

Oregon Mortuary and Cemetery Board Meeting
Lions Eye Bank of Oregon
2201 SE 11th Avenue
Portland OR

JULY 28 2009 *FINAL* General Session Meeting Minutes
(Revised September 22 2009)

Board Members Present:

Jon Cummings, President
Pam Wachter, Vice President
Joncile Martin, Secretary / Treasurer
Teri Dresler
Laurie Goolsby
Barry Horowitz
Kevin Korn
Charles Kurtz
Erin Phelps
Lyn Stanger
Dwight Terry

Staff Members Present:

Michelle Gaines, Executive Director
Lynne Nelson, Compliance Manager
Merill Cray, Investigator
William Bennington, Investigator
Johanna Matanich, AAG
Carla Knapp, Office Manager / Licensing

Board Members Absent:

None

Staff Members Absent:

None

Guests Present:

John Brenneman, OFDA
Cindy Hinton, OFDA
Patricia Sweeney
Nancy Ward, Sacred Endings
Nancy Felton, CGC / CAO

Mark Stehn, OFDA
Chad Dresselhaus, AFCTS
Sandra Bishop, Bishop Communications
Jane Malloy, Farewell Assistance

I Call to Order

President Cummings called the general session of the Mortuary and Cemetery Board (Board) to order at 9:45 am. After roll call, he then welcomed and introduced the Board's newest public member, Laurie Goolsby. Ms Goolsby thanked him and spoke briefly about herself. She lives in Klamath Falls, just outside of the Bear Valley Eagle Refuge and has been working as a hospital pharmacist for over ten years. She said she enjoys fishing, hiking, snow shoeing, as well as quilting.

President Cummings thanked her. He also thanked Corrina Patzer, Communications Director, for hosting the tour of the Lions Eye Bank earlier in the morning, as well as providing the meeting space, and refreshments for the Board's meeting. He then welcomed everyone in the audience.

II General Session

A. Approval of Meeting Minutes

General Session Meeting Minutes Draft - May 28 2009

President Cummings asked if there were any questions or comments on the subject draft meeting minutes as prepared. Hearing none, he then asked if there was a motion to approve the draft meeting minutes. He recognized Teri Dresler.

Ms Dresler so moved. Pam Wachter seconded. All others were aye and the motion carried unanimously. Those voting in favor: Members Cummings, Dresler, Goolsby, Horowitz, Korn, Kurtz, Martin, Phelps, Stanger, Terry, Wachter. Those voting no: none.

B. President's Comments

1. Board Member Orientation, September 15 2009

President Cummings reported that this Orientation was available for new members as well as those members that would like a refresher course.

2. Vietnam Memorial in Seattle

President Cummings discussed the handout for the above. This traveling replica of the Vietnam Veterans Memorial in Washington DC stands eight feet tall and is 240 feet long. It is inscribed with the names of more than 58,000 service men and women who died or are missing in Vietnam and is dedicated to all Vietnam Veterans. Ceremonies are scheduled for August 14 - 16 2009, in Seattle Washington.

3. Washington Department of Licensing

President Cummings briefly discussed our neighboring state's proposed fee increase, as well as their hiring of two additional funeral director investigator / inspector / auditor positions to address auditing and inspecting workloads. He directed staff to send out Washington's newly proposed fees to all Board members.

C. Public Comments

President Cummings noted that two members of the audience had signed up to provide public comment. He then recognized Patricia Sweeney.

Ms Sweeney introduced herself as a community educator in a few fields, one of which was providing education about home funerals through her company, Spiral of Life. She discussed her frustration of not being appointed as either a public member of the Board, due to her commercial interest in the death care industry, even though she has not been charging her clients for home funeral assistance, or appointed to an industry represented position, as these are clearly defined in the statute.

