



MCB

OREGON MORTUARY & CEMETERY BOARD

Regulating Death Care Facilities & Practitioners in Oregon.

JULY 12 2010 *FINAL* BOARD WORKSHOP MEETING MINUTES: CONSUMER-INDUSTRY ADVISORY COMMITTEE (CIAC) RECOMMENDATIONS (Revised September 13 2010)

Board Members Present:

Jon Cummings, President
Kevin Korn, Vice President
Joncile Martin, Secretary / Treasurer
Laurie Goolsby
Barry Horowitz
Charles Kurtz
Lyn Stanger
Pam Wachter

Staff Members Present:

Michelle Gaines, Executive Director
Lynne Nelson, Compliance Manager
Brenda Biggs, Compliance Specialist
Carla Knapp, Office Manager

Board Members Absent:

Teri Dresler, excused
Erin Phelps, excused
Dwight Terry, excused

Staff Members Absent:

Merill Creagh
Johanna Riemenschneider, AAG

Guests:

R Tim Corbett, CAO / Archdiocese
Wally Ordeman, OFDA

Sylvia Bouneff, FCAO

I Call to Order

President Cummings called the Special Meeting of the Oregon Mortuary and Cemetery Board (Board) to order at 9:05 am. After roll call, he then welcomed everyone in the audience.

II Work Session

President Cummings explained that the purpose of this special Board meeting was to review the Consumer Industry Advisory Committee's Rules Recommendations as presented and adopt only the ones that the Board had no objections to. For the recommendations that some Board members may have issues with, he asked each Board member to take notes, with the intent that those would be reviewed in a subsequent meeting in more detail.

The Board then reviewed in detail the "CIAC Master List of Recommendations - For Review, Edit and Approval June 22 2010" that was distributed in the Board packet. After thorough discussion, President Cummings asked if there was a motion on the floor. He then recognized Barry Horowitz.

Member Horowitz recommended, and so moved, that the Board adopt the recommendations as discussed. Member Wachter seconded. All others were aye and the motion carried

unanimously. Those voting in favor: Members Cummings, Goolsby, Horowitz, Korn, Kurtz, Martin, Stanger, Wachter. Those voting no: none.

Below are the portions of the rules that the Board accepted; note that **bolded underlined** text is proposed change to existing rules (most recently published version of rules used was April 15 2010) and ~~strikeout~~ indicates text removed:

a)	OAR 830-011-0000 Definitions
<p>(34) <u>(35)</u> “Principal”. Principal means those persons who have controlling authority over the licensed facility, including but not limited to:</p> <ul style="list-style-type: none">(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; and(d) Partners;(e) <u>(d)</u> Sole proprietors; and(f) <u>(e)</u> Majority stockholders	
b)	OAR 830-011-0010 Employees, Meetings, Officers of the Board
<p>(1) The Board shall employ an executive director, office manager, licensing specialist, investigator<u>(s), and inspector(s), and other office personnel</u> to maintain the office of the Board, answer correspondence, and perform those duties necessary in carrying out the provisions of the law and of these rules. The office of the Board shall be such place as is designated by the Board.</p> <p>(2) The Board shall meet at least six times per year, at a date, time, and place determined by the Board. Special meetings may be called by the president as deemed applicable.</p> <p>(3) The Board, at its regular meeting in January of each year, shall elect from its members a president, a vice-president, and a secretary-treasurer to serve until the next election. Special elections may be held at the discretion of the Board. The president, or, in his/<u>her</u> absence, the vice-president, shall preside at all meetings, appoint all committees, and perform all functions incidental to the president of the Board.</p> <p>(4) The executive director shall act under instruction of the president of the Board, and in his/her absence the vice-president and shall be responsible for supervising and monitoring the activities of the Board’s office and staff. The executive director is authorized by the Board to sign correspondence, legal documents and other necessary papers to carry out Board mandates.</p> <p><u>(5) The Board shall evaluate the performance of the executive director on an annual basis. Evaluation criteria will include but not be limited to the percentage of required inspections completed and timeliness of investigations completed.</u></p> <p>(5) <u>(6)</u> No individual member of the Board or any of their employees may be sued for doing or omitting to do any act in the performance of their duties as prescribed by ORS 692.180.</p>	

