

NOTICE

TO: INTERESTED PARTIES
FROM: DAVID KOACH, EXECUTIVE DIRECTOR
DATE: FEBRUARY 15, 2005
SUBJECT: DISINTERMENT OF CREMATED REMAINS

SUMMARY:

A disinterment permit is **not** required for the disinterment, transportation or re-interment of cremated human remains (cremains). However, consent of the cemetery authority and written consent of the person with the right to control disposition are required for the disinterment of cremains.

ANALYSIS: [This is the Board staff's view of what the law requires. It is not a legal opinion.]

Disinterment is addressed in two chapters of the Oregon Revised Statutes: ORS chapter 97 and ORS chapter 432.

The definition of human remains as that term is used in ORS chapter 97, clearly includes cremains. ORS 97.010(1). Although consent of the cemetery authority and written consent of the person with the right to control disposition are required for the disinterment of cremains under ORS 97.220(1), there is no requirement for a disinterment permit under ORS chapter 97.

The definition of human remains in ORS chapter 97 does not apply to ORS chapter 432. The operative definition in ORS chapter 432 is "dead body," meaning a human body or parts of a human body (head, torso, etc.) from which it can reasonably be concluded that death occurred. ORS 432.010(1). Read within the full context and purpose of ORS chapter 432, it is apparent that "dead body" means just that, a human corpse or parts of a corpse, not cremains. It follows from the definition in ORS 432.010(1) that the disinterment permit required under ORS 432.317(8) applies only to a dead body or fetus, not cremains.

NOTE 1: While it is true that a few recognizable bone fragments remain after the cremation (incineration) of a dead body, crematories are required to reduce them to unidentifiable dimensions before the cremains are released. OAR 830-011-0000(17) and 830-030-0050(2). The mandatory final processing of bone fragments thus eliminates any possibility of mistaking the residual of cremation for "body parts."

NOTE 2: The analysis above makes sense from a practical point of view. Where earth burial or entombment of a body is concerned, the place or manner of final disposition can change. Furthermore, the need for a permit to transport a disinterred body and to reinter or otherwise dispose of a disinterred body is readily apparent. Human bodies, whether they have been disinterred or not, may not be interred in a cemetery, cremated or shipped out of state without a disposal-transit permit. The green copy of the death certificate serves as the initial disposal-transit permit. The disinterment permit serves that purpose for any subsequent transportation of a dead body and for any change in the place or manner of final disposition, i.e., interment in another cemetery, cremation or transportation out of state. In the case of cremation, on the other hand, the crematory is considered the official place of final disposition. Significantly, the place and manner of final disposition can never change after a cremation. Unlike a dead body, cremains may be taken home by the family, scattered, shipped out of state or otherwise disposed of in a variety of ways that require no permit of any kind. With that in mind, the requirements of ORS 97.220(1) also make sense. There is no conflict between ORS 432.317(8) and ORS 97.220(1). Once interred in a cemetery, families have a statutory right to expect that the cremains of a loved one will not be moved without their express written consent.

BACKGROUND:

Questions as to whether or not a permit is required for the disinterment of cremains have been coming up periodically for years. The Board, itself, is responsible for much of the confusion. In a quarterly newsletter published in the Spring of 1993 (Volume VIII, Number 1), the Board made a mistake when it interpreted ORS 97.220(1) to mean that a permit from the Center for Health Statistics is required for the disinterment of cremains. That error was later compounded when the Center for Health Statistics reprinted the Board's faulty interpretation in a separate notice circulated on May 6, 1993.

The Board attempted to correct its error by means of a 1998 amendment to OAR 830-030-0060(2) which states plainly that the disinterment permit requirement "does not apply to cremated human remains\cremains." Nevertheless, questions continue to arise on occasion as copies of the misinformation published in 1993 resurface. This rather lengthy notice has been issued in a further effort to resolve any ongoing confusion.

LEGAL AUTHORITIES:

ORS 97.010(1) "Human remains" or "remains" means the body of a deceased person in any stage of decomposition or after cremation.

ORS 97.220(1) The remains of a deceased person interred in a plot in a cemetery may be removed therefrom with the consent of the cemetery authority and written consent of the person who has the right to control the disposition of the remains of the deceased person. If the consent of any such person or of the cemetery authority cannot be obtained, permission by the county court or the board of county commissioners of the county where the cemetery is situated is sufficient. Notice of application to the court for such permission must be given at least 60 days prior thereto, personally or by mail, to the cemetery authority, to the person not consenting and to every other person or authority on whom service of notice is required by the county court or the board of county commissioners.

ORS 432.005(1) "Dead body" means a human body or such parts of such human body from the condition of which it reasonably may be concluded that death occurred.

ORS 432.317(8) Authorization for disinterment and reinterment shall be required prior to disinterment of a dead body or fetus. The authorization shall be issued by the state registrar to a licensed funeral service practitioner or person acting as a funeral service practitioner, upon proper application.

OAR 830-011-0000 Definitions

(5) "Cremated Remains". Cremated remains are the remaining bone fragments after the act of cremation is completed.

(17) "Final Processing". Final Processing is the processing of cremated bone fragments to an unidentifiable dimension.

(21) "Human Remains". Human remains means a dead human body.

(33) "Processed Cremated Remains". As used in this chapter, processed cremated remains are the end result of pulverization, where the residual from the cremation process is cleaned leaving bone fragments reduced to unidentifiable dimensions.

OAR 830-030-0050(2) All residual of the cremation process shall undergo final processing;

OAR 830-030-0060(2) No disinterred human remains shall be transported from one cemetery to another within the State of Oregon or transported out of the state, except by permit of the State Health Division. A disinterred human remains shall be any human remains removed from one cemetery to another cemetery (this does not apply to cremated human remains\cremains).