

Review document for proposed rule-making to be considered at the
May 25, 2010 Board Meeting

Key: Primary Origin of Recommendations

Highlighted: CIAC recommendations

Highlighted and italic: OMCB Staff suggestions

Chapter 830 Mortuary and Cemetery Board
Oregon Administrative Rules Compilation

DIVISION 11
GENERAL INFORMATION

830-011-0000 Definitions

- (1) "At Need". As used in this chapter, means arrangements entered into after a death has occurred, "at the time of need".
 - (2) "Authorizing Agent(s)". The authorizing agent(s) is (are) the person(s) legally entitled to order the disposition of human remains and cremated remains.
 - (3) *"Burial [Vault] Container". A burial [vault] container is a receptacle, such as a vault or liner, designed to protect the casket from the intrusion of outside elements, the weight of the surrounding earth, and the weight of maintenance equipment.*
 - (4) "Certificate of Authority". A Certificate of Authority is a certificate issued to an individual or corporation who is responsible for the operation of either a cemetery or crematory. If the crematory or cemetery is a corporation, the Certificate of Authority shall be issued to the corporation.
 - (5) "Cremated Remains". Cremated remains are the remaining ash and bone fragments after the act of cremation is completed.
 - (6) "Cremated Remains Container". As used in this chapter, a cremated remains container means any container in which processed cremated remains can be placed and closed [so as] to prevent leakage. At a minimum, this would be a plastic-lined cardboard container.
 - (7) "Cremation". Cremation is the technical heating process that reduces human remains to ash and bone fragments.
 - (8) "Cremation Chamber". A cremation chamber is the enclosed space in which the cremation process takes place.
 - (9) "Cremation Container". A cremation container is the container in which the human remains are placed in the cremation chamber for a cremation. The container shall meet all the requirements of the crematorium.
 - (10) "Crematory Authority". The crematory authority is the legal entity or the authorized representative of the legal entity who conducts the cremation.
 - (11) "Crematory or Crematorium". A crematory or crematorium is any person, partnership, or corporation with a Certificate of Authority to operate a cremation chamber.
- (DEATH CARE CONSULTANT added here in Temp Rules)**
- (12) "Death Care Industry". As used in this chapter death care industry means the funeral service, cemetery, immediate disposition, and cremation industries.

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- (13) "Disinfectant Solution". A disinfectant solution is a chemical agent capable of destroying pathogens or their product when applied with sufficient time and concentration.
- (14) "Disposition". Disposition is burial, entombment, burial at sea or cremation.
- (15) "Embalmed". Human remains shall be considered embalmed when sufficient disinfectant solution or preservative fluid has been injected into the circulatory system and/or applied externally to render it not a hazard to public health.
- (16) "Endowment Care Funds". Endowment care funds are principal amounts deposited from which the revenue on the principal is used for the care and maintenance of a cemetery.
- (17) "Final Processing". Final Processing is the processing of cremated bone fragments to an unidentifiable dimension.
- (18) "Grave Liner". A grave liner is a burial receptacle either in sectional or box form, built and designed to be installed in a grave to assist in preventing the ground from collapsing.
- (19) "Holder of a Certificate of Registration". As used in this chapter a "Holder of a Certificate of Registration" means the same as "Certified Provider" as defined in ORS 97.923(2).
- (20) (21)** "Holding Room". A holding room is a suitable room constructed in accordance with OAR 830-040-0020(2)(a)(b)(c)(d)(e) [, (3), (4), (5), and (6)] which licensed funeral establishments use for the care, storage, or holding of human remains prior to effecting disposition. This room shall be of sufficient size to accommodate at least one table for a casketed remains and attendant that may be used by the funeral establishment to care for or repair remains in those facilities which do not offer on premises embalmings. This room would be other than a chapel, viewing or visitation room, office supply room, closet or other room normally open to the public.

Note/Justification: *The above referenced numbers have all been included in revised (2) of the rule so the other numbers are superfluous.*

Fiscal impact to OMCB: *None*

Impact to small business: *None*

(21) – (43) No changes in these definitions, other than numbering

Stat. Auth.: ORS 128.414 & 692.320

Stats. Implemented: ORS 692.320 & 128.414

Hist.: MCB 1-1986, f. & ef. 10-21-86; MCB 1-1988, f. & cert. ef. 2-10-88; MCB

1-1989, f. & cert. ef. 2-6-89; Renumbered from 830-030-0010(1)(a) - (k) & 830-

030-0020; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 1-1994, f. 6-28-94, cert. ef. 8-1-

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

2001(Temp), f. 12-12-01, cert. ef. 1-1-02 thru 6-29-02; MCB 1-2002, f. 5-30-02, cert. ef.

6-30-02; MCB 1-2009, f. & cert. ef. 7-1-09

830-011-0010

Employees, Meetings, Officers of the Board

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(1) The Board shall employ an executive director, [office manager, licensing specialist,] investigator(s), and inspector(s), and other personnel 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.

Note/Justification: The current rule would not allow for two inspectors or the existing position of Compliance Manager .

Fiscal impact to OMCB: None

Impact to small business: None (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.

(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 absence, the vice-president, shall preside at all meetings, appoint all committees, and perform all functions incidental to the president of the Board.

