

Consumer & Industry Advisory Committee—(CIAC)
Recommendations, Rationale and Fiscal Impact Estimates for Rule Changes

1

OMCB May, 2010 Draft – CIAC Recommendations for further discussion

KEY:

- **Underlined Bold** – Proposed changes
- ~~Strikeout~~ – Removed text
- *Boxed bold & Italicized font* – Explanations
- Items that are in "move forward now" document
- Items that are OMCB suggestions
- Items still flagged for clarification or question.

Oregon Administrative Rules 830, Division 1 – Division 50

830-001-0000 Model Rules of Procedure and Notice of Proposed Rulemaking

DIVISION 1

PROCEDURAL RULES

DIVISION 1

PROCEDURAL RULES

830-011-0000 - Definitions

(33) "Principal". Principal means those persons who have controlling authority over the licensed facility, including but not limited to:

(a) Managers or other persons who have decision making authority and whose primary duties include control over the operation of the licensed facility;

(b) Officers or directors who have some degree of responsibility for the operation of the licensed facility;

(c) Stock holders or corporations who own or control ten percent or more of the licensed facility by owning or controlling ten percent or more of the voting stock;

(d) (b) Partners;

(e) Sole proprietors; and

(f) Majority stockholders.

Note/Justification: All persons included in the definition of a principal require a background check under both old and proposed rule language. This new definition limits the definition of principal to fewer people. The current level of background checks and listing of minor owners on records does not seem necessary since there is no statutory requirement to do so. The Board may revoke a facility's license as a result of disciplinary action when problems are identified. If a facility is licensed and that license is revocable, why do those other than preneed sales persons,

This is a draft copy of proposed Oregon Administrative Rule change recommendations compiled by the Consumer Industry Advisory Committee (CIAC) - with comments inserted by Staff in May, 2010.

Consumer & Industry Advisory Committee—(CIAC) Recommendations, Rationale and Fiscal Impact Estimates for Rule Changes

2

OMCB May, 2010 Draft – CIAC Recommendations for further discussion

managers, partners, owners and majority stockholders need to be background checked? See also 830-011-0050 (1), (2), 830-020-0040 (1).

OMCB – Are LLC members considered “stockholders” – or “shareholders” or “members” – Current CIAC recommendations do not address this issue. Also, if there are four 25% stockholders in a corporation, who is considered majority? None? Also, what about persons with decision making authority, trainers, etc. such as preneed salesperson supervisors – they aren’t required to be licensed, shouldn’t they have to pass a background?

Impact to small business: Reduced costs involved when there is a change in “principal” under the old definition.

Stat. Auth.: ORS 128.414 & ORS 692.320

Stats. Implemented: ORS 692.320 & ORS 128.414

Hist.: MCB 1-1986, f. & ef. 10-21-86; MCB 1-1988, f. & cert. ef. 2-10-88; MCB 1-1989, f. & cert. ef. 2-6-89; Renumbered from 830-030-0010(1)(a) - (k) & 830-030-0020; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 1-1994, f. 6-28-94, cert. ef. 8-1-94; MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97; MCB 1-1998, f. & cert. ef. 6-22-98; MCB 1-2001(Temp), f. 12-12-01, cert. ef. 1-1-02 thru 6-29-02; MCB 1-2002, f. 5-30-02, cert. ef. 6-30-02

830-011-0070 -Registration of Preneed Salespersons and Endowment Care Cemetery Salespersons

(1) An individual may not engage in prearrangement or preconstruction (preneed) sales under ORS 97.923 to 97.949 unless the individual is registered as a “preneed salesperson” with the State Mortuary and Cemetery Board. Individuals who are currently licensed as a funeral service practitioner or embalmer or certificated as an apprentice funeral service practitioner or apprentice embalmer need not register separately to sell preneed .

(2) Preneed registration is required to sell any at-need or preneed cemetery products, services, or interment rights or spaces at any location other than a licensed facility. This does not pertain to the sale of the above items through insurance products by a licensed insurance sales person.

Note/Justification: This should be required to protect the public in cases where cemetery sales persons conduct business in a consumer’s home. This matches California law and improves consumer protection. The change also makes it clear that selling insurance products is done under a different licensing agency and insurance sales do not require preneed registration.

OMCB – First, consumers buying insurance products are not buying cemetery services. The worksheet used to determine the amount of the policy to cover what one would spend at today’s prices are not ‘sales contracts’, and most of these worksheets state this fact. It’s the insurance policy that is sold, so the second sentence is confusing.

Second, preneed registration is specifically required by statute (ORS 97.931) for trust-funded sales. Expanding the definition is not statutorily authorized, and bringing “at need” into the preneed realm fights the statutory meaning of preneed..

Another license (“Cemetery Salesperson?”) would be needed for ‘this type of person’ (cemetery lot brokers, casket salespersons) if the Board deemed it necessary. Further, if another license was created for these persons, wouldn’t any Oregon citizen that sold anything to do with cemetery goods or services need to be registered (if they went to someone’s home to show a product book) – from every casket, OBC, marker, flower shop, artisans such as stone engravers, brass plaque designers, etc., but even persons wanting to sell their own family plots to another person? Seems rather daunting...

(It also doesn’t clarify that licensed funeral service practitioner and embalmers/apprentices don’t need PN registration to sell at-need or preneed cemetery services or products in someone’s home, such as , where the FE sends the CE a check on behalf of the family when the at need situation occurs. This rule needs a lot of discussion by everyone.)

Finally, while insurance salespersons do come under the jurisdiction of the Insurance Division, they also come under our jurisdiction – they are required to follow FTC Funeral Rule. Nobody seems to be checking to see if they do.

Comment [MC1]: Makes a license required for door to door preneed property sales persons.

This is a draft copy of proposed Oregon Administrative Rule change recommendations compiled by the Consumer Industry Advisory Committee (CIAC) - with comments inserted by Staff in May, 2010.

Consumer & Industry Advisory Committee—(CIAC)
Recommendations, Rationale and Fiscal Impact Estimates for Rule Changes

OMCB May, 2010 Draft – CIAC Recommendations for further discussion

Fiscal impact to OMCB: Minimal but may increase registration fees for individuals selling pre-need property in homes.

Impact to small business: None

(2) (3) Applicants for registration as a "preneed salesperson" must apply on a form provided by the Board, pay the preneed salesperson fees set forth in OAR 830-020-0040 and submit to a background investigation. The background investigation may include but is not limited to information solicited from the Department of State Police, Law Enforcement Data System, Oregon Department of Motor Vehicles, other government agencies including local law enforcement agencies, the courts and prior employers.

(3) Endowment care cemetery salespersons engaging in prearrangement or preconstruction sales must comply with all the requirements set forth in this section.

Note/Justification: Stricken because this language is not needed as compliance with rules is required of all licensees.

OMCB – it's possible at some time there was an intention to register all endowment care cemetery salespersons, even those selling at only need goods or services? Something to research and consider.

Fiscal impact to OMCB: None

Impact to small business: None

Stat. Auth.: ORS 128.414

Stats. Implemented: ORS 128.414

Hist.: MCB 1-1994, f. 6-28-94, cert. ef. 8-1-94; MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97; MCB 1-2001(Temp), f. 12-12-01, cert. ef. 1-1-02 thru 6-29-02; MCB 1-2002, f. 5-30-02, cert. ef. 6-30-02

830-011-0080 -Grounds for Civil Penalty, Revocation, Suspension or Refusal to Issue or Renew a Preneed Salespersons Registration

(1) In accordance with ORS 97.933(5), the Holder of a Certificate of Registration is responsible for the conduct of their preneed salespersons. Therefore, the Board may take disciplinary action against a licensee that is the Holder of the Certificate of Registration for the misconduct of their preneed salespersons - It is the responsibility of the Holder of the Certificate of Registration to insure that sound sales and business practices are used in the training and supervision of their preneed salespersons.

Note/Justification: Redundant statement

OMCB – Not redundant – Notices are not written "Certified Provider is responsible for the conduct of their preneed salespersons which is a violation of OAR 830- etc. They are written "CP failed to insure sound sales and business practices when training or supervising their preneed salespersons...

