

OREGON MORTUARY AND CEMETERY BOARD MEETING

800 NE Oregon Street, Conference Room 1A

Portland, OR 97232

MAY 22, 2007

FINAL MEETING MINUTES – GENERAL SESSION

(Revised 07/19/2007)

Board Members Present:

Jim Ward, President
Laura Mather, Secretary / Treasurer
Robert Wentzel
Pamela Wachter
Joncile Martin
Kevin Korn
Michael Kimoto

Staff Members Present:

David Koach, Executive Director
Lynne Nelson, Compliance Manager
Bill Bennington, Investigator
Merill Cray, Investigator
Brandy Cochrane, Inspector
Johanna Matanich, AAG
Carla Knapp, Office Manager / Licensing

Board Members Absent:

Diane Bassett-Pohl
Jon Cummings, Vice President
Michael Harper
Kathy Wentz-Phelps

Staff Members Absent:

Raul Ramirez, AAG

Guests Present:

Rick Bennett, AARP
Don Ballantyne, CIAC / OFS
Steve Schacht, SCI Oregon
J C Aubry, Lincoln Memorial

Nancy Felton, CGC / CAO
Tim Corbett, CIAC / CAO / Mt Calvary
Mark Stehn, OFDA
Scott Logan, Finley-Sunset Hills

CALL TO ORDER:

President Ward called the general session of the Oregon Mortuary and Cemetery Board (Board) meeting to order at 9:12 am. After roll call, he directed that the Board go into executive session as authorized under ORS 192.660(2) (f), (h), (i) or (k). The executive session adjourned at 11:45 am.

GENERAL SESSION:

The President then called the general session of the Board to order at 12:07 pm.

A. Approval of Draft Meeting Minutes

1. March 27, 2007 Draft General Session Meeting Minutes

President Ward asked the Board to review the draft meeting minutes for March 27, 2007 and report if they have any changes, additions or corrections. Hearing none, he asked if there was a motion on the floor to approve the draft general session meeting minutes as prepared.

Ms Wachter so moved. Mr Korn seconded. All others were aye and the motion carried unanimously. Those voting in favor: Members Kimoto, Korn, Martin, Mather, Wachter, Ward, Wentzel. Those voting no: none.

2. May 17, 2007 Draft Executive Session Teleconference Meeting Minutes

President Ward asked the Board to review the draft meeting minutes for May 17, 2007 and report if they have any changes, additions or corrections. Hearing none, he asked if there was a motion on the floor to approve the draft executive session teleconference meeting minutes as prepared.

Ms Mather so moved. Ms Wachter seconded. All others were aye and the motion carried unanimously. Those voting in favor: Members Kimoto, Korn, Martin, Mather, Wachter, Ward, Wentzel. Those voting no: none.

B. President's Issues

1. Letter to Governor Kulongoski re New Board Members

President Ward reviewed his May 3, 2007 letter to Governor Kulongoski regarding the two current vacancies on our Board. He then said he was surprised that he hadn't received a response to his letter requesting appointment of two new Board members as soon as possible.

Mr Koach then said that he followed up on President Ward's letter with the Board's policy advisor, Howard Lavine. Mr Lavine said that he thought there would be action taken to appoint two new Board members shortly. Mr Koach also said that he had talked with Nancy Goss Duran, the Executive Appointments Director. The Governor's Office is aware that there is concern on filling the vacancies.

2. Letter to Rebecca Jasso re Gold Star Certificate

President Ward then reviewed his letter to the Board's accountant. He said he didn't expect a response to this letter though.

3. Consumer Industry Advisory Committee (CIAC)

Since Jon Cummings, Chair, was absent (excused), President Ward recognized Rick Bennett, to report on this Committee's recommendations to the Board.

Once the 'Additional Recommendations for the inspection process' memo and the inspection checklists handouts developed by this Committee were distributed to members of the Board and the audience, Rick Bennett introduced himself as Oregon's director of government relations for AARP, as well as a member of this Advisory Committee.