(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.

(5) 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.

(6) The Board shall evaluate the performance of the executive director annually. Evaluation criteria will include, but not be limited to, the completion rate of required inspections and timeliness of investigations.

Note/Justification: Evaluations are currently being done but are not required by rule and have no criteria to address efficiency of staff work.

Fiscal impact to OMCB: None

Impact to small business: None

Stat. Auth.: ORS 183.341, 692.300, 692.310 & 692.320

Stats. Implemented: ORS 183.341, 692.300, 692.310 & 692.320

Hist.: FDB 13, f. 9-9-74, ef. 3-1-75; FDB 16, f. & ef. 6-30-77; SMB 1-1984, f. & ef. 10-22-84; MCB 1-1986, f. & ef. 10-21-86; Renumbered from 830-010-0005; MCB 2-1988, f. & cert. ef. 9-9-88; MCB 1-1989, f. & cert. ef. 2-6-89; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97

830-011-0020

Apprenticeship — Generally

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(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 funeral service practitioner / embalmer** 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.

Note/Justification: *The rule should be clarified to allow for an apprentice to embalm in more than one facility under one the supervision of one licensed embalmer.*

OMCB – *Interns learn both embalming and funeral service duties, so the supervisor should hold both licenses?*

Fiscal impact to OMCB: *None*

Impact to small business: *None*

(2) Apprentice embalmers must assist in the preparation of at least 45 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 per year] **1150 hours per year.**

(4) Apprentice funeral service practitioners must work a minimum of **1150 hours per year** [30 hours per week] during normal business hours, [excluding 30 days of vacation leave 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 legible log book shall be kept, [on the premises], by the apprentice 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]:**

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- (a) Name of deceased;
- (b) Date and place of death;
- (c) Date arrangements were made;
- (d) Apprentice participation with family; and
- (e) *Number of days and hours worked [per] each week.*
- (g) Name of the licensed facility responsible for the final disposition arrangements**
- (f) Supervisor's legible written confirmation for their apprentice's arrangements and hours worked**

(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]* **144 hours toward the 1150 hours per year** 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] apprentice* 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]* **144 hours toward the 1150 hours per year** requirement for a funeral service practitioner license.

Note/Justification: *Allows flexibility for students. Current language may also be up to interpretation as to how vacation is defined, if sick time is exempt and ultimately what this means in terms of actual hours that need to be worked over a year. For example, can I be scheduled to work 3 days a week which would end up being 156 days or 1248 hours and then take 30 of those working days (240 hours or 10 weeks) off? This would lead to under 1000 hours for the year.*

(OMCB) Adding place arrangements were made, and name of facility for whom the apprentice is making arrangements is necessary, especially if they are not 'tied' to a facility....and also because apprentices may change supervisors (to another FE location).... The log book should follow the apprentice to each facility they work at throughout their apprenticeship period. Documenting the name of the facility and supervisor confirmation makes it possible to confirm requirements to issue full license. Adding "by the apprentice" ensures licensee's know whose responsibility it is to do and keep it. (We've had complaints from apprentices whose supervisors or facility managers don't want to give them their apprenticeship log when they leave.)

Fiscal impact to OMCB: None

Impact to small business: None

(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

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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] person 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] under [the] a supervisor['s facility], the apprenticeship certificate shall become null and void. It is the responsibility of the supervisor to **immediately notify the Board's office, in writing**, of any termination in apprenticeship.

Note/Justification: The rule should be clarified to allow for an apprentice to embalm in more than one facility under one licensed embalmer. Apprentice should be tied to the licensee, not to the facility.

Fiscal impact to OMCB: None

Impact to small business: None

- (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] recognized funeral service practitioner or embalmer in good standing.**
- (a) For three years of the past five years; or
- (b) For a total of ten years.

Note/Justification: Reflects new legislation.

Fiscal impact to OMCB: None

Impact to small business: Change will make it easier for Oregon funeral homes to recruit new licensees.

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(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.

Note/Justification: Clarifies that this is in lieu of an apprenticeship, not in addition to, and that it is reciprocity for licensure in another state (not county) and this is based on legislation language. A practical exam does not seem to be necessary for experienced embalmers. OMCB still has the option to require a practical exam, if deemed necessary.

Fiscal impact to OMCB: None

Impact to small business: Cost and time savings from not being required to take the exam.

(13) Funeral Service Practitioner applicants who meet the requirements set forth in section (11) of this rule shall be required to successfully complete a written examination and receive a score of not less than 75 percent, based on the total number of questions.

Stat. Auth.: ORS 692.160 & 692.320

Stats. Implemented: ORS 692.045, 692.070, 692.105, 692.130 & 692.190

Hist.: FDB 13, f. 9-9-74, ef. 3-1-75; SMB 1-1984, f. & ef. 10-22-84; MCB 1-1986, f. & ef. 10-21-86; Renumbered from 830-010-0050; MCB 2-1988, f. & cert. ef. 9-9-88; MCB 1-1989, f. & cert. ef. 2-6-89; MCB 1-1992, f. & cert. ef. 2-11-92; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 1-1994, f. 6-28-94, cert. ef. 8-1-94; MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97; MCB 1-1998, f. & cert. ef. 6-22-98; MCB 1-2009, f. & cert. ef. 7-1-09

REMOVE ENTIRE NEXT SECTION, UNNECESSARY

[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

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request an official leave of absence in order to insure receiving credit for time previously served.

