239 CMR: BOARD OF REGISTRATION IN EMBALMING AND FUNERAL DIRECTING

239 CMR 3.00: REGISTRATION REQUIREMENTS; STANDARDS OF BUSINESS AND PROFESSIONAL PRACTICE

Section

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3.01: Definitions

For purposes of 239 CMR 3.00 through 5.00, the following terms shall have the following meanings:

Apprentice Embalmer - means any individual engaged in learning the practice of embalming under the instruction and personal supervision of a duly registered embalmer; provided that no individual shall serve as an apprentice embalmer until he has been registered as such by the Board pursuant to 239 CMR 3.02. An apprentice embalmer registration shall not be renewed after six years from the date the registration was initially granted. Individuals who were registered prior to March 30, 2012 shall be permitted to renew registrations in excess of six years up until November 1, 2014.

Board - means the Massachusetts Board of Registration in Embalming and Funeral Directing.

Embalmer - means any individual holding a funeral director's registration or a person holding a special Type 1 registration who is engaged, or holding himself or herself out as engaged, in the business, practice, science, or profession of embalming, whether on his or her own behalf or in the employ of a registered and licensed funeral director. The Board shall only issue a special Type 1 registration on a case by case basis if desired by a qualified applicant.

Funeral Director - means any individual holding a Type 3 or Type 6 license and practicing within the scope of that registration.

Licensed Funeral Establishment - means a fixed place or establishment owned or maintained by a person, partnership, corporation, association or other organization which has been duly registered by the Board pursuant to M.G.L. c. 112, § 84 and which is located, constructed, equipped and operated for the purpose of providing sanitary handling, preparation, disposition and care of dead human bodies.

LLC - means any "limited liability company" or "foreign limited liability company", as defined by M.G.L. c. 156C, § 2.

LLP - means any "registered limited liability partnership" or "foreign registered limited liability partnership", as defined in M.G.L. c. 108A, § 1.

3.01: continued

Person - means an individual; a corporation; a partnership; a limited liability company or foreign limited liability company as defined in M.G.L. c. 156C, § 1; a registered limited liability partnership or foreign registered limited liability partnership as defined in M.G.L. c. 108A, § 1; a society; an association; an organization; or any other business entity, however named.

Personal Supervision - shall mean being supervised by an individual in the same building unless the only activity being performed is removing human remains under the orders of a supervisor and performed within the scope of the registration held. For purposes of conferences with consumers for the purposes of making funeral or pre-need arrangements, personal supervision of apprentice embalmers must be provided within the same room. For purposes of embalming, an apprentice embalmer must only have same room supervision for the first 50 dead human bodies.

Profession and Business of Embalming and Funeral Directing - includes, but shall not be limited to, the sale or provision of any of the following goods or services:

(a) Consulting with members of the general public about, and/or making arrangements concerning the disposition of human remains, including arrangements for cremation for compensation;
(b) Removing a human body from the place of death;
(c) Transporting human remains;
(d) Embalming;
(e) Performing restorative and cosmetic work on human remains, including hairdressing;
(f) Dressing, and retail sale of clothing for use in dressing, human remains;
(g) Casketing of human remains;
(h) Sale of caskets, either at retail or at wholesale, and/or rental of caskets to the general public;
(i) Arranging for disposition of flowers used in funerals or funeral services;
(j) Making arrangements for obituaries and death notices in newspapers, the internet, radio and television;
(k) Making cemetery, cremation and/or anatomical gift arrangements at the request of the decedent or the decedent's family;
(l) Providing hearses, flower vehicles, limousines and sedans in connection with a funeral;
(m) Arranging for services and officiant at the interment of human remains;
(n) Providing assistants during visiting hours and at the funeral service, and for other funeral service related functions and responsibilities;
(o) Securing and processing required documents, including but not limited to death certificates, burial/transfer permits, certified copies of death certificates, and visas for foreign shipment of human remains;
(p) Making arrangements with medical examiners;
(q) Providing acknowledgment cards, register books, local and long distance telephone messages and telegrams in connection with a funeral;
(r) Preparing, negotiating or executing any pre-need funeral contract, or receiving, controlling or managing any funds tendered as payment for the funeral goods and/or services identified in such a pre-need funeral contract, as defined in 239 CMR 4.00: *Pre-need Funeral Contracts and Arrangements*;
(s) Disposition of ashes or cremated remains; or
(t) Engaging in such other activities as are considered to be a part of the business, practice, science or profession of embalming or funeral directing, as commonly practiced.

