

OREGON MORTUARY AND CEMETERY BOARD MEETING

800 NE Oregon Street, Conference Room 1E

Portland, OR 97232

SEPTEMBER 25, 2007

FINAL MEETING MINUTES – GENERAL SESSION

(Revised 11/20/2007)

Board Members Present:

Jim Ward, President
Jon Cummings, Vice President
Laura Mather, Secretary / Treasurer
Diane Bassett-Pohl (via Teleconference)
Michael Harper
Michael Kimoto
Kevin Korn
Joncile Martin
Lyn Stanger
Robert Wentzel

Staff Members Present:

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

Board Members Absent:

Pamela Wachter

Staff Members Absent:

None

Guests Present:

Scott Logan, Finley's - C.I.A.	Steve Schacht, SCI - Oregon
Chad Dresselhaus, AFCTS	Mark Stehn, OFDA
J C Aubry, Lincoln Memorial	Nancy Felton, CGC / CAO
Don L Ballantyne, OFS	Dwight A Terry, Terry Family Funeral Home
Rick Bennett, AARP	Wally Ordeman, OFDA
Mike Day, Center for Health Statistics	Amy Bollman Lowery, Dallas Funeral Home

CALL TO ORDER:

President Ward called the general session of the Oregon Mortuary and Cemetery Board (Board) meeting to order at 9:05 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 11:51 am.

GENERAL SESSION:

The President then called the general session of the Board to order at 12:05 pm.

A. Approval of Draft Meeting Minutes

July 24, 2007 Draft General Session Meeting Minutes

President Ward asked the Board to review the draft meeting minutes for July 24, 2007 and report if they have any changes, additions or corrections. He then recognized Jon Cummings.

Mr Cummings asked that the minutes be corrected to reflect that Nancy Felton and Scott Logan are Consumer-Industry Advisory Committee Members under Guests Present.

Kevin Korn so moved. Michael Harper seconded. All others were aye and the motion carried unanimously. Those voting in favor: Members Bassett-Pohl, Cummings, Harper, Kimoto, Korn, Martin, Mather, Stanger, Ward, Wentzel. Those voting no: none.

B. President's Issues

1. Consumer-Industry Advisory Committee

President Ward announced that the Board would be completing the review of the Committee's Recommendations today. He then directed the Chair, Jon Cummings to proceed.

Chair Cummings then directed the Board to Page 20 of the CIAC Recommendations and Staff Response. Under Staff Response to CIAC Inspection Process Recommendations, he read Recommendation # 1 into the record:

The Board should have a stated goal of having no fewer than 12.5% of licensed facilities inspected every quarter. The goal should be monitored through a simple report devised by staff and provided to the Board meeting for the end of the previous fiscal quarter.

Justification: A simple reporting system would allow the board to evaluate whether they are meeting statutory requirements on an ongoing basis and to staff accountability.

After discussion regarding whether or not the Board needed to establish categories for the facilities that perform the largest volume of final dispositions versus those facilities that perform a small number, or should all facilities be treated the same. The Board determined to treat all licensed facilities the same and all licensed facilities will be inspected once each biennium.

President Ward asked if there was a motion on the floor to rescind this recommendation. Hearing none, he asked Chair Cummings to continue.

Chair Cummings then read Recommendation # 2:

Staff should use 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. Such a classification system would still rely on the inspector's discretion to some degree, but would clarify the potential ramifications and severity of the violations for licensees. (Minor violations to be corrected within six months; no follow up or proof of correction required but compliance will be reviewed during the next biennial inspection, etc.)

Justification: Time spent on minor, moderate violations, while important should be minimized to increase the amount of time spent on (more) inspections in the field.

Severe violations should be the focus of follow up inspections and written follow up. Severe violations are most likely to be discovered through a timely inspection process.

After brief discussion, Mr Wentzel moved to rescind. Mr Kimoto seconded. Further discussion followed. There was general agreement that the current inspection process provided the Board with sufficient information in order for the Board to decide whether there was a minor or major violation found during the inspection. Others were aye and the motion carried. Those voting in favor: Members Bassett-Pohl, Harper, Kimoto, Korn, Mather, Stanger, Ward, Wentzel. Those voting no: Cummings, Martin.

Chair Cummings then read Recommendation # 3:

The Board should appoint a subcommittee of Board members to hear disagreements or complaints on inspection process, staff interpretations, or cited violations from licensees.

Justification: Some sort of feedback mechanism is needed to allow licensees to voice their concerns directly by the Board, and to ensure that the Board gets its licensees perspective on rule and statute interpretation.

Discussion followed regarding the confidentiality law that encumbered Board members during General Session. There was also discussion that if a licensee had a concern about any issue, they could do so in writing, and then be allowed to appear before the full Board during Executive Session. Peer pressure was discussed as well; licensees may not want to speak up during the Public Comment portion of the Board's General Session.