Stat. Auth.: ORS 692.320

Stats. Implemented: ORS 692.190

Hist.: FDB 13, f. 9-9-74, ef. 3-1-75; SMB 1-1984, f. & ef. 10-22-84; Renumbered from 830-010-0055

Note/Justification: *These sections can be stricken due to new legislative language that states time in terms of 48 aggregate months.*

OMCB – *For the same justification, the entire section can be removed, not just (3)*

Fiscal impact to OMCB: *None*

Impact to small business: *None*

830-011-0040

Completion of Funeral Service Practitioner and Embalmer Apprenticeship and Examination

- (1) A funeral service practitioner apprenticeship shall be completed within 48 aggregate months. The individual must successfully complete practical experience as a funeral service practitioner's apprentice under ORS 692.190.
- (2) An embalmer apprenticeship shall be completed within 48 aggregate months, excluding time lost as provided in ORS 692.190(7). [*Extensions of the 48 aggregate month period for completion of an embalmer apprenticeship may be granted by the Mortuary and Cemetery Board due to extenuating circumstances beyond the control of the apprentice*]. The embalmer apprentice shall submit written evidence of graduation from an accredited program of funeral service education. An embalmer apprentice may either take the Oregon embalmer examination or he may submit to the Board proof of passing the National Board Examination written by the Conference of Funeral Service Examining Boards of the United States, Inc. in lieu of the Oregon embalmer examination. In either case an average score of at least 75 percent as described in OAR 830-020-0000(2)(b) will be required for passing.

Stat. Auth.: ORS 183.341, 183.545, 692.160 & 692.320

Stats. Implemented: ORS 692.105, 692.045 & 692.190

Hist.: FDB 1-1978, f. & ef. 6-30-78; SMB 1-1984, f. & ef. 10-22-84; MCB 1-1986, f. & ef. 10-21-86; Renumbered from 830-010-0060; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 1-1998, f. & cert. ef. 6-22-98; MCB 1-2009, f. & cert. ef. 7-1-09

OMCB - Note/Justification: *This section should be stricken because the apprentice may not serve any longer than 48 months total, per statute. The "extension" rule was only applicable for "consecutive 4 years" statute – is not congruent with new legislative language.*

Fiscal impact to OMCB: *None*

Impact to small business: *None*

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830-011-0050

Background Investigation Required Prior to Oregon Licensure

(1) All applicants for certificate of apprenticeship, reciprocal licensure, preneed salesperson[s] registration, [endowment care cemetery salespersons registration,] funeral establishment license or certificate of authority to operate a cemetery or crematory and principals of licensed facilities must submit to a background investigation. The background investigation may include, but not be limited to, information solicited from the Law Enforcement Data Systems, Corporation[s] [Commissions] **Divisions**, 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 & Business Services** 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 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.

Stat. Auth.: ORS 692.320

Stats. Implemented: ORS 692.025

Hist.: MCB 1-1986, f. & ef. 10-21-86; MCB 1-1988, f. & cert. ef. 2-10-88; MCB 1-1994, f. 6-28-94, cert. ef. 8-1-94; MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97

830-011-0080

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 **registered** 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.

Note/Justification: Reflects OMCB registration policy. Change clarifies requirement.

Fiscal impact to OMCB: None

Impact to small business: None

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Stat. Auth.: ORS 128.414 & 692.320

Stats. Implemented: ORS 128.414

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

**DIVISION 20
EXAMINATION AND LICENSURE**

830-020-0000

Applications and Examinations for Funeral Service Practitioner and Embalmer Licenses

- (1) *All applications for funeral service practitioner and embalmer licenses by examination, accompanied by the examination fee prescribed by ORS Chapter 692, must be received in the office of the Board at least [30] 14 days before the examination is held, or be postmarked before midnight of that date.*
- (2) The examinations for a funeral service practitioner and embalmer shall be given at least twice each year:
 - (a) Applicants for a funeral service practitioner license shall be required to successfully complete a written examination and receive a score of not less than 75 percent, based on the total number of questions;
 - (b) Applicants for an embalmer's license shall be required to successfully complete a written examination that will include two sections, funeral service arts and funeral service sciences, and must receive an average score of at least 75 percent on the sections with not less than 70 percent on either of these two sections; and
 - (c) If the Board deems it necessary, the applicant for an embalmer's license may also be required to pass an examination testing his qualifications as to the practical application of his knowledge.
- (3) Upon successful completion of the funeral service practitioner's examination, an appropriate license for the current year will be issued to the examinee after fulfilling the apprenticeship and upon payment of the annual license fee prescribed by ORS Chapter 692. An applicant for an embalmer's license may be examined by the Board after first providing evidence of graduation from a funeral service program accredited by the American Board of Funeral Service Education, but shall not receive an embalmer's license until he has fulfilled his apprenticeship and paid the required fee as prescribed in ORS Chapter 692.
- (4) If an applicant for a funeral service practitioner's or embalmer's license fails to satisfactorily complete the examination, he may retake the examination the next time it is given upon payment of the full examination fee. Such fee must be received in the office of the Board at least 30 days before the examination is given.
- (5) The examination fee shall not be returned to an examinee once he takes the examination.
- (6) *Test results will be mailed to examinees within [30] 14 days after completion of the examination. Exams are not reviewable by examinee, pursuant to the Public Records Act, ORS Chapter 192.*

