WEST VIRGINIA SECRETARY OF STATE
KRIS WARNER
ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

# NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Funeral Service Examiners

RULE TYPE: Legislative

TITLE-SERIES: 6-01

RULE NAME: 6-01 Funeral Director, Embalmer, Apprentice, Courtesy Card Holders and Funeral Establishment Requirements

CITE AUTHORITY: § 30-6.6

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

**BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.**

**Yes**

**Kendra D Zamora -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**

# TITLE 6
# LEGISLATIVE RULE
# BOARD OF FUNERAL SERVICE EXAMINERS

## SERIES 1
## FUNERAL DIRECTOR, EMBALMER, APPRENTICE, COURTESY CARD HOLDERS AND FUNERAL ESTABLISHMENT REQUIREMENTS

### §6-1-1. General.

1.1. Scope. -- This rule relates to the licensing and conduct of embalmers and funeral directors and funeral establishments and apprentices and courtesy card holders.

1.2. Authority. -- W. Va. Code §30-6-6

1.3. Filing Date. – ~~April 3, 2026~~

1.4. Effective Date. – ~~April 3, 2026~~

1.5. Sunset Provision. - This rule shall terminate and have no further force or effect upon August 1, ~~2036~~ 2037.

### §6-1-2. Definitions.

For purposes of this rule, the following terms have the following meaning unless the context in which they are used requires a different meaning.

2.1. "Advertise" and "advertising" means the use of radio, television, billboards, stationery, contracts, price lists, calendars, fans, internet, including social media and web pages, and novelty advertising, or any other advertising method or medium.

2.2. "Apprentice funeral director" means a person who is preparing to become a licensed funeral director and is learning the practice of arranging funeral services, memorial services, and final disposition of dead human bodies, under the general supervision and personal instruction of a duly licensed funeral director or funeral service licensee

2.3. "Apprentice funeral service licensee" means a person who is preparing to become a licensed funeral service licensee and is learning the practice of embalming under the direct supervision and personal instruction of a duly licensed funeral service licensee and funeral directing under the general supervision and personal instruction of a duly licensed funeral service licensee.

2.4. "Arrangement conference" means the time spent with the next-of-kin, or other duly or legally authorized person or representative, planning and making financial arrangements for the funeral services, embalming, or final disposition of a dead human body.

2.5. "Basic services fee" means charges for the services of the funeral director and staff for completing the following tasks: conducting of the arrangements conference, securing of necessary permits, preparation of notices, sheltering of human remains, coordination of arrangements with the cemetery, crematory, retail sellers, or other third party. The basic services fee may include overhead costs, such as parking lot and other common areas, insurance, staff, taxes, and other fees the funeral establishment pays.

2.6. "Board" means the West Virginia Board of Funeral Service Examiners.

2.7. "Cremation" means any mechanical, alkaline hydrolysis or thermal process whereby a dead human body is reduced to ashes and bone fragments. Cremation also includes any other mechanical or thermal process whereby human remains are pulverized, burned, hydrolyzed, recremated, or otherwise further reduced in size or quantity.

2.8. "Direct supervision" means the physical presence and oversight of an activity by a licensed funeral director or licensed embalmer.

2.9. "Embalming" means the introduction into the vascular system or hollow organs of a dead human body, by arterial or by hypodermic injection, of any chemical substance, fluids, or gases used for the purpose of preservation and includes the disinfection, preservation or restoration of a dead human body.

2.10. "Fees" means the amount of monies owed for any and all services issued by the Board as prescribed in the Board's Series 6 CSR 7 Rule.

2.11. "Funeral establishment" means a place of business maintained and operated and devoted to such activities that are incident, convenient, or related to the preparation and arrangements, financial or otherwise, for the embalming, funeral, transportation, burial or other disposition of dead human bodies.

2.11.1. "Branch funeral establishment" means a funeral establishment which is owned one-hundred percent by, operated by, is a subsidiary of, or otherwise financially connected or controlled by a licensed main funeral establishment. If the preparation of dead human bodies by embalming is done at the main establishment and the main establishment is within 60 miles of the branch facility, then the equipment for the preparation of dead human bodies is not required at the branch facility.

2.11.2. "Embalming facility" means a separate and secondary building operated by a main funeral establishment which was licensed by the Board prior to July 1, 2002, for the sole purpose of embalming or other preparation of dead human bodies.

2.11.3. "Funeral home," "funeral chapel," "funeral services," or "funeral parlor" means a funeral establishment which offers funeral services and preparation for the disposition of dead human bodies. Funeral homes in existence prior to the effective date of this rule, which use the term "mortuary" in the business name, may continue to do so.

2.11.4. "Main funeral establishment" means a primary funeral establishment.

2.11.5. "Trade service" or "mortuary service" means a funeral establishment devoted strictly to the preparation and embalming of dead human bodies and may also include the financial arrangements for the embalming of dead human bodies. A trade service or mortuary service may not offer to the public funeral services under any circumstance.

2.12. "Funeral service" means the religious, fraternal or civil ceremony performed with the body present at a funeral home, church or other public place and also includes the committal or other dedication ceremony at a cemetery or other place of final disposition. Funeral services entail the use of the funeral establishment's facilities, equipment, and personnel.

2.13. "Funeral service licensee" means a person who has met the requirements to be a funeral director and an embalmer. Upon the effective date of this rule, wherever the terms which refer to the act of being a funeral director and an embalmer are used, the term "funeral service license" or "funeral

service licensee" shall apply. Wherever the term "embalmer" is used, the term "funeral service licensee" shall apply

2.14. "General supervision" means the general oversight or overall responsibility for an activity by a licensed funeral director. General supervision does not require the physical presence of the licensed funeral director, but they shall make himself / herself available to the apprentice funeral director.

2.15. "Authorized representative" means the closest next-of-kin or the person entitled to give permission for the preparation and disposition of a dead human body.

2.16. "Licensee" means a person who holds a funeral service license, a funeral director's license, or a funeral establishment license issued by this Board.

2.17. "Inactive Licensee" means an individual not actively practicing in the funeral service profession and are exempt from obtaining continuing education. The individual must renew their inactive status and pay the fee as prescribed in the board's Series 6 CSR 7 rule biennially to maintain an inactive status.

2.18. "Minimum Adult Service" means necessary items for a complete funeral service, including but not limited to basic service fees, the use of facilities and staff for a particular kind of service, casket, and embalming or cremation.

2.19. "Person" means an individual, partnership, association, corporation or other organization.

2.20. "Preparation room" means a separate room located in the primary building of the main or branch funeral establishment for the sole purpose of embalming and other preparation of dead human bodies, and which room shall not be open to the general public.

2.21. "Professional services" means embalming and funeral services.

2.22. "Registrant" means a person who holds a certificate of registration for apprenticeship, or a courtesy card issued by this Board.

2.23. "Cremated remains" refers to the human body after being cremated or hydrolyzed.

2.24. "Human remains" refers to the human body as a whole.

**§6-1-3. Licensing examination for applicants of funeral service license.**

3.1. An applicant for the state licensing examination shall remit the fees as provided in 6 CSR 7 Rule for examination and shall supply the Board with the following documentation:

3.1.1. A certified copy of a birth certificate establishing that the applicant is at a minimum eighteen (18) years of age;

3.1.2. One of the following:

3.1.2.a. A certified transcript which shows successful completion of an associate degree or 60 semester hours or 90 quarter hours of college credit toward a baccalaureate degree, to be completed by a dean of academic affairs or an equivalent officer of an accredited college or university which offers an associate degree or a baccalaureate degree, and a certified transcript from an approved school of mortuary science which shows successful completion of at least 12 months of study in mortuary science; or

3.1.2.b. A certified transcript which shows successful completion of a bachelor's degree from an approved school of mortuary science.

