

BEFORE THE STATE OF IDAHO
BOARD OF MORTICIANS

In the Matter of the Licenses of:)	
)	Case Nos. MOR-2022-1
LANCE R. PECK,)	MOR-2022-2
License No. M-821,)	MOR-2022-3
)	
DOWNARD FUNERAL HOME,)	FINDINGS OF FACT,
License No. FE-15, and)	CONCLUSIONS OF LAW
)	AND FINAL ORDER
PORTNEUF VALLEY CREMATORY,)	
License No. CRE-968,)	
)	
Respondents.)	
)	

Having reviewed the documents and correspondence contained in the administrative file in this matter, the Idaho State Board of Morticians (the “Board”) hereby enters the following Findings of Fact, Conclusions of Law, and Final Order:

FINDINGS OF FACT

1. Respondent Lance R. Peck is a duly licensed Mortician in the State of Idaho holding License No. M-821. Respondent Downard Funeral Home is a duly licensed Funeral Establishment in the State of Idaho holding License No. FE-15, and Respondent Portneuf Valley Crematory is a duly licensed Crematory in the State of Idaho holding License No. CRE-968. Respondents Downard Funeral Home and Portneuf Valley Crematory are owned by Downard Funeral Home, Inc., and Lance R. Peck is the President of Downard Funeral Home, Inc. Respondents’ continued right to licensure is subject to Respondents’ compliance with the laws of the Board codified at title 54, chapter 11, Idaho Code, and the rules of the Board, promulgated at IDAPA 24.08.01, *et seq.*

Prior Discipline

2. On May 1, 2015, the Board entered a Consent Order in Case Nos. MOR-2015-2, MOR-2015-3 and MOR-2015-4 against Respondents for (1) operating a funeral establishment with an expired license, (2) failing to ensure that a decedent was embalmed and donated to Idaho

State University (ISU) Anatomical Donation Program in accordance with the decedent's prearranged funeral plan for disposition, and (3) failing to create and maintain records relating to the disposition of the decedent's remains. Respondents were ordered to pay a \$2,500 fine and investigative costs and attorney fees of \$3,800, and were placed on probation for six months.

3. On July 12, 2016, the Board entered a Consent Order in Case Nos. MOR-2016-1 and MOR-2016-2 against Respondents Peck and Portneuf Valley Crematory for operating a crematory with an expired license. Respondents were ordered to pay a \$2,000 fine and investigative costs and attorney fees of \$2,015, and were placed on probation for two years.

4. On September 5, 2018, the Board entered a Consent Order in Case Nos. MOR-2018-2, MOR-2018-3 and MOR-2018-4 against Respondents for (1) failing to carry out instructions for disposition and (2) misrepresentation in the conduct of mortician services. Respondents' licenses were suspended for six months with the entire six-month suspension period withheld provided Respondents complied with the terms of the Consent Order. In addition, Respondents were ordered to pay a \$2,000 fine and investigative costs and attorney fees of \$2,015, and were placed on probation for two years.

Current Cases

5. On March 24, 2021, a Division of Occupational and Professional Licenses (DOPL) inspector conducted a routine annual inspection of Portneuf Valley Crematory. During the inspection, Respondent Peck advised the inspector that an explosion had occurred during the last cremation which caused major damage to the retort floor and caused the fire door to stay shut. There were six cadavers present that Respondent stated he had received from ISU to be cremated, and the inspector found that there was no discernable smell, all records were in order, and the refrigeration unit was functioning at 30°F. Respondent Peck informed the inspector that he had been placed on a waiting list for repairs to the retort and he had contacted other local crematories to assist with cremations until his retort was repaired. On April 30, 2021, and again on June 16, 2021, an administrative assistant for Downard Funeral Home advised the inspector that the retort still had not been repaired and other crematories were continuing to assist with

cremations. On July 29, 2021, the administrative assistant informed the inspector that they had been informed by the repair company that repairs would begin around August 23, 2021.

