MCB
OREGON MORTUARY & CEMETERY BOARD
Regulating Death Care Facilities & Practitioners in Oregon.

MARCH 19 2013 *FINAL* General Session Meeting Minutes
(Revised May 3 2013)

Board Members Present:
Dwight Terry, President
Erin Phelps, Vice President (late)
Laurie Goolsby, Secretary / Treasurer
James Campbell
Larry Gyure
Joncile Martin (late)
David Noble (late)
Lyn Stanger
Pam Wachter

Staff Members Present:
Michelle Gaines, Executive Director
Lynne Nelson, Compliance Manager
Robert Magill, Investigator
Lori St James, Office Assistant
Brenda Biggs, Compliance Specialist
Carla Knapp, Office / Licensing Manager
Johanna Riemenschneider, AAG

Board Members Absent:
None

Staff Members Absent:
None

Guests:
Rep Joe Gallegos, OR State
Chad Dresselhaus, AFCTS
Suzanne Primm, DAS
Bryce Stanger
Wally Ordeman, OFDA Lobbyist
Margaret Neal, NCFH
Mary Stanger
Mary McCarron, DCBS / DFCS

I Call to Order
The General Session of the Mortuary and Cemetery Board (OMCB) was called to order at 9:02 am in Hearing Room 50, in the Capitol building (Salem).

II General Session
After roll call, President Terry introduced Kuri Gill.

A Invited Presentations

1 Kuri Gill, Parks & Recreation Department, Commission on Historic Cemeteries
Ms Gill introduced herself to the Board as the Historic Cemeteries Program Coordinator and provided a power point presentation on her Commission and the Historic Cemeteries Program.

In 1999, in recognition that Oregon's old cemeteries are historic sites worthy of care and protection, the Oregon Legislature created the Commission, composed of seven members, within the State Historic Preservation Office. The primary responsibility of the Commission is to develop and maintain a statewide registry of historic cemeteries and gravesites. In order to be recognized as a historic cemetery, the cemetery can be of any size that contains a burial of at least one person who died on or prior to February 14 1909, 50 years after the date of statehood. The definition of a historic cemetery includes a burial or burials located on private properties, ranch properties or farms.

The Commission makes recommendations for funding, obtains and distributes grants, seeks legislative appropriations for historic cemeteries, and assists in obtaining care for above ground artifacts, such as grave markers, structures, railings and curbs, ironwork, fencing and historic plantings. Ms Gill reported that they currently have over 900 cemeteries listed, and suspects that there are over 500 cemeteries remaining to be recognized as historic.

Her Commission works very closely with qualified archeologists as any cemetery that hasn't been used for 75 years or more counts as an archeological site. In Oregon, an archaeological site is defined as any location with physical remains of past human activity that is at least 75 years old. The Commission has discussed moving the February 14 1909 forward 25 years, but there has been no formal motion to move forward to date.

Their most popular program is their Grant Program, which can be given to anyone, a private for profit business, a non profit, or individuals that have a burial or burials on their land, can apply for a project based grant. It doesn't even require a match, although it is more competitive if there is a match, and can be for all kinds of projects, but they tend to emphasize marker repair and preservation of the historic features in historic cemeteries. Grants have funded major tree trimming, interpretive brochures, signage, lighting, and fencing. Fencing is one of the biggest security features, delineating where the cemetery is, which can be a huge protection for these cemeteries. A grant recently funded a youth program, who went in and cleaned up a cemetery and all the markers, and documented the known burials.

The Preservation Program allows them to fund training for volunteers and staff on how to take care of markers, care for them properly, what materials to use, sometimes more what not to use, and how to do the repairs so they can do it on their own. Safety training is offered along with that, as markers can be deceivingly heavier than they look.

One of the major challenges facing historic cemeteries is ownership. Early in Oregon's history, during land donation claim time, if someone donated a portion of their land claim to the community for the purpose of providing space for burials, and if that hasn't changed, that means that nobody owns it.

Ms Gill said that she gets a lot of referrals from the Board and she said she really appreciated all the work the Board does.

President Terry thanked her for her presentation and directed Board staff to email Ms Gill's presentation to all Board members.