3.1.3. A certificate of completion of the apprenticeship program as outlined in Section 4 of this rule; and

3.1.4. A certificate issued by the International Conference of Funeral Service Examining Boards showing a passing score of its' National Board Examination of not less than 75% and

3.1.5. A passing score report of 75% from the International Conference of Funeral Service Examining Boards on the West Virginia Laws, Rules and Regulation (WV LRR) examination.

3.2. Examinations.

The International Conference of Funeral Service Examining Boards shall prepare and grade the state licensing examination. A passing grade for the state licensing examination is a score of not less than 75%.

3.3. Subjects.

The state licensing examination shall include the following subjects:

3.3.1. State laws governing the conduct and responsibilities of embalmers and funeral directors and funeral establishments.

3.3.2. State laws governing the pre-need sale of funeral services and merchandise;

3.3.3. The Rules of the Board;

3.3.4. State laws governing sales tax;

3.3.5. The Federal Occupational Safety and Health Act;

3.3.6. The Americans with Disabilities Act;

3.3.7. The Federal Trade Commission, Funeral Industry Practices Rule.

**§6-1-4. Apprenticeship for a funeral service director and embalmer (funeral service license).**

4.1. The apprenticeship for embalmer's license and a funeral director's license shall be served simultaneously and shall be referred to as a Funeral Service license.

4.2. The apprenticeship program is of a one year duration and consists of full-time employment under the direct supervision of an embalmer and general supervision of a funeral director licensed by this state and actively practicing within this state. For purposes of this rule, the definition of a full-time employee follows the guidelines as defined by the U. S. Department of Labor. The apprentice has five years within which to finish the apprenticeship. The Board may allow additional years of apprenticeship status upon a written application which shows good cause.

4.3. During the apprenticeship, an apprentice shall meet the following requirements:

4.3.1. Under the direct supervision of a licensed embalmer, he or she shall assist in the operation or embalming not less than 35 dead human bodies.

4.3.2. Under the general supervision of a licensed funeral director, he or she shall assist in the conduct of not less than 35 funeral services.

4.4. During the apprenticeship program, the Board shall require the submission of monthly case reports by the apprentice and quarterly evaluations from the preceptor, on forms prepared by the Board and revised as needed.

4.5. An applicant may serve the apprenticeship prior to, during, or after completion of mortuary school.

4.6. An applicant may serve their apprenticeship prior to, during, or after obtaining college credits.

4.7. Acknowledge the time served of equal or greater apprenticeship requirements.

**§6-1-5. Apprenticeship for a funeral director license.**

5.1. The apprenticeship program for a Funeral Director license is of ~~a two~~ one year duration and consists of full-time employment under the general supervision of a licensee in charge or an active funeral director, licensed by this state and actively practicing within this state.

5.2. During the apprenticeship, an apprentice shall meet the following requirements:

5.2.1. Diligent attention to the work in the course, or regular and steady employment, and not a side issue to other employment;

5.2.2. Under the general supervision of a licensed licensee in charge or a licensed funeral director, he or she shall assist in conducting not less than 35 disposition arrangements for individuals.

5.2.3. Under the general supervision of a licensed licensee in charge or licensed funeral director, he or she shall assist in the conduct of not less than 35 funeral and/or memorial services.

5.3. During the apprenticeship program, the Board shall require the submission of monthly case reports by the apprentice and quarterly evaluations from the preceptor, on forms prepared by the Board and revised as needed.

5.4. The Board shall acknowledge the time served of equal or greater apprenticeship requirements.

5.5. Upon the effective date of these regulations, an apprentice that is already serving a Funeral Service license apprenticeship may count their time towards a Funeral Director apprenticeship.

5.6. A passing score of not less than 75% percent is required. An individual shall pass the West Virginia Laws, Rules and Regulations examination in order to be eligible for licensure.

5.7. A licensed funeral director who is pursuing an embalmer license must satisfy the following requirements:

5.7.1. Graduation from an American Board of Funeral Service Education (ABFSE) accredited mortuary school.

5.7.2. Passage of the National examination administered by the International Conference of Funeral Service Examining Boards, and

5.7.3. Submission of the 35 body requirement.

**§6-1-6. Control of dead bodies.**

6.1. Authority to assume control.

A licensee, licensee's agent, assistants or employees shall not assume control of any dead body without first gaining permission from the next of kin or their representatives, or a medical examiner, health officer or other public official legally authorized to give permission to release the body.

6.2. Responsibility to honor instructions.

6.2.1 A licensee or licensee's agents, assistants or employees who have assumed control of a dead body shall honor all instructions from persons who have given the control, as to matters relating to the handling of the body, including all steps in preparation; autopsy; embalming; viewing; photographing; clothing; casket; box or vault; cremation; time, location and type of ceremonies; and burial or other customary disposal, insofar as considerations of public health, legal requirements and customary respectful handling of the dead body may permit.

6.2.2. A licensee may establish a general policy which requires embalming for public viewings of dead human bodies as a matter of public health. A licensee may conduct a public viewing of an unembalmed body, provided that he or she shall provide a disclosure of the risks to every person viewing the body, pursuant to subsection 6.3 of this rule.

6.3. Authority to embalm.

A licensee or licensee's agents, assistants or employees shall not authorize the embalming of, or embalm any body without first gaining permission from the person or persons authorized to give permission, or in the event services are being rendered by virtue of reference from another funeral establishment, from a representative of the funeral establishment, provided that the other funeral establishment provides proof of authorization from the person or persons authorized to give permission.

<u>6.3.1. If the facility utilizes the service of an off-site embalming service under contract, the facility shall have a signed “embalmer of record” form developed by the Board on file.</u>

6.4. Exception.

6.4.1. If a question exists to whether the condition of a body may pose a hazard to public health which would be eliminated by embalming, the embalmer shall get a written certification of the condition along with a request that the body be embalmed from a public health officer prior to embalming.

6.4.2. If the funeral establishment is unable to contact the next of kin or other authorized representative of the decedent, the funeral establishment shall follow procedures outlined in subsection 25.1 of this rule relating to storage and disposal of unclaimed human remains.

6.5. Responsibility for fees.

A person or persons authorized to give permission to embalm a body pursuant to subsections 6.3 and 6.4 of this rule, shall not be responsible for the payment of any fee in connection with an unauthorized embalming.

**§6-1-7. Health requirements.**

7.1. Statutes and rules.

A licensee and the licensee's agents, assistants and employees shall comply with all federal and state laws and rules related to health. State laws include, but are not limited to §§16-1-1 et. seq. related to state public health, §§16-2-1 et. seq. related to local public health, §§16-5-1 et. seq. related to vital statistics, 64CSR18 related to general sanitation, 64CSR32 related to vital statistics, 64CSR56 related to infectious medical waste, and 64CSR64 related to aids-related medical testing and confidentiality.

7.2. Bodies of individuals affected with infections or contagious diseases.

An embalmer who knows that a body is affected with infections or contagious diseases shall closely and directly supervise the body. The body shall be encased in a heavy burial pouch, transfer case or sealed casket. Body cavities and orifices shall be treated and disinfected.

7.3. Viewing, public or otherwise, of unembalmed bodies.

An embalmer shall provide a written disclosure to individuals who wish to view an unembalmed body. This disclosure shall contain relevant information pertaining to the potential spread of infectious or contagious disease or other possible hazards. The embalmer shall thoroughly discuss these risks with the individual wishing to view the body and may require the legally authorized representative or other individuals who will view an unembalmed body to sign a statement which releases the embalmer and his employer from any liability, only after discussing the potential hazards.

**§6-1-8. Evidence of crime.**

8.1. Embalming, removal, cremation or hydrolyzation.

The licensee or registrant, or a licensee's or registrant's agents, assistants or employees shall get permission from a medical examiner or other qualified law enforcement official before embalming, removing, cremating or hydrolyzation of a body when they have information of or suspect a crime or intentional violence in connection with the cause of death.

