

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #3

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MAY 6 9 13 AM '93

OFFICE OF 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

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: _____

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.



12.40

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

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: May 6, 1993

Signature of Agency Head or Authorized Representative

Sharon S. Frutts

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.

b. Date of hearing: _____

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

d. Attach findings and determinations and reasons:

Attached _____

**TITLE 6
LEGISLATIVE RULES
BOARD OF EMBALMERS AND FUNERAL DIRECTORS**

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

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

MAY 6 9 23 AM '93

FILED

§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 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. Definitions.

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

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

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

2.4. 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.

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

2.6. 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.

2.7. 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 or other disposition of dead human bodies.

2.8. 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.

2.9. 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.

§6-1-3. Licensing and Examination.

3.1. No person shall be entitled to sit for a funeral directors' 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) 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;
- (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.

3.2. 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%).

3.3. 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.

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

3.6. 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.

§6-1-3A. Apprenticeship.

3A.1. The apprenticeship for an embalmer license and for a funeral director's license shall be served simultaneously.

3A.2. The apprenticeship program shall be of one (1) year's duration and shall consist 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 these rules, a full-time employee shall be defined as an employee working a minimum of forty (40) hours per week in a licensed funeral establishment. The apprentice shall have five (5) years within which to complete the apprenticeship, to graduate from a mortuary science school, and successfully complete all examinations. The Board will 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.

3A.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.

3A.4. During the course of the apprenticeship program, the Board may require the submission of progress reports, at its discretion.

§6-1-4. Control of dead bodies.

4.1. 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.

4.2. 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.

4.3. 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 services are being rendered by virtue of reference from another funeral establishment, from a representative of such funeral establishment.

4.4. 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 a public health officer prior to embalming.

4.5. Responsibility for fees - Failure to gain authority for embalming. No person or persons entitled to give permission to embalm a body pursuant to Sections 4.3 and 4.4 of these rules, shall be responsible for the payment of any fee in connection with an unauthorized embalming.

§6-1-5. Health requirements.

5.1. 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.

5.2. 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 across the borders of this State, whether such bodies 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.

§6-1-6. Evidence of crime.

6.1. 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.

6.2. 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.

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

6.4. Use of 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 chloral or any poisonous alkaloid in the embalming of a body.

§6-1-7. Price Disclosure.

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

§6-1-8. Advertising.

8.1. 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.

8.2. 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.

(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 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 non-general, 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, 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

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 its 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, stationery, contracts, calendars, fans and novelty advertising, or any other advertising method or medium.

§6-1-9. Confidence.

9.1. 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.

§6-1-10. Supervision required of licensee.

10.1. 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.

10.2. 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.

10.3. 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.

10.4. Funeral Directing - A funeral director, licensed by this state, shall be responsible for and supervise any funeral ceremony conducted within the state.

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

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

§6-1-11. Inspections.

11.1. 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.

11.2. 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) Materials as specified in sections 6-1-7. and 6-1-8. of these rules;

(d) Medical waste disposal procedure and documents.

§6-1-12. Necessary Equipment.

12.1. 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.

§6-1-13. Courtesy Card.

13.1. Requirements - In order for an applicant to receive a nonrenewable, annually issued courtesy card, he shall meet the following 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 by 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. Penalties.

14.1. 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.

§6-1-15. Contested Case Hearing Procedures.

15.1. Definitions.

(a) Demanding Party - For the purpose 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 these 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.

15.2. 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 16.2(a) 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 forty-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/its 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 described in subsection (d) of this section shall be set forth in 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 Board as the "Complainant", and shall designate the Licensee, Funeral Establishment and/or Branch Establishment involved in the proceeding as the "Respondent"; shall set out the substance of each offense charged 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 twenty (20) days prior to the date of the hearing.

(i) Upon written motion received by the Board no later than twenty (20) days prior to the date of the 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 to the hearing date.

(j) Hearings 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 witnesses 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 twenty (20) 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 to the licensee's last known address as filed with the Board.

(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 pleadings, 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 16.2(d) and 16.2(e) 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 16.2(a), 16.2(b), 16.2(c) and 16.2(e) 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 16.2(j)(13) 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 16.2(j)(14) 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 witnesses 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) Hearings 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.

15.3. 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.

15.4. 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.

15.5. 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 consent 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.

15.6. 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.

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

15.8. 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, 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 16.8. of this section must be received by the Board no later than ten (10) days before a scheduled 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).

15.9. 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 the 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 must 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 charged 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.

15.10. 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.



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

FILED

MAR 17 1 25 PM '93

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.

Attached are the comments received. The specific sections referred to in the comments and the actions the Board took with regard to the comments are as follows:

6-1-2A and 2A.2 - Changed to 6-1-3A and 3A.2 - After careful consideration and advice by counsel, 3A.2 was re-written.

6-1-6 Price Disclosure - Changed to 6-1-7. Upon advice of counsel, this rule was struck in its entirety and re-written as 6-1-7.1.

6-1-7. Advertising - Changed to 6-1-8. - After due consideration and upon advice of counsel, section 7.3 was deleted from the Rules.

6-1-9 - Supervision Required of Licensee - Changed to 6-1-10. Upon advice of counsel, the words "present at" were changed to read "responsible for".

6-1-10 and 10.2 Inspections - Changed to 6-1-11. - Upon advice of counsel, changed 6-1-11.2(c) took out the words "documents" and changed to read "Materials as specified in sections 6-1-6 and 6-1-7 of these rules"

6-1-11. Necessary Equipment. - Changed to 6-1-12. - After due consideration, the Board felt it necessary to leave this rule as written.

6-1-12. Continuing Education - After due consideration and upon advice by counsel that this rule was outside the scope of the code, it was struck out in its entirety.

6-1-14 Definitions. - Changed to 6-1-2. Definitions were moved to the beginning of the Rules and are necessary to the Rules.

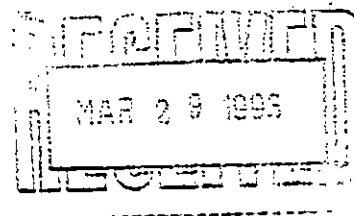
6-1-16. Contested Case Hearing Procedures - Changed to 6-1-15. After due consideration, it is the opinion of the Board that this language and rule, as written by the Board's legal counsel, needs to be a part of the Rules.

ECKELS-MYERS FUNERAL HOME

RANDY L. MYERS - OWNER

600 Main Street
Sistersville, WV 26175
Phone: 304-652-6531

WV Board of Embalmers and Funeral Directors
179 Summers Street, Suite 305
Charleston, WV 25301
March 25, 1993



RE: Comment on Proposed Rule Change

Dear Sirs;

I would like to comment on one portion of the proposed rule change. The Continuing Education proposal should not be enacted, specifically the proposed 18 formal hours of continuing education in a three year period.

As a sole proprietor with no employees, I find it difficult at times to fulfill the present requirement of continuing education. Being at least an hour away from most continuing education sites, a full day is required of my time for these courses.

I urge you not to change this rule.