Then several Board members asked if the Board's Complaint Review Committee (CRC) could be the subcommittee. Currently, CRC consists of several Board members who meet via a teleconference one day before each scheduled Board meeting, to review the inspection and investigative reports in the Board packet. This helps streamline the actual Board meeting the next day, as CRC provides a written recommendation on each case to the full Board during the Board's Executive Session.

All Board members agreed that the Board does want to hear from their licensees as it helps the Board members make better decisions. Then AAG Matanich said that they can certainly have time with the licensee to hear a complaint, but there may be legal restrictions on their ability to share information or have sort of discourse or discussion of information obtained as part of an inspection.

Mr Wentzel then moved to rescind. Ms Bassett-Pohl seconded. One was aye and the motion failed. Those voting in favor: Members Wentzel. Those voting no: Bassett-Pohl, Cummings, Harper, Kimoto, Korn, Martin, Mather, Stanger, Ward.

Chair Cummings then read Recommendation # 4:

A copy of a memo describing the inspection and compliance process should be provided to licensees when violations are noted. This should be accompanied by a form that

allows licensees to ask for the Board's subcommittee to review complaints from licensees (see Recommendation # 3).

Justification: A clear understanding of the process and the voluntary nature of compliance would improve the relationship between the Board and the industry.

Chair Cummings then noted that we already do provide an explanation of the inspection process on the back of the Board's Inspection Receipt. President Ward then asked if there was a motion to rescind. Hearing none, he asked Chair Cummings to continue.

Chair Cummings then read Recommendation # 5:

Every other inspection should come with 24 - 48 hours notice to facilitate efficient scheduling of the inspector's time as well as to ensure that the manager of the facility is available to the inspector. The next inspection is a random inspection. All inspections are to be random if a moderate or severe violation was noted within the last four years.

Justification: ORS 692.320 states that the bi-annual inspection is to be made and that the Board may make random inspections at other times. Random inspection is not a requirement. OAR's also do not appear to require random inspections. Requiring random inspections each time seems to have added to the backlog of cases. Managers being available who are presumably more versed on statutes and OAR's than general office staff will also facilitate better dialogue. This would likely improve the learning process for inspectors and communication between the managers and the inspectors. Regular inspections, even if every other one is not random, would be an improvement over the frequency of inspections now occurring.

Discussion followed as to whether this was a time saver or not for staff. Several Board members then voiced that all inspections should be random and unannounced. Other Board members disagreed. President Ward then asked Wally Ordeman for clarification on setting up the appointment.

Mr Ordeman said that the Committee was not talking about a negotiated appointment, just something that announces very clearly that within 24 - 48 hours notice, the Board's inspector is coming. This allows the manager to prepare in advance of that inspection, it has to be more efficient, even though it is not a negotiated time. If something comes up, then the licensee can make provisions for somebody else to be available.

Mr Koach then asked what would happen if the inspector isn't able to meet with the licensee within that time frame, has the Board staff failed to follow through with a sort of an agreed upon arrangement.

Mr Ordeman said yes, because it gets away from the intent of the recommendation, which is to save both the licensee and inspector time.

Mr Koach asked if we are discontinuing random unannounced inspections in order to improve relations with the industry.

Mr Bennett responded on behalf of the Committee. He said that type of discussion never occurred in any conversation that they had related to this issue, and that he was not speaking for other industry people. Only as far as discussion within the Committee.

Mr Koach responded that he thought it was an honest comment that needed to be aired. He said he has tried to offer some compromises that seemed reasonable that might satisfy all interests and even though he doesn't have a vote on the Board, he has an obligation to ensure that Board members have sufficient information before they vote. Especially if that vote is a decision not to inspect for compliance with the FTC Funeral Rule. Board members need to understand what might be the unintended consequences and perceptions that arise out of a decision by a regulatory board that is charged with the responsibility for ensuring compliance. Once the Board makes the decision, we'll live with whatever decision the Board makes. Mr Koach said it would be an abdication of his responsibility to sit mute, and he was sure that the Executive Branch would say that he wasn't doing his job. He said that once he's done that, the Board makes its decision, and as far as he's concerned, he's done his duty.

After discussion, Ms Bassett-Pohl said that in light of the fact that we are a regulatory agency, a Health Related Licensing Board, that we continue our present program of random inspections, that we do not change our inspections to allow a mandatory 24 - 48 hour notice, she moved to rescind. Mr Wentzel seconded. Others were nay and the motion failed. Those voting in favor: Members Bassett-Pohl, Wentzel. Those voting no: Members Cummings, Harper, Kimoto, Korn, Martin, Mather, Stanger, Ward.

Ms Bassett-Pohl said that was a shame and ended her teleconference call.

Chair Cummings then asked that the Committee's Recommendations for Investigations be distributed as a handout to Board members for the next meeting.

2. 2008 Board Meeting Schedule

President Ward then asked Board members to review the 2008 meeting schedule. Mr Koach pointed out that the May 2008 Board meeting will be on a Thursday.

3. Public Comment

President Ward asked for comment. He then recognized Mark Stehn.

