



Oregon

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MEMO

TO: Interested Parties
FROM: David Koach, Executive Director
DATE: February 7, 2008
SUBJECT: Initial Facility License Application Process
(Including Change of Ownership)

I. Preface:

The following summary and related narrative do not constitute new rules, laws, policies or procedures. This is merely an attempt to describe the typical facility application process, as governed by existing rules and statutes.

Application forms and procedures cover many details. Some correspond to licensing prerequisites. Some are intended to confirm compliance with regulations administered by the Board. Others are included for practical reasons.

At times, the facility application and change of ownership process may seem complex. Fortunately, applications are not processed by a large or impersonal bureaucracy. The Board employs only five people. Facility applicants will have direct contact with staff members who can answer questions and provide assistance throughout the application process.

How long will it take?

Although neither Board members or staff have authority to waive operation of a rule or statute, the facility application process, itself, is not written in stone. So long as they meet licensing prerequisites and do not conflict with regulations, reasonable deviations from the standard process may be negotiated to account for unusual or unforeseen circumstances.

How long will it take?

Board members and staff appreciate that because a license is required to conduct business, time is of the essence in the application process. For that reason, facility applications are given as much priority as possible within the Board's limited resources and competing priorities.

HOW LONG WILL IT TAKE?

The shortest possible amount of time needed to obtain formal approval of an initial facility application runs from the date a completed application is received to the next regularly-scheduled bi-monthly Board meeting. For a variety of reasons, obtaining formal approval usually takes longer, but staff will issue temporary authority to begin operations as soon the applicant meets the requirements for licensure. The amount of time needed to obtain temporary authority

will depend, to a large extent, upon the applicant and other variables, like the number of licensed facilities involved. Assuming that the application forms are complete, that all principals pass the background check, that the facility is ready for inspection and that the inspection reveals no potential cause for license denial, staff could issue temporary authority in as little as a couple of weeks. As a practical matter, the process normally takes longer. Application forms are rarely complete and facilities are rarely ready for inspection when the Board receives an application.

II. Summary:

- A. Applicant obtains license application and principal forms from the Board.
- B. Applicant completes and submits forms with appropriate fee.
- C. Licensing Specialist checks forms and fee.
- D. Incomplete forms must be completed by the applicant.
- E. Investigator conducts background checks and facility inspection.
- F. Investigator issues temporary authorization or submits report to the Board.
- G. Board approves or denies license.

III. Narrative:

It is not uncommon for Board staff to field questions from those who are still in the process of deciding whether or not to open a new facility or purchase an existing one. Even after deciding to do so, some prospective applicants consult Board staff before filing an application. A person who plans to open a new funeral establishment, for example, may want to know whether or not a particular facility meets the requirements for licensure before making a real estate purchase or entering into a long term lease. While staff can provide information about the requirements, it is important to note that neither staff members or individual Board members have authority to approve or deny a license in advance. Approval or denial involves a process that begins with a license application and ends with a formal decision made by the full Board in a public meeting.

A. Obtaining Applications and Forms

Free applications and principal forms may be downloaded and printed from the Board's website: www.oregon.gov/MortCem. Hard copies are also available for free from the Board's office.

B. Completing and Submitting Forms and Fees

Although application forms are designed to gather necessary information, you are encouraged to review the license requirements set forth in statutes (ORS chapter 692) and administrative rules (OAR chapter 830). Copies are included in the Board's Directory. Links to the statutes and rules may also be found on the Board's website "menu" under "Laws and Rules."

If you have questions or problems in completing a form, the Board's Licensing Specialist should be your first point of contact. If the Licensing Specialist cannot help, your

question will be referred to the Compliance Unit. Application forms contain the Board's phone and fax numbers. Phone numbers and e-mail addresses for individual staff members may be found in the Directory and on the website.

License fees are established by administrative rule. OAR 830-020-0040. Except for cemeteries that perform ten or fewer interments per year, the facility application fee is \$150.00 (which includes the fee for the first principal) plus \$50 for each additional principal. The application fee for a cemetery that performs ten or fewer interments per year is \$100 plus \$50 for all principals, no matter how many.

The definition of "principal" may be found in OAR 830-011-00(32). In general, principals are owners, stockholders, partners, managers and others who have control, decision-making authority or operating responsibility for a licensed facility.

