

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

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

RULE TYPE: Legislative; CITE AUTHORITY 30-6-1

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: _____

Rules of the West Virginia Board of Embalmers and Funeral Directors

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

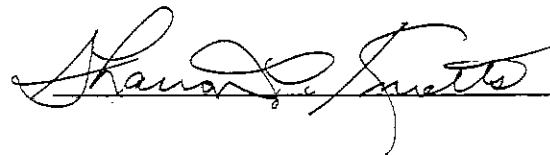
IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON April 16, 1993 AT 5:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

WV Board of Embalmers and Funeral Directors

179 Summers Street, Suite 305

Charleston, WV 25301

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

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APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Rules of the West Virginia Board of Embalmers and Funeral Directors

Type of Rule: X Legislative Interpretive Procedural

Agency: West Virginia Board of Embalmers and Funeral Directors Address: 179 Summers St., Suite 305 Charleston, WV 25301

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ N/A	\$ N/A	\$ N/A	\$ N/A	\$ N/A
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates: N/A

3. Objectives of these rules:

The purpose of the proposed rules changes is to incorporate changes to 30-6, effective March 6, 1992, make changes to existing rules and regulations to bring them up-to-date, and to incorporate Contested Case Hearing Procedures.

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4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

N/A

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

N/A

C. Economic Impact on Citizens/Public at Large.

N/A

Date: March 17, 1993

Signature of Agency Head or Authorized Representative

Sharon Knotts



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STATE OF WEST VIRGINIA
Board of Embalmers and Funeral Directors

Sharon L. Knotts, Executive Director
179 Summers Street, Suite 305
Charleston, West Virginia 25301
(304) 558-0302

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Amendment of Existing Rule: Title Six, Series 1

Rules of the West Virginia Board of Embalmers and Funeral Directors

The purpose of the proposed rule changes is to incorporate changes to §30-6, effective March 6, 1992, make changes to existing rules and regulations to bring them up-to-date, and to incorporate Contested Case Hearing Procedures.

R. Brent Parker, President Joseph F. Ford, III, Secretary John W. Chapman, III
Joseph P. Christian, Jr. Charles F. Greco H. E. Melton, III Raymond S. Tomassene

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TITLE 6
LEGISLATIVE RULES
BOARD OF EMBALMERS AND FUNERAL DIRECTORS

MAR 17 1 26 PM '93

SERIES 1
RULES OF THE WEST VIRGINIA BOARD OF
EMBALMERS AND FUNERAL DIRECTORS

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§6-1-1. General.

1.1. Scope - These rules relate to the licensing and conduct of embalmers and funeral directors.

1.2. Authority - W. Va. Code §30-6-1 et. seq.

1.3. Filing date - _____

1.4. Effective date - _____

1.5. Repeal and replace - This rule repeals and replaces the June 12, 1987 filing.

§6-1-2. Licensing and Examination.

2.1. No person shall be entitled to sit for a funeral director's examination until he supplies the Board with the following documentation:

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

(b) An affidavit of United States citizenship (See Form A);

(c) 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 (See Form B)

(d) A copy of the applicant's high school diploma or it's equivalent;

(e) A transcript of grades of college-level training 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;

(f) A copy of a diploma of graduation from an approved school of Mortuary Science;

(g) A certificate of completion of the apprenticeship program as outlined in Section 2.A of these rules;

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(h) A certificate issued by the National Conference of Funeral Service showing a passing score of it's examination of not less than seventy-five percent (75%).

(i) The payment of any statutory fees prescribed for examinations.

2.2. Examinations - Examinations shall be prepared and graded by the Conference of Funeral Service Examining Boards of the United States. A passing grade for the state examination shall be a score of not less than seventy-five percent (75%).

2.3. Subjects - The subject matter which will comprise the examination includes:

(a) State laws governing the conduct and responsibilities of embalmers and funeral directors;

(b) State laws governing the preneed sale of funeral service and merchandise;

(c) The Rules of this Board;

(d) State laws governing sales tax;

(e) Federal Occupational Safety and Health Act;

(f) Americans with Disabilities Act;

(g) Federal Trade Commission, Funeral Industry Practices Rule.

