

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER**

ADMINISTRATIVE LAW DIVISION

Form #3 □

Do Not Mark In This Box

AUG 18 3 14 PM '00

OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Board of Embalmers and Funeral Directors TITLE NUMBER: 6

CITE AUTHORITY: 30-6-1 et. seq.

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 1

TITLE OF RULE BEING PROPOSED: General Provisions (this is repeal and replace)

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Authorized Signature

SUMMARY OF PROPOSED RULE

Title 6

Legislative Rules

Series 1

General Provisions

This rule repeals and replaces the current Series 1, entitled "Rules of the West Virginia Board of Embalmers and Funeral Directors." The rule provides definitions of many terms and establishes general provisions for Board operation. The rule clarifies licensing examination criteria and apprenticeship requirements. The rule creates standards for the transportation of dead human bodies, including the obtaining of appropriate permits. The rule retains current health safety requirements and evidence of crime standards. The rule amends advertising and solicitation restrictions. The rule expands confidentiality. The rule preserves the duties and responsibilities of funeral directors and embalmers and maintains inspection criteria. The rule establishes minimum necessary equipment for embalming and funeral directing. The rule maintains courtesy card qualifications and requirements, as well as penalties for violations of the rule. The rule introduces miscellaneous fees and establishes basic continuing education requirements.

STATEMENT OF CIRCUMSTANCES

Title 6

Legislative Rules

Series 1

General Provisions

Title 6, Series 1, General Provisions, currently entitled "Rules of the West Virginia Board of Embalmers and Funeral Directors," went into effect June 12, 1994. Since that time the practice of funeral service has evolved and encompasses a much more variety of activities. As families become more mobile and move away from their childhood communities, dead human bodies are being shipped more through public transportation to be interred in family cemeteries within the childhood communities, an area addressed in the proposed rule.

Furthermore, with the advent of 'retail funeral goods sales,' advertisement restrictions have been anti-competitive in the past. It is necessary to establish advertising requirements that are not anti-competitive in nature.

Additionally, inspections of funeral establishments have shown that there is a need for basic equipment standards to provide safe embalming facilities for employees. Many facilities have not received routine maintenance or updating in many years. Also, there is a national trend toward more stringent educational standards for funeral service practitioners, as a response to the ever changing environment of the funeral business.

Finally, there is a need to implement basic fees for the processing of documents and other materials so that licensee fee revenue can be utilized for the enforcement of state law, as intended. Therefore, it is necessary to update the regulations so that this agency can effectively regulate the practice of funeral service in order to protect the public.

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: August 18, 2000

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No) Board of Embalmers and Funeral Directors

179 Summers Street, Suite 305

Charleston, WV 25301

558-0302

LEGISLATIVE RULE TITLE: General Provisions (this is repeal and replace)

1. Authorizing statute(s) citation 30-6-1 et. seq.

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
July 3, 2000

b. What other notice, including advertising, did you give of the hearing?
All current licensees and registrants were notified via newsletter which was mailed July 1, 2000. Additional organizations were notified via letter mailed June 26, 2000. See attached list.

c. Date of Public Hearing(s) *or* Public Comment Period ended:
4:00 p.m. August 1, 2000

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.
Attached X No comments received 2

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

August 18, 2000

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Sherri Douglass, Executive Director

179 Summers Street, Suite 305, Charleston, WV 25301

304-558-0302, Fax 304-558-0660

boeafd@mailcity.com

- g. **IF DIFFERENT FROM ITEM 'F'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

The following persons or groups were notified about the proposed rules, the comment period, and how they could receive copies.

American Association of Retired Persons
American Funeral Consultants
Association for Death Education and Counseling
Better Business Bureau
Cemetery Association (WV)
Cremation Association of North America
WV Department of Health and Human Resource, Medical Examiner and Bureau
for Public Health
WV Department of Health and Human Resource, Vital Registration Office
Federal Trade Commission
Funeral Ethics Association
Hospice Foundation of America, Washington, DC
International Cemetery and Funeral Association
International Conference of Funeral Service Examining Boards
National Funeral Directors Association
National Funeral Directors and Morticians Association
National Selected Morticians
Preferred Funeral Directors International
Pre-Need Associates
Attorney General's Office, Preneed Division
Regulatory Support Services
The American Board of Funeral Service Education
The International Order of the Golden Rule
The National Association of Colleges of Mortuary Science, Inc.
The University of Mortuary Science Education Association
West Virginia Funeral Directors Association
All WV Funeral Establishments
All Licensed Funeral Directors and Embalmers
All Registered Apprentice Funeral Directors and Apprentice Embalmers
All Current Courtesy Card Holders

□
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: General Provisions

Type of Rule: Legislative Interpretive Procedural

Agency: Board of Embalmers and Funeral Directors

Address: 179 Summers Street, Suite 305

Charleston, WV 25301

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	0	0	0	0	0
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

2. Explanation of Above Estimates:

It is predicted that there will be little or no increased expense to this agency, as the board already employs an inspector. There will be no need for an additional inspector.

3. Objectives of These Rules:

Establish requirements for equipment, transportation, & health concerns. Clarify educational standards. Establish continuing education procedures. Establish fees for processing documents. Establish inspection standards & courtesy card requirements

Rule Title: General Provisions

4. Explanation of Overall Economic Impact of Proposed Rule:

- A. Economic Impact on State Government:
There will be no impact on General Revenue, as this agency is self-sustaining. It is predicted that misc. fees will cover the costs of printing those materials and provide no more than \$2550.00, which will be utilized partly for printing and postage.

- B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens: It is predicted that the misc. fees will have only minimum impact as they are generally one-time fees. Most facilities are already equipped to pass the proposed inspection standards and would therefore not be required to pay the re-inspection fee.

- C. Economic Impact on Citizens/Public at Large.
Misc. fees for copies of documents and shipping would cost the public minimally, should the public be the requesting party. Many materials are available via Internet if the public chose not to purchase hard copies.

Date: August 18, 2000

Signature of Agency Head or Authorized Representative:

Sheri Douglass

6CSR1
TITLE 6
LEGISLATIVE RULE
BOARD OF EMBALMERS AND FUNERAL DIRECTORS

SERIES 1
GENERAL PROVISIONS

FILED
Aug 13 3 14 PM '00
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§6-1-1. General.

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

1.2 Authority. - WV Code §30-6-3.

1.3 Filing Date. -

1.4 Effective Date. -

1.5 Repeal of Former Rule. - This rule repeals and replaces Title 6 Legislative Rules, Board of Embalmers and Funeral Directors, Series 1, Rules of the West Virginia Board of Embalmers and Funeral Directors, 6 CSR 1, filed June 12, 1994.

§6-1-2. Definitions.

2.1. Arrangements conference. Includes the time spent with the next-of-kin, or other duly authorized or legally responsible person, planning and making financial arrangements for the funeral and/or final disposition of a dead human body.

2.2. Board. Means the West Virginia Board of Embalmers and Funeral Directors.

2.3. Embalming. 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 and/or restoration of a dead human body.

2.4. Funeral establishment. For purposes of this rule, means a place of business maintained and operated by a person, partnership, association, corporation or other organization, conducted in a building, or series of buildings, or a separate portion of a building having a specific street address or location, and devoted to such activities as are incident, convenient, or related to the preparation and arrangements, financial and otherwise, for the embalming or cremation, funeral, transportation, burial or other disposition of dead human bodies, and includes "trade service," "trade embalmer," "mortuary service," or any related term which designates activities relating to the shelter, care, custody and preparation of a deceased human body.

2.4.1 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 or cremation is done at the main establishment and the main establishment is within 60 miles of the branch facility, then the equipment for such preparation of dead human bodies is not required at the branch facility.

2.4.2 Main funeral establishment. Means a primary funeral establishment.

2.4.3 A "trade service" or "mortuary service" means a funeral establishment devoted strictly to the preparation and embalming of dead human bodies, and which may also include the financial arrangements for said embalming and transportation of dead human bodies. A trade service or mortuary service does not offer to the public funeral services, either in the funeral establishment, in religious facilities, or at graveside.

2.5. Funeral service. Includes 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.

2.6. Professional services. Includes embalming, funeral services and the arrangements conference.

2.7 Person. Means a person, partnership, association, corporation or other organization.

2.8 Registrant. Means a person who holds a certificate of registration issued by this board.

2.9 Licensee. Means a person who holds a license or courtesy card issued by this board.

§6-1-3. Licensing Examination.