Registered Funeral Home Assistant - means any individual registered to and working under the personal supervision of a Type 3 Funeral Director and Embalmer (that Type 3 Funeral Director and Embalmer may delegate such supervision to an employed Type 6 Funeral Director and Embalmer), provided that no individual shall serve as a registered Funeral Home Assistant unless he or she has been registered by the Board pursuant to 239 CMR 3.02. A registered Funeral Home Assistant may only perform services outlined in 239 CMR 3.18.

3.01: continued

Type 6 Funeral Director and Embalmer - means a funeral director and embalmer who does not hold a 10% ownership interest in a licensed funeral establishment but has been issued a Type 6 registration by the Board pursuant to M.G.L. c. 112, § 83 and who meets the qualifications outlined in 239 CMR 3.02(2) and has been sworn in by the Board. Individuals holding this registration may practice embalming, but may otherwise only practice funeral directing when holding a license issued by a city or town pursuant to M.G.L. c. 114, § 49 and working as an employee in a licensed funeral establishment owned by one or more Type 3 Funeral Directors and Embalmers where, in said establishment, the registrant shall conduct, direct, and keep up said establishment. A Type 6 Funeral Director and Embalmer who performs funeral services when not so employed shall be considered acting outside the scope of his/her licensure and shall face disciplinary action. Said registrants may not sign death certificates and may only utilize stationary, or other funeral related contracts or documents on behalf of an employing licensed funeral establishment and Type 3 Funeral Director and Embalmer. Type 6 Funeral Directors and Embalmers may only conduct pre-need funeral arrangements pursuant to 239 CMR 3.04(5).

Type 3 Funeral Director and Embalmer - means a funeral director issued a Type 3 registration by the Board pursuant to M.G.L. c. 112, § 83 and licensed by a city or town pursuant to M.G.L. c. 114, § 49, who holds an ownership interest of at least 10% in one or more licensed funeral establishments as set forth in 239 CMR 3.02(4)(a).

3.02: Registration Requirements and Examinations

(1) Registration as an Apprentice Embalmer. Any individual desiring to become an Apprentice Embalmer shall make application to the Board on a form provided for that purpose. Said application shall contain all of the following information:

(a) Satisfactory written proof that the applicant is of good moral character;

(b) Satisfactory written proof that the applicant holds a high school diploma or its equivalent;

(c) Satisfactory written proof that the applicant is or will be employed on a full-time basis by only one sole proprietorship, partnership, corporation, association, limited liability partnership, limited liability company, or other business entity which operates one or more duly licensed funeral establishments in Massachusetts;

(d) The name and address of the sole proprietorship, partnership, corporation, association, limited liability partnership, limited liability company, or other business entity which employs or will employ the applicant;

(e) The name and funeral director's registration number of the Type 3 Funeral Director and Embalmer who serves as chief executive officer or chief operating officer of the sole proprietorship, partnership, corporation, association, limited liability partnership, limited liability company, or other business entity which employs the applicant;

(f) The name and registration number of the funeral director and embalmer to whom the applicant will be registered, and who will be responsible for providing instruction and direct personal supervision of the applicant's activities as an Apprentice Embalmer at all times;

(g) Payment of any applicable fees; and

(h) Have completed OSHA training related to biohazards/blood borne pathogens within 30 days prior to applying for this registration and for each year so registered.

(2) Registration as a Type 6 Funeral Director and Embalmer. Any individual who desires to become registered as a Type 6 Funeral Director and Embalmer shall make application to the Board on a form provided for that purpose. Said application shall be accompanied by written proof satisfactory to the Board that:

(a) The applicant is 18 years of age or over;

(b) The applicant is of good moral character;

(c) The applicant has a high school diploma or its equivalent;

(d) The applicant has served as a duly registered Apprentice Embalmer for a period of not less than two years under the instruction and personal supervision of a duly registered funeral director;

(e) The applicant has, during the period of service as an Apprentice Embalmer, as required under 239 CMR 3.02(2)(e), personally embalmed not less than 50 dead human bodies;

3.02: continued

(f) The applicant has achieved an associates degree in mortuary science from a program meeting the accreditation requirements of the American Board of Funeral Service Education, or the equivalent thereof as determined by the Board;

(g) The applicant has achieved a passing grade on the examination prescribed by the Board;

(h) Said application shall be accompanied by a check or money order for any applicable fees; and

(i) A certification that said applicant will only work in the funeral service industry in the employ of a Type 3 Funeral Director and Embalmer in a licensed funeral establishment where the applicant shall be conducting, directing, and keeping up said establishment. Applicants must also agree to notify the Board at all times where they are employed utilizing a certification approved by the Board.