Fiscal impact to OMCB: None

Impact to small business: None

Stat. Auth.: ORS 128.414 & ORS 692.320

Stats. Implemented: ORS 128.414

Hist.: MCB 1-1994, f. 6-28-94, cert. ef. 8-1-94; MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97; MCB 1-1998, f. & cert. ef. 6-22-98; MCB 1-2001(Temp), f. 12-12-01, cert. ef. 1-1-02 thru 6-29-02; MCB 1-2002, f. 5-30-02, cert. ef. 6-30-02

830-020-0030 - Reciprocal Licensure

This is a draft copy of proposed Oregon Administrative Rule change recommendations compiled by the Consumer Industry Advisory Committee (CIAC) - with comments inserted by Staff in May, 2010.

**Consumer & Industry Advisory Committee—(CIAC)
Recommendations, Rationale and Fiscal Impact Estimates for Rule Changes**

4

OMCB May, 2010 Draft – CIAC Recommendations for further discussion

(1) An applicant for reciprocal licensure shall apply to the Board on a form provided by the Board. The application shall be accompanied by the following:

- (a) The reciprocal fee as prescribed by OAR 830-020-0040;
- (b) A certified copy of the applicant's birth certificate;
- (c) A certified copy of transcripts from a school accredited by an Association of Schools and Colleges demonstrating completion of an Associate's degree or higher degree (for funeral service practitioner licensure) or proof of passing an accredited course of funeral service education (for embalmer licensure);
- (d) A certificate from the state(s) the applicant is licensed in which includes: length of apprenticeship, examination score, date licensed, status of license at the present time, **including unresolved complaints or investigations**, and whether the applicant's license has ever been suspended or revoked or other disciplinary action taken;

Note/Justification: Allows pending complaints to be considered.

OMCB - We can't legally 'consider' them because they are not a basis to deny according to our statutes or rules. We might have to strike this amended portion altogether. It's a great idea, but, guilty until proven innocent? Is the existence of pending discipline or investigation a legal basis to deny? No. Or, could the Board legally table a decision to approve a license until it is resolved?

Fiscal impact to OMCB: None

Impact to small business: None

Stat. Auth.: ORS 183.341, [ORS 183.545](#), [ORS 692.160](#) & [ORS 692.320](#)

Stats. Implemented: [ORS 692.140](#)

Hist.: MCB 1-1986, f. & ef. 10-21-86; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97; MCB 1-1998, f. & cert. ef. 6-22-98

830-020-0050 - Administrative Fees

(1) The Mortuary and Cemetery Board may charge a fee reasonably calculated to reimburse the agency for costs of providing and conveying copies of public records. **A schedule of fees will be approved annually by the Board and will be made available to the public on the Board's website or mailed upon request.**

(2) All fees and charges must be paid before public records will be available for inspection or copies provided.

(3) The Board establishes the following fees:

- (a) \$60 per hour fee to obtain the requested documents (prorated with a \$15 minimum);
- (b) \$1 for the first page and \$0.25 for each additional page;
- (c) \$75 per set of computer-generated lists on paper;
- (d) \$80 per set of computer-generated lists on peel-n-stick labels;
- (e) \$10 per copy of individual Board meeting minutes;
- (f) \$10 each for cassette tape recordings;

This is a draft copy of proposed Oregon Administrative Rule change recommendations compiled by the Consumer Industry Advisory Committee (CIAC) - with comments inserted by Staff in May, 2010.

Consumer & Industry Advisory Committee—(CIAC)
Recommendations, Rationale and Fiscal Impact Estimates for Rule Changes

5

OMCB May, 2010 Draft – CIAC Recommendations for further discussion

(g) A fee to cover the printing and postage for a copy of the Board's Directory of Licensees; and,

(h) \$10 each for Certificates issued by the Board.

Note/Justification: The above change allows fees to be set administratively. This in turn allows all individual fees under (3) to be struck

OMCB – Statute requires us to list our fees in rule.

Fiscal impact to OMCB: None

Impact to small business: None

Stat. Auth.: ORS 692.160 & 692.320

Stats. Implemented: ORS 692.160

Hist.: MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 1-1994, f. 6-28-94, cert. ef. 8-1-94; MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97

830-030-0000 - In General

(1) No licensee, operator of a licensed facility, or their agent shall interfere with another licensee, operator of a licensed facility, or their agent who has been legally called to take care of human remains, or perform services relating to the disposition of human remains. The choice of licensed funeral homes, cemeteries, crematories or immediate disposition companies, or licensed person shall be left entirely to the person with the legal right to control final disposition.

(2) It shall be the responsibility of the funeral service practitioner **or person acting as such** to prepare a certificate of death and file the same with the vital statistics local registrar in the county where the death occurred.

OMCB - True, ORS 432.317 refers to a person acting as such, and at first it seemed proper. However, adding this language to our rule seems to compel the Board to take action when someone 'acting as such' has NOT prepared and filed the certificate of death? Do we have jurisdiction over them? I think not. DHS has the statutory authority over such persons, whether they do or do not file a death certificate. If we add this language to our rules, DHS may start sending us their non-compliant persons, thinking we can and should take disciplinary action against such persons?

(3) It shall be the responsibility of the funeral service practitioner to see that an identifying metal disc (with a number assigned by the State Registrar's Office) is attached to each receptacle containing human remains. When remains are to be cremated, the identifying metal disc shall be secured to the top of the head end of the casket or alternative container. When remains are going to be buried or entombed, the identifying metal disc shall be placed on the back side of the head end of the casket behind the handle. If there are no handles, the identifying metal disc should be attached in the same general vicinity. The number on the identifying metal disc shall be written on the certificate of death and final disposition permit by the responsible funeral service practitioner.

(4) It shall be the responsibility of the Crematory Authority to see that the identifying metal disc shall accompany remains through the cremation process.

(5) It shall be the responsibility of the Cemetery Authority or Crematory Authority to see that the identifying metal disc is properly secured to each receptacle containing human remains when remains are delivered to the Cemetery Authority or Crematory Authority and that the number on the identifying metal disc is the number recorded on the final disposition permit. **The Cemetery Authority or Crematory Authority shall sign the final disposition permit verifying this fact prior to accepting the remains.** At no time shall the Cemetery Authority or Crematory Authority accept remains without an identifying metal disc unless death occurred in a state other than Oregon.

(3) It shall be the responsibility of the funeral service practitioner or person acting as such to see that an identifying metal disc (with a number assigned by the State Registrar's Office) is attached to each casket or receptacle containing human remains (OMCB – or, when there is no receptacle, properly secured to the remains. When remains are to be cremated, the identifying metal disc shall be (OMCB – properly) secured to the top of the head end of the casket, receptacle or alternative container. When remains are going to be buried or entombed, the identifying metal disc shall

This is a draft copy of proposed Oregon Administrative Rule change recommendations compiled by the Consumer Industry Advisory Committee (CIAC) - with comments inserted by Staff in May, 2010.

**Consumer & Industry Advisory Committee—(CIAC)
Recommendations, Rationale and Fiscal Impact Estimates for Rule Changes**

6

OMCB May, 2010 Draft – CIAC Recommendations for further discussion

be (OMCB - properly secured to) on the head end of the casket or receptacle when delivered to the cemetery. The number on the identifying metal disc shall be written on the certificate of death and final disposition permit by the responsible funeral service practitioner. It shall be the responsibility of the funeral service practitioner or person acting as such to see that the identifying metal disc is properly secured to each receptacle containing human remains or to the remains when remains are delivered to the Cemetery Authority or Crematory Authority and that the number on the identifying metal disc is the number recorded on the final disposition permit.

Note/Justification: This clarifies language and adds flexibility while maintaining protection. Allows for 'green burials' and alternatives to traditional casket. Clarifies responsibilities.

OMCB – last two sentences are unnecessary with OMCB suggested revisions. Staff understands the intent, but needs more time to research existing law...

Deleting the entire rules and then reposting or rewriting it...using most of the same sentences - makes this difficult to see where the changes were recommended. Will work on this more when time permits.....

Fiscal impact to OMCB: None

Impact to small business: None

(4) It shall be the responsibility of the Crematory Authority to see that the identifying metal disc shall accompany remains through the cremation process. The disc may be attached to the outside of the cremation retort or cremation processor.