3.1 An applicant for the state licensing examination shall remit the appropriate fees for examination and shall supply the Board with the following documentation:

3.1.1 A certified copy of a birth certificate establishing the applicant's age at eighteen (18) years or over;

3.1.2. One of the following:

a. A certified transcript which shows successful completion of an associate degree or sixty (60) semester hours or ninety (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

b. A certified transcript which shows successful completion of a bachelor's degree from an approved school of mortuary science for which at least 12 months of study is specifically in mortuary science and equivalent to a diploma program, and for which at least sixty (60) semester hours or ninety (90) quarter hours are in liberal arts.

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

3.1.4. A certificate issued by the International Conference of Funeral Service Examining Boards showing a passing score of its' examination of not less than seventy-five percent (75%).

3.2. Examinations. The state licensing examination shall be prepared and graded by the International Conference of Funeral Service Examining Boards. A passing grade for the examination shall be a score of not less than seventy-five percent (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.

3.3.2. State laws governing the preneed 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.

3.4. Monitoring of examinations. Employees or members of the Board may monitor examinations, provided that they have no relatives or employees sitting for the examination.

3.5. Inspection of examinations. The Board shall allow any individual who fails an examination to inspect his or her examination.

§6-1-4. Apprenticeship.

4.1. The apprenticeship for an embalmer license and for a funeral director's license shall be served simultaneously.

4.2. The apprenticeship program is of one (1) year's duration and consists of full-time employment under the direct supervision of an embalmer and funeral director licensed by this state and actively practicing within this state. For purposes of this rule, a full-time employee is an employee working a minimum of forty (40) hours per week in a licensed funeral establishment. The apprentice has five (5) years within which to complete the apprenticeship, to graduate from mortuary science school, and successfully complete all examinations. The Board will allow one (1) additional year of apprenticeship status upon a written application which shows good cause.

4.3. During the course of 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 thirty-five (35) dead human bodies.

4.3.2. Under the direct supervision of a licensed funeral director, he or she shall assist in the conduct of not less than thirty-five (35) funeral services.

4.4. During the course of the apprenticeship program, the Board may require the submission of progress reports, on forms prepared by the Board and revised as needed.

§6-1-5. Control of Dead Bodies.

5.1. Authority to assume control. No licensee, licensee's agent, assistants or employees shall assume control of any dead body without first gaining permission from the legally authorized person, or a medical examiner, health officer or other public official lawfully entitled to give the permission.

5.2. Responsibility to honor instructions. 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; cremation; viewing; photographing; clothing; casket; box or vault; cremation; time, place 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 will permit.

5.3. Authority to embalm or cremate. No licensee or licensee's agents, assistants or employees shall authorize the embalming or cremation of, or embalm or cremate any body without first gaining permission from the legally authorized person entitled 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.

5.4. Exception. Hazard to public health. If a question exists to whether the condition of a body may pose a hazard to public health which would be eliminated by embalming, written certification of the condition along with a request that the body be embalmed must be obtained from a public health officer prior to embalming. The embalmer must inform the legally authorized person, other than the public health officer of this certification prior to embalming.

5.5. Responsibility for fees. Failure to gain authority for embalming or cremation. No person or persons entitled to give permission to embalm a body pursuant to Sections 5.3 and 5.4 of this rule, is responsible for the payment of any fee in connection with an unauthorized embalming or cremation.

5.6. Transportation of dead human bodies.

5.6.1. Transit permit. A burial-transit permit, shall be obtained in accordance with WV Code §16-5-21.

5.6.2. Possession of permit. Until the time of final disposition, the burial-transit permit shall be in possession of the person in physical or legal custody of the body, or attached to the transportation container which holds the body. At final disposition, the permit shall be filed, in accordance with WV Code §16-5-21.

5.6.3. Death outside of West Virginia. A burial-transit permit shall be obtained from the state in which the death occurred, and shall be in accordance with WV Code §16-5-21.

5.6.4. Transportation equipment. A dead human body may be transported by means of public transportation or private vehicle or private aircraft that meets the following standards:

- a. promotes respect for and preserves the dignity of the dead human body;
- b. shields the body from being viewed from outside of the vehicle ;
- c. has ample enclosed area to accommodate an ambulance cot, aircraft ambulance stretcher, casket, alternative container, or cremation container, in a horizontal position;
- d. is so designed to permit loading and unloading of the body without excessive tilting of the casket, or other container which holds the body;
- e. if used for the transportation of more than one body at one time, the vehicle or aircraft must be designed so that a body or container does not rest directly on top of another body or container, and that each body or container is secured in such a manner as to prevent the body or container from excessive movement within the vehicle.

5.6.5. Transportation procedures. A dead human body transported via public transportation or private vehicle or aircraft must be placed in a carrying container adequate to prevent seepage of fluids and escape of offensive odors.

a. Public transportation. When a dead human body is transported by public transportation, it must be properly enclosed in a casket or alternative container and an appropriate outside shipping container. A body which is transported by means of public transportation must be properly prepared in accordance with the regulations or policies of the transportation carrier.

b. Private transportation. When transportation is by any private vehicle or aircraft, the outside shipping container may be omitted if the body is encased in a casket or alternative container. The casket or alternative container and the outside container may both be omitted and, in such case, the body shall be wrapped in a sheet that is impervious to liquids and offensive odors, covered in such a manner that the body cannot be viewed.

5.6.6. Embalming required. A dead human body that will not reach its destination within seventy-two hours following death must be properly embalmed. Refrigeration is not considered a form of preservation or disinfection and does not alter the seventy-two hour requirement.

§6-1-6. Health Requirements.

6.1. Statutes and rules and regulations. A licensee and the licensee's agents, assistants and employees shall comply with all federal and state laws and rules and regulations related to health.

6.2. Bodies of individuals affected with infections or contagious diseases. A licensee who has knowledge that a body is affected with infections or contagious diseases shall closely and directly supervise such bodies. The bodies shall be encased in airtight burial pouches, transfer cases or sealed caskets. Body cavities and orifices shall also be treated and disinfected.

6.3. An embalmer or funeral director shall handle body fluids, discarded sharps used in the preparation of bodies for burial, or biological or biologically-contaminated waste materials received with a body to be prepared for burial or cremation in a manner which complies with the provisions of Infectious Medical Waste, 64 CSR 56 for generators of infectious medical waste, as defined in that rule, specifically, Subsections 5.1; 5.2, except for 5.2.8 and 5.3; all of Section 6; Subsection 7.4; all of Section 8; and Subsections 12.1, 12.2, and 12.9 as though the body fluids, sharps and biological or biologically-contaminated waste materials were infectious medical waste and the embalming or funeral establishment were a small quantity generator of infectious medical waste as defined in Infectious Medical Waste, 64 CSR 56, except that any references to the secretary shall be taken as references to the Executive Director of the West Virginia Board of Embalmers and Funeral Directors.

6.4 An embalmer or funeral director shall treat body fluids, sharps, and biological or biologically-contaminated waste materials received with a body to be prepared for burial or cremation as required by Section 10 of Infectious Medical Waste, 64 CSR 56, or shall arrange for treatment and disposition of the body fluids, sharps or biological or biologically-contaminated waste materials received with a body to be prepared for burial or cremation by a treatment facility appropriately licensed or otherwise authorized by the agency having lawful

jurisdiction.

6.5 An embalmer or funeral director shall utilize a lawful and licensed transporter or infectious medical waste for the transport of body fluids, sharps, biological or biologically-contaminated waste materials received with a body to be prepared for burial or cremation to a treatment facility or may transport the waste themselves, according to the provisions of Infectious Medical Waste, 64 CSR 56, regarding the transport of infectious medical waste by small quantity generators.

6.6 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 person 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.

§6-1-7. Evidence of Crime.

7.1. Embalming, removal and/or cremation. No licensee, or a licensee's agents, assistants or employees shall embalm, remove or cremate a body when they have information of or suspect a crime or intentional violence in connection with the cause of death, until permission is obtained from a medical examiner or other qualified official.

7.2. Information of crime. A licensee or registrant, or a licensee's or registrant's agents, assistants or employees who have obtained information of a possible crime shall immediately communicate that information to a proper law enforcement officer.

7.3. Concealment of crime. No licensee or registrant, or a licensee's or registrant's agents, assistants or employees shall knowingly do any act that would conceal evidence of a crime.

7.4. Use of certain materials in embalming. No licensee, or licensee's agents, assistants or employees shall 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.

§6-1-8. Price Disclosure.

8.1. General price and information List. All funeral establishments shall comply with the current Federal Trade Commission, Trade Regulation Rule for Funeral Industry Practices, 16 CFR Part 453.

