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PUBLIC NOTICES  
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

State Board of Mortuary Science Rules

Notice of Receipt of Petition for Rulemaking

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. The petitioner requested that the Board amend N.J.A.C. 13:36-1.9 to remove the line item charge for newspaper notices from its mandatory classification as a cash advance item on the Statement of Funeral Goods and Services Selected form. The petitioner believes that this amendment is necessary because funeral directors now provide additional services with respect to the preparation of such notices that were not provided in the past. Specifically, the petitioner noted that funeral directors are often responsible for formatting text, scanning photographs, providing layout, and uploading finished notices directly to a newspaper's website. The petitioner believes that funeral homes should be permitted to charge discretionary fees for these services, either as a mark-up on the newspaper charges, or as a separate service charge. [page=1530] The petitioner also requested that the Board 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 petitioner believes that this amendment is necessary because of increased payroll administration costs and recordkeeping requirements. Removing such charges from the cash advance category will permit funeral directors to recover the costs associated with the employer's share of FICA, unemployment and disability taxes for pallbearers that are not evident and readily demonstrable to families, as well as permit funeral directors to recover a portion of their increased administration costs.

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

The petitioner requested that the Board retitle 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 petitioner believes that the requested amendment is necessary to permit the placement of charges in this category that are service-based but which may not raise to the level of the "professional services" encompassed by Category I charges.

The petitioner requested that the Board amend N.J.A.C. 13:36-4.4 to provide for the issuance of a "temporary registration" for funeral homes. The petitioner believes that the requested amendment is necessary to help address the ambiguities and delays often encountered when transferring or selling a funeral business. The petitioner noted that the purchase of an existing funeral home in New Jersey often leaves the purchaser forced to operate without a registration because of the inability to accurately predict a closing date. While the required inspection can be carried out, the paperwork for the new registration cannot be processed until the closing occurs. The petitioner noted that this process has previously resulted in the imposition of fines for the use of an unregistered mortuary.

The petitioner requested that the Board amend N.J.A.C. 13:36-4.5 in order to clarify when a change of ownership in a registered mortuary triggers the requirement to obtain a new certificate of registration. The petitioner believes that N.J.A.C. 13:36-4.5 is unclear with respect to when a new certificate of registration is required, and believes that added clarity is needed because N.J.A.C. 13:36-11.18 requires that notice be provided to consumers holding prepaid funeral

agreements when a new certificate of registration is issued. The petitioner noted that many funeral homes are unsure when this notice must be provided to consumers because N.J.A.C. 13:36-4.5 does not specify the conditions under which a change of registration is required.

The petitioner requested that the Board amend N.J.A.C. 13:36-8.10 in order to clarify a licensee's responsibility with respect to the final disposition of human remains. The petitioner noted that funeral homes and funeral directors have a responsibility to families to ensure that the remains entrusted to their care are interred, entombed, cremated or transported consistent with the arrangements that the family has made. In practice, this has meant that a licensed funeral director must be at the funeral, and that a licensee must deliver remains to cemeteries and crematories. The petitioner noted that recently, however, crematories have been offering a service to funeral homes whereby a licensed funeral director employed by, or contracted by, the crematory will be sent to pick up remains at the funeral home for transport to their final disposition. The petitioner believes that N.J.A.C. 13:36-8.10 should be amended to prohibit this practice because the licensee in this situation is not acting as the agent of the funeral home, but, rather, is an agent of the crematory.

The petitioner requested that the Board make various amendments to its continuing education requirements. Specifically, the petitioner recommended that the Board amend N.J.A.C. 13:36-10.3, 10.6, 10.7 and 10.8. The petitioner believes that the recommended amendments will improve the Board's continuing education requirements by establishing minimum content distribution standards and limiting the number of credit hours that can be earned in any one subject area during each biennial licensure period. The petitioner also believes that the recommended amendments will permit the Board to anticipate the accelerated use of alternate forms of educational content, by distinguishing between "facilitated" and "self directed" course work, and will improve home study course work by requiring minimum competency testing.