2 Mary McCarron, Depart of Consumer & Business Services (Finance & Corporate Securities)

Ms McCarron introduced herself to the Board as the Financial Examiner for the Division of Finance and Corporate Securities, (DFCS), which is a part of the Department of Consumer and Business Services (DCBS). Her Division received the responsibility of the oversight of the Preneed Program in 2002 from the Secretary of State's Audits Division.

Prearrangements that are sold in advance of need through a contract can be funded with an insurance product, or the consumer's money can be placed in a trust account, either with a Master Trustee or a financial institution (depository). Ms McCarron only deals with trust funded contracts, even though the Insurance Division resides within DCBS.

The Preneed Program has four components to it, Certified Providers (mostly funeral homes, some cemeteries), Master Trustees (holds the funds), and two cemetery programs: endowment care and irreducible fund.

She devotes half of her work week to focusing on the Preneed Program, and then the rest of the week on other programs: pawn brokers, pay day lenders, consumer finance, collection agencies and money transmitters.

The largest component of her job is the Certified Provider Program and currently there are 205. A CP is a funeral home or cemetery that is either selling prearrangements through trust funded contracts or just administering prearrangements through trust funded contracts. There is a common misunderstanding that a CP is required only if you are selling trusts, but it is also required if you are administering funds (distributing at time of need). She conducts onsite examinations of CPs four to six per year.

The next component is Master Trustees, where the money is trusted and there are only eight. She does a lot of the same things with the Master Trustees as she does with CPs; she registers them and collects annual reports from them. Starting in 2012, DFCS began examining Master Trustees and they have already completed three so far. The goal is to complete the rest of the examinations of the MTs within the next year.

Endowment Care Cemeteries, most commonly known as perpetual care or maintenance fund cemeteries, are primarily privately owned cemeteries, but does include municipalities, religious cemeteries or associations that are managing cemeteries. Currently there are 79 endowment care cemeteries. To become an endowment care cemetery is an election, a choice for the cemetery. They made a decision to follow the statute about how the funds would be invested and what percentages of sales would go into this fund. The important thing about becoming an EC cemetery is that the principal cannot be touched and the cemetery can only operate their maintenance on the interest earned, not the principal.

Irreducible Fund Cemetery is another type of maintenance fund cemetery but is geared more for non profit cemeteries and is a permanent selection choice once chosen. Currently there are 31 of these types of cemeteries.

What is very important to her and DFCS is that they want an open line of communication with the death care industry as DFCS can be of a resource to them on how to interpret statute, how to understand the law requirements. She said she enjoys this part of her job, answering questions via phone calls or emails. Second message that she is trying to get out to the industry is that there are some things that she could use their help with that would help her better serve them. She does get phone calls from consumers concerned about their trusts and is happy to assist them. She does take calls regarding insurance funded contracts, as she can direct their call to the appropriate contact within the Insurance Division.

President Terry thanked her for taking time to share with us. (For the record Member Noble arrived at 9:11, Member Martin arrived 9:17 and Member Phelps arrived at 9:35 am.)

B Approval of Meeting Minutes

1 General Session Meeting Minutes Draft - January 29 2013

President Terry asked if there were any corrections, questions or comments on the subject draft meeting minutes. Hearing none, he asked if there was a motion to approve the minutes as prepared. He recognized Member Goolsby.

Member Goolsby so moved. Member Wachter seconded. All others were aye and the motion carried unanimously. Those voting in favor: Members Campbell, Goolsby, Gyure, Martin, Noble, Phelps, Stanger, Terry, Wachter. Those voting no: none.

2 Special General Session Meeting Minutes Draft - February 14 2013

President Terry asked if there were any corrections, questions or comments on the subject draft meeting minutes. Hearing none, he asked if there was a motion to approve the draft minutes as prepared. He recognized Member Phelps.

Member Phelps so moved. Member Noble seconded. All others were aye and the motion carried unanimously. Those voting in favor: Members Campbell, Goolsby, Gyure, Martin, Noble, Phelps, Stanger, Terry, Wachter. Those voting no: none.

C President's Comments

1 New Board & Staff Member Welcome

President Terry introduced and welcomed Chad Dresselhaus, the Board's newest Board member, who will be filling the vacant public member position officially at the May Board meeting, after he goes through the Senate Confirmation Hearing process.