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

2.5. Inspection of examinations - Any individual who fails an examination shall be afforded the opportunity to inspect his or her examination.

2.6. 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 such information or interpretation, 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.

§6-1-2A. Apprenticeship.

2A.1. The apprenticeship for an embalmer license and for a funeral directors license shall be served simultaneously.

2A.2. The apprenticeship program shall commence when the applicant has provided the Board with proof of his or her satisfying the college or university educational requirements of the Board and shall continue until the apprentice has graduated from Mortuary Science School and successfully completed all examinations. This program shall start with a one (1) year full-time employment under the direct supervision of a embalmer and funeral director licensed by this state and active practicing in this state. For the purposes of these rules, a full-time employee shall mean that the employee works a minimum of forty (40) hours per work week in the licensed funeral establishment. The apprentice shall have a total of five (5) years in which to complete this program. The Board may allow one (1) additional year of apprenticeship status upon written application which shows good cause. Individuals who were apprentices prior to June 12, 1987 may continue as apprentices by annual renewal of their registration regardless of the five (5) year limit.

2A.3. During the course of apprenticeship an apprentice shall meet the following requirements:

(a) Under the direct supervision of a licensed embalmer, he shall assist in the operation of embalming not less than thirty-five (35) dead human bodies.

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

2A.4. During the course of the apprenticeship program, the Board may require the submission of progress reports, at its discretion.

§6-1-3. Control of dead bodies.

3.1. Authority to assume control - No licensee, his or its agent, assistants or employees shall assume control of any dead body without first gaining permission from the next of kin or their representatives, or a medical examiner, health officer or other public official lawfully entitled to give such permission.

3.2. Responsibility to honor instructions - A licensee, his or its agents, assistants or employees who has assumed control of a dead body shall honor all instructions, from persons who have given such control, as to matters relating to the handling of such body, including all steps in preparation; autopsy; embalming; 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 requirement and customary respectful handling of the dead will permit.

3.3. Authority to embalm - No licensee, his or its agents, assistants or employees shall authorize the embalming of, or embalm

any body without first gaining permission from the person or persons entitled to give such permission, or in the event service are being rendered by virtue of reference from another funeral establishment, from a representative of such funeral establishment.

3.4 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 such condition along with a request that the body be embalmed must be obtained from public health officer prior to embalming.

3.5 Responsibility for fees - Failure to gain authority for embalming. No person or persons entitled to give permission to embalm a body pursuant to Sections 3.3 and 3.4 of these rules, shall be responsible for the payment of any fee in connection with an unauthorized embalming.

§6-1-4. Health requirements.

4.1. Statutes and rules and regulations - A licensee, his or its agents, assistants and employees shall comply with all statutes and rules and regulations related to health.

4.2. Bodies of individuals affected with infections or contagious diseases - A licensee shall give his closest personal supervision to bodies affected with infections or contagious diseases. Such bodies shall be encased in airtight burial pouches, transfer cases or sealed caskets when transported within the state. Transportation of such bodies outside the state shall require, in addition to the foregoing requirement, embalming, treatment and disinfection of the body cavities and orifices.

§6-1-5. Evidence of crime.

5.1. Embalming, removal and/or cremation - No licensee, his or its agents, assistants or employees shall embalm, remove or cremate a body when he has information of or suspects a crime or intentional violence in connection with the cause of death, until permission is obtained from a medical examiner or other qualified official.

5.2. Information of crime - A licensee, his or its agents, assistants or employees who have obtained information of a possible crime shall forthwith communicate such information to a proper law enforcement officer.

5.3. Concealment of crime - No licensee, his or its agents, assistants or employees shall knowingly do any act that would conceal evidence of a crime.

5.4. Use of a certain materials in embalming - No licensee, his or its agents, assistants or employees shall use any fluid or

compound which contains arsenic, lead, mercury, copper, zinc, silver, antimony or choloral or any poisonous alkaloid in the embalming of a body.

§6-1-6. Price Disclosure.