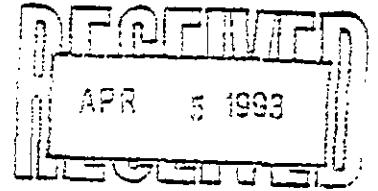
Cordially,

Randy L. Myers, Owner
Eckels-Myers Funeral Home
Sistersville, WV

POLING - ST. CLAIR FUNERAL HOME

PHONE 304-472-1000 95 S. KANAWHA ST.
BUCKHANNON, W. VA. 26201

April 2, 1993



W.V. Board of Embalmers & Funeral Directors
179 Summers St., Suite 305
Charleston, W.V. 25301

Gentlemen:

As licensed Funeral Directors & Embalmers, we would like to go on record as opposing code 6-1-12 continuing education of the new proposed rules. We feel this is not a true continuation of our education and that it would put an undue burden and expense on the Funeral Homes of W.V. and the Families they serve.

Thank you for your consideration in this matter.

Sincerely,
Jeffrey C. St. Clair
Jeffrey C. St. Clair

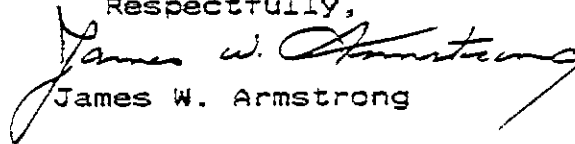
M. Conard St. Clair	Funeral Dir. # 647	Embalmers #1066
Jeffrey C. St. Clair	Funeral Dir. #1484	Embalmers #1784
Gary L. Skidmore	Funeral Dir. #1378	Embalmers #1678
Stephen A. Straight	App. Funeral Dir. #3120	App. Embalmers #3370

M. Conard St. Clair	<i>M. Conard St. Clair</i>
Jeffrey C. St. Clair	<i>Jeffrey C. St. Clair</i>
Gary L. Skidmore	<i>Gary L. Skidmore</i>
Stephen A. Straight	<i>Stephen A. Straight</i>

ones without the necessary college or university hours will be removed as an apprentice?

I congratulate the Board on their efforts to update our chosen field of service and support your ideas but I feel that you have forgotten the little man and are leaning more to making everyone live up to big city procedures.

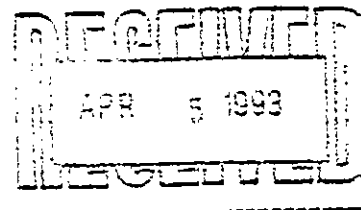
Respectfully,

A handwritten signature in cursive script that reads "James W. Armstrong". The signature is written in dark ink and is positioned above the typed name.

James W. Armstrong

Louis A. Hussell
P.O. Box 215
Point Pleasant, WV 25550
F.D. Lic. #1048

April 2, 1993



West Virginia Board of Embalmers
and Funeral Directors
179 Summers Street, Suite 305
Charleston, WV 25301

RE: Change to Hours of School of Instruction

Dear Sir:

I am writing in regards to a recent change which I have heard about recently, in the number of credit hours which will be required for all West Virginia licensed embalmers and funeral directors.

It is my understanding that the board is wanting to change the hours to a total of 18 (eighteen) hours for a 3 (three) year period. This would require 6 (six) hours per year.

I am very much against making a change for this amount of hours. I believe they are excess of what is necessary. I feel changing the hours of instruction needed, in order to maintain one's current license, will place an undue hardship on many of the profession.

It is difficult, at some times and extremely difficult others, for funeral directors and embalmers, to be able to attend these schools. Especially, if the director is an owner of the establishment, it places an undue hardship, not only on the business, but leaves clients and family of deceased, at times in a disadvantage of unavailability of the directors professional service.

It is also, not easy, when more than one or two directors, are the employees of the home, to arrange to be away from the business so many times throughout the year. You must be there to conduct business.

I believe, when we become more concerned about "school's of instruction and hours required", we are loosing sight of what our profession is truly about, and that is the caring of the dead by serving the living. We must be available to the public. We have, as you should know, " NO " clear cut hours, we serve when needed.

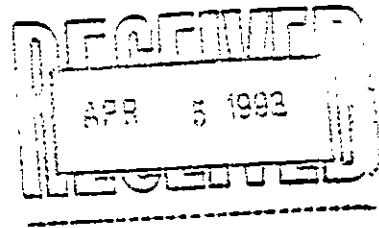
I ask that you consider a " VOTE OF NO " in regards to changing the hours needed for license renewal.

Sincerely,

Handwritten signature of Louis A. Hussell.

Louis A. Hussell, Jr.
Rt. #1, #10 Belle Road
Point Pleasant, WV 25550
F.D. Lic. #1477

April 2, 1993



West Virginia Board of Embalmers
and Funeral Directors
179 Summers Street, Suite 305
Charleston, WV 25301

RE: Change to Hours of School of Instruction

Dear Sir:

I am writing in regards to a recent change which I have heard about recently, in the number of credit hours which will be required for all West Virginia licensed embalmers and funeral directors.

It is my understanding that the board is wanting to change the hours to a total of 18 (eighteen) hours for a 3 (three) year period. This would require 6 (six) hours per year.

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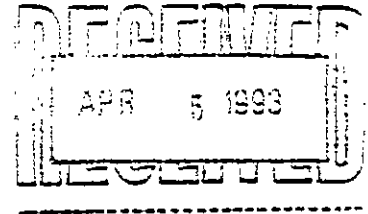
I ask that you consider a " VOTE OF NO " in regards to changing the hours needed for license renewal.

Sincerely,

Louis A. Hussell, Jr.

Ronald K. Browning
1701 Jefferson Blvd.
Point Pleasant, WV 25550
F. D. Lic. #3519

April 2, 1993



West Virginia Board of Embalmers
and Funeral Directors
179 Summers Street, Suite 305
Charleston, WV 25301

RE: Change to Hours of School of Instruction

Dear Sir:

I am writing in regards to a recent change which I have heard about recently, in the number of credit hours which will be required for all West Virginia licensed embalmers and funeral directors.

It is my understanding that the board is wanting to change the hours to a total of 18 (eighteen) hours for a 3 (three) year period. This would require 6 (six) hours per year.

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It is also, not easy, when more than one or two directors, are the employees of the home, to arrange to be away from the business so many times throughout the year. You must be there to conduct business.

I believe, when we become more concerned about "school's of instruction and hours required", we are loosing sight of what our profession is truly about, and that is the caring of the dead by serving the living. We must be available to the public. We have, as you should know, " NO " clear cut hours, we serve when needed.

I ask that you consider a " VOTE OF NO " in regards to changing the hours needed for license renewal.

Sincerely,

Ronald K. Browning

April 9, 1993

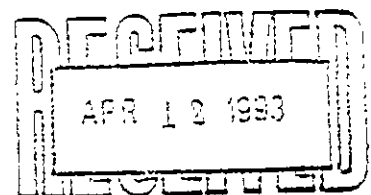
WV Board of Embalmers
179 Summers Street, #305
Charleston, WV 25301

RE: Rules

I was very pleased to see the rules proposed by you. I am very much in favor of these rules, especially the continuing education requirement. I was also glad to see someone finally define a funeral so that we as licensee know exactly what the law expects of us. All the rules are clear and long over due. Please include this letter in your comments.