8.2. Required records. The following documents shall be maintained by the funeral establishment for a minimum of one year after expiration: general price list, casket price list, outer burial container price list, statement of goods and services.

§6-1-9. Advertising and solicitation, applicable to all persons licensed or registered by this board.

9.1. All advertising shall comply with the requirements set forth in article six (6) of chapter thirty (30) of W.Va. Code.

9.2. No licensee, registrant, apprentice or any other person, persons or business organization associated or in any way connected with a funeral establishment shall use or sponsor the use of any false, misleading, untrue or deceptive advertising in any manner whatsoever.

9.2.1. If the words "Free," "Without Charge" or other words with similar connotations have the effect of misleading the public, then their use shall be considered false and misleading by the Board.

9.2.2. No licensee, registrant, apprentice or any other person, persons or business organization associated or in any way connected with a funeral establishment shall solicit business or shall offer any inducement, pecuniary or otherwise for employing solicitors, agents, canvassers or other persons for the purpose of securing or attempting to secure business. Such persons shall not call upon, visit, 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. No licensee, apprentice or any other person, persons or business

organization associated or in any way connected with a funeral establishment shall offer or accept bribes or kickbacks, direct or indirect.

9.2.3. All advertising copy, such as newspaper, radio, television, bill-boards, church bulletins, school publications, trade journals, stationery, contracts and other similar periodical publications have no limit as to size providing the advertising is not in any way false, misleading, untrue or deceptive. The contents of the advertising must meet the follow requirements:

a. Corporations, limited liability companies, limited partnerships, limited liability partnerships. For these licensees or registrants required to register with the secretary of state, the advertisement must contain the trade name of the business as it appears on the organizing documents filed with the secretary of state, the name of the business as it appears on the license or certificate of registration issued by this board, the location and/or mailing address of the business, and the name of the licensed or registered person in charge. The advertisement must identify the person in charge by placing the term "licensee-in-charge" or "funeral director in charge" or other similar term after the name of the licensee or registrant in charge. This does not prohibit the inclusion of other employees of the business; however, their titles must also appear on the advertisement. If the name of the owner of the business is different than the trade name of the funeral establishment, the owner's name must also appear on all advertisements. The advertisement must identify the owner by placing the term "owner," or other similar term after the owner's name. The term "owner" is construed to mean the name of the corporation, limited liability company, limited partnership, or limited liability partnership.

b. Sole proprietorships, general partnerships. For these licensees or registrants, the advertisement must contain the DBA division or subsidiary name as it appears on the tax commission business registration form WV/BUS-APP, the name of the business as it appears on the license or certificate of registration issued by this board, the location and/or mailing address of the business, and the name of the licensed or registered person in charge. The advertisement must identify the person in charge by placing the term "licensee-in-charge" or "funeral director in charge" or other similar term after the name of the licensee or registrant in charge. This does not prohibit the inclusion of other employees of the business; however, their titles must also appear on the advertisement. If the owner's name, as it appears on the tax commission business registration form WV/BUS-APP, is different than that of the name of the business, as it appears on the funeral establishment license, the owner's name must also appear on the advertisements. The advertisement must identify the owner by placing the term "owner," or other similar term after the owner's name. The term "owner" is construed to mean the name of the sole proprietor or the names of the partners.

9.2.4. The advertisement may include a description of the service facilities of the advertiser as well as general information pertaining to his or her business. The following are additional requirements:

a. A funeral establishment may advertise the total cost of various adult services, however the advertisement must contain at least the total cost of the minimum adult service, which is construed to mean the cost of the casket and all necessary items for a complete funeral service. The cemetery costs, opening grave costs, vault costs or excess mileage costs are not considered to be necessary to constitute a complete funeral. If not advertising the total cost of adult services, casket prices and other funeral goods can be listed separately; however, the advertisement must contain at least one casket that is considered the least expensive of the models sold by the funeral establishment.

b. Any funeral establishment 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 thirty (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 thirty (30) days; and

c. The terms "advertise" and "advertising" as used in this rule include the use of radio, television, billboards, stationery, contracts, price lists, calendars, fans and novelty advertising, or any other advertising method or medium.

§6-1-10. Confidentiality.

10.1. Preserving confidentiality. No licensee or registrant, or a licensee's or registrant's agents, assistants or employees shall 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 lawfully entitled or properly authorized to receive the information.

10.2. Exception. Should any form of child abuse, child neglect, or elder abuse be suspected or divulged, the proper authorities shall be notified, 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 will result in disciplinary action as outlined in article six (6) of chapter thirty (30) and article one (1) of chapter thirty (30) of W.Va. Code.

§6-1-11. Supervision Required of Licensee and Registrant.

11.1. Licensed funeral director in charge. Each licensed funeral establishment shall have a licensed funeral director in charge of and responsible for the day-to-day operation of the establishment. The funeral director shall be a full time employee of the funeral establishment.

11.2. Branch funeral establishment. A licensed funeral director shall directly supervise the activities of a branch establishment at all times that professional services are being rendered at the branch.

11.3. Absence in excess of thirty (30) days. A licensed funeral establishment shall not go without the supervision of a licensed funeral director in charge for a continuous period in excess of thirty (30) days.

11.4. Funeral Directing. A funeral director, licensed by this state, shall be responsible for, be present at, and directly supervise any funeral service conducted for compensation within the state.

11.5. Embalming and cremation. 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. A funeral director, licensed by this state, shall be present at and directly supervise a cremation of a dead human body within the state.

11.6. Arrangements conference. A funeral director, licensed by this state, shall be responsible for and 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.

11.7. Direct supervision. Means the physical presence and oversight of an activity by a licensed funeral director or licensed embalmer.

11.8. General supervision. Means the general oversight or overall responsibility for an activity by a licensed funeral director or licensed embalmer. General supervision does not require the physical presence of the licensed funeral director or licensed embalmer.

§6-1-12. Inspections.

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

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

12.3. Areas of inspections, applicable to funeral establishments. The Board shall produce an inspection report to use as a guide while inspecting an establishment, a copy of which will be left with the establishment at the conclusion of the inspection and a copy which will be filed in the office of the Board. Areas of inspections shall include but not be limited to:

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

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

12.3.3. Materials as specified in sections 8 and 9 of these rules;

12.3.4. Medical waste disposal procedure and documents;

12.3.5. Other necessary equipment, materials, and records, as provided for in section 13 of these rules;

12.4 All funeral establishments shall maintain all necessary equipment, as established in section 13 of this rule, and materials in a clean, safe, and sanitary condition. All such equipment and materials shall be in good repair and are subject to inspection. The building in which the funeral establishment is located shall also be in good repair and maintained in a clean, safe, and sanitary condition and is subject to inspection.

§6-1-13. Necessary Equipment. Failure to comply with the following requirements shall result in disciplinary action as outlined in article six (6) of chapter thirty (30) and article one (1) of chapter thirty (30) of W.Va. Code, if not corrected within the allotted time designated by the inspector or any other duly authorized representative of the board.

13.1. 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:

13.1.1. Embalming and preparation room facilities along with all necessary equipment, in compliance with all state and federal laws and rules, located in each funeral establishment; existing funeral establishments, at the time of effective date of these rules, shall have installed the following equipment and materials by July 1, 2002. New applicants shall have installed such equipment and materials prior to issuance of license:

- a. sanitary flooring;
- b. all instruments and appliances used in the embalming of a dead human body shall be 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 individual case;
- c. running hot and cold water with a lavatory sink for personal hygiene;
- d. exhaust fan and intake vent, permanent installed and operable with the capacity to change the air in the room four times each hour;
- e. sanitary plumbing connected with sewer, cesspool, septic tank, or other department of health and human resources approved system;
- f. porcelain, stainless steel, metal-lined or fiber-glass operating table;
- g. all opening windows and outside doors shall be adequately screened and shielded from outside viewing;
- h. all hydro-aspirators shall be equipped with at least one air breaker;
- i. containers for refuse, trash and soiled linens shall be adequately covered or sealed at all times;
- j. first aid kit and eyewash;
- k. the embalming or preparation room shall be strictly private. A "private" sign shall be posted on the door(s) entering the embalming room. No one shall be allowed therein while the body is being embalmed except licensed embalmers, registered apprentices, and other authorized persons and officials in discharge of their duties. The embalming room shall not be open to the general public;
- l. all waste materials, refuse, used bandages, and cotton shall be destroyed by reducing to ashes by incineration, or shall be removed by a licensed medical waste dispenser;
- m. every person, while engaged in actually embalming a dead human body, shall be attired in a clean smock or gown covering the person from the neck to below the knees and shall, while so engaged, wear impervious rubber gloves;

n. All bodies in the preparation shall be treated with proper care and dignity and shall be properly covered at all times; and

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

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

13.1.4. Office space for making arrangements.

13.1.5. If caskets are displayed at the funeral establishment, there will be a separate room set aside for this purpose.

13.1.6. Exception. 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, public restroom facilities and office space are not required.

