

**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 et. seq.

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 3

TITLE OF RULE BEING PROPOSED: Crematory Requirements

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 August 1, 2000 AT 4:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

179 Summers Street

Suite 305

Charleston, WV 25301

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


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

\$4.20 w/out referenced material
\$ 8.20 w/ referenced material

SUMMARY OF PROPOSED RULE

Title 6

Legislative Rules

Series 3

Crematory Requirements

This rule introduces a new series entitled "Crematory Requirements." The rule focuses on those businesses which operate in part or whole as crematories. These businesses would be considered a type of funeral establishment and would also be required to follow the provisions of 6CSR1 of the Board's legislative rules.

The rule provides definitions of many terms and establishes general provisions for Board operation. The rule prescribes necessary equipment for such facilities, as well as procedures for obtaining permission to cremate, identification of a dead human body, disposition of cremated remains, and other procedures. The rule requires a means for records retention and provides for inspection of such facilities. The rule establishes penalties for violations of the rule.

STATEMENT OF CIRCUMSTANCES

Title 6

Legislative Rules

Series 3

Crematory Requirements

Title 6, Series 3, Crematory Requirements, is a new series. Since the Board's legislative rules were last updated in June 1994, many changes have taken place in the funeral business. Crematories are still new businesses in this state; however, national trends show cremation as a choice in which more and more consumers are taking advantage. Not only can cremation be a less expensive alternative, it is now becoming more acceptable by some religions, allowing consumers more options in planning their funeral services. These types of businesses are most often a division or part of existing, traditional funeral homes, offering not only cremation but funeral services and funeral goods. Few are separate entities which offer only cremation of the body.

Many states have updated their regulations regarding these types of businesses to include basic equipment requirements and minimum cremation procedures in order to prevent bodies that are actually slated for traditional burial from being cremated. Co-mingling of human remains with each other and with animals, such as pets, is also of major concern; most states have banned both. Other states have struggled with how to address unclaimed remains. This rule would address all of these concerns.

Current state requirements are not thorough enough to provide for good consumer protection. There are currently no specific standards in place. Therefore, it is necessary to introduce new regulations designed specifically for crematories so that the Board can effectively regulate the funeral business in order to protect the public.

□
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Crematory Requirements

Type of Rule: Legislative Interpretive Procedural

Agency: Board of Embalmers and Funeral Directors

Address: 179 Summers Street, Suite 305

Charleston, WV 25301

1. Effect of Proposed rule:

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

2. Explanation of Above Estimates:

It is predicted that there will be no increased expense to this agency, as the board already has an inspector. So additional personnel will not be necessary at this time.

3. Objectives of These Rules:

To establish minimum requirements for crematories, such as necessary equipment, operating procedures, and records retention as a means of protecting the consumer.

Rule Title: Crematory Requirements

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

There will be no impact on General Revenue, as this agency is self-sustaining and receives no appropriations. It is predicted that there will be little or no economic impact on this agency, amounting to less than \$500 in revenue, as there are less than 10 crematories operating in West Virginia.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:

It is predicted that there will be little or no impact on licensees, as most crematories will meet the basic equipment requirements. There will be minimum expense involved in setting up the operating procedures.

C. Economic Impact on Citizens/Public at Large.

There should be no economic impact on citizens at large, as the requirements should not impact overall cost of crematory services.

Date:

June 29, 2000

Signature of Agency Head or Authorized Representative:

Sherril Douglass

FILED

6CSR3

JUL 3 8 56 AM '00

TITLE 6
LEGISLATIVE RULE
BOARD OF EMBALMERS AND FUNERAL DIRECTORS
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 3
CREMATORY REQUIREMENTS

§6-3-1. General.

- 1.1 Scope. - This rule relates to the minimum requirements of crematories.
- 1.2 Authority. - WV Code §30-6-3.
- 1.3 Filing Date. -.
- 1.4 Effective Date. -

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

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

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

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

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

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

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

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

2.5. **Funeral service.** Includes the religious, fraternal or civil ceremony performed with the body present at a funeral home, church or other public place and also includes the committal or other dedication ceremony at a cemetery or other place of final disposition.

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

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

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

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

2.10 **Cremated remains.** Means all human remains recovered after the completion of the cremation process, which may include but not be limited to the residue of any foreign matter such as casket material, dental work, or eyeglasses that were cremated with the human.

2.11 **Cremation.** Means any mechanical or thermal process whereby a dead human body is reduced to ashes and bone fragments. Cremation also includes any other mechanical or thermal process whereby human remains are pulverized, burned, re Cremated, or otherwise further reduced in size or quantity.

2.12 **Crematory.** Means a place of business maintained and operated for compensation 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, in part or whole, to such activities as are incident, convenient, or related to the reduction of dead human bodies to ashes and bone fragments. A crematory is a funeral establishment under the provisions of this article.

2.13 **Cremation chamber.** Means the enclosed space within which cremation takes place.

§6-3-3. **Necessary Equipment.** Failure to comply with the following requirements shall result in

disciplinary action as outlined in article six (6) of chapter thirty (30) and article one (1) of chapter thirty (30) of W.Va. Code, if not corrected within the allotted time designated by the inspector or any other duly authorized representative of the board.

3.1. A main funeral establishment shall have the equipment for the conduct of cremating and funeral directing and includes but is not limited to:

3.1.1. If a main funeral or branch establishment operates, in whole or part, as a crematory, it must meet the following requirements:

a. have one or more commercially manufactured cremation unit, equipped with an interlock, maintained in good working condition, and in accordance with the division of environmental protection legislative rules 45 CSR 13;

b. have a commercially manufactured mechanical device or processor for grinding, crushing, or pulverizing cremated remains maintained in good working condition; and

c. have an appropriate holding facility for dead human bodies awaiting cremation; unembalmed dead human bodies retained or being held for more than eight hours prior to cremation shall be kept in a refrigeration unit.

3.1.2. A crematory shall have the necessary equipment as outlined in section 4 of these rules, with the following exception. A main or branch funeral establishment operating solely as a crematory, where no embalming is performed, is not required to maintain an embalming room.

§6-3-4. Crematories.

4.1 All funeral establishments operating as crematories, in part or whole, shall abide by the following additional requirements set forth in this section. These additional requirements are subject to inspections, pursuant to section 5 of these rules.

4.2 **Written permission to cremate.** All licensed crematories shall obtain written authorization to cremate from the legally authorized person who has the legal right to authorize the cremation. All licensed crematories shall obtain a permit for cremation from the office of the chief medical examiner. The operator of the crematory shall not cremate a dead human body prior to receiving the written authorization to cremate or the certification for cremation form. These two documents must be retained pursuant to the provisions of section 4.6 of these rules.

4.3 **Identification of a dead human body.** All licensed crematories shall develop, implement, and maintain an identification procedure whereby dead human bodies can be identified from the time the crematory accepts delivery of the remains until the cremated remains are released to a legally authorized person. After cremation, an identifying disk, tab, or other permanent label shall be placed within the cremated remains container before the cremated remains are released from the crematory. This disk, tag, or label shall be made of durable, noncorroding materials. Each identification disk, tab, or label shall have a number that shall be recorded on all paperwork regarding the decedent. The identification disk, tab, or label shall also contain the name of decedent, the date of death, the county and state of death, the date of

cremation, and the name of the crematory. This procedure shall be designed to reasonably ensure that the proper body is cremated and that the cremated remains are returned to the appropriate legally authorized person.

4.4 Cremation chamber for human remains. The operator of a crematory shall knowingly cremate only dead human bodies or human remains in a cremation chamber, along with the cremation container and a sheet or pouch utilized for disease control. No operator of a crematory shall knowingly use or allow the use of the same cremation chamber for the cremation of dead human bodies and animals.

