Oregon Mortuary & Cemetery Board

MEMORANDUM

TO: **BOARD MEMBERS**

FROM: **LYNNE NELSON, COMPLIANCE MANAGER**

DATE: **NOVEMBER 25, 2008**

RE: **CHANGE of OWNERSHIP – LICENSING POLICY QUESTION**

CHANGE OF OWNERSHIP:

Staff is presenting two cases to the Board today that involve changes of ownership without prior Board approval. One is in a normal Confidential Report of Investigation format because the principal involved also received prior disciplinary actions, causing extenuating circumstances. Extenuating circumstances normally prevent Staff from issuing temporary authority to operate pending the Board's formal approval. The other case was presented in a Confidential Consent Item format, for brevity, and temporary authority was issued when the violation was discovered.

Changes of ownership without Board approval are usually found during the two-year-renewal-cycle for facility licenses, as noted on the forms they return. Typical examples are stock ownership where someone acquires more than 51% of stock, or a new stockholder is found owning more than 10% of shares. Other times, it involves entirely new principals, as in Case #08-1066 and #08-1069, and may be discovered during an inspection.

When an unapproved change of ownership is found, Staff directs the new owner to immediately submit an application for licensure. Compliance then conducts an inspection. When no extenuating circumstances are involved, Staff has issued temporary authority and in most cases brought the information to the Board in a Report.

Policy Question #1: In cases where there is no evidence of intent to violate the Board's rules, and no other extenuating circumstances related to principals, does the Board prefer to see the information in the Confidential Consent Item format (paragraph on Executive Agenda) or does the Board want a full (short) Confidential Report of Investigation?

Policy Question #2: Should Staff issue temporary authority to operate to those facilities that failed to follow the rules pertaining to change of ownership by obtaining prior Board approval,

> **2a.)** When there are no extenuating circumstances (current practice)
> **2b.)** Even when there are some extenuating circumstances, such as prior disciplinary action taken against a principal, extended length of time before change of ownership is discovered, etc?

Reasons to issue TA: Waiting until the next Board Meeting can be a disservice to the community by forcing the facility to stop operating, or cause the facility to be operating and incurring additional violations of statute each time they meet with a family, etc.)

Reason to not issue TA: If the Board determines the applicant is a risk for licensure and votes to deny the application, it may be harder to *revoke a temporary authority* than deny an application. AAG opinion would be needed.

The Board's options remain the same: They may vote to deny the application, knowing sufficient evidence exists to substantiate the violation, or the Board may vote to accept the application with or without initiating other disciplinary action.

Historical Information:
In approximately 5 *listed* cases involving unapproved changes of ownership, the Board took disciplinary action in three of them:

Case #97-1008A through F –
Civil Penalty imposed on Loewen for purchasing several facilities without prior Board approval ($5000.00)

Case #99-1063 –
Change from sole proprietor to corporation. Consent Order, probation for 3 years.

Case #05-1008A through G –
Change of ownership of several facilities between HG Services (Walt Hogan) and SCI. Consent Order for Reprimand issued to both.

LEGAL AUTHORITIES:

OAR 830-040-0040 Change of Ownership
Prior to a change of ownership, the prospective new owner shall apply to the Board for the issuance of a new license on forms provided by the Board in the new owner's name. (Refer to section (3) of this rule). In no event shall a funeral establishment, immediate disposition company, crematory or cemetery be operated without the appropriate license or certificate of authority to operate. The appropriate fees and disclosures shall accompany the application.
(1) Board approval: It is the intent of this rule that all licensed facilities receive Board approval prior to the sale or change of ownership of a licensed facility and provide the Board with a full disclosure of ownership of that licensed facility including percentages of ownership.
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(3) Licenses issued under ORS 692.146 and 692.275 are not transferable; therefore, prior to change of ownership, sales, or purchase agreements pertaining to such shall be conditioned upon the prospective new purchaser's ability to apply for and obtain the necessary license or certificate of authority to operate. All licensed or certificated facilities are subject to the inspection and approval of the Board. Before opening a new facility or continuing the operation of an existing facility under new ownership, the prospective operator or new owner shall apply to the Board on a form provided by the Board with all ownership and, if applicable, corporate information. Prior to a transfer of ownership, the prospective new purchaser and seller shall notify the Secretary of State's office, Division of Audits, giving notice of sale to that office, and give the approximate or intended date of the change of ownership.
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ORS 692.025 License required for funeral service practitioner, embalmer, funeral establishment operator, cemetery or crematory operator.

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(3) A person may not operate a funeral establishment unless the establishment meets the requirements under this subsection. A place is a funeral establishment if the place is used for the care and preparation of dead human bodies before the bodies undergo cremation, entombment or burial, or before the bodies are transported out of the State of Oregon. A funeral establishment must:

ORS 692.146 Application for funeral establishment or immediate disposition company license.

(1) The State Mortuary and Cemetery Board shall issue a license to a funeral establishment or immediate disposition company if the person who will operate the establishment or immediate disposition company applies to the board for a license on a form provided by the board. The application shall be accompanied by the application fee established under ORS 692.160.

(2) The application shall disclose the following:

(a) The name and address of the establishment or company.

(b) That the establishment is operated by a licensed funeral service practitioner.

(c) That the immediate disposition company is operated by a licensed funeral service practitioner.

(3) For purposes of this section and ORS 692.025, each branch of a licensee's funeral establishment or immediate disposition company is a separate establishment and must be licensed at a fixed place of business. [1957 c.596 §5; 1971 c.115 §8; 1983 c.810 §11; 1989 c.177 §6; 1997 c.638 §7]

ORS 692.148 When new or reissued license, registration or certificate required; fee.

(1) If the principals of a licensed funeral establishment or immediate disposition company change, the establishment or company shall apply to the State Mortuary and Cemetery Board for a new license.