Mr Bennett reported that since the Committee was established at the January 2007 Board meeting, the Committee members have made a commitment to meet at least twice a month,

each meeting usually lasting about three hours. He said he was very impressed with the discussion by the Committee on the issues before them. There has been some real give and take, with an interest in trying to do what is the best for both consumers and the industry.

The Committee brought forth four recommendations for the Board to consider. Mr Bennett realized that it was going to take some time for the Board to review and consider these recommendations.

The first priority for the Committee was looking at the inspection process as related to ORS 692.320(2): The Board shall inspect not less than once biennially the facilities and records of funeral establishments, cemeteries, crematories and immediate disposition companies and any location in which dead human bodies may be stored, temporarily held or processed prior to final disposition.

Since the Board is failing to meet this statutory requirement, the Committee is reviewing the Board's inspection checklists with the intent of seeing if there is a better way of allocating existing staff's time and resources to meet the statutory requirement regarding inspections.

Therefore, Recommendation 1 states that the Board should be inspecting facilities every two years (biennium), with a stated goal of no fewer than 12.5% of licensed facilities being inspected in each quarter. The goal should be monitored through a simple report devised by staff and provided to the Board at the meeting for the end of previous fiscal year.

Recommendation 2 suggests that the Board should consider a simple classification system for violations which would reduce the need for follow up letters sent out by staff except in cases of severe violations, with the intent that time spent on minor and moderate violations would be minimized in order to increase the amount of time spent on inspections in the field.

Recommendation 3 suggests that the Board should appoint a subcommittee of Board members to hear disagreements or complaints on inspection process, staff interpretations or cited violations from licensees, which would allow licensees to voice their concerns directly to the Board. It would also allow the Board to get its licensees' perspective on rules and statute interpretation.

Recommendation 4 suggests that a copy of a memo describing the inspection and compliance process should be provided to licensees when violations are noted, in order for a clearer understanding of the process and the voluntary nature of compliance would help improve the relationship between the Board and the industry.

Mr Bennett then suggested that the Board should consider changing its current policy of random unannounced inspections and allow 24 to 48 hours notice for every other inspection. Exceptions to this would be for facilities that have had moderate to severe violations in the past four years. He then asked Tim Corbett to discuss the inspection checklists in more detail that were distributed as handouts.

Mr Corbett first thanked staff and all the members on the Committee for their cooperation. He noted that there has been little contention so far, and he is very pleased with the process.

He understands that the inspection checklists are more like guidelines and are not necessarily to be considered all inclusive of what is considered during an inspection. The Committee's intent was to provide some prioritization of what the inspector should be looking at during an inspection, hopefully making the process more efficient. He then discussed the edits; red ink indicates a comment or an explanation of a revision; strikeout indicates text that was removed from the checklist.

Mr Corbett said he wasn't going to go through each checklist line-by-line. He noted that there are some revisions that do not agree with the Board's current Oregon Administrative Rules; the Committee will be reviewing the Board's rules for recommendations soon. He then asked that the Board and staff read through these handouts before the next Board meeting in July. If anyone has questions, he would be happy to address any concerns they might have then.

President Ward thanked him and all the members of the Consumer Industry Advisory Committee for all of their work. He understood that this was just the start and he really appreciated their efforts so far.

4. Public Comment

President Ward then asked if anyone had a question, comment or a concern to be brought before the Board. Hearing none, he recognized David Koach and requested that he move to Executive Director Issues.

C. Executive Director Issues

1. HB 5029 - Budget Update

- a. HB 5029-A, with related documents
- b. Staff Reduction Issues
- c. License Fee Increase

Mr Koach provided a review of the 2007 - 2009 budget, the Board's budget for the next biennium, starting July 1, 2007, and ending June 30, 2009. The budget initially proposed a permanent reclassification of the licensing specialist position from Office Specialist 2 to Investigator 1. Since this reclassification package was not approved and the licensing specialist position itself was totally eliminated, both due to a revenue shortfall, the Board will lose the vacant licensing specialist position, reducing the Board staff from six staff members to five full time staff members.