6. On July 26, 2021, DOPL received a complaint from LH alleging that when LH's mother (LL) died on January 18, 2016, Respondent Peck represented to LH that he had transported LL's remains to ISU pursuant to LL's wishes, and that ISU would have her mother's remains for five years. LH stated that in approximately January 2021, she attempted to contact Respondent Peck regarding the return of LL's remains, but Respondent Peck failed to return LH's calls. LH then contacted ISU and was informed that LL's remains were returned to Respondents on April 7, 2017. As part of the investigation into LH's complaint, on August 4, 2021, a DOPL investigator contacted ISU to request all documentation relating to LL's remains.

7. On August 9, 2021, DOPL received a complaint from ISU stating that from 2011 to 2017, ISU worked with Respondents to help facilitate anatomical donations to ISU for academic purposes, and once the academic purpose was finished, Respondents were supposed to make sure that the families of the donor received the donor's cremains. ISU stated that it subsequently stopped working with Respondents and entered into an anatomical donation agreement with another funeral home, and as part of the transition, ISU sent letters to individuals who had signed the Anatomical Donation Program's intent to donate form. ISU stated that in response to the letters, two family members reached out to ISU stating they never received the cremains of their family members. ISU stated that it then completed a comprehensive audit of the Anatomical Donation Program, as well as any records relating to Respondents, and found:

a. ISU records indicate one individual (LL) had been returned to Respondents for final cremation on April 7, 2017, but the family informed ISU that they never received the cremains from Respondents;

b. Two families informed ISU that Respondent Peck informed the families that the remains of their loved ones were being donated to ISU, but ISU has no record of receiving the remains;

c. ISU has completed intent to donate forms for four individuals whose obituaries stated that their remains were donated to ISU and Respondents handled the arrangements, but ISU has no record of receiving the individuals' remains; and

d. ISU was able to locate obituaries for six additional individuals stating that their remains were donated to ISU and that Respondents handled the arrangements, but ISU does not have an intent to donate form for any of the individuals and there is no record of ISU receiving the remains from Respondents.

8. While investigating the complaints, on August 31, 2021, the investigator received information indicating that there was an overwhelming foul odor coming from Respondent Downard Funeral Home, as well as a decomposing body on the table of the prep room that had been visible through a window to passersby for a number of days, including high school students from the high school located near the funeral home, and another decomposing body in one of the funeral home's vehicles in a body bag.

9. On August 31, 2021, a DOPL investigator visited Respondent Downard Funeral Home and found the building locked, but the rear overhead garage door was open and a strong odor could be detected in the garage area. The windows were covered and the investigator was unable to see a decomposing body in the prep room. The investigator contacted Respondent Peck by phone, and Respondent Peck stated he was out of town but would be available the following morning at 9 a.m. at the funeral home. The investigator also contacted the Bannock County Coroner's Office concerning the odor and the report of the decomposing body.

10. On September 1, 2021, the investigator and inspector conducted an inspection of Downard Funeral Home and Portneuf Valley Crematory and found one badly decomposed body in the drive-through garage which, according to Respondent Peck, had been in the garage for approximately one month. Respondent Peck was informed that he needed to immediately secure the body in the refrigeration unit, which Respondent Peck did. The investigator and inspector began reviewing documentation relating to the bodies that were in the refrigeration unit and the

cremains located in the funeral home, and later made arrangements to continue the document review the following day.

11. On September 2, 2021, the investigator and inspector entered Downard Funeral Home, checked the temperature of the refrigeration unit, and reviewed additional documentation in an attempt to verify the identity of each of the ten bodies in the refrigeration unit and the cremains located in the funeral home. The investigator and inspector then walked into the drive-through garage and observed that the floor and multiple body boxes appeared to be covered in human decomposition material, and another badly decomposed body was in a plastic bag. Respondent also informed the investigator and inspector that he had multiple fetuses in various stages of development. DOPL staff immediately contacted Pocatello Police Department (PPD) regarding what had been discovered. On September 8, 2021, PPD reported that staff from the Idaho State Police Forensic Services office is assisting PPD in determining the identities of six unidentified individuals removed from Downard Funeral Home using fingerprints and DNA. As of the date of this Order, the investigation by PPD is ongoing.