4.5 Cremation procedures.

4.5.1. Privacy. Only authorized crematory personnel shall be permitted in the cremation area while any dead human body is in the cremation area awaiting cremation, in the cremation chamber, being removed from the cremation chamber, or being processed and placed in a cremated remains container. A sign marked "private" shall appear at all entrances to the cremation area. If the family of the decedent wishes to view the body, an area designated for such use will be provided, and shall not be a part of the cremation area. The designated area shall be maintained in a clean and sanitary condition.

4.5.2. Removal of objects from the dead human body. No operator of a crematory shall remove any dental gold, body parts, organs, or other items of value from a dead human body prior to the cremation or from the cremated remains after cremation except with the express written permission from the legally authorized person with the right to control such objects. The operator shall identify jewelry and ask the legally authorized person if jewelry is to be removed, prior to cremation. This information shall be maintained as part of the records.

4.5.3. Commingling of human remains prohibited. Except with the express written permission of the legally authorized person with the right to control the disposition, no crematory shall cremate more than one dead human body at the same time and in the same cremation chamber, or introduce a second dead human body into a cremation chamber until reasonable efforts have been employed to remove all fragments of the preceding cremated remains, or cremate a dead human body and other human remains at the same time in the same cremation chamber. The fact that there is incidental and unavoidable residue in the cremation chamber used in a prior cremation is not a violation of this provision.

4.5.4. Removal from the cremation chamber. Upon completion of the heat and flame reduction process, reasonable efforts shall be made to remove, from the cremation chamber, all of the recoverable cremated human remains and non-combustible materials or items. Insofar as is possible, the non-combustible materials or items shall be separated from the cremated human remains and disposed of, in any lawful manner, by the crematory. The cremated human remains shall be placed in an appropriate container to be transported to the processing area.

4.5.5. Commingling of human remains prohibited. Except with the express written permission of the legally authorized person with the right to control the disposition, no crematory shall mechanically process more than one dead human body at the same time and in the same mechanical processor, or introduce a second dead human body into a mechanical processor until reasonable efforts have been employed to remove all fragments of the preceding cremated remains, or mechanically process a dead human body and other human remains at the same time in the same mechanical processor. The fact that

there is incidental and unavoidable residue in the mechanical processor used in a prior cremation is not a violation of this provision.

4.5.6. Processing the cremated remains. The cremated human remains shall be reduced by a motorized device to a granulated appearance appropriate for final disposition and placed in a cremated remains container along with the appropriate identifying disk, tab, or label.

4.5.7. Container of sufficient capacity and durability. If a cremated remains container is of insufficient capacity to accommodate all cremated remains of a given dead human body, subject to directives provided in the written authorization to cremate, the crematory shall place the excess cremated remains in a secondary cremated remains container and attach the second container, in a manner so as not to be easily detached through incidental contact, to the primary cremated remains container. The secondary container shall contain a duplicate of the identification disk, tab, or label that was placed in the primary container and all paperwork regarding the given body shall include a notation that the cremated remains were placed in two containers. All containers shall be closed, rigid, and leak resistant.

4.5.8. Disposition of accumulated residue. Every crematory shall provide for the removal and disposition in accordance with local, state, and federal laws of any accumulated residue from any cremation chamber, mechanical processor, container, or other equipment used in cremation.

4.5.9. Release of cremated remains. Following completion of the cremation, the inurned cremated remains shall be released according to the instructions given on the written authorization to cremate. If the cremated remains are to be shipped, they must be securely packaged and transported via a method which has an internal tracking system available and which provides for a receipt signed by the person accepting delivery. Where there is a dispute over release or disposition of the cremated remains, a crematory may deposit the cremated remains with a court of competent jurisdiction pending resolution of the dispute or retain the cremated remains until the legally authorized person with the right to control disposition presents satisfactory indication that the dispute is resolved.

4.5.10. Unclaimed cremated remains. If, after sixty (60) calendar days following the inurnment, the cremated remains are not claimed or disposed of according to the written authorization to cremate, the crematory shall give written notice, by certified mail, to the person who signed the authorization to cremate, that the cremated remains are unclaimed and requesting further release directions. Should the cremated remains be unclaimed one hundred eighty (180) calendar days following the mailing of the written notification, the crematory may dispose of the cremated remains in an appropriate manner and in accordance with local, state, and federal laws.

4.6 Records.

4.6.1. Required records. Every crematory shall create and maintain on its premises an accurate record of every cremation provided. The record shall include all of the following information for each cremation;

- a. The name of the person or other funeral establishment delivering the body for cremation;
- b. The name of the deceased and the identification number assigned to the body;

- c. The date of acceptance of delivery;
- d. The names of the cremation chamber and mechanical processor operator;
- e. The time and date that the body was placed in and removed from the cremation chamber;
- f. The time and date that processing and inurnment of the cremated remains was completed;
- g. The time, date, and manner of release of the cremated remains;
- h. The written authorization to cremate, and the name and address of the person who signed the authorization to cremate;
- i. The permit for cremation from the medical examiner, and the date form was presented to the operator of the cremation chamber; and
- j. All supporting documentation, including but not limited to any transit or disposition permits, a photocopy of the death certificate, any documents supporting attempt to deliver unclaimed remains, documents listing objects remaining or removed from the deceased prior to or after cremation.

4.6.2. **Retention of records.** Records required under subsection 4.6.1 of this section shall be maintained at the crematory for a period of five (5) calendar years after the release of the cremated remains. Following this period and subject to any other laws requiring retention of such records, the crematory may then place the records in storage.

§6-3-5. Inspections.

5.1. **Areas of inspections.** The Board shall produce an inspection report to use as a guide while inspecting an establishment, a copy of which will be left with the establishment at the conclusion of the inspection and a copy which will be filed in the office of the Board. Areas of inspections shall include those areas outlined in section 12.3 of 6CSR1, in addition to the following:

5.1.1 Materials as specified in section 3 of these rules; and

5.1.2. Procedures as specified in section 4 of these rules.

5.2. All funeral establishments shall maintain all necessary equipment, as established in section 3 of these rules and as established in 6CSR1, as well as all other materials in a clean, safe, and sanitary condition. All such equipment and materials shall be in good repair and are subject to inspection. The building in which the funeral establishment is located shall also be in good repair and maintained in a clean, safe, and sanitary condition and is subject to inspection.

§6-3-6. **Penalties.** Any violation of this rule constitutes grounds for the refusal to renew a license or constitutes grounds for the suspension or revocation, or other disciplinary action as outlined in article six (6) of chapter thirty (30) and article one (1) of chapter thirty (30) of W.Va. Code, of any license or certificate issued under the provisions of article six (6) of chapter thirty (30) of W.Va. Code.

Referenced Material and Related Laws

ARTICLE 6. EMBALMERS AND FUNERAL DIRECTORS.

§30-6-1. Board of embalmers and funeral directors created; membership.

There is hereby created a state board to be known and designated as the "West Virginia board of embalmers and funeral directors," which shall consist of seven members, who shall be appointed by the governor, by and with the advice and consent of the Senate, six of whom shall be licensed embalmers and practicing funeral directors with a minimum of five consecutive years' experience in West Virginia immediately preceding their appointment; the seventh member shall be a lay member as provided in section four-a, article one of this chapter.

§30-6-2. Terms of members; former board of embalming examiners to cease and files to be delivered to new board.

Immediately after the effective date of this article, the governor shall appoint one member of said board for a term of one year, one for a term of two years, one for a term of three years and three for a term of four years and thereafter shall appoint said members for a term of four years beginning on the first day of July. Upon the organization of the board created by this article the state board of embalming examiners shall cease to exist. The funds, records and files of said board shall be delivered to the board created hereunder, which shall have all the powers and privileges of the state board of embalming examiners, as well as the powers and privileges conferred by this article.