8.2. Information of crime.

A licensee or registrant, or a licensee's or registrant's agents, assistants or employees who have information of a possible crime shall immediately file a formal report of that information to a proper law enforcement officer, if the possible crime has not yet been reported.

8.3. Concealment of crime.

A licensee or registrant, or a licensee's registrant or registrant's agents, assistants or employees shall not knowingly do any act that would conceal evidence of a crime.

8.4. Use of certain materials in embalming.

A licensee or registrant, licensee's agents, assistants or employees shall not use any fluid or compound which contains arsenic, lead, mercury, copper, zinc, silver, antimony or chloral or any poisonous alkaloid in the embalming of a body which would interfere in the autopsy or other investigation of the death of that body.

**§6-1-9. Price disclosure, price lists, statement of goods and services, misrepresentations.**

9.1. All funeral establishments shall comply with applicable state and federal laws on price disclosures, price lists, statements of goods and services, and misrepresentation, including but not limited to the Federal Trade Commission, Trade Regulation Rule for Funeral Industry Practices, 16 CFR Part 453.

9.2. Required records.

Funeral establishments shall maintain the following documents for at least one year after expiration: general price list, casket price list, outer burial container price list, statement of goods and services.

**§6-1-10. Advertising.**

10.1. All advertising shall comply with the requirements set forth in W. Va. Code §§30-6-1 et. seq.

10.2. A licensee, apprentice or any other person, persons or business organization associated or in any way connected with a funeral establishment shall not use or sponsor the use of any false, misleading, untrue or deceptive advertising in any manner.

10.2.1. If the words "Free," "Without Charge" or other words with similar connotations have the effect of misleading the public, the Board may consider the advertisement to be false and misleading.

10.2.2. A licensee, apprentice or any other person, persons or business organization associated or in any way connected with a funeral establishment shall not solicit business or offer any inducement, pecuniary or otherwise, for employing solicitors, agents, canvassers or other persons for the purpose of securing or attempting to secure business. These persons shall not call upon, telephone, write or cause, directly or indirectly, advertising literature to be sent to a sick or dying person as would tend to be considered non-general, selective or soliciting advertisements. A licensee, apprentice or any other person, persons or business organization associated or in any way connected with a funeral establishment shall not offer or accept bribes or kickbacks, direct or indirect.

10.2.3. All advertising shall have no limit as to size providing the advertising is not in any way false, misleading, untrue or deceptive. The contents of the advertising shall include the name of the funeral establishment, its address and telephone number and the name of the licensed funeral director in charge. It may also include a description of the types of services available and prices and the service facilities of the advertiser as well as general information pertaining to his or her business.

10.2.3.a. A funeral establishment may advertise an individual casket price or prices; provided, that the advertisement contains both the casket price or prices and a disclosure which informs the public there is an additional charge for the funeral services. The Board shall not require that the exact charges for such services be included. The cemetery costs, opening grave costs, vault costs or excess mileage costs are not considered necessary to constitute a complete funeral.

10.2.3.b. Any funeral director advertising any merchandise used in connection with his or her business shall carry in his stock a sample of the merchandise for a period of not less than 30 days after

advertisement publication and must be able to meet any and all demands for such items, with no increase in price, for the stated period of not less than 30 days.

10.3. Exceptions to subsection 10.2.3. of this section.

10.3.1. Advertising medium which is notably small in size is exempt from subsection 10.2.3 of this rule, including but not limited to pens, pencils, pins or other items smaller than 1.5 inches in diameter.

10.3.2. Registered trademark logos are exempt from subsection 10.2.3 of this rule.

10.3.3. A licensee may request additional exemptions based on the size of the advertising medium by filing a written request in the Board office, before ordering the items. The Board shall approve or deny the request within 30 days of receipt of the request.

10.3.4. A business card is exempt from this rule.

**§6-1-11. Confidentiality.**

11.1. Preserving confidentiality.

A licensee or registrant, or a licensee's or registrant's agents, assistants or employees shall not divulge any confidential or private information relating to the domestic life in any home wherein they may be called upon to serve. This prohibition, however, shall not prevent divulging information to any person legally authorized to receive the information.

11.2. Exception.

Should any form of child abuse, child neglect, or elder abuse be suspected or divulged, the licensee or registrant shall notify proper authorities, including but not limited to local office of the West Virginia Department of Health and Human Resources and local law enforcement. Failure to do so shall result in disciplinary action, pursuant to W. Va. Code §§30-6-1, et seq.

**§6-1-12. Supervision required of licensee and registrant.**

12.1. Licensee in charge.

Each licensed funeral establishment shall employ a licensed funeral director as a licensee in charge and will be in charge of and responsible for the day-to-day operation of the establishment. The licensee in charge shall be a full-time employee of the funeral establishment and shall have the following licenses:

12.1.1. Funeral Service licensee's license in the State of West Virginia,

12.1.2. Crematory Operator training certificate ~~or Crematory Operator permit~~ in the State of West Virginia, and

12.1.3. Pre-need license in the State of West Virginia if the establishment offers or sells pre-need contracts.

12.2. Effective July 1, ~~2022~~ 2026, the board shall allow two years to complete the requirements under this section for the licensee in charge. Any individual not meeting the requirements of 12.1.1.

through 12.1.3. after July 1, ~~2022~~ 2028 may not serve as a licensee-in-charge of an establishment. All Licensees-in-Charge must submit copies of their Crematory Operator certificate (or a copy of their Crematory Operator permit issued by the board office) and a copy of their Pre-Need licenses with their renewal application.

12.3. Branch funeral establishment.

A licensee in charge shall directly supervise the activities of a branch establishment at all times that professional services are being rendered at the branch.

12.4. Absence in excess of ~~thirty (30)~~ ninety (90) days.

A licensed funeral establishment may not go without the supervision of a licensee in charge for a continuous period in excess of ~~30~~ 90 days. If the facility is unable to locate and hire a fulltime licensee in charge within the ~~30~~ 90 days, the facility cannot perform services.

12.4.1. The board shall issue a 90 day temporary permit.

12.5. Funeral Directing.

A funeral director, licensed by this state, shall be responsible for, be present at, and supervise any funeral service, grave side service, committal service or memorial service conducted for compensation within the state.

12.6. Embalming.

An embalmer, licensed by this state, shall be present at and directly supervise any embalming operation performed within the state. Only licensed embalmers or registered apprentice embalmers may embalm dead human bodies.

12.7. Arrangements conference.

A funeral director, licensed by this state, shall be responsible for and generally supervise any arrangements conference conducted within the state. A registered apprentice funeral director may be present and participate in the arrangements conference under the general supervision of a licensed funeral director.

**§6-1-13. Inspections.**

13.1. Right of inspection.

The Board, any of its members or any inspector duly authorized, has the right to enter, without prior notice, any licensed funeral establishment or its embalming facility, during normal business hours, for the purpose of inspecting the establishment.

13.2. Compliance.

The holder of a funeral establishment license shall correct any violations found during an inspection. The severity of the violation shall dictate the time allotted for correction and is at the discretion of the person conducting the inspection.

13.3. The Board shall produce an inspection report to use as a guide while inspecting an establishment, a copy of which shall be left with the establishment at the conclusion of the inspection and a copy which shall be filed in the office of the Board.

13.4. Areas of inspection shall include but are not limited to:

13.4.1. Public areas, including restrooms, lounges, parlors, casket display rooms and individual caskets, offices and chapels;

13.4.2. Non-public areas, including preparation or embalming rooms, embalming facilities, refrigeration facilities, holding areas, crematories and dressing rooms;

13.4.3. Documents, equipment, and materials covered by sections 9, 10, 14, 23, 24, and 26-28 of this rule; and,

13.4.4. Medical waste disposal procedure and documents.

13.5. All funeral establishments shall maintain all necessary equipment, as established in section14 of this rule, and materials in a clean, safe, and sanitary condition. All equipment and materials shall be in good repair and are subject to inspection. The building in which the funeral establishment or embalming facility is located shall also be in good repair and maintained in a clean, safe, and sanitary condition and is subject to inspection.