(3) Frequency of Examinations. Examinations for registration as a funeral director shall be held at least two times per year at the discretion of the Board. The Board shall give reasonable advance notice of the dates established for these examinations.

(4) Status as Type 3 Funeral Director and Embalmer. Any Type 6 Funeral Director and Embalmer who desires to become a Type 3 Funeral Director and Embalmer shall be granted such status by the Board, provided that he or she shall first appear before the Board and submit satisfactory written proof of both of the following:

(a) Proof that he or she holds an ownership interest of not less than 10% in the corporation, partnership or firm which holds the funeral establishment certificate for, and operates, the funeral establishment in question. Where the funeral establishment is operated by a corporation, the applicant must show that he or she owns at least 10% of the issued and outstanding stock of that corporation. Where the funeral establishment is operated by a partnership, the applicant must show that he or she owns at least a 10% share of that partnership; and

(b) Proof that he or she has been continuously employed in a funeral establishment by said corporation, partnership or firm. A letter presented by the owner or majority stockholder of said corporation, partnership or firm showing such employment shall be sufficient to meet this requirement.

(5) Licensed Funeral Directors, Registered Unlicensed Funeral Directors, and Certified Funeral Directors. Effective March 30, 2012, the Board shall no longer issue licenses for Licensed Funeral Directors (Type 2), Registered Unlicensed Funeral Directors (Type 4), and Certified Funeral Directors (Type 5). Individuals holding these licenses/registrations shall be transferred to the appropriate type class whenever practicable.

(6) Registration as a Registered Funeral Home Assistant. Any individual desiring to become a Registered Funeral Home Assistant shall make application to the Board on a form provided for that purpose. Said application shall contain all of the following information:

(a) Satisfactory written proof that the applicant is of good moral character;

(b) Satisfactory written proof that the applicant holds a high school diploma or its equivalent;

(c) Satisfactory written proof that the applicant is or will be employed by only one sole proprietorship, partnership, corporation, association, limited liability partnership, limited liability company, or other business entity which operates one or more duly licensed funeral establishments in Massachusetts;

(d) The name and address of the sole proprietorship, partnership, corporation, association, limited liability partnership, limited liability company, or other business entity which employs or will employ the applicant;

(e) The name and registration number of the Type 3 Funeral Director and Embalmer to whom the applicant will be registered, and who will be responsible for providing supervision of the applicant's activities as Registered Funeral Home Assistant;

(f) A check or money order for any applicable fees;

3.02: continued

(g) Meet ONE of the following educational criteria:

1. possessing an associates degree in mortuary science from a program meeting the accreditation requirements of the American Board of Funeral Service Education;
2. Have completed Board approved training in the following areas:
   a. General Public Health;
   b. Ergonomics; and
   c. Funeral Service law and ethics.
3. Applicants who have funeral related experience and/or education that do not fall within the specific provisions of 239 CMR 3.02(6)(g)1. or 2. may submit to the Board a written request that such experience and/or education be considered for approval as the equivalent of the education requirements.

(h) Have completed OSHA training related to biohazards/blood borne pathogens within 30 days prior to applying for this registration and for each year so registered.

3.03: Employment of Apprentice Embalmers

A licensed funeral establishment may employ Apprentice Embalmers to prepare or assist in the preparation of dead human bodies for burial, cremation or other final disposition, provided that all of the following conditions are met:

(1) Each Apprentice Embalmer so employed is duly registered with the Board pursuant to 239 CMR 3.02;

(2) Each Apprentice Embalmer is employed on a full-time basis by only one sole proprietorship, partnership, corporation, association, limited liability partnership, limited liability company, or other business organization which operates one or more duly licensed funeral establishments in the Commonwealth of Massachusetts;

(3) Each Apprentice Embalmer so employed is registered to a duly registered Type 3 Funeral Director and Embalmer employed by the same entity which employs that Apprentice Embalmer. The Apprentice Embalmer shall work at all times under the instruction and personal supervision of that funeral director, who shall be held responsible for all acts or omissions of that Apprentice Embalmer which occur while that Apprentice Embalmer is registered to him or her;