OMCB – Second sentence is vague. Does it mean the tag can stay on the retort throughout the entire process? If the cremated remains are in a pan on the floor, the tag should be with the pan; if the cremated remains are in the processing bowl, the tag should be at the processing bowl; if at the pouring, sifting or wrapping areas, the tag should with the cremated remains. The second sentence is also unnecessary because of OAR 830-030-0040(5)

(5) The Cemetery Authority or Crematory Authority shall sign the final disposition permit prior to accepting the remains. At no time shall the Cemetery Authority or Crematory Authority accept remains without an identifying metal disc unless death occurred in a state other than Oregon.

Note/Justification: Changes to (4) and (5) clarify responsibilities for crematory operator, Cemetery Authority, and FH practitioner. State statute states the following:

692.405 Identifying receptacle. The funeral service practitioner or person acting as such shall be responsible for causing to be affixed to each receptacle, as defined by rule of the State Mortuary and Cemetery Board, in which a dead human body is contained an identifying metal disc, of a design to be approved by rule of the State Mortuary and Cemetery Board, that shall remain attached to the receptacle in which the body is contained and shall bear a corresponding number that is also on both the death certificate and the final disposition permit. In the event of cremation, the disc shall stay with the cremated remains. [1985 c.207 §20]

Fiscal impact to OMCB: None

Impact to small business: None

(6) When no metal tag is attached as required or the tag number does not match the permit, the funeral service practitioner shall take responsibility for the proper care and storage of human remains until the tag can be obtained and affixed to the casket or seek appropriate advice from the Board. If the issue can not be resolved on the day of the scheduled service, the funeral service practitioner shall take responsibility for notifying the person with the right to control disposition that the disposition is postponed.

Note/Justification: Clarifies responsibility and duties of the funeral practitioner or person acting as such when no tag is on the casket.

This is a draft copy of proposed Oregon Administrative Rule change recommendations compiled by the Consumer Industry Advisory Committee (CIAC) - with comments inserted by Staff in May, 2010.

Consumer & Industry Advisory Committee—(CIAC)
Recommendations, Rationale and Fiscal Impact Estimates for Rule Changes

7

OMCB May, 2010 Draft – CIAC Recommendations for further discussion

OMCB - "Seek appropriate advice from the Board" ? - The rule already states the Board's position.. If a funeral service practitioner or cemetery or crematory sexton called us to tell us there is no tag, or the number doesn't match the final disposition permit, we would merely remind them that the rule states the cemetery or crematory cannot accept the remains, and that the funeral service practitioner is in violation for not attaching the proper tag, or putting the correct number on the death certificate/final disposition permit.

In addition, it seems odd to invent a rule for people not following the rule. Most importantly, it's already stated that the cemetery or crematory must verify PRIOR to accepting remains... so it's obvious that the funeral service practitioner still has custody and must care for the remains until the issue is settled.

Fiscal impact to OMCB: None

Impact to small business: None

Stat. Auth.: ORS 183.341, [ORS 183.545](#), [ORS 692.160](#) & [ORS 692.320](#)
Stats. Implemented: [ORS 432.165](#), [ORS 432.307](#), [ORS 692.180](#) & ORS 692.405
Hist.: FDB 13, f. 9-9-74, ef. 3-1-75; SMB 1-1984, f. & ef. 10-22-84; MCB 1-1986, f. & ef. 10-21-86; Renumbered from 830-010-0150; MCB 1-1989, f. & cert. ef. 2-6-89; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97; MCB 1-1998, f. & cert. ef. 6-22-98

830-030-0004 - Scope of Practice

The purpose of this rule is to establish an acceptable scope of practice for licensed funeral service practitioners, embalmers, and preneed salespersons.

(1) 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; and

(c) Offer formal viewing of human remains, excepting identification viewing.

Note/Justification: (1)(c) Moved from 830-030-0008 to allow for viewing in churches and cemeteries.

OMCB – The addition of (c) to practice of an FSP is unnecessary. The existing rules do not limit the location of a formal viewing to a funeral establishment. The existing rule states only who may offer it (for sale...), and only an FE may offer it. It could occur at a cemetery, church, community center, etc..

Fiscal impact to OMCB: None

Impact to small business: None

Stat. Auth.: ORS 183.341 & [ORS 692.320](#)
Stats. Implemented: [ORS 692.025](#)
Hist.: MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97; MCB 1-1998, f. & cert. ef. 6-22-98

830-030-0008 - Scope of License

This is a draft copy of proposed Oregon Administrative Rule change recommendations compiled by the Consumer Industry Advisory Committee (CIAC) - with comments inserted by Staff in May, 2010.

**Consumer & Industry Advisory Committee—(CIAC)
Recommendations, Rationale and Fiscal Impact Estimates for Rule Changes**

8

OMCB May, 2010 Draft – CIAC Recommendations for further discussion

The purpose of this rule is to establish an acceptable scope of license for funeral establishments and immediate disposition companies.

(1) Only a licensed funeral establishment shall:

(a) Have facilities for the care and preparation, processing and handling of human remains before the remains undergo cremation, entombment or burial, or before the remains are transported out of the State of Oregon;

(b) Offer embalming, employ a licensed embalmer, have on premises either a preparation room or holding room facility to care for and prepare human remains; and

~~(c) Offer formal viewing of human remains.~~

Note/Justification: ~~Moved to section 830-030-0004 (1)(c)~~

Fiscal impact to OMCB: None

Impact to small business: None

(2) An Immediate Disposition Company shall only:

~~(a) Arrange for immediate burials and immediate cremations without public viewing, or visitation, or ceremony with the human remains present, except for a graveside service.~~

~~(b) If minimum preparation of a human remains is requested by the family, for purposes of having an "identification viewing", the immediate disposition company shall refer the family to a licensed funeral establishment to provide those services.~~

Note/Justification: Immediate disposition companies should offer no viewings. Allowing identification viewings has led to past issues.

OMCB – The Board needs to interpret this rule clearly as to its intent...and application. Can an IDC still offer an ID viewing if they contract out the viewing/prep of remains (to an FE), but the IDC keeps 'custody' - or does it mean the IDC must refer the entire final disposition to an FE? Once this is understood, there may or may not be rule revision needed. Identification viewings, as defined, are only for that purpose. Industry seems to have expanded it to mean the 'short time, minimum or no prep, good-bye viewings.' To not permit an ID viewing may put an IDC in jeopardy - if there was some question as to the identity of the remains...

Fiscal impact to OMCB: None

Impact to small business: None

Stat. Auth.: ORS 183.341 & [ORS 692.320](#)

Stats. Implemented: [ORS 692.025](#)

Hist.: MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97; MCB 1-1998, f. & cert. ef. 6-22-98

830-030-0070 - Transportation and Care of Persons Who have died of Communicable Diseases (Does not Include Removal of Deceased from Place of Death to Funeral Establishment, Crematory or Other Holding Facility)

I've asked DHS for a list of communicable diseases to update this section. LN

This is a draft copy of proposed Oregon Administrative Rule change recommendations compiled by the Consumer Industry Advisory Committee (CIAC) - with comments inserted by Staff in May, 2010.

Consumer & Industry Advisory Committee—(CIAC)
Recommendations, Rationale and Fiscal Impact Estimates for Rule Changes

9

OMCB May, 2010 Draft – CIAC Recommendations for further discussion

(1) The transportation of persons who have died of communicable diseases specified by the Oregon State Health Division shall be permitted only under the following conditions: the human remains shall be thoroughly embalmed with approved disinfectant solution; all orifices shall be closed with absorbent cotton; and the body shall be washed.

(2) Communicable diseases which apply to this section are as follows: **THIS LIST MUST BE CROSS-REFERENCED WITH STATE LIST that has been updated**

(a) Acquired immunodeficiency syndrome;

(b) Diphtheria;

(c) Hemorrhagic fevers (e.g., Ebola);

(d) Hepatitis B;

(e) Hepatitis C;

(f) Hepatitis, delta;

(g) Human immunodeficiency virus;

(h) Plague;

(i) Rabies;

(j) Tularemia; and

(k) Tuberculosis.