13.2 A branch funeral establishment shall have, at minimum the equipment for the conduct of funeral directing and shall have restroom facilities in compliance with all federal, state, and local health requirements. A branch establishment must meet requirements as established in section 2.4.1. of these rules, as it relates to embalming room facilities. If the branch funeral establishment has embalming room facilities, it shall comply with section 13.1.1. of these rules.

13.3 Caskets. If a funeral establishment stores in its building or offers for sale caskets to the public, the establishment shall comply with the following requirements: each casket on display, in storage, awaiting pick up or delivery to a customer or a customer's representative, or being utilized during a service shall have a permanent adhesive label which contains: manufacturer's name; type of materials the casket is made of, such as type of wood, metal, etc.; gauge of metal; and type of materials used on the exterior.

§6-1-14. Courtesy Card.

14.1. Requirements. The applicant shall:

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

14.1.2. Certify licensure status as a funeral director and embalmer in his state of residence, on a form supplied by the board;

14.1.3. Complete an application, supplied by the Board; and

14.1.4. Pay any and all statutory fees.

14.2. Privileges. A courtesy card holder may conduct funerals, for an out-of-state funeral establishment, within the boundaries of the state of West Virginia.

14.3. Responsibilities. A courtesy card holder shall obey all the laws of the state of West Virginia and this rule. He or she shall not open or operate a place of business for the purpose of conducting funerals, embalmings, cremations, or selling of funeral goods. He or she shall 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 embalmer or funeral director.

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

§6-1-15. Penalties.

15.1. 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 as outlined in article six (6) of chapter thirty (30) and article one (1) of chapter thirty (30) of W.Va. Code, of any license or certificate issued under the provisions of article six (6) of chapter thirty (30) of W.Va. Code.

§6-1-16. Fees.

16.1. Study Packets for state examination. \$25.00. Applicant will be informed of the availability at time of request for registration. The applicant shall not be required to purchase a packet; however, upon request and payment of fee, a study packet will be promptly mailed to applicant.

16.2. Apprentice Handbook. \$50.00. This handbook is free only with the Initial apprentice registration. Subsequent handbooks must be purchased at the above cost.

16.3. Lost or stolen licenses, certificates of registration or courtesy cards. \$25.00 for each re-issuance.

16.4. Inspections. A \$200.00 inspection fee will be charged for the following:

16.4.1. Each additional inspection for funeral establishments found to be out of compliance with the provisions of article 6 of chapter 30 of W.Va. Code and series one of title six legislative rules during the initial yearly inspection.

16.4.2. Missed scheduled appointments with inspector, in which the inspector must return to the funeral establishment on a date other than the date of the original appointment. This fee will only be charged if it is determined that the inspector was not at fault for the missed appointment. If a funeral establishment owner or operator or the licensee-in-charge contacts the inspector or the board office prior to the scheduled appointment with a reasonable reason for his inability to be present for the appointment and can provide written documentation supporting his reason, the fee shall not be charged. This fee is designed to cover the cost of the inspector's expenses.

16.5. Continuing Education Approvals. \$50.00 for each program application submitted for approval within 45 days of the first date of the program, which requires expedient approval. Any application submitted more than 45 days prior to the first date of the program will not carry this charge.

16.6. Chapter 30-6 and related rules. \$5.00 for one copy of each plus shipping and handling. All copies of other state or federal laws will carry a charge of \$.30 per page plus shipping and handling. For materials that are pre-printed by another organization, only shipping and handling charges will apply.

16.7. All other materials that must be re-printed and are not included of these rules will carry a cost of \$.30 per page plus shipping and handling.

16.8. Reciprocal Funeral Director License and Embalmer License. Application processing fee of \$25.00, in addition to statutory fees.

§6-1-17. Correspondence with Board.

17.1. Response to inquiries. 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.

§6-1-18. Continuing Education.

18.1. All continuing education programs must be approved by the board prior to the first presentation date of the program and be relevant to the practice of mortuary science. Sponsors of such programs are responsible for submitting applications for approval. Fees for such approvals are established in section 16.5 of these rules. On-going programs that are presented as needed must be approved each calendar year.

18.2. One-quarter of required continuing education credits may be obtained through audio or video media. Such programs must be approved in advance, as established in section 18.1. of these rules. The board may require the licensee to demonstrate new knowledge of material learned through such media by examination or other means of testing.

Public Comments
Title 6, Series 1

Reg #	Regulation (Quote)	Intent of Regulation	Issue	Recommended Solution
§ 2.1	<p>Arrangements conference. "Includes the time spent with the next-of-kin or other duly authorized or legally responsible person, planning for the funeral and/or final disposition of a dead human body."</p>	<p>To clarify the actual meeting with the family and to clarify further in the regulations that an arrangement conference falls within the scope of practice of a licensed funeral director.</p>	<p>In at least §§ 2.4 and 2.4.3, the important responsibility of making financial arrangements is part of the definition. It is excluded in § 2.1.</p>	<p>Strengthen and Clarify the definition of an arrangement Conference to mean: "... includes the time spent with the next-of-kin, or other duly authorized or legally responsible person, planning and making financial arrangements for the funeral and/or final disposition of a dead human body."</p>
§ 3.1.2	<p>The applicant must submit to the Board "two letters from persons who have known the applicant for a minimum of 5 years preceding application, who are not related to the applicant, and can attest to the applicant's moral character and temperate habits."</p>	<p>Appears to enhance screening and credentialing.</p>	<p>As former Executive Director of the Virginia Board of Funeral Directors and Embalmers, I have never seen an applicant choose anyone for a reference that was not going to give a favorable reference. These letters simply sated staff time and did not appear to provide any information could lead to a Board decision to deny a license.</p>	<p>Please delete the requirement.</p>
§ 4.1	<p>"The apprenticeship for an embalmer's license and for a funeral director's license shall be served simultaneously."</p>	<p>Appears to establish credentialing requirements in conjunction with cites described on following page.</p>	<p>See following page.</p>	<p>Please refer to following page.</p>

Reg. #	Regulation (Quote)	Intent of Regulation	Issue	Recommended Solution
§30-6-5 (1) of the Code	"No person shall be entitled to an embalmer's license unless he is 18 years of age or over..."	Credentialing.	These laws (including the one on the previous page) appear to read that the Code is lenient enough to allow me to become licensed as an embalmer as young as 18 years old yet the Board will not allow me to even register as an apprentice until I am 18 and would not allow me to sit for the state exam until I was 21.	Please clarify.
§30-6-5 (8) of the Code	"No person shall be registered as an apprentice funeral director or apprentice embalmer unless he is 18 years of age or over..."		Would an eager candidate have a loophole here in which to challenge the Board?	
§3.1	An applicant for the state licensing exam shall supply the Board with ... a certified copy of a birth certificate establishing the applicant's age at 21 years or older.			
§ 4.2	In pertinent part referencing the apprenticeship program: "... The apprentice has 5 years within which to complete the apprenticeship ... The Board will allow one additional year of apprenticeship status upon a written application which shows good cause. "	To provide a hardship waiver under certain circumstances.	For consistency of application and enforcement of this provision, I believe that the word "will" opens the Board to liability when making the subjective determination of what is "good cause."	Strengthen the Board's position in this definition to read in pertinent part: "... The Board, in its discretion, may allow one additional year of apprenticeship status upon a written application that the Board considers shows good cause. "

Reg. #	Regulation (Quote)	Intent of Regulation	Issue	Recommended Solution
§ 5.6.4	Public Transportation In pertinent part: "A dead human body may be transported by means of public transportation provided that the body must be properly embalmed and encased in an appropriate container, or by any private vehicle or aircraft that meets the following standards..." "	Appears to be for infection control.	This law appears to be intended to provide public health protection. Yet the Board is mandated to provide public protection in general including freedom of choice. Many religions and religious sects do not allow bodies to be embalmed in keeping with tradition and practice. I believe that requiring embalming when all public carriers do not require embalming (airlines now allow bodies to be in sealed caskets and packed in dry ice) would be a violation of freedom of choice of the consumer as well as violation of religious practices.	Consider deleting the embalming requirement. Also please define "appropriate container" both for enforceability and clarity. Entitle 5.6.4 "Public Transportation Vehicles."