President Terry then introduced Lori St James, the Board's new part-time office assistant, who started March 4 2013.

2 Committee Assignments

President Terry appointed Member Campbell to the Best Practices Performance Measure Subcommittee. He decided to wait until the May Board meeting before adding members to the Education Subcommittee. He suspended the Environmental Advisory Committee as they do not have anything to work on. He then appointed Member Gyure and Member Noble to the Policy Subcommittee.

3 Chief Financial Office's Gold Star Certificate for 2012

The subject Certificate is awarded to state agencies that provide accurate and complete fiscal year end information in a timely manner. This Certificate is Oregon's equivalent to the nationally recognized GFOA Certificate of Achievement for Excellence in Financial Reporting. President Terry explained that the Board earned this award because of the outstanding service provided by the Board's former accountant, Lora Carson, as well as Board staff.

4 Comments on Mt Hood Community College Funeral Service Program

President Terry reported that Mt Hood Community College's Funeral Service Education (FSE) Program is doing an outstanding job. Students enrolled in Mt Hood CC FSE course must take the National Embalmer Exam in order to graduate from the FSE program. Of the 24 students that took the Exam in 2012 at Mt Hood CC, 23 passed the Arts section, and 24 passed the Sciences section, a combined passing rate of 98% for this college, making it one of the top five schools in the nation! The national average passing rate for 2012 was 65% for both sections. He noted that embalming labs are scheduled every Monday, Tuesday and Wednesday, and any help or assistance in providing cadavers would be very much appreciated.

5 OMCB 13-15 Affirmative Action Plan

The Governor's Affirmative Action Office developed guidelines for the Affirmative Action Plan to be used by all state agencies. Based upon these guidelines, each state agency was required to develop and submit, in hard copy, to the Governor's Affirmative Action Office their Affirmative Action Plan for the 2013-2015 budget. Our AA Plan was submitted January 28 2013. On March 1 2013, the Board was notified by the Governor's Office that the Board's AA Plan was thoroughly reviewed and accepted.

President Terry noted that one copy of the Board's AA Plan was distributed among the Board members for their review during this meeting, but Director Gaines will be discussing it in detail at the May meeting.

D Presentation and Approval of Executive Director's Report for March 2013

Director Gaines reviewed in detail the Report that was included in the Board packet, which included the Aging Report list (approval of an extension of case reporting for up to an additional 60 days under ORS 676.165).

She reported that we are in the legislative process for the approval of the 2013-2015 budget. We did have the first budget hearing before the Ways and Means Subcommittee, and it will likely be April before the budget moves to the next step, which is consideration before the full Ways and Means Committee. That tends to be a work session; they typically don't have testimony at that point. From that point, it would move to the floor for a vote on the budget. She thought that the hearings have gone fairly well so far and by our next meeting at the end of May, we should know if there have been any changes or if anything else comes up in the legislative process for the budget approval. She asked if there were any questions.

Hearing none, President Terry then asked if there was a motion to approve the Executive Director's Report. He recognized Member Wachter.

Member Wachter so moved. Member Gyure seconded. All others were aye and the motion carried unanimously. Those voting in favor: Members Campbell, Goolsby, Gyure, Martin, Noble, Phelps, Stanger, Terry, Wachter. Those voting no: none.

E Public Comments

President Terry stated that the Board welcomed public comments, but stipulated that questions would not be considered at this time. Since the guests present opted out of providing public comment, President Terry thanked them for their attendance.

F General Discussion & Action Items

1 Policy Subcommittee Report Out: Session 2014 Topics

Manager Nelson reported that the Subcommittee met the day before via a telephone conference. The current rulemaking process was just completed, which means those rules are going to be effective March 29 2013. They have been posted on our website, and they were sent out in our OMCB E-News.

Since we are beginning a new round of rulemaking, the Subcommittee moved forward with some issues into rulemaking and asked that the members of the industry and all stakeholders remember they can suggest rules, policies, and legislative concepts to the Board by sending an email to mortuary.board@state.or.us.