Sincerely,

Bruce E. Blankenship
Bruce E. Blankenship
FD# 1439
EMB# 1739



April 9, 1993

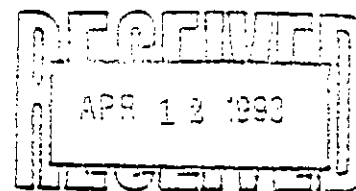
Board of Embalmers and Funeral Directors
179 Summers Street, #305
Charleston, WV 25301

I am writing you concerning the proposed Rules and Regulations. Please consider this an official comment for your comment period. My license numbers are: Funeral Director 1525 and Embalmer 1825.

I am very satisfied with what has been proposed by you. I favor the continuing education requirement and hope everyone realizes how important this is. I was also happy to see the definitions section, with it there will be no question about what constitutes a funeral or what is expected of a licensee. Overall the rules are clear and understandable.

Sincerely,


David L. Wood II, Licensee





Stanley N. Vaughan Funeral Home, Inc.

1010 Murdoch Avenue • P.O. Box 2006
Parkersburg, West Virginia 26102
Phone (304) 485-5471 • FAX (304) 485-5474

April 12, 1993

To whom it may concern:

These are my thoughts on new rules;

Section 6.2- A question, should all employees have to disclose prices or only licensed personnel. To me, only licensees should be required to do so.

Section 6.9.2 - Does each branch have to have a licensee or are we going to lower our standards to give people less than than the best personal service.

Section 6:1.14:5- Is a pre-arrangement not an arrangement conference too? Therefore a person to make pre-arrangement must be a licensee. This should be clearly spelled out. There should also be a large fine if this is done. See also Section 6:9-4 and 6 ;9.6.

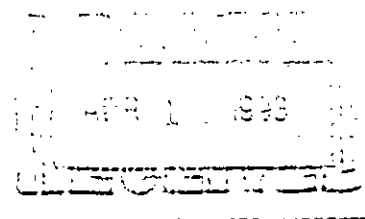
Section 6:1-2A-2-Will an apprentice be allowed to attend school if the 40 hours of employment requirement is met?

Thankyou,

John W. Rockhold, III

John W. Rockhold, III

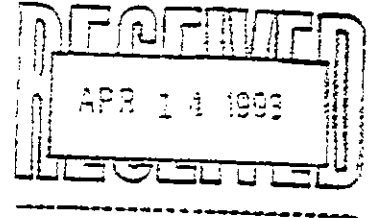
Mark E. Hickman
Director





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



NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

Amendments to the existing Rules of the West Virginia Board of Embalmers and Funeral Directors, Title 6, Series 1, have been filed with the West Virginia Secretary of State, Ken Hechler, Administrative Law Division.

A comment period has been established during which any interested person may send comments concerning proposed rules. This comment period will end on April 16, 1993, at 5:00 p.m. The issues to be commented on are limited to the proposed rules. Only written comments will be accepted and are to be mailed to the following address.

WV Board of Embalmers and Funeral Directors
179 Summers St., Suite 305
Charleston, WV 25301

Copies of said Amendments may be obtained by contacting the Administrative Law Division at (304) 345-4000.

To Whom It may Concern:

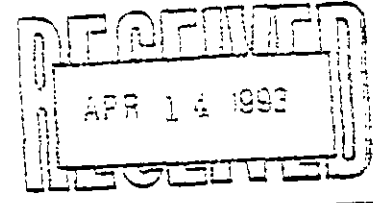
We object to the Proposed Amendments to the Existing Rules of the West Virginia Board of Embalmers and Funeral Directors, Title 6, Series 1.

Sincerely,

Raymond Waldeck
Rodney A. Parker

Thomas C. Sovine
P.O. Box 218
Milton, WV, 25541-0218

WV Board of Embalmers and Funeral Directors
179 Summers St., Suite 305
Charleston, WV, 25301



Re: Comments on Rules of the WV Board of
Embalmers and Funeral Directors

Page 2, Question 4-B. I dispute that there will be no economic impact. The annual fees alone, providing that one does not belong to the WV Funeral Directors Association, will be a minimum of \$150.00 to maintain ones license through continuing education. Also, as an employer, there will be a significant loss of on job time due to the additional "formal" required educational hours that an employee will be gone from the job.

General Premise: W.Va. Code 30-6-3. "The board shall have the power and it shall be its duty to make and enforce all necessary rules and regulations, not inconsistent with this article, for the examination and licensing of funeral directors, and the general practice of funeral directing; the examination and licensing of embalmers and the general practice of embalming and the registration and regulation of apprentices; the licensing and general operation of funeral establishments, . . ." (Highlights Added)

Proposed Rule 6-1-2A. 2A.2.

W.Va. Code 30-6-11. "The board may by its rules and regulations, provide for the manner in which an apprenticeship shall be served and the length of time thereof, which shall not be more than one year." (Highlights Added)

Proposed Rule 6-1-6. The F.T.C. has changed their view as regards to "Other Use of Facilities" and "acknowledgement cards" the rule does not reflect the current F.T.C. position. The F.T.C. requires only price ranges for caskets and outer burial containers on the G.P.L. not itemization as the rule specifies. "Telephone Price Disclosure- A licensee, his employees or agents must:" Later in the rule changes you indicate that only a licensed funeral director may arrange a funeral, yet here you are saying that even the "car wash boy" must dispense price information. (Highlights Added)

Suggestion: Just say that the establishment shall be in compliance with the minimum standards set forth by the F.T.C. in regards to, the General Price List, Casket Price List, Outer Burial Container Price List and Telephone Price Disclosures. This is better for the following reasons: A. Simplification of the Rules and Regulations B. For testing purposes, the board will have only one set of disclosures C. The board will not need to make constance changes to the rules and regulations as a result of staff changes within the

F.F.C.

Proposed Rule 6-1-7. Advertising 7.3 (b) Redundant. Already covered in W.Va. Code 30-6-7 (d), (e), (f), (h), (i), (j) and W.Va. Code 30-6-14 (d), (e), (f), (h), (i), (j).

Proposed Rule 6-1-9. "9.6" The A.G.'s office will license non-licensed individuals to prearrange funerals which makes this proposed change inconsistent with already existing state policy.

Proposed Rule 6-1-10. 10.2 (c) W.Va. Code 30-6-3. ". . . and the inspector shall be absolutely prohibited from examining any books and records of the funeral establishment." (Highlights Added)

10.3. "the board may suspend the funeral establishment license until the violation or violations are corrected." W.Va. Code 30-6-15 gives the board the power to do this through an injunction. I would hate to be a board member or executive director of the board that suspended an establishment license without the benefit of a board initiated public hearing. The grieved party could possibly obtain satisfaction from the personal assets of the members and/or director. 10.4. I believe the initiation of a fine needs to be through code and not rules and regulations. Even the examination fees have to be changed in the code not the rules and regs.

Proposed Rule 6-1-11. Make it simple. Just say that the funeral establishment shall be in compliance with the minimum standards set forth by O.S.R.A.