The petitioner also recommended that the Board amend the definition of "cash advance item" in N.J.A.C. 13:36-9.1 to further clarify its current meaning.

For the foregoing reasons, the petitioner recommended that the Board make the following amendments to the rules in N.J.A.C. 13:36 (additions to the rules indicated in boldface thus; deletions to the rule 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 and Other Services

1.-7. (No change.)

8. Other (Specify--Items may be packaged for individual items less than [\$ 100.00] \$ 400.00 each)

#### CATEGORY V--Cash Disbursements (Estimated)

1.-2. (No change.)

[3. Pallbearers]

[4.] 3. Organist and/or Soloist

[5.] 4. Certified Copies of Death Certificate and Permit Fee

[6. Newspaper Notices]

[7.] 5. Other (Specify) . . .

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

13:36-4.4 New Installations

(a) (No change.)

(b) A new installation inspection of the premises shall be made by the inspector before a certificate of registration is granted, which inspection shall occur in the presence of the prospective manager and the new registrant.

(c) [When] In the case of a facility not previously used as a mortuary, when the new installation inspection is made, and the inspection in the sole and absolute discretion of the inspector results in a determination that the facility is suitable for operation, temporary approval [may] shall be granted to the new registrant to operate until a certificate of registration is issued provided the mortuary satisfies all applicable requirements set forth in this chapter and the provisions of the Mortuary Science Act, N.J.S.A. 45:7-32 et seq.

(d) In the case of a new registration that is replacing a certificate of registration for a facility that has been and continues to operate as a mortuary through a sale and purchase transaction, when the new installation inspection is made and the inspection in the sole and absolute discretion of the inspector results in a determination that the facility is suitable for operation, the new registrant shall have three (3) business days from the time the new registrant gains control of the facility and/or business, to deliver to the offices of the Board the completed application for a new registration and payment as required by subsection (a) above, and shall have thereafter temporary approval to operate until a certificate of registration is issued.

(e) In the case of both subparagraph (c) and (d) above, the Board shall retain the authority to rescind the temporary registration without hearing or cause.

13:36-4.5 [Change] When a change of ownership requires a new certificate of registration

[(a) Whenever there are any changes whatsoever in ownership, including a change of stockholders in an existing and continuing corporation, it shall be necessary for the new ownership to notify the [page=1531] Board within five working days after the ownership changes or stock transfer.]

[(b) Upon request, any new owner shall provide the Board with records of prepaid funeral agreements required to be maintained pursuant to N.J.A.C. 13:36-11.16.]

(a) Whenever there are any of the following changes in ownership in an existing funeral establishment, it shall be necessary for the funeral establishment to file for a new certificate of registration within thirty (30) days after such ownership change occurs whether by way of sale, gift, testamentary transfer, operation of law or otherwise:

1. In the case of a corporation, whenever there occurs a change in ownership of the majority of the outstanding voting stock of the corporation; or

2. In the case of:

i. A partnership or limited liability partnership, whenever there occurs a change of any partner;

ii. A limited partnership, whenever there occurs a change of the general partner(s); and

iii. A limited liability company, whenever there occurs a change of the managing member or, if there is no managing member, of the operating member responsible for day-to-day operations of the funeral establishment.

(b) The terms conditions and requirements of sub-section (a) above for a funeral establishment to file for a new certificate of registration shall also apply when:

1. In the case of a corporation, if the ownership of a majority of its voting stock is itself controlled by another corporation, partnership, limited liability partnership, limited partnership, limited liability company; or

2. In the case of a partnership, limited liability partnership, limited partnership or limited liability company, if the partner, general partner, managing member or operating member, as the case may be, is itself a corporation, a partnership, limited liability partnership, limited partnership, or limited liability company, and there occurs any change in ownership, whether by way of sale, gift, testamentary transfer, operation of law or otherwise, of the majority of the outstanding voting stock of such corporation, or

1. In the case of:

i. A partnership or limited liability partnership, whenever there occurs a change of any partner;

ii. A limited partnership, whenever there occurs a change of the general partner(s); and

iii. A limited liability company whenever there occurs a change of the managing member or, if there is no managing member, of the operating member.