C. Form and Fee Review

Upon receipt, the Licensing Specialist reviews the application forms to insure that they are complete and checks the fee paid to insure that it is correct. If the fee is insufficient, the Licensing Specialist will notify the applicant of the additional payment due. Although application fees, themselves, are not refundable or transferable, overpayments will be refunded.

D. Incomplete Forms

Application forms must be completed by the applicant. Staff may not add to or change your application based upon information you provide by phone. Incomplete applications are often returned to the applicant for completion. Whenever possible, the Licensing Specialist will make an effort to inform the applicant of any problems - before returning an incomplete application. Minor additions or changes can be made by submitting a written addendum signed by the applicant. If the Licensing Specialist cannot reach the applicant, the incomplete application will be returned with a cover letter explaining the deficiencies. Such cover letters may also be faxed to the applicant.

E. Background Checks and Facility Inspection

1. Background Checks

All principals are subject to background check. The Board may deny a facility license for conditions relating to a principal. When filling out a background questionnaire, principals should bear in mind that prior unlawful or objectionable conduct is not necessarily disqualifying. Failure to disclose such conduct, on the other hand, presents clear cause for license denial.

Staff has no authority to reject a principal. In the event background investigation reveals information that might be disqualifying, an investigator will submit a written

report to the Board. Only the full Board may propose to deny a license based upon conditions related to a principal.

Most background checks are completed within a few days from receipt of a completed questionnaire. Obviously, cases requiring the preparation of an investigative report take much longer.

Information obtained during the course of a background investigation is subject to the same confidentiality laws as information obtained during a complaint investigation. If the Board decides to deny a license based upon conditions related to a principal, the facility applicant will be informed by means of a formal Notice of Proposed License Denial.

2. Facility Inspection

Facilities proposed for initial licensure or change of ownership are subject to inspection. Unlike most other inspections, initial facility inspections are conducted by appointment. Although on-site inspections are preferred and should be considered the norm, change of ownership inspections may sometimes be conducted by phone and mail. However, when a new facility is proposed for licensure on-site inspection is a must.

The sequence of events related to facility inspection may vary depending upon the circumstances, but the process is more efficient and the outcome more likely to be positive when documents and forms are submitted for review and correction in advance of the on-site inspection. Much of the time it takes to complete the initial application process is within the applicant's control. The sooner documents are found to be in order and the applicant otherwise comes into compliance with regulations, the sooner temporary authorization can be issued and the licensing process completed.

F. Temporary Authority or Report to the Board

1. Temporary Authority

By statute, the Board must issue a license to anyone who applies and meets the licensing requirements. Put another way, the Board may only deny a license for cause. It is staff's responsibility to inform the Board whenever any potential cause for license denial arises. The rationale for staff-issued temporary authority stems from the simple notion that when there is no potential cause for denial, staff can safely assume that the Board will approve a license application. Therefore, when review of a completed application, background checks, facility inspection and other information reveal no potential cause for license denial, staff will issue an inspection receipt that includes temporary authorization to begin conducting business.

2. Confirmation of Closing

As a matter of standard practice, staff will only issue a new license upon confirmation that the transaction through which the applicant is obtaining possession of a new facility has closed. Requiring confirmation of closing is intended to prevent the awkward situation that would arise if a business deal fell through after a new license was issued. Under such circumstances, the prospective purchaser would have a new license, but no facility and the prospective seller would have a facility but no license. Additionally, since the old license would become void when the new license was issued, the prospective seller would have to apply for a new license.

3. Report to the Board

In the event application review, background checks, facility inspection or other information indicate a potential cause for license denial, temporary authority will not be issued. Instead, staff will prepare an investigative report for submission to the Board.

G. Board Approves or Denies License

1. Approval

At the next regular meeting after temporary authority has been issued and closing has been confirmed, the Board formally approves the license application.

2. Potential Denial

Upon consideration of an investigative report, the Board may decide to:

- a. Approve the license;
- b. Negotiate conditions under which the license would be approved; or,
- c. Deny the license.

3. Denial

In the event the Board decides to deny an application, a Notice of Proposed License Denial is issued along with the reasons and information explaining the applicant's right to contest the proposed denial.