Proposed Rule 6-1-12. W.Va. Code 30-6-3. "it (school of instruction) shall be the duty of every licensed funeral director and embalmer to attend at least one such school or other approved program, every three years:"(Parenthesis Added) If someone would take the board to court, and someone will, the eighteen hours will not stand the test as long as the code is worded the way it is worded. 12.4. (3)(b) I appreciate what you are trying to do, but the code does not recognize an "inactive license".

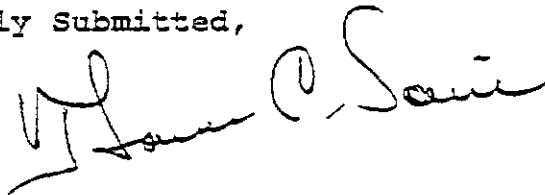
Proposed Rule 6-1-14. First of all, definitions would be better nearer the beginning of the rules. Secondly, the definitions are mostly redundant. . . some already exist in the code. Third, new definitions or expanded old definitions should be placed in code not rules and regs.

Proposed Rule 6-1-16. W.Va. Code 30-6-8. "No order refusing, suspending or revoking a license shall be made until after a public hearing conducted by the board." (Highlights Added) W.Va. Code 30-6-14. "After notice and hearing given and held as notices and hearings are required to be given and held under the provisions of section eight of this article, the board may revoke or suspend . . ." "Any decision of the board suspending or revoking a license to operate a funeral establishment shall be subject to judicial review in the same manner as a decision to suspend or revoke a funeral director's license or embalmer's license is subject to judicial review under the provisions of section eight of this article, and

the written notice of appeal specified in said section eight shall be filed with the circuit court of the county in which such funeral establishment is located." (Highlights Added)

Comments: This rule promulgation certainly sounds as if the board intends to refuse to renew, suspend or revoke licenses without the benefits afforded the licensee under the code. The code spells out the procedure to lift licenses. The process is initiated by the board with a written complaint, not heresy. The licensee is notified in a manner prescribed by code. A public hearing is held in a manner prescribed by code. The board then votes to lift the license or not to lift the license and then the licensee has the right to appeal, all the way to the W.Va. Supreme Court of Appeals if needed. This procedure cannot be changed through the rules and regulations, only through a change in the code.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "James A. Sauer". The signature is written in dark ink and is positioned below the typed text "Respectfully Submitted,".

April 12, 1993
349 Falling Run Road
Morgantown, WV 26505

WV Board of Embalmers & Funeral Directors
179 Summers Street, Suite 305
Charleston, WV 25301

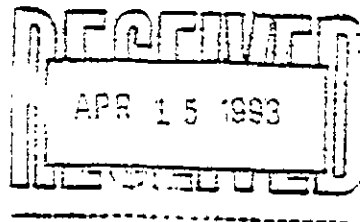
Dear Board Members:

As a licensed Embalmer and Funeral Director in West Virginia for several years, I feel our profession has been over regulated by Federal and State Laws. I object to the proposed amendments to the existing rules and regulations referred to as West Virginia Board of Embalmers and Funeral Directors, Title 6, Series 1.

Yours truly,

Otis Fansler
Otis Fansler

cc: Secy. of State



DAVIDSON
MANCINELLI FUNERAL HOME
108 HOLLAND AVENUE (WV)
MORGANTOWN, WEST VIRGINIA 26505-4394
PHONE 304/292-9494

VINCENT F. MANCINELLI
DIRECTOR

AGNES S. MANCINELLI

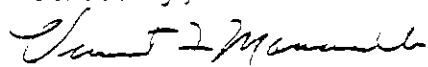
April 13, 1993

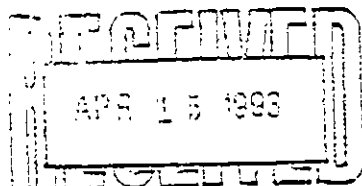
WV Board of Embalmers & Funeral Directors
179 Summers Street, Suite 305
Charleston, WV 25301

TO WHOM IT MAY CONCERN:

As a licensed Funeral Director and Embalmer and owner of a Funeral Home, I object to the Amendments to the existing Rules of the West Virginia Board of Embalmers and Funeral Directors, Title 6, Series 1, which have been filed with the West Virginia Secretary of State.

Sincerely,


Vincent F. Mancinelli



DAVIDSON
MANCINELLI FUNERAL HOME
108 HOLLAND AVENUE (WO)
MORGANTOWN, WEST VIRGINIA 26505-4394
PHONE 304/292-9494

VINCENT F. MANCINELLI
DIRECTOR

AGNES S. MANCINELLI

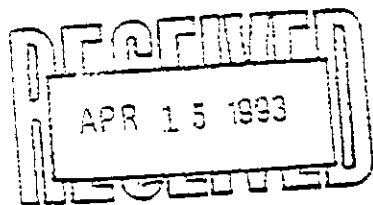
April 12, 1993

West Virginia Board of Embalmers & Funeral Directors
179 Summers Street, Suite 305
Charleston, WV 25301

Dear Board Members:

For approximately fifteen years I have been an apprentice embalmer and funeral director. In these years, more rules and regulations have been made on us than on the cemeteries and now, the cemeterian has acquired more privileges and freedom than our firm has been given.

This letter is written to inform you that I object to the proposed amendments to the existing Rules of the West Virginia Board of Embalmers and Funeral Directors, Title 6, Series 1, which the Board filed with the Administrative Law Division, West Virginia Secretary of State.



Sincerely,

Agnes S. Mancinelli

Agnes S. Mancinelli
Apprentice Embalmer & Funeral Director

cc: Secretary of State

April 13, 1993
108 Holland Avenue
Morgantown, WV 26505

WV Board of Embalmers & Funeral Directors
179 Summers Street, Suite 305
Charleston, WV 25301

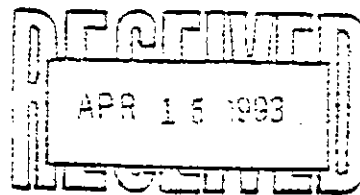
Dear Board Members:

I have read the amendments you have submitted to the Secretary of State's office and I am objecting to the Proposed Amendments to the existing Rules of the West Virginia Board of Embalmers and Funeral Directors, Title 6, Series 1. There are many changes that were made that I do not agree with.

Sincerely,

Mark D Mancinelli

Mark Mancinelli
Apprentice Embalmer & Funeral Director



April 13, 1993

WV Board of Embalmers & Funeral Directors
179 Summers Street, Suite 305
Charleston, WV 25301

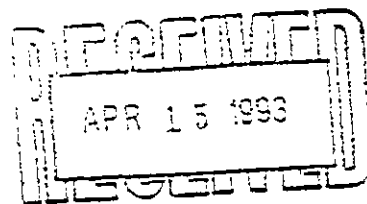
Dear Board Members:

I have been a licensed apprentice embalmer and funeral director for approximately fifteen years and I feel that the Amendments to the existing Rules of the West Virginia Board of Embalmers & Funeral Directors, Title 6, Series 1, are not needed and I object to the amendments.

