

**ORDER NO. 2012-008A**

<b>IN THE MATTER OF:</b>	<b>§</b>	<b>BEFORE THE BANKING</b>
	<b>§</b>	
<b>MYRTLEWOOD MEMORIAL SERVICES,</b>	<b>§</b>	
<b>INC. DBA HARLINGEN-COMBES</b>	<b>§</b>	<b>COMMISSIONER OF TEXAS</b>
<b>MEMORIAL CEMETERY</b>	<b>§</b>	
<b>(CERTIFICATE OF AUTHORITY NO. 238)</b>	<b>§</b>	
	<b>§</b>	
<b>COMBES, TEXAS</b>	<b>§</b>	<b>AUSTIN, TRAVIS COUNTY, TEXAS</b>

**FIRST AMENDED ORDER TO CEASE AND DESIST FROM OPERATING A PERPETUAL CARE CEMETERY WITHOUT A VALID CERTIFICATE OF AUTHORITY AND FROM VIOLATING TEXAS HEALTH AND SAFETY CODE § 712.029(C)**

On this day, the matter of Myrtlewood Memorial Services, Inc. dba Harlingen-Combes Memorial Cemetery (Respondent), located in Combes, Texas, was submitted to the Banking Commissioner (Commissioner) of the State of Texas, for consideration and action.

**I. Findings of Fact**

1. Respondent is a perpetual care cemetery (PCC) operating under certificate of authority number 238. It is located in Combes, Texas. Its president and manager is Uvaldo Bravo (Bravo).
2. The Texas Department of Banking (Department) regulates PCCs under the authority of Texas Health and Safety Code(Health Code)Chapter 712.
3. Health Code § 712.003(c) requires a corporation that is operating a PCC and is chartered after September 1, 1993, to have a minimum capital of \$75,000.00.
4. Health Code § 712.0032 requires a corporation that is operating a PCC to have a certificate of authority that is issued by the Department.
5. Health Code § 712.0034 states that two of the qualifications required for obtaining a certificate of authority are that the applicant’s character and financial condition warrant the public’s confidence.
6. Health Code § 712.0036 states that certificates of authority expire March 1 of each year and must be renewed.
7. Health Code § 712.0037 states that, as a condition of renewal, a certificate holder must meet the requirements that apply to an applicant for a new certificate.

8. Health Code § 712.021 requires each corporation operating a PCC to establish a trust fund for the perpetual care of the cemetery (perpetual care fund).
9. Health Code § 712.028 requires a corporation operating a PCC to deposit a certain amount to its perpetual care fund for each conveyance of cemetery property or interment rights.
10. Health Code § 712.029(c) requires the corporation to deposit the amount required by § 712.028 into its perpetual care fund “not later than the 20th day after the end of the month in which the original purchase agreement has been paid in full.”
11. Health Code § 712.0443 authorizes the Commissioner to issue a cease and desist order to a person if the Commissioner finds that the person has violated a law of this state relating to PCCs, including a violation of Chapter 712 or a rule of the Texas Finance Commission and the violation was not corrected 31 days after the person received written notice of the violation.
12. Respondent was incorporated in 2006.
13. Respondent was most recently examined by the Department commencing on January 10, 2012. The information examined was as of November 30, 2011. A report of examination (Report of Examination) was issued and sent to Respondent on February 8, 2012.
14. In the Report of Examination, Respondent was found to have violated Health Code § 712.029(c) for the sixth consecutive examination by failing to timely make required deposits to the perpetual care fund. As of November 30, 2011, the shortage was \$1,019.10.
15. Respondent was given notice of this violation on February 8, 2012. Not only has Respondent not corrected the violation, its president and manager has indicated a total lack of intent to correct the violation even though Respondent has been cited for this violation in six consecutive examinations. Bravo stated in a letter to the Department dated December 26, 2011, that his procedure for making the required deposits to the perpetual care fund is to “wait for a good month and catch up.” In the letter, Bravo listed his priorities for how to apply money received by Respondent. Perpetual care deposits was last at number six; Bravo’s pay was number four.
16. Respondent has also violated Health Code § 712.0036 because it failed to renew its certificate of authority by March 1, 2012. Therefore, Respondent’s certificate of authority expired March 1, 2012. This failure to renew also causes Respondent to be in violation of Health Code § 712.0032, which requires a corporation to hold a certificate of authority issued under Chapter 712.

17. The Department mailed Respondent a notice of non-renewal on March 8, 2012. Respondent signed for the letter on March 14, 2012. The 31st day after March 14, 2012, is April 14, 2012, a Saturday. As of April 16, 2012, Respondent has not corrected this violation because it still has not submitted its renewal.
18. Respondent has also violated Health Code § 712.0037 because it failed to submit, by March 1, 2012, evidence that it had the qualifications and could satisfy the requirements that apply to an applicant for a new certificate of authority. In particular, it has not shown that it has \$75,000.00 in capital as required by Health Code § 712.003(c) or that it has a financial condition that warrants the public's confidence, as required by Health Code § 712.0034. Respondent was given notice of these violations on February 8, 2012, when it was sent the Report of Examination.
19. On April 17, 2012, the Commissioner signed the original Order to Cease and Desist from Operating a Perpetual Care Cemetery without a Valid Certificate of Authority and from Violating Texas Health and Safety Code § 712.029(c), Commissioner's Order No. 2012-008.
20. Order No. 2012-008 was served on Respondent on April 18, 2012.
21. Respondent did not request a hearing in regard to Order No. 2012-008. Therefore, the order took effect on May 8, 2012. Order No. 2012-008 must be clarified to ensure that Respondent shall perform burials only for those persons who owned plots before the effective date of Order No. 2012-008 and to ensure that Respondent continues to maintain the property and grounds of the cemetery.

## **II. Conclusions**

1. Respondent has violated the following laws of this state relating to perpetual care cemeteries: Health Code §§ 712.0032, 712.0036, 712.0037, and 712.029(c).
2. Respondent did not correct the violations by the 31st day after the date Respondent received written notice of the violations from the Department.
3. The Report of Examination as of November 30, 2011, and other credible evidence of the above-described violations is sufficient cause for issuance of a cease and desist order to Respondent under Health Code § 712.0443(a).

### **III. Order**

In accordance with Health Code § 712.0443, Respondent, Myrtlewood Memorial Services, Inc. dba Harlingen-Combes Memorial Cemetery is ORDERED to cease and desist from failing, within 5 days of the effective date of this Order, to deposit all perpetual care funds due at that time into its perpetual care trust account; and is further ORDERED to cease and desist from operating a perpetual care cemetery without a valid certificate of authority from the Texas Department of Banking, except that Respondent shall continue to perform burials for persons who owned plots in the cemetery as of May 7, 2012, and Respondent shall continue to maintain the property and grounds of the cemetery.

### **IV. Effective Dates**

Pursuant to Health Code § 712.0443(b), this Order to Cease and Desist will take effect on June 5, 2012, which is the 20th day after the date the order is mailed or delivered, unless Respondent requests a hearing not later than the 19th day after the date the order is mailed or delivered.

### **V. Service**

This Order is served on Respondent by certified mail, return receipt requested and first class mail, sent on May 16, 2012 to:

Mr. Uvaldo Bravo, President and Chairman of the Board  
Myrtlewood Memorial Services, Inc.  
P.O. Box 675  
Combes, Texas 78535

Signed on this 15th day of May, 2012.

/s/ Charles G. Cooper  
Charles G. Cooper  
Texas Banking Commissioner