c) OAR 830-011-0020 - Apprenticeship -- Generally

(1) Apprenticeship for embalmer, funeral service practitioner, or intern apprentice must be served under persons licensed and working in Oregon who have been licensed for at least one year. A funeral service practitioner may supervise only one apprentice at a time and an embalmer may supervise only one apprentice at a time. (The only exception to this rule is that ~~an~~ a **combination** embalmer/**funeral service practitioner** may supervise up to three intern apprentices from an accredited funeral service education provider in addition to an apprentice embalmer.) A person who holds both a funeral service practitioner license and an embalmer license may supervise an apprentice funeral service practitioner and an apprentice embalmer. The licensee who supervises an apprentice must be working and located in the same licensed facility **or facilities** as the apprentice he/she is supervising.

(2) Apprentice embalmers must assist in the ~~preparation~~ **embalming** of at least ~~45~~**35** human remains during the apprenticeship period under the personal supervision of a licensed embalmer. A record showing the name of the deceased, date, and place of death, and the date of embalming shall be kept and furnished to the Board upon request.

(3) Apprentice embalmers must work a minimum of ~~at least thirty hours per week and at least three days per week, excluding up to 30 days of vacation time~~ **1150 hours per year.**

(4) Apprentice funeral service practitioners must work a minimum of ~~30 hours per week during normal business hours, excluding 30 days of vacation leave~~ **1150 hours per year,** and must assist in the planning of at least 25 funerals or dispositions per year through some form of direct contact with the family or representative of the deceased. Apprentice funeral service practitioners may not be accredited for time served in their funeral service practitioner apprenticeship while being enrolled in a full-time funeral service education program. For the purpose of this chapter, full-time is considered 12 or more credit hours per quarter. If the apprentice is enrolled in 11 or less credit hours per quarter, he/she will be considered a part-time student and could qualify for a funeral service practitioner apprenticeship providing he/she can meet the minimum requirements set forth above. Apprentice funeral service practitioners who are planning to become part-time students shall submit a letter to the Board clearly explaining their ability to attend classes and still meet the minimum requirements set forth above. Each applicant shall be approved individually based on the submission of all appropriate paperwork, fees and letters of explanation. No credit will be granted for apprenticeship time served unless prior approval by the Board has been granted. A log book shall be kept, on the premises, showing all arrangements made or participated in by the apprentice and be available upon request. The log book shall be retained for a period of one year after completion of the apprenticeship and shall include the following:

(a) Name of deceased;

(b) Date and place of death;

(c) Date **and place** arrangements were made;

(d) Apprentice **direct** participation with family; and

(e) Number of days and hours worked per week-;

(f) Supervisor's written confirmation for each of their apprentice's arrangements; and

(g) Name of the licensed facility responsible for the final disposition arrangements.

(5) Intern apprentices shall serve their apprenticeships in accordance with the internship

guidelines established by an accredited funeral service education program. A copy of the guidelines is available from the Board upon request. Intern apprentices are only required to intern at a funeral home for 15 hours per week and may acquire half credit for the three-month period toward the twelvemonth licensing requirement for embalmer toward licensing. If the intern apprentice is also serving an embalmer apprenticeship and is meeting the ~~thirty hour a week~~ **1150 hours per year** requirement set forth in section (3) of this rule then full credit shall accrue toward completion of the embalmer apprenticeship. If the intern is performing the functions of an intern funeral service practitioner in addition to an intern apprentice then the apprentice may also receive half-credit for the three-month period toward the 12-month requirement for a funeral service practitioner license.

(6) Applicants for an apprentice certificate shall make application in accordance with ORS Chapter 692. The application must be accompanied by the fee prescribed by OAR 830-020-0040, a certified copy of the applicant's birth certificate, and satisfactory proof of high school graduation or equivalency. If an applicant for an apprentice certificate does not have a high school diploma, he/she must present satisfactory evidence that he/she possesses the equivalent of a high school education received in some private, public, or trade school, or he/she must successfully pass the high school equivalency test (General Education Development Test) given by the local high school, or some similar equivalency test conducted by a similar agency. Prior to becoming licensed as a funeral service practitioner, apprentices shall provide a certified copy of a transcript from a school accredited by an Association of Schools and Colleges demonstrating completion of an Associate's degree or higher degree. Prior to becoming licensed as an embalmer, apprentices shall provide proof of completion of an accredited course of funeral service education.