§30-6-3. Oath of members of board; officers; salary and expenses; bond of treasurer; meetings; powers and duties; notice; rules and regulations; school of instruction; inspection.

Members of said board, before entering upon their duties, shall take and subscribe to the oath of office prescribed by the secretary of state.

Said board shall select from its own members a president, a secretary and a treasurer. Each member shall be reimbursed for his traveling expenses, incident to his attendance upon the business of the board, and in addition thereto, the sum of fifty dollars per day for each day actually spent by such member upon the business of the board. The secretary shall receive an annual salary of not to exceed one thousand dollars, the amount and payment of which shall be fixed by said board, and in addition thereto shall receive traveling and other incidental expenses incurred in the performance of his duties.

The board may employ an executive director and such clerks, inspectors and assistants as it shall deem necessary to discharge the duties imposed by the provisions of this article and duly promulgated rules and regulations of the board and to effect its purposes, and the board shall determine the duties and fix the compensation of such executive director, clerks, inspectors and assistants, subject to the general laws of the state. Any inspector employed by the board shall have either a West Virginia embalmer's license or a West Virginia funeral director's license. Any inspection shall be conducted in such a manner so as not to interfere with the conduct of business within the funeral establishment, and the inspector shall be absolutely prohibited from examining any books and records of the funeral establishment.

All such expenses, per diem and compensation shall be paid out of the receipts of the board, but such allowances shall at no time exceed the receipts of the board.

The treasurer of the board shall give bond to the state of West Virginia in such sum as the board shall direct with two or more sureties or a reliable surety company approved by the board, and such bond shall be conditioned for the faithful discharge of the duties of such officer. Such bond, with approval of the board endorsed thereon, shall be deposited with the treasurer of the state of West Virginia.

The board shall hold not less than two meetings during each calendar year for the purpose of examining applicants for licenses, such meeting or meetings to be held at such time and place as the board shall determine. The time and place of such meeting shall be announced by publication in three daily newspapers of general circulation in different locations in the state, and publication to be once a week for two consecutive weeks immediately preceding each such meeting.

The board may hold such other meetings as it may deem necessary and may transact any business at such meetings. Four or more members shall comprise a quorum authorizing the board to transact such business as is prescribed under this article.

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, except that no rules and regulations issued by the board shall require that an applicant for a license to operate a funeral establishment shall be required to have either an embalmer's or funeral director's license.

The board shall publish in its rules and regulations the subjects to be covered in the said examinations and the standards to be attained thereon. Changes in the rules and regulations shall be published and shall be given due

publicity at least ninety days before becoming effective.

The board may conduct annually a school of instruction to apprise funeral directors and embalmers of the most recent scientific knowledge and developments affecting their profession. Qualified lecturers and demonstrators may be employed by the board for this purpose. The board shall give notice of the time and place at which such school will be held for all licensed funeral directors and embalmers, and it 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: **Provided,** That the location of any school of continuing education shall accommodate the geographic diversity of the embalmers and funeral directors of this state. Compliance with the requirements of continuing education is a prerequisite for license renewal.

Hours of continuing education may be obtained by attending and participating in board-approved programs, meetings, seminars or activities. It is the responsibility of each licensee to finance his or her costs of continuing education.

The board, any of its members or any duly authorized employee of the board shall have the authority to enter at all reasonable hours for the purpose of inspecting the premises in which the business or profession of funeral directing is conducted or practiced or where embalming is practiced.

§30-6-4. Definitions.

For the purpose of this article, the following terms shall be construed in the following manner:

"Funeral director" shall mean any person engaged, or holding himself out as engaged, in the business of funeral directing as herein defined, and shall use in connection with his name or business the words or terms "funeral director," "undertaker," "mortician," or any other word, term, or title to imply or designate him as a funeral director, undertaker, or mortician.

"Funeral directing" shall mean the business or profession of directing or supervising funerals for profit by any person, partnership, association, corporation, or other organization, or the business or profession of preparing dead human bodies for burial by means other than embalming by any person, partnership, association, corporation, or other organization, or the disposition of dead human bodies by any person, partnership, association, corporation, or other organization, or maintenance of a place or establishment for the preparation for disposition or for the care or disposition of dead human bodies by any person, partnership, association, corporation, or other organization, or the use in connection with a business of the word or term "funeral director," "undertaker," "mortician," by any person, partnership, association, corporation, or other organization, directing or the holding out to the public that one is a funeral director by any person, partnership, association, corporation, or other organization.

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.

"Embalmer" shall mean any person engaged in, or holding himself out to be engaged in, the practice of embalming, whether on his own behalf or in the employ of another, and shall include any person who shall use in connection with his name, the term "embalmer," or use any word, term, or title intending to imply or designate him as an embalmer or as one engaged in embalming.

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

"Apprentice" shall mean any person engaged in this state in the learning of the practice of embalming or of the practice of funeral directing under the instruction and personal supervision of a duly licensed embalmer or a duly licensed funeral director, under the provisions of this chapter.

§30-6-5. Embalmers and funeral directors to be licensed; qualifications and requirements for license; advertising; renewal of license; registration as apprentice; courtesy cards.

No person shall engage in or hold himself out as engaging in, or discharge any of the duties of the business or profession of embalming, or preserving in any manner dead human bodies in this state, whether for himself or in the employ of another, unless he holds an embalmer's license issued to him by the board, and shall at the date of its issuance have complied with the provisions of this article.

No person shall engage in, or hold himself out as engaging in, or discharge any of the duties of the business or profession of funeral directing in this state, unless he holds a funeral director's license issued to him by the board, and shall at the date of its issuance have complied with the provisions of this article, or conduct a funeral unless he be a licensed funeral director.

No person shall be entitled to an embalmer's license unless he:

- (1) Is eighteen years of age or over;

- (2) A citizen of the United States;
- (3) Of good moral character and temperate habits;
- (4) Holds a high school diploma or its equivalent;
- (5) Holds an associate degree from an accredited college or university or has successfully completed not less than sixty semester hours or ninety quarter hours of academic work in an accredited college or university toward a baccalaureate degree with a declared major field of study, as evidenced by a transcript submitted for evaluation prior to beginning a one-year course of apprenticeship as described in subdivision (6) of this section and prior to obtaining a diploma of graduation from a school of mortuary science as described in subdivision (7) of this section;
- (6) Has completed a one-year course of apprenticeship under the supervision of a licensed embalmer actively and lawfully engaged in the practice of embalming in this state, such apprenticeship to consist of diligent attention to the work in the course of regular and steady employment and not as a side issue to another employment, and under which said apprenticeship he shall have taken an active part in the operation of embalming not less than thirty-five dead human bodies, under the supervision of a licensed embalmer;
- (7) Possesses a diploma of graduation from a school of mortuary science which requires as a prerequisite to graduation the completion of a course of study not less than twelve months' duration, and which said school of mortuary science must be one accredited by the American board of funeral service education, inc., and duly approved by the board; and
- (8) Passes with an average score of not less than seventy-five percent the national conference of funeral services examination at a testing site provided by the national conference, passes with a score of not less than seventy-five percent the state law examination administered by the board and passes such further examination as the board may deem necessary to ascertain his qualification and ability to engage in the practice of embalming. Successfully passing the national conference of funeral services examination is a condition precedent to taking the state law examination administered by the board. The board shall offer the state law examination at least twice each year.

The board shall issue licenses separately to embalmers and to funeral directors.

An applicant for a funeral director's license must furnish satisfactory proof to the board that his business or profession of funeral directing is to be conducted in a fixed place or establishment equipped for the care and preparation for burial or disposition of dead human bodies. What shall be deemed "necessary equipment" shall be defined in the rules and regulations of the board, the same to be in compliance with the public health laws of the state or the rules of the state board of health of West Virginia. This shall not be so construed as to deny an applicant for a funeral director's license such a license because he is not the owner, or part owner, of an establishment or proposed funeral business.