(4) The Type 3 Funeral Director and Embalmer who serves as the chief executive or chief operating officer of the sole proprietorship, partnership, corporation, association, limited liability partnership, limited liability company or other business organization which employs that Apprentice Embalmer shall also be held responsible for all acts or omissions of that Apprentice Embalmer which occur in the course of that Apprentice Embalmer's employment with that entity;

(5) Each Apprentice Embalmer so employed complies with any and all applicable requirements of 239 CMR 3.00 through 5.00, and M.G.L. c. 112, §§ 61 through 65A, 82 through 87;

(6) The entity which employs an Apprentice Embalmer notifies the Board, in writing, of any change in the identity of the registered Apprentice Embalmer to whom that Intern is registered, and of any change in the name and address of the licensed funeral establishment(s) in which each such Apprentice Embalmer works;

(7) If there is a change in the employment status of any such Apprentice Embalmer, the entity which employed that Apprentice Embalmer submits to the Board a written affidavit indicating the length of time that the Apprentice Embalmer was employed as such; and

(8) The total number of Apprentice Embalmer employed by any one entity does not exceed one Apprentice Embalmer for each 50 cases, or fraction thereof, for which funeral goods or services were provided by that entity during the preceding calendar year.

(9) The address of the license for an Apprentice Embalmer shall be the licensed funeral establishment where the Apprentice Embalmer is employed.

3.03: continued

(10) Upon termination of employment, an Apprentice Embalmer registration shall become null and void within 30 days, unless the Apprentice Embalmer secures employment with another funeral establishment.

(11) Apprentice Embalmers may perform the removal or transfer of a dead human body in a vehicle registered as a hearse after requisite permission for such a removal has been obtained by the supervisor (Type 3 or Type 6) so long as said supervisor has personally accompanied the registrant for the first 20 removals/transfers performed during the course of their employment.

Upon the request of the Board, or a duly authorized representative thereof, a licensed funeral establishment shall furnish to the Board satisfactory written proof of employment for any Apprentice Embalmer employed by said funeral establishment and registered under 239 CMR 3.03.

3.04: Ownership of Funeral Establishments; Disclosure of Ownership

(1) A corporation, limited liability company, partnership, limited liability partnership, association or other business entity may engage in the profession and business of embalming and funeral directing only if:

(a) a controlling interest, reflected by a majority of authorized stock in said entity, is held by one or more Type 3 Funeral Directors and Embalmers;

(b) the business of that entity is under the direction and control of a Type 3 Funeral Director and Embalmer, who shall be held responsible for ensuring that the entity complies with all applicable laws and regulations governing embalming and funeral directing; and

(c) that entity meets the insurance requirements of 239 CMR 3.16.

(2) Display of Ownership Information.

(a) Every licensed funeral establishment shall display on a sign, located either immediately outside or immediately inside the main entrance, all of the following ownership information:

1. The name of every individual who holds at least a 10% ownership interest in the corporation, limited liability company, partnership, limited liability partnership, association, organization, or other business entity which operates said funeral establishment; and

2. The names of any and all corporations, limited liability companies, partnerships, or limited liability partnerships which either directly or indirectly hold an ownership interest of 10% or more in the corporation, limited liability company, partnership, limited liability partnership, association or other business entity which operates that funeral establishment.

3. The lettering on said signs shall be readily legible.

(b) Where an ownership interest of 10% or more in a licensed funeral establishment is held, either directly or indirectly, by one or more corporations, limited liability companies, partnerships or limited liability partnerships, the name, complete headquarters address and telephone number of each such corporation, limited liability company, partnership or limited liability partnership shall also be listed on the business letterhead stationery, invoices, and all advertising materials used by said funeral establishment.

(3) Changes in Name, Ownership, or Location of a Funeral Establishment.

(a) Whenever the ownership of a funeral establishment changes, the establishment registration shall be deemed cancelled pursuant to M.G.L. c. 112, § 83.

(b) A change of ownership shall be deemed to occur whenever the Type 3 Funeral Director and Embalmer(s) originally owning or holding more than a 50% stake in an entity owning the establishment are transferring ownership in the funeral home or entity owning the funeral home such that he/she/they no longer hold more than a 50% controlling interest in the home/entity.