13.6. The Board shall charge an inspection fee prescribed in the Board's Series 6 CSR 7 Rule.

13.7. The inspector or the investigator may visit any facility while preparation of a body is being conducted or where a funeral is in progress, when it may be considered necessary to secure evidence, provided that the visit shall be conducted in a respectful and decorous manner.

13.8. The Board shall initiate disciplinary proceedings for violations that are not corrected or for continuous disregard for cleanliness and other standards prescribed in this rule.

13.9. The inspector shall in no way be connected with the work or business of a funeral establishment he or she inspects, or inspect a competitive business within a 25 mile radius. The Board shall make other arrangements to conduct inspections of any of these facilities.

**§6-1-14. Necessary equipment.**

The inspector or another duly authorized agent of the Board shall use his or her discretion to designate the time frame in which a funeral establishment shall correct violations, depending upon the type and severity of violation. Failure to comply with the following requirements shall result in disciplinary action pursuant to W. Va. Code §§30-6-1, et. seq.

14.1. A main funeral establishment shall have the equipment for the conduct of embalming and funeral directing, and shall comply with Occupational Safety and Health Administration's regulations as outlined in 29CFR1900 et seq., and includes but is not limited to:

14.1.1. A preparation room or an embalming facility, along with all necessary equipment, in compliance with all state and federal laws and rules.

14.1.1.a. Upon the effective date of this rule, an existing main funeral establishment shall install an embalming facility or a preparation room pursuant to subsection 14.1.7(b) and 14.2 of this section.

141.1.b. Upon the effective date of this rule, a new applicant for a main funeral establishment license shall install a preparation room pursuant to subsection 14.1.7(b) and 14.2 of this section and is prohibited from installing an embalming facility.

14.1.2. The following equipment and materials shall be located in the preparation room and embalming facility:

14.1.2.a. Sanitary flooring;

14.1.2.b. All instruments and appliances used in the embalming of a dead human body, which are thoroughly cleansed and sterilized by boiling or immersion for ten minutes in a one percent solution of chlorinated soda or an equivalent disinfectant immediately at the conclusion of each embalming;

14.1.2.c. Running hot and cold water with a lavatory sink for personal hygiene;

14.1.2.d. Permanently installed and operable exhaust fan and intake vent with the capacity to change the air in the room four times each hour;

14.1.2.e. Sanitary plumbing connected with sewer, cesspool, septic tank, or other Department of Health and Human Resources approved system;

14.1.2.f. Porcelain, stainless steel, metal-lined or fiber-glass operating table;

14.1.2.g. All opening windows and outside doors adequately screened and shielded to prevent viewing from outside;

14.1.2.h. All hydro-aspirators equipped with at least one air breaker;

14.1.2.i. Containers for refuse, trash and soiled linens adequately covered or sealed at all times;

14.1.2.j. First aid kit and eyewash;

14.1.2.k. A “private” sign posted on the door(s) entering the preparation room or embalming facility. No one may be allowed in while the body is being embalmed or prepared except licensed embalmers, registered apprentices, and other authorized persons and officials while discharging their duties. The preparation room or embalming facility may not be open to the general public;

14.1.2.l. Documentation which shows that all waste materials, refuse, used bandages, and cotton are destroyed by reducing to ashes by incineration, or are removed by a licensed medical waste dispenser, or are removed and transported by the owner in accordance with the provisions of 64 CSR 56;

14.1.2.m. Personal protective equipment in which every person, while engaged in actually embalming or preparing a dead human body, is attired with impervious rubber gloves and a clean smock or gown covering the person from the neck to below the knees; and

14.1.2.n. Appropriate holding area for dead human bodies. All bodies in the preparation room or embalming facility or awaiting funeral services or transport to another destination shall be treated with proper care and dignity and shall be properly covered at all times.

14.1.3. Restroom facilities in compliance with all federal, state, and local health requirements.

14.1.4. Chapel or other separate room for conducting funeral services.

14.1.5. Office space for making arrangements.

14.1.6. Exception.

14.1.6.a. If a main or branch funeral establishment operates solely as a trade service or mortuary service, a chapel is not required. If the trade service or mortuary service does not serve the public directly and instead only offers its services directly to other funeral establishment, public restroom facilities and office space are not required.

14.1.6.b. If a branch funeral establishment is within 60 miles of the main funeral establishment, a fully-equipped preparation room or embalming facility is not required, pursuant to subsection 14.1.1 of this section. Instead, a separate holding area for dead human bodies shall exist which shields or hides the bodies from public view while awaiting a funeral service to begin or while awaiting transport to another destination. If a branch funeral establishment is more than 60 miles from the main funeral establishment, the branch funeral establishment shall maintain equipment same as the main funeral establishment.

14.2. Embalming facilities.

14.2.1. An embalming facility shall:

14.2.1.a. be a separate building from the main funeral establishment;

14.2.1.b. be located within five miles of the main funeral establishment; and,

14.2.1.c. not be open to the general public.

14.2.2. A funeral establishment may only construct an embalming facility if the funeral establishment's building and property were constructed and used as a main funeral establishment prior to July 1, 2002.

**§6-1-15. Courtesy card.**

15.1. Requirements.

The applicant shall:

15.1.1. Certify residency of a state which borders West Virginia;

15.1.2. Certify licensure status as a funeral director and embalmer in state of residence on a form supplied by the Board;

15.1.3. Submit an application supplied by the Board; and

15.1.4. Pay fees, as prescribed in the Board's Series 6 CSR 7 Rule.

15.2. Privileges.

15.2.1. A courtesy card holder may conduct funerals, prepare death certificates, and bury a dead human body for an out-of-state funeral establishment, within the boundaries of the state of West Virginia.

15.2.2. A courtesy card holder may advertise for his or her funeral establishment in publications or other media in West Virginia, so long as the courtesy card holder follows section 9 of this rule.

15.2.3. Responsibilities.

A courtesy card holder shall obey all laws of the State of West Virginia and this rule.

15.3. Exception.

A courtesy card holder may not open or operate a place of business for the purpose of conducting funerals, embalmings, cremations, hydrolyzation or selling of funeral goods. He or she may not maintain an office or agency in this state. Further, he or she may not be employed by, nor contracted by, a funeral establishment licensed by this state as a licensed funeral service licensee or funeral director. A courtesy card holder may not prepare or embalm dead human bodies within the boundaries of the State of West Virginia. Courtesy card holders are prohibited from exhuming or disinterring bodies in the State of West Virginia.

15.4. The violation of this section shall result in the immediate revocation or cancellation of the courtesy card of the violator issued by this Board.

**§6-1-16. Penalties.**

16.1. Any violation of this rule constitutes grounds for the refusal to renew a license or constitutes grounds for the suspension or revocation, or other disciplinary action pursuant to W. Va. Code §30-1-1, et. seq. and § 30-6-1, et. seq.

16.2. Any individual may make a complaint to the board concerning a licensee or registrant, and the Board shall initiate an investigation and resolve complaints, pursuant to procedural rule 6 CSR 4.

16.3. Any person who had a license or registration suspended or revoked by the Board who believes the suspension, or revocation was a violation of W. Va Code §§30-1-1, et. seq. or 30-6-1, et. seq. or this rule is entitled to a hearing on the action denying the license, pursuant to procedural rule 6 CSR 4.

16.4. The Board may fine a licensee or registrant for violation of W. Va Code §§30-1-1 et. seq. or 30-6-1, et. seq. or this rule, up to $1,000.00 per violation per day, pursuant to procedural rule 6 CSR 4. The Board may take further disciplinary action if the licensee or registrant fails to pay any fines.