Licenses issued under the provisions of this article shall not be transferable or assignable.

No person shall be eligible to receive a license as a funeral director unless he:

- (1) Holds an embalmer's license issued by this board;
- (2) Has been duly registered with the board as an apprentice;
- (3) Has served not less than a one-year apprenticeship under the personal supervision of a licensed funeral director-embalmer actively and lawfully engaged in the business or profession of funeral directing and embalming in this state, such apprenticeship to consist of diligent attention to the work in the course of regular and steady employment and not as a side issue to another employment including taking an active part in conducting not less than thirty-five funeral services. For the purpose of this section, "regular and steady employment" means a forty-hour week or a longer period of time set at the discretion of the person by whom he is employed.

All funeral homes or establishments or any other places pertaining to funeral directing or the conducting of funerals shall display in all advertising the name of the licensed funeral director who is actually in charge of the establishment. All branch establishments must display the name of the funeral director who is actually in charge. At least one licensed funeral director shall supervise each main establishment and at least one licensed funeral director shall directly supervise each branch establishment when professional services are performed at the branch establishment.

No licensed funeral director or licensed embalmer shall be permitted to register or have registered more than five apprentices under his license at the same time.

Any person now holding a license as an embalmer or funeral director shall not be required to make a new application, or submit to an examination, but shall, upon the payment of the fee therefor, be entitled to a renewal of his license upon the terms and conditions herein provided for the renewal of licenses of those who may be licensed after the effective date of this article, but all such persons shall be subject to every provision of this article, and such rules and regulations as the board may adopt in pursuance of this article.

No person shall be registered as an apprentice funeral director or apprentice embalmer unless he is eighteen years of age, or over, a citizen of the United States, of good moral character and temperate habits, the holder of a high school diploma or its equivalent, and holds an associate degree from an accredited college or university or has successfully completed not less than sixty semester hours or ninety quarter hours of academic

work in an accredited college or university toward a baccalaureate degree with a declared major field of study.

The board may issue annual nonrenewable courtesy cards to licensed funeral directors and licensed embalmers of the states bordering on West Virginia, upon application for same made on form prescribed by the board. The annual fee for such courtesy cards shall be fifty dollars and said fee shall be paid at the time application is made therefor. Applications for said courtesy cards shall be approved by the board before the same may be issued, and said courtesy cards shall be issued under the following conditions: Holders of courtesy cards shall not be permitted to open or operate a place of business for the purpose of conducting funerals or embalming bodies in the state of West Virginia, nor shall they be permitted to maintain an office or agency in this state. A violation of this section shall be sufficient cause for the board to revoke or cancel the courtesy card of the violator.

§30-6-6. Examination, registration and renewal fees; disposition of fees; report to governor.

The examination fee for a funeral director's license shall be one hundred fifty dollars and shall be remitted at the time the application for a funeral director's license is submitted to the board.

The examination fee for an embalmer's license shall be one hundred fifty dollars and shall be remitted at the time the application for an embalmer's license is submitted to the board.

All the licenses and certificates of registration shall expire on the thirtieth day of June of each calendar year and the renewal date for all licenses and certificates shall be the first day of July of each calendar year.

The annual renewal fee for embalmer's license is thirty dollars; the annual renewal fee for a funeral director's license is thirty dollars; the annual renewal fee for an apprentice embalmer's license is twenty-five dollars; the annual renewal fee for an apprentice funeral director's license is twenty-five dollars; and each shall be paid on or before the first day of July of each calendar year.

Any person who has been duly licensed as a funeral director or as an embalmer under the laws of this state, but who fails to renew his license within thirty days after the expiration date for renewals, may file an application for a renewal of his license, without examination, upon payment of a penalty of fifty dollars, a reinstatement fee of fifty dollars and the required renewal fee.

Any person who has been duly licensed as a funeral director or as an embalmer under the laws of this state, but who fails to renew his license within sixty days after the expiration date for renewals, may file an application for a renewal of his license, without examination, upon payment of a penalty of one hundred dollars, a reinstatement fee of one hundred dollars and the required renewal fee.

A funeral director or an embalmer whose license has lapsed one year or more shall make application to the board for a new license in compliance with the provisions of this article relating to unlicensed persons.

Any person who has been duly registered as an apprentice embalmer or apprentice funeral director and fails to renew his registration within thirty days after the expiration date for renewals may file an application for such renewal upon payment of a penalty of fifty dollars, a reinstatement fee of fifty dollars and the required renewal fee. Otherwise, after the said period of thirty days, his registration will automatically be canceled.

All fees and other moneys received by the board pursuant to the provisions of this article shall be kept in a separate fund and expended solely for the purposes of this article. After the expenditures for a fiscal year, of the remaining moneys accrued and set aside for that fiscal year, all sums in excess of twenty thousand dollars in the separate fund shall revert to the general fund of the state. The compensation provided by this article and all expenses incurred, the payment of which is authorized under this article, shall be paid from this separate fund. No compensation or expense incurred under this article shall be a charge against the general funds of the state.

§30-6-7. Refusal to grant or renew; suspension or revocation of license or certificate of registration.

The board may either refuse to issue, or may refuse to renew, or may suspend, or may revoke any embalmer's license or funeral director's license, or embalmer's or funeral director's certificate of registration issued by it for any one or combination of the following causes:

(a) The practice of fraud or deceit in obtaining or attempting to obtain a license or a certificate of registration;

(b) Conviction of a felony as shown by a certified copy of the record of the court of conviction;

(c) Violation of any of the provisions of this article or the public health laws of this state;

(d) The use of false, misleading or unethical advertising by any licensee or applicant for a license or certificate of registration;

(e) Upon satisfactory proof that a licensed embalmer or a licensed funeral director has taken undue advantage of his patrons or has committed a fraudulent act in the conduct of his business;

(f) Solicitation of business by the licensee, his agents, assistants or employees, whether such solicitation occurs after death or while death is impending: **Provided**, That this shall not be deemed to prohibit proper advertising;

(g) If the applicant therefor or holder thereof knowingly permits an unlicensed person to engage in the profession or business of embalming or funeral directing under his supervision; or if any holder of an embalmer's

license or funeral director's license issued hereunder knowingly permits any unlicensed person to use his license number or numbers for the purpose of practicing, or discharging any of the duties of, the professions of embalming or funeral directing;

(h) Employment by the licensee of persons as "cappers," "steerers" or "solicitors," or other such persons to obtain funeral directing business;

(i) Employment directly or indirectly of any apprentice, agent, assistant, embalmer, employee, or other person, on part or full time, or on commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular funeral director;

(j) The buying of business by the licensee, his agents, assistants, or employees or the direct or indirect payment or offer of payment of a commission by the licensee, his agent, assistants, or employees, for the purpose of securing business;

(k) Gross immorality;

(l) If the applicant therefor or holder thereof has been guilty of habitual drunkenness or is addicted to the use of morphine, cocaine or other habit-forming drugs.

§30-6-8. Duty of public officers, physicians, etc., as to disposition of body of deceased person; penalty for violation of section; hearings on refusing, suspending or revoking licenses; appeals from decisions of board; penalty for engaging in business without license; purpose of article.

No public officer, employee, physician or surgeon, or any other person having a professional relationship with the deceased, shall send, or cause to be sent, to any funeral director, undertaker, mortician or embalmer, the body of any deceased person without having first made due inquiry as to the desires of the next of kin, or any persons who may be chargeable with the funeral expenses of such deceased person; and if any such kin or person can be found, his authority and direction shall be received as to the disposal of said corpse.