(c) The provisions of sub-sections (a) and (b) shall not apply in the case of transfers to or among exempt entities. An exempt entity shall be the estate of, or a living trust for the benefit of, any existing shareholder, partner or member.

#### 13:36-8.10 Presence of licensee for disposition of dead human body

Except for the transfer of remains from a place of temporary storage to a place of final entombment or interment within a single cemetery as provided in N.J.A.C. 13:44J-8.4, no interment, cremation or other disposition of a dead human body or any disinterment thereof, shall be made by any person in the State of New Jersey unless a New Jersey licensed practitioner of mortuary science is present at the time of disposition, provided, however, that this rule shall not apply to a disinterment resulting from a court order in connection with a criminal investigation. For the purposes of this section, "licensed practitioner of mortuary science" means a person directly employed or hired by the funeral home with responsibility for the disposition of the remains. Nothing in this section shall prohibit a funeral home from hiring or engaging another licensee or funeral home for this purpose, provided that this shall not include a person directly or indirectly employed or hired by the place of final disposition.

#### 13:36-9.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

. . . "Cash advance item" means any item of service or merchandise described to a purchaser as a "cash advance", "accommodation", "cash disbursement", or similar term, the price charged for which is the same as the cost to the funeral provider. [A cash advance item is also any item obtained from a third party and paid for by the funeral provider on the purchaser's behalf.] Cash advance items may include, but are not limited to, the following items: Cemetery or crematory services; pallbearers; public transportation; clergy honoraria; flowers; musicians or singers; nurses; obituary notices; gratuities and death certificates.

#### . . . 13:36-10.3 Minimum credit hours for biennial license renewal

(a) Each applicant for biennial license renewal shall complete a minimum of 10 credit hours of continuing education in courses or seminars accredited by the Board during the preceding biennial period, consistent with the requirements of (b) [and (c)] through (e) below.

(b) [A licensee shall obtain 10 credit hours of continuing education in courses or seminars accredited by the Board. No more than three credit hours may be obtained, during each biennial license period, in courses or seminars dealing with funeral merchandise, such as caskets, outer burial containers and clothing.] The credit hours required by this section shall at a minimum be distributed during each biennial license period in the following subject areas:

1. At least three credit hours in matters of "technical" competency which may include occupational health and safety programs involving formaldehyde and chemical related exposures, blood borne pathogens and disease transmission; and the handling, disposition, preparation and restoration of human remains, including the donation of organs, tissue, bone and whole bodies;
2. At least two credit hours in matters of "compliance" competency, which may include state and federal laws and rules governing the business and practice of funeral directing, including the prearrangement and prepayment of funerals;
3. At least one credit hour involving "ethics" and ethical conduct, decision making and matters of confidentiality and privacy.

(c) In any biennial licensing period, licensees shall not:

1. Earn more than one credit hour in courses concerning funeral "merchandise and merchandising," and the acquisition, purchasing or leasing of funeral and funeral business related goods and services, but which hour may be earned by participation in the exhibit and trade show of any bona fide state or national trade association qualified under 501(c)(6) of the Internal Revenue Code;
2. Earn credits more than once from the same or substantially similar course of instruction;
3. Earn credits from courses involving matters of personal and business estate, financial, investment and tax planning.

[(c)] (d) Licensees shall not be permitted to carry over credit hours in excess of those required for one biennial licensure period to the next biennial licensure period.

(e) Licensees shall not be permitted to earn more than six credit hours in "self directed" courses as defined in N.J.A.C. 13:36-10.7.

#### 13:36-10.6 Credentials Committee

(a) (No change.)

(b) The Credentials Committee's responsibilities shall include:

1.-2. (No change.)

