

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

Form #3

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Aug 18 3 19 PM '00

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

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

CITE AUTHORITY: 30-6-3(i), 30-6-14, 30-1-8(h)

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: 4

TITLE OF RULE BEING PROPOSED: Hearing Procedures Complaint and

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

Shirley Douglas
Authorized Signature

\$6.80

SUMMARY OF PROPOSED RULE

Title 6

Legislative Rules

Series

Complaint and Hearing Procedures

This rule introduces a new series entitled "Complaint and Hearing Procedures." The rules focuses on the procedures for the investigation and resolution of complaints.

The rule prescribes necessary information for the initiation of an investigation. The rule provides the Board authority to establish a complaint committee, to obtain subpoenas, to depose witnesses, and to collect evidence. The rule establishes a standard procedure for investigations, as well as public hearing procedures.

STATEMENT OF CIRCUMSTANCES

Title 6

Legislative Rules

Series 4

Complaint and Hearing Procedures

Title 6, Series 4, Complaint and Hearing Procedures, is a new series. During the 2000 Legislative Session, two bills passed which required the introduction of complaint procedures, those being Senate Bill 22 and House Bill 4062. The hearing procedures in this proposed rules were derived from the hearing procedures which are currently found in 6CSR1 of the board's legislative rules, the same rules which are proposed to be repealed and replaced.

Standard procedures are necessary for consistent investigation and resolution of complaints, and provides the Board and its representatives a guide for appropriate conduct during the course of an investigation, which in turn protects the licensee's privileges and rights and affords due process.

QUESTIONNAIRE

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

DATE: August 18, 2000

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

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

179 Summers Street, Suite 305

Charleston, WV 25301
558-0302

LEGISLATIVE RULE TITLE: Complaint and Hearing Procedures

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

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

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

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

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received 1

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

August 18, 2000

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

Sherri Douglass, Executive Director

179 Summers Street, Suite 305, Charleston, WV 25301

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

boeafd@mailcity.com

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

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

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

N/A

b. Date of hearing or comment period:

N/A

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

N/A

d. Attach findings and determinations and reasons:

Attached N/A

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

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

□
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Complaint and Hearing Procedures

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 proposed procedures are generally being utilized at this time.

3. Objectives of These Rules:

Establish complaint and hearing procedures for purposes of resolving complaints in an organized and consistent manner, as required by statute.

Rule Title: Complaint and Hearing Procedures

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

There will be no impact on General Revenue, as this agency is self-sustaining. It is predicted that there will be little or no economic impact on this agency.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens: It is predicted that there will be little or no impact on on organizations as these procedures are for the resolution of complaints.

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: August 18, 2000

Signature of Agency Head or Authorized Representative:

Shemi Douglas

FILED

6CSR1

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TITLE 6
LEGISLATIVE RULE
BOARD OF EMBALMERS AND FUNERAL DIRECTORS

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 4
COMPLAINT AND HEARING PROCEDURES

§6-4-1. General.

- 1.1 Scope. - This rule relates to the complaint and hearing procedures for all licensees and registrants.
- 1.2 Authority. - WV Code §30-6-3(i), §30-1-8(h), §30-6-8 and §30-6-14.
- 1.3 Filing Date. -
- 1.4 Effective Date. -

§6-4-2. Complaint Procedures.

- 2.1. Any individual may make a complaint to the board concerning a licensee or registrant.
- 2.2. The board may accept an anonymous complaint if the information provided is adequate to begin an investigation.
- 2.3. The board shall accept a complaint in writing, by phone or in person. The board may provide a form for the purpose of submitting a written complaint, but shall accept a complaint if the information includes:
 - 2.3.1. the alleged violation which prompted the complaint;
 - 2.3.2. the name and address of the individual against whom the complaint is lodged;
 - 2.3.3. the date or dates the incident or incidents occurred; and
 - 2.3.4. the name or names of witnesses to the incident or incidents.
- 2.4. All complaints shall be referred to the Executive Director, Investigator, or counsel for the Board, who shall act as a representative for the board. A complaint committee shall be established to review such matters. This committee shall consist of two board members, with each member serving on the committee for two (2) years.
- 2.5. The board shall maintain a complaint log which records the receipt of each complaint, and the nature and the disposition of the complaint. The board shall also maintain a separate file on each complaint received, and each file shall have a number assigned it.
- 2.6. Upon receipt of complaint or on its own initiative, the representative for the board shall, within five (5) business days, issue an acknowledgment of the complaint to the complainant and shall initiate an investigation into the conduct which is occurring or has occurred which violates W.Va. Code §30-6-1 et seq. or

rules governing funeral service practitioners. The complaint committee may employ the services of consultants or other employees necessary to assist the representative for the board in an investigation.