6.1. General Price and Information List - Upon the beginning of any in-person discussion with persons concerning the purchase of funeral goods or services or upon the request of any person, a licensee, his or its agents, assistants or employees must provide such person a typewritten or printed list, for their retention, containing the following information:

(a) The name, address and telephone number of the licensed facility;

(b) A caption describing the list as a "General Price List";

(c) The effective date for the price list;

(d) The retail prices and other information specified for the following items if such items are offered for sale;

(1) Forwarding of remains to another funeral home together with a list of the services provided for any quoted price;

(2) Receiving remains from another funeral home together with a list of the services provided for any quoted price;

(3) Cremation without formal viewing, visitation or ceremony with the body present with a separate price for each container offered for sale; including the price of either an unfinished wooden box or alternative container, and with a description of the services provided for each price quoted;

(4) Cremation without formal viewing, visitation or ceremony with the body present where the consumer provides the container with a description of the services provided with the price quoted;

(5) Burial without formal viewing, visitation or ceremony with the body present where the consumer provides the casket with a description of the services provided with the price quoted;

(6) Burial without formal viewing, visitation or ceremony with the body present with a separate price for each alternative container or casket offered for sale and with a description of the services provided with each of the prices quoted;

(7) Transfer of remains to the funeral establishment;

(8) Embalming;

- (9) Other preparation of the body;
- (10) Use of facilities for viewing;
- (11) Use of facilities for funeral ceremony;
- (12) Other use of facilities together with a list of the facilities provided for any quoted price;
- (13) Hearse;
- (14) Limousine;
- (15) Other automotive equipment together with a list of the automotive equipment provided for any quoted price;
- (16) Acknowledgement cards;

(e) Prices and descriptions of each individual casket offered for sale;

(f) Prices and descriptions of each individual outer burial container offered for sale;

(g) The price for the services of funeral director and staff together with a list of the principal services provided with any quoted price, and if the charge cannot be declined by the consumer, the statement: "This fee for our services will be added to the total cost of the funeral arrangements you select. (This fee is already included in our charges for cremations or burial without viewing, visitation, or ceremony with the body present, and forwarding and receiving remains)."

(h) The statement: "The goods and services shown above are those we can provide to our customers. You may choose only the items you desire. If legal or other requirements mean that you must buy any items you did not select, we will explain the reason in writing on the statement of goods and services."

(i) The statement: "This list does not include prices for certain items that you may ask us to buy for you, such as cemetery or crematory services, flowers and newspaper notices. The prices for those items will be shown on your bill, (and if applicable), we charge you for our services in buying such items."

(j) The statement (in immediate conjunction with the information indicated in section 6.1(d)(8) of these rules): "Except in certain special cases, embalming is not required by law. If you selected a funeral which requires embalming, such as a funeral with viewing, you may have to pay for embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial. If we

charged for embalming, we will explain why on the statement of goods and services."

(k) The statement (in immediate conjunction with the information indicated in section 6.1(d)(3) of these rules): "If you want to arrange a direct cremation you can use an unfinished wood box or an alternative container. Alternative containers can be made of materials like heavy cardboard or composition materials (with or without an outside covering), or pouches of canvas."

(l) The statement: "In West Virginia state law does not require you to buy a container to surround the casket in the grave. However, many cemeteries ask that you have such a container so that the grave will not sink in. Either a burial vault or a grave liner will satisfy these requirements."

6.2. Telephone Price Disclosure - A licensee, his employees or agents must:

(a) Tell persons who call the licensee's place of business and tell those who ask about terms, conditions, or prices at which funeral goods and services are offered that price information is available over the telephone;

(b) Tell persons who ask by telephone about the licensee's offerings or prices any accurate information from the General Price and Information List required by Section 6.1. of these rules or from any other source which reasonably answers the questions and which is readily available.

6.3. Statement of Funeral Goods and Services - A licensee, his employees or agents must give a written statement for retention to each person who arranges a funeral or other disposition of human remains at the conclusion of the discussion or arrangements. The statement must list at least the following information:

(a) The funeral goods and funeral services selected by that person and the prices to be paid for each of them;

(b) Specifically itemized cash advance items, including but not limited to cemetery and crematory services, pallbearers, public transportation, clergy honoraria, flowers, musicians, singers, nurses, obituary notices, gratuities and death certificates. These prices must be given to the extent then known or reasonably ascertainable. If the prices are not known or reasonably ascertainable, a good faith estimate shall be given and a written statement of actual charges shall be provided before the final bill is paid;

(c) Citation of legal or other requirements mentioned in Section 6.1.(h) of these rules;

(d) The statement: "If you select a funeral which requires embalming, such as a funeral with viewing, you may have to pay

for embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial. If we charged for embalming, we will explain why below.";

(e) The total cost of the goods and services.

