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LAW AND PUBLIC SAFETY

DIVISION OF CONSUMER AFFAIRS

STATE BOARD OF MORTUARY SCIENCE

N.J.A.C. 13:36-1.9, 4.4, 4.5, 8.10, 9.1, 10.3, 10.6, 10.7 and 10.8

Notice of Action on Petition for Rulemaking

State Board of Mortuary Science Rules

Petitioner: Wilson H. Beebe, Jr., Executive Director, New Jersey State Funeral Directors Association, Inc.

Take notice that on February 23, 2009, Wilson H. Beebe, Jr., Executive Director of the New Jersey State Funeral Directors Association, Inc., requested that the State Board of Mortuary Science (the Board) amend various rules set forth at N.J.A.C. 13:36. A notice acknowledging receipt of the petition and summarizing its contents was filed with the Office of Administrative Law and was published in the New Jersey Register on April 6, 2009 at 41 N.J.R. 1529(b).

Take further notice that on April 6, 2009, the petitioner submitted a modification to the original petition for rulemaking with respect to the requested amendments to N.J.A.C. 13:36-8.10. The Board considered the original petition for rulemaking and the petitioner's requested modification to the original petition for rulemaking at its Board meeting on April 7, 2009. Consistent with the requirements of N.J.A.C. 1:30-4.2, the Board referred this matter to its Rules and Regulation Committee for further deliberation in order to determine whether the requested amendments to N.J.A.C. 13:36-1.9, 4.4, 4.5, 8.10, 9.1, 10.3, 10.6, 10.7 and 10.8 are necessary and reasonable. A notice of receipt of modification to petition for rulemaking and notice of action on petition for rulemaking was filed with the Office of Administrative Law and was published in the New Jersey Register on May 18, 2009 at 41 N.J.R. 2150(a).

Take further notice that, following review of the petition by a Committee of the Board, the Board voted on July 7, 2009 to deny the petition in part, and to grant the petition in part for the reasons set forth below.

The Board denies the petitioner's request to amend N.J.A.C. 13:36-1.9 to remove the line item charge for newspaper notices from the cash advance classification on the Statement of Funeral Goods and Services Selected form. The Board believes that the placement of death notices should continue as a cash advance item in order to protect consumers. The Board does not believe that it is appropriate for a funeral home to charge consumers more for this service that is actually charged by the newspaper. The Board notes that newspaper notices have traditionally [page=2988] been treated as cash advance items and are also treated as such under existing Federal Trade Commission (FTC) regulations, set forth at 16 CFR §453.1(b). The Board is concerned that the removal of newspaper notices from the cash advance category could subject this category of charges to abuse. The Board notes that services incidental to the placement of the death notice, such as formatting the layout and compiling video memorials, are services that are more appropriately captured in "Professional Services" under Category I charges on the Statement of Goods and Services Selected Form.

The Board denies the petitioner's request to amend N.J.A.C. 13:36-1.9 to remove the line item charge for pallbearers on the Statement of Funeral Goods and Services Selected form. The Board does not believe that a change to the existing rule is necessary. The Board believes that the petitioner's concern can be adequately addressed by listing the funeral home's actual cost to retain the services of pallbearers in the cash advance classification on the Statement of

Funeral Goods and Services Selected form. This figure should capture the funeral home's share of FICA, unemployment and disability taxes for pallbearers. The Board believes that removing pallbearer charges from the cash disbursement category could lead to abusive billing practices. The Board believes that consumers are entitled to know the actual cost incurred by the funeral home to obtain pallbearer services.

The Board grants the petitioner's request to amend the Statement of Funeral Goods and Services Selected form to increase the dollar value of the items that may be included in a Memorial Package from \$ 100.00 to \$ 400.00. The Board agrees that this amendment is necessary to provide funeral homes with greater flexibility in packaging common and popular items whose cost may exceed the current \$ 100.00 limit.