In addition, the entry level Inspector position which was created as an alternative to replacing the previous licensing specialist (Office Specialist 2) who resigned her position in September

of 2005, is scheduled to expire June 30, 2007. This impacts the Board's Inspector, Brandy Cochrane.

After providing a very detailed account of the Board's previous attempts to raise fees for the past seven years, Mr Koach asked for the Board's intent on whether or not he needed to pursue restoration of the lost position, with the understanding that fees would need to be raised to support it.

Ms Wachter then recommended and so moved that the Board attempt to restore the position. Mr Wentzel seconded. Mr Korn opposed. Mr Kimoto opposed. All others were aye and the motion failed. Those voting in favor: Members Martin, Mather, Wachter, Ward, Wentzel. Those voting no: Members Kimoto, Korn.

President Ward then directed Mr Koach to continue to the next agenda item.

2. Successful Legislative Initiatives

a. SB 545 - Funeral Service Practitioner Apprentices

Mr Koach said that this was introduced at the behest of OFDA. The Board voted to approve it. It does eliminate some iniquities and reduces some unnecessary barriers to licensure also. The President and Speaker have signed it, and it has gone to the Governor's Office. Mr Koach signed a blue sheet recommending that the Governor sign the bill.

b. SB 746 - Cemetery License Fee Exemptions

The Board voted to oppose this bill as introduced because it would have reduced the Board's revenue by approximately \$40,000 to \$50,000, by exempting cemeteries with 25 or fewer interments per year from paying renewal fees.

The bill was subsequently amended to 10 or fewer interments per year, or 20 per biennium. Once the amendments came forward, even though the Board voted to oppose it, Mr Koach found it very hard to provide a rational opposition to something that would have reduced the Board's revenue by only about \$4,000 to \$5,000.

c. HB 2864 - ORS chapter 97 Amendments

Mr Koach reviewed this bill and said that it looked like it was going to pass. It was essentially a Cemetery Association Bill, even though it was technically introduced by the Consumer and Business Services. There was one objectionable aspect to it that had to do with establishing in statute a recipe for the conversion of fully funded trusts to insurance, but that portion of the bill was eliminated.

d. HB 2927 - Anatomical Gift Task Force

This is really a tissue broker bill. It looks like it is going to pass.

e. HB 2007 - Domestic Partnership

Mr Koach reported that Mark Stehn called with a very good question as to the application of this bill pertaining to domestic partnership on the right to control disposition. The memo in the Board packet included Board Counsel's comment with respect on how that affects the rights to control disposition.

Mr. Koach asked if there were any questions on the legislative initiatives. Hearing none, he continued.

3. Memo re Failed Legislative Initiatives

Mr Koach said that we've talked about a number of these bills and he didn't want to lightly pass over those bills because there were some that would have done considerable damage to the Board and its ability to conduct business. Even though we didn't do well with regard to budget issues, we did manage to avoid what would have been very unfortunate outcomes if some of these failed legislative initiatives had passed.

4. Indigent Burial Fund - Filing Fee Collection

Mr Koach reported that he followed up on some concerns that licensees have had on the paltry sums that they have been getting when they request reimbursement from the Indigent burial Fund.

5. Electronic Death Registration System update

Mr Koach asked if anyone had any questions regarding the memo in the Board packet.

Hearing none, President Ward then directed the Board to proceed to Investigations, New Cases.

D. Investigations

1. Cases Pending:

- a. **04-1006A, B and 04-1028A, B** - Ms Mather reported that the full Board considered these cases in executive session and recommended and she so moved that the Board issue two Final Orders adopting the two Proposed Orders in their entirety with the exception that the civil penalties of \$44,000 will be for each case, for a total \$88,000; Orders to be effective 30 days after they are signed. Ms Wachter seconded. All others were aye and the motion carried unanimously. Those voting in favor: Members Kimoto, Korn, Martin, Mather, Wachter, Ward, Wentzel. Those voting no: none.
- b. **05-1051A** - Ms Mather reported that the full Board considered this case in executive session for the purpose of staff guidance.