12. On September 2, 2021, Respondent voluntarily surrendered his licenses. In voluntarily surrendering his licenses, Respondent acknowledged his “alleged failure to comply with Idaho Law, title 54, chapter 11, Idaho Code and the rules promulgated by the” Board. Respondent also consented to the Board imposing discipline against him, including an order revoking or suspending his license and requiring him to pay a civil fine as well as the Board’s fees and costs to investigate and prosecute this matter. A copy of the voluntary surrender form signed by Respondent is attached hereto as Exhibit A.

13. Respondent, individually and on behalf of Downard Funeral Home and Portneuf Valley Crematory, knowingly and freely waived his right to a hearing, and waived all rights granted to Respondents pursuant to the Administrative Procedures Act, chapter 52, title 67, Idaho Code.

CONCLUSIONS OF LAW

1. As a licensed Mortician, Funeral Establishment, and Crematory in the State of Idaho, Respondents are subject to the jurisdiction of the Board and to the provisions of title 54, chapter 11, Idaho Code, and the rules and regulations promulgated by the Board thereunder.

2. The allegations, if proven, would constitute grounds upon which the Board may discipline Respondents for having violated the Board's laws and rules, including Idaho Code § 54-1116(2)(a), (g) and/or (k) (Board may suspend or revoke a license for unprofessional conduct including misrepresentation of services, gross immorality, and/or violation of any state law or rule affecting the handling, custody, care, processing or transportation of dead human bodies) and Board Rules 452.03 (IDAPA 24.08.01.452.03) (if a dead body is to be held longer than 24 hours prior to burial, cremation, or other disposition, the body must be either embalmed or refrigerated at 36°F or less until buried, cremated, or otherwise disposed of) and 455.01 (records regarding the burial, cremation, and other disposition of human bodies must be made as soon as reasonably possible after the burial, cremation, or other disposition and must be dated and signed by the licensed mortician or funeral director who supervised or was otherwise directly responsible for the burial, cremation, or other disposition).

3. Pursuant to Idaho Code §§ 54-1116 and 67-2604(1)(e) and (f), and Board Rule 501, such discipline may include suspension or revocation of Respondents' licenses and the imposition of a civil fine and the costs and fees incurred by the Board in the investigation and prosecution of this matter.

4. Respondents' voluntary surrender of licensure authorizes the Board to enter an order disciplining Respondents without further process.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, based upon the foregoing Findings of Fact and Conclusions of Law, and good cause being shown:

1. License No. M-821 issued to Respondent Lance R. Peck, License No. FE-15 issued to Respondent Downard Funeral Home, and License No. CRE-968 issued to Portneuf Valley Crematory, including any renewal rights, are hereby **REVOKED**.

2. Within ninety (90) days of the Board's entry of this Order, Respondents shall reimburse the Board for its investigative costs incurred in this matter in the total amount of Four Thousand Nine Hundred Forty-Six and 94/100 Dollars (\$4,946.94).

3. If Respondents apply for licensure in the future, Respondents must use the same application forms and provide the same information and items as would be required of a first-time applicant. Additionally, Respondent Peck shall appear before the Board to discuss the details surrounding the factual events addressed above in this Order.

4. Respondents are solely responsible for any and all costs that may arise from Respondents having to comply with the terms of this Order.

This order is effective immediately.

DATED this 14 day of September, 2021.

IDAHO BOARD OF MORTICIANS

REDACTED

By _____
Chair

NOTICE OF DUE PROCESS RIGHTS

NOTE: THIS NOTICE IS PROVIDED SOLELY FOR COMPLIANCE WITH IDAHO CODE § 67-5248, AND IS NOT INTENDED TO REINSTATE ANY RIGHTS PREVIOUSLY WAIVED BY RESPONDENT.