2.6.1. The representative for the board shall issue subpoenas to gather necessary facts and evidence to determine validity of the allegations contained in the complaint. The representative shall have the authority to institute proceedings in the courts of this state to enforce its subpoenas for the production of documents and witnesses and its orders and to restrain and enjoin violations of W.Va. Code §30-6-1 et seq., or rules governing funeral service practitioners.

2.6.2. The board shall provide copies of complaint forms and other available evidence to the licensee or registrant against whom a complaint is filed within ten (10) days of receipt of complaint. The licensee shall respond within fourteen (14) days of such notification, to the allegations contained in the complaint, by making an appointment with the representative for the board to meet in person or by preparing a written statement and returning it to the board.

a. Exception. The board may use its discretion regarding the notification of complaint to the licensee or registrant if such notification would result in possible tampering of evidence. However, once such evidence is collected by the representative for the board, the licensee or registrant must be notified, pursuant to §6-4-2.6.2..

2.6.3 The representative for the board may depose witnesses, take sworn statements, and collect other evidence.

2.6.4 The representative for the board may require a criminal history records check. The licensee or registrant under investigation shall furnish to the board a full set of fingerprints for purposes of conducting a criminal history check. Records will be checked through the criminal identification bureau of the West Virginia State Police, a similar agency within the licensee's or registrant's state of residence, and the United States Federal Bureau of Investigation.

2.6.5. The representative for the board shall evaluate the complaint, licensee response and other investigative information to determine if a violation of law has occurred and to determine the need for additional investigation. The representative shall have the authority to enter any funeral establishment to review documents related to the complaint and to interview any individual during the course of an investigation. Subpoenas duces tecum to compel the production of documents may be issued by the representative for the board. The subpoenas shall be issued pursuant to W.Va. Code §29A-5-1(b).

2.7. Upon completion of investigation, the representative for the board shall present investigative information in a report to the complaint committee. The report shall contain a statement of allegations, a statement of facts, and an analysis of the complaint. The analysis shall consist of a description of the conduct of the licensee or registrant, the records reviewed, and a statement of findings and recommendations. If probable cause for further action is not identified, the representative may make a recommendation that a complaint be dismissed. All investigative information shall be provided to the committee for review for any case recommended for dismissal due to lack of probable cause. The committee may approve dismissal of the case or direct the representative for the board to proceed with further investigation if the committee believes further investigation is necessary.

2.8. Upon completion of investigation and investigative information has been reviewed by the complaint committee and probable cause is established, the committee may negotiate terms of a consent agreement with a licensee or recommend to the board that the case be set for hearing.

2.9. The complaint committee shall review the terms of a consent agreement and all investigative

information. The committee may then approve the consent agreement, request revisions to the consent agreement or reject the consent agreement.

2.10. If the licensee or registrant contests the allegations and refuses to enter into a consent agreement, the committee may recommend to the board that the case be set for hearing. All hearings shall be in accordance with Chapter 29A of W.Va. Code.

2.11. Members of the complaint committee shall be disqualified from the formal hearing process if the case has been presented to the committee prior to the formal hearing.

2.12. All powers of the board, the complaint committee, and its representatives may be exercised to investigate a matter, even if a hearing or disciplinary action does not result from the investigative findings.

§6-4-3. Public Hearing Procedures.

3.1. Definitions.

3.1.1. Charged Party. For the purposes of this rule, the term "charged party" means an individual who holds a license or holds a certificate of registration issued by the Board and who has been charged by the Board as described in these rules.