Reg. #	Regulation (Quote)	Intent of Regulation	Issue	Recommended Solution
§ 5.6.5	Public Transportation. In pertinent part: [When a dead human body is transported by] "any private vehicle or aircraft, the outside shipping container may be omitted or the casket or alternative container and the outside container may both be omitted, and, in such case, the body shall be wrapped in a sheet that is impervious to liquids, covered in such a manner that the body cannot be viewed."	Appears to be for public protection.	Appears contradictory. Please refer to § 5.6.7 described below.	Please refer to § 5.6.7 described below.
§ 5.6.7	"A dead human body transported via public transportation or private vehicle must be placed in a carrying container adequate to prevent the seepage of fluids and escape of offensive odors.	Appears to be for public protection.	Note in § 5.6.5, the regulations state that if a funeral home, or private individual for that matter, is transporting a body in a private vehicle or aircraft, the transporter is authorized to transport the body in a waterproof sheet if he chooses. Yet in this section, the regulations state that if a transporter is transporting a body in a private vehicle, the body must be in a carrying container. What is the difference between an outside shipping container in § 5.6.5 and a carrying container in § 5.6.7?	Consolidate and clarify §§ 5.6.5 and 5.6.7.

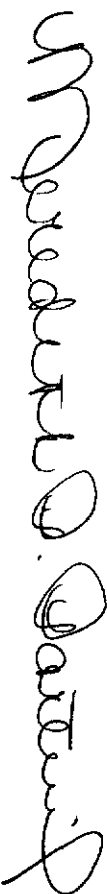
Reg. #	Regulation (Quote)	Intent of Regulation	Issue	Recommended Solution
§ 5.6.6	Embalming required. "{A dead human body that is being transported by public transportation or will not reach its destination with[in] 72 hours following death must be properly embalmed. Refrigeration is not considered a form of preservation or disinfection and does not alter the 72-hour requirement. "	Appears to be public protection.	Typo as bracketed. The issue here relates to the embalming requirement. Please see discussion above in § 5.6.4.	Please see discussion above in § 5.6.4. Please delete embalming requirement.
§ 6.2	Bodies of individuals affected with infectious or contagious diseases. In pertinent part: "... The bodies shall be encased in airtight burial pouches, transfer cases or sealed caskets when transported within the state. Transportation of the bodies across the border of this State, whether they are transported into or out of this State, shall require, in addition to the foregoing requirements, embalming..."	Appears to be public protection	The issue here relates to the embalming requirement. Many states contiguous to West Virginia are clear in their statutes that law does not require embalming. This Board does not appear to have the authority to require a Virginia funeral home, for example, to impose an embalming requirement on a family in order to ship the body into West Virginia. Could this be interpreted as restraint of interstate commerce laws if the shipping firm refused to require its bodies to be embalmed?	Please see discussion above in § 5.6.5. Please delete embalming requirement.
			In addition, please see discussion above in § 5.6.45.	

Reg. #	Regulation (Quote)	Intent of Regulation	Issue	Recommended Solution
§ 6.2	Bodies of individuals affected with infections or contagious diseases. "A licensee shall closely and personally supervise bodies affected with infectious or contagious diseases."	Appears to be for public protection.	When death certificates are still so "uncreative" as to commonly list heart failure (the heart stopped!) or respiratory failure (the person stopped breathing!) as causes of death, a funeral professional is often not aware that a body harbors an infectious disease.	Please relax requirement by rewording: "A licensee who has knowledge that a body is affected with infectious or contagious diseases shall closely and personally supervise such body during transportation and shipping."
§ 9.2.1	"If the words Free, Without Charge or other words with similar connotations have the effect of misleading the public, then their use will be considered false and misleading by the Board."	The intent appears to be clear disclosure.	In some areas of these requirements the word "will" is used, in other areas the word "shall" is used. This section is given as an example.	Where appropriate, enforceability might be strengthened through use of the word "shall."
§ 10.1	Preserving confidentiality. In pertinent part: "No licensee or registrant, or a licensee's or registrant's agents, assistants or employees shall divulge any confidential or private information relating to the domestic life in any home wherein they may be called upon to serve..."	Intended for public protection.	Since the term "domestic life" is not defined, it is not clear if the term "domestic life" covers infectious diseases, the deceased profession and employment habits, etc.	Please ensure that the use of the term "domestic life" is sufficiently legally broad to cover confidentiality of infectious disease and all areas of the deceased's life.

Reg #	Regulation (Quote)	Intent of Regulation	Issue	Recommended Solution
<p>§ 11.5 as it relates to §11.4 and §11.6</p>	<p>Embalming and cremation. In pertinent part: "... Only licensed embalmers or registered apprentice embalmers may embalm dead human bodies. A funeral director, licensed by this state [State] shall be present at and directly supervise an [a] cremation of a dead human body within the state. "</p>	<p>The intent appears to be two fold: (1) To ensure that only qualified individuals, practicing within the scope of their licenses/registrations, perform embalmings; and (2) To ensure that an apprentice embalmer is able to fulfill his regulatory mandate of 35 embalmings.</p>	<p>Whereas I do not take issue with this regulation, please refer to the language in § 11.4 and § 11.6 listed below.</p>	<p>Please see following section. Please note that I bracketed the word "state" because it is capitalized in some places, and lower case in others.</p>
<p>§11.4</p>	<p>Funeral Directing. "A funeral director, licensed by this [S]tate, shall be responsible for and directly supervise any funeral service conducted for compensation within the state. "</p>	<p>The intent appears to be public protection by ensuring that a licensed funeral director is present at each funeral service conducted for compensation within the state.</p>	<p>Note that language above states that "a funeral directors <i>shall be present at and directly supervise</i> a cremation and, in this section, a funeral director must be responsible for and shall directly supervise a funeral service. §11.6 states that the funeral director is "responsible" be he must only "supervise" the arrangements. "Directly supervise" is not defined nor is "supervise." Can he "be responsible for and directly supervise the plans on paper or through a discussion in a meeting with his staff?"</p>	<p>Clarify. Please clarify that an apprentice funeral director is authorized to participate in funeral directing and arrangement conferences (also in order to fulfill his mandate as intended in §11.5). Please define "supervise" and "directly supervise." Please add "to be present at" when the Board determines this mandate necessary.</p>
<p>§ 11.6</p>	<p>Arrangements conference. "A funeral director, licensed by this state, shall be responsible for and supervise any arrangements conference conducted within the state.</p>			

Reg #	Regulation (Quote)	Intent of Regulation	Issue	Recommended Solution
§16.4.2	Missed scheduled appointments with inspector... This fee will only be charged (\$200) if the inspector was not at fault.	Responsibility and fiduciary soundness.	Do scheduled inspections really provide oversight? But most importantly, the small operator that the Board has just mandated must be present for almost everything and could be the only licensee at his establishment, could get multiple death calls and be so busy that a State Board inspection would be the last thing on his mind. Does the Board truly wish to penalize an otherwise responsible funeral professional for meeting his public responsibility but failing to call the inspector?	Delete requirement. Charge for inspections as a result of disciplinary follow-up.

Respectfully Submitted,



Meredyth P. Partridge
Regulatory Support Services, Inc.



STATE OF WEST VIRGINIA
Board of Embalmers and Funeral Directors
179 Summers Street, Suite 305
Charleston, WV 25301
304-558-0302
FAX 304-558-0660

August 17, 2000

Meredith Partridge
Regulatory Support Services
PO Box 83
Manakin-Sabot, VA 23103

Dear Ms. Partridge:

On August 16, 2000, the Board reviewed your written comments on the proposed legislative rules regarding each of the proposed rules: §6-1-1 et seq., §6-2-1 et seq., §6-3-1 et seq., and §6-4-1 et seq. Based upon those comments, the Board made several amendments.

Please find enclosed Response, which highlights the amendments.

The Board believes that this amendment satisfies many of your concerns and found your comments to be very helpful. The Board appreciates your input and has attempted to take into consideration all points of view in their pursuit of regulations that meet the Board's duty to protect the public and enforce related regulations.

Sincerely,

A handwritten signature in cursive script that reads "Sherri Douglass".

Sherri Douglass, MSW
Executive Director

Response to Regulatory Support Services

The Board has attempted to incorporate many of your concerns through various amendments. We appreciate all of the good suggestions for changes. Please note that some recommendations for change were not possible or practical at this time. I would like to address as many of those as possible.