Stat. Auth.: ORS 183.341, 183.545, 692.160 & 692.320

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Stats. Implemented: ORS 692.045, 692.070, 692.105, 692.130, 692.140 & 692.320 Hist.: FDB 13, f. 9-9-74, ef. 3-1-75; SMB 1-1984, f. & ef. 10-22-84; MCB 1-1986, f. & ef. 10-21-86; Renumbered from 830-010-0100; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 1-1998, f. & cert. ef. 6-22-98

OMCB - Note/Justification: 30 days is a hardship on some persons applying. OMCB has been asked to waive operation of this rule. Changing it has no adverse effects and is better for stakeholders.

Fiscal impact to OMCB: None

Impact to small business: None

830-020-0020

Funeral Service Practitioner and Embalmer Licenses: Military Leave

- (1) Funeral service practitioners and embalmers shall be licensed only after compliance with ORS Chapter 692, and rules adopted thereunder. Licenses for funeral service practitioner and embalmer will not be issued or renewed unless assessed civil penalties have been paid.
- (2) A license issued pursuant to ORS Chapter 692 shall not be transferable.
- (3) **The Board shall publish biennially, or post on the Board's official website [for distribution to licensees and other persons whom the Board may from time to time designate,] a list of the officially licensed funeral establishments, funeral service practitioners, and embalmers.**
- (4) A person licensed under ORS Chapter 692 shall not be required to renew his/her individual funeral service practitioner or embalmer license while in active military service unless the person is required by that branch of the military service to maintain an active license from the state in which he/she is licensed in order to perform those services for that branch of the service. Such person shall notify the Board in writing of the date he/she will begin active military duty. The Board will not require this person to pay renewal licensing fees until completion of military duty. After release from active duty under honorable conditions, this person shall notify the Board in writing within 60 days of such discharge and shall be restored to former status. No fees will be requested until the following renewal period.

Stat. Auth.: ORS 692.320

Stats. Implemented: ORS 692.190

Hist.: FDB 13, f. 9-9-74, ef. 3-1-75; SMB 1-1984, f. & ef. 10-22-84; MCB 1-1986, f. & ef. 10-21-86; Renumbered from 830-010-0105; MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97; MCB 1-1998, f. & cert. ef. 6-22-98

OMCB - Note/Justification: Updating technology... Printing costs were too great. We hadn't printed it since 2005.

Fiscal impact to OMCB: None

Impact to small business: None

830-020-0040

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License, Certificate and Registration Fees

(1) Initial application fees:

- (a) Funeral establishment, immediate disposition company, crematory or cemetery that performs more than five interments per year
—\$150 (includes first principal) plus \$50 for each additional principal;
- (b) Cemetery that performs five or fewer interments annually
—\$100 (includes first principal) plus \$50 for [each additional principal] all other principals regardless of the total number of principals;**
- (c) Change of principal— \$50 per licensed facility;
- (d) Apprentice funeral service practitioner or apprentice embalmer — \$50;
- (e) Reciprocal funeral service practitioner or reciprocal embalmer — \$160;
- (f) Intern Apprentice— \$25;
- (g) Preneed Salesperson — \$150;
- (h) Certificate of Removal Registration— \$30.

(2) Renewal application fees:

- (a) Funeral establishment or immediate disposition company—
\$350 per year, payable biennially;
- (b) Crematory — \$100 per year plus \$2 per cremation performed during the two calendar years preceding the year in which the current license expires, payable biennially;
- (c) Cemetery—\$4 per interment performed during the two calendar years preceding the year in which the current license expires up to a maximum of 150 interments or \$600 per year, payable biennially;
(Cemeteries with ten or fewer interments biennially are not required to pay a renewal fee in accordance with ORS 692.275.)
- (d) Funeral service practitioner—\$80 per year, payable biennially;
- (e) Embalmer — \$80 per year, payable biennially;
- (f) Combination funeral service practitioner/embalmer—\$160 per year, payable biennially;
- (g) Apprentice funeral service practitioner — \$25 per year, payable annually;
- (h) Apprentice embalmer— \$25 per year, payable annually;
- (i) Preneed salesperson — \$25 per year, payable biennially.

(3) Exam fees:

- (a) Funeral service practitioner exam— \$100;
- (b) Embalmer exam (written or practical) — \$130 to \$400 (depending on the cost to the Board).

(4) License, certificate and registration reissue fees:

- (a) Transfer of apprenticeship, replacement license, name change or manager change—
\$25;
- (b) Licensed facility location change— \$250.

(5) Reinstatement of lapsed license, certificate or registration—
\$50 each.

(6) Funeral service practitioners, embalmers and preneed salespersons shall renew their licenses on even numbered years. Funeral establishments, immediate disposition companies, cemeteries, and crematoriums shall renew on odd numbered years.

(7) Fees paid under this section are not refundable or transferable.