She then asked for clarification on who could prepare and wash human remains legally, since she was confused, even after asking for clarification from the Board who provided the statutory and administrative rules authorities that stipulate that only a licensed embalmer or certificated embalmer apprentice may engage in the practice of washing or

supervision of the dressing of human remains, even if the body was not going to be embalmed, but Ms Sweeney's understanding was that a funeral director could do it as well. She wanted this clarified, since she was considering serving a funeral service practitioner apprenticeship at a funeral home.

Ms Sweeney then reported that her understanding was that when a person was embalmed, the body fluids, etc, were released directly into the public sewer system. If this was true, she perceived this as a glaring and immediate public safety health threat, especially in light of the latest scare of swine flu. She wondered why the Board was even taking the time to license death care consultants rather than addressing this immediate threat, and she was concerned that members of the Board weren't even aware of it.

Ms Sweeney then asked the Board to identify the sponsor or original drafter of Senate Bill 796. She said that she had been asking this for four straight months and she has not received a believable answer from the Board or Senator Vicki Walker. She said she wasn't sure why she was being stonewalled and it was very frustrating as an educator and as a public citizen, as she has a right to know as a taxpayer.

President Cummings responded that he believed Senator Walker was in charge of that bill, but Ms Sweeney was free to contact the Legislature, as it was a matter of public record.

Ms Sweeney then provided a handout containing a synopsis of some of her statements and asked that it be distributed to the Board. She said that she intended to attend all future Board meetings in order to ask questions, but she said she would try to not overwhelm the Board.

President Cummings thanked her. He then recognized John Brenneman.

Mr Brenneman said he represented the Oregon Funeral Directors Association as a lobbyist for the past eight legislative sessions, just over sixteen years. He said that this session was the first time that he has had a good working relationship with the Board, and he wanted to express his personal gratitude to the Board and especially to the Director.

President Cummings thanked him. He then asked if anyone else wished to provide public comment, even if they hadn't signed up to speak. Hearing no response, he directed the Board to the next agenda item.

D. Panel Presentation - Anatomical Donation for Transplantation

Michelle Gaines, Executive Director, said that the four panelists would be speaking about anatomical donation, specifically for the purposes of transplantation, and would be available to address any questions. She then introduced the members of the Panel: Corrina Patzer, Communications Director for the Lions Eye Bank;

Emily Wittekindt, Hospital Development Coordinator for Community Tissue Services; Craig Van De Walker, Department Director for the Pacific NW Transplant Bank; and Mary Jane Hunt, Executive Director of Donate Life Northwest.

Ms Hunt said that her organization, originally known as the Oregon Donor Program, was started with a group of health professionals from OHSU in 1975, as they saw the need for public education about organ and tissue donation. This nonprofit organization works very closely with hospitals, but their most important role is public education. She was proud to report that they launched the Oregon Donor Registry a couple of years ago, which allows individuals the opportunity to register online. Through the Registry, one could donate the whole body or specify specific organs. Or, one could register as a donor with the Department of Motor Vehicles (DMV), as the Uniform Anatomical Gift Act provides that a driver's license, permit, or ID is a legal document. Currently, there are over 2,000,000 registered in Oregon as donors, one of the highest registered populations for organ and tissue donors in the nation. Unfortunately, the lowest represented age group for donors is the 15 - 29 year olds. Her organization is currently concentrating on education in high schools, colleges in order to target these young adults.

Mr Van De Walker said that his organization covers the whole state of Oregon, southern Washington, and portions of western Idaho. Anytime there is someone with a catastrophic neurological injury in that area, somebody from his group becomes involved in the situation by talking to the family, going through the donation process with them if they choose that, or if that individual had been on the donor registry. His group deals typically with heart, lungs, liver, kidney, pancreas, and small intestines transplants. Only a small percentage of people who pass away do so in a way that they can become organ donors, significantly less than one percent of deaths avail themselves to this potential opportunity for others. Seventeen people per day die on the transplant waiting list nationwide. His organization is regulated by the federal government, the Association of Organ Procurement Organizations.