Stat. Auth.: ORS 183.341, [ORS 183.545](#), [ORS 692.160](#) & [ORS 692.320](#)

Stats. Implemented: [ORS 692.025](#)

Hist.: MCB 1-1986, f. & ef. 10-21-86; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97; MCB 1-1998, f. & cert. ef. 6-22-98

830-030-0090 - Standards of Practice

Every licensee or agent of a licensed facility of the Oregon State Mortuary and Cemetery Board (Board) shall abide by the accepted standards of the Death Care Industry and the minimum standards, including but not limited to the following standards of practice set forth by the Board. Violations of the following may be cause for Board action.

(1) Required conduct related to safety and integrity:

(a) Compliance with Oregon Revised Statutes [ORS 97.010 to 97.920](#), [97.931](#) and Chapter 692 relating to death care;

Note/Justification: Statutory reference clarifies authority of OMCB compared to DCBS.

OMCB – There are other applicable statutes, such as those passed by recent legislation – reporting of impaired practitioners, for example, that must be followed – are related to safety and integrity. Staff must research these statutes. Time did not yet permit for this.

Fiscal impact to OMCB: None

This is a draft copy of proposed Oregon Administrative Rule change recommendations compiled by the Consumer Industry Advisory Committee (CIAC) - with comments inserted by Staff in May, 2010.

**Consumer & Industry Advisory Committee—(CIAC)
Recommendations, Rationale and Fiscal Impact Estimates for Rule Changes**

10

OMCB May, 2010 Draft – CIAC Recommendations for further discussion

Impact to small business: None

(b) Compliance with Oregon Public Health Laws;

(c) Compliance with FTC Funeral Rule;

(d) Implementation or follow through of agreed upon arrangements as designated by the responsible party **authorizing agent as defined under 97.130;**

Note/Justification: No definition for responsible party. Clarifies requirement

OMCB – There other responsible parties other than someone listed in ORS 97.130 – For example, ORS 97.170 talks about a person willing to pay the costs of final disposition, but they aren't necessarily the person designated by ORS 97.130; or a person makes preneed arrangements for someone still living.... Or someone orders a marker on behalf of a family member, but the cemetery doesn't follow through...etc

Fiscal impact to OMCB: None

Impact to small business: None

(e) Assigning persons to perform functions for which they are licensed and which are within their scope of practice/scope of duties. **Owners and Operators are responsible for the actions of all employees related to the operation of a licensed facility;**

Note/Justification: Takes the place of 830-030-0100 (5). Clarifies responsibilities of owners and operators.

OMCB – The above rule for justification is incorrect. What is the difference between an owner or operator? Is a manager an operator or other, such as management company?

Fiscal impact to OMCB: None

Impact to small business: None

(f) Maintain Supervision of **appropriate business practices by** apprentices and unlicensed persons to whom tasks are assigned;

Note/Justification: Clarifying language.

Fiscal impact to OMCB: None

Impact to small business: None

(g) Report through proper channels and to the Board facts known regarding the incompetent, unethical, unsafe or illegal practices of any death care industry licensee;

(h) Respect the dignity and rights of clients, regardless of social or economic status, age, race, religion, sex, sexual preference, national origin, or disability; and

(i)-Respect the dignity of dead human remains by appropriate handling, including but not limited to **transporting**, refrigerating, embalming, dressing, cremating, and burial;

OMCB - Note/Justification: Transporting should be included with respect to the treatment of remains

This is a draft copy of proposed Oregon Administrative Rule change recommendations compiled by the Consumer Industry Advisory Committee (CIAC) - with comments inserted by Staff in May, 2010.

**Consumer & Industry Advisory Committee—(CIAC)
Recommendations, Rationale and Fiscal Impact Estimates for Rule Changes**

11

OMCB May, 2010 Draft – CIAC Recommendations for further discussion

~~(j)(b) Perform—Supervision of the required sanitizing of the preparation/holding room, including but not limited to, embalming tables, work surfaces, sinks, floors, instruments, and handling and properly disposing of contaminated waste.~~

Note/Justification (1)(j) moved from 830-030-0004 to allow anyone to clean the prep room. Establishments are still required to have a clean prep room and licensees are required to supervise cleaning.

OMCB – See change in scope of practice...not necessary now.

Fiscal impact to OMCB: None

Impact to small business: None

~~(2) Unacceptable Conduct includes: Conduct unacceptable under the Board's "Standards of Practice":~~

~~(a) Conduct generally:~~

~~(A) (a) Abusing a corpse, as defined in ORS 166.085 and ORS 166.087;~~

~~(B) (b) Abusing a client. The definition of abuse includes but is not limited to causing physical or emotional discomfort or intimidating, threatening or harassing a client;~~

~~(C) Engaging in unacceptable behavior towards or in the presence of a client such as using derogatory names or gestures or profane language:~~

Note/Justification: Covered above under (2) (b).

Fiscal impact to OMCB: None

Impact to small business: None

~~(D) (c) Failing to report actual or suspected incidents of client or corpse abuse through the proper channels in the work place and to the Board and appropriate state agencies; OMCB - "to the Board" ensures the 'proper channel' will be followed....~~

~~(E) (d) Using the death care industry practitioner/client relationship to exploit the client by gaining property or items of value from the client for personal gain beyond the compensation for services;~~

~~(F) (e) Aiding, abetting, or assisting any individual to violate or circumvent any law, rule or regulation intended to guide the conduct of the death care industry, including but not limited, to funeral service practitioners, embalmers, apprentices, or preneed sales registrants; and~~

~~(G) (f) Failing to conduct perform death care services for the living or the deceased without discrimination on the basis of age, race, religion, (OMCB)[sex], gender, gender identity, sexual preference, national origin, nature of health problems or disability;:~~

~~(b) Conduct related to communication and record keeping:~~

~~(2)(b)(A) (g) Inaccurate or incomplete record keeping in client record as required in ORS 97 or ORS 692 OAR 830-040-0000:~~

Comment [MC2]: Covered below.

Note/Justification: Part (b) is deleted as it has no meaning and is merely a section head. Covered above under (g). Redundant.

OMCB – Why remove the rule? It provides that the licensee maintain relevant, important info not specified in statute.

This is a draft copy of proposed Oregon Administrative Rule change recommendations compiled by the Consumer Industry Advisory Committee (CIAC) - with comments inserted by Staff in May, 2010.

**Consumer & Industry Advisory Committee—(CIAC)
Recommendations, Rationale and Fiscal Impact Estimates for Rule Changes**

12

OMCB May, 2010 Draft – CIAC Recommendations for further discussion

Fiscal impact to OMCB: None

Impact to small business: None

(2)(b)(B) **(h)** Falsifying a client's funeral service, cemetery or crematory records; including but not limited to, filling in someone else's omissions, signing someone else's name, recording services or merchandise not provided, fabricating data;

OMCB - Plain language

(2)(b)(C) **(i)** Altering a funeral service, cemetery or crematory record; including but not limited to, changing words/letters/numbers from the original document in order to mislead the reader of the record;

(2)(b)(D) **(i)** Destroying any document pertaining to a death care service as it pertains to statutory requirements; **and**

Note/Justification: Covered under (g) above

Fiscal impact to OMCB: None

Impact to small business: None

(2)(b)(E) **(k)** Directing another person to falsify, alter or destroy any death care document.

(3) Conduct related to licensure violations:

(2)(e)(A) **(a)** Practicing without an appropriate, Oregon license/certificate or registration;

(2)(e)(B) **(b)** Allowing another person to use one's license, certificate or registration;

(2)(c)(C) **(c)** Using another's license, certificate, or registration;

(2)(c)(D) **(d)** Using fraud, misrepresentation, or deceit during the application process for licensure, certification or registration or while taking the licensure exam;

(d) Making false or misleading statements or using fraud or misrepresentation in communications with the Board;

Note/Justification: Moved from 830-050-0050

Fiscal impact to OMCB: None

Impact to small business: None

(2)(e)(E) Impersonating any applicant or acting as a proxy for the applicant in any Board examination; **and**

Note/Justification: Covered under (d).

Fiscal impact to OMCB: None

Impact to small business: None

(2)(e)(F) **(e)** Disclosing the contents of the licensure examination or soliciting, accepting or compiling information regarding the contents of the examination, before, during or after its administration;

This is a draft copy of proposed Oregon Administrative Rule change recommendations compiled by the Consumer Industry Advisory Committee (CIAC) - with comments inserted by Staff in May, 2010.