(c) A funeral establishment must obtain a new establishment certificate from the Board whenever the name or location of the establishment is changing.

3.04: continued

(4) Temporary Absence of a Type 3 Funeral Director and Embalmer.

(a) A Type 6 Funeral Director and Embalmer may operate a funeral home during the limited absence of a Type 3 Funeral Director and Embalmer for up to 90 days so long as the funeral home is still subject to the direction and ownership of the Type 3 Funeral Director and Embalmer.

(b) The Board must be notified in writing by the Type 3 Funeral Director and Embalmer whenever he/she will have a Type 6 Funeral Director and Embalmer fill in for him/her in excess of 30 days.

(c) Notwithstanding any other restrictions in these regulations, the Board may, after a majority vote, allow a Type 6 Funeral Director and Embalmer to fill in for a Type 3 Funeral Director and Embalmer for a period in excess of 90 days for good cause shown.

(5) Pre-need Funeral Arrangements. A Type 6 Funeral Director and Embalmer may conduct pre-need funeral arrangements at any funeral establishment owned by their Employer(s) under the following conditions:

(a) The Type 6 Funeral Director and Embalmer has been employed by the Type 3 Funeral Director and Embalmer at the subject funeral establishment for at least 30 days; and

(b) The Type 6 Funeral Director and Embalmer has written authorization from the employing Type 3 Funeral Director and Embalmer that they have been employed for at least 30 days and may conduct pre-need funeral arrangements. A copy of this authorization must be available for Board review upon request.

3.05: Inspections; Powers and Duties of Investigators

(1) A Board investigator shall have the right to enter into and inspect any licensed funeral establishment at any time during regular business hours for the purpose of inspecting such records and conducting such investigations as may reasonably be necessary to ensure that that funeral establishment, and its agents or employees, are in compliance with all applicable requirements of 239 CMR 3.00 through 5.00, and M.G.L. c. 112, §§ 61 through 65A, 82 through 87.

(2) A Board investigator may visit any place where the operation of embalming is being conducted or where a funeral is in process of being directed, provided, however, that such visitation shall be made in a respectful and decorous manner.

(3) A Board investigator shall in no way be connected with the work or business of an Embalmer or Funeral Director in any establishment.

(4) Interference with or obstruction of the Board or any investigator authorized by the Board in the performance of their respective duties by a registered person, shall be considered sufficient cause for suspension or revocation of such registration.

3.06: Establishments

(1) Every licensed funeral establishment shall:

(a) Be accessible to individuals with disabilities to the extent required by all applicable provisions of the rules and regulations of the Architectural Access Board found at 521 CMR and 239 CMR 3.00 through 5.00, and M.G.L. c. 112, §§ 61 through 65A, 82 through 87;

(b) Include a chapel sufficiently large and sufficiently equipped for the conduct of an average funeral service; such chapel shall contain a minimum of 300 square feet of floor space.

(c) Not contain any living quarters on the floor used for the funeral establishment without the prior written permission of the Board. Said permission shall not be granted unless the applicant provides satisfactory written assurances that such living quarters will not be used for the conduct of any funeral or visitation, or for the provision of any food or refreshments before, during or after a funeral or visitation;

3.06: continued

(d) Include a preparation room equipped with sanitary flooring, a flush rim sink, floor drain and ventilation, a reduced pressure backflow preventer or air gap separation at the meter or property line, and the necessary equipment, instruments and supplies for the preparation and embalming of dead human bodies for burial and transportation. Such preparation room and equipment shall comply with all applicable requirements of 239 CMR 3.07 and 3.12, and all applicable requirements of other federal, state and local laws, including but not limited to all applicable regulations of the United States Occupational Safety and Health Administration;
(e) Contain such toilets, lavatories and other sanitary facilities for men and women as may be required by applicable federal, state and local laws and regulations;
(f) Where the establishment consists of more than one building or more than one lot of land, said buildings and/or lots shall be adjoining and connecting (this rule shall not apply to any funeral establishment opened prior to December 3, 1943 unless there has been a change of address for said establishment since that date);
(g) Removals of dead human bodies into funeral establishments established after December 1, 1949 shall be completely concealed from public view; and
(h) Meet the insurance requirements of 239 CMR 3.16.