3.1.2. Demanding Party. For the purpose of this rule, the term "demanding party" means an individual who has been denied a license or a certificate of registration by the Board and who, as a result, demands that a hearing be held before the Board on the issue of denial, suspension, or revocation.

3.2. Hearing Procedures.

3.2.1. Any person denied a license or certificate of registration, or had a license or certificate of registration suspended or revoked by the Board who believes the denial, suspension or revocation was a violation of W.Va. Code §30-1-1 et seq and/or 30-6-1 et seq. is entitled to a hearing on the action denying the license.

3.2.2. Any person who desires a hearing for the reason described in subsection 3.2.1. of this section must present a written demand for a hearing to the Board.

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

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

3.2.5. Charges instituted against a licensee or registrant as described in subsection 3.2.4 of this section shall be set forth in a Complaint and Notice of Hearing issued in the name of the Board as the agency of the State regulating the practice of Embalming, cremation, Funeral Directing and selling of funeral goods. The Complaint and Notice of Hearing shall designate the Board as the "Complainant", and shall designate the Licensee, or

Registrant involved in the proceeding as the "Respondent"; shall set out the substance of each offense charged with sufficient particularity to reasonably apprise the Respondent of the nature, time and place of the conduct or condition complained of; shall state the date, time and place for the hearing; and, shall contain a statement of intention by the Board to appoint a hearing examiner.

3.2.6. Upon receipt of a demand for a hearing described in subsection 3.2.1. and 3.2.2. of this section, the president or his or her designee shall provide the demanding party with a Complaint and Notice of Hearing issued in the name of the Board as the agency of the state regulating the practice of embalming, cremation, funeral directing and selling of funeral goods. The Complaint and Notice of Hearing shall designate the demanding party as the "Complainant" and shall designate the Board as the "Respondent"; shall set out the substance of each and every reason that the Board has denied the demanding party a license with sufficient particularity to reasonably apprise the demanding party of the nature, time and place of the conduct or condition at issue; shall state the date, time and place for the hearing; and, shall contain a statement of intention by the Board to appoint a hearing examiner.

3.2.7. The Board may amend the charges set forth in a Complaint and Notice of Hearing as it considers proper.

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

3.2.9. Upon written motion received by the Board no later than thirty (30) days prior to the date of the hearing, a more definite statement of the matters charged or the reasons stated for denial, suspension or revocation of licensure shall be provided to the demanding or charged party or his or her counsel, at least fifteen (15) days prior to the hearing date.

3.2.10. Hearings shall be conducted as follows:

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

b. The Board shall be represented by the West Virginia Attorney General's Office at no additional compensation.

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

d. The rules of privilege recognized by the law of this State shall be followed.

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

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

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

h. The hearing shall be open to the general public.

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

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

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

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

m. Where a hearing is held upon the instance of the Board after charges have been brought against a licensee or registrant pursuant to subsections 3.2.4. and 3.2.5. of this section, the Board has the burden of proof and shall present its evidence and/or testimony in support of the charges first.

n. Where a hearing is held upon demand under the provision of subsections 3.2.1., 3.2.2., 3.2.3., and 3.2.5. of this section, the demanding party has the burden of proof and is therefore required to present his or her evidence first.

o. Following the conclusion of the demanding party's presentation of evidence in accordance with subsection 3.2.10.(m) of this section, the Respondent or charged party has the right to submit his or her evidence in defense.

p. Following the conclusion of the demanding party's presentation of evidence in accordance with subsection 3.2.10.(n) of this section, the Board has the right to submit its evidence in defense.

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

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

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

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

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

3.3. Transcript of Testimony and Evidence.

3.3.1. All testimony, evidence, arguments and ruling on the admissibility of testimony and evidence shall be recorded by stenographic notes and characters or by mechanical means.

3.3.2. All recorded materials shall be transcribed. The Board has the responsibility to make arrangement for the transcription of the recorded testimony and evidence.

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

3.3.4. A transcript of the hearing shall be provided to all members of the Board for review.

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

3.5. Hearing Examiner.

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

3.5.2. Hearing examiners appointed by the Board are not authorized or empowered to grant, suspend, revoke or otherwise discipline any licensee or registrant.