**Consumer & Industry Advisory Committee—(CIAC)
Recommendations, Rationale and Fiscal Impact Estimates for Rule Changes**

13

OMCB May, 2010 Draft – CIAC Recommendations for further discussion

~~(d) Conduct related to the licensee's relationship with the Board;~~

Note/Justification: Unnecessary language.

Fiscal impact to OMCB: None

Impact to small business: None

~~(2)(d)(A) (f) Failing to provide the Board with requested documents within the Board's jurisdiction; and~~

~~(2)(d)(B) (g) Knowingly failing to cooperate or answer truthfully and completely inquiries regarding matters within the Board's jurisdiction; and~~

~~(h) Evidence of habitual use or abuse of intoxicants, drugs or controlled substances which impairs or compromises acceptable industry practice.~~

Comment [MC3]: Allows for mistakes made by staff under questioning during inspections.

Note/Justification: Moved from 830-050-0050(1)

Fiscal impact to OMCB: None

Impact to small business: None

Stat. Auth.: ORS 183.341, [ORS 692.160](#) & [ORS 692.320](#)

Stats. Implemented: [ORS 692.320](#)

Hist.: FDB 13, f. 9-9-74, ef. 3-1-75; SMB 1-1984, f. & ef. 10-22-84; MCB 1-1986, f. & ef. 10-21-86; Renumbered from 830-010-0170; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97; MCB 1-1998, f. & cert. ef. 6-22-98

830-030-0100 - Misleading Business Practices

The following practices are prohibited and shall be considered misrepresentation in the conduct of doing business:

(1) Any presentation in such language or manner as to lead the prospect to believe the interment space or rights offered is being given to him and the money he would pay would go into the care fund, whenever this is not the fact.

(2) Any representation that the interment space or rights, merchandise or services are offered at a special price to the prospect only, or for a limited period of time only, whenever this is not the fact.

(3) Any offer of a discount on the price for interment space or rights, merchandise or services, whenever the price of such space, merchandise or services has been increased to cover such an alleged discount.

Note/Justification: Redundant. Covered below in (1).

OMCB – Rules are often specific because stating the minimum (“any misrepresentation” – which is already covered by statute) wasn't sufficient – the rules provide examples of types of misrepresentation that was likely, at one time, a practice. Reverting to stating the general may not be a good idea....

Fiscal impact to OMCB: None

Impact to small business: None

(9) (1) Any sales presentation or practice which conceals, omits, or misstates a material fact shall be considered a misrepresentation in the conduct of doing business.

This is a draft copy of proposed Oregon Administrative Rule change recommendations compiled by the Consumer Industry Advisory Committee (CIAC) - with comments inserted by Staff in May, 2010.

**Consumer & Industry Advisory Committee—(CIAC)
Recommendations, Rationale and Fiscal Impact Estimates for Rule Changes**

14

OMCB May, 2010 Draft – CIAC Recommendations for further discussion

Note/Justification: Moved within the section.

Fiscal impact to OMCB: None

Impact to small business: None

(4)(2) Any guarantee or representation that the purchaser would realize a profit by reselling at a later date.

Note/justification: Typographical error in existing rule

Fiscal impact to OMCB: None

Impact to small businesses: None

(5)(3) Any use of interment space [used] for the unauthorized interment of cremains cremated remains other than the owner's, or other materials belonging to a person other than an owner, without the written authorization of the owner or representative of the owner of such space or interment rights. It shall not be a violation if the owner or representative of the owner has been misled or misrepresented himself to the facility.

Note/Justification: Eliminates problems where an owner does not have legal representation. Change allows burial of owner without legal representation. This also clarifies that licensees are not responsible for misrepresentations by the public since there is no practical way to truly ascertain who a legal heir to a deceased owner might be.

OMCB – Confusing – who is the 'representative' of an owner?

Fiscal impact to OMCB: None

Impact to small business: None

(6) Any sale of merchandise or services for future delivery without adequate reserves or trust funds to guarantee such dealing when required. (Lending one's property or name to the sale of merchandise or services for future delivery is deemed the equivalent of the sale of same).

(7) Any offer of free interment space or rights, merchandise or services (hereinafter referred to as "free goods") either in a drawing or lottery, or offer of free goods to any organization, group or person in conjunction with another obligation without disclosure of such obligation.

Note/Justification: Covered in #1

Fiscal impact to OMCB: None

Impact to small business: None

(8) Any denial of responsibility by the owner or operator for the representations and practices of employees of the facility.

Note/Justification: Item 8 is addressed in the change in 830.030.0090 (1) (e). Denial as part of these rights to defend one's actions should not be a violation in and of itself.

Fiscal impact to OMCB: None

Impact to small business: None

This is a draft copy of proposed Oregon Administrative Rule change recommendations compiled by the Consumer Industry Advisory Committee (CIAC) - with comments inserted by Staff in May, 2010.

**Consumer & Industry Advisory Committee—(CIAC)
Recommendations, Rationale and Fiscal Impact Estimates for Rule Changes**

15

OMCB May, 2010 Draft – CIAC Recommendations for further discussion

(9) Any sales presentation or practice which conceals or misstates a material fact shall be considered a misrepresentation in the conduct of doing business.

Note/Justification: Moved to #1 of this section.

Fiscal impact to OMCB: None

Impact to small business: None

(10) (4) Any failure to comply with the terms of the sales contracts, or state or local law requirements, with respect to irrevocable permanent care, and failure to comply with any other applicable laws and regulations relating to cemeteries.

(11) Any advertising or other presentation or indication that a licensee is in any way connected with the federal government, any other government agency, or any veterans' or other organization. If a veterans' or other organization's program is referred to in any advertisement, sales program or presentation, such reference shall be accompanied by a disclaimer in bold type to the effect that "This program is not financed or connected in any manner with any government agency or veteran's or other organization". (12) Any use of advertisements, printed materials, forms, or any other materials that resemble or suggest official government documents or publications.

(13) Any advertising or other representation that interment space is not available in government cemeteries in the certificate of authority's area, without full disclosure in such advertisements or other representations of the availability of space in the nearest government cemeteries.

Note/Justification: Redundant statements were deleted.

OMCB – not sure where they are stated, how are they redundant

Fiscal impact to OMCB: None

Impact to small business: None

(14) (5) Any circulation or petitions relating to veterans' benefits, which have been proposed by members of Congress or other government officials, without the written express consent of the author, and any use of such material in connection with sales promotion programs.

(15) Any advertising or other offer of interment space or rights to veterans or others which does not provide for deed or assignment of such space or rights at the time of acceptance of the offer and customary or required endowment care payment, unless these facts are clearly disclosed at the outset in such advertisement or offer.

(16) Any misuse of the word "free" in advertising, sales promotions or presentations in connection with sales programs. If allowance or discount to veterans or other persons is offered, it must be bonafide and the comparative price for the veteran and nonveteran or other such person must be shown. Any such allowance or discount must not be made by adjusting upward the price of other items, or the price of the interment space or rights for wives to cover the lower price to the veterans or other persons. Further, it shall be a violation of these rules to fail to disclose any material fact or condition of the offer, or to use any other misrepresentation in sales practice.

(17) The provisions of these rules shall apply to any and all other groups whereby offers similar to veteran's programs are sponsored by a licensee. Examples of such groups are the Masonic Order, labor unions, head of household, or any other associated groups selected for any sales promotion.

Note/Justification: Redundant statements were deleted.

This is a draft copy of proposed Oregon Administrative Rule change recommendations compiled by the Consumer Industry Advisory Committee (CIAC) - with comments inserted by Staff in May, 2010.

**Consumer & Industry Advisory Committee—(CIAC)
Recommendations, Rationale and Fiscal Impact Estimates for Rule Changes**

16

OMCB May, 2010 Draft – CIAC Recommendations for further discussion

OMCB – not sure where they are stated, how are they redundant

Fiscal impact to OMCB: None

Impact to small business: None

(19)(6) Licensees shall, in their preneed-sales programs **contracts** include a reasonable period of not less than five days during which purchasers are extended the privilege of canceling their purchase contracts **funeral or cemetery contracts for delivered good that are unused and/or undamaged, or any contract for interment rights.**

Note/Justification: Clarifies what CIAC believes was to be covered under the five day rule. Trust contracts are revocable and would not need to be covered under this rule.