(7) The effective date of the apprenticeship shall be the date the completed application, fee, and the required certificates are received and validated in the office of the Board. A letter will be sent notifying the apprentice of the status of his/her apprenticeship.

(8) The certificate of apprenticeship shall be issued to the applicant as an apprentice to a specified licensee. If the apprentice changes ~~establishments or~~ **the person licensee** to whom apprenticed, he/she shall file a request for approval of transfer with the Board immediately. A certificate shall be reissued upon payment of an administrative charge. When an apprentice ceases ~~employment at the~~ **to work under a specific licensee** ~~supervisor's facility,~~ the apprenticeship certificate shall become null and void. It is the responsibility of the ~~supervisor~~ **supervising licensee** to notify the Board's office of any termination in apprenticeship.

(9) Apprentice funeral service practitioner and embalmer certificates shall not be granted to any person for a longer period than 48 aggregate months. When an apprentice has completed his/her apprenticeship, he/she will no longer be licensed as an apprentice, but must qualify either as a licensed embalmer or licensed funeral service practitioner.

(10) If a funeral service practitioner's apprentice makes any arrangements for a deceased person the licensed funeral service practitioner supervising the apprentice is responsible for any arrangements made by the apprentice.

(11) **In lieu of meeting apprenticeship requirements,** ~~a~~An applicant for Oregon funeral service practitioner ~~or~~ embalmer licensure shall be deemed to have satisfied the **respective** apprenticeship requirement upon submitting proof satisfactory to the Board

that the person has practiced, respectively, as a ~~licensed~~ funeral service practitioner or embalmer **licensed in good standing in this state or another state:**

(a) For three years of the past five years; or

(b) For a total of ten years.

(12) Embalmer applicants who meet the requirements set forth in section (11) of this rule, shall **may** be required to demonstrate competency by way of a practical examination at a time and place designated by the Board.

d) ~~OAR 830-011-0030 Leave of Absence from Apprenticeship~~

~~(1) Leaves of absence from apprenticeship may be granted by the Board in accordance with ORS Chapter 692. Application for leave of absence shall be submitted on a form provided by the Board.~~

~~(2) Time spent in embalming college by an apprentice shall not be counted as part of the twelve months leave of absence which may be approved by the Board. No request for leave of absence is necessary when an apprentice enters embalming college. The apprentice shall, however, notify the Board of the name of the college he is attending and the date of his entry in college.~~

~~(3) If an apprentice enters military service of the United States, he shall notify the Board of the date of his entry into service. Upon release from military service, he shall notify the Board. If he is resuming his apprenticeship immediately, this fact must be certified to by the funeral service practitioner or embalmer under whom he is apprenticing:~~

~~(a) If an apprentice resumes his apprenticeship within one year of his release from military service, the Board may grant him full credit for times served on his apprenticeship prior to entry into the military service; and~~

~~(b) An apprentice returning from military leave who resumes his apprenticeship within six months need not request a leave of absence to cover the time between discharge from service and return to apprenticeship. However, an apprentice returning from military leave who does not intend to resume his apprenticeship within six months should request an official leave of absence in order to insure receiving credit for time previously served.~~

e) ~~OAR 830-011-0050 Background Investigation Required Prior to Oregon Licensure~~

(1) All applicants for certificate of apprenticeship, reciprocal licensure, preneed salespersons registration, ~~endowment care cemetery salespersons registration, funeral establishment license or certificate of authority to operate a cemetery or crematory and principals of licensed facilities~~ **as defined in this chapter** must submit to a background investigation. The background investigation may include, but not be limited to, information solicited from the Law Enforcement Data Systems, Corporations Commissions, Department of Motor Vehicles, other State agencies, personal references, former employers, credit checks, and when applicable, information solicited from the Secretary of State's Office, Division of Audits **Department of Consumer and Business Services (DCBS)** on endowment care, prearrangement and preconstruction sales funds. ~~If the principal is a corporation, the Board may perform background investigations on the principals of that corporation.~~ The Board may require the applicant or licensee **principal** to furnish any information necessary to perform a background investigation.