§6-1-4.2. Regarding the one year extension of the apprenticeship, the board believes that your recommendation still does not eliminate the subjectiveness of which you speak. Much of what we do can be subjective. It would be difficult to list all the possible reasons for which an apprentice could receive an extension, as each individual situation may vary. We believe that board members are intelligent enough and have enough work experience to know what would be considered "good cause" just as a good employer would know what constitutes an excused absence.

§6-1-10.1. The board did not choose to address this issue at this time, as it did not understand the concern.

§6-1-11.4 - 11.6. Regarding the capitalization of certain words, words in the middle of a sentence are not to be capitalized. This is standard for our state laws.

§6-2-2.3. and §6-3-2.3. The board attempted to clarify the definition. Please see below.

§6-2-4.3.1 and 4.4.1. and §6-3-1 et seq. Regarding the warranty disclaimer, the board has been informed by the Office of the Attorney General that such a statement, as you suggest, is not legal in our state as it violates implied warranty laws. Therefore, we would not attempt to supercede an existing law which is out of our bounds of jurisdiction.

§6-3-1 et seq. Regarding the inclusion of price lists for urns, urn vaults, and cremation caskets, the board will address those matters in future rules. We realize that these changes are not going to happen over night and this will be a process which will last for a few years. The board will continue to consider this suggestion in future proposed rules.

§6-3-1 et seq. Regarding the inclusion of Statement of Goods and Services, this is irrelevant as Series One of the proposed legislative rules addresses this. And crematories would be required to not only follow the regulations in Series Three, but also regulations in Series One.

§6-4-1 et seq. Regarding a toll free phone number. While the board sees this as a well-intentioned idea, the funding at this time does not provide for such a number. We will consider it for the future.

§6-4-2.10 and 3.6.1. Regarding due process, the board believes that the proposed procedures do not interfere or burden the licensee's right to due process. Additionally, the use of the word "may" will remain because the process is one that is not black and white, step-by-step. Many things can happen during the course of an investigation and circumstances of a case will vary with each case. Therefore, to attempt to put all cases into a "cookie cutter" form would be difficult. There must be some leeway for the board throughout the process to provide for various options for resolution.

Please note the following: **"Strikethroughs"** suggest deletion of language
"Highlights" suggest new language

Amendments Response to Regulatory Support Services Title 6, Series 1

§6-1-2. Definitions.

2.1. **Arrangements conference.** Includes the time spent with the next-of-kin, or other duly authorized or legally responsible person, planning and making financial arrangements for the funeral and/or final disposition of a dead human body.

§6-1-3. Licensing Examination.

3.1 An applicant for the state licensing examination shall remit the appropriate fees for examination and shall supply the Board with the following documentation:

3.1.1 A certified copy of a birth certificate establishing the applicant's age at ~~eighteen (18)~~ or over;

~~e. Two (2) letters from persons who have known the applicant for a minimum of five (5) years preceding application; who are not related to the applicant, and can attest to the applicant's moral character and temperate habits;~~

~~3.12.~~ One of the following:

a. A certified transcript which shows successful completion of an associate degree or sixty (60) semester hours or ninety (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

b. A certified transcript which shows successful completion of a bachelor's degree from an approved school of mortuary science for which at least 12 months of study is specifically in mortuary science and equivalent to a diploma program, and for which at least sixty (60) semester hours or ninety (90) quarter hours are in liberal arts.

~~3.13.~~ A certificate of completion of the apprenticeship program as outlined in Section 4 of these rules; and

~~3.14.~~ A certificate issued by the International Conference of Funeral Service Examining Boards showing a passing score of its' examination of not less than seventy-five percent (75%).

§6-1-5. Control of Dead Bodies.

5.6.4. ~~Public Transportation equipment.~~ A dead human body may be transported by means of public transportation ~~provided that the body must be properly embalmed and encased in an appropriate container, or by any private vehicle or aircraft or private vehicle or private aircraft that meet the following standards:~~

- a. promotes respect for and preserves the dignity of the dead human body;
- b. shields the body from being viewed from outside of the vehicle;
- c. has ample enclosed area to accommodate an ambulance cot, aircraft ambulance stretcher, casket, alternative container, or cremation container, in a horizontal position;
- d. is so designed to permit loading and unloading of the body without excessive tilting of the casket, or other container which holds the body;
- e. if used for the transportation of more than one body at one time, the vehicle or aircraft must be designed so that a body or container does not rest directly on top of another body or container, and that each body or container is secured in such a manner as to prevent the body or container from excessive movement within the vehicle.

5.6.5. ~~Transportation procedures.~~ A dead human body transported via public transportation or private vehicle must be placed in a carrying container adequate to prevent seepage of fluids and escape of offensive odors.

~~a. Public transportation.~~ When a dead human body is transported by public transportation, it must be ~~properly embalmed and enclosed in a casket or alternative container and an appropriate outside shipping container. A body which is transported by means of public transportation must be properly prepared in accordance with the regulations or policies of the transportation carrier.~~

~~b. Private transportation.~~ When transportation is by any private vehicle or aircraft, the outside shipping container may be omitted ~~if the body is encased in a casket or alternative container.~~ The casket, or alternative container, and the outside container may both be omitted and, in such case, the body shall be wrapped in a sheet that is impervious to liquids and offensive odors, covered in such a manner that the body cannot be viewed.

5.6.6. **Embalming required.** A dead human body that ~~is being transported by public transportation or~~ will not reach its destination within seventy-two (72) hours following death must be properly embalmed. Refrigeration is not considered a form of preservation or disinfection and does not alter the seventy-two hour requirement.

~~5.6.7. A dead human body transported via public transportation or private vehicle must be placed in a carrying container adequate to prevent the seepage of fluids and escape of offensive odors.~~

§6-1-6. Health Requirements.

6.2. **Bodies of individuals affected with infections or contagious diseases.** A licensee who has knowledge that a body is affected with infections or contagious diseases shall closely and personally supervise such bodies affected with infections or contagious diseases. The bodies shall be encased in airtight burial pouches, transfer cases or sealed caskets when transported within the state. Transportation of the bodies across the borders of this State, whether they are transported into or out of this State, shall require, in addition to the foregoing requirement, embalming, treatment and disinfection of the body cavities and orifices. Body cavities and orifices shall also be treated and disinfected.

§6-1-8. Price Disclosure.

8.1. **General Price and Information List.** All funeral establishments shall comply with the current Federal Trade Commission, Trade Regulation Rule for Funeral Industry Practices, 16 CFR Part 453.

8.2. **Required Records.** The following documents shall be maintained by the funeral establishment for a minimum of one year after expiration: General Price List, Casket Price List, Outer Burial Container Price List, Statement of Goods and Services.

§6-1-9. Advertising and solicitation, applicable to all persons licensed or registered by this board.

9.1. All advertising shall comply with the requirements set forth in article six (6) of chapter thirty (30) of W.Va. Code.

9.2. No licensee, registrant, apprentice or any other person, persons or business organization associated or in any way connected with a funeral establishment shall use or sponsor the use of any false, misleading, untrue or deceptive advertising in any manner whatsoever.

9.2.1. If the words "Free," "Without Charge" or other words with similar connotations have the effect of misleading the public, then their use will shall be considered false and misleading by the Board.

§6-1-11. Supervision Required of Licensee and Registrant.

11.4. **Funeral Directing.** A funeral director, licensed by this state, shall be responsible for, be present at, and directly supervise any funeral service conducted for compensation within the state.

11.5. **Embalming and cremation.** 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. A funeral director, licensed by this state, shall be present at and directly supervise an cremation of a dead human body within the state.

11.6. **Arrangements conference.** A funeral director, licensed by this state, shall be responsible for and 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.

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

11.8. "General supervision" means the general oversight or overall responsibility for an activity by a licensed funeral director or licensed embalmer. General supervision does not require the physical presence of the licensed funeral director or licensed embalmer.

§6-1-16. Fees.

16.4.1. Each additional inspection for funeral establishments found to be out of compliance with the provisions of article 6 of chapter 30 of W.Va. Code and series one of title six legislative rules during the initial yearly inspection.

16.4.2. Missed scheduled appointments with inspector, in which the inspector must return to the funeral establishment on a date other than the date of the original appointment. This fee will only be charged if it is determined that the inspector was not at fault for the missed appointment. If a funeral establishment owner or operator contacts the inspector or the board office prior to the scheduled appointment with a reasonable reason for his inability to be present for the appointment and can provide written documentation supporting his reason, the fee shall not be charged. ~~or the appointment was rescheduled at least one week prior to the date of inspection.~~ This fee is designed to cover the cost of the inspector's expenses.