OMCB –the sale of constructed/existing interment rights are not considered preneed sales in ORS 97. OMCB rules need to agree with the statute meaning of preneed, not change it.

Fiscal impact to OMCB: None

Impact to small business: None

(19) (7) Licensees who violate any of the provisions of these rules will be subject to disciplinary action by the Board as provided for in ORS 692.180.

Stat. Auth.: ORS 183.341, **ORS 183.545 & ORS 692.320**

Stats. Implemented: **ORS 692.025 & ORS 692.180**

Hist.: MCB 1-1986, f. & ef. 10-21-86; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97

830-040-0000 - General Principles

(1) Every licensee operating under ORS Chapter 692 shall be responsible for complying with the provisions of ORS Chapter 692 and rules adopted thereunder, and any other law pertaining to the duties and responsibilities of the funeral service practitioner or the operation or licensing of funeral establishments, immediate disposition companies, cemeteries and crematoriums.

(2) No licensed facility shall be advertised or operated without the appropriate license, registration or certification or be held out under any name which could be termed misleading. **The Board may refuse to allow use of a name considered misleading.**

Note/Justification: Covers the same issue as originally but would allow a non licensed, non operating facility to advertise intent to open up at a future date. Example is a cemetery planning on opening a funeral home in two years. They could advertise intent and progress to date as long as they do not sell or operate. See also changes to 830-040-0050.

Fiscal impact to OMCB: None

Impact to small business: None

(3) When a person, firm, partnership or corporation applies to the Board for a funeral establishment license, immediate disposition company license, or certificate of authority to operate a cemetery or crematorium, the name shall contain the identification of the activity, business or profession of funeral, immediate disposition, cemetery or crematory service as set forth in ORS Chapter 692 and the rules adopted thereto. This identified name shall be the registered name with the Board and shall also be utilized as the advertised name of the funeral, immediate disposition company, cemetery or crematory establishment.

This is a draft copy of proposed Oregon Administrative Rule change recommendations compiled by the Consumer Industry Advisory Committee (CIAC) - with comments inserted by Staff in May, 2010.

Consumer & Industry Advisory Committee—(CIAC)
Recommendations, Rationale and Fiscal Impact Estimates for Rule Changes

17

OMCB May, 2010 Draft – CIAC Recommendations for further discussion

(4) Each licensed facility shall provide to the Oregon Mortuary and Cemetery Board its true corporate, firm or individual name. Applications for all licensed facilities shall specify the names of all **principals managers, owners, partners, majority stockholders, board members or single proprietors.** If the new principal is a corporation, the application shall include the names of all principals of that corporation. **If an owner, partner, majority stockholder, or single proprietor are a corporation, the application shall include the names of all principals of that corporation.**

Note/Justification: Redrafted rules require a corporation to provide its true corporate name and use its registered name consistently on advertising and printed materials. A DBA or registering a DBA offers no additional protection to consumers and may lead to confusion regarding who polices registration of DBAs .

Fiscal impact to OMCB: None

Impact to small business: May reduce the need for small businesses to register with a DBA at a savings to the small business of \$50 annually.

(OMCB - This fee has recently been omitted by statute for non-profit cemeteries....)

(5) When there is a change in manager, owner, partner, majority stockholder, board member or single proprietor principal of the licensed facility as defined in this chapter, the licensee shall provide the Board with the name of the new manager, owner, partner, majority stockholder, board member or single proprietor principal(s) on a form provided by the Board within 30 days of the change prior to filing for a license renewal. If the new principal is a corporation, the licensee shall provide the names of the principals of that corporation to the Board on a form provided by the Board.

Comment [MC4]: Redundant by definition.

Note/Justification: With a new definition for principal we need to specifically list those not included under the new definition that should be listed but not background checked. Since a background check is not required there is no reason to supply the information within 30 days of the change. Notice at time or renewal should be more efficient and adequate.

OMCB – ownership and manager information should be kept current in any regulatory agency; what about LLC members? What if stockholders have equal 50% shares? Four 25% shares? There is no “majority” stockholder. Or if a joint proprietorship changes to three, or down to one?

Fiscal impact to OMCB: None

Impact to small business: None

(6) All licensees and licensed facilities and funeral service practitioners shall keep a detailed, accurate, and permanent record of all transactions that are performed for the care and preparation and final disposition of human remains. The record shall set forth as a minimum:

(a) Name of decedent and the identifying metal disc number provided by Vital Statistics; **(metal disc does not apply to cremated remains or for deaths that occur out of state);**

OMCB - (a) Name of decedent and, when the death has occurred in Oregon, the identifying metal disc number provided by Vital Statistics; **(the identifying metal disc number is not required for interment, inurnment or scattering of cremated remains at cemeteries);**

Comment [MC5]: Clarification needed.

(b) Date of death; **(does not apply to cemetery records);**

OMCB – in cases where the family wants to act as FSP – it is applicable – to ensure burial is within ten days of the date of death.

(c) Name of **person arranging for purchaser of professional services and relationship delivery of goods and services and the person authorizing the final disposition;**

This is a draft copy of proposed Oregon Administrative Rule change recommendations compiled by the Consumer Industry Advisory Committee (CIAC) - with comments inserted by Staff in May, 2010.

**Consumer & Industry Advisory Committee—(CIAC)
Recommendations, Rationale and Fiscal Impact Estimates for Rule Changes**

18

OMCB May, 2010 Draft – CIAC Recommendations for further discussion

Note/Justification: Purchaser is irrelevant; cemeteries do not provide professional services.

OMCB – I've never understood this thinking. Cemeteries provide many professional services, and it is a good idea to keep a record of the relationship of the person ordering the services to the decedent. They provide opening and closing, marker installation, last date lettering, etc. It's also relevant their relationship to the decedent – so the cemetery knows whether or not the person has the right to apply goods and services.

Requires information from all licensees and clarifies type of information required.

Fiscal impact to OMCB: None

Impact to small business: None

(d) Name of place wherein remains are to be interred or cremated (in cemetery records the exact location of the interment of remains by crypt, niche, or by grave, lot and plot);

(e) The name of the funeral service practitioner or cemetery or crematory personnel responsible for making the arrangements **pertaining to the delivery of goods and services;**

Note/Justification: Clarifies which arrangements

OMCB – again, the cemetery makes arrangements with persons for professional services of interment, or marker ordering, placement, etc.

Fiscal impact to OMCB: None

Impact to small business: None

(f) The name of the embalmer responsible for embalming (does not apply to cemetery or crematorium records); and

(g) Written documentation of permission to embalm or cremate human remains is required from the person who has the right to control disposition of the remains pursuant to [ORS 97.130\(1\)](#) and (2). The record of such authorization shall be made to include as a minimum: The name of the authorizing individual and relationship to the deceased, date and time contacted, phone number and name of the licensee or funeral home representative acquiring the authorization (does not apply to cemetery or crematorium records).

(9) No funeral establishment operator, immediate disposition company operator, Cemetery Authority or Crematory Authority shall;

~~(a) fail to preserve **required** permanent records for inspection by the Board; or~~

Note/Justification: Clarifies which records

Fiscal impact to OMCB: None

Impact to small business: None

~~(b) Alter, cancel or obliterate entries in permanent records for the purpose of falsifying any record required by this chapter to be made, maintained or preserved.~~

This is a draft copy of proposed Oregon Administrative Rule change recommendations compiled by the Consumer Industry Advisory Committee (CIAC) - with comments inserted by Staff in May, 2010.

**Consumer & Industry Advisory Committee—(CIAC)
Recommendations, Rationale and Fiscal Impact Estimates for Rule Changes**

19

OMCB May, 2010 Draft – CIAC Recommendations for further discussion

Note/Justification: Struck out portion covered under 830-030-0090 and the remaining section related to preserving records.