6.4. Retention of Documents - True and accurate copies of the price lists required by Section 6.1. of these rules must be retained for a period of one year after the date of their last distribution to customers. True and accurate copies of statements of goods and services required by Section 6.3. of these rules must be retained for a period of one year after the date of their last delivery to customers.

§6-1-7. Advertising.

7.1. All advertising shall comply with the requirements set forth in Section Three, Article Six, Chapter Thirty of the W. VA. Code of 1931, as amended.

7.2. No licensee, 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.

7.3. All advertising is hereby declared to be unethical, except only as hereinafter approved, and licensees, apprentices or other person, persons or business organizations associated or in any way connected with a funeral establishment are prohibited from the use of any advertising except only as hereafter approved:

(a) 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.

(b) No licensee, 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 person shall not issue any gift certificates or discount certificates to a sick or dying person designed to place the recipient in a position of obligation or indebtedness and shall not transfer or offer to transfer any property or service as payment of, or in token for, business secured, influenced or otherwise provided or in promise thereof. Such persons shall not call upon, telephone, write or cause, directly or indirectly, such advertising literature to be sent to the sick or dying person as would tend to be deemed nongeneral, selective or soliciting advertisements. No bribes or kickbacks, direct or indirect, are permitted by the Board.

(c) All advertising copy, such as newspaper, radio, television, bill-boards, church bulletins, school publications, trade journals, stationary, 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 such advertising must include the name of the funeral establishment, its address and telephone number and the name of the licensed funeral director in charge. It may also include a description of the service facilities of the advertiser as well as general information pertaining to his business. It may also include the total cost of the minimum adult services. In all advertisements relating to the minimum cost of the adult services, the following rules must be observed and conformed to, in their entirety:

(1) Any advertised casket price will be so construed to mean the cost of such casket and all necessary items for a complete funeral service. However, the cemetery costs, opening grave costs, vault costs or excess mileage costs are not considered to be necessary to constitute a complete funeral.

(2) Any funeral director so advertising any merchandise used in connection with his business shall carry in his stock a sample of said 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 such stated period of not less than thirty (30) days.

(3) The terms advertise and advertising as used in these rules include the use of radio, television, billboards, stationary, contracts, calenders, fans and novelty advertising or any other advertising method or medium.

§6-1-8. Confidence.

8.1. Preserving confidence - No licensee, his or its agents, assistants or employees shall divulge any confidence, privacy or secrets of the domestic life in any home wherein he 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 same.

§6-1-9. Supervision required of licensee.

9.1. 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. He shall be a full time employee of the funeral establishment.

9.2. Branches - A licensed funeral director shall supervise the activities of a branch establishment at all times that professional services are being rendered at said branch.

9.3. 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.

9.4. Funeral Directing - A funeral director, licensed by this state, shall be present at and supervise any funeral ceremony conducted within the state.

9.5. Embalming - An embalmer, licensed by this state, shall be present at and supervise any embalming operation performed within the state.

9.6. Arrangements conference - A funeral director, licensed by this state, shall be present and supervise any arrangements conference conducted within the state.

§6-1-10. Inspections.

10.1. 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 said establishment.

10.2. Areas of inspection - 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 will be filed in the office of the Board. Areas of inspection shall include but not be limited to:

(a) Public areas, including restrooms, lounges, parlors, casket display rooms, offices and chapels;

(b) Non-public areas, including preparation or embalming rooms, refrigeration facilities, holding areas, crematories and dressing rooms;

(c) Documents required in sections 6-1-6. and 6-1-7. of this rule;

(d) Medical waste disposal procedure and documents.

10.3. Violations - The Board shall inform, in writing, the funeral service licensee in charge of any violation of this rule or of state code discovered during an inspection. Said notice shall include a description of the violation or violations and a time limit within which corrections are to be made. In the case of an extreme number of violations or violations which would endanger the public health or welfare, the board may suspend the funeral establishment license until the violation or violations are corrected.