**§6-1-17. Fees.**

17.1. Fees paid to the Board are not refundable. All fees are payable to the West Virginia Board of Funeral Service Examiners (WVBFSE) and are prescribed in the Board's Series 6 CSR 7 Rule.

17.2. Study Packets for state examination.

Applicant shall be informed of the availability of a study packet at time of request for registration for the state examination. The applicant is not required to buy a packet; however, upon request, a study packet shall be promptly mailed to applicant upon payment of the fee as prescribed in the Board's Series 6 CSR 7 Rule.

17.3. Apprentice Handbook.

The Board shall prepare an apprentice handbook, which is free only with the initial apprentice registration. However, upon payment of a fee as prescribed in the Board's Series 6 CSR 7 Rule, the Board shall prepare and promptly mail to the apprentice subsequent handbooks.

17.4. Lost or stolen licenses, certificates of registration or courtesy cards.

The Board shall print and promptly mail a new license, certificate of registration, or courtesy card upon payment of a fee as prescribed in the Board's Series 6 CSR 7 Rule, for each re-issuance.

17.5. Inspections.

The Board shall inspect a funeral establishment and charge an inspection fee for the following reasons:

17.5.1. When it is necessary for the inspector to conduct an additional inspection of a funeral establishment found to be out of compliance with the provisions of W. Va. Code §§30-6-1, et. seq. and this rule, the funeral establishment shall pay a fee as prescribed in the Board's Series 6 CSR 7 Rule for each additional inspection.

17.5.2. When the inspector schedules an appointment for inspection and no one is present at the funeral establishment for the inspection to be conducted and the inspector must return to the funeral establishment on a subsequent date, the establishment shall pay a fee for the first occurrence and for each subsequent occurrence, as prescribed in the Board's Series 6 CSR 7 Rule. This fee shall only be charged if it is determined by the Board that the inspector was not at fault for the missed appointment. No fee will be charged if a funeral establishment owner or operator or the licensee-in-charge contacts the inspector or the Board office before the scheduled appointment with a justifiable reason for his or her inability to be present for the appointment and can provide written documentation supporting his or her reason.

17.5.3. When a funeral establishment has undergone renovations which are something other than routine maintenance or upgrades of equipment and which affects the preparation room or embalming facility, the funeral establishment shall pay a fee prescribed in the Board's Series 6 CSR 7 Rule for an inspection before the Board issues the license.

17.5.4. When a funeral establishment is newly constructed or has been purchased by new owners, the funeral establishment shall pay a fee as prescribed in the Board's Series 6 CSR 7 Rule for an inspection before the Board issues the license.

17.5.5. When the holder of a funeral establishment license fails to renew the license pursuant to section 20 of this rule, the funeral establishment shall pay a fee as prescribed in the Board's Series 6 CSR 7 Rule for an inspection before the Board reinstates the license.

17.6. Continuing Education Approvals.

17.6.1. No fee shall be charged for single program applications submitted more than 45 days before the first date of the program.

17.6.2. The annual fee for a certified continuing education provider is prescribed in the Board's Series 6 CSR 7 Rule, the renewal of the certification being first day of January.

17.6.3. Exception.

For each single program application submitted for approval within 45 days of the first date of the program, which requires expedient approval, the applicant or provider shall pay a fee prescribed in the Board's Series 6 CSR 7 Rule for each application.

17.7. W. Va. Code §30-6-1, et. seq.

A fee prescribed in the Board's Series 6 CSR 7 Rule will be charged for each copy of the W. Va. Code or Rules, plus shipping and handling. All copies of other state or federal laws shall carry a charge of a fee as prescribed in the Board's Series 6 CSR 7 Rule per page plus shipping and handling. For materials that are pre-printed by another organization, only shipping and handling charges shall apply. A copy of this rule is available on-line athttp://www.state.wv.us/csr/ http://apps.sos.wv.gov/adlaw/csr/ and at the Secretary of State's office.

17.8. All other materials that must be re-printed and are not included in this rule shall carry a cost prescribed in the Board's Series 6 CSR 7 Rule, per page plus shipping and handling.

17.9. Reciprocal Funeral Director License and Embalmer License.

The applicant of a reciprocal license shall pay an application processing fee prescribed in the Board's Series 6 CSR 7 Rule, in addition to statutory fees, to cover expenses of the Board incurred while completing a background check with the applicant's home state of licensure.

17.10. Late fees.

17.10.1. The fee for the late payment of any required fee is prescribed in the Board's Series 6 CSR 7 Rule

17.10.2. The fee for a payment made by a check returned due to insufficient funds or similar failure to negotiate payment is prescribed in the Board's Series 6 CSR 7 Rule. The Board shall charge the fee prescribed if the payment is not made within the specified time frames after the Board has notified the payee of the returned check.

17.11. License and registration fees.

17.11.1. All fees except the fifth year of an apprentice license are prescribed in the Board's Series 6 CSR 7 Rule. The apprentice shall renew for only one year during the fifth year of registration and pay a renewal fee of $120.00 since the apprentice is prohibited from being registered for more than five years, pursuant to subsection 4.2 of this rule. The Board may require the apprentice to pay the remainder of the biennial license fee $100.00 if the apprentice is granted a one-year extension, pursuant to subsection 4.2 of this rule.

17.11.2. The fee for the state law examination required by the Board is prescribed in the Board's Series 6 CSR 7 rule.

17.11.3. The fee for the National Board Examination is established by and payable to the International Conference of Funeral Service Examining Boards. Information regarding these examinations is available on-line at http://www.cfseb.org.

17.11.4. Any Funeral Director /Embalmer, who had been licensed for no less than five (5) years in the state of West Virginia, and in good standing with no pending disciplinary action, desiring to return to work for no more than six (6) consecutive months (such as covering a maternity leave or illness) shall pay the inactive license fee of $ 50.00. With this conditional license, no continuing education is required. This request must be in writing and submitted to the Board along with a Return-to-Work form.

**§6-1-18. Correspondence with board.**

To avoid inconsistency, all inquiries relating to any facet of licensing requirements shall be directed, in writing, to the full Board through its Executive Director. If any employee or member of the Board is asked to provide information or interpretations, he or she shall refrain from responding, but shall reduce the inquiry to written form and direct it to the full Board through its Executive Director.

**§6-1-19. Continuing education.**

19.1. Applications to present or sponsor a single program.

Applicants wishing to present continuing education programs shall submit an application 45 days before the first presentation date of the program and the program shall be relevant to the practice of mortuary science. Sponsors or providers of programs are responsible for submitting applications for approval. Fees for applications are prescribed in the Board's Series 6 CSR 7 Rule. On-going programs shall be approved biennially.

19.2. Applications to present or sponsor multiple programs.

19.2.1. An applicant wishing to present multiple continuing education programs shall submit an application to become a certified continuing education provider instead of applying for each single program as prescribed in this section. The Board shall thoroughly screen an applicant to ensure that the applicant conducts quality programs based on the presenter's educational qualifications and experience, adequate resources, past performances, and general program content. The fee for applications is prescribed in the Board's Series 6 CSR 7 Rule.

19.2.2. The Board may revoke the certification of a continuing education provider immediately if the Board determines that the provider cannot deliver quality programs. The Board may consider reinstatement of certification if the applicant can show cause for reinstatement, by providing proof of qualifications and documentation of improvement. The applicant shall pay the required application fee prescribed in the Board's Series 6 CSR 7 Rule.

19.3. Licensees.

19.3.1. Licensed Funeral directors and funeral service licensees shall attend approved continuing education programs as a prerequisite to license renewal. A funeral director licensee and a funeral service licensee shall obtain four hours every two years of general funeral service education, in which one of these hours must be in ethics, and two hours every two years of occupational safety or health-related training. It is the responsibility of the licensee to finance his or her costs of continuing education.

19.3.2. Licensees may get two hours of required continuing education credits through audio or video media. However, these programs shall be approved in advance, as established in subsection 19.1.

of this rule. The Board may require the licensee to demonstrate new knowledge of material learned by examination or other means of testing.