2 General 2013 Legislative Update—Relevant Bill Review & Status

Director Gaines had originally anticipated a need to talk about legislative concepts for the 2014 Legislative Session, but since the Legislature is not going to establish what those due dates are until later in the current session, she will defer until the May meeting, for both the 2014 and 2015 Sessions.

There has been some activity on a couple of bills so far this Session. One of the biggest potential impacts to the Board was Senate Bill 302, which looked at consolidating most of the smaller health professional regulatory boards into Oregon Health Licensing Agency. That bill did have a hearing on the Senate side, but the Committee Chair indicated that the bill would not be worked or moved any further than the one hearing in part because the Legislature would like to have more input.

The Audit's Division recently did a full high level audit of boards and commissions within the state and there were some recommendations that came out of that. They testified before the Senate Rules Committee recommending that they start with a narrow pilot with a board that presents the highest public risk, which they determined is a relatively small subset of boards and commissions, since most boards and commissions are advisory or policy making within a larger agency. But rather that they should focus on boards that are disciplinary or regulatory in nature since they could have the highest public risk, from their standpoint, of course as auditors. They recommended auditing all of the health professional regulatory boards, which they anticipate getting started with in June 2013 and being able to return to the Legislature in either September or December of this year. We have been named on that list, so we should know more by the next meeting of what the full scope will be. From their comments and testimony it sounds like what they are looking for is to what extent are we actually accomplishing our mission in public outreach. They will look at our licensing practices, whether we are actually licensing like we are statutorily supposed to be licensing. They will look at things like financial controls and are we following the statutes related to the investigative process.

She reported that there have been a number of other bills that relate to the impaired practitioner program. It affects us in that we are named in it, but we are not obligated to do anything unless the Board decides to initiate that kind of program by rule. If this Board ever chooses to go in that direction, they are making it more cost effective for smaller organizations, so all the changes that they are making will end up being positive.

Many of the other bills have to do with final order disclosure, transparency, posting information in certain places, changes to the public meeting law, but some of those other things are still in the hearing process. Some of them haven't even been scheduled yet. The first major hurdle is April 8 2013, that is the date that any bill needs to be worked and moved out of the first committee, otherwise it is considered a dead bill at the point and will not go any further. By the next meeting we'll have a better sense of what bills are going to move forward, as they will have most likely have been through its first chamber of origin.

There was a flurry of activity around the vital statistics bill that she had mentioned at the last meeting. Vital Records is making changes to provisions of law related to vital statistics to reflect 2011 Revision to Model State Vital Statistics Act. We were able to give them some feedback. OFDA was also active in providing feedback as some of the language that was changed had some inadvertent consequences. She did discuss with them about potentially taking on the management of the Indigent Disposition Fund and moving that over to the Board. Vital Records is interested, however, Legislative Counsel did determine that the particular relating clause on this bill was not a sufficient mechanism for us to be able to amend that

particular bill to make that change. So on the upside, there is some amendment language drafted that could potentially move forward as part of our legislative concepts for a future session, or in the current session, if there is another bill that has a relating clause where it would fit, but we would need to speak with those bill sponsors to see if they would allow us to add our language.

There is one other bill which deals with the potential regulation of the non transplant anatomical material organizations. A bill has been introduced and submitted to the House Health Committee, but it has not yet been scheduled. If that bill were to pass, the way it is written currently, it would move regulatory oversight of those entities, of which there are two in the state, under the purview of this Board. It is predominantly written so that the requirement is a national certification, which means that the primary role of this Board would be to ensure that they are certified. There is some additional language that would help protect consumers that enter into prearrangements, that there is disclosure about how the remains would be used, how much would be returned to the family, whether the free cremation, if such is offered, is guaranteed or not, and under what circumstances. She said she would entertain any questions.

Discussion followed. Staff was then directed to send a link to both the vital statistics bill and the non transplant anatomical bill to Board members.

Discussion followed regarding the management of the Indigent Disposition Fund. The statute on that program is written so that an entity that manages it can use up to 5% of that revenue in order to administer the program, which means that the position authority as a result of that revenue source would also come over if that responsibility was shifted to the Board.