10.4. Reinspection fine - If a violation of sufficient importance as to warrant a reinspection prior to the next scheduled inspection is discovered; the funeral establishment shall pay a reinspection fine of \$100.00 per visit until the violation or violations have been corrected.

§6-1-11. Necessary Equipment.

11.1. Necessary equipment for the conduct of embalming and funeral directing shall include but is not limited to:

(a) A funeral establishment as defined by these rules.

(b) Embalming room facilities along with all necessary equipment, in compliance with all state and federal laws and rules located in each funeral establishment as defined by these rules.

(c) Restroom facilities in compliance with all state and local health requirements located in each funeral establishment and each branch establishment as defined by these rules.

§6-1-12. Continuing Education.

12.1. School of Instruction - Shall consist of a series or course of study of not less than eighteen (18) formal hours of continuing education, to be taken over a three year period, approved by the Board and relating to the field of embalming and/or funeral directing.

12.2. Notification of Board - It is the responsibility of each licensee to insure that the Board is properly notified of his or her acquiring of hours of continuing education.

12.3. Study Periods - The three year sequence for Schools of Instruction shall begin with January 1, 1994 and continue until December 31, 1996 and shall continue every three years thereafter.

12.4. Exceptions -

(a) Persons who become licensed after the beginning of any three year sequence shall be exempted from the education requirements of this rule as follows:

(1) If a person becomes licensed during the first year of the sequence the licensee is exempted from six (6) hours of continuing education;

(2) If a person becomes licensed during the second year of the sequence the licensee is exempted from twelve (12) hours of continuing education;

(3) If a person becomes licensed during the third year of the sequence the licensee is exempted from eighteen (18) hours of continuing education.

(b) Any licensed funeral director and/or embalmer who's license status is inactive shall be exempt from the education requirements of this article; however, if the licensee becomes active at any time the full education requirement for that individual shall be enforced for the then current three year period.

§6-1-13. Courtesy card.

13.1. Requirements - In order for an applicant to receive a nonrenewable, annually issued courtesy card, he shall meet the follow requirements:

(a) Applicant must be a resident of a state which borders West Virginia;

(b) Applicant must be a licensed embalmer and funeral director in his state of residence;

(c) An application, supplied by this Board, must be completed;

(d) Any and all statutory fees must be paid.

13.2. Rights - A courtesy card holder may conduct funerals, for a non-West Virginia funeral establishment within the boundaries of the state of West Virginia.

13.3. Responsibilities - A courtesy card holder will obey all the laws of the state of West Virginia and these rules. He shall not open or operate a place of business for the purpose of conducting funerals or embalmings, nor shall he be permitted to maintain an office or agency in this state. Further, he cannot be employed by, nor contracted by, a funeral establishment licensed in this state as a licensed embalmer or funeral director.

13.4. The violation of any of these rules will result in the immediate revocation or cancellation of the courtesy card, of the violator, issued by this Board.

§6-1-14. Definitions.

14.1. Board - For the purposes of these rules, the word "Board" shall mean the West Virginia Board of Embalmers and Funeral Directors.

14.2. Masculine gender - For the purposes of these rules, words in the masculine gender shall include the feminine and neuter genders as well.

14.3. Professional services - For the purposes of these rules, "professional services" shall include embalming, funeral services and the arrangements conference.

14.4. Funeral service - For the purposes of these rules, "funeral services" shall include the religious, fraternal or civil ceremony performed with the body present at a funeral home, church or other public place and shall also include the committal or other dedication ceremony at a cemetery or other place of final disposition.

14.5. Embalming - For the purposes of these rules, "embalming" shall include the disinfection, preservation and/or restoration of a dead human body.

14.6. Arrangements conference - For the purposes of these rules, the term "arrangements conference" shall include 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.

14.7. Funeral establishment - 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, cremation or other disposition of dead human bodies.

14.8. Branch establishment - A "branch establishment" is a funeral establishment which is owned by, operated by, is a subsidiary of, or otherwise financially connected or controlled by a licensed funeral establishment.