Any person who shall violate the provisions of this section shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred dollars, nor more than one thousand dollars, or imprisoned not less than ten days nor more than ninety days, or both.

The board may make investigations, subpoena witnesses, administer oaths and conduct hearings.

No order refusing, suspending or revoking a license shall be made until after a public hearing conducted by the board.

At least twenty days prior to the date of hearing, the board shall send a written notice of the time and place of such hearing to the applicant, together with a statement of the charges against him, by mailing the same to the last-known address of such person.

The testimony presented and the proceedings had at such hearings shall be taken in shorthand, at the expense of the board, and preserved as records of the board. The board shall as soon thereafter as possible make its findings in determination thereof, and send a copy to each interested party.

Any person who has been refused a license for any cause or whose license has been revoked or suspended may file with the secretary of the board, within thirty days after the decision of the board, a written notice of appeal therefrom to the circuit court of the county within which such person whose license has been refused, revoked or suspended resides. Upon the filing of such notice, the secretary of the board shall transmit to the clerk of said court the record of such proceedings. Such court shall thereupon hear and determine such case as in other cases of appeal. The judgment of the circuit court may be reviewed upon proceedings in error in the supreme court of appeals.

No person shall engage in the profession or business of embalming or funeral directing as defined in this article unless he is duly licensed as an embalmer and/or as a funeral director within the meaning of this article, and any person who shall engage in either business or profession, or both, without having first complied with the provisions of this article, or who shall violate any other provisions of this article, shall be deemed guilty of a misdemeanor, and, upon conviction thereof in any court of competent jurisdiction, shall be fined not less than two hundred dollars nor more than four hundred dollars for the first offense. Upon conviction of a second or subsequent offense, the violator shall be fined not less than five hundred dollars nor more than one thousand dollars.

The sanitary preparation of dead human bodies for burial and the burial thereof is a public necessity, and it has direct relation to the health, welfare and convenience to the public, and the Legislature of this state hereby finds, determines and declares that this article is necessary for the immediate preservation of the public peace, welfare, health and safety.

§30-6-9. Article not to apply to or interfere with duties of state board of health, officers of medical colleges, medical societies, etc., or rites of religious sects.

No provision of this article shall apply to or interfere with the duties of an officer of any local or state board of health, who, in compliance with local or state board of health rules, may be charged with the duty of preparation for burial of a human body, when death was caused by a virulent, communicable disease; nor with the

duties of an officer of a medical college, county medical society, anatomical association or other recognized person carrying out the provisions of the sections of the code prescribing the conditions under which indigent dead human bodies are held subject for anatomical study; nor with the customs or rites of any religious sect in the burial of its dead.

§30-6-10. Licensing of assistant funeral director as funeral director.

Any person who on July first, one thousand nine hundred forty-one, has been engaged in the profession or business of funeral directing as an assistant funeral director for a continuous period of at least two years shall, by that date, register as a funeral director with the board on a form prescribed by said board, and upon the payment of a fee of fifty dollars, and examination by said board, such person shall be entitled to a license, and the board shall issue to such person a license as a funeral director; which such license shall remain in full force and effect until the first day of the year following the issuance of such license. Thereafter, such person or persons shall renew such license or licenses as herein provided for.

§30-6-11. Apprenticeship.

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.

§30-6-12. Words in masculine gender; definition of "board."

In the interpretation of this article, words in the masculine gender include the feminine and neuter genders. Whenever the word "board" is used in this article, it shall be construed to mean and refer to the "board of embalmers and funeral directors of West Virginia."

§30-6-13. License required to operate funeral establishment; application and qualifications for license; renewal; fee; manager.

On or before the first day of July, one thousand nine hundred sixty-nine, every funeral establishment operating in West Virginia shall obtain a license for the succeeding fiscal year beginning the first day of July, one thousand nine hundred sixty-nine, as provided for in this section.

An application for a license to operate a funeral establishment shall be in writing and verified on a form provided by the board and shall be accompanied by a fee as herein provided, and upon receipt of the same, the board shall forthwith issue or renew a license to operate a funeral establishment. Such application to operate a funeral establishment shall be made by any person, partnership, association, corporation, organization or fiduciary having controlling interest in such funeral establishment.

Such application shall be signed by the applicant and by the individual who is duly licensed as a funeral director, and who shall be in charge and responsible for all transactions conducted and services performed therein. If such funeral establishment is owned by a person who is not licensed as a funeral director or by a partnership, association, corporation or other organization, then such owner shall have in his or its employ and place in charge of such establishment a person who is duly licensed as a funeral director, who shall manage, conduct and have supervision of the work or business of such establishment and be responsible therefor.

A license to operate a funeral establishment shall expire on the thirtieth day of June of each calendar year and the renewal date for any such license shall be the first day of July of each calendar year.

Each funeral establishment license shall be valid only for one funeral establishment to be located at a specific street address or location; the fee to operate the principal establishment shall be one hundred twenty-five dollars per year and the fee to operate each additional funeral establishment by the same applicant shall be seventy-five dollars per year. Each separate funeral establishment shall have its own license, which license shall be prominently displayed within the funeral establishment. No additional license fee shall be charged if during any given year it shall be necessary to reapply for a license to operate a funeral establishment at the same or different location. A funeral establishment that fails to pay fees for either the principal establishment or additional establishment by the first day of July of each calendar year is subject to a penalty of fifty dollars and a reinstatement fee of fifty dollars for each establishment and the required renewal fee.

The holder of any funeral establishment license who ceases to operate the funeral establishment at the location specified in the application shall, within twenty days thereafter, surrender the funeral establishment license to the board and such license shall be canceled by the board, except that in the event of the death of an individual who was the holder of a funeral establishment license, it shall be the duty of such holder's personal representative to surrender such funeral establishment license within one hundred twenty days of qualifying as such personal representative. It shall be the duty of any holder of a funeral establishment license, pursuant to this section, to notify the board within thirty days if for any reason the licensed funeral director whose name is signed to the application for the issuance thereof, ceases to be employed by such funeral establishment. Within thirty days after such notification, such holder of a funeral establishment license may execute a new application for a funeral

establishment license signed by the applicant and by the licensed funeral director who shall be in charge of and responsible for all transactions conducted and services performed within the funeral establishment. Failure to comply with any of these provisions shall be grounds for revocation of a funeral establishment license.

A licensee whose embalmer's license, funeral director's license or license to operate a funeral establishment has been revoked under this article shall not operate, either directly or indirectly, or hold any interest in any funeral establishment. Nothing herein contained shall prohibit a licensee whose license has been revoked from leasing any property owned by him or them for use as a funeral establishment so long as he or they do not participate in the control or profit of such funeral establishment otherwise than as a lessor of the premises for a fixed rental not dependent upon earnings.

§30-6-14. Suspension or revocation of license to operate funeral establishment.

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 license to operate a funeral establishment issued under section thirteen of this article, for any one or combination of the following causes:

- (a) The practice of fraud or deceit or misrepresentation in obtaining or attempting to obtain a funeral establishment license;
- (b) Conviction of a felony as shown by a certified copy of the record of the court of conviction;
- (c) Violation of any of the provisions of this article or rules and regulations of the board;
- (d) The use of false, misleading or unethical advertising by any holder of a funeral establishment license;
- (e) Upon satisfactory proof that a holder of a funeral establishment license has taken undue advantage of his patrons or has committed a fraudulent act in the conduct of his or its business;
- (f) Solicitation of business by the holder of a funeral establishment license, his agents, assistants or employees: **Provided**, That this shall not be deemed to prohibit proper advertising;
- (g) If the holder of a funeral establishment license knowingly permits an unlicensed person to engage in the profession or business of embalming or funeral directing under his or its supervision;
- (h) Employment by the holder of a funeral establishment license of persons as "cappers," "steerers" or "solicitors," or other such persons to obtain funeral directing business;
- (i) Employment by the holder of a funeral establishment license directly or indirectly of any apprentice, agent, assistant, embalmer, employee, or other person, on part or full time, or on commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular funeral establishment;
- (j) The buying of business by the holder of a funeral establishment license, his or its agents, assistants, or employees or the direct or indirect payment or offer of payment of a commission by the licensee, his or its agent, assistants, or employees, for the purpose of securing business;
- (k) Gross immorality.