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Stat. Auth.: ORS 692.160, 692.320 & 97.931

Stats. Implemented: ORS 692.160 & 97.931

Hist.: SMB 1-1984, f. & ef. 10-22-84; MCB 1-1985(Temp), f. & ef. 7-3-85; MCB 2-1985(Temp), f. & ef. 11-5-85; MCB 1-1986, f. & ef. 10-21-86; Renumbered from 830-010-0110; MCB 2-1989(Temp), f. 10-2-89, cert. ef. 11-1-89; MCB 3-1989, f. 12-4-89, cert. ef. 12-1-89; MCB 1-1992, f. & cert. ef. 2-11-92; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 3-1993, f. 10-28-93, cert. ef. 11-1-93; MCB 1-1994, f. 6-28-94, cert. ef. 8-1-94; MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97; MCB 1-1998, f. & cert. ef. 6-22-98; MCB 1-2001(Temp), f. 12-12-01, cert. ef. 1-1-02 thru 6-29-02; MCB 1-2002, f. 5-30-02, cert. ef. 6-30-02; MCB 1-2004, f. 9-30-04, cert. ef. 11-1-04

OMCB – Needed to amend to correspond to new legislation for exempt cemeteries.

Fiscal impact to OMCB: None

Impact to small business: Per statute, exempt CE's don't have to pay for multiple, constantly changing officers.

**DIVISION 30
DUTIES OF FUNERAL SERVICE PRACTITIONER
CREMATORY AUTHORITY — CEMETERY AUTHORITY**

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

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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) 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) It shall be the responsibility of the funeral establishment 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) It shall be the responsibility of *[the funeral establishment licensee, immediate disposition company, Cemetery Authority, and Crematory Authority]* **each licensed facility 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 **shall consider and** may authorize a funeral service practitioner's **reasonable request** to manage *[more than one]* **up to three** funeral establishments or immediate disposition *[company]* **companies.** *[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.]* **In determining the reasonableness of each request for a single funeral service practitioner to manage more than one funeral establishment or immediate disposition company, the Board may consider, in its sole discretion, the following: The disciplinary histories of each facility, the named manager, and each facilities'; whether the manager is supervising apprentice(s); the average number of final dispositions conducted by each facility in recent years; the physical location of each facility; the facilities' previous inspection reports; and whether the request is in the publics' best interest. After consideration of the request, the Board shall provide the funeral service practitioner with a written response. Any approval may be reconsidered at any time, and, after considering any of the foregoing reasons, the Board may, in its sole discretion, determine the approval is no longer in the best interests of the facilities or the public, and revoke the previous approval.**

Note/Justification: While CIAC believes that deciding how many facilities a manager can manage is a business decision, the committee ultimately decided that two is a reasonable number without special Board approval. There is built in protection to some degree. If a person manages too many facilities and can't control the operation, the facility is subject to losing its license if they fail to meet Board requirements.

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OMCB – *Allowing two without any approval required would mean one manager could manage two busy FE's that are 200 miles apart...and have multiple apprentices working at both...etc.*

With the above guidelines, three facilities wouldn't be out of the question if reasonableness by the requestors were exercised. To reduce staff time in preparing Reports, Staff could produce a form with the above questions to be answered by the requestor and considered by the Board . If the requestor did not agree with the Board's initial response, they could request a formal Notice be issued by the Board to begin the Contested Case hearing process. If the Board finds this rule has turned into an expensive accommodation, the Board could change the rule back to allowing only one facility/manager combination, two with Board approval.

Fiscal impact to OMCB: Less time in preparing denial recommendations. *(By the way, staff did not prepare "denial recommendations." EVERY written request resulted in Staff providing the Board with the requestors letter, and a summary that included the owners name, facility names, numbers of final dispositions in the past three years, locations, name of intended manager, distance between other facilities, any disciplinary actions, mitigating and aggravating factors , and a list of previous approvals and denials. By having the Requestor answer pre-prepared questions on a Board form, Staff time would be minimal.)*

Impact to small business: Allows tandem funeral home to limit overhead with potential for funeral establishment to stay open.

Stat. Auth.: ORS 183.341, 183.545, 692.160 & 692.320 Stats. Implemented: ORS 432.165, 432.307, 692.180 & 692.405 Hist.: FDB 13, f. 9-9-74, ef. 3-1-75; SMB 1-1984, f. & ef. 10-22-84; MCB 1-1986, f. & ef. 10-21-86; Renumbered from 830-010-0150; MCB 1-1989, f. & cert. ef. 2-6-89; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97; MCB 1-1998, f. & cert. ef. 6-22-98; MCB 1-2009, f. & cert. ef. 7-1-09

830-030-0004

Scope of Practice

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

(1) Only a funeral service practitioner or funeral service practitioner apprentice shall:

(a) Work directly with at need persons to arrange for the disposition of human remains; and

(b) Coordinate and direct the various tasks associated with performing funeral services for at need persons including but not limited to: taking all vital information on the deceased for the purpose of filing the death certificate; arranging for transportation of the remains; coordinating the services for final disposition; supervising or otherwise controlling the care, preparation, processing and handling of human remains.

(2) Only a registered preneed salesperson [or other funeral service licensee], funeral service practitioner, embalmer, funeral service practitioner apprentice or embalmer apprentice shall engage in prearrangement or preconstruction sales or marketing.