19.3.3. In the event the governor has declared a state of emergency, and if the board of funeral service examiners determines that it is a hardship to obtain in-person hours, it may exempt the in-person, face to face requirement for the compliance period during which the state of emergency was declared.

19.4. Exception.

Courtesy card holders and emeritus licensees are exempt from attending continuing education programs or other schools of instruction, pursuant to W. Va. Code §30-6-14.

**§6-1-20. Biennial licenses and registrations.**

20.1. The Board shall renew all licenses and certificates of registration biennially on a staggered schedule as prescribed in W.Va. Code §30-6-14. Beginning July 1, 2002, one half of all licenses and certificates of registration shall be renewed for one year and one half of all licenses and certificates of registration shall be renewed for two years. Thereafter, all licenses and certificates of registration shall be issued or renewed biennially.

20.2. A licensee or registrant, who desires to continue in his or her practice, shall biennially on or before the first day of July of the renewal period apply to the Board for a renewal of his or her license, and shall transmit with the application the fee prescribed in the Board's 6 CSR7 rule. If the Board finds that the applicant has been legally licensed and is entitled to a renewal, it shall issue a renewal certificate.

20.3. The Board shall give notification of the need to renew licenses or registrations by the first day of June.

20.4. A licensed embalmer, funeral director, or funeral service licensee 65 years of age or older with at least 10 years of experience as a licensed embalmer, funeral director, or funeral service licensee is entitled to be issued, after payment of a fee, a license as an embalmer emeritus, funeral director emeritus, or funeral service licensee emeritus and is exempt from all continuing education requirements. The emeritus license shall entitle the holder to all the rights and privileges of the license previously held by the licensee. The board may not require renewal of an emeritus license more frequently than once every four years

~~20.4.~~ 20.5. The Board shall charge a late fee prescribed in the Board's Series 6 CSR 7 Rule for the renewal of the late application.

~~20.5.~~ 20.6. Reinstatement.

~~20.5.1.~~ 20.6.1. In order for a licensee or registrant whose name has been erased from the register of the Board pursuant to W. Va. Code § 30-6-26, in order to again become licensed or registered, the licensee or registrant shall personally appear before the Board, or an authorized committee of the Board, to show cause for allowing the license or registration to lapse.

~~20.5.2~~. 20.6.2. Funeral directors or Funeral Service licensees.

~~20.5.2.a.~~ 20.6.2.a If a funeral director or funeral service licensee submits to the Board, within one year of the date his or her license lapsed, satisfactory reasons for failing to renew his or her license, the Board shall reinstate the license upon payment of a late fee prescribed in the Board's Series 6 CSR 7 Rule, plus the appropriate renewal fee for the current renewal period.

~~20.5.2.b.~~ 20.6.2.b., If a funeral director or funeral service licensee submits to the Board, after one year of the date his or her license lapsed, satisfactory reasons for failing to renew his or her license and satisfies the Board as to his or her qualifications to practice the profession ~~by successfully passing the West Virginia Laws, Rules and Regulations examinations administered by the International Conference of Funeral Service Examining Boards~~, by obtaining twelve (12) hours of Continuing Education credits, the Board shall reinstate the license upon payment of a reinstatement fee prescribed in the Board's Series 6 CSR 7 Rule, plus the appropriate renewal fee for the current renewal period. ~~The licensee shall pay all applicable fees for the examinations, also.~~

~~20.5.3.~~ 20.6.3. Courtesy card holders and apprentices.

~~20.5.3.a.~~ 20.6.3.a. If a courtesy card holder submits to the Board, within one year of the date his or her certificate lapsed, satisfactory reasons for failing to renew his or her certificate and pays a late fee prescribed in the Board's Series 6 CSR 7 Rule, plus the prescribed renewal fee for the current renewal period and demonstrates competency to work as a courtesy card holder, the Board shall reinstate the certificate.

~~20.5.3.b.~~ 20.6.3.b. If a courtesy card holder submits to the Board, after one year of the date his or her certificate lapsed, satisfactory reasons for failing to renew his or her certificate and pays a reinstatement fee prescribed in the Board's Series 6 CSR 7 Rule, plus the prescribed renewal fee for the current renewal period and demonstrates competency to work as a courtesy card holder, the Board shall reinstate the certificate.

~~20.5.3.c.~~ 20.6.3.c. If an apprentice submits to the Board, within one year of the date his or her certificate lapsed, a late fee prescribed in the Board's Series 6 CSR 7 Rule, plus the prescribed renewal fee for the current renewal period and provides a satisfactory reasons for failing to renew his or her certificate and demonstrates competency to work as an apprentice, the Board shall reinstate the certificate.

~~20.5.3.d.~~ 20.6.3.d If an apprentice submits to the Board, after one year of the date his or her certificate lapsed, satisfactory reasons for failing to renew his or her certificate and pays a reinstatement fee prescribed in the Board's Series 6 CSR 7 Rule, plus the prescribed renewal fee for the current renewal period and demonstrates competency to work as an apprentice, the Board shall reinstate the certificate.

~~20.5.4.~~ 20.6.4 Funeral establishments.

~~20.5.4.a.~~ 20.6.4.a If the holder of a funeral establishment license submits to the Board, within one year of the date the license lapsed, satisfactory reasons for failing to renew the license, passes an inspection and meets all other licensing requirements, the Board shall reinstate the license upon payment of a late fee prescribed in the Board's Series 6 CSR 7 Rule, plus the appropriate renewal fee for the current renewal period and an inspection fee.

~~20.5.4.b.~~ 20.6.4.b. If the holder of a funeral establishment license submits to the Board, after one year of the date of the license lapsed, satisfactory reasons for failing to renew his or her license, passes an inspection and meets all other licensing requirements, the Board shall reinstate the license upon payment of a reinstatement fee prescribed in the Board's Series 6 CSR 7 Rule, plus the appropriate renewal fee for the current renewal period and an inspection fee.

~~20.5.5~~. 20.6.5. Investigations of persons requesting reinstatement.

If the licensee or registrant whose name has been erased for failure to renew his or her license or registration is under investigation for alleged violations of W.Va. Code §30-6-1 et. seq. or this rule, the Board may deny reinstatement until the investigation is resolved.

~~20.6.~~ 20.7. Funeral establishments.

~~20.6.1.~~ 20.7.1. The executive director shall immediately issue a 90 day probationary license to a funeral establishment which has met all requirements prescribed in §30-6-1 et. seq. and this rule and place the application on the agenda for consideration during the next scheduled meeting.

~~20.6.2.~~ 20.7.2. If, at the meeting, the Board determines that the funeral establishment has complied with all requirements, the Board shall issue a license as prescribed in subsection 20.1. of this section.

~~20.6.3.~~ 20.7.3. If, at the meeting, the Board determines that the funeral establishment has not complied with all requirements, the Board shall deny the application and shall not issue a license. The Board may reconsider the application at a later date.

~~20.6.4.~~ 20.7.4 The Board shall not charge a fee for the probationary license.

**§6-1-21. Inactive licenses.**

21.1. At its discretion, the Board may grant inactive licenses to funeral directors or funeral service licensee, which waives compliance of any continuing education requirement temporarily. The Board may grant an inactive license under the following conditions:

21.1.1. The licensee certifies that he or she is not actively engaged in practice which requires a license in this state and agrees to not engage in such practice without first complying with provisions for activation of an inactive license, on a form prescribed by the Board, and paying all applicable fees for activation to active status prescribed in the Board's Series 6 CSR 7 Rule,

21.1.2. The licensee agrees to continue to renew his or her license biennially to maintain inactive status and pay all applicable fees prescribed in the Board's Series 6 CSR 7 Rule, and;

21.1.3. The licensee agrees to obtain all continuing education credits waived while on inactive status, prior to actively engaging in practice again.