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.

§30-6-15. Injunction proceedings.

The board may bring legal proceedings to enjoin a person, partnership, association, corporation or other organization violating the provisions of this article or any rule or regulation of the board from practicing the science of embalming or conducting the business of funeral directing or operating a funeral establishment, as may be the case, until such person, partnership, association, corporation, or other organization complies with the requirements of this article and the rules and regulations of the board.

§30-6-16. Reciprocity in licensing of embalmers and funeral directors.

The board may recognize licenses issued to funeral directors or embalmers from other states, and, upon presentation of such license, may, upon the payment of the sum of sixty dollars to the director of the board, issue to the lawful holder thereof, the funeral director's or embalmer's license provided for in this article: **Provided**, That such recognition shall not be extended to funeral directors or embalmers holding licenses from other states unless reciprocal rights are provided by such other states to holders of funeral director's or embalmer's licenses granted in this state. Such reciprocal licenses may be renewed annually upon payment of the renewal license fee as provided for in section six for license holders residing in this state. No person is entitled to a reciprocal license as a funeral director or embalmer unless he furnishes proof that he has, in the state in which he is regularly licensed, complied with requirements substantially equal to those set out in this article.

§30-6-17. Special emeritus license for embalmers and funeral directors.

Notwithstanding any other provision of this article, the board shall establish a special emeritus license for any licensed embalmer or funeral director sixty-five or older. After becoming sixty-five years of age with at least ten years experience as a licensed embalmer or licensed funeral director, a licensed embalmer or funeral director is entitled to be issued a license as an embalmer emeritus or funeral director emeritus. The emeritus license shall entitle the holder to all the rights and privileges of the license previously held by the licensee, except that a licensee emeritus shall be exempt from all continuing education requirements set forth in section three of this article.

The annual license fee for an embalmer emeritus or funeral director emeritus shall be no more than that required of a licensed embalmer or licensed funeral director.

Proposed

6CSR1

TITLE 6
LEGISLATIVE RULE
BOARD OF EMBALMERS AND FUNERAL DIRECTORS

SERIES 1
GENERAL PROVISIONS

§6-1-1. General.

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

1.2 Authority. - WV Code §30-6-3.

1.3 Filing Date. -

1.4 Effective Date. -

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

§6-1-2. Definitions.

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

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

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

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

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

2.4.2 Main funeral establishment. Means a primary funeral establishment.

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

2.5. Funeral service. Includes the religious, fraternal or civil ceremony performed with the body present at a funeral home, church or other public place and also includes the committal or other dedication ceremony at a cemetery or other place of final disposition.

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

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

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

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

§6-1-3. Licensing Examination.

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

3.1.1 A certified copy of a birth certificate establishing the applicant's age at twenty-one (21) years or over;

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

3.1.3. One of the following:

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

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

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

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

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

3.3. Subjects. The state licensing examination shall include the following subjects:

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

3.3.2. State laws governing the preneed sale of funeral services and merchandise;

3.3.3. The Rules of the Board;

3.3.4. State laws governing sales tax;

3.3.5. The Federal Occupational Safety and Health Act;

3.3.6. The Americans with Disabilities Act;

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

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

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

§6-1-4. Apprenticeship.

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

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

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

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

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

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

§6-1-5. Control of Dead Bodies.

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

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

5.3. Authority to embalm or cremate. No licensee or licensee's agents, assistants or employees shall authorize the embalming or cremation of, or embalm or cremate any body without first gaining permission from the legally authorized person entitled to give permission, or in the event services are being rendered by virtue of reference from another funeral establishment, from a representative of the funeral establishment.

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

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

5.6. Transportation of dead human bodies.

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

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

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

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

- a. promotes respect for and preserves the dignity of the dead human body;
- b. shields the body from being viewed from outside of the vehicle ;

c. has ample enclosed area to accommodate an ambulance cot, aircraft ambulance stretcher, casket, alternative container, or cremation container, in a horizontal position;

d. is so designed to permit loading and unloading of the body without excessive tilting of the casket, or other container which holds the body;

e. if used for the transportation of more than one body at one time, the vehicle or aircraft must be designed so that a body or container does not rest directly on top of another body or container, and that each body or container is secured in such a manner as to prevent the body or container from excessive movement within the vehicle.

5.6.5. Transportation procedures. When a dead human body is transported by public transportation, it must be properly embalmed and enclosed in a casket or alternative container and an appropriate outside shipping container. When transportation is by any private vehicle or aircraft, the outside shipping container may be omitted or the casket or alternative container and the outside container may both be omitted and, in such case, the body shall be wrapped in a sheet that is impervious to liquids, covered in such a manner that the body cannot be viewed.

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

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

§6-1-6. Health Requirements.

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

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

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

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

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

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

§6-1-7. Evidence of Crime.

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

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

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

7.4. Use of certain materials in embalming. No licensee, or licensee's agents, assistants or employees shall use any fluid or compound which contains arsenic, lead, mercury, copper, zinc, silver, antimony or chloral or any poisonous alkaloid in the embalming of a body.

§6-1-8. Price Disclosure.

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

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

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

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

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

9.2.2. No licensee, registrant, apprentice or any other person, persons or business organization associated or in any way connected with a funeral establishment shall solicit business or shall offer any inducement, pecuniary or otherwise for employing solicitors, agents, canvassers or other persons for the purpose of securing or attempting to secure business. Such persons shall not call upon, visit, telephone, write or cause, directly or indirectly, advertising literature to be sent to a sick or dying person as would tend to be considered non-general, selective or soliciting advertisements. No licensee, apprentice or any other person, persons or business organization associated or in any way connected with a funeral establishment shall offer or accept bribes or kickbacks, direct or indirect.

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

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

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

the funeral establishment license, the owner's name must also appear on the advertisements. The advertisement must identify the owner by placing the term "owner," or other similar term after the owner's name. The term "owner" is construed to mean the name of the sole proprietor or the names of the partners.

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

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

b. Any funeral establishment advertising any merchandise used in connection with his or her business shall carry in his stock a sample of the merchandise for a period of not less than thirty (30) days after advertisement publication and must be able to meet any and all demands for such items, with no increase in price, for the stated period of not less than thirty (30) days; and

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

§6-1-10. Confidentiality.

10.1. Preserving confidentiality. No licensee or registrant, or a licensee's or registrant's agents, assistants or employees shall divulge any confidential or private information relating to the domestic life in any home wherein they may be called upon to serve. This prohibition, however, shall not prevent divulging information to any person lawfully entitled or properly authorized to receive the information.

10.2. Exception. Should any form of child abuse, child neglect, or elder abuse be suspected or divulged, the proper authorities shall be notified, including but not limited to local office of the West Virginia Department of Health and Human Resources and local law enforcement. Failure to do so will result in disciplinary action as outlined in article six (6) of chapter thirty (30) and article one (1) of chapter thirty (30) of W.Va. Code.

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

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

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

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

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

11.5. Embalming and cremation. An embalmer, licensed by this state, shall be present at and directly supervise any embalming operation performed within the state. Only licensed embalmers or registered apprentice embalmers may embalm dead human bodies. A funeral director, licensed by this state, shall be present at and directly supervise an cremation of a dead human body within the state.

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

§6-1-12. Inspections.