Discussion followed regarding where the revenue was coming from (proportion per funeral home), does it accrue interest, how much is distributed during that month, how many funeral homes are accepting funds, which may shed some light on its functionality. Director Gaines said she had a lot of raw data and she would bring it forward for discussion for future concepts.

Discussion followed regarding accountability for those family members that say they are unable to pay for services and walk away from the body, requiring the funeral home to apply for compensation from the IDF. If they are truly without funds, they could be asked why they are applying for a certified copy of the death certificate. If it is because they are applying for an insurance policy, that certainly changes the picture. Director Gaines noted that there was some language in the vital statistics bill that talks about qualification for requesting a record, which may allow us to add some additional qualification language. If not, we can explore legislative concepts for qualifications and definitions ourselves.

3 2013 Governor's Food Drive

Food Drive Coordinator Magill reported that the Food Drive officially ended Friday, March 1 2013. Once again the Board did its best to rid hunger from the state of Oregon by raising the equivalent of almost 10,000 pounds of food through payroll deductions, donations from Board members and the public. Where we stand against the rest of the state is unknown right now. We will get results sometime in mid-April we have been told. President Terry asked him to bring the results to the next meeting and then said, good job! The rest of the Board agreed and thanked him and staff.

F Licensing Actions - Requests for approval of initial License, Certificate or Registration Application, transfer of Apprenticeship, Change of location, Name Changes, etc.

President Terry asked the Board to review the agenda items identified on the March 19 2013 Licensing Actions that was included in the Board packet. He asked if there were any questions or comments. Hearing none, he asked if there was a motion to approve. He recognized Member Goolsby.

Member Goolsby recommended, and so moved, that the Board approve the Licensing Actions agenda items as prepared. Member Stanger seconded. All others were aye and the motion carried unanimously. Those voting in favor: Members Campbell, Goolsby, Gyure, Martin, Noble, Phelps, Stanger, Terry, Wachter. Those voting no: none.

President Terry then requested that the Board adjourn general session at 10:25 am, for the purpose of entering into executive session.

III Executive Session

President Terry then directed the Board to enter into executive session as authorized under ORS 192.660(2)(a), (b), (f), (h), (i) and / or (k). Executive session adjourned at 2:42 pm.

IV General Session

President Terry called the general session of the Board back to order at 2:44 pm. All Board members that were in attendance for the earlier general session were present. No members of the public had returned from the earlier public session.

H Investigations

President Terry asked the Board to review the Executive Session Schedule Revised for Handout that was distributed to all Board members. He then asked Board members to report if they had an actual or potential conflict with any of the cases before voting. Hearing none, Member Terry noted that he had potential conflicts of interest, and would be abstaining from cases 2013-1005 and 2013-1006.

a **2009-1037A, B and C -** Member Wachter reported that the full Board considered these cases during executive session and recommended that the Board take no action, and she so moved. Member Goolsby seconded. President Terry asked if there was discussion. Hearing none, he asked those in favor to signify by saying aye. All were aye and the motion carried unanimously. Those voting in favor: Members Campbell, Goolsby, Gyure, Martin, Noble, Phelps, Stanger, Terry, Wachter. Those voting no: none.

b **2012-1010A and B -** Member Wachter reported that the full Board considered these cases during executive session and recommended that the Board take no action, and she so moved. Member Martin seconded. President Terry asked if there was discussion. Hearing none, he asked those in favor to signify by saying aye. All were aye and the motion carried unanimously. Those voting in favor: Members Campbell, Goolsby, Gyure, Martin, Noble, Phelps, Stanger, Terry, Wachter. Those voting no: none.

c **2012-1017A, B and C -** Member Noble reported that the full Board considered these cases during executive session and recommended that the Board take no action, and he so moved. Member Goolsby seconded. President Terry asked if there was discussion. Hearing none, he asked those in favor to signify by saying aye. All were aye and the motion carried unanimously. Those voting in favor: Members Campbell, Goolsby, Gyure, Martin, Noble, Phelps, Stanger, Terry, Wachter. Those voting no: none.

d **2012-1021A, B -** Member Martin reported that the full Board considered these cases during executive session and recommended that the Board table these cases, and she so moved.