(2) No funeral establishment certificate shall be granted to any funeral establishment unless the owners of said establishment certify, in writing and under the pains and penalties of perjury, that said funeral establishment is in compliance with all applicable requirements of the rules and regulations of the Architectural Access Board found at 521 CMR and all applicable requirements of the United States Occupational Safety and Health Administration. The Board may require proof of such compliance by building officials, licensed engineers, or licensed architects. Adherence to 239 CMR 3.06(2) may be waived if the establishment obtains a variance from the Architectural Access Board or if the establishment enters into a compliance plan agreed to by the Board.

(3) Existing funeral establishments not meeting the rules and regulations of the Architectural Access Board found at 521 CMR. because they are grandfathered under 521 CMR do not need to conform to the newer accessibility rules adopted by 239 CMR 3.00:
(a) The funeral home needs a new establishment certificate due to a change in ownership or location (name changes alone do not trigger this requirement);
(b) Compliance is mandated by the Architectural Access Board or some other local, state, or federal authority; or
(c) Other changes are made to the laws applicable to the establishment ending said grandfathering.

3.07: Preparation Room

(1) Every licensed funeral establishment shall have at least one preparation room for the preparation for burial or other disposition of all dead human bodies. Said preparation room shall be at least 12' x 14' in size for any new construction after January 1, 2008. Preparation rooms shall be locked at all times.

(2) No person shall be allowed in the preparation room while a dead human body is being prepared for burial or other final disposition except persons duly registered or licensed by the Board pursuant to M.G.L. c. 112, §§ 82 through 87, public officials engaged in the discharge of their official duties, students who are duly enrolled in a recognized mortuary school, and members of the decedent's immediate family or persons authorized by them in writing. The provisions of 239 CMR 3.07(2) shall be printed on a placard and conspicuously displayed or posted on the exterior of each door to each preparation room in the funeral establishment. Failure to post said placards shall constitute grounds for disciplinary action by the Board.

(3) Each preparation room in a funeral establishment shall be equipped with a tile or cement floor. Rubber tile, rubber matting or linoleum may be used provided that it is not less than 3/16" thick, and that, if it is used as a floor covering, it is laid over a floor constructed of cement or other waterproof substance. Wooden floors overlaid with metal or other waterproof materials may be accepted in *lieu* of cement floors.

3.07: continued

(4) Each preparation room shall also contain the following: one standard-type sanitary operating table; one flush-rim sink, one floor drain; one reduced pressure or air gap separation backflow prevention device located at the water meter or property line; one sanitary waste receptacle which is opened by a foot pedal; and a standard-type instrument sterilizer.

(5) Every preparation room shall comply with all applicable federal, state and local laws, regulations and ordinances regarding ventilation and, in the absence of such laws, shall be ventilated so as to ensure that no deleterious odors are allowed to remain therein and that the odors there from are not permitted to enter into any other part of the funeral establishment or any part of any adjoining premises.

(6) An embalmer's kit shall contain, at a minimum, all items which are reasonably necessary for proper embalming and/or preparation of a dead human body for burial, cremation or other final disposition in light of currently accepted standards of professional practice.

(7) All equipment which is used to aspirate or remove blood or other potentially infectious materials, as defined in 239 CMR 3.12, or which comes into contact with blood or other potentially infectious materials, shall be maintained and used in a manner which prevents conversion of blood or other potentially infectious materials to aerosol or airborne particles.

3.08: Medical Examiner

(1) Every Embalmer and Funeral Director shall report to the Medical Examiner all deaths which he or she, as an authorized public official, should investigate. Such deaths include all deaths believed to have been caused by injury or trauma; all deaths believed to have been caused by the action of chemical (*i.e.*, drugs or poisons), thermal or electrical agents; all deaths following abortions; all deaths believed to have resulted from occupational injuries or infections; all sudden deaths of persons not disabled by a recognized disease; and all deaths of persons found dead. Persons registered by the Board shall consult the medical examiner of the district prior to making any removal when in doubt.

(2) No embalming fluid or any preparation substitute therefor shall be injected into the body of any person supposed to have died by violence or under suspicious circumstances without prior authorization from the Medical Examiner of the state in which the death occurs.