Mr Stehn asked if it okay for a licensee to refuse to allow the inspector into their funeral home.

Mr Koach responded that a licensee could refuse the inspector entrance into a licensed facility, but if it happened, it could be a serious violation because the statutes and rules

specifically obligate licensees to cooperate with the inspection. The Board has very strong inspection warrant powers, so the Board's authority to obtain an inspection warrant is really solid.

President Ward then asked if any other interested party wished to come before the Board. Seeing none, he asked David Koach to proceed with Executive Director Issues.

C. Executive Director's Issues

1. Email re: Legislator Changes

Mr Koach reported there was a list of legislators in the Board packet that are not coming back. Basically information only.

2. Documents Pertaining to Health Related Licensing Boards

- a. House Health Care Committee Agenda for October 9, 2007
- b. Memo from the Governor's Chief of Staff to the Executive Directors of All Health Related Licensing Boards, dated September 12, 2007
- c. Memo from the Governor to the Oregon Board of Nursing, dated August 27, 2007
- d. Oregon Board of Nursing Management Review and Assessment, dated August 27, 2007
- e. Nursing Board Chief Resigns (Portland Tribune article, dated August 31, 2007)

Mr Koach reported that we've already discussed this meeting, and he hasn't gotten any briefing yet as to what happened at the Governor's meeting yesterday. He asked if there were questions. Hearing none, he continued to the next agenda item.

3. Memo to Executive Director from Compliance Manager re: Posting Notices of Proposed Disciplinary Action on the Board's Web Site

During the March 27, 2007 Board meeting, the Board decided to post notices of proposed disciplinary actions and orders on its website. Recently, we received a call from an attorney who felt it was unfair to publish a notice and there is some merit to that. The question that we put before the Board, does the Board want us to wait until the final order is issued before posting both to the website? This would not change the Board's obligation to make notices available for someone who requested to them, it is still subject to disclosure under the confidentiality act.

Mr Cummings so moved. Mr Kimoto seconded. All others were aye and the motion carried unanimously. Those voting in favor: Members Bassett-Pohl, Cummings, Harper, Kimoto, Korn, Martin, Mather, Stanger, Ward, Wentzel. Those voting no: none.

4. Memo to Executive Director from Compliance Manager re: Contested Case Hearing Costs

Mr Koach then said that the final issue has to do with contested case hearing expenses. The Committee requested this, and Ms Nelson crafted this memo. He thought it give the Board a sense of what a minimal hearing might be and what one that's more expansive might be.

This does not add the cost of judicial review. This is strictly contested case hearings. He asked if there were questions.

Hearing none, President Ward asked Laura Mather to proceed to Investigations.

D. Investigations

Ms Mather reported that during Executive Session, the full Board recommended and she so moved that the Board take no action on the following cases: 2003-1033A, B, C; 2006-1026A, B, C, D, E; 2007-1010A, B; and 2007-1029. Mr Korn seconded. All others were aye and the motion carried unanimously. Those voting in favor: Members Cummings, Harper, Kimoto, Korn, Martin, Mather, Stanger, Ward, Wentzel. Those voting no: none.

Ms Mather reported that during Executive Session, the full Board recommended and she so moved that the Board take no action on case 2007-1010E, but initiate Disciplinary Action for cases 2007-1010C and D. Mr Korn seconded. All others were aye and the motion carried unanimously. Those voting in favor: Members Cummings, Harper, Kimoto, Korn, Martin, Mather, Stanger, Ward, Wentzel. Those voting no: none.

Ms Mather reported that during Executive Session, the full Board recommended and she so moved that the Board approve the application for case 2007-1033. Mr Cummings seconded. All others were aye and the motion carried unanimously. Those voting in favor: Members Cummings, Harper, Kimoto, Korn, Martin, Mather, Stanger, Ward, Wentzel. Those voting no: none.

Ms Mather reported that during Executive Session, the full Board recommended and she so moved that the Board deny the application for case 2007-1035. Mr Korn seconded. All others were aye and the motion carried unanimously. Those voting in favor: Members Cummings, Harper, Kimoto, Korn, Martin, Mather, Stanger, Ward, Wentzel. Those voting no: none.

E. Licensing

President Ward then recommended and so moved that the Board approve agenda items E2 through 9c3. Ms Mather seconded. All others were aye and the motion carried unanimously. Those voting in favor: Members Cummings, Harper, Kimoto, Korn, Martin, Mather, Stanger, Ward, Wentzel. Those voting no: none.

President Ward asked if there was any business to come before the Board. Hearing and seeing none, he thanked everybody and especially the public for being here today, and the last two days. He then recognized Michael Harper.

Mr Harper announced that this would be his last Board meeting, as the Governor had asked him to be on the Commission for Children and Families. He said it's been a wonderful 3 1/2 years, he thought he made a difference and he was really proud of it.

After various Board and staff members thanked him, President Ward thanked him again, and then he adjourned the meeting.

ADJOURNMENT - The general session was adjourned at 1:52 pm.