OMCB- Note/Justification: per statute 97.931. Also, "marketing" agrees with OAR 830-011-0070(4).

(3) A preneed funeral service salesperson shall not engage in at need funeral arrangements or sales.

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(4) Only a licensed embalmer or certificated embalmer apprentice shall:

(a) Provide the necessary handling and preparation of human remains, e.g. washing, disinfecting, setting features, embalming, **repair**, [*and supervising dressing*]; and

(b) [*Perform*] **Supervise the dressing of remains** and 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.

Note/Justification: *Part (a) of the rule is now incorporated in (4). Part (b) moved to 830-030-0090(j) and changes language in that section*

OMCB - (Staff re-wrote but kept same intent as CIAC)

Fiscal impact to OMCB: see 830-030-0090(j).

Impact to small business: : see 830-030-0090(j)

Stat. Auth.: ORS 183.341 & 692.320

Stats. Implemented: ORS 692.025

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

830-030-0030

Removal and Identification of Human Remains

(1) *In accordance with the identifying requirements established in ORS 692.405, the crematory authority shall, [immediately upon] prior to taking custody of human remains, verify that the human remains bear a means of identification attached thereto as described in OAR 830-030-0000(3), (4)(a) and (b). A crematory authority shall not cremate human remains without an identifying metal disc unless death occurred in a state other than Oregon.*

(2) Documents identifying the human remains placed in the custody of a crematory authority prior to cremation shall contain the following information:

(a) Name of deceased;

(b) Date of death;

(c) Place of death;

(d) Name and relationship of authorizing agent; and

(e) Name of authorizing agent or firm engaging crematory services. (3) If the crematory authority takes custody subsequent to the human remains being placed within a cremation container, the crematory authority shall satisfy itself that identification has been made as described in section (2) of this rule, and thereafter shall place a similar appropriate identification upon the exterior of the cremation container.

Stat. Auth.: ORS 692.320

Stats. Implemented: ORS 692.405

Hist.: MCB 1-1986, f. & ef. 10-21-86

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OMCB – Note/Justification: Clarification of statute's intent, and coordinating with existing rules – strengthens process whereby an FE cannot drop off a body without the cemetery or crematory ensuring proper tag and documentation. 830-030-0030(1); (5)

Fiscal impact to OMCB: None

Impact to small business: None

830-030-0040

Holding Human Remains for Cremation and Cremation of Human Remains

(1) No Crematory Authority shall cremate a human remains without obtaining written permission of the person who has right to control the disposition of the remains.

(2) When the crematory authority is unable to cremate the human remains immediately upon taking custody thereof, the crematory authority shall place the remains in a room which shall be marked as "Private" or "Authorized Entry Only."

(3) Human remains that are not embalmed shall be held only within a refrigerated facility or in compliance with applicable public health regulations.

(4) The unauthorized simultaneous cremation of more than one human remains within the same cremation chamber is specifically forbidden. It may be done only when authorized as provided in section (6) of this rule.

(5) Immediately prior to being placed within the cremation chamber, the identification of the human remains shall be verified by the crematory authority staff; and the identifying metal disc from the top head end of the cremation container shall be removed and placed on the inside of the cremation chamber where it shall remain until the cremation process is complete. The identifying metal disc may be hung on the outside of the retort if the cremation chamber has a hook for such purpose.

(6) A crematory authority may only simultaneously cremate more than one human remains within the same cremation chamber upon having received such written authorization to do so from the authorizing agent of each human remains to be cremated. A written authorization shall exempt the crematory authority from all liability for [comingling] **comingling of the products of the cremation process.**

Stat. Auth.: ORS 692.320

Stats. Implemented: ORS 692.025, 692.275 & 692.405

Hist.: MCB 1-1986, f. & ef. 10-21-86; MCB 1-1988, f. & cert. ef. 2-10-88; MCB 1-1989, f. & cert. ef. 2-6-89 ; MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97; MCB 1-1998, f. & cert. ef. 6-22-98

830-030-0050

Processing of Cremated Remains

In order to protect the public's interests and to prevent any misrepresentation in the conduct of doing business, the crematory authority shall process cremated remains in the following manner:

(1) Upon completion of the cremation, insofar as is possible, all residual of the cremation process shall be removed from the cremation chamber and the chamber swept clean. The

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residual shall be placed within a container or tray that will ensure against [co-mingling] commingling with other cremated remains, and the identification removed from the cremation chamber and attached to the container or tray to await final processing;

(2) All residual of the cremation process shall undergo final processing;

(3) The entire processed cremated remains shall be placed in a cremated remains container. The identifying metal disc shall be placed on the cremated remains container. The cremated remains container contents shall not contain any other object unrelated to the cremation process unless specific authorization has been received from the authorizing agent;

(4) If the entire processed remains will not fit within the dimensions of the cremated remains container, the remainder shall be returned either in a separate container, or upon written permission of the authorizing agent, be disposed of according to the established procedures of the crematory authority; and,

(5) The following information will be affixed to the temporary receptacle, or attached to the permanent receptacle for cremated remains: deceased name, date of death, identifying metal disc number, name of funeral home, and name of crematory.