3.09: Control over Arrangements and Disposition of Human Remains

(1) Every registrant and licensed funeral establishment shall comply with the following rules with respect to control over funeral arrangements and disposition of human remains:

(a) If a licensed funeral establishment is a party to a pre-need funeral services contract, as defined in 239 CMR 4.01, for the benefit of the deceased person, and said contract is still in effect at the time of that person's death, the terms of that contract shall control the nature of the funeral goods and services to be provided, the manner in which funeral services are to be conducted for the deceased, and the final disposition of the deceased person's remains to the full extent provided in that contract. No licensed funeral establishment, nor any of its agents or employees, may cancel or materially alter any of the arrangements specified in that contract, even if requested to do so by a member of the deceased person's family or any other person, unless:

1. Compliance with the terms of the original contract would result in a violation of any applicable federal, state or local law or regulation; or
2. The funeral establishment is ordered to do so by a court of competent jurisdiction.

3.09: continued

(b) Where there is no pre-need funeral services contract with the licensed funeral establishment in effect at the time of death for the benefit of the deceased person, or to the extent that any such contract does not fully specify the nature of the funeral arrangements to be provided, said funeral establishment and its agents or employees shall give effect first to any wishes of the deceased person regarding the nature of the funeral goods and services to be provided, the manner in which funeral services are to be conducted, and/or the final disposition of the deceased person's remains, which have been expressed in any written document which was signed by the deceased person in the presence of a witness. In the absence of an order from a court of competent jurisdiction to the contrary, said written document shall be sufficient legal authorization for implementation of the arrangements specified therein.

(c) To the extent that there is no pre-need funeral services contract in effect at the time of death for the benefit of the deceased person, and no other valid written document indicating the wishes of the deceased person with respect to the nature of the funeral goods and services to be provided, the manner in which funeral services are to be conducted, or the final disposition of the deceased person's remains, the funeral establishment and its agents or employees shall follow the directions of the deceased person's surviving kin, in the following order of priority, which is specified in M.G.L. c. 113, § 8:

1. the surviving spouse of the deceased;
2. the surviving adult children of the deceased;
3. the surviving parent(s) of the deceased;
4. the surviving brother(s) or sister(s) of the deceased;
5. the guardian of the deceased at the time of his or her death;
6. any other person authorized or obligated by law to dispose of the remains of the deceased.

3.10: Removal, Preparation and Transportation - Other General Requirements

(1) For purposes of 239 CMR 3.10, the following terms shall have the following meanings:

(a) Remove or removal shall mean the moving of a dead human body from a home, hospital, or other place of death to a licensed funeral establishment for the purpose of preparing it for burial or cremation.

(b) Ship or shipment shall mean to convey a dead human body by train, boat, airplane, express or motor freight, or other means of transportation, either within, into, or out of the Commonwealth of Massachusetts after said body has been prepared for burial or cremation.

(c) Transport shall mean to convey a dead human body in a closed hearse or other vehicle registered as a hearse used exclusively for the purpose of transporting dead human bodies or funeral equipment, either within, into or out of Massachusetts for any purpose other than that referred to in the definition of remove or ship in 239 CMR 3.10(1)(a) or (b).

(2) In order to recognize the inherent dignity of the human body and protect the public health, sufficient preservation and/or disinfection and refrigeration shall be applied to each dead human body to guarantee temporary protection against excessive decomposition.

(3) Removals shall not be made from any place of death unless a death certificate or other appropriate death pronouncement form, signed by a duly licensed physician, the medical examiner or another person duly authorized by law, is in the possession of the funeral director. In the absence of such a pronouncement, removal may take place with the verbal approval by authorized/legally appropriate government authorities unless otherwise prohibited by M.G.L. c. 114, § 45. Such approval should be documented, in writing thereafter, with the details of said approval.

(4) No licensed funeral establishment, nor any agent or employee thereof, shall handle, move or transport any dead human body except under the supervision of, and with the personal attendance in the vehicle of, a person registered by the Board.

3.10: continued

(5) No person registered by this Board or his or her agent or employee shall remove, transport or otherwise convey a dead human body except in a closed hearse or other vehicle used exclusively for the purpose of transporting dead human bodies within the Commonwealth of Massachusetts. Said vehicles shall be designed or equipped in such a manner as to ensure that any dead human body transported therein is concealed from public view. Said vehicles shall be registered and designated as hearses by the Registry of Motor Vehicles. A person duly registered by this Board shall be in personal attendance in the vehicle during any removal, transportation or conveyance of a dead human body.

(6) Vehicles registered and equipped as hearses and bearing hearse plates may be used only for removal or transportation of dead human bodies, transportation of flowers, transportation of funeral equipment, transportation of a clergyperson or other funeral service officiant if such is the custom of the deceased, and/or transportation of other funeral establishment personnel.