(2) The Board may deny, suspend or refuse to issue or renew a license or certificate when

conditions exist in relation to any principal of a licensed facility which constitute grounds for refusing to issue or renew a license or certificate or for suspension of a license.

f) | 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) 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.~~

g) | OAR 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.~~

(2) Upon complaint or upon its own motion, the Board may investigate any complaint concerning a preneed salesperson, a preneed salesperson applicant or an individual engaged in preneed sales activity without registration. For any of the causes described in ORS 692.180(1) or OAR 830-050-0050, or upon a determination that a **registered** preneed salesperson, applicant or unregistered individual has not complied with the provisions of ORS 97.923 to 97.949 or Chapter 692 or any rules adopted thereunder, the Board may impose a civil penalty of up to \$1000 per violation or suspend, revoke or refuse to issue or renew a registration.

h) | OAR 830-020-0030 Reciprocal Licensure

(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, **(if any)**, 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;

(e) Proof that the applicant is **was** licensed and has practiced, respectively, as a funeral service practitioner or an embalmer in another state for three of the past five years immediately preceding the respective application date; and

(f) An authorization signed by the applicant for the Board to perform a thorough background investigation as described in ORS 692.025(8).

i) OAR 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.

(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~~ **the casket or** receptacle containing human **or cremated** remains. When remains are to be cremated, the identifying metal disc shall be ~~secured~~ **attached** to the top of the head end of the casket, **receptacle** or alternative container. When **human** remains are going to be buried or entombed, the identifying metal disc shall be ~~placed~~ **attached on to** the ~~back side of the~~ head end of the casket **or receptacle**. ~~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 **or person acting as such**. **It shall be the responsibility of the funeral service practitioner or person acting as such to see that the identifying metal disc is properly attached 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.**

(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.

(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 cremation container. If the issue cannot be resolved on the day of the scheduled service, the funeral service practitioner shall take responsibility for notifying the person with the legal right to control disposition that the disposition is postponed.

~~(6)~~**(7)** In the case of scattering of cremated remains by a licensee, the identifying metal disc shall be made a part of the licensee's permanent record.

~~(7)~~**(8)** It shall be the responsibility of the funeral establishment licensee, **immediate disposition company licensee**, or person acting as such handling the disposition of human remains, to pay the death certificate filing fee as required in ORS 432.312(1). This fee shall be paid within 30 days after the billing, and in no case, longer than 90 days after the billing. Failure to pay death certificate filing fees shall be cause for disciplinary action by the Board.

~~(8)~~**(9)** It shall be the responsibility of the funeral establishment licensee, immediate disposition company, Cemetery Authority, and Crematory Authority to assign a manager for each funeral establishment, cemetery or crematory. In the case of funeral establishments and immediate disposition companies, the manager shall be an Oregon licensed funeral service practitioner.

~~(9)~~ Notwithstanding the provisions of subsection (8) of this section, the Board may authorize a funeral service practitioner to manage more than one funeral establishment or immediate disposition company when the Board, in its sole discretion, determines that the management of more than one funeral establishment or immediate disposition company by a single funeral service practitioner is in the public interest. A request by a funeral service practitioner to manage more than one funeral establishment or immediate disposition company shall be in writing and shall describe the basis for the request. Board approval shall be in writing and shall identify each funeral establishment or immediate disposition company the funeral service practitioner is authorized to manage.