Ms Wittekindt stated that Community Tissue Services is a nonprofit organization, and has about the same coverage area that PNWTB does, in addition to the Walla Walla area. Her organization is involved with tissue recovery, and focuses only on transplants, specifically skin, bone, vascular tissue, veins, heart valves, and tendons. They typically don't recover for research or medical education, unless they have research consent, and if they aren't able to use the tissue for transplant.

Ms Patzer stated that her organization is primarily transplant focused as well, but if they are not able to use the tissue for transplant, it could be used for research and medical education. Her organization is regulated by the Food and Drug Administration, the Eye Bank Association of America, and American Association of Tissue Bank Regulated. She said that there were 102,748 people waiting for an organ in the United States, as of July 27 2009. Most people who suffer a cardiac death are eligible potentially to be eye and tissue donors.

President Cummings thanked the panelists for their presentations. Discussion followed. Blood pressure medication is not a hindrance for organ donation; the blood may not be acceptable for transfusions though. Each organization performs an extensive medical, social history with the deceased's family, if possible, as well as an extensive battery of serological and valproic acid testing on the blood. As to the time frame, starting with the diagnostic testing, the discussion with the families, matching appropriate recipients from the national waiting list, the whole process could take anywhere from 12 to 24 hours, though it could be done quicker in certain urgent situations. The incidence of recipient infections for organ donations is extremely small. Most piercings or tattoos are not detrimental to being a successful donor, depending on whether or not it was performed in a professional establishment. There was discussion on the condition of the body after donation, on how difficult it was for the embalmer to prepare the body for viewing, which increases the costs to the families. If the reconstruction was unusually difficult due to the tissue recovery, Ms Patzer asked that the funeral home bill the organization, as they would rather see a bill from the funeral home, then to have it passed on to the families. It would be taken under consideration on a case by case basis, but with the understanding that since they are a nonprofit organization, they may not be able to recoup the reconstruction expenses to the funeral home.

Director Gaines asked what the Board and licensees could do to support their services.

Ms Wittekindt responded that there is a need to educate people about the option to donate, as people automatically rule themselves out, because they are not fully informed. She said that they have a very thorough and easy to read website. Donors need to talk to their family, even though the driver's license, identification, or permit is legal consent, but it is helpful that family members are aware of their intent. While working with families, especially in planning their prearrangements, if the directors could pass on the kinds of questions that are being asked to her organization or what types of misconceptions the directors are seeing.

Ms Patzer said that transplant surgeons are the recipient advocates. Her organization's job is to advocate for the people who sign up on the registry. She asked the directors to remember that the donation is an incredible gift, and is meant to be a positive experience for the families to reflect upon while they are grieving. She knows that tissue recovery can make the reconstruction harder than normal, so if there is an issue, to please contact her organization, rather than sharing their frustration with the family.

President Cummings thanked all the panelists for their presentations. He then requested that the Board adjourn for a short break.

President Cummings then reconvened the Board meeting after a 10 minute break. He directed Michelle Gaines, Executive Director, to proceed.

E. Presentation and Approval of Executive Director's Report for July 2009

Director Gaines noted that even though the 2007 - 2009 biennium ended June 30 2009, the final numbers will not be available until mid-August. She discussed the possibility of taking out a State Treasury loan in October, with the possibility that we may not need the entire \$100,000 loan. She then asked if there were any questions on the Report.

President Cummings asked if notice went out regarding the filing fee increase that was effective July 1 2009.

Director Gaines said yes. Due to a technical error in House Bill 2244, the death certificate filing fee bill became law the date the Governor signed it, May 26 2009. She expressed her gratitude to the folks at the Department of Human Services and the Oregon Funeral Directors Association who were instrumental in working with her in the last hours of the Legislative Session, to get a technical fix to change the effective date to July 1. She asked if there were any other questions regarding the Report.

President Cummings asked about the cases identified in the Report that were over 120 days. (Cases received over 61 days ago require the Board to consider voting to extend the time allowed for an investigative report pursuant to ORS 676.165.) He asked if it was possible to see some of them at the next Board meeting.