(7) If a body has not been embalmed, and the body is to be buried or cremated within the Commonwealth of Massachusetts within 50 hours after death, said body shall be prepared by a registered embalmer. Said embalmer shall thoroughly wash, disinfect and sanitize said body; close all orifices with treated absorbent cotton; envelop the entire body with clean sheeting or with provided clothing; and take any other appropriate steps necessary to ensure that there will be no offensive leakage or odors from the body prior to burial, cremation or other final disposition. If a body has not been embalmed, and said body is to be buried or cremated within the Commonwealth of Massachusetts, but said burial or cremation will not occur within 50 hours after death, said body shall be prepared by a registered embalmer as required by 239 CMR 3.10(7), and shall also be placed in a refrigeration unit designed to accept dead human bodies and retard decomposition by maintaining temperatures between 34°F and 39°F if such refrigeration equipment is reasonably available.

(8) A body, once interred or placed in a cemetery receiving vault, shall not be transported or shipped from the cemetery where it lies unless it is encased in a hermetically sealed or air-tight casket, box or container. A body embalmed by a registered embalmer and placed in a receiving vault for not over 30 days shall be excepted from 239 CMR 3.10.

(9) In all cases of cremation, a suitable casket or alternative container shall be used. If a casket is used, that casket may later be re-used as long as:

(a) The casket is equipped with a removable liner or insert;

(b) The removable liner or insert is completely removed and replaced with a new liner or insert after each use;

(c) No such casket is used or re-used after any non-removable portion of that casket has been soiled, stained or otherwise contaminated by or from any human remains placed therein, or has been placed within a rental casket insert;

(d) The customer who rents or re-uses that casket has been informed, in writing, that the casket may have been used previously and that it will be reclaimed by the funeral establishment from which he or she has rented or obtained it immediately prior to final disposition of the deceased; and

(e) The customer who rents or re-uses that casket has signed a written disclosure or authorization form verifying that he or she has received all of the information required by 239 CMR 3.10(10) in writing and that he or she authorizes the funeral establishment to use the removable liner or insert selected by him or her for the final disposition of the deceased.

3.11: Conduct of Funerals

(1) All funerals conducted by a licensed funeral establishment shall be conducted under the direct supervision of a Type 3 Funeral Director and Embalmer or Type 6 Funeral Director and Embalmer.

3.11: continued

(2) Removal, Viewing, Identification and Embalming Procedures.

(a) When a licensed funeral establishment is called upon to remove a body and accept responsibility for it, said body shall be held at said funeral establishment, or at such other location as the Medical Examiner may direct, until such time as the body can be buried or cremated in accordance with applicable state or local laws.

(b) A licensed funeral establishment which has accepted responsibility for the care of any dead human body may properly require that said body be viewed and identified by the next of kin or duly authorized legal representative of the deceased at said funeral establishment prior to any cremation, burial, medical school donation or anatomical gift donation, if said body has not previously been viewed and identified by said next of kin or duly authorized legal representative elsewhere.

(c) Required Forms. Funeral establishments must develop and utilize written disclosure/authorization forms to be obtained by licensed funeral directors as follows:

1. A licensed funeral establishment shall obtain written permission to embalm, or a written acknowledgment of the decision not to embalm, from the next of kin or the duly authorized legal representative of the deceased, for each dead human body which is placed under its care and for which it has accepted responsibility.

2. Where a dead human body is under the care of a licensed funeral establishment which has accepted responsibility for it, and said body is to be cremated, said funeral establishment shall also obtain written authorization for cremation of said body from the medical examiner, in addition to the normally-required physician certifications, prior to cremation of said body.

(d) All arrangements for a funeral, including obtaining any required permissions or authorizations, must be made by properly registered funeral directors.

(e) For purposes of 239 CMR 3.11(2)(a) through (d) all identifications, authorizations and permissions shall be obtained first from the decedent's next of kin, in the order of priority specified for anatomical gifts in M.G.L. c. 113, § 8. If none of the next of kin are available, said identifications, authorizations or permissions may then be obtained from the duly authorized legal representative of the deceased, the individual designated as the health care proxy for the deceased pursuant to M.G.L. c. 201D, or the individual possessing a power of attorney for health care executed by the decedent.

(3) Refreshments. No individual registered with the Board, or other agent or employee of any licensed funeral