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ISSUE DATE: **JUNE 6, 2016**
RULE ADOPTIONS
LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
NEW JERSEY STATE BOARD OF MORTUARY SCIENCE

Adopted Amendments: N.J.A.C. 13:36-5.6 and 10.3

Equipment Requirements; Continuing Education Requirements (OSHA)

Proposed: October 5, 2015, at 47 N.J.R. 2425(a).

Adopted: March 1, 2016, by the State Board of Mortuary Science, James J. Marrocco, President.

Filed: April 27, 2016, as R.2016 d.056, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 45:1-15, 45:7-38, and 45:7-72.2.

Effective Date: June 6, 2016.

Expiration Date: November 14, 2018.

Summary of Public Comments and Agency Responses:

The official comment period ended on December 4, 2015. The Board of Mortuary Science (Board) received one comment from Adam S. Guzejewski, Deputy Executive Director, on behalf of the New Jersey State Funeral Directors Association.

1. COMMENT: The New Jersey State Funeral Directors Association (NJSFA) believes that the proposed rule change to N.J.A.C. 13:36-10.3(b)4 regarding required training in applicable Occupational Safety and Health Administration (OSHA) laws and regulations requires further clarification. The NJSFA believes clarification is needed as to whether Board approval is necessary for the required course or program on OSHA laws and regulations. In addition, NJSFA seeks clarification as to whether there is a minimum number of continuing education credit hours from the required OSHA course that each licensee must take each biennial licensing period. The NJSFA also seeks clarification as to whether licensees may satisfy N.J.A.C. 13:36-10.3(b)4 by participating in training from a firm's OSHA compliance officer. The NJSFA notes that OSHA requires all licensees to be trained in OSHA laws and regulations on an annual basis but does not mandate that the training receive accreditation or that licensees earn a continuing education unit as part of completing the training. The NJSFA also notes that OSHA's standards also allow licensees to receive training from a firm's OSHA compliance officer. The NJSFA suggests that the Board can eliminate further confusion by mirroring the Federal standards and stating affirmatively that as required by OSHA: (a) licensees are required to receive training on applicable OSHA laws and regulations on an annual basis; (b) licensees are not required to complete a Board approved course or program (meaning in-person training by an OSHA Compliance Officer is acceptable); and (c) licensees are not required to earn a minimum number of continuing

education credits in OSHA laws and regulations for licensure renewal.

The NJSFA states that it takes no issue with the Board's continued policy of allowing licensees to apply no more than three (3) continuing education units towards the minimum 10 credits required for licensure renewal.

RESPONSE: The Board agrees with the commenter that there is confusion amongst the regulated community as to the licensee's obligation to comply with Occupational Safety and Health Administration (OSHA) annual training and the Board's acceptance of up to three continuing education credit hours in a biennial licensing period for these courses or programs. To resolve this confusion, upon adoption the Board will provide additional clarifying changes to N.J.A.C. 13:36-10.3(b)4. The Board is substituting reference to "complete a course or program" with "receive training" in applicable OSHA laws and regulations as required by OSHA. In addition, the Board is changing N.J.A.C. 13:36-10.3(b)4 to include language specifying that if the licensee wants to obtain continuing education credit for the OSHA training, the licensee must attend a Board-approved program or course. The clarifying language does not change the effect of this rule, which is to clarify that licensees must complete a course or program in applicable OSHA laws and regulations as required by OSHA, and, as set forth in existing N.J.A.C. 13:36-10.3(b), credit for continuing education must be obtained from a course or program approved by the Board.

2. COMMENT: The NJSFA believes that the proposed amendment to N.J.A.C. 13:36-5.6(a) is unnecessary and should not be adopted. The NJSFA notes that this proposed change arose from the receipt of a petition for rulemaking based upon a complaint against a funeral director that used grey construction tape (also known as "duct tape") in the preparation of a deceased person. The NJSFA further notes that the term "flesh-colored" (being used to describe a type of adhesive tape) is a subjective term and can mean a lot of different things to a lot of different people. As such, the NJSFA requests that the Board, if the amendment is adopted, acknowledge that the shades of "flesh-colored" adhesive tape present in preparation rooms of registered mortuaries may vary and that Board has no expectation of uniformity.

RESPONSE: The Board believes that requiring a funeral establishment to have in its preparation or embalming room clear, white, or flesh-colored adhesive tape available to use in the preparation of a deceased person is more cosmetically appealing and sensitive to the needs of the bereaved. In addition, the Board believes that the proposed terminology of "clear, white or flesh-colored" provides the regulated community with flexibility to determine the color of adhesive tape that should be maintained in its preparation or embalming room.

Federal Standards Statement

A Federal standards analysis is not required because the adopted amendments are governed by N.J.S.A. 45:7-72.2 and the adopted amendment to N.J.A.C. 13:36-10.3 does not exceed any Federal requirements or standards. The adopted amendment to N.J.A.C. 13:36-10.3 is consistent with OSHA's requirement for licensees to complete annual training on applicable OSHA laws and regulations, and the credits for continuing education are not subject to any Federal requirements or standards.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 5. MORTUARIES

13:36-5.6 Equipment requirements

(a) Every funeral establishment in the State shall have in its preparation or embalming room and shall be equipped with, at a minimum, the following:

1.-23. (No change.)

24. Suture thread;

25. An electrically-powered embalming machine; and

26. Clear, white, or flesh-colored adhesive tape.

(b) (No change.)

SUBCHAPTER 10. CONTINUING EDUCATION

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

(a) (No change.)

(b) A licensee shall obtain 10 credit hours of continuing education in courses or programs approved by the Board, consistent with the following requirements:

1.-3. (No change.)

4. A licensee shall *[complete a course or program]* ***receive training*** in applicable Occupational Safety and Health Administration (OSHA) laws and regulations as required by OSHA. Licensees ***who seek continuing education credit for such training must attend a course or program approved by the Board and*** may not count towards the biennial continuing education requirement more than three credit hours in such courses or programs in each biennial licensing period; and

5. (No change.)

(c) (No change.)