Manager Nelson responded that staff would continue to do their best.

President Cummings thanked her. He asked the Board if they had any other questions regarding the Report. Hearing none, he asked if there was a motion. He recognized Kevin Korn.

Mr Korn so moved. Barry Horowitz seconded. All others were aye and the motion carried unanimously. Those voting in favor: Members Cummings, Dresler, Goolsby, Horowitz, Korn, Kurtz, Martin, Phelps, Stanger, Terry, Wachter. Those voting no: none.

President Cummings then directed Joncile Martin to continue to the next agenda item.

F. General Discussion Items

1. Treasurer's Audit Report

Ms Martin met with Jon Cummings, Michelle Gaines and Lora Carson, Board Accountant, in the Board's office the day before the Board meeting. The purpose of the meeting was for the Board's Secretary / Treasurer to review the internal controls that the Executive Director and staff are using for revenues and expenditures. Ms Martin was very satisfied with the procedures that were set up for in-house cashiering where two staff members complete the cashiering process. Whoever opens up the mail is not the one that makes the deposits. She said it was a lot more thorough than

she anticipated and she was extremely pleased with the controls in place. The Board's Accountant was impressed as well.

President Cummings thanked her. He asked if there were any questions. Hearing none, he asked Director Gaines to proceed.

2. Legislative Update & Impacts

Director Gaines said that it was a very robust Legislative Session for 2009 and she was thrilled beyond measure that there is an interim session scheduled for February 2010. She wasn't able to provide a full report of the bills that were passed into law, as the Governor has not signed all the bills yet. Once he has, she will then be able to report to the Board all of the legislative changes mandated for the Board's programs and licensees.

She spoke about the series of bills that have been signed into law that had to do with the standardization of Health Related Licensing Boards. This Board will now have Senate confirmation for new Board members. Term limits will shift from four years to three years, but she was seeking clarification as to how that impacts the current Board member terms. Board members will be required to be a resident of the state of Oregon. The Governor can now remove a Board member for cause, based upon certain criteria. There is language around an impaired practitioner program that will make it the same across all Health Related Licensing Boards, but it doesn't mandate our Board to create one. Another law mandates an administrative process review, a peer audit review to be performed by a panel of executive directors from other boards that includes at least one public member. There is a statutory requirement now for all licensees of Health Related Licensing Boards that observe inappropriate or criminal conduct on the part of another board licensee to report the conduct to that licensee's board.

Director Gaines then discussed in detail Senate Bill 796, which was Senator Walker's bill. We will need to do administrative rulemaking on environmental standards recommendations for the Board's licensees, as well as implementing the new license requirements for death care consultants. This law will also allow different forms of disposition, such as resomation, an alternative to burial and cremation using a water based natural process. This law added some standards around cenotaph and scattering gardens that we'll need to address through the rulemaking process. Burial requirements for private home burial have been expanded by requiring local jurisdictions (city, county, regional governments) to report to us their local zoning laws, ordinances.

This law also changes many aspects of indigent burial, one of which is allowing the Department of Human Services to raise the maximum allowed reimbursement to be set via the rulemaking process. Since the law went into effect July 1 2009, they've implement temporary rulemaking that would in essence put the rules back in place the way it worked originally, until they can request input from funeral service

practitioners before implementing the permanent rulemaking process. DHS has requested that the Board send out their DHS' survey to our licensees to determine what the costs are for the activities involved in trying to locate families, to determine what an appropriate cap would be.

In an effort to connect veterans to their benefits, every State of Oregon webpage now will contain a direct link to the Oregon Department of Veterans' Affairs where veterans, their dependents and survivors can request information about veteran benefits. This law was passed because there are approximately 350,000 veterans residing in Oregon, but only 80,000 are receiving any type of veteran benefit.