This is a final order of the Board. Any party may file a motion for reconsideration of this final order within fourteen (14) days of the service date of this order. The Board will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Idaho Code § 67-5246(4).

Pursuant to Idaho Code §§ 67-5270 and 67-5272, any party aggrieved by this final order or orders previously issued in this case may appeal this final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- a. A hearing was held,
- b. The final Board action was taken,
- c. The party seeking review of the order, resides, or
- d. The real property or personal property that was the subject of the Board action is located.

An appeal must be filed within twenty-eight (28) days (a) of the service date of this final order, (b) of an order denying petition for reconsideration, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See Idaho Code § 67-5273. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of September, 2021, I caused to be served a true and correct copy of the foregoing by the following method to:

Lance R. Peck
241 N. Garfield Avenue
Pocatello, ID 83204

- U.S. Mail
- Hand Delivery
- Certified Mail, Return Receipt Requested
- Overnight Mail
- Facsimile: _____

REDACTED

Marcie Rightnowar
Appeals/Hearings Coordinator

IDAHO DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSES
VOLUNTARY SURRENDER OF LICENSES

I, Lance R. Peck, individually and as owner of Downard Funeral Home and Portneuf Valley Crematory, hereby voluntarily surrender my license to practice as a mortician and my licenses to operate a funeral home and a crematory in the State of Idaho. I agree and consent that the surrender of my licenses to practice is done without an order, order to show cause, hearing, or any other proceeding compelling its surrender. In view of my failure to comply with title 54, chapter 11, Idaho Code, and the rules promulgated by the Idaho Mortician Board ("Board"), and as an indication of my good faith in desiring to remedy any incorrect or unlawful practices on my part, I voluntarily surrender my licenses agree to immediately discontinue practicing as a mortician and operating a funeral home and a crematory in this state.

I understand that I have the right to a hearing, the right to confront and cross-examine witnesses, the right to present evidence and testimony on my behalf, the right to appeal and all other rights accorded to me by the Idaho Administrative Procedures Act, title 67, chapter 52, Idaho Code, and the laws and rules governing morticians, funeral homes, and crematories, title 54, chapter 11, Idaho Code. I hereby freely and knowingly waive these rights without further process as a resolution of any claims or allegations which might otherwise be brought against me by the Board. I further waive any license renewal rights provided by Idaho Code § 67-2614.

I acknowledge that in surrendering my licenses, I specifically waive the right to contest this relinquishment in any subsequent proceeding. I acknowledge that the Board has jurisdiction to proceed against my licenses pursuant to Idaho Code § 54-1116. I understand that the Board may enter findings of fact, conclusions of law, and an order either revoking or suspending my licenses based upon my voluntary surrender of my licenses, which order may include, but is not limited to, a civil penalty and/or the imposition of costs and fees incurred by the Board in its investigation and prosecution of any claims or allegations against me, and I hereby consent to the imposition of such discipline without further notice or process.

I understand and acknowledge that by surrendering my licenses, all of the privileges associated with said licenses are hereby surrendered until such time as I am again properly licensed. I understand that to regain a license to practice as a mortician or operate a funeral home or a crematory in the State of Idaho, I must re-apply to the Board pursuant to the provisions of title 54, chapter 11, Idaho Code, and all applicable rules and orders entered by the Board. I understand and agree that any decision regarding reinstatement of my licenses or the reissuance of a license to me is a discretionary decision for the Board. I understand and agree that the Board may rely on factors set forth in this document or other than those set forth in this document as grounds for denial of a petition for reinstatement of my licenses or any license application that I may submit. I waive refund of any payments made by me in connection with my licenses under the Morticians, Funeral Directors and Embalmers Act and any rules promulgated thereunder.

Name/License No. of Licensees: Lance R. Peck, M-821
Downard Funeral Home, FE-15
Portneuf Valley Crematory, CRE-968
241 N. Garfield
Pocatello, ID 83204

Signature of Licensee or Authorized Individual: _____

REDACTED

Signature of Witness: _____

REDACTED

Date: 9/2/21

Date: 9/2/21