14.9. Trade embalmer - For the purposes of these rules, the term "trade service", "trade embalmer", "mortuary service" or any related term which designates an establishment which provides embalming services for funeral directors at a location separate from a funeral establishment shall be deemed a funeral establishment.

§6-1-15. Penalties.

15.1. Any violation of these rules shall constitute grounds for the refusal to renew a license or shall constitute grounds for the suspension or revocation of any license or certificate issued under the provisions of section one, article six, Chapter Thirty, et seq., of the West Virginia Code of 1931, as amended.

§6-1-16. Contested Case Hearing Procedures.

16.1. Definitions.

(a) Demanding Party - For the purposes of these rules, the term "demanding party" means an individual who has been denied a license to practice Embalming and Funeral Directing by the Board and who, as a result, demands that a hearing be held before the Board on the issue of such denial.

(b) Charged Party - For the purposes of these rules, the term "charged party" means an individual who holds a license to practice Embalming and /or Funeral Directing issued by the Board and who has been charged by the Board as described in of the rules.

(c) Licensee - For the purposes of these rules, the term "licensee" means an individual who holds a license to practice embalming and/or Funeral Directing issued by the Board.

16.2. Hearing Procedures.

(a) Any person denied a license by the Board who believes such denial was a violation of W. Va. Code §§ 30-1-1 et seq. and/or 30-6-1 et seq. shall be entitled to a hearing on the action denying such license.

(b) Any person who desires a hearing for the reason described in subsection 3.1. of this section must present a written demand for such to the Board.

(c) When the president of the Board or his or her authorized designee is presented with such a demand for a hearing, he or she shall schedule a hearing within forth-five (45) days of receipt by him or her of such written demand, unless postponed to a later date by mutual agreement.

(d) Charges may be instituted against any licensee, funeral establishment and/or branch establishment by the Board when reasonable cause exists for believing that the licensee, funeral establishment and/or branch establishment may have engaged in conduct or be in such condition that his/it license should be suspended, revoked or otherwise disciplined for one or more of the grounds set forth in W. Va. Code § 30-6-1 et seq. or the Board's legislative rules. Charges may be based upon information received by a verified written complaint filed with the Board and further information gathered by the Board in the process of investigating such complaint. Charges may also be based upon information received solely through investigative activities undertaken by the Board.

(e) Charges instituted against a licensee as describe in subsection (d) of this section shall be set forth in a Complaint and Notice of Hearing issue in the name of the Board as the agency of the State regulating the practice of Embalming and Funeral Directory. Such Complaint and Notice of Hearing shall designate the Board as the "Complainant", and shall designate the

Licensee, Funeral Establishment and/or Branch Establishment involves in the proceeding as the "Respondent"; shall set out the substance of each offense charges with sufficient particularity to reasonably apprise the Respondent of the nature, time and place of the conduct or condition complained of therein; shall state the date, time and place for the hearing; and, shall contain a statement of intention by the Board to appoint a hearing examiner.

(f) Upon receipt of a demand for a hearing described in subsections (a) and (b) of this section, the president or his or her designee shall provide the demanding party, with a Complaint and Notice of Hearing issued in the name of the Board as the agency of the State regulating the practice of Embalming and Funeral Directing. Such Complaint and Notice of Hearing shall designate the demanding party as the "Complainant" and shall designate the Board as the "Respondent"; shall set out the substance of each and every reason that the Board has denied the demanding party a license with sufficient particularity to reasonably apprise the demanding party of the nature, time and place of the conduct or condition at issue therein; shall state the date, time and place for the hearing; and, shall contain a statement of intention by the Board to appoint a hearing examiner.

(g) The Board may amend the charges set forth in a Complaint and Notice of Hearing as it deems proper.

(h) A Complaint and Notice of Hearing shall be served upon the demanding or charged party at least thirty (30) days prior to the state of hearing.

(i) Upon written motion received by the Board no later than twenty (20) days prior to the date of hearing, a more definite statement of the matters charged or the reasons stated for denial of licensure shall be provided to the demanding or charged party or his or her counsel, at least fifteen (15) days prior the hearing date.

(j) Hearing shall be conducted as follows:

(1) Any party to a hearing shall have the right to be represented by an attorney-at-law, duly qualified to practice law in the State of West Virginia.