3.5.3. The hearing examiner shall prepare recommended findings of fact and conclusions of the law for

submission to the Board. The Board may adopt, modify or reject the findings of fact and conclusions of law.

3.6. Conferences; Informal Disposition of Cases.

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

- a. To dispose of procedural requests, prehearing motions or similar matters;
- b. To simplify or settle issues by consent of the parties; or
- c. To provide for the informal disposition of cases by stipulation or agreement.

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

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

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

3.8. Subpoenas.

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

3.8.2. Written requests by a party for the issuance of subpoenas or subpoenas duces tecum as provided in subsection 3.8.1. of this section must be received by the Board no later than ten (10) days before a scheduled hearing. Any party requesting the issuance of subpoenas or subpoenas duces tecum shall see that they are properly served in accordance with W. Va. Code §29A-5-1(b).

3.9. Orders.

3.9.1. Any final order entered by the Board following a hearing conducted pursuant to these rules shall be made pursuant to the provisions of W. Va. Code §29-5-3 and §30-1-8(d). The orders shall be entered within forty-five (45) days following the submission of all documents and materials necessary for the proper disposition of the case, including transcripts, and shall contain findings of fact and conclusions of law.

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

3.10. Appeals. An appeal from any final order entered in accordance with these rules shall comply with the provisions of W. Va. Code §29A-5-4.

**Public Comments
Title 6, Series 4**

Reg. #	Regulation (Quote)	Intent of Regulation	Issue	Recommended Solution
Series 4	Complaint Procedures	To provide the public a venue for complaints.	The regulations are not clear on how the public will be informed of its right to register a complaint with the Board.	I recommend that the Board consider a toll-free number as part of its complaint/investigation/inspection division and that the name, address, and toll free number of the Board be printed on the establishment licenses.
§ 2.10	"If the licensee or registrant contests the allegations and refuses to enter into a consent agreement, the [complaint] committee may recommend to the Board that the case be set for hearing..."	Due Process	The laws appear unduly burdensome on the regulant. With the "mays" incorporated into these regulations, I am unclear on how the regulant gains due process.	I recommend full due process for all regulants. Please revise the regulations in this area from "may" to "shall."
§ 3.6.1	"At any time prior to the hearing or thereafter, the Board, its designee or its duly appointed hearing examiner may hold conferences..."		Since the majority of complaints against establishments and licensed owners, for example, are made by competitors, the respondent must (shall) have the right to appear before the complaint committee with full due process on an informal level prior to being offered a consent order as a sanction. If the respondent refuses to sign a consent order, then he shall be given the opportunity for a formal hearing before the Board.	



Respectfully Submitted, Meredith P. Partridge, Regulatory Support Services, Inc.



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

August 17, 2000

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

Dear Ms. Partridge:

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

Please find enclosed Response, which highlights the amendments.

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

Sincerely,

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

Sherri Douglass, MSW
Executive Director

Response to Regulatory Support Services

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

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

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

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

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

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

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

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

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

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

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

Amendments Response to Regulatory Support Services Title 6, Series 1

§6-1-2. Definitions.

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

§6-1-3. Licensing Examination.

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

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

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

~~3.12.~~ One of the following:

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

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

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

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

§6-1-5. Control of Dead Bodies.

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

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

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

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

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

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

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

§6-1-6. Health Requirements.

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

§6-1-8. Price Disclosure.

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

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

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

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

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

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

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

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

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

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

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

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

§6-1-16. Fees.

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

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

Amendments
Response to Regulatory Support Services
Title 6, Series 2

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

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

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

§6-2-4. **Price Disclosure.**

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

4.2. **General Price List.**

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

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

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

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

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

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

4.3. Casket Price List.

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

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

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

c. Name of the funeral establishment; and

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

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

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

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

4.4. Outer Burial Container Price List.

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

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

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

c. Name of the funeral establishment; and

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

e. The following disclosure:

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

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

utilized, but only in addition to the OBCPL.

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

4.5. Statement of Goods Selected.

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

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

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

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

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

Amendments Response to Regulatory Support Services Title 6, Series 3

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

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

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

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