Sincerely,

Vincent F. Mancinelli, II

Vincent F. Mancinelli, II
108 Holland Ave.
Morgantown, WV 26505



ANDERSON FUNERAL HOME

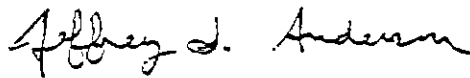
1109 SECOND STREET
MOUNDSVILLE, WEST VIRGINIA 26041
304 - 845 - 7884

To: W.V. Board of Embalmers & Funeral Directors

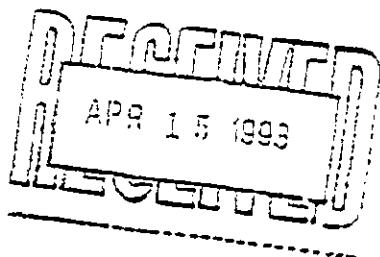
Dear Sirs;

I Strongly object to the proposed
Admendments to the exsisting Rules, Title 6
Series 1.

THANK YOU,



Jeffrey S. Anderson
Licened Funeral Director
And Embalmer



Established 1918

F. E. Runner Funeral Home, Inc.

Cheryl J. Runner, Licensed Director

121 DAVIS STREET

ELKINS, WEST VIRGINIA 26241

Area Code 304
Dial 636-2445

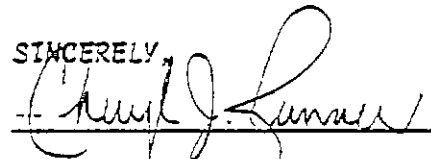
APRIL 13, 1993

W.VA. BOARD OF EMBALMERS AND FUNERAL DIRECTORS
179 SUMMERS ST. SUITE 305
CHARLESTON, W.VA. 25301

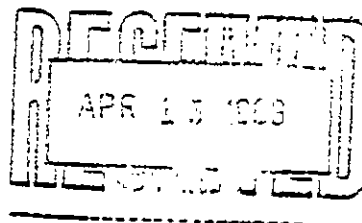
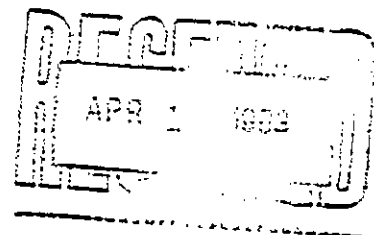
DEAR SIRs:

WE OPPOSE THE PROPOSED AMMENDMENTS TO THE EXISTING RULES OF THE W.VA. BOARD
OF EMBALMERS AND FUNERAL DIRECTORS, TITLE 6 SERIES 1.

SINCERELY,



CHERYL J. RUNNER, DIRECTOR
F.E. RUNNER FUNERAL HOME, INC.
121 DAVIS ST.
ELKINS, W.VA. 26241



35 Hundley Rd.
Clintonville, WV 24928-8851
April 14, 1993

WV Board of Embalmers and Funeral Directors
179 Summers St., Suite 305
Charleston, WV 25301

Gentlemen/Ladies:

In regard to the proposed legislative rule entitled "Rules of the West Virginia Board of Embalmers and Funeral Directors" filed with the Secretary of State on March 17, 1993, I raise the following objections:

(a). Proposed section 6-1-12 Continuing Education, paragraph 12.1, goes beyond the requirement authorized by West Virginia Code §30-6-3 (Cum. Supp. 1992). The proposed rule would require 18 hours of continuing education over three years, whereas the code simply requires the licensee to attend one school of instruction every three years. In practice, the code requirement has been interpreted as three hours of instruction every three years.

(b). Proposed section 6-1-9 Supervision required of licensee, paragraph 9.4, also goes beyond the statutory authority as provided in West Virginia Code §30-6-1 et seq., specifically West Virginia Code §30-6-3 (Cum. Supp. 1992). §30-6-3 states, in part, that "at least one licensed funeral director shall directly supervise each branch establishment when professional services are performed at the branch establishment," while the proposed rule states that a licensed funeral director "shall be present and supervise any funeral ceremony," apparently including the committal rites performed at the cemetery after the funeral service.

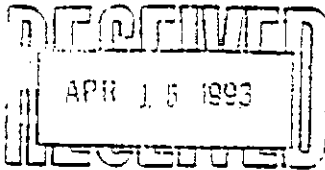
Many one- and two-licensee firms traditionally do not send a licensed person to the cemetery to allow the one licensed person that they have there to remain at the establishment to handle emergency death calls in the homes, embalming, and preparations for a visitation that evening, in other words, matters that cannot be delayed. This practice is in line with the code which requires the licensee to be at the establishment to supervise professional services.

(c). Proposed section 6-1-9 Supervision required of licensee, Paragraph 9.6, places an undue hardship on funeral establishments with only one licensee. An exception should be allowed for these smaller operations who, from time to time, are "surprised" by families who walk in unannounced when the licensee is away performing a function of professional services, such as removal of remains from the place of death, home visitation, church funerals, and, yes, attending continuing education classes.

Respectfully submitted,



William H. Wallace
Licensed WV Funeral Director and
Embalmer
Member of the WV House of Delegates



cc: Hon. Brian Gallagher, Chair, Legislative Rule-Making Review Comm.

HOKE

P.O. Box 188
Grafton, WV.
26354-0188

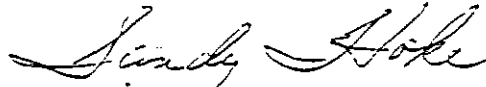
FUNERAL CHAPEL

Phone: (304)
265-5187
265-5189

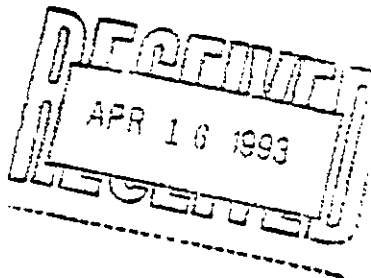
April 14, 1993

Board of Embalmers and Funeral Directors
179 Summers Street, Suite 305
Charleston, WV 25301

I object to the proposed amendments to the existing rules of the West Virginia Board of Embalmers and Funeral Directors : Title 6, Series 1.



Hoke Funeral Chapel



Steel and Wolfe Funeral Homes, Inc.

TWO LOCATIONS

Main St. Corner Maryland Ave. ♦ 380 Penco Road
748-3721 • Phone • 723-5100

Martinsburg, West Virginia 25062

Harold E. Wolfe, Director
Douglas B. Finton, Director
Mary Hannah Wolfe-Finton, Director

April 13, 1993

WEST VIRGINIA BOARD OF EMBALMERS & FUNERAL DIRECTORS
179 Summers Street
Suite 305
Charleston, WV 25301

ATTENTION:

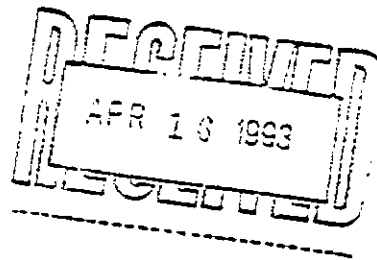
WE OPPOSE THE PROPOSED AMENDMENT TO THE EXISTING RULES OF THE WEST VIRGINIA
BOARD OF EMBALMERS & FUNERAL DIRECTORS TITLE 6 SERIES 1.