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

12.2 Compliance. The holder of a funeral establishment license shall correct any violations found during an

inspection. The severity of the violation will dictate the time allotted for correction and is at the discretion of the inspector.

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

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

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

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

12.3.4. Medical waste disposal procedure and documents;

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

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

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

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

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

- a. sanitary flooring;
- b. all instruments and appliances used in the embalming of a dead human body shall be thoroughly cleansed and sterilized by boiling or immersion for ten minutes in a one percent solution of chlorinated soda or an equivalent disinfectant immediately at the conclusion of each individual case;
- c. running hot and cold water with a lavatory sink for personal hygiene;
- d. exhaust fan and intake vent, permanent installed and operable with the capacity to change the air in the room four times each hour;
- e. sanitary plumbing connected with sewer, cesspool, septic tank, or other department of health and human resources approved system;
- f. porcelain, stainless steel, metal-lined or fiber-glass operating table;
- g. all opening windows and outside doors shall be adequately screened and shielded from outside viewing;
- h. all hydro-aspirators shall be equipped with at least one air breaker;
- i. containers for refuse, trash and soiled linens shall be adequately covered or sealed at all times;
- j. first aid kit and eyewash;
- k. the embalming or preparation room shall be strictly private. A "private" sign shall be posted on the door(s) entering the embalming room. No one shall be allowed therein while the body is being embalmed except licensed

embalmers, registered apprentices, and other authorized persons and officials in discharge of their duties. The embalming room shall not be open to the general public;

i. all waste materials, refuse, used bandages, and cotton shall be destroyed by reducing to ashes by incineration, or shall be removed by a licensed medical waste dispenser;

m. every person, while engaged in actually embalming a dead human body, shall be attired in a clean smock or gown covering the person from the neck to below the knees and shall, while so engaged, wear impervious rubber gloves;

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

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

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

13.1.4. Office space for making arrangements.

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

13.1.6. Exception. If a main or branch funeral establishment operates solely as a trade service or mortuary service, a chapel is not required. If the trade service or mortuary service does not serve the public directly, public restroom facilities and office space are not required.

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

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

§6-1-14. Courtesy Card.

14.1. Requirements. The applicant shall:

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

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

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

14.1.4. Pay any and all statutory fees.

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

14.3. Responsibilities. A courtesy card holder shall obey all the laws of the state of West Virginia and this rule. He or she shall not open or operate a place of business for the purpose of conducting funerals, embalmings, cremations, or selling of funeral goods. He or she shall not maintain an office or agency in this state. Further, he or she may not be employed by, nor contracted by, a funeral establishment licensed by this state as a licensed embalmer or funeral director.

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

§6-1-15. Penalties.

15.1. Any violation of this rule constitutes grounds for the refusal to renew a license or constitutes grounds for the suspension or revocation, or other disciplinary action as outlined in article six (6) of chapter thirty (30) and article one (1) of chapter thirty (30) of W. Va. Code, of any license or certificate issued under the provisions of article six (6) of chapter thirty (30) of W. Va. Code.

§6-1-16. Fees.

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

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

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

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

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

16.4.2. Missed scheduled appointments with inspector, in which the inspector must return to the funeral establishment on a date other than the date of the original appointment. This fee will only be charged if it is determined that the inspector was not at fault for the missed appointment or the appointment was rescheduled at least one week prior to the date of inspection. This fee is designed to cover the cost of the inspector's expenses.

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

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

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

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

§6-1-17. Correspondence with Board.

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

§6-1-18. Continuing Education.

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

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

receives and shall do so in a timely manner. Every board shall provide public access to the record of the disposition of the complaints which it receives, in accordance with the provisions of chapter twenty-nine-b of this code. Every board has a duty to report violations of individual practice acts contained in this chapter to the board by which the individual may be licensed, and shall do so in a timely manner upon receiving notice of such violations. Every person licensed or registered by a board has a duty to report to the board which licenses or registers him or her a known or observed violation of the practice act or the board's rules by any other person licensed or registered by the same board, and shall do so in a timely manner. Law-enforcement agencies or their personnel and courts shall report in a timely manner to the appropriate board any violations of individual practice acts by any individual.

(c) Whenever a board referred to in this chapter obtains information that a person subject to its authority has engaged in, is engaging in, or is about to engage in any act which constitutes or will constitute a violation of the provisions of this chapter which are administered and enforced by that board, it may apply to the circuit court for an order enjoining the act. Upon a showing that the person has engaged, is engaging, or is about to engage in any such act, the court shall order an injunction, restraining order or other order as the court may deem appropriate.

§§30-1-6. Application for license or registration; examination fee.

(a) Every applicant for license or registration under the provisions of this chapter shall apply for such license or registration in writing to the proper board and shall transmit with his or her application an examination fee which the board is authorized to charge for an examination or investigation into the applicant's qualifications to practice.

(b) Each board referred to in this chapter is authorized to establish by rule a deadline for application for examination which shall be no less than ten nor more than ninety days prior to the date of the examination.

(c) Boards may set by rule fees relating to the licensing or registering of individuals, which shall be sufficient to enable the boards to carry out effectively their responsibilities of licensure or registration and discipline of individuals subject to their authority: *Provided*, That when any board proposes to promulgate a rule regarding fees for licensing or registration, that board shall notify its membership of the proposed rule by mailing a copy of the proposed rule to the membership at the time that the proposed rule is filed with the secretary of state for publication in the state register in accordance with section five, article three, chapter twenty-nine-a of this code.

(d) In addition to any other information required, the applicant's social security number shall be recorded on the application.

§§30-1-7. Contents of license or certificate of registration.

Every license or certificate of registration issued by each board shall bear a serial number, the full name of the applicant, the date of issuance, and the seal of the board. It shall be signed by the board's president and secretary or executive secretary. No license or certificate of registration granted or issued under the provisions of this chapter may be assigned.

§§30-1-7a. Continuing education.

Each board referred to in this chapter shall establish continuing education requirements as a prerequisite to license renewal. Each board shall develop continuing education criteria appropriate to its discipline, which shall include, but not be limited to, course content, course approval, hours required and reporting periods.

§§30-1-8. Denial, suspension or revocation of a license or registration; probation; proceedings; effect of suspension or revocation; transcript; report; judicial review.

(a) Every board referred to in this chapter is authorized to suspend or revoke the license of any person who has been convicted of a felony or who has been found to have engaged in conduct, practices or acts constituting professional negligence or a willful departure from accepted standards

of professional conduct. Where any person has been so convicted of a felony or has been found to have engaged in such conduct, practices or acts, every board referred to in this chapter is further authorized to enter into consent decrees, to reprimand, to enter into probation orders, to levy fines not to exceed one thousand dollars per day per violation, or any of these, singly or in combination. Each board is also authorized to assess administrative costs. Any costs which are assessed shall be placed in the special account of the board, and any fine which is levied shall be deposited in the state treasury's general revenue fund. For purposes of this section, the word "felony" means a felony or crime punishable as a felony under the laws of this state, any other state, or the United States. Every board referred to in this chapter is authorized to promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code to delineate conduct, practices or acts which, in the judgment of the board, constitute professional negligence, a willful departure from accepted standards of professional conduct or which may render an individual unqualified or unfit for licensure, registration or other authorization to practice.

(b) Notwithstanding any other provision of law to the contrary, no certificate, license, registration or authority issued under the provisions of this chapter may be suspended or revoked without a prior hearing before the board or court which issued the certificate, license, registration or authority. However, this does not apply in cases where a board is authorized to suspend or revoke a certificate, license, registration or authority prior to a hearing if the individual's continuation in practice constitutes an immediate danger to the public.