Amendments
Response to Regulatory Support Services
Title 6, Series 2

§6-2-2. **Definitions.** For purposes of these legislative rules, the following terms shall be construed in the following manner, and shall elaborate on definitions contained in section 4, article 6 of chapter 30 .

2.3. **Funeral Establishment.** ~~For purposes of these rules,~~ means a place of business maintained and operated by a person, partnership, association, corporation, or other organization, located in a building, or series of buildings, or a separate portion of a building having a specific street address or location, and sells only funeral goods for compensation. For the purposes of these rules, funeral establishments ~~defined in this rule do not~~ are not permitted to sell or conduct funeral services or prepare dead human bodies for final disposition, or transport dead human bodies. These funeral establishments are commonly known as "retail sellers," ~~"funeral merchandise stores,"~~ or "third party sellers" and shall be permitted only to offer funeral goods for sale.

2.8 **Funeral Goods Provider.** Means any person, other than a licensed funeral director or a registered funeral director apprentice, engaged, or holding himself out as engaged in the business of selling or offering to sell funeral goods to the public and shall not use in connection with his name or business the words "funeral director," "undertaker," "mortician," or any other word, term, or title to imply or designate him as a funeral director, undertaker, or mortician. ~~A funeral goods provider is prohibited from the selling or conducting of funeral services, the preparation of dead human bodies for final disposition, and the transportation of dead human bodies.~~

§6-2-4. **Price Disclosure.**

4.1. **General Price and Information List** for funeral establishments that sell only funeral goods. Funeral establishments shall comply with the following requirements, unless otherwise regulated by the current Federal Trade Commission, Trade Regulation Rule for Funeral Industry Practices, 16CFR Part 453:

4.2. **General Price List.**

4.2.1. Maintain a type written or printed General Price List that contains the following information:

- a. The caption: "General Price List;"
- b. The effective date of the General Price List (otherwise known as the "GPL");
- c. Itemized list of all various funeral goods offered for sale, including exact prices or price ranges, from least expensive to most expensive;
- d. Name of the funeral establishment, the majority stock holder's name, the licensed funeral goods provider in charge, full location and mailing address, and telephone number; and
- e. Five disclosures, which include:
 1. The consumer's right to select only the goods desired;
 2. The consumer's right to use alternative containers, if the funeral establishment sells alternative containers;
 3. Basic non-declinable service fees for such things as delivery of goods express shipping, etc. or other service charges. You must disclose this as a separate charge or disclose this as a charge included in the price of the goods;
 4. The availability of a separate Casket Price List, if the funeral establishment sells caskets; and
 5. The availability of a separate Outer Burial Container Price List, if the funeral establishment sells outer burial containers.

4.2.2. The General Price List shall be given to keep to anyone that asks for it, or inquires about the goods offered for sale, in a face-to-face meeting with a representative from the funeral establishment. Telephone inquiries are not considered face-to-face meetings.

4.2.3. During a telephone inquiry about the goods offered for sale, the funeral goods provider or his representative must inform the caller that the General Price List exists and that it is available at the funeral establishment. The funeral establishment is not required to mail the GPL to the caller.

4.2.4. The funeral establishment shall not charge for the General Price List.

~~4.2.5. The General Price List shall be maintained by the funeral establishment for a minimum of one year after it expires.~~

4.3. Casket Price List.

4.3.1. Maintain a type written or printed Casket Price List, if casket or alternative caskets are offered for sale, that contains the following information:

a. The caption: "Casket and Alternative Price List." If the funeral establishment does not offer for sale alternative containers, it may read "Casket Price List;"

b. The effective date of the Casket Price List, (otherwise known as the "CPL");

c. Name of the funeral establishment; and

d. The retail price of each casket and alternative container offered for sale that does not require special ordering, with enough information to identify it, such as the gauge of metal or type of wood, the exterior trim, and interior fabric, manufacturer name, or model number. A photograph or model number alone is not sufficient. Special ordering means purchasing of a casket or container that is not part of the regular offerings to customers.

4.3.2. The Casket Price List shall be made available for review to anyone who, in a face-to-face meeting, asks about caskets or alternative containers offered for sale or inquires about prices. The CPL must be given to the consumer prior to showing these items to the consumer. Individual price cards placed on the caskets or alternative containers can be utilized, but only in addition to the CPL.

4.3.3. If a consumer discusses the option of purchasing an alternative container, it must be disclosed, verbally or in writing, to the consumer that state or local law does not require an alternative casket for direct cremation, in which no formal viewing or visitation will take place with the body present.

~~4.3.4. The Casket Price List shall be maintained by the funeral establishment for a minimum of one year after it expires.~~

4.4. Outer Burial Container Price List.

4.4.1. Maintain a type written or printed Outer Burial Container Price List, if outer burial containers are offered for sale, that contains the following information:

a. The caption: "Outer Burial Container Price List;"

b. The effective date of the Outer Burial Container Price List (otherwise known as the "OBCPL");

c. Name of the funeral establishment; and

d. The retail price of each outer burial container offered for sale that does not require special ordering, with enough information to identify it. A photograph or model number alone is not sufficient. Special ordering means purchasing of an outer burial container that is not part of regular offerings to customers.

e. The following disclosure:

"In most areas of the country, state, or local, law does not require that you buy a container to surround the casket in the grave. However, many cemeteries require that you have such a container so that the grave will not sink in. Either a grave liner or a burial vault will satisfy these requirements."

4.4.2. The Outer Burial Container Price List shall be made available for review to anyone who, in a face-to-face meeting, asks about outer burial containers offered for sale or inquires about prices. The OBCPL must be given to the consumer prior to showing these items to the consumer. Individual price cards placed on the outer burial containers can be

utilized, but only in addition to the OBCPL.

~~4.4.3. The Outer Burial Container Price List shall be maintained by the funeral establishment for a minimum of one year after it expires.~~

4.5. Statement of Goods Selected.

4.5.1. Provide a State of Goods Selected to the consumer at the end of discussion of proposed purchase(s), which contains the following information:

- a. Itemized list of good(s) to be purchased;
- b. The cost(s) of each good to be purchased;
- c. Any cash advances for cash advance goods or deposits to be made toward purchase(s);
- d. Total cost of purchase(s);
- e. Final total cost after deduction of cash advances or deposits; and
- f. The following disclosures:

1. For legal requirements, "Charges are only for those items that you selected or that are required. If we are required by law or by a cemetery or crematory to use any items, we will explain the reasons in writing below." The reasons must then be written somewhere on the Statement, if any requirements exist.

2. For cash advance items, "We charge you for our services in obtaining the following cash advance items below:" The cash advance items must then be listed, if any exist.

~~4.5.2. The Statement of Goods Selected shall be maintained by the funeral establishment for a minimum of one year after it expires.~~

Amendments Response to Regulatory Support Services Title 6, Series 3

§6-3-2. **Definitions.** For the purposes of this rule, crematories are considered funeral establishments and the provisions of 6CSR1, series 1, article 1 of chapter 6 of the West Virginia Board of Embalmers and Funeral Directors shall apply, in addition to the provisions of 6CSR3, series 3, article 1 of chapter 6.

2.3. Funeral establishment. For purposes of this rule, means a place of business maintained and operated by a person, partnership, association, corporation or other organization, conducted in a building, or series of buildings, or a separate portion of a building having a specific street address or location, and devoted to such activities as that are primarily incident, convenient, or related to the preparation and arrangements, financial and otherwise, for the ~~embalming or cremation, funeral, transportation, burial or other disposition~~ of dead human bodies, and includes "trade service," "trade embalmer," "mortuary service," or any related term which designates activities relating to the shelter, care, custody and preparation of a deceased human body. ~~These funeral establishments, while primarily operating as crematories, may also embalm, make arrangements, financial and otherwise, for funeral services, transportation, burial or other disposition of dead human bodies, provided that all requirements for such additional activities are followed, including those provisions set forth in 6CSR1, series 1, article 1 of chapter 6.~~

2.3.1. 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 or cremation is done at the main establishment and the main establishment is within 60 miles of the branch facility, then the equipment for such preparation of dead human bodies is not required at the branch facility.