SINCERELY,

Douglas B. Finton
DOUGLAS B. FINTON

Mary Hannah Wolfe-Finton
MARY HANNAH WOLFE-FINTON

Harold E. Wolfe
HAROLD E. WOLFE



Presley Funeral Home
303 PENNSYLVANIA AVENUE
WEIRTON, WEST VIRGINIA 26062
748-3031

TO WEST VIRGINIA BOARD OF FUNERAL DIRECTORS
AND EMBALMERS
179 SUMMERS STREET
SUITE 305
CHARLESTON, WV 25301

DATE APRIL 14, 1993

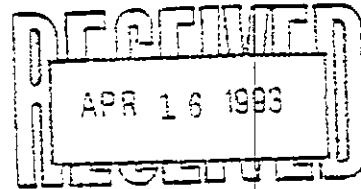
RE

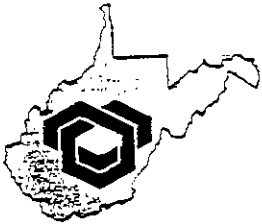
I OPPOSE TO THE PROPOSED AMMENDMENT TO THE EXISTING RULES OF THE
WEST VIRGINIA BOARD OF FUNERAL DIRECTORS AND EMBALMERS TITLE 6
SERIES 1.

SINCERELY,

Albert Presley

ALBERT PRESLEY
FUNERAL DIRECTOR





West Virginia Funeral Directors Association

INCORPORATED

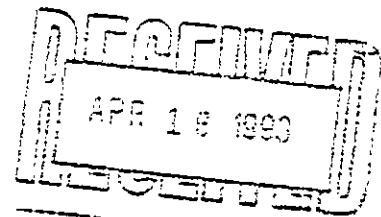
ROGER K. PRICE

Executive Director

815 Quarner Street
Suite 215 — Morrison Building
Charleston, West Virginia 25301
(304) 345-4711

April 15, 1993

Ms. Sharron Knotts, Executive Director
State Board of Embalmers and Funeral Directors
305 Peoples Building, 179 Summers Street
Charleston, WV 25301-2131



Dear Ms. Knotts:

The comments of the West Virginia Funeral Directors Association relative to proposed Legislative Rules of the West Virginia Board of Embalmers and Funeral Directors are as follows:

(1.) 6-1-6 Price Disclosure

Any state rule pertaining to regulations enforced by the Federal Trade Commission should be carefully reviewed and perhaps not placed in State Rules due to the uncertainty of what amendments to the FTC Rule will be. (ie: telephone disclosure 6.2) FTC Rules are enforced by an agency of the federal government and any changes would cause the State Board to go through the lengthy process of amending the State Rule.

(2.) 6-1-7 Advertising

There is some concern with the statement in (7.3) that "all advertising is hereby declared to be unethical, except...." We understand that this language may have been from the "old rule", however, question its validity. We have no problem with the Rule controlling false or misleading advertising.

(3.) 6-1-10 Inspections

There is some concern relative to 10.2 (c and d) regarding the inspection of documents and procedures enforced by the Federal Trade Commission or other state agencies.

Thank you for the opportunity to respond to these proposed rules and we will be happy to meet with you to further discuss them.

Sincerely,

Roger K. Price
Executive Director

RKP/scp

HUDDLESTON, BOLEN, BEATTY, PORTER & COPEN

ONE BRIDGE PLACE
10 HALE STREET
P. O. BOX 3786
CHARLESTON, W. VA. 25337
TELEPHONE (304) 344-9869
TELECOPIER (304) 344-4309

WILLIAM G. BEATTY
NOEL P. COPEN
R. KEMP MORTON
RICHARD J. BOLEN
FRED ADKINS
JOHN R. FOWLER
THOMAS H. GILPIN
JAMES E. CLEVELAND, III
THOMAS J. MURRAY
ANDREW S. ZETTLE
DAVID L. CAMPBELL
BRUCE L. STOUT
FRED G. WESTFALL, JR.
CHRISTOPHER J. PLYBON
DAVID L. SOLE
MARY H. SANDERS
JANICE P. CPPERLY

MARC E. WILLIAMS
R. RUSSELL ALEXANDER
DANIEL J. KONRAD
T. SCOTT SENNETT
SCOTT K. SHEETS
LUKE A. LAFFERRE
SHARON EASTHOM-ROWSEY
JANET SMITH HOLBROOK
DAVID H. LUNSFORD
JAMES W. TURNER
MARK A. SRAMBLE
ANGELA W. KONRAD
COLIN M. CLINE
TROY N. GIATRAS
BRUCE E. SLACKBURN
MARK H. HAYES
RICHARD L. BURGER

ANGELA L. GREENE
ROBERT L. MASSIE
LINDA S. BOUVETTE
TIMOTHY P. ROSINSKY
BLAKE SEXTON
CEIRORE M. MACCARTHY
DANIEL A. EARL
MAGEL E. RHODES

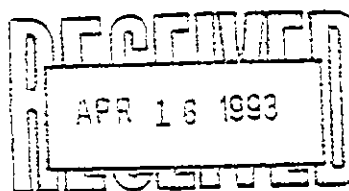
AMOS A. BOLEN
PAUL C. HOBBS
JAMES O. PORTER
OF COUNSEL

JACKSON N. HUDDLESTON
1908-1977

511 THIRD AVENUE
P. O. BOX 2185
HUNTINGTON, W. VA. 25722-2185
TELEPHONE (304) 528-6181
TELECOPIER (304) 522 4312

1422 WINCHESTER AVENUE
P. O. BOX 770
ASHLAND, KY. 41105-0770
TELEPHONE (606) 329-8771
TELECOPIER (606) 324-4651

April 16, 1993



West Virginia Board of Embalmers
and Funeral Directors
179 Summers Street, Suite 305
Charleston, West Virginia 25301

RE: Comments with respect to the Proposed Rule
Changes to the Regulations of the West Virginia
Board of Embalmers and Funeral Directors

On behalf of the Rose and Quesenberry Funeral Chapel of Beckley, West Virginia, hereinafter referred to as Rose and Quesenberry, we state the following objections and comments to the proposed changes to the Regulations of the West Virginia Board of Embalmers and Funeral Directors filed March 17, 1993.

I. Proposed Rule §6-1-6 Price Disclosure - The proposed rule by the West Virginia Board of Embalmers and Funeral Directors not only supersedes requirements set forth in the West Virginia Code, but also the provisions set forth by the Federal Trade Commission. It is the view of Rose and Quesenberry that the Board's request for superseding authority with respect to disclosure of price information is in violation of both the United States constitution and the West Virginia Constitution; along with an overbroad use of the authority of the Board, which constitutes an ultra-vires act.