The Board denies the petitioner's request to re-title Category IV of the Statement of Funeral Goods and Services Selected form in N.J.A.C. 13:36-1.9 to include "Other Services." The Board does not believe that the petitioner's suggested amendment is necessary because charges for "professional services" are appropriately captured in Category I of the existing form. The Board believes that the inclusion of "other services" under Category IV of the form will lead to confusion among members of the industry and consumers.

The Board denies the petitioner's request to amend N.J.A.C. 13:36-4.4 to provide for the issuance of a "temporary registration" for funeral homes. N.J.S.A. 45:7-55 of the Mortuary Science Act provides that the Board shall issue certificates of registration following review of submitted documentation and the requisite fee. Under the Act, the Board alone has the authority to issue certificates of registration. The process established to obtain a certificate of registration, including final review and approval of inspection reports by the Board, is designed to protect consumers by helping to ensure that all mortuaries in the State operate in a manner that safeguards and promotes public health, safety and welfare.

The Board agrees with the petitioner that clarification is needed in N.J.A.C. 13:36-4.5 with respect to when changes of ownership require a registered mortuary to obtain a new certificate of registration. The Board, however, believes that petitioner's recommended amendments to N.J.A.C. 13:36-4.5 are unclear and may lead to confusion among members of the regulated community. In addition, the Board believes that in some of the instances of ownership change articulated by the petitioner, requiring a new certificate of registration may impose an undue burden on the registered mortuary without a concomitant benefit to New Jersey consumers. The Board believes further study of this issue is necessary to determine when changes in ownership should trigger the requirement to obtain a new certificate of registration and, therefore, denies the petitioner's request to amend N.J.A.C. 13:36-4.5.

The Board agrees with the petitioner that amendments to N.J.A.C. 13:36-8.10 are necessary to clarify a licensee's responsibility concerning final disposition of human remains in light of the transportation services now being offered to funeral homes by some crematories. The Board, however, believes that the petitioner's suggested amendments may lead to added confusion, particularly with respect to the participation in final dispositions by persons licensed in other jurisdictions. The Board believes that further study of this issue is necessary in order to ensure that any proposed amendments to the rule adequately address the various situations involving final disposition with which a licensee may be confronted so as to ensure that licensees are aware of their professional obligations in these situations and, therefore, denies the petitioner's request to amend N.J.A.C. 13:36-8.10.

The Board denies the petitioner's request to amend the definition of "cash advance item" in N.J.A.C. 13:36-9.1. The suggested change would make the Board's definition inconsistent with the current FTC definition of "cash advance item" set forth in 16 CFR §453.1(b), possibly leading to confusion among licensees. The Board does not believe that its current definition is unclear.

The petitioner has requested various amendments to the continuing education rules in N.J.A.C. 13:36-10.3, 10.6, 10.7 and 10.8. With respect to the petitioner's request to amend N.J.A.C. 13:36-10.3(a), the Board denies the petitioner's request to amend this subsection to refer to "courses or seminars accredited by the Board." The Board does not accredit courses and seminars for purposes of continuing education, but rather approves such offerings, consistent with the requirements of N.J.S.A. 45:7-72.2 of the Mortuary Science Act.

With respect to the petitioner's suggested amendments to N.J.A.C. 13:36-10.3(b) and parts of N.J.A.C. 13:36-10.3(c), although the Board agrees with the concept articulated by the petitioner that licensees should be required to take a

specific number of credits in courses dedicated to mortuary science laws and regulations, funeral director ethics, occupational health and safety, handling human remains, and merchandizing, the Board denies the petitioner's request to amend N.J.A.C. 13:36-10.3(b) and (c) because further study of this issue is necessary to determine the exact number of credits that should be required in each of the specified subject area. The Board believes that this added information is necessary to help ensure that the continuing education licensees receive is well-rounded.

In addition, the Board denies the petitioner's request to amend subsection (c) of N.J.A.C. 13:36-10.3, to permit licensees to obtain continuing education credit for participation in the exhibit and trade show of a state or national trade association. The Board does not believe that these activities provide licensees with adequate instruction such that they should be counted toward satisfaction of a licensee's continuing education obligation. The Board also denies the petitioner's request to further amend N.J.A.C. 13:36-10.3(c)3 to prohibit licensees from earning credits from courses involving matters of personal and business estate, financial, investment and tax planning. The Board believes that determinations with respect to whether these types of courses may be taken for continuing education credit should continue to be made by the Board's Credentials Committee pursuant to N.J.A.C. 13:36-10.6.