Stat. Auth.: ORS 183.341, 183.545 & 692.320

Stats. Implemented: ORS 692.025 & 692.275

Hist.: MCB 1-1986, f. & ef. 10-21-86; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97; MCB 1-2009, f. & cert. ef. 7-1-09

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)

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

(2) Communicable diseases which apply to this section are as follows:

- (a) Acquired immunodeficiency syndrome;
- (b) Diphtheria;
- (c) Hemorrhagic fevers (e.g., Ebola);
- (d) Hepatitis B;
- (e) Hepatitis C;
- (f) Hepatitis, delta;
- (g) Human immunodeficiency virus;
- (h) Plague;
- (i) Rabies;
- (j) Tularemia; and
- (k) Tuberculosis.

(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

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sealed [*metal casket*] **impervious container** enclosed in a strong transportation case or in a sound [*casket*] **container designed for that purpose** enclosed in a sealed [*metal or metal lined*] **impervious transportation case.**

Note/Justification: Clearer language allowing plastic to be used; still protective of remains..

Fiscal impact to OMCB: None

Impact to small business: None

Stat. Auth.: ORS 183.341, 183.545, 692.160 & 692.320

Stats. Implemented: ORS 692.025

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

830-030-0090

Standards of Practice

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

(1) Required conduct related to safety and integrity:

(a) Compliance with Oregon Revised Statutes relating to death care;

(b) Compliance with Oregon Public Health Laws;

(c) Compliance with FTC Funeral Rule;

(d) Implementation and/or follow through of agreed upon arrangements as designated by the responsible party;

(e) Assign persons to perform functions for which they are licensed and which are within their scope of practice/scope of duties;

(f) Maintain supervision of apprentices and unlicensed persons to whom tasks are assigned;

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

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

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

(2) Conduct unacceptable under the Board's "Standards of Practice."

(a) Conduct generally:

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

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

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

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

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

(b) Conduct related to communication and record keeping:

(A) Inaccurate record keeping in client record as required in OAR 830-040-0000;

(B) 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) 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) Destroying any document pertaining to a death care service as it pertains to statutory requirements; and

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

(c) Conduct related to licensure violations:

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

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

(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;

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

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

(B) Failing to cooperate or answer truthfully and completely inquiries regarding matters within the Board's jurisdiction.

Stat. Auth.: ORS 183.341, 183.545, 692.160 & 692.320

Stats. Implemented: ORS 692.320

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

**DIVISION 40
FUNERAL ESTABLISHMENTS, IMMEDIATE DISPOSITION COMPANIES,
CREMATORIUMS, CEMETERIES AND OPERATORS OF SAME**

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 [or certification or be held out under any name which could be termed misleading].

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

OMCB - Staff amended only a portion, did not strike out "advertised" as recommended by CIAC. The Staff has used discretion when licensees must get an ad in before a deadline...nor have they considered "opening soon" ads to be misleading or operating without a license, as long as they weren't answering the intended phone lines. Typically, if they did have a phone number, as required by Yellow Pages, etc., they agreed to and had a message: "this business is not in operation at this time" or they needed to disconnect the number.

Fiscal impact to OMCB: None

Impact to small business: None

(3) When a person, firm, partnership or corporation applies to the Board for a [funeral establishment license, immediate disposition company license, or certificate of authority to operate a cemetery or crematorium] facility license, either the registered name or the assumed business name shall contain the identification of the activity, business or profession of [funeral, immediate disposition, cemetery or crematory service] the licensed facility as set forth in ORS Chapter 692 and the rules adopted thereto. Only this [identified] identifying 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] licensed facility.

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

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OMCB - Staff re-wrote these sections, keeping CIAC's *intent* that only ONE name can be advertised, but not interfering with other statutes or rules with "registered name" and "assumed business name.")

Fiscal impact to OMCB: None

Impact to small business: May reduce the need for small businesses to register with a DBA at a savings to the small business of \$50 annually. (OMCB – Small, exempt, cemeteries no longer have to pay renewal fee to SOS)

(4) Applications for all licensed facilities shall specify the names of all principals. If the 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 when the death occurred in Oregon, the identifying metal disc number provided by Vital Statistics; (the identifying metal disc number is not required for interment, inurnment or scattering of cremated remains at cemeteries)

Note/Justification: Cremated remains arrive at cemetery without ID tag.

Fiscal impact to OMCB: None

Impact to small business: None

(b) Date of death;

(c) Name of purchaser of professional services and relationship;

(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;

(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

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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 shall:

(a) Fail to preserve 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.

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

(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.

Note/Justification: Clarifies when notification should be made to OMCB. The term random is not necessary but eliminating it does not preclude random inspections.

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Fiscal impact to OMCB: None

Impact to small business: None

Stat. Auth.: ORS 183.341, 183.545, 692.160 & 692.320

Stats. Implemented: ORS 692.025 & 692.160

Hist.: FDB 13, f. 9-9-74, ef. 3-1-75; SMB 1-1984, f. & ef. 10-22-84; MCB 1-1986, f. & ef. 10-21-86; Renumbered from 830-010-0200; MCB 1-1988, f. & cert. ef. 2-10-88; MCB 1-1989, f. & cert. ef. 2-6-89; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97; MCB 1-1998, f. & cert. ef. 6-22-98; MCB 1-2009, f. & cert. ef. 7-1-09

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 main phone number for 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, on the front page, the name and physical location of the facility printed in a minimum 10-point print.

