



800 NE Oregon Street, Suite 430 Portland, Oregon 97232-2195 | 971.673.1500 F 971.673.1501 | www.oregon.gov/mortcem

The following information was compiled by Oregon Mortuary and Cemetery Board (Board) staff in response to public and industry inquiries concerning the business practice of requiring embalming when a family selects a service with viewing.

PROHIBITED: POLICY OF REQUIRING EMBALMING for VIEWING, VISITATION or SHIPPING

A funeral establishment cannot have a policy requiring embalming for a service with viewing. A funeral establishment cannot turn someone away if this is what they choose. A funeral establishment cannot refuse to provide a service if there is not embalming.

These FTC Funeral Rule, Oregon Revised Statutes and Oregon Administrative Rules apply:

1. The FTC Funeral Rule Business Guide, June 2004 ed., page 25, tells funeral providers that to avoid an unfair or deceptive act or practice you can charge a fee for embalming, only in one of the following three circumstances¹:
 - (1) *State or local law or regulation requires embalming in the particular circumstances regardless of any funeral choice which the family might make; or*
 - (2) *You have obtained prior approval for embalming (expressly so described) from the authorized person² or*
 - (3) *The funeral provider is unable to contact an authorized person after exercising due diligence, has no reason to believe the family does not want embalming performed, and obtains subsequent approval for embalming already performed (expressly so described).*

Since Oregon State law requires prior permission for embalming in all circumstances³, the third provision does not apply in Oregon.

2. The FTC Funeral Rule allows a family to CHOOSE their funeral options/goods/services. The June 2004 business guide, "Complying with the Funeral Rule," page 24, states:

"You cannot require consumers to buy unwanted or unneeded goods and services to get the items that they do want. Consumers must be able to choose only the goods and services that they want, with certain limited exceptions noted below."⁴

¹ 16 CFR Section 453.5

² ORS 97.130(1)(2) defines "Authorized person"

³ OAR 830-030-0010(3)

⁴ Section 453.4

Accordingly, you cannot condition the furnishing of any funeral good or service to a consumer on the purchase of any other funeral good or service except for your basic services fee and any items required by law.⁵ You also cannot refuse to service a family because they do not purchase a particular item (e.g., a casket or embalming) or a combination of items or services from you.

In addition, you cannot include the charge for an optional item of service (such as embalming) in a non-declinable basic services fee. This would have the effect of making the optional item a required purchase for every customer.

The Rule expressly prohibits you from charging any fee, as a condition of furnishing any funeral goods or services, other than the fees for:

- a) The basic services of funeral director and staff,⁶ (the only non-declinable fee allowed by the Rule, unless an good or service is required by law⁷)
- b) The funeral goods and services selected by the consumer; and
- c) The funeral goods and services required to be purchased by law (or by the cemetery or crematory)⁸”

3. It is considered a deceptive act or practice for a funeral provider to represent that embalming (or any other good or service) is required, when it is not the case⁹. This rule states that:

"In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provide to: (i) Represent that state or local law requires that a deceased person be embalmed when such is not the case; (ii) Fail to disclose that embalming is not required by law except in certain special cases, if any."

4. The FTC disclosure on the Statement of Funeral Goods and Services Selected states:
"Charges are only for those items that you selected or that are required. If we are required by law or by a cemetery or crematory to use any items, we will explain the reasons in writing below."¹⁰

5. The FTC disclosure on the General Price List states:

"Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement that does not require you to pay for it, such as direct cremation or immediate burial."¹¹

⁵ Section 453.4(b)(1)(i)

⁶ As described in 16 CFR 453.2(b)(4)(C)(1) & (2)

⁷ Section 453.2(b)(4)(iv)

⁸ Section 453.4(b)(1)(i)

⁹ Section 453.3(a)(1)(i) & (ii)

¹⁰ Section 453.4(b)(2)(i)(B)

¹¹ Section 453.2(1)(2)(i)

Sometimes embalming may be necessary (legally required). The following would be legal reasons to embalm remains:

(1) If a public or private funeral service, or public viewing is held, and the remains will be out of refrigeration longer than six hours, embalming is required.¹²

(2) If the person died of a communicable disease and the family wants a public viewing, embalming is required.¹³

The rules clearly provide that the funeral establishment is not to limit or discourage either an identification viewing or a private viewing by family members; nor is it meant to limit or discourage religious customs.¹⁴

(3) Transportation: If a family contracts the funeral establishment to ship remains to a state or country that requires remains are embalmed when entering or transporting in that state or country, embalming may be required.

However, the rules provide that, in Oregon, if the transportation will keep remains out of refrigeration longer than six hours, EITHER a sealed container or embalming is required.

Embalming may be highly recommended in many cases, but to misrepresent that it is necessary when it is not, or to maintain a policy that requires embalming for viewing and all transportation, is considered misrepresentation or dishonest conduct.¹⁵

6. The FTC Funeral Rule requires that "*Use of Facilities and Staff for Viewing*"¹⁶ and "*Use of Facilities and Staff for Funeral Ceremony*"¹⁷ be listed on the General Price List, if offered. Funeral Ceremony is with the body present and therefore, you cannot turn someone away for requesting a funeral ceremony with or without embalming; and with or without a public or private viewing.
7. The Board's Standards of Practice, requires that funeral service practitioners "Respect the dignity and rights of clients..."¹⁸ It is the right of the client to choose their goods and services per the FTC Funeral Rule. The funeral provider cannot discriminate against the client and fail to provide their request.
8. The Board has authority to initiate disciplinary action for violations of the FTC Funeral Rule.¹⁹

¹² OAR 830-030-0080(1) See also

¹³ OAR 830-030-0080(2)

¹⁴ OAR 830-030-0080(3)

¹⁵ See OAR 830-030-0100(9), OAR 830-050-0050(9), & ORS 692.180(1)(a)(b) & (g) for misrepresentation and fraudulent or dishonest business practices

¹⁶ Section 453.2(4)(C)(ii)(H)

¹⁷ Section 453.2(4)(C)(ii)(I)

¹⁸ OAR 830-030-0090(1)(h)

¹⁹ ORS 692.180(1)(h), OAR 830-030-0090(1)(c) & OAR 830-030-0090