CIAC and OMCB STAFF
RULE CLUSTER POLICY QUESTIONS
DRAFT 11.19.09

Rule Cluster 1: Holding Rooms, Preparation Rooms, Viewings, Scope of License

CIAC's recommendations in this cluster were generally "renumbering" – with the exception of amending the rules to fit the current Board's position regarding placement of preparation and holding room adjacent to a public passageway or area. For existing facilities, the Board has not required major remodeling to move a prep or holding room away from a public passageway, but has recommended such facilities protect consumers by 'screening' the door from outside view, and installing self-closing and self-locking entry doors.

1. Does the Board believe allowing preparation rooms to be adjacent to rooms such as chapels, casket display rooms and arrangement rooms, with self-closing, self-locking doors to be sufficient to protect the public.

One consideration might be that an employee inside the preparation room would not know if a member of the public was outside the door until they open it, allowing the public to view inside the room. Adding some sort of language that requires a sort of "screening" of the doorway, some sort of barrier, or language that requires placement of the embalming table(s) out of straight line of vision into the room would ensure the facility's proper safe-keeping of remains from public view.

2. Does the Board observe a need to amend rules to require FE's to have proper holding facilities for remains that may need preparation other than embalming? (This question comes from Staff.)

Currently, preparation rooms (with running water, sink, proper sewerage connection, embalming/operation table, instruments, disinfectants, proper waste disposal, etc) are required when an FE offers embalming at that facility. However, facilities with only a holding room may conduct all other preparation of remains such as washing and disinfecting (for religious purposes or other), setting features, aspirate or repair remains (including suturing post mortem remains). Yet holding rooms are not required to have plumbing, disinfectants, etc. They only need to have impervious surfaces and ventilation.

Options to consider might include:

a. Distinguish between FE's that will conduct any on-premises preparation of remains from those that will not. Those that do not must contract with another facility to conduct all preparation of remains. Because current statute requires an FE to have either a preparation or holding room, holding rooms might be redefined - perhaps used only for storing embalmed, prepared remains.

b. Eliminate holding rooms. Require all FE's that will hold remains (for any reason, including on-premises services such as any type of viewing or funeral services) to have fully equipped preparation rooms.

3. Should facilities that will hold remains be required to employ an on-site embalmer? (This question comes from Staff.)

Close to the above issue is a concern about facilities that do not employ an "on-site" embalmer, yet hold remains for viewing and funeral services. Problems (and complaints) arise when remains need attending (slippage, bleeding, bloating) and the facility does not call for a trained embalmer to repair the remains.

4. Due to continuing questions and confusion regarding types of viewing ("ID viewing" vs the brief 'goodbye' viewing vs multiple-family-member-brief private viewing), and removal of remains from refrigeration, should the Board consider rules to define such terms, and to ensure consumer protection? (This question comes from Staff.)

Currently, only ID viewing is defined in our rules, yet many FE's use this term in place of a brief, private viewing requested by a family member. In addition, FE's cannot wash and disinfect remains for a brief private viewing unless the family specifically requests that service, and pays for it. (The FE cannot *couple* washing and disinfecting with a brief private viewing: OAR 830-030-0080 provides that no public or private funeral service or public viewing shall be held over the remains of an unwashed human remains – and states the FE cannot discourage private viewing of unwashed remains by family members or hinder religious customs.)

The current rules put the FE in a position of either washing remains without family permission, which is not lawful, or showing remains that are likely odorous, unsanitary and possibly traumatic to the family.

Options might include:

a. Developing rules that allow combining any type of viewing of remains with necessary washing and disinfecting of remains. (FTC, who says funeral providers cannot condition one service upon another, but defers to state law requirements.) One way to do this would be to either define "Private family viewing" as viewing of washed remains… However, not hindering religious customs should remain essential.

b. Some states (ie California) have tort claim statutes – prohibiting families from suing FE's with claims that the condition of remains were traumatic for them…

Also, the Board has been asked on numerous occasions for interpretation of the "six-hour" rule (remains out of refrigeration over six hours must be either embalmed or placed in a sealed container)…current language may be confusing. Does it mean a total of six aggregate or consecutive hours? Should the Board amend the rule to better define the

meaning? In determining direction with this issue, discussion or possibly current research is needed regarding why this rule developed, and if current research would have an impact on our rules (i.e. decomposition of remains, sanitation of remains, etc.).