- c. **06-1022A, B, C** - Ms Mather reported that the full Board considered these cases in executive session and recommended that the Board issue all the Default Orders. Mr Korn so moved. Ms Wachter seconded. All others were aye and the motion carried unanimously. Those voting in favor: Members Kimoto, Korn, Martin, Mather, Wachter, Ward, Wentzel. Those voting no: none.
 - d. **06-1028B** - Ms Mather reported that the full Board considered this case in Executive Session and recommended, and she so moved, that the Board approve the Consent Order. Mr Wentzel seconded. All others were aye and the motion carried unanimously. Those voting in favor: Members Kimoto, Korn, Martin, Mather, Wachter, Ward, Wentzel. Those voting no: none.
2. New Cases:
- a. **04-1057A, B** - Ms Mather reported that the full Board considered these cases in executive session and recommended, and she so moved, that the Board take no action. Ms Martin seconded. All others were aye and the motion carried unanimously. Those voting in favor: Members Kimoto, Korn, Martin, Mather, Wachter, Ward, Wentzel. Those voting no: none.
 - b. **06-1017** - Ms Mather reported that the full Board considered this case in executive session and recommended, and she so moved, that the Board take no action. Ms Martin seconded. All others were aye and the motion carried unanimously. Those voting in favor: Members Kimoto, Korn, Martin, Mather, Wachter, Ward, Wentzel. Those voting no: none.
 - c. **06-1039A, B** - Ms Mather reported that the full Board considered these cases in executive session and recommended, and she so moved, that the Board take no action. Ms Martin seconded. All others were aye and the motion carried unanimously. Those voting in favor: Members Kimoto, Korn, Martin, Mather, Wachter, Ward, Wentzel. Those voting no: none.
 - d. **07-1001** - Ms Mather reported that the full Board considered this case in executive session and recommended, and she so moved, that the Board take no action. Ms Martin seconded. All others were aye and the motion carried unanimously. Those voting in favor: Members Kimoto, Korn, Martin, Mather, Wachter, Ward, Wentzel. Those voting no: none.
 - e. **07-1002A, B, C** - Ms Mather reported that the full Board considered these cases in executive session and recommended, and she so moved, that the Board initiate Disciplinary Action on case 07-1002A, but take no action on cases 07-1002B and 07-1002C. Ms Wachter seconded. All others were aye and the motion carried unanimously. Those voting in favor: Members Kimoto, Korn, Martin, Mather, Wachter, Ward, Wentzel. Those voting no: none.
 - f. **07-1007A, B, C, D, E, F** - Ms Mather reported that the full Board considered these cases in executive session and recommended, and she so moved, that the Board take no action. Ms Wachter seconded. All others were aye and the motion carried unanimously. Those voting in favor: Members Kimoto, Korn, Martin, Mather, Wachter, Ward, Wentzel. Those voting no: none.

- g. **07-1013A, B, C and 07-1014A, B** - Ms Mather reported that the full Board considered these cases in executive session and recommended, and she so moved, that the Board take no action. Ms Wachter seconded. All others were aye and the motion carried unanimously. Those voting in favor: Members Kimoto, Korn, Martin, Mather, Wachter, Ward, Wentzel. Those voting no: none.
- h. **07-1019A, B** - Ms Mather reported that the full Board considered these cases in executive session and recommended, and she so moved, that the Board accept the applications. Mr Korn seconded. All others were aye and the motion carried unanimously. Those voting in favor: Members Kimoto, Korn, Martin, Mather, Wachter, Ward, Wentzel. Those voting no: none.
- i. **07-1022** - Ms Mather reported that the full Board considered this case in executive session and recommended, and she so moved, that the Board accept the applications. Mr Korn seconded. All others were aye and the motion carried unanimously. Those voting in favor: Members Kimoto, Korn, Martin, Mather, Wachter, Ward, Wentzel. Those voting no: none.
- j. **07-1023** - Ms Mather reported that the full Board considered this case in executive session and recommended, and she so moved, that the Board deny the application. Ms Wachter seconded. All others were aye and the motion carried unanimously. Those voting in favor: Members Kimoto, Korn, Martin, Mather, Wachter, Ward, Wentzel. Those voting no: none.