2.3.2. Main funeral establishment. Means a primary funeral establishment.



**West
Virginia
Cemetery & Funeral Association**

RECEIVED
JUL 29 2000

July 28, 2000

Sherri Douglas, Executive Director
WV BOARD OF EMBALMERS & FUNERAL DIRECTORS
179 Summers Street, Suite 305
Charleston, WV 25301

Dear Ms. Douglas,

Thank you for giving us the opportunity to review the Proposed Rules under Chapter 30 of the West Virginia Statutes. Listed below please find our observations and comments relating to specific portions of the proposed rules:

A. Proposed 6CSR: General Provisions, Section 6-1-9-(9.2.3)

This rule creates new advertising requirements that are over-reaching and unnecessary. This information is readily available through the Secretary of State's Office, as are all other businesses operating in the State of West Virginia. We feel this proposed requirement singles out our industry and offers no benefits to our client families.

C. Proposed 6CSR2: Funeral Goods Sales, Section 6-2-2 (2.3)

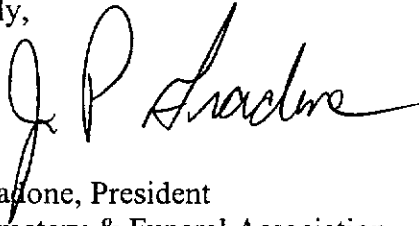
This creates a new definition for funeral establishments, which attempts to circumvent current law. It is obvious this language is a far-reaching attempt to broaden the Board's regulatory authority. This is also true for the funeral establishment's definition under Proposed Title 6, Series 3 (Crematory Requirements), Section 6-3-2 (2.3). Under these proposed rules, the definition of funeral establishment has been altered to fit each different entity. Therefore, the definition of funeral establishment is unclear and inconsistent with the original intent of the statute.

Section 6-2-2 (2.7)

As you know, cemeteries are regulated under Chapter 35. Therefore, we feel that the last sentence of this Paragraph, "*It shall not include cemetery lots, markers, . . .*", should be deleted and cemetery exemption should be noted in it's place.

We hope you will give serious consideration to our concerns, and feel free to contact our association for further discussion. We look forward to working with you in this endeavor.

Sincerely,

A handwritten signature in black ink, appearing to read "J. P. Gradone". The signature is written in a cursive style with a large, looped initial "J".

J. P. Gradone, President
WV Cemetery & Funeral Association

CC: John Atilli, President
WV Funeral Directors Association



STATE OF WEST VIRGINIA
Board of Embalmers and Funeral Directors
179 Summers Street, Suite 305
Charleston, WV 25301
304-558-0302
FAX 304-558-0660

August 17, 2000

West Virginia Cemetery and Funeral Association
JP Gradone, President
2210 Washington Street, East
Charleston, WV 25311

Dear Mr. Gradone:

The Board reviewed your written comments on August 16, 2000 on the proposed legislative rules regarding funeral establishments, specifically §6-1-9 and §6-2-2.

Please find enclosed Response addressing each concern outlined in your written comments dated July 28, 2000.

The Board appreciates your input and attempted to take into consideration all points of view in their pursuit of regulations that meet the Board's duty to protect the public and enforce related regulations.

Sincerely,

Sherri Douglass, MSW
Executive Director

Response to West Virginia Cemetery and Funeral Association

Regarding Concern A:

The Board's Legislative Committee included a new section 9.2.3.a. and b. which require any funeral establishment to disclose ownership in any advertisement. It has been the history of funeral service that funeral establishments were owned locally by families who lived and worked in the community. The name of the funeral home clearly shouted out who the owner was. Now, as with many businesses, the concept of family-owned businesses is becoming a thing of the past. And, while the newly-purchased funeral home might maintain the same name it has had for the last 50 years, it certainly is not owned by the former owner. And while the funeral home may continue to provide excellent service to the community, the consumer still believes he or she is dealing with the former owner.

The purchasing of existing businesses is a reflection of the economics of our nation. Companies are becoming larger and are merging together to pool resources. Small businesses simply don't exist to the extent that they did in years past. This is not to say that corporate-owned businesses or larger businesses are a bad thing, whether small domestic corporations or large multi-million dollar businesses. Expansion of business certainly has strengthened our economy. And, this proposed amendment is not targeted only to those large franchise businesses. A proprietorship may be purchased by another competing business or proprietorship. Or, a new funeral home may open its doors in the community.

However, consumers are not aware that they are no longer purchasing goods and services from their neighbor or their high school buddy. At least when Walmart builds a new store, consumers are obviously aware that it is part of a chain. Consumers are not aware that funeral establishments are becoming a part of that "chain" system. They are not aware that the financial atmosphere in the funeral industry has changed the way they are owned and operated.

It is the board's belief that a consumer should have the basic right of knowing where their money is going. The culture of our state is one that thrives on a sense of honesty and pride. West Virginians, by our nature, are trusting people. This is a part of who we are as human beings. It is a deception to our residents if they don't have the knowledge of ownership.

Regarding Concern C, part 1:

While WVCFA would like to believe that these rules are an attempt to circumvent current law, Attorney General Legal Counsel had stated during a recent board meeting that the definition of funeral establishment contained in the statute is a broad enough definition to allow the regulation of funeral goods sales and crematories. The board is simply attempting to lay a foundation to such regulation, to provide for more specific requirements of each of these types of funeral establishments.

Funeral establishments can vary greatly. Some provide a full range of products and services. Some simply provide the funeral service. Some only provide embalming or preparation of bodies. Some sell only funeral goods. And still others only offer cremation services. Regardless of what aspect of the funeral industry that these businesses cater to, they are still all offering products and services "incident, convenient, or related to the preparation and arrangements, financial and otherwise, for the embalming, funeral, transportation, burial or other disposition of dead human bodies."

Many other regulatory boards have variations of their licenses. For instance, the Board of Pharmacy has mail-order pharmacies and regular pharmacies. The Board of Social Work Examiners has levels of

licensing including the temporary license, the basic license, the graduate level license, the certified level, and the clinical level. These are all variations of the same license. Each license denotes what "type" of practice can take place. Obviously the basic social work license would not permit a person to practice clinical social work; only the clinical license would allow this. Likewise, a mail order pharmacy offers different services than a regular pharmacy.

To say that funeral goods sales and crematories are not types of funeral establishments is simply an attempt to keep cemeteries, in general, from stricter regulation. In comparison to funeral establishments, cemeteries are much less regulated. However, cemeteries and other businesses are attempting to sell goods and services which are directly related to the funeral industry and thus would fall under the board's jurisdiction.

By definition in §30-6-4, a funeral establishment is "a place of business maintained and operated by a person, partnership, association, corporation, or other organization, conducted in a building, or series of buildings, or a separate portion of a building having a specific street address or location, and devoted to such activities as are incident, convenient, or related to the preparation and arrangements, financial and otherwise, for the embalming, funeral, transportation, burial or other disposition of dead human bodies."

To say that the selling of caskets and other related items is not "incident to the...burial or other disposition of dead human bodies" is ludicrous. Most people are buried in a casket or, if cremated, inurned in a container. And to say that cremation services are not "incident to the...other disposition of dead human bodies" is also illogical. A human body can be disposed of in only a handful of ways, those being body donation, burial of the body intact, and cremation of the body. Most states that regulate cremation consider the cremation process itself to be final disposition. In fact, our International Conference of Funeral Service Examining Boards offer model law which defines the cremation process itself as "final disposition."

Regarding Concern C, part 2:

It is not the intent of this board to regulate cemeteries in regard to selling of cemetery items, such as lots, markers, etc. However, to completely exempt cemeteries from these rules would do an injustice to the consumer. As stated previously, many other businesses are starting to sell funeral related goods. Cemeteries just happen to be one such business; they sell caskets and other such items. There are "casket stores" beginning to open for business as well. It is the belief of the board that it shouldn't matter who is selling these items, only that the consumer must be protected utilizing consistent guidelines, and that all entities should be required to follow the same rules if they sell the same products and/or services. Traditional funeral homes are already regulated, in regard to selling of funeral goods, such as caskets and outer burial containers, both by the Federal Trade Commission and this board. However, other businesses selling these same items are not regulated. Consumers should be able to compare apples to apples, and when one industry can sell goods with no regulation while another industry selling the exact same goods is regulated, the consumer loses out.

The cemetery industry may say they are already regulated, and the board does not disagree with this. The funeral industry is also regulated. All businesses are regulated to an extent. Traditional funeral homes are certainly regulated heavily and necessarily. However, the current regulations do not provide protection to the consumer who purchases funeral goods from cemeteries or casket stores. The same rules must apply to all. Therefore, to provide exemption to cemeteries would not provide consumer protection.