Director Gaines then explained that due to the volatility of the overall economy, both at the state and federal level, cost reduction measures have been mandated by the state for July and August. Another economic forecast is scheduled for September, which could lead potentially to additional general fund reductions. She was anticipating more furlough days to be implemented, additional salary freezes and roll backs. After the union contract negotiations are resolved, hopefully by September, we'll know the dates that the state is planning to close all state offices for the next two years.

Director Gaines said that since various laws have different effective dates (the date the Governor signed the bill into law, or, depending on the wording of the clause, it could be July 1 2009, January 1 2010, or March 30 2010, etc), and impact different parts of the Board's programs, she will put together a calendar for the Legislative Committee, and other advisory committees that need to be established, which will help schedule which is going to be continuous but separate rulemaking activities with different advisory groups.

President Cummings thanked her. He then directed Lynne Nelson, Compliance Manager to proceed.

3. Rulemaking Update

Manager Nelson reported that at the May 28 2009 Board meeting, the Board voted to approve the first round of the rule amendments. Those amendments became effective upon filing July 1 2009, and are posted on the Board's website. She asked if the Board had any questions.

Hearing none, President Cummings directed Director Gaines to proceed.

4. Annual Performance Progress Report - Key Performance Measures

Director Gaines then discussed the material in the Board packet regarding Key Performance Measures. She stated that we are required to report out annually, and this year's report is due by September 30 2009. Even though the Board has been understaffed, the statistics for both investigations and customer service show positive

increases for Fiscal Year 2009. Investigations show an increase due to deliberately focusing on investigations, rather than inspections, and through efficiencies achieved by streamlining the investigative process.

Key Performance Measure # 4, Percent of total best practices met by the Board, will not be able to be tabulated until after the Board's September board meeting. She asked if there were any questions, or a suggestion to better report the information.

Hearing none, President Cummings asked her to continue to the next agenda item.

5. Agency Goals & Objectives FY2009-2010

Director Gaines then discussed in detail the draft Agency Goals linked to the Strategic Policy Framework handout. She explained that it was in draft form for Board discussion and input, in order to make sure that the agency goals and objectives are tied into our strategic plans. The Strategic Policy Framework was developed from the Board's retreat last October. Once the Board determines specific concrete actions, she will then be able to break it out into quarters for the upcoming biennium. The next strategic planning meeting will be in October. She asked if there were any questions.

After brief discussion, President Cummings asked if there was a motion on the floor. He then recognized Pamela Wachter.

Ms Wachter moved to approve the Board Agency Goals linked to Strategic Policy Framework draft document as prepared. Barry Horowitz seconded. All others were aye and the motion carried unanimously. Those voting in favor: Members Cummings, Dresler, Goolsby, Horowitz, Korn, Kurtz, Martin, Phelps, Stanger, Terry, Wachter. Those voting no: none.

6. FY2008-2009 Board Best Practice Assessment

Kevin Korn said that he needed all of the Board member's individual scorecards turned in today, in order to determine whether the Board met a set of standard board governance best practices for Fiscal Year 2009. The results will be reported each year as part of the Board's Annual Performance Progress Report. He asked if there were any questions.

After brief Board discussion, Mr Korn said that the Board would discuss the results at the next Board meeting before they are submitted to the state on a composite score card. He noted that if consensus is not achieved on a line item, the Board is required to record the response as no for the whole Board.

G. Consent Items

President Cummings asked if there was an issue or a question before the Board approved the licensing agenda items. Hearing none, he directed Kevin Korn to proceed.

Mr Korn recommended and he so moved, that the Board approve Consent Agenda Items G1 through G10. Teri Dresler seconded. All others were aye and the motion carried unanimously. Those voting in favor: Members Cummings, Dresler, Goolsby, Horowitz, Korn, Kurtz, Martin, Phelps, Stanger, Terry, Wachter. Those voting no: none.

President Cummings then requested that the Board adjourn general session at 11:55 am, for the purpose of entering into executive session.

III Executive Session

President Cummings then directed the Board to enter into executive session as authorized under ORS 192.660(2)(a), (b), (f), (h), (i) and / or (k). Executive session adjourned at 1:55 pm.