(10) Upon providing written notification to the Board, a funeral service practitioner currently in good standing shall be authorized by the Board to manage up to two funeral establishments or immediate disposition companies without receipt of a written approval by the Board. A funeral service practitioner may be authorized by the Board to manage more than two funeral establishments or immediate disposition companies upon providing written notification to the Board, which shall describe the basis for the request, and receipt of written approval by the Board. The Board shall be authorized to conduct a formal investigation which shall include, but not be limited to, the funeral service practitioner and the funeral establishments or immediate disposition companies currently being managed by said funeral service practitioner. At any time during this process, the Board is authorized to reasonably request documentation and information from the funeral service practitioner in an effort to make an informed decision. The funeral service practitioner shall comply with all reasonable requests. For purposes of the section, "currently in good standing" means the funeral service practitioner has not had its

<u>license revoked, suspended, or had a civil penalty imposed upon it by the Board.</u>	
j)	OAR 830-030-0004 Scope of Practice
<p>(4) Only a licensed embalmer or certificated embalmer apprentice shall may (a)- provide the necessary handling and preparation of human remains, e.g. washing, disinfecting, setting features, embalming, repair, and supervising dressing; and</p> <p>(b) Perform the required sanitizing of the preparation room, including but not limited to, embalming tables, work surfaces, sinks, floors, instruments, and handling and properly disposing of contaminated waste.</p>	
k)	OAR 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)
<p>(3) If religious custom or the conditions of the remains prohibit embalming, a human remains shall be received for transportation by a common carrier if the human remains are placed in a sealed impervious container metal casket enclosed in a strong transportation case or in a sound container designed for that purpose casket enclosed in a sealed metal or metal lined impervious transportation case.</p>	
l)	OAR 830-030-0090 Standards of Practice
<p>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.</p> <p>(1) Required conduct related to safety and integrity:</p> <p>(a) Compliance with Oregon Revised Statutes relating to death care;</p> <p>(b) Compliance with Oregon Public Health Laws;</p> <p>(c) Compliance with FTC Funeral Rule;</p> <p>(d) Implementation and/or follow through of agreed upon arrangements as designated by the responsible party authorizing agent as defined under 97.130;</p> <p>(e) Assigning persons to perform functions for which they are licensed and which are within their scope of practice/scope of duties. Owners and managers are responsible for the actions of employees related to the operation of a licensed facility;</p> <p>(f) Maintain s Supervision of appropriate business practices by apprentices and unlicensed persons to whom tasks are assigned;</p> <p>(g) Report through proper channels facts known regarding the incompetent, unethical, unsafe or illegal practices of any death care industry licensee;</p> <p>(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</p> <p>(i) Respect the dignity of dead human remains by appropriate handling, including but not limited to, refrigerating, embalming, dressing, cremating, and burial; ;</p> <p><u>(j) Direct or indirect supervision by a licensed embalmer or embalmer apprentice of the required sanitizing of the preparation / holding room including, but not limited</u></p>	

to, embalming tables, work surfaces, sinks, floors, instruments, and handling and properly disposing of contaminated waste.

(2) **Unacceptable** conduct **includes** unacceptable under the Board's "Standards of Practice."

(a) ~~Conduct generally:~~

(A) ~~(a)~~ **(a)** Abusing a corpse, as defined in ORS 166.085 and 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)~~ **(c)** Engaging in unacceptable behavior towards or in the presence of a client such as using derogatory names or gestures or profane language;

~~(D)~~ **(d)** Failing to report actual or suspected incidents of client or corpse abuse through the proper channels in the work place and to the appropriate state agencies;

~~(E)~~ **(e)** 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)~~ **(f)** 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, death care consultants, or preneed sales registrants;

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

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

~~(A)~~ **(g)** Inaccurate **or incomplete** record keeping ~~in client record~~ as required in ~~OAR 830-040-0000~~;

~~(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 and/or merchandise not provided, fabricating data;

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

~~(D)~~ **(j)** Destroying any document pertaining to a death care service as it pertains to statutory requirements; ~~and~~ **or**

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

~~(e)~~ **(3)** Conduct related to licensure violations:

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

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

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

~~(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;

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

~~(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.

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

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

~~(B) (g) (Information: The word "Knowingly" preceded this sentence, however, since it was not bolded it was not brought to the attention of the Board Members.) Failing to cooperate or answer truthfully and completely inquiries regarding matters within the Board's jurisdiction;~~ or

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

m) | OAR 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.~~

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

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

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

~~(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.~~

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

~~(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)~~ **(5)** 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)~~ **(6)** 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.