(c) In all proceedings before a board or court for the suspension or revocation of any certificate, license, registration or authority issued under the provisions of this chapter, a statement of the charges against the holder thereof and a notice of the time and place of hearing shall be served upon the person as a notice is served under section one, article two, chapter fifty-six of this code, at least thirty days prior to the hearing, and he or she may appear with witnesses and be heard in person, by counsel, or both. The board may take oral or written proof, for or against the accused, as it may deem advisable. If upon hearing the board finds that the charges are true, it may suspend or revoke the certificate, license, registration or authority, and suspension or revocation shall take from the person all rights and privileges acquired thereby.

(d) Pursuant to the provisions of section one, article five, chapter twenty-nine-a of this code, informal disposition may also be made by the board of any contested case by stipulation, agreed settlement, consent order or default. Further, the board may suspend its decision and place a licensee found by the board to be in violation of the applicable practice on probation.

(e) Any person denied a license, certificate, registration or authority who believes the denial was in violation of this article or the article under which the license, certificate, registration or authority is authorized shall be entitled to a hearing on the action denying the license, certificate, registration or authority. Hearings under this subsection shall be in accordance with the provisions for hearings which are set forth in this section.

(f) A stenographic report of each proceeding on the denial, suspension or revocation of a certificate, license, registration or authority shall be made at the expense of the board and a transcript thereof retained in its files. The board shall make a written report of its findings, which shall constitute part of the record.

(g) All proceedings under the provisions of this section are subject to review by the supreme court of appeals.

§§30-1-9. Review by circuit court and supreme court of board's refusal to issue; suspension or revocation of license or registration.

A person, not an applicant for or holder of a license to practice law, who has been refused a license or registration for any cause other than failure to pass the examination given by the board, or whose certificate, license, registration or authority has been suspended or revoked, may, within thirty days after the decision of the board, present his petition in writing to the circuit court of the county in which such person resides, or to the judge of such court in vacation, praying for the review and reversal of such decision. Before presenting his petition to the court or judge, the petitioner shall

mail copies thereof to the president and secretary, respectively, of the board. Upon receipt of such copy the secretary shall forthwith transmit to the clerk of such court the record of the proceeding before the board. The court or judge shall fix a time for the review of said proceeding at his earliest convenience. Notice in writing of the time and place of such hearing shall be given to the president and secretary of the board at least ten days before the date set therefor. The court or judge shall, without a jury, hear and determine the case upon the record of the proceedings before the board. The court or judge may enter an order affirming, revising or reversing the decision of the board if it appears that the decision was clearly wrong. Prior to the entry of such order, no order shall be made or entered by the court to stay or supersede any suspension, revocation or cancellation of any such certificate, license, registration or authority. The judgment of the circuit court may be reviewed upon appeal in the supreme court of appeals.

§§30-1-10. Disposition of money fines; legislative audit.

(a) The secretary of every board referred to in this chapter shall receive and account for all money which it derives pursuant to the provisions of this chapter which are applicable to it. With the exception of money received as fines, each board shall pay all money which is collected into a separate special fund of the state treasury which has been established for each board. This money shall be used exclusively by each board for purposes of administration and enforcement of its duties pursuant to this chapter. Any money received as fines shall be deposited into the general revenue fund of the state treasury. When the special fund of any board accumulates to an amount which exceeds twice the annual budget of the board or ten thousand dollars, whichever is greater, the excess amount shall be transferred by the state treasurer to the state general revenue fund.

(b) Every licensing board which is authorized by the provisions of this chapter shall be subject to audit by the office of the legislative auditor.

§§30-1-11. Compensation of members; expenses.

Each member of every board which is referred to in this chapter shall receive compensation and expense reimbursement which shall not exceed the amount paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties.

§§30-1-12. Record of proceedings; register of applicants; certified copies of records prima facie evidence; report to governor and Legislature; public access.

(a) The secretary of every board shall keep a record of its proceedings and a register of all applicants for license or registration, showing for each the date of his or her application, his or her name, age, educational and other qualifications, place of residence, whether an examination was required, whether the applicant was rejected or a certificate of license or registration granted, the date of this action, the license or registration number, all renewals of the license or registration, if required, and any suspension or revocation thereof. The books and register of the board shall be open to public inspection at all reasonable times, and the books and register, or a copy of any part thereof, certified by the secretary and attested by the seal of the board, shall be prima facie evidence of all matters recorded therein.

(b) On or before the first day of January of each year in which the Legislature meets in regular session, the board shall submit to the governor and to the Legislature a report of its transactions for the preceding two years, an itemized statement of its receipts and disbursements for that period, a full list of the names of all persons licensed or registered by it during that period, statistical reports by county of practice, by specialty if appropriate to the particular profession, and a list of any complaints which were filed against persons licensed by the board, including any action taken by the board regarding those complaints. The report shall be certified by the president and the secretary of the board, and a copy of the report shall be filed with the secretary of state.

(c) To promote public access, the secretary of every board shall ensure that the address and telephone number of the board are included every year in the state government listings of the Charleston area

telephone directory. Every board shall regularly evaluate the feasibility of adopting additional methods of providing public access, including, but not limited to, listings in additional telephone directories, toll-free telephone numbers, facsimile and computer-based communications.

§§30-1-13. Roster of licensed or registered practitioners.

The secretary of every such board shall also prepare and maintain a complete roster of the names, social security numbers and office addresses of all persons licensed, or registered, and practicing in this state the profession or occupation to which such board relates, arranged alphabetically by name and also by the counties in which their offices are situated. The board may call for and require a registration whenever it deems it necessary or expedient to secure an accurate roster.

§§30-1-14. Remission of certain fees.

Every board of examination or registration referred to in this chapter is hereby authorized, under such rules and regulations as may be adopted by each board, to remit all annual license or annual registration fees required to be paid by any licensee or registrant under its supervision during such time as such licensee or registrant is serving with the armed forces of the United States of America, and to retain the name of such licensee or registrant in good standing on the roster of said board during said time.

§§30-1-15. Office of executive secretary of the health profession licensing boards; appointment of executive secretary; duties.

The office of the executive secretary of the health professional licensing boards is hereby created. The health profession licensing boards shall include those boards provided for in articles two-a, four, five, six, seven, seven-a, eight, ten, fourteen, sixteen, seventeen, twenty, twenty-one, twenty-five and twenty-six of chapter thirty of this code. Notwithstanding any other provision of this code to the contrary the office space personnel, records and like business affairs of the health profession licensing boards shall be within the office of the executive secretary of the health profession licensing boards. The secretaries of each of the health profession licensing boards shall coordinate purchasing, record keeping, personnel, use of reporters and like matters under the executive secretary in order to achieve the most efficient and economical fulfillment of their functions. The executive secretary shall be appointed by the director of health and shall report to the director. The executive secretary shall keep the fiscal records and accounts of each of the boards. The executive secretary shall keep the director informed as to the needs of each of the boards. The executive secretary shall coordinate the activities and efforts of the boards with the activities of the health resources advisory council and shall see that the needs for health manpower perceived by the boards are communicated to the health resources advisory council. The executive secretary shall keep any statistics and information on health professions, collected by or for the boards and shall make such statistics and information available to the health resources advisory council to aid it in carrying out its responsibilities.

§§30-1-16. Liability limitations of peer review committees and professional standards review committees.

No member of a peer review committee or a professional standards review committee of a state or local professional organization, including, but not limited to, committees established to review the practices of doctors of chiropractic, doctors of veterinary medicine, doctors of medicine, doctors of dentistry, attorneys at law, real estate brokers, architects, professional engineers, certified public accountants, public accountants or registered nurses shall be deemed liable to any person for any action taken or recommendation made within the scope of the functions of the committee, if the committee member acts without malice and in the reasonable belief that such action or recommendation is warranted by the facts known to him after reasonable effort to obtain the facts of the matter as to which such action is taken or recommendation is made.