3. Maintaining substantive criteria for course content [continuing education courses or seminars which courses or seminars may include topics which:] consistent with the objectives of N.J.A.C. 13:36-10.3, and which advance the funeral director competency in:

i. [Concern professional competency, ethics] Ethics and legal developments specific [relating] to the business and practice of funeral directing [mortuary science];

ii. [Examine and train licensees in the utilization] The use and application of [new] clinical techniques in the utilization, preparation, [page=1532] care and disposition of human remains [and scientific and clinical advances relating to mortuary science; and];

iii. [Deal with business] Business management [concepts as they relate] specific to the delivery of efficient professional services to consumers[.];

iv. Matters of grief, loss, aging and dying, and the roles and responsibilities of the funeral home and funeral director to assist the families they serve and the communities at large in responding to and meeting the practical and social implications therein; and

v. Such other subjects as the Committee may deem of professional value that are not otherwise prohibited by these sections.

#### 13:36-10.7 Criteria for continuing competency programs

(a) A course of acceptable subject matter shall directly and materially relate to the practice of funeral directing [mortuary science] consistent with the provisions of N.J.A.C. 13:36-10.3 and 13:36-10.6 and shall be:

1. A formal course of learning which contributes directly to the maintenance of the professional competence of a licensee;

[2. At least one instructional hour in duration; and;]

[3. Conducted by a qualified instructor or workshop leader.]

2. At that provides for a minimum of at least 50 minutes of instructional time per credit hour granted, excluding the time required for the competency testing associated with a self directed course defined below and is delivered:

i. As a "facilitated" course meaning a classroom presentation, seminar or lecture, conducted by a qualified instructor or workshop leader, that is delivered in-person, or via a teleconference, webinar or any other inter-active means that provides for exchanges between the attendee and the instructor via any electronic mediated communication including, but not limited to, email, listserv, audio and video conferencing; or

ii. As a "self directed" course, meaning a course conducted without a qualified instructor or workshop leader, where the curriculum is delivered via text, video, audio or computerized format, and that is completed by passing a competency test at its conclusion, which test shall be retained by the licensee as evidence of participation and completion.

(b) A program provider or a licensee seeking Board approval for a course of acceptable subject matter shall [submit the following to the Board]:

1. [Information] Submit to the Board information to document the elements of (a) above, in writing, and on a form provided by the Board, including, but not limited to:

i. A detailed description of course content and estimated hours of instruction; [and]

ii. The curriculum vitae of the lecturer, including specific background which qualifies the individual as a lecturer of repute in the area of instruction[.] and

iii. In the case of a "self directed" course of study, a copy of the post-course test required by this section; and

iv. Specifying which competency in N.J.A.C. 13:36-10.3, or any other, is satisfied by the proposed course of instruction.

#### 13:36-10.8 Presumptive accreditation and list of accredited courses

(a) [The] In addition to the Board's authority and responsibility to accredit programs for continuing education, the Board shall also grant credit for successful completion of the following, provided that the course or program is submitted to the board for approval as provided for in [meets the criteria of] N.J.A.C. 13:36-10.7 and that [any other] the source of credit directly and materially relates to the practice of funeral directing consistent with N.J.A.C. 13:36-10.6 [mortuary science]:

1. (No change.)

[2. Continuing education courses;]

[3. Correspondence, televised, videotaped and other short courses/tutorials;]

[4. Seminars, in-house courses, workshops and technical programs at professional meetings and conferences;]

[5.] 2. Teaching or instruction by the applicant of any of the courses otherwise accredited for continuing education by the Board [in (a)1, 2 and 4 above]; and

[6.] 3. Published papers, articles or books authored by the licensee.

(b) For the purpose of earning continuing education credit for attending an exhibit or trade show as permitted by N.J.A.C. 13:36-10.3, proof of conference registration shall be deemed proof of attendance and participation.

[(b)] (c) The Board may presumptively approve continuing education courses or seminars which are accredited by any [nationally-recognized] association or entity which demonstrates to the Board's satisfaction competency in the accreditation of [whose primary function is to accredit] continuing education courses or seminars regarding the practice of funeral directing [mortuary science anywhere in the United States].

[(c)] (d) The Board shall maintain a list of courses currently approved [pursuant to N.J.A.C. 13:36-10.6 and 13:36-10.7]. This list shall be made available by the Executive Director on the web site of the State Board [to any licensee upon request].

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