With respect to the petitioner's requested amendments to N.J.A.C. 13:36-10.3(e) and 10.7, concerning "self-directed" and "facilitated" continuing education courses, the Board agrees in concept with the petitioner's suggestion that the rules should differentiate between these types of courses, but denies the petitioner's request to amend the rules because the Board believes that the suggested terminology is unclear, and may lead to confusion. In addition, the Board believes that changes of this nature should await the completion of the Board's study of the appropriate number of continuing education credits and the specific subject areas that should be required of licensees, as noted above.

The Board denies the petitioner's request to amend N.J.A.C. 13:36-10.6 because the Board believes the suggested language is unclear. The Board notes that the petitioner's suggested deletion of the phrase "mortuary science" in favor of the phrase "funeral directing" in this section, and throughout various sections of Subchapter 10, is inconsistent with the terminology utilized in the Mortuary Science Act. The practice of "mortuary science" encompasses both embalming and funeral directing under N.J.S.A. 45:7-34(d) of the Act. In addition, the Board does not believe that the remainder of the suggested changes in N.J.A.C. 13:36-10.3(b)6i through v are necessary. The suggested changes do not substantively alter the requirements currently articulated in the rule. The Board believes that the course content requirements currently set forth in N.J.A.C. 13:36-10.6 are broad enough to encompass the additional areas of study suggested by the petitioner if the Credentials Committee determines, based upon a review of submitted documentation, that the courses in such areas relate to a licensee's professional practice development.

In addition, the Board denies the petitioner's request to amend N.J.A.C. 13:36-10.8. The Board believes that the petitioner's suggested [page=2989] amendments to subsection (a) are unnecessary and believe that the deletion of the requirements in paragraphs (a)2 through 4 will lead to confusion among licensees. The suggested deletion may lead licensees to believe that those sources of continuing education are no longer acceptable. The Board also denies the petitioner's request to amend the rule to include a new subsection (b), concerning continuing education credits earned for attending exhibits or trade shows. As noted above with respect to the petitioner's suggested changes to N.J.A.C. 13:36-10.3(c), the Board declines to permit licensees to receive continuing education credit for such activities.

The Board also denies the petitioner's request to amend existing subsections (b) and (c) of N.J.A.C. 13:36-10.8. The suggested amendments to subsection (b), which currently provides that the Board may presumptively approve continuing education courses accredited by a nationally recognized association or entity, would permit the Board to accredit courses offered by any association or entity that demonstrates "competency in the accreditation" of funeral directing continuing education courses. The petitioner's suggested changes fail to articulate any standards by which the Board may assess such courses. In addition, the Board denies the petitioner's request to amend existing subsection (c), to provide that the Board must maintain a list of approved continuing education courses on the Board's website. Currently, the Board lacks the technical and administrative resources to maintain this list on its website. Licensees may continue to obtain information concerning approved courses by contacting the Board's Executive Director.

For the foregoing reasons, the Board will be proposing the following amendments to the rules in N.J.A.C. 13:36 (additions to the rules indicated in boldface **thus**; deletions to the rules indicated in brackets [thus]):

13:36-1.9 Statement of Funeral Goods and Services Selected

(a)-(b) (No change.)

(c) All charges relative to the funeral shall be categorized as follows and the Statement of Funeral Goods and Services Selected shall contain the following information:

STATEMENT OF FUNERAL GOODS

AND SERVICES SELECTED

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.

...

CATEGORY IV--Merchandise

\$

1.-7. (No change.)

8. Other (Specify--Items may be packaged for individual items less

than \$

[\$ 100.00] \$ 400.00 each)

...

(d)-(g) (No change.)

A copy of this notice has been mailed to the petitioner consistent with the requirements of N.J.A.C. 1:30-4.2.