5. Should Immediate Disposition Companies be prohibited from allowing ID viewing?

Currently, the rule requires that if a family requests minimum preparation of remains for an ID viewing, the Immediate Disposition Company must refer the family to a funeral establishment to provide those services.

CIAC recommends that the rules be amended to remove the above rule because allowing ID viewings has led to past issues.

The definition of ID viewing is strictly for purposes of identifying the remains. Removing this could result in cremation or burial of the wrong remains, and it is possible CIAC's recommendation was to eliminate the "private family viewing" or "one last good-bye" type of viewing, which is already prohibited in current rule.

Staff recommends looking at the larger issue –

6. Should the Board consider the legality of Immediate Disposition Companies or amend rules so they are not operating outside of current laws?

In summary, IDC's cannot hold remains – the remains are to be immediately buried, cremated or removed from the state. The last "goodbyes" or family viewings should have been done at the place of death, there should be no need for refrigeration which is either charged by the IDC or included in the Basic Services Fee… Yet, remains should not be left in a removal van until the final disposition permit can be obtained – which could take days.

Further, only a license funeral establishment shall "offer embalming, employ a licensed embalmer, have on premises either a prep or holding room to care for and prepare human remains." It would be safe to say that most IDC's currently are managed by or employ a licensed embalmer.

Yet, families may prefer their loved ones be dressed in their own clothes for an immediate burial, not the hospital gown they wore when quickly 'released' from the hospital. For an IDC to dress remains means they are preparing remains. In addition, if the decedent is to be entombed, the cemetery may require embalming… (The Board has heard of concerns from consumers who were directed to a higher-priced funeral establishment after initiating final disposition arrangements with a lower-cost IDC. They feel targeted by "bait and switch" tactics.)

<u>Rule Cluster 2: Rules Regarding Principals</u>

Policy Question:

1. Does the Board want to adopt a policy that backgrounds are unnecessary for certain employees and all stockholders other than majority stockholders, and unnecessary for all association officers and board directors? If so, the current definition of principal should be amended.

CIAC recommends the Board only conduct backgrounds on the licensed facility's assigned facility manager, (not persons who do not deal directly with the public) and owners such as sole proprietors, partners and majority stockholders. Justification for this approach is that by limiting the number of persons the Board "unnecessarily" backgrounds will save businesses money, and reduce workload (and revenue) for the Board.

In summary, principals basically fall into two categories:

Owners: Currently, the Board conducts background on owners with 10% or more stock or shares in a corporation, all officers and directors of associations and boards, sole proprietors, partners and;
Managers and other persons employed by Licensees that have various *business titles* such as "General Manager" and "Area Manager" and "Regional Training Director" and "Preneed Sales Manager" – these are persons who have some degree of responsibility over a licensed facility, and have decision-making authority including control over the operation of a licensed facility. Typically these persons supervise facilities managers.

Currently, all of the above principals come under the Board's rule that allows the Board to deny, suspend or refuse to issue or renew a license or certificate when "conditions exist in relation to any principal" of a licensed facility. OAR 830-011-0050(2)

(The Board has not considered persons such as a cemetery's "Lead Groundskeeper" or a "Maintenance Manager" as a principal requiring a background.)

If the Board agrees that only "majority stockholders" would need to undergo a background investigation, further discussion is required to define a majority stockholder. If a corporation has two 25% owners and one 50% owner, would only the 50% owner need a background? Or if there were three 33.33% owners, are they all majority stockholders? Or if there were ten 10% stockholders, would no backgrounds be necessary? If someone with a history of criminal conduct or Board disciplinary action, or both, applies as a 49% owner, the Board would have no legal cause to deny a license if only allowed to consider the background of the 51% owner.