Note/Justification: Provides the consumer with needed information. See changes to 830-040-0050.

OMCB – Added "regulated" so persons understand our function clearly.

Fiscal impact to OMCB: None

Impact to small business: None

Stat. Auth.: ORS 183.341 & 692.320

Stats. Implemented: ORS 692.320

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

830-040-0020

Requirements and Specifications for Preparation Rooms/Holding 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:

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[(2)] (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, **walls and ceilings** must be impervious to microbes, liquids and gases.

[(5)] (d) Preparation and holding rooms must be private and cannot be located *[near]* adjacent to a public *[passageway]* area unless the entry door or doors are self-closing, self locking and *[. 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.

Note/Justification: Presently, there is no definition of "public passageway". Use of public area will help clarify rule.

(OMCB - Staff added Board's current position that the preparation room may be located in a public area as long as there is a self-closing and self-locking and signed door.)

Fiscal impact to OMCB:

Impact to small business:

[(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 437-002-0161,; 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.

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[(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 **and holding 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] 45** minutes driving time from the licensed facility.

Stat. Auth.: ORS 183.341, 183.545, 692.160 & 692.320

Stats. Implemented: ORS 692.025

Hist.: FDB 13, f. 9-9-74, ef. 3-1-75; SMB 1-1984, f. & ef. 10-22-84; MCB 1-1986, f. & ef. 10-21-86; Renumbered from 830-010-0205; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 1-1998, f. & cert. ef. 6-22-98

OMCB – Note/Justification: 45 minutes to refrigeration is probably sufficient. In many cities, highway/street overcrowding slows traffic so it takes longer and some are very borderline right now.

Fiscal impact to OMCB: None

Impact to small business: None

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, **only** one assumed business name, **which must identify the activity, business, or profession, and which [as] must be registered with the [Corporation Commission] Secretary of State Corporation Division,** may be used by such licensed facility and shall be promptly reported to the Board.

Stat. Auth.: ORS 692.320

Stats. Implemented: ORS 692.025

Hist.: FDB 1-1978, f. & ef. 6-30-78; SMB 1-1984, f. & ef. 10-22-84; MCB 1-1986, f. & ef. 10-21-86; Renumbered from 830-010-0210

(OMCB) Only one name should be used in advertising – 830-00-0050 - the one that identifies the type of business. It is required they register assumed business names with Secretary of State in order that the consumer can obtain the current owner information, which is vital to the Board's business.)

830-040-0050

Advertising

(1) Each licensed facility advertising through any media (including but not limited to telephone books, newspapers, direct mail, bill boards, **television, internet websites,** etc.) shall include **[either]** the licensed facility's registered name, or, **if the registered name does not identify the facility's activity, business or profession, the advertising must include its required identifying** assumed business name. **[and] In addition, the advertisement must include,**

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**at a minimum, the city and state [physical address] as it appears on the Board's records.
[All printed materials and letterhead shall include the physical location of the facility.]**

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

OMCB – added other current forms of media, cleaned up the 'assumed' and 'registered' name issue for same intent...

Fiscal impact to OMCB: None

Impact to small business: none

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

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

Stat. Auth.: ORS 183.341, 183.545, 692.160 & 692.320

Stats. Implemented: ORS 692.160

Hist.: FDB 1-1978, f. & ef. 6-30-78; SMB 1-1984, f. & ef. 10-22-84; MCB 1-1986, f. & ef. 10-21-86; Renumbered from 830-010-0220; MCB 1-1989, f. & cert. ef. 2-6-89; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93

830-040-0060

Listing of Employees— Name

(1) 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.

(OMCB - added "licensed" as recommended by CIAC. Already addressed the advertised name issue by amending the rule to require that the "identifying" name must be the only one used in advertising.

(2) 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.

Stat. Auth.: ORS 183.341, 183.545, 692.160 & 692.320

Stats. Implemented: ORS 692.025

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

830-040-0070

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 establishments operating at a single location must so identify this fact in any public communications.]

OMCB - Note/Justification for removing it: Currently, facility licenses, which require posting in a conspicuous area, say "associated with" and then name the co-located FE or IDC. The Board has not been enforcing advertising that doesn't include statements that one FE is co-located with another FE. Either remove this rule, or start enforcing it.

Fiscal impact to OMCB: None

Impact to small business: None

Stat. Auth.: ORS 692.320

Stats. Implemented: ORS 692.025 & 692.180

Hist.: FDB 1-1978, f. & ef. 6-30-78; FDB 1-1979, f. & ef. 2-21-79; SMB 1-1984, f. & ef. 10-22-84; MCB 1-1986, f. & ef. 10-21-86; Renumbered from 830-010-0230 ; MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97

**DIVISION 50
UNPROFESSIONAL CONDUCT**

830-050-0050

Cause for Disciplinary Action

(5/18/10 - Staff removed this section that included some "yellow" and some "green" today. I need more time to merge the two above sections into OAR 830-030-0090 (all of which are "cause for disciplinary action" so there's no need for this section at all when they are merged.)