Fiscal impact to OMCB: None

Impact to small business: None

(10) After human remains are released to the Cemetery Authority, they shall be placed in their designated grave, crypt or vault within 24 hours after taking possession of the remains unless exigent circumstances exist. After human remains are released to the Crematory Authority, those remains shall be cremated and processed within 48 hours unless exigent circumstances exist. In such exigent circumstances, the Cemetery/Crematory Authority shall notify both the funeral service practitioner responsible for the arrangements and the office of the Board. The funeral service practitioner responsible for the arrangements for that deceased shall notify the family of such exigent circumstances **and, at the request of the Cemetery Authority or crematory, within 24 hours pick up and arrange for proper storage of the remains.**

Note/Justification: Cemeteries do not have access to storage facilities. Clarifies responsibility

Fiscal impact to OMCB: None

Impact to small business: None

(11) No licensee shall pay, cause to be paid or offer to pay, and no person, firm or corporation shall receive, directly or indirectly, any commission, bonus, rebate or other thing of value in consideration for recommending or causing a human remains to be taken to any specific funeral establishment.

(11) No licensee or employee of a licensed facility shall:

a) pay or cause to be paid directly or indirectly from any vendor of cemetery or funeral goods and services, any commission, bonus, rebate or other thing of value in consideration for recommending or causing a human remains to be taken to any specific funeral establishment or for recommending or causing the purchase of funeral goods and services from any specific vendor whether or not that vendor is licensed by the Board; or

b) be paid, receive or offer to receive, directly or indirectly from any vendor of cemetery or funeral goods and services, any commission, bonus, rebate or other thing of value in consideration for recommending or causing a human remains to be taken to any specific funeral establishment or for recommending or causing the purchase of funeral goods and services from any specific vendor whether or not that vendor is licensed by the Board.

Note/Justification: Addresses concerns that licensees or employees currently may get bonus from casket stores or outside marker vendors. Intent is to prevent licensees from trying to "steer" people to certain vendors of goods and services in return for some remuneration.

OMCB – (11) The purpose isn't to stop licensees from getting a bonus for steering people toward a particular good or service – but to stop agreements between persons in the community, like the medical field, care centers, hospice workers, ME's etc, from getting paid a bonus or commission from a particular funeral home for causing a body to go to a particular funeral home.

Fiscal impact to OMCB: None

Impact to small business: None

830-040-0010 - Inspection of Licensed Facilities or Location Where Records Are Kept: Investigations

This is a draft copy of proposed Oregon Administrative Rule change recommendations compiled by the Consumer Industry Advisory Committee (CIAC) - with comments inserted by Staff in May, 2010.

**Consumer & Industry Advisory Committee—(CIAC)
Recommendations, Rationale and Fiscal Impact Estimates for Rule Changes**

20

OMCB May, 2010 Draft – CIAC Recommendations for further discussion

(1) All [funeral establishments, cemeteries and crematories] licensed facilities shall keep their premises sanitary at all times.

(2) Every licensee shall accommodate the inspector or investigator of the Board in making his/her inspections **unless a licensee can clearly demonstrate that such accommodations will negatively impact the ability to provide scheduled services to consumers or that exigent circumstances exist.** ~~No appointments shall be necessary unless exigent circumstances exist.~~ In such cases, the licensee shall make the reasons known to the Board in writing within ten days following the attempted inspection.

Note/Justification: Allows inspector to take circumstances into account after he arrives but not require explanation in writing in all cases. Clarifies circumstances during inspection.

Fiscal impact to OMCB: None

Impact to small business: None

(3) No licensee or employee of a licensed facility shall give false or misleading information to an inspector, investigator or any other member of the Board while investigating a possible violation of law or administrative rules.

(4) Every licensee shall provide the State Mortuary and Cemetery Board inspector a copy of all ~~price lists and other business~~ documents as requested during inspection or investigation

Note/Justification: Deletes unnecessary language covered by the existing term "business documents"..

Fiscal impact to OMCB: None

Impact to small business: None

(5) No person, licensee, or any agent of a licensee, shall interfere with any inspection or investigation conducted by an agent of the Board.

~~(6) No licensee, nor any employee of a licensee, shall refuse or fail to promptly open a door to a licensed facility upon request of an investigator or inspector to enter the premises when the licensee or employee knows or should know that such request is made by an officer or inspector of the Board, and the investigator or inspector has reason to believe that a violation of law or administrative rule is occurring on the premises. This provision shall not be construed to deny the State Mortuary and Cemetery Board investigator and inspector access at any reasonable time to any licensed facility.~~

(6) Staff shall inform licensees of the nature of any complaint against them that is being investigated except when the Board finds that disclosure of the potential violation would impede the effectiveness of the investigation or that a serious danger to the public health or safety exists.

(7) In order to conduct a full and proper investigation, the Board may, at its discretion, allow licensees to present information directly to the Board in executive sessions.

Note/Justification: The CIAC believes that licensees/facilities should know what they are being investigated for and be able to address the Board. What makes it allowable under statute is that the ability to know why one is being investigated and to present facts to the Board are implicitly "necessary to conduct a full and proper investigation" and therefore allowable under statute. How can staff conduct an effective investigation without making one aware of the allegations? If the Board feels the consumer should get equal access nothing seems to preclude the Board from providing the consumer a similar opportunity to address the Board.

Fiscal impact to OMCB: None

Impact to small business: None

This is a draft copy of proposed Oregon Administrative Rule change recommendations compiled by the Consumer Industry Advisory Committee (CIAC) - with comments inserted by Staff in May, 2010.

Consumer & Industry Advisory Committee—(CIAC)
Recommendations, Rationale and Fiscal Impact Estimates for Rule Changes

OMCB May, 2010 Draft – CIAC Recommendations for further discussion

Stat. Auth.: ORS 183.341, [ORS 183.545](#), [ORS 692.160](#) & [ORS 692.320](#) & [676.175 \(1\)](#)
 Stats. Implemented: [ORS 692.180](#)
 Hist.: MCB 1-1986, f. & ef. 10-21-86; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93

Comment [MC6]: Redundant.

830-040-0040 - Change of Ownership

Prior to a change of ownership, the prospective new owner shall apply to the Board for the issuance of a new license on forms provided by the Board in the new owner's name. (Refer to section (3) of this rule). In no event shall a funeral establishment, immediate disposition company, crematory or cemetery be operated without the appropriate license or certificate of authority to operate. The appropriate fees and disclosures shall accompany the application.

(1) Board approval: It is the intent of this rule that all licensed facilities receive Board approval prior to the sale or change of ownership of a licensed facility and provide the Board with a full disclosure of ownership of that licensed facility including percentages of ownership.

(2) All licensed facilities shall be licensed by the Board and all applications for licenses shall specify the real and true names of the person(s) who own or have an interest in the business proposed to be licensed by the Board, and shall be signed by such person(s) or in the case of corporations, by a duly authorized officer or agent.

(3) Licenses issued under [ORS 692.146](#) and [692.275](#) are not transferable; therefore, prior to change of ownership, sales, or purchase agreements pertaining to such shall be conditioned upon the prospective new purchaser's ability to apply for and obtain the necessary license or certificate of authority to operate. All licensed or certificated facilities are subject to the inspection and approval of the Board. Before opening a new facility or continuing the operation of an existing facility under new ownership, the prospective operator or new owner shall apply to the Board on a form provided by the Board with all ownership and, if applicable, corporate information. Prior to a transfer of ownership, the prospective new purchaser and seller shall notify the Department of Consumer and Business Services giving notice of sale to that office, and give the approximate or intended date of the change of ownership.

(4) The purchase of a controlling interest (a majority) of assets or stock of an existing licensed facility will constitute a sale or change of ownership. The person or persons who own the stock of a licensed facility shall be considered the ownership of the licensed facility. Any one person who owns a majority of the stock shall be considered an owner. When percentages of stock ownership change any person moving into a majority position shall be required to submit an application for change of ownership.

(5) Corporate Licenses:

(a) The corporate licensee shall notify the Board in writing whenever a person intends to acquire or accumulates ownership or control of ten percent or more of any class of stock in a licensed facility, except for stock in a publicly traded corporation;

(b) Except for publicly traded corporations, the corporate licensee shall notify the Board immediately in writing when there has been a change in an officer or director;

(c) The Board may disapprove a change or acquisition described in this rule for any of the grounds for which a license may be denied.