As this concluded Investigations, President Ward directed the Board to proceed to Licensing. He then recognized Lynne Nelson, Compliance Manager.

E. Licensing Issues

1. Special Requests

- a. Gary Meeker is requesting that the Board grant him authorization to simultaneously manage three FEs which are not co-located. The three FEs are Lienkaemper Funeral Chapel, Vale; Lienkaemper Funeral Chapel, Ontario; and Lienkaemper Funeral Chapel, Nyssa.

Ms Nelson reported that the Board previously approved Mr Meeker to manage these same facilities, but due to a pending change of ownership, that Board approval will end. Gary Trick, the new owner, is requesting that the Board grant Mr Meeker again the authorization to manage these three funeral homes that are not co-located.

After brief discussion, Ms Mather so moved. Mr Korn seconded. All others were aye and the motion carried unanimously. Those voting in favor: Members Kimoto, Korn, Martin, Mather, Wachter, Ward, Wentzel. Those voting no: none.

- b. Written request from Mark Musgrove requesting extension of temporary authorization to simultaneously manage West Lawn Memorial Funeral Home and Chapel of the Memories Funeral Home, both located in Eugene.

Ms Nelson reported that the Board previously approved Mr Musgrove to manage these same funeral establishments, but that authorization expired February 28, 2007. Mr Musgrove is now requesting an extension until October 31, 2007, due to the permit process taking so long.

After discussion, Ms Mather so moved. Mr Kimoto seconded. All others were aye and the motion carried unanimously. Those voting in favor: Members Kimoto, Korn, Martin, Mather, Wachter, Ward, Wentzel. Those voting no: none.

- c. Apprenticeship - Supervisors and Locations

Ms Nelson reviewed the letter regarding special apprenticeship circumstances for an embalmer apprentice. Currently, an apprentice holds both an embalmer and funeral service practitioner apprenticeship certificate under one supervisor, at one funeral establishment. The embalmer apprentice is struggling to perform the required 45 embalmings at this one funeral establishment.

The question before the Board was whether or not an apprentice can serve two apprenticeships under one supervisor, at two separately located funeral establishments. Ms Nelson reported that there does not appear to be anything in rule or statute to prohibit allowing an apprentice to embalm at another facility under these circumstances if the Board agrees.

After discussion, the Board determined that current rules and statutes do not prohibit persons who are an embalmer apprentice to work at more than one facility for the purpose of obtaining the required number of embalmings, provided they are properly supervised by their apprentice supervisor.

President Ward then asked the Board to review the remaining agenda items under Licensing before voting. He then recommended and so moved that the Board approve Licensing Agenda Items 2a through 10. Kevin Korn then called for discussion. After discussion, Mr Ward amended his motion to withdraw 9a1 for approval. Ms Mather seconded. All others were aye and the motion carried unanimously. Those voting in favor: Members Kimoto, Korn, Martin, Mather, Wachter, Ward, Wentzel. Those voting no: none.

President Ward then recommended and so moved for approval of the remaining Licensing Agenda Item 9a1. Mr Korn seconded. Discussion followed regarding allowing funeral establishments to operate within multi-family dwellings. After Board discussion that there is not a valid basis for the Board to deny a funeral home to operate from what appears to be a multi-family dwelling, President Ward called for a vote. Mr Kimoto recused himself. All others were aye and the motion carried. Those voting in favor: Members Korn, Martin, Mather, Wachter, Ward, Wentzel. Those voting no: none.

F. Miscellaneous

President Ward asked if there were any other questions or concerns to be brought before the Board. Hearing none, and there being no further business, President Ward adjourned the meeting.

ADJOURNMENT - The general session was adjourned at 2:05 pm.