IV General Session

President Cummings called the general session of the Board back to order at 1:56 pm. He stated for the record that the same members that were in attendance for the earlier general session were still present. He then recognized Kevin Korn.

H. Action Items

Pursuant to Oregon Administrative Rules 830-030-0000(9), the Board may authorize a funeral service practitioner to manage more than one funeral establishment when the Board, in its sole discretion, determines that the management of more than one funeral establishment by a single funeral service practitioner is in the public interest.

Board discussion followed regarding the two similar requests. The Board determined that because one request was for a temporary period, consistency was not required.

1. **Hector De Los Santos' request to manage two funeral establishments that are not co-located:** Affordable Burial & Cremation Company, located in Newport, and Affordable Burial & Cremation Company - Lincoln City.

Pam Wachter moved to deny Mr De Los Santos' request. Dwight Terry seconded. All others were aye and the motion carried unanimously. Those voting in favor: Members Cummings, Dresler, Goolsby, Horowitz, Korn, Kurtz, Martin, Phelps, Stanger, Terry, Wachter. Those voting no: none.

2. **Michael Godsey's request to manage two funeral establishments that are not co-located:** Bateman Funeral Home, located in Newport, and Pacific View Memorial Chapel, located in Lincoln City.

The Board approved Mr Godsey's request on a temporary basis and directed staff to ensure a different manager is appointed for one of the facilities prior to the Board's November 24 2009 meeting. Kevin Korn so moved. Erin Phelps seconded. Others were aye and the motion carried. Those voting in favor: Members Cummings, Dresler, Goolsby, Horowitz, Korn, Kurtz, Martin, Phelps, Stanger. Those voting no: Members Terry, Wachter.

President Cummings then directed Kevin Korn to proceed.

I. Investigations

1. New Cases

Mr Korn reported that the full Board reviewed these cases during executive session and recommended, and he so moved, that the Board:

initiate Disciplinary Action for case **2008-1028**;
initiate Disciplinary Action on cases **2009-1033A, B**;
take no action on cases **2009-1042A, B, C, D, E, F, G and H**;
take no action on case **2009-1029**;

2. New Cases, Confidential Consent Agenda Items (Investigation Summary)

take no action on cases **2008-1044A, B**;
take no action on cases **2009-1023A, B**;
take no action on cases **2009-1032A, B**;
take no action on cases **2009-1038A, B, C**; and

3. Pending Cases, Confidential Consent Agenda Items (Investigation Summary)

allow monthly civil penalty payments for cases **2004-1056A, 2005-1003, and 2006-1015A**. Barry Horowitz seconded. All others were aye and the motion carried unanimously. Those voting in favor: Members Cummings, Dresler, Goolsby, Horowitz, Korn, Kurtz, Martin, Phelps, Stanger, Terry, Wachter. Those voting no: none.

Kevin Korn then reported that the full Board reviewed these cases during executive session and recommended, and he so moved, that the Board take no action on cases **2009-1022A, B**. The motion failed due to a lack of a second.

President Cummings then asked if there was another motion. He recognized Charles Kurtz.

Mr Kurtz moved to initiate Disciplinary Action on cases **2009-1022A, B**. Barry Horowitz seconded. Others were aye and the motion carried. Those voting in favor:

Members Cummings, Dresler, Goolsby, Horowitz, Korn, Kurtz, Phelps, Terry, Wachter. Those voting no: Martin, Stanger.

President Cumming asked if there was anything else that needed to come before the Board, or there were any questions or comments. He recognized Director Gaines.

Director Gaines reported an update on the union negotiations. There will be salary freezes, furlough days, as well as 10 days in which state government will close state offices over the next two years; the first closure is scheduled for a Friday, on October 16 2009. She said she would send out the details to Board members.

President Cummings asked if there was anything else that needed to come before the Board. Hearing none, he thanked everyone for their participation and adjourned the meeting.

ADJOURNED - The general session adjourned at 2:15 pm.