~~(14)~~ **(7)** 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.

~~(18)~~ **(8)** 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 goods that are unused or undamaged, or any contract for interment rights.**

~~(19)~~ **(9)** 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.

n) | OAR 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 deemed misleading.**

(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.

(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. If the new principal is a corporation, the application shall include the names of all principals of that corporation.

(5) When there is a change in any principal of the licensed facility, the licensee shall provide the Board with the name of the new principal(s) on a form provided by the Board within 30 days of the change. 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.

(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~~ **the State Registrar's office; (metal disc does not apply to cremated remains or for deaths that occur out of state);**

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

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

(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;**

(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 a 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).

(7) In the case of cremation, the licensee responsible for making the cremation

arrangements shall require the person making the cremation arrangements to provide the licensee with a signed statement specifying the action **to be** taken regarding delivery of the cremated remains. A copy of this statement shall be retained by the responsible licensee and be made a part of the permanent record.

(8) If cremated remains are not retained by the licensee accepting initial responsibility, the licensee shall upon delivery of such cremated remains to another individual, obtain a signed receipt from that individual. The receipt shall state the name of the individual receiving the cremated remains, the name of the deceased, and the date of delivery of such cremated remains. The individual receiving the cremated remains shall sign the receipt. The licensee or the licensee's representative releasing the cremated remains shall also sign the receipt and a copy of that receipt shall remain a part of the permanent record.

(9) ~~No funeral establishment operator, immediate disposition company operator, cemetery authority or crematory authority~~ **licensee or operator of a licensed facility shall**

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

~~(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.~~

(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, pick up and arrange for proper storage of the remains within 24 hours.**

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

(a) pay or ~~cause to be paid or offer to pay, and no person, firm or corporation shall receive, directly or indirectly,~~ **any retail 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 licensed facility funeral establishment or recommending or causing the purchase of funeral goods and services from any specific vendor whether or not that retail vendor is licensed by the Board; or**

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

(12) When the Board issues to any person a certificate of authority to operate, license or certificate of apprenticeship the licensee shall post the certificate in a conspicuous location for public viewing. Individual licenses will be available for inspection upon request.

(13) Every cemetery authority and crematory authority shall keep the Board's office informed of the location of their permanent records **if the records are located at an address other than at the physical address of the licensed facility**. These records shall be made available for ~~random~~ inspections by the Board at any reasonable time.

o) OAR 830-040-0005 Contract Requirements

(1) It is the responsibility of each licensed facility entering into contracts, either at need, prearrangement or preconstruction, for death care goods and services to have printed (in a minimum 10-point print) at the bottom of each contract "This facility is licensed and regulated by the Oregon State Mortuary and Cemetery Board" and include the phone number of the Oregon Mortuary and Cemetery Board. All contracts executed after January 1, 1998 shall contain this language.

(2) It is the responsibility of each licensed facility to ensure that all contracts, either at need, prearrangement or preconstruction, for death care goods and services have the physical location of the facility printed (in a minimum 10-point print) on the front.

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

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

(2) Every licensee shall accommodate the inspector or investigator of the Board in making his/her random 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 **and upon request of the Board or Board employee**, the licensee shall make the reasons known to the Board in writing within ten days following the attempted inspection.

(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 **Oregon State** Mortuary and Cemetery Board inspector a copy of all ~~price lists and other~~ business documents as requested ~~relevant to~~ **during** inspection or investigation.

(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) The Board 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.

q) OAR 830-040-0020 Requirements and Specifications for Preparation Rooms

(1) The preparation room shall be of sufficient size to accommodate an operating or embalming table, a sink with running water and proper sewerage connections or systems, an instrument table, and a cabinet or shelves.

(2) **The following is required of preparation and holding rooms:**

(a) The interior of the preparation room, all furnishings, and equipment shall be finished with materials impervious to microbes, liquids and gases.

(3) (b) Outside ventilation shall be provided for by windows or transoms or forced air ventilation. The installation must be so arranged that it shall not be a menace to public health or offensive to the public.

