Charges for 6 death certificates not timely paid;
- ii. Invoice #AI038285 with a date of billing of October 10, 2009. Charges for 6 death certificates not timely paid;
- iii. Invoice #AI038953 with a date of billing of November 9, 2009. Charges for 6 death certificates not timely paid;
- iv. Invoice #AI039396 with a date of billing of December 7, 2009. Charges for 7 death certificates not timely paid;
- v. Invoice #AI039868 with a date of billing of January 5, 2010. Charges for 8 death certificates not timely paid; and;
- vi. Invoice #AI040239 with a date of billing of February 5, 2010. Charges for approximately 7 to 9 death certificates not timely paid.

6c. Respondent failed to pay the foregoing death certificate filing fees within 90 days of billing in at least 39 instances, each of which is a violation of OAR 830-030-0000(7) and cause for disciplinary action including license revocation and civil penalty of up to \$1000 for each violation under ORS 692.180(1)(g).

7.

Definitions that may be relevant to this notice are contained in *ORS 97.010*, *ORS 97.923*, *ORS 692.010*, and *OAR 830-011-0000*.

Rights and Procedures

Respondent is entitled to a hearing as provided by the Administrative Procedures Act (ORS Chapter 183) and ORS 692.265(1). If Respondent wants a hearing, Respondent 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 within this 21-day period, Respondent's right to a hearing shall be considered waived. Hearing requests may be mailed to State Office Building, 800 NE Oregon St., Suite 430, Portland, Oregon 97232-2195.

If Respondent requests a hearing, Respondent will be notified of the time and place of the hearing. Respondent has the right to be represented by legal counsel at a hearing. A Notice of Contested Case Rights and Procedures is enclosed with this Notice of Proposed Disciplinary Action. If Respondent does not request a hearing within 21 days, or if Respondent withdraws a hearing request, notifies the Board or hearing officer that Respondent will not appear or fails to appear at a scheduled hearing, the Board may issue a final order imposing 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 ____23rd____ day of August, 2010.

STATE MORTUARY AND CEMETERY BOARD

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