Member Phelps seconded. President Terry asked if there was discussion. Hearing none, he asked those in favor to signify by saying aye. All were aye and the motion carried unanimously. Those voting in favor: Members Campbell, Goolsby, Gyure, Martin, Noble, Phelps, Stanger, Terry, Wachter. Those voting no: none.

e **2012-1030 -** Member Gyure reported that the full Board considered this case during executive session and recommended that the Board take no action, and he so moved. Member Campbell seconded. President Terry asked if there was discussion. Hearing none, he asked those in favor to signify by saying aye. All were aye and the motion carried unanimously. Those voting in favor: Members Campbell, Goolsby, Gyure, Martin, Noble, Phelps, Stanger, Terry, Wachter. Those voting no: none.

f **2012-1043A, B and C -** Member Wachter reported that the full Board considered these cases during executive session and recommended that the Board initiate Disciplinary Action on cases 2012-1043A and B, but take no action on case 2012-1043C, and she so moved. Member Phelps seconded. President Terry asked if there was discussion. Hearing none, he asked those in favor to signify by saying aye. All were aye and the motion carried unanimously. Those voting in favor: Members Campbell, Goolsby, Gyure, Martin, Noble, Phelps, Stanger, Terry, Wachter. Those voting no: none.

g **2013-1005 -** Member Goolsby reported that the full Board considered this case during executive session and recommended that the Board initiate Disciplinary Action, and she so moved. Member Wachter seconded. President Terry asked if there was discussion. Hearing none, he noted for the record that he was abstaining due to potential conflict of interest (direct competition). He then asked those in favor to signify by saying aye. All were aye and the motion carried. Those voting in favor: Members Campbell, Goolsby, Gyure, Martin, Noble, Phelps, Stanger, Wachter. Those voting no: none. Those abstaining: Member Terry.

h **2013-1006 -** Member Goolsby reported that the full Board considered this case during executive session and recommended that the Board initiate Disciplinary Action, and she so moved. Member Campbell seconded. President Terry asked if there was discussion. Hearing none, he noted for the record that he was abstaining due to potential conflict of interest (direct competition). He then asked those in favor to signify by saying aye. All were aye and the motion carried. Those voting in favor: Members Campbell, Goolsby, Gyure, Martin, Noble, Phelps, Stanger, Wachter. Those voting no: none. Those abstaining: Member Terry.

i **2013-1007 -** Member Campbell reported that the full Board considered this case during executive session and recommended that the Board take no action, and he so moved. Member Phelps seconded. President Terry asked if there was discussion. Hearing none, he asked those in favor to signify by saying aye. All were aye and the motion carried unanimously. Those voting in favor: Members Campbell, Goolsby, Gyure, Martin, Noble, Phelps, Stanger, Terry, Wachter. Those voting no: none.

j **2013-1009A and B -** Member Goolsby reported that the full Board considered these cases during executive session and recommended that the Board initiate Disciplinary Action, and she so moved. Member Wachter seconded. President Terry asked if there was discussion. Hearing none, he asked those in favor to signify by saying aye. All were aye and the motion carried unanimously. Those voting in favor: Members Campbell, Goolsby, Gyure, Martin, Noble, Phelps, Stanger, Terry, Wachter. Those voting no: none.

k 2013-1010A and B - Member Noble reported that the full Board considered these cases during executive session and recommended that the Board initiate Disciplinary Action, and he so moved. Member Phelps seconded. President Terry asked if there was discussion. Hearing none, he asked those in favor to signify by saying aye. All were aye and the motion carried unanimously. Those voting in favor: Members Campbell, Goolsby, Gyure, Martin, Noble, Phelps, Stanger, Terry, Wachter. Those voting no: none.

President Terry then requested that the Board adjourn general session at 2:55 pm, for the purpose of entering into executive session. For the record, Members Martin, Noble and Phelps left prior to start of the second executive session and did not return.

V Executive Session

President Terry then directed the Board to enter into executive session as authorized under ORS 192.660(2)(a), (b), (f), (h), (i) and / or (k). Executive session adjourned at 3:25 pm.

VI General Session

President Terry called the general session of the Board back to order at 3:25 pm. No members of the public had returned from the earlier public session. Having no further business, President Terry adjourned the meeting.

VII Adjournment The meeting adjourned at 3:25 pm.