(2) The Board may be represented by the West Virginia Attorney General's Office.

(3) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded from the hearing. Furthermore, the rules of evidence as applied in civil cases in the circuit courts of this State shall be followed. However, when necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied

upon by reasonably prudent persons in the conduct of their affairs.

(4) The rules of privilege recognized by the law of this State shall be followed.

(5) Objections to evidentiary offers shall be noted in the record. Any party to the hearing may vouch the record as to any excluded testimony or other evidence.

(6) Any party to a hearing may appear with witnesses to testify on his or her behalf; may be heard in person, by counsel or both; may present such other evidence in support of his or her position as deemed appropriate by the Board or its designated hearing examiner; and, when appropriate, may cross-examine witness called by the Board in support of the charges or in defense of its decision to deny licensure.

(7) The hearing shall be held at such time and place as is designated by the Board, but no hearing shall be conducted unless and until at least thirty (30) days written notice thereof has been served upon the charged or demanding party and/or his or her attorney in person; or if he or she cannot be found, by delivering such notice at his or her usual place of abode, and giving information of its purport, to his wife or her husband, or to any other person found there who is a member of his or her family and above the age of sixteen years; or if neither his wife or her husband nor any such person can be found there, and he or she cannot be found, by leaving such notice posted at the front door of such place of abode; or if he or she does not reside in this State, such notice may be served by the publication thereof once a week for three successive weeks in a newspaper published in this State; or such notice may be served by registered or certified mail.

(8) The hearing shall be open to the general public.

(9) Members of the Board and its officers, agents and employees shall be competent to testify at the hearing as to material and relevant matters: Provided, that no member of the Board who testifies at such hearing shall thereafter participate in the deliberations or decisions of the Board with respect to the case in which he or she so testified.

(10) The hearing may be conducted by one or more Board members or by a hearing examiner appointed by the Board.

(11) A record of the hearing, including the complaint(s), if applicable, the notice of hearing, all pleading, motions, rulings, stipulations, exhibits, documentary evidence, evidentiary depositions and the stenographic report of the hearing, shall be made and a transcript thereof maintained in the Board's files. Upon request, a copy of the transcript shall be furnished to any party at his or her expense.

(12) Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference.

(13) Where a hearing is held upon the instance of the Board after charges have been brought against a licensee pursuant to subsections 3.4. and 3.5. of this section, the Board shall have the burden of proof and shall present its evidence and/or testimony in support of the charges first.

(14) Where a hearing is held upon demand under the provision of subsections 3.1., 3.2., 3.3. and 3.6. of this section, the demanding party shall have the burden of proof and shall therefore be required to present his or her evidence first.

(15) Following the conclusion of the demanding party's presentation of evidence in accordance with subsection 3.10.(m) of this section, the Respondent or charged party shall have the right to submit his or her evidence in defense.

(16) Following the conclusion of the demanding party's presentation of evidence in accordance with subsection 3.10.(n) of this section, the Board shall have the right to submit its evidence in defense.

(17) The Board may call witnesses to testify in support of its decision to deny licensure or in support of the charges instituted against a licensee; may present such other evidence to support its position; and, may cross-examine witness called by the demanding party or charged party in support of his or her position.

(18) All parties shall have the right to offer opening and closing arguments, not to exceed ten (10) minutes for each presentation.

(19) Hearing held by the Board as a result of charges instituted against a licensee may be continued or adjourned to a later date or a different place by the Board or its designee by appropriate notice to all parties.

(20) Motion for a continuance of a hearing may be granted upon a showing of good cause. Motions for continuance must be in writing and received in the office of the Board no later than seven (7) days prior to the hearing date. In determining whether good cause exists, consideration will be given to the ability of the party requesting the continuance to proceed effectively without a continuance. A motion for a continuance filed less than seven (7) days from the date of hearing shall be denied unless the reason for the motion could not have been ascertained earlier. Motions for continuance filed prior to the date of hearing may be ruled on by the Executive Director or Assistant Executive Director of the Board or designated hearing examiner. All other motions for continuance shall be ruled on by

the Board member(s) or the hearing examiner presiding over the hearing.