21.2. Inactive licensees shall satisfy the following requirements for activation to active status prior to actively engaging in the practice of funeral directing or embalming

21.2.1. Submit notification to the Board of his or her intention to actively engage in practice which requires a license,

21.2.2. Obtain all continuing education credits previously waived and submit verification of completion, and

21.2.3. Pay the fees prescribed in the Board's Series 6 CSR 7 Rule for reactivation.

**§6-1-22. Inspector and investigator requirements.**

22.1. The positions of inspector and investigator shall be exempt and at-will positions. The Board has the discretion to hire individuals as part-time or full-time employees, provided that full-time employees are given leave, retirement and health care benefits as that of other state employees.

22.2. The inspector and investigator shall be expected to get training periodically to enhance his or her skills, at the expense of the Board. The Board shall evaluate these employees annually to determine competence to continue in his or her position.

22.3. An applicant for the position of inspector shall meet all qualifications for licensure as a funeral director and an embalmer prior to being hired. The Board shall require the inspector to get training in cremation procedures during his or her first six months of employment if the inspector has not attended any such training within the previous year.

22.4. An applicant for the position of investigator shall meet the following requirements to be considered for employment:

22.4.1. graduation from an accredited four-year college or university in a related field and 2 years full-time or equivalent part-time employment in law enforcement or other government policing agency; or

22.4.2. 6 years full-time or equivalent part-time employment in law enforcement or other government policing agency.

**§6-1-23. Identifying dead human bodies.**

23.1. A funeral establishment shall develop, implement, and maintain a written procedure for identification of a dead human body or cremated remains whereby the body or cremated remains can be identified from the time the funeral establishment accepts delivery of the body or cremated remains until the body or cremated remains are released to an authorized representative or buried. Documentation of identification includes but is not limited to: disks or other tags and paper evidence.

23.2. If the remains are cremated remains, the funeral establishment shall inspect the cremated remains to determine if documentation of identification has been placed within or on the cremated remains container. If the funeral establishment finds that no documentation exists, the funeral director shall contact the crematory which performed the cremation immediately to inform the crematory of the error. The funeral establishment shall not be responsible for correcting the error. Rather, the crematory shall determine the identification of the cremated remains and place the documentation within the cremated remains container.

23.3. For all other remains, the funeral establishment shall inspect the remains for identification. If the funeral establishment finds that no documentation exists, the funeral director shall contact the person who released the body to the funeral establishment to inform him or her of the error. The funeral establishment shall not be responsible for correcting the error, except that the authorized representative should confirm the identity of the deceased person, if possible or feasible.

23.4. If the funeral establishment retrieves a deceased human body from a family residence or similar living quarters in which it would be inappropriate to tag the body out of respect of the family members or other residents, the funeral establishment may place the identification documents on the body upon arrival at the funeral establishment.

23.5. The funeral establishment shall permanently tag a deceased human body or the casket which contains a body, but only after the embalmer disinfects the body. The Board shall allow the funeral

establishment discretion regarding what type of tag to use, so long as the tag is permanent and will not decay, decompose, or otherwise breakdown. Paper tags are permissible if protected from decomposition.

23.6. The funeral establishment shall report their own identification errors to the Board within 5 business days. The funeral establishment which received the body from another institution which made the error shall not be responsible for reporting the error.

**§6-1-24. Permission to cremate or hydrolyze, disclosure for unclaimed remains, removing objects from body.**

24.1. If a funeral establishment has been contracted by the authorized representative of a deceased person to provide a cremation or hydrolyzation, the licensee in charge shall cooperate with the funeral establishment's contracted crematory or alkaline hydrolysis facility to:

24.1.1. get written authorization from the authorized representative who has the legal right to authorize the cremation or hydrolysis; and,

24.1.2. get a permit for cremation or hydrolyzation from the county medical examiner, assistant county medical examiner, or the county coroner in whose county jurisdiction death takes place as stated on the death certificate, pursuant to the provisions of W.Va. Code §61-12-1, et. seq. and §30-6-1, et. seq.

24.2. The contracted funeral establishment shall not release a dead human body to a crematory before the written authorization to cremate or hydrolysis from the authorized representative and the permit for cremation or hydrolyzation are executed.

24.3. A funeral establishment shall, in writing, disclose to the authorized representative during the arrangement conference that unclaimed remains may be buried in a common grave and may not be recoverable in their entirety or at all, if exhumed at a later date.

24.4. A funeral service only licensee shall remove all non-combustible objects, hazardous medical equipment and other objects which may not incinerate from a deceased human body prior to releasing the body to a crematory. In doing so, the licensee shall first ask the authorized representative or next of kin if the decedent may have any of these objects and shall disclose to the authorized representative that these objects must be removed because of their non-combustible or dangerous properties.

**§6-1-25. Authorized representatives; right to control and duty of disposition.**

25.1. Advance directives, medical power of attorney and will of decedent.

A person may direct the preparation for, type, or place of his or her own final disposition, either by oral or written instructions. The authorized representative otherwise entitled to control the final disposition pursuant to W.Va. Code §30-6-3 and this rule shall faithfully carry out the reasonable and otherwise lawful directions of the decedent to the extent that the decedent has provided resources for the purpose of carrying out the directions. If the instructions are contained in a will, they shall be immediately carried out, regardless of the validity of the will in other respects or of the fact that the will may not be offered for or admitted to probate until a later date, subject to other provisions of this chapter or any other law of this state. If the instructions are contained in a valid medical power of attorney document, they shall be immediately carried out, pursuant to W.Va. Code §16-30-1, et. seq. This subsection shall be administered and construed so that the reasonable and lawful instructions of the decedent or the person entitled to control the final disposition shall be faithfully and promptly performed

25.2. Determination of right to control and duty of disposition.

The right to control the disposition of the remains of a deceased person, including the location and conditions of final disposition, unless other directions have been given by the decedent pursuant to subsection 25.1. of this section, vests in, and the duty of final disposition of the body devolves upon, the following authorized representative in the order named:

25.2.1. the person appointed in a dated written instrument signed by the decedent. Written instrument includes, but is not limited to, a health care directive or medical power of attorney executed pursuant to W.Va. Code §16-30-1, et. seq. of the West Virginia Health Care Decisions Act. Written instrument does not include a durable or nondurable power of attorney which terminates on the death of the principal pursuant to W.Va. Code §39-4-1, et. seq. of the Uniform Durable Power of Attorney Act;

25.2.2. the surviving, legally recognized spouse;

25.2.3. the surviving biological or adopted child or children of the decedent over the age of majority, provided that, in the absence of actual knowledge to the contrary, a funeral director may rely on instructions given by the child or children who represent that they are the sole surviving child, or that they constitute a majority of the surviving children;

25.2.4. the surviving parent or parents of the decedent or other permanent legal guardian of the decedent;

25.2.5. the surviving biological or adopted sibling or siblings of the decedent over the age of eighteen (18), provided that, in the absence of actual knowledge to the contrary, a funeral director may rely on instructions given by the sibling or siblings who represent that they are the sole surviving sibling, or that they constitute a majority of the surviving siblings;

25.2.6. the person or persons respectively in the next degree of kinship in the order named by law to inherit the estate of the decedent; and

25.2.7. the appropriate public or court authority, as required by law.

For purposes of this subsection, the appropriate public or court authority includes the county Department of Health and Human Resources of the county in which the death occurred if the person dies without apparent financial means to provide for final disposition or the circuit court in the county in which the death occurred.

25.3. Estranged persons.

Where there is only one person in a degree of relationship to the decedent described in subsections 25.2.1. through 25.2.7. of this section and a circuit court, pursuant to subsection 25.5. of this section, determines that the person and the decedent were estranged at the time of death, the right to control and the duty of disposition shall devolve to the authorized representative or representatives in the next degree of relationship pursuant to subsection 25.2. For purposes of this subsection, "estranged" means having a relationship characterized by mutual enmity, hostility, or indifference.