The Federal Trade Commission requires disclosure of price ranges for caskets, and outer burial containers on the general price list. Promulgation of the rule proposed by the West Virginia Board of Embalmers and Funeral Directors would require all funeral directors throughout the state of West Virginia to draft and maintain two sets of price lists. The proposed rule would require much greater and exacting detail in the break down of prices, which would not only make it more cumbersome upon the individual funeral directors, but in addition would force each individual funeral director to

provide and maintain two individual price lists. It is obvious, that maintaining two lists would, and could be confusing, and construed as a deceptive practice to the consumer. Maintenance of a dual list system would be unduly burdensome upon the funeral directors having to comply with conflicting federal and state regulations. Additionally, Rose and Quesenberry suggests that such requirement would be unconstitutional. In requiring to keep abreast of changing prices on each and every specific category would be cumbersome and costly, and would only create confusion for the consumer.

With respect to telephone price disclosure and disclosure by "any person, a licensee, his or its agents, assistants, or employees" in providing price information, the rule as proposed is not only overly broad, but is unduly burdensome upon individual funeral directors. The West Virginia Legislature has authorized that only licensed funeral directors may arrange a funeral. This rule is inconsistent in that it requires not only licensees, but agents, employees, and assistants which could include part-time employees, housekeeping personnel, drivers, and other non-managerial employees to be responsible to dispense binding and critical price information to the consumer.

Rose and Quesenberry requests this board to reconsider its position, and to follow the practices outlined by the Federal Trade Commission in regard to casket price lists, outer burial container price lists, general price lists, and telephone price disclosures. This method would provide not only for a simpler and unified approach to price disclosure within the state of West Virginia, but would also prevent misleading information to the consumer, and alleviate an undue hardship and burden upon individual funeral directors. Furthermore, by following the guidelines set forth by the Federal Trade Commission, the West Virginia Board of Embalmers and Funeral Directors will not be required to update or proscribe future amendment changes.

II. Proposed rule 6-1-7.3 - Advertising - With respect to advertising, Rose and Quesenberry, addresses proposed rule change §6-1-7.3 where "all advertising is hereby declared to be unethical, except only as hereinafter approved, ..."

The promulgation of this rule not only faces possible constitutional challenges of free-trade and property rights, but

creates an undue burden upon the Board to draft detailed rules and regulations which specifically set forth ethical advertising. In whole, this rule is a rule of inclusion and does not provide sufficient detail, definition, or guidance to individual funeral directors so as to avoid violation.

In addition, this rule supersedes pre-enacted legislation by the West Virginia Legislature, the Federal Trade Commission, and the Consumer Protection Agency; which have all afforded protections for all consumers in the state of West Virginia. Additionally, West Virginia Code §§30-6-7; 30-6-14 sufficiently addresses the issue of advertising for a licensed funeral director.

III. Proposed rule §6-1-10.2c - Promulgation of this rule clearly supersedes pre-enacted legislation under West Virginia Code §30-6-3. West Virginia Code §30-6-3 clearly states that "any inspection shall be conducted in such a manner so as not to interfere with the conduct of businesses within the funeral establishment, and the inspectors shall be absolutely prohibited from examining any books and records of the funeral establishment".

The proposed rule by the Board is in direct conflict with the clear and unambiguous intent of the Legislature. The word shall in West Virginia Code §30-6-3 makes it clear that the intent of the Legislature was to prohibit the inspector from conducting a search of the books and records of the funeral establishment. Such rule on behalf of the West Virginia Board of Embalmers and Funeral Directors is clearly an ultra-vires act. Additionally, promulgation of this rule would violate statutory authority granted the Board by the Legislature, and would be in direct violation of West Virginia law.

IV. Proposed rule §6-1-10.3 - It is the opinion of Rose and Quesenberry that this proposed rule does not adequately provide proper due process for an alleged violator. The procedural and constitutional safeguards mandated by West Virginia Code §30-6-15 provide for temporary injunctive relief through normal legal channels. The Board's proposal to circumvent a violator's constitutional rights of due process and fair hearing would not only spur a constitutional challenge but possible liability upon the Board. Additionally, this rule would extend and exceed the authority granted to the Board by the Legislature by circumventing both legal and legislative intent, and be deemed an ultra-vires

act. Furthermore, West Virginia Code §30-6-16 adequately outlines and protects an accused violator.

V. Proposed rule §6-1-10.4 - Rose and Quesenberry suggests that this proposed rule exceeds the statutory authority granted to it by the West Virginia Legislature by imposing monetary fines upon violators without due process. This proposed rule section does not provide for recourse or the contingency of hearing prior to the levy of fine.

VI. Proposed rule §6-1-12 - Continuing education - Rose and Quesenberry objects on the grounds that the Board does not have the authority to exceed the Legislature's intent to establish a school of instruction to include at least one such school or other approved program every three (3) years. This Board is unilaterally increasing its school of instruction by five (5) times. Prior to enactment of this rule, both this Board and the Legislature should have a full opportunity to appreciate not only the economic, and logistic impacts that such a rule would have, but the impracticality of such proposed rule. Additionally, throughout the past several years, the Legislature and Governor have thwarted prior attempts to alter the current school of instruction. Requiring eighteen (18) hours of instruction within three years would be unduly burdensome upon individual funeral directors who are required to travel throughout the state to attend a minimum of six (6) hours per year of instruction. Additionally, this is time away from an individual's business and would create an extreme economic hardship on smaller, privately owned funeral homes.

Currently there is not a program in place to prepare or conduct eighteen (18) hours of instruction over a three year period. Furthermore, the West Virginia Legislature through enactment of West Virginia Code §30-6-et al., does not recognize an inactive license status. Therefore, exception 12.4b would be invalid and contrary to current West Virginia law.

Finally, such proposal could be considered an ultra-vires act on behalf of the board, and deemed unconstitutional.

VII. Proposed rule §6-1-14 - Rose and Quesenberry suggests that adoption of the definitions should be a function of the Legislature so that both the Legislature and the Board are operating with mutual definitions and intent.

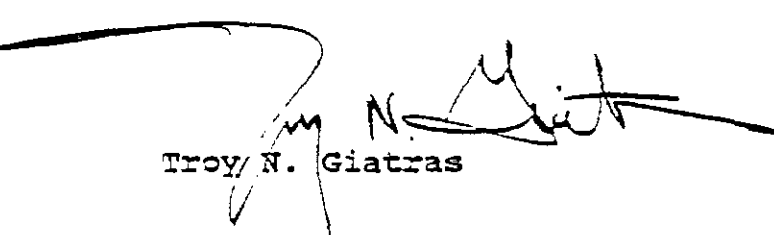
West Virginia Board of Embalmers
and Funeral Directors
April 16, 1993
Page 5

VIII. Proposed rule §6-1-16 - Rose and Quesenberry suggests that the language in this proposed rule prohibits an accused the right to due process and proper appellant challenge. Proper appellant challenge through an authorized judicial body avoids the need to promulgate such rules. Additionally the proposed rule is in direct contradiction with the West Virginia Code, the United States Constitution, and the West Virginia Constitution. Under the proposed rules, an accused's right to a fair and impartial hearing with proper due process and procedural guarantees are circumvented.

Currently, West Virginia Code §30-6-et al. clearly defines the process in which an injunction, or a hearing is available to revoke or suspend a license. The current procedure provides for and protects the constitutional rights of a violator. Therefore, Rose and Quesenberry respectfully requests that this Board consider no changes with respect to the process for revocation, or suspension of an accused's license.

These objections, comments and suggestions are submitted on behalf of Rose and Quesenberry.