(21) All motions related to a case set for hearing before the Board, except motions for continuance and those made during the hearing, shall be in writing and shall be received in the office of the Board at least ten (10) days before the hearing. Prehearing motions shall be heard at a prehearing conference or at the hearing prior to the commencement of testimony. The Board member(s) or the hearing examiner presiding at the hearing shall hear the motions and the response from the non-moving party and shall rule on such motions accordingly.

16.3. Transcript of Testimony and Evidence.

(a) All testimony, evidence, arguments and rulings on the admissibility of testimony and evidence shall be recorded by stenographic notes and characters or by mechanical means.

(b) All recorded materials shall be transcribed. The Board shall have the responsibility to make arrangement for the transcription of the recorded testimony and evidence.

(c) Upon the motion of the Board or any party assigning error or omission in any part of any transcript, the Board or its appointed hearing examiner shall settle all differences arising as to whether such transcript truly discloses what occurred and/or revised as appropriate so as to make it conform to the truth.

(d) A transcript of the hearing shall be provided to all members of the Board for review at least ten (10) days before the vote is taken on its decision in any licensure or licensure disciplinary matter.

16.4. Submission of Proposed Findings of Fact and Conclusions of Law. Any party may submit proposed findings of fact and conclusions of law at a time and manner designated by the Board or its duly appointed hearing examiner.

16.5. Hearing Examiner.

(a) The Board may appoint a hearing examiner who shall be empowered to subpoena witnesses and documents, administer oaths and affirmations, examine witnesses under oath, rule on evidentiary matters, hold conferences for the settlement or simplification of issues by constant of the parties, cause to be prepared a record of the hearing so that the Board is able to discharge its functions and otherwise conduct hearings as provided in § 19-5.3.10. herein.

(b) Hearing examiners appointed by the Board are not authorized or empowered to grant, suspend, revoke or otherwise discipline any license.

(c) The hearing examiner shall prepare recommended findings of fact and conclusions of law for submission to the Board. The Board may adopt, modify or reject such findings of fact and conclusions of law.

16.6. Conferences; Informal Disposition of Cases.

(a) At any time prior to the hearing or thereafter, the Board, its designee or its duly appointed hearing examiner may hold conferences for the following purposes:

- (1) To dispose of procedural requests, prehearing motions or similar matters;
- (2) To simplify or settle issues by consent of the parties; or
- (3) To provide for the informal disposition of cases by stipulation or agreement.

(b) The Board or its appointed hearing examiner may cause such conferences to be held on its own motion or by the request of a party.

(c) The Board may also initiate or consider stipulation or agreement proposals with regard to the informal disposition of cases and may enter into such stipulations and/or agreements without conference.

16.7. Depositions. Evidentiary depositions may be taken and read or otherwise included into evidence as in civil actions in the circuit courts of this State.

16.8. Subpoenas.

(a) Subpoenas to compel the attendance of witnesses and subpoenas duces tecum to compel the production of documents may be issued by the Board, its Executive Director, its Assistant Executive Director, and by the hearing examiner appointed by the Board. Such subpoenas shall be issued pursuant to W. Va. Code § 29A-5-1(b).

(b) Written requests by a party for the issuance of subpoenas or subpoenas duces tecum as provided in section 9.1. of this section must a schedule hearing. Any party requesting the issuance of subpoenas or subpoenas duces tecum shall see that they are properly served in accordance with W. Va. Code §§ 29A-5-1(b).

16.9. Orders.

(a) Any final order entered by the Board following a hearing conducted pursuant to these rules shall be made pursuant to

the provisions of W. Va. Code §§ 29A-5-3 and 30-1-8(d). Such orders shall be entered within forty-five (45) days following the submission of all documents and materials necessary for the proper disposition of the case, including transcripts, and shall contain findings of fact and conclusions of law.

(b) The findings of fact and conclusions of law be approved by a majority of the Board either by a poll or vote at a regular meeting, before a final order is entered. A copy of the final order approved by a majority of the Board shall be served upon the demanding or changed party and/or his attorney of record, if any, within five (5) days after entry by the Board by personal service or by registered or certified mail.

16.10. Appeal. An appeal from any final order entered in accordance with these rules shall comply with the provisions of W. Va. Code § 30-1-9.