(4) (c) In order to make the room as sanitary as possible, flooring must be impervious to microbes, liquids and gases.

(5) (d) ~~The preparation r~~**ooms** must be private and cannot be located **adjacent near to** a public ~~area passageway~~ **unless there is a self closing, self locking entry door**. The preparation room entry door(s) must be labeled as "private" or "authorized entry only." This sign must be conspicuous and readable and must be permanently affixed to the door. The lettering on the sign shall not be smaller than one inch high.

(6) (e) All windows and exterior doors are to be screened or permanently closed and must be installed in such a way that the room shall be obstructed from view from the outside and so that fumes and odors are prevented from entering other parts of the building.

(7) (3) The equipment for preparation rooms shall include the following:

(a) An operating or embalming table, which provides suitable drainage;

(b) A covered waste can and a sink with running water and sewerage connections, disinfectants and antiseptics;

(c) A first aid emergency kit for personnel use which shall contain the minimum first aid supplies as specified by Workers' Compensation Department, OAR 437-127-0015 **437-002-0161**; and

(d) In addition to the supplies required by Workers' Compensation Department, the State Mortuary and Cemetery Board requires one eye wash station be available for personnel use. The station should be plumbed into the cold water supply. There shall be two water spouts which are activated by one motion. The water must be able to flow continuously, hands free, for not less than 15 minutes to allow both eyelids to be held open during the rinsing process.

(8) (4) Instruments used during an embalming shall be cleaned and sterilized (either in a steam sterilizer or by chemicals) after each embalming. Instruments shall be free of stains and foreign particles.

(9) (5) The preparation room shall be kept in a sanitary condition at all times.

(10) (6) All facilities shall have a mortuary or hospital refrigeration unit available which

is suitable for the storage of human remains. The refrigeration unit shall be in good operating condition and shall be maintained in a sanitary condition at all times. The refrigeration shall be no more than 30 minutes driving time from the licensed facility.

r) | ~~OAR 830-040-0030 Name Registered with Board~~

~~Each licensed facility shall be registered with the State Mortuary and Cemetery Board by its true corporate, firm or individual name. In addition, one assumed business name, as registered with the Corporation Commission, may be used by such licensed facility and shall be promptly reported to the Board.~~

s) | OAR 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 business name and~~ **city and state** physical address as it appears on the Board's records. ~~All printed materials and letterhead shall include the physical address of the facility.~~

(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.~~

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

t) | OAR 830-040-0060 Listing of Employees— Name

(1) ~~(2)~~ **(2)** Any listing of names of **licensed** employees of a licensed facility in connection with that facility shall use ~~either the facility's registered name or its assumed business name~~ as it appears on the Board's records.

(2) ~~(1)~~ **(1)** All licensed facilities shall report to the Board, on a form provided for such purpose, a complete list of all licensed employees (full-time, part-time, and licensed independent contractors) at the time of renewal of license.

u) | OAR 830-040-0070 Multiple Establishments at Single Location

The following criteria shall apply to the operation of more than one funeral establishment at a single location:

(1) One or more of the establishments shall give prompt written notice to the Board of the commencement of the use of the single location and shall give such further notice thereof as the Board deems reasonable in the circumstances to apprise interested persons thereof.

(2) For purposes of funeral establishment inspection sheets, each of the establishments shall be considered as if they constituted a single establishment.

(3) In issuing a license to each establishment, the other establishments shall be named as associated therewith.

(4) Two or more **funeral** establishments **and / or immediate disposition companies** operating at **from** a single location must so identify this fact in any public communications.

v) ~~OAR 830-050-0000 Failure to Comply with Rules~~

~~(1) Failure to comply with ORS Chapter 692 and these rules shall be considered unprofessional conduct.~~

~~(2) 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.~~

w) OAR 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.~~

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

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

~~(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.

~~(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.

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

President Cummings asked if there was any further business to be brought before the Board before the meeting was adjourned. Hearing none, President Cummings thanked everyone for their full participation and adjourned the meeting.

VI Adjournment The meeting adjourned at 3:31 pm.