Very truly yours,

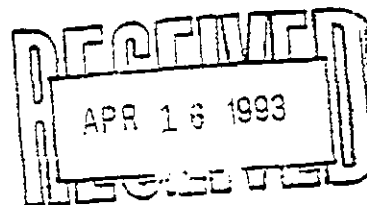


Troy N. Giatras

TNG/rdc

Route 3, Box 20
Bluefield, WV 24701
April 16, 1993

WV Board of Embalmers and Funeral Directors
179 Summers Street, Suite 305
Charleston, WV 25301



Gentlemen:

My intent is to express opposition to the proposed legislative rule entitled "Rules of the West Virginia Board of Embalmers and Funeral Directors" which was filed with the Secretary of State on March 17, 1993. My objections are to proposed section 6-1-12 Continuing Education, Paragraph 12.1 and include the following reasoning:

(1) The unpredictability of the funeral business by its very nature makes it virtually impossible for any funeral director/embalmer to know when he/she will be obligated to make funeral arrangements with a family, to embalm a body, to conduct a funeral, etc. Therefore, it is oftentimes impossible for funeral directors to leave their established business when they are obligated by law to be on the premises to conduct such elements of funeral service. Obviously, this could create the circumstance of a conflict that would make it impossible to attend a scheduled school of instruction. Furthermore, this would place a greater burden on establishments with small professional staffs, whereas one or two licencees are operating the funeral home and would be unable to shirk their responsibilities in order to attend a school of instruction.

(2) The current trend for schools of instruction appears to include a presentation by a glorified sales representative, during which I am gaining an awareness of what I can purchase through this particular presenter and his/her company. I question the content of said schools of instruction on both a professional and educational basis. To me, continuing education should represent a promotion of my own knowledge and expertise in the funeral service field. Here again, I see evidence of promotional gimmicks masked in the name of continuing education.

(3) My objection to the increase in the continuing education requirements also has foundation in there being no apparent increase in the number of approved schools of instruction offered locally, or even within West Virginia. The world of the "jet-set" traveller can hardly be rectified with that of the traditional funeral service provider. It is impossible to travel long distances to attend said events.

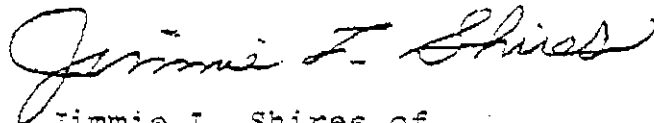
Be aware that I have always believed in progressive education and have attended schools of instruction as often as possible. Furthermore, I have always encouraged and provided every possible opportunity for my licensed employees to attend schools of instruction.

Early in my career preparation, I became determined to serve in the embalming/funeral profession in a manner that would offer the kind of dedicated service desired by our society. I have no qualms about keeping abreast of what is going on in the profession even yet. There have been some very worthwhile seminars which I have been privileged to attend in the past. Perhaps the most informative and beneficial one I ever attended was a two-day seminar sponsored by Dodge Chemical Company in Richmond, VA where all phases of modernized procedures were demonstrated. It would never be my intention to sit in the "dark" and become a "old world" funeral director or embalmer. On the other hand, I have never become plagued severely by an ailment that seems to adversely bother some modern day funeral professionals which is the result of confinement, so often required in our business. The "remedy" for such confinement seems to be attending schools of instruction in fabulous, far-away resorts. Many of these seminars are beyond the means of mine or my business.

May I further state that some of the proposed regulations requiring a licensed person to be present at all places at all times is totally absurd. Granted a licensed person should be present whenever possible and I continue to value embalmer/funeral director licenses for what they should be worth; yet I do not see how a small business operation can consistently have a licensed person present at all times.

I thank you for the opportunity to voice my concerns in regard to these matters, knowing that many other licensed professionals share my views. Please consider my remarks and expect them to be discussed with state legislators and officials.

Respectfully submitted,

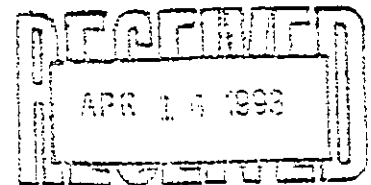


Jimmie L. Shires of
Cravens-Shires Funeral Home, Inc.
WV Funeral Director and Embalmer



Snodgrass Funeral Home

4122 MACCORKLE AVENUE, S. W.
SOUTH CHARLESTON, WEST VIRGINIA 25309
J. W. FAIRLESS, LICENSED DIRECTOR



April 14, 1993

Mrs. Sharron Knotts, Executive Director
West Virginia Board of Embalmers & Funeral Directors
179 Summers St. Suite 305
Charleston, W. Va. 25301

Dear Sharron:

I have read through the proposed rule changes for Embalmers and Funeral Directors and agree in principle with the changes, but find there may be a few areas that have potential conflict with persons who are not Licensed Funeral Directors, selling pre-need contracts.

Section 4.2: If a person dies within the state and has no infectious disease can he be transported across state lines without embalming? I have heard statements that they can't. I was always under the impression that they could.

Section 6-1-7.3 b.: The prohibition against solicitation of business seems to be in conflict with pre-need sales as a person selling pre-needs will receive a commission or payment.

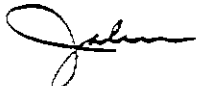
Section 6-1-9.6: Arrangements conferences associated with pre-need sales are again in potential conflict with this section as there is no provision to require pre-need salesmen to be Licensed Funeral Directors. The lack of control over these non-licensed parties give the public no protection from receiving misinformation concerning requirements and W.Va. State Law either unintentionally or intentionally. It seems that a third license should be mandated for persons who are not Licensed Funeral Directors. The requirement should include a test of W. Va. State Law relative to embalming and funeral service. Upon passing a test the sales person would be licensed to sell pre-need services only, providing he had proper certification from the W. Va. Insurance Board.

It seems we are not protecting the general public from high pressure tactics and if we do discover a person giving misinformation we have no control to stop it. This situation is brought close to home when Snodgrass Funeral Home had the potential of losing its establishment license for conducting three funerals at the funeral home and going to the cemetery without a Licensed Director, but a person can solicit and arrange pre-need services which includes advising families of proper procedures and legal requirements with no licensure certification from the Board.

I believe this situation should be evaluated and, if we have to delay the proposed changes until proper legislation is introduced, it would be better in the long run. At times it is more complicated to make some changes then come back later for additional changes covering the same problems.

If you would like to discuss this further, please feel free to give me a call.

Kindest personal regards,



John W. Fairless, Licensed Director
Snodgrass Funeral Home, Inc.

Brown Funeral Home, Inc.

Phone: 304/263-8896 • FAX: 304/263-9248

CHARLES M. BROWN

ROBERT R. RIGOT



Howard K. Brown
1924 - 1976

327 West King Street • P.O. Box 821
Martinsburg, West Virginia 25401

April 16, 1993

WV Board Embalmers & Funeral Directors

We object to the proposed amendments to the existing rules of the
West Virginia Board of Embalmers & Funeral Directors, Title 6, Series 1.

Robert R. Rigot

Robert R. Rigot

RRR/amm