(6) Partnership licensees:

(a) For the purposes of this rule, a partnership is an association of two or more persons who carry on a business jointly and who demonstrate an intent to be treated as partners by signing a partnership agreement, or by entering into a lease or contract under a name different from their real and true names;

(b) The licensee must obtain prior written approval from the Board whenever a person intends to become a general partner in a partnership or intends to acquire or control ten percent or more of the total investment commitment in a licensed limited partnership;

~~(c) The licensee shall notify the Board in writing whenever an existing approved partner increases or decreases his/her investment interest;~~

This is a draft copy of proposed Oregon Administrative Rule change recommendations compiled by the Consumer Industry Advisory Committee (CIAC) - with comments inserted by Staff in May, 2010.

**Consumer & Industry Advisory Committee—(CIAC)
Recommendations, Rationale and Fiscal Impact Estimates for Rule Changes**

22

OMCB May, 2010 Draft – CIAC Recommendations for further discussion

Note/Justification: *This is not necessary. Partners are listed as principals and receive background checks .See 830-011-0000 (33)*

OMCB – what if someone goes from 50% to 0%? Board should know who the principals are for contacting, liability, etc.

Fiscal impact to OMCB: None

Impact to small business: None

~~(e)~~ **(c)** The Board may disapprove a change or acquisition described in this rule for any of the grounds for which a license may be denied.

(7) Colicensees: For purposes of this rule, whenever two or more persons intend to carry on the business jointly other than as a corporation, partnership, or other approved legal entity, they shall be treated as colicensees. Spouses usually fall within this category. Corporations, partnerships, individuals, or other legal entities may become colicensees. If corporations, or partnerships become colicensees, they must comply with the requirements pertaining to corporate and partnership licensees.

Stat. Auth.: ORS 183.341, [ORS 183.545](#), [ORS 692.160](#) & [ORS 692.320](#)

Stats. Implemented: [ORS 692.025](#) & [ORS 692.160](#)

Hist.: FDB 1-1978 f. & ef. 6-30-78; SMB 1-1984, f. & ef. 10-22-84; MCB 1-1986, f. & ef. 10-21-86; Renumbered from 830-010-0215; MCB 1-1993, 4-14-93, cert. ef. 4-16-93; MCB 1-1998, f. & cert. ef. 6-22-98

830-040-0050 - Advertising

~~(1) Each **Any** licensed facility advertising through any media (including but not limited to telephone books, newspapers, direct mail, bill boards, etc.) shall include either the licensed facility's registered name or its assumed businessname and, **at a minimum, city and state as it appears on the Board records**, physical address as it appears on the Board's records. **All printed materials and letterhead shall include the physical location of the facility.**~~

Amended by OMCB in April 2010 version

Note/Justification: *The reasons for striking assumed business name is addressed under 830-040-0060. Address on advertising is not a statutory requirement; the CIAC believes having a city and state listed on advertising is adequate. This is stricken to allow advertising of a facility that may be opened in the future but is now not open or operating. In other words, it is okay to advertise 'intent' to open a facility in the future provided you are clear that it is not operating or licensed at the moment.*

Fiscal impact to OMCB: None

Impact to small business: None

~~(2) No person, firm or corporation shall advertise, promote, or market at need or preneed funeral arrangements without first having received a license from the Board.~~

Note/Justification: *Leaving this would not allow advertising in the form of a heads up for a future business not yet operating*

Fiscal impact to OMCB: None

OMCB – Should people be able to market preneed sales in our State without a license? We aren't just talking about facilities that intend to do business, but facilities that are in business, but hire people to market their products and plans without having a license.

Impact to small business: None

This is a draft copy of proposed Oregon Administrative Rule change recommendations compiled by the Consumer Industry Advisory Committee (CIAC) - with comments inserted by Staff in May, 2010.

Consumer & Industry Advisory Committee—(CIAC) Recommendations, Rationale and Fiscal Impact Estimates for Rule Changes

23

OMCB May, 2010 Draft – CIAC Recommendations for further discussion

~~(3) No cemetery or cremation facility, or person, firm or corporation shall advertise, promote, or market at need or preneed cemetery or cremation plans without first having received either a certificate of authority to operate that cemetery or crematorium.~~

~~(4) No person, firm or corporation shall advertise, promote, or market at need or preneed immediate disposition arrangements without having first registered with the Board.~~

~~(5) (2) Any advertisement which intentionally conceals or misstates a material fact shall be considered misrepresentation.~~

Comment [MC7]: Redundant.

Note/Justification: This section is covered under misleading business practices, . The only issue would be to have physical address on contracts which the current rules don't necessarily require. Advertising without license is covered under 830-040-0000 (1)

Fiscal impact to OMCB: None

Impact to small business: None

Stat. Auth.: ORS 183.341, [ORS 183.545](#), [ORS 692.160](#) & [ORS 692.320](#)

Stats. Implemented: [ORS 692.160](#)

Hist.: FDB 1-1978, f. & ef. 6-30-78; SMB 1-1984, f. & ef. 10-22-84; MCB 1-1986, f. & ef. 10-21-86; Renumbered from 830-010-020; MCB 1-1989, f. & cert. ef. 2-6-89; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93

Stat. Auth.: ORS 183.341, [ORS 183.545](#), [ORS 692.160](#) & [ORS 692.320](#)

Stats. Implemented: [ORS 692.025](#)

Hist.: FDB 1-1978, f. & ef. 6-30-78; SMB 1-1984, f. & ef. 10-22-84; MCB 1-1986, f. & ef. 10-21-86; Renumbered from 830-010-0225; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97

830-050-0050 - Cause for Disciplinary Action

The following circumstances may be considered grounds for reprimand, assessment of civil penalty, or refusal to grant, refusal to renew, revocation, or suspension of an applicant's or a licensee's license, certificate, or registration.

~~(1) Evidence of habitual use or abuse of intoxicants, drugs or controlled substances which impairs or compromises acceptable industry practice.~~

Note/Justification: Moved to 830-030-0090 (3) (f).

(OMCB – HB 2118, HB 2345 language can be implemented here)

Fiscal impact to OMCB: None

Impact to small business: None

~~(2) Making false or misleading statements in applying to the Board for licensure, certificate of authority, certificate of registration, or apprenticeship.~~

Note/Justification: Moved to 830- 830-0090 (3) (d).

Fiscal impact to OMCB: None

Impact to small business: None

(3) (1) Conviction of a crime whose facts and circumstances have a demonstrable bearing upon the standards of the profession.

This is a draft copy of proposed Oregon Administrative Rule change recommendations compiled by the Consumer Industry Advisory Committee (CIAC) - with comments inserted by Staff in May, 2010.

**Consumer & Industry Advisory Committee—(CIAC)
Recommendations, Rationale and Fiscal Impact Estimates for Rule Changes**

24

OMCB May, 2010 Draft – CIAC Recommendations for further discussion

~~(4) Insanity or mental disease as evidenced by an adjudication or by voluntary commitment to an institution.~~

(2) Inability to appropriately conduct duties for which license or registration was issued

Note/Justification: New language is more appropriate and would cover circumstances covered under old (4) if person is unable to perform.

Fiscal impact to OMCB: None

Impact to small business: None

~~(5) (3) Disciplinary action by Oregon or another state against a personal, professional or business license, including but not limited to a death care industry license, where the conduct upon which the disciplinary action was based bears a demonstrable relationship to death care industry practices or operations.~~

~~(6) (4) Violating any provision of ORS Chapter 692, or any rule adopted by the Board, Board Order, or failing to comply with a Board request.~~

~~(5) It is considered unprofessional conduct for any person or licensee to directly or indirectly cause any other person or licensee to be in violation of any section of applicable rule or law.~~

~~(7) Failure to report to the Board any information required in OAR 830-011-0060.~~

~~(8) (6) Allowing an unlicensed, uncertificated or non-registered individual to perform the duties of licensed individuals including but not limited to, making arrangements with families, making preneed arrangements, assisting with embalmings, etc.~~

~~(6) Unfair or deceptive acts or practices.~~

~~(9) Fraudulent or dishonest conduct where such conduct bears a demonstrable relationship to sales and/or business practices.~~

Note/Justification: Most of this section is covered in other sections and then addressed under new (4) above which brings into account the vast array of items in earlier chapters including misleading business practices, registration and licensing requirement and general principals.

Fiscal impact to OMCB: None

Impact to small business: None

Comment [MC8]: A board request is a little broad