

## **Filing a Complaint with the Board**

It is the Board's responsibility to license and regulate the practice of individuals and establishments engaged in the sale of funeral and cemetery goods and services as well as the care, preparation, processing, transportation and final disposition of human remains. The Board's licensees include funeral service practitioners, embalmers, apprentices, preneed sales people, funeral establishments, immediate disposition companies, cemeteries and crematories.

Pursuant to ORS 692.180 and 692.320, the Board must conduct facility inspections and investigate complaints. In accordance with the Administrative Procedures Act (ORS chapter 183), the Board may take disciplinary action for violations of ORS chapter 692 and OAR chapter 830. The Board may also impose discipline for fraudulent and dishonest conduct or conviction of a crime when such conduct or crime bears a demonstrable relationship to death care industry practice. Additionally, the Board may take action for violations of the following:

- ORS chapter 97, as it relates to the final disposition of human remains and to cemeteries;
- ORS 97.929 and 97.937 limited to three specific kinds of endowment care cemetery preneed sales agreements and related trust deposits;
- ORS chapter 432 and OAR chapter 333 division 11, as they relate to the final disposition of human remains and vital records; and,
- FTC regulations pertaining to funeral industry practices (the Funeral Rule).16 CFR Part 453; and
- Non-compliance with Oregon Revised Statutes pertaining to the death care industry.

If you have a complaint against a licensee of the Board, we suggest that you first discuss your problem with the management of the facility. If you feel you were not treated fairly, he / she should be given the opportunity to satisfy you. If this is not acceptable, you are encouraged to provide the facts in writing to the Board. Attached is the Complaint Form. You may return the completed form by mail to the address provided on the form.

## **Confidentiality of Complaints**

Complaints filed with the Board are confidential and are not subject to public disclosure. The fact that a complaint has been filed against any licensee is not public information. The Board is required by law to keep confidential, to the greatest extent possible, the identity of the complainant and the respondent. Every effort is made to abide by this requirement, while at the same time conducting a fair and thorough investigation.

## **Investigative Process**

ORS 676.165 requires that complaints received from a person shall be assigned to an investigator and a report submitted to the Board within 120 days of receipt of the complaint. However, the statute also provides for extensions of time. Due to the workload of the investigative staff and the complexity of many of the complaints received, it could be longer than 120 days before the Board receives a report of investigation.

Once a complaint is received, it is reviewed by compliance staff, given a case number and assigned to an investigator. The investigator requests a variety of documents and information from the licensee

(respondent) who is the subject of the complaint as well as a written response to the allegations in the complaint. Once the information is received from the respondent, the staff investigator reviews the response and /or records, conducts appropriate witness interviews and collects enough information to conclude a fair and accurate inquiry into the issues raised.

The staff investigator then creates a report of investigation which provides the Board with enough information to either affirm or refute the allegations and make a determination as to whether or not a violation has occurred within the jurisdiction of their legal authority. Also, if there is sufficient evidence to show that a violation has occurred, additional information is included in the investigative report as to what kind of sanction, if any, is warranted.

The Board deliberates on each case in a closed executive session. ORS 676.165 and 676.175 specify that the information gathered during the investigation as well as the investigative report are confidential and not subject to public disclosure. The Board votes on investigative matters by the assigned case number in the open session of the Board meeting.

If the Board makes a determination **not** to initiate disciplinary action against a licensee / respondent, the confidentiality statute does provide that the Board may issue a written summary of information obtained during the investigation to the complainant, if so requested, to the extent necessary to explain the reason(s) for the Board's decision.

### **Disciplinary Actions**

The Board may impose a variety of disciplinary sanctions ranging from a reprimand to license revocation. When the Board initiates disciplinary action in accordance with the Oregon Administrative Procedures Act (ORS 183.310 - 183.550), Board staff issues a Notice of Proposed Disciplinary Action to the licensee/respondent. The Notice is essentially a statement of charges against the licensee in question. The Notice contains a timeframe within which a hearing can be requested by the respondent and may specify the level of sanction that has been proposed. The respondent is entitled to a contested case hearing and is afforded every opportunity to exercise that right. If the respondent does not request a hearing within the allotted timeframe, a Final Order is issued by default. If the respondent does request a hearing and does not agree with the Board's final decision, the respondent can appeal to the Oregon Court of Appeals. If there is disagreement with the Court of Appeals' decision, the respondent can appeal to the Oregon Supreme Court.

The Board protects the public by promoting and enforcing compliance with the statutes and rules established for that purpose. Although lacking authority to require payment of compensatory (actual) damages to consumers, the Board may impose civil penalties up to \$1,000 per violation and may negotiate voluntary settlement agreements that provide some measure of restitution to a complainant, in lieu of civil penalties.

Pursuant to ORS 676.175(5), investigative information, Notices, contested case proceedings or any type of Final Orders may not be used as evidence in any civil proceeding except in a proceeding between the Board and the licensee or applicant.

### **Public Records Request**

Notices of Proposed Disciplinary Action and final disciplinary actions (Orders, Consent Orders) taken against licensees are public record and available upon written request for a fee.

### **Additional Questions or Information**

For additional information regarding Oregon's funeral / cemetery laws, or questions concerning the Board's complaint / investigation process, confidentiality provisions or contested case proceedings in accordance with the Oregon Administrative Procedures Act, please contact the Board compliance unit at 971-673-1503.