Rule Cluster 3: Apprenticeship Requirements

Policy Questions

1. Does the Board believe apprentices should be tied to a person rather than a facility and a person?

CIAC recommends embalmer and funeral service practitioner apprentices be allowed to work at multiple facilities as long as they are supervised by their supervisor (who may also work at multiple facilities). Justification is so that an embalmer can be legally allowed to embalm at various facilities.

Based on past discussions, this is probably because some facilities have centralized embalming facilities, and other facilities do not have enough embalming cases for an apprentice to reach their required number of embalmings.

In addition, statute changed to allow an embalmer to supervise up to three interns in addition to one apprentice embalmer, instead of only one intern in addition to one apprentice embalmer. This change was based on the short-term internship period coupled with a shortage of embalmers (to assign as supervisors) at various facilities.

The Board must consider changing their current interpretation of 'supervision' to one that would allow for one supervising embalmer to properly supervise up to four persons in multiple facilities at the same time…or five if that embalmer was also an funeral service practitioner who also supervised a funeral service practitioner apprentice.

2. Should the number of embalmings required during apprenticeship be reduced from 45 to 35.

The justification is that 35 embalmings is adequate for learning this trade.

3. Does the Board believe apprentices should not be restricted to work a certain number of hours per week, but should be required to work a minimum number of hours in a twelve-month period?

CIAC recommends the rules change from a policy that an apprenticeship period change from a work schedule spread out on a weekly basis over the twelve-month apprenticeship period, to a total number of hours in a twelve-month period. Justification is that it allows flexibility for students.

A consideration might be that omitting the "work 30 hours during normal business hours" for a funeral service practitioner apprentice, and "work 30 hours per week at least 30 three days per week" for the embalmer apprentice would allow for either apprentice to work 24-hour shifts, and complete the required number of hours by working less than 50 days in a year. While that seems an extreme, it would be legal. For example, in a centralized embalming facility 35 embalmings could be conducted within a very short period of time, and might not provide adequate experience in the various circumstances that occur over a longer period of time.

4. Should "Leave of Absence" rules be omitted? (This question comes from Staff.)

There is no longer reason for leaves of absences to "stop the clock from ticking" on apprenticeship periods since the apprenticeship period is now aggregate months, not consecutive.

Rule Cluster 4: Chain of Custody and ID of Human Remains

Policy Question:

1. Do the current rules require further amendment to include a clarifying section that states when there is "no tag" or when the tag number doesn't 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"?

CIAC recommends this rule change to clarify the responsibilities of the funeral service practitioner when no tag is on the casket or receptacle, or when they don't match.

Currently, the rules provide clearly that the funeral service practitioner must affix the tag to the remains when taking custody of the remains. Further, when delivered to a cemetery or crematory authority, the rules provide that the sexton, before accepting remains, must verify the numbers. If they don't match, or if there isn't a tag, they cannot accept the remains. The remains, therefore, are still in custody of the person delivering them, if properly refused by the cemetery or crematory.

The CIAC recommendation also adds that when there is an issue, the funeral service practitioner must take responsibility (they already have it) of the remains "until the tag can be obtained and affixed to the casket or seek appropriate advise from the Board."

The Board should consider issues that the tag may not be able "to be obtained", it may have been assigned to other remains. Also, whether the Board should enter into a dispute resolution process when the existing rules appear adequate.

Current practices are likely the cause of these problems. Scenarios that are ripe for mistakes are when remains are delivered to a crematory by a funeral service practitioner that has an access code to leave the remains in the crematory cooler - without any contact with the crematory personnel who must check the tag number against the final disposition permit. Or the remains that arrive at the cemetery when family has scheduled a service, the numbers do not match, so the sexton merely crosses out the number on the final disposition permit so the family can proceed with services without upset. (Wrong remains have been buried…)

2. Should the Board add clarification to the rules to ensure the ID tag is always attached to the remains, even if not casketed?

CIAC recommends adding “receptacle” to the containers in which remains may be placed, and to which the identifying state tag should be affixed. Justification is that this allows for green burials, but maintains proper identification of remains.