25.4. Refusal of right to control and duty of disposition.

If a person or persons to whom the right to control and duty of disposition devolve, pursuant to subsection 25.2. of this section, refuses to accept or declines to act upon the right or duty, that right and duty shall pass as follows:

25.4.1. to another person or persons with the same degree of relationship to the decedent as the person or persons refusing to accept or declining to act; or

25.4.2. to the person or persons in the next degree of relationship to the decedent, pursuant to subsection 25.2.

25.5. Disputes.

25.5.1. When a dispute exists regarding the right to control or duty of disposition, the parties in dispute or the funeral director may file a petition in a county circuit court, requesting that the court make a determination in the matter. The petition may be filed as follows:

25.5.1.a. in the circuit court in the county of residence of the decedent or

25.5.1.b. if the decedent resided in another state, in the county where the funeral establishment is located.

25.5.2. Should the right to control and duty of disposition devolve to more than one person with the same degree of relationship to the decedent and those persons cannot, by majority vote, make a decision regarding arrangements and final disposition and a circuit court has been petitioned to make a determination, the court shall consider the following factors in making its determination:

25.5.2.a. the reasonableness, practicality, and resources available for payment of the proposed arrangements and final disposition;

25.5.2.b. the degree of the personal relationship between the decedent and each of the persons in the same degree of relationship to the decedent;

25.5.2.c. the expressed wishes and directions of the decedent and the extent to which the decedent has provided resources for the purpose of carrying out the wishes or directions; and

25.5.2.d. the degree to which the arrangements and final disposition will allow for participation by all who wish to pay respect to the decedent.

25.6. Control by funeral director.

A funeral director shall have complete authority to control the final disposition and to proceed under this chapter to recover reasonable charges for the final disposition when both of the following apply:

25.6.1. the funeral director has actual knowledge that none of the persons described in subsection 25.2. of this section exist or that none of the persons so described can be found after reasonable inquiry or contacted by reasonable means; and

25.6.2. the appropriate public or court authority fails to assume responsibility for disposition of the remains within 36 hours after having been given written notice of the facts. Written notice may be delivered by hand, United States mail, facsimile transmission.

25.7. Immunity.

A funeral director or the funeral establishment shall not be subject to criminal prosecution or civil liability for carrying out the otherwise lawful instructions of the decedent or the person or persons whom

the funeral director reasonably believes is entitled to control the final disposition as the authorized representative or representatives.

25.8. Liability for cost of final disposition.

In addition to separate contractual obligations, the liability for the reasonable cost of final disposition devolves upon the estate of the decedent, regardless of whether testate or intestate, and the distributees of the estate, pursuant to Chapter 41 of W. Va. Code relating to wills. In the case of persons who die without apparent financial means to provide for final disposition, control of final disposition and liability devolves to the county Department of Health and Human Resources in which the death occurred, pursuant to W.Va. Code §9-5-18 relating to funeral expenses for indigent persons and pursuant to W.Va. Code §9-6-1 et. seq. relating to social services for adults. In the case of bodies delivered as anatomical gifts, pursuant to W.Va. Code §16-9-1 et. seq. of the Anatomical Gift Act, the institution receiving the body shall bear the responsibility for transportation and final disposition.

25.9. Interference with body or final disposition.

Any person that arrests, attaches, detains, or claims to detain any human remains for any debt or demand, or upon any pretended lien or charge, or who, without authority of law, obstructs or detains a person charged with the duty or engaged in the final disposition of a dead human body, or fails to release any dead human body upon the receipt of authorization for the release signed by a person or persons entitled to custody of the body is guilty of a misdemeanor. Criminal prosecution shall not preclude the Board from taking any other lawful disciplinary action.

**§6-1-26. Storage and disposal of unclaimed human remains.**

26.1. Unclaimed dead human bodies.

A funeral establishment may embalm an unclaimed dead human body under the following circumstances:

26.1.1. If the funeral establishment has made legitimate attempts to contact the next of kin or authorized representative without success within 12 hours after the body was placed in its care, the funeral establishment may embalm the body after this 12 hour period; provided that the funeral establishment makes a record of such legitimate attempts to contact the next of kin or authorized representative; or,

26.1.2. If the funeral establishment has made legitimate attempts to contact the next of kin or authorized representative without success and has reasonable belief that a body could be infected with a contagious or communicable disease, the funeral establishment may embalm the body immediately upon receipt of certification by a public health officer that the body is infected with a contagious or communicable disease. The funeral establishment may embalm the body prior to the end of 12 hour period set forth in subsection 26.1.1. of this section if the body is certified as contagious by the public health officer.

26.2. Unclaimed cremated remains.

26.2.1. A funeral establishment shall store in a secure location unclaimed cremated remains while trying to locate an authorized representative or person to whom the funeral establishment was instructed to release the cremated remains.

26.2.2. If, after 60 calendar days following the cremation procedure, the cremated remains are not claimed, the funeral establishment shall send notification, by certified mail, to the authorized representative or person to whom the cremated remains were to be released. This notification shall state that the remains are unclaimed and that the funeral establishment requires additional instructions regarding their release.

26.2.3. If, after 30 calendar days since the first notification, the cremated remains are still unclaimed, the funeral establishment shall send a second notification, by certified mail, to the same person or persons prescribed in subsection 26.2.2 of this section. This notification shall state that the cremated remains are still unclaimed and that the funeral establishment requires additional instructions regarding their release. The notice shall also inform the recipient that the funeral establishment may dispose of the remains in 90 days if unclaimed.

26.2.4. If, after 90 calendar days since the second notification, the cremated remains are still unclaimed, the funeral establishment may dispose of the cremated remains by burial or entombment. The funeral establishment may bury such cremated remains in a common grave, pursuant to section 24 of this rule.

26.3. The funeral establishment shall be entitled to payment for these services from the deceased person's estate, pre-need contract, applicable insurance policies or trust funds, or indigent burial programs.

**§6-1-27. Release of cremated remains.**

27.1. Following completion of a cremation, the cremated remains shall be released according to the instructions given on the written authorization to cremate. If the cremated remains are to be shipped, they must be securely packaged and transported via a method which has an internal tracking system available and which provides for a receipt signed by the person accepting delivery.

27.2. Where there is a dispute over release or disposition of the cremated remains, a funeral establishment may deposit the cremated remains with a court of competent jurisdiction pending resolution of the dispute or retain the cremated remains until the authorized representative with the right to control disposition presents satisfactory indication that the dispute is resolved.

**§6-1-28. Record-keeping practices.**

28.1. Every funeral establishment shall create and maintain on its premises an accurate record of every funeral and preparation of a dead human body. The record shall include all of the following information:

28.1.1. the name of the person or other funeral establishment delivering the body to the funeral establishment;

28.1.2. the name of the deceased and the identification number assigned to the body;

28.1.3. the date and time of acceptance of delivery;

28.1.4. the name of the embalmer who prepared the body;

28.1.5. the date, time and condition of the body at the beginning and end of the preparation of the body;

28.1.6. the date, time and manner of disposition of the body, and;

28.1.7. a photocopy of the death certificate.

28.2. If the deceased human body was cremated, the record shall also include:

28.2.1. documents supporting delivery or attempt to deliver cremated remains, including the method of delivery and to whom the cremated remains were released;

28.2.2. a listing of objects removed from the deceased by the embalmer before cremation or hydrolyzation;

28.2.3. written authorization and the name and address of the authorized representative who signed the authorization; and,

28.2.4. the permit for cremation from the medical examiner and the date this form was presented to the operator of the crematory.

28.3. A funeral establishment shall maintain records prescribed in this section at the funeral establishment for a period of five calendar years after the disposition of the body. Following this period and subject to any other laws requiring retention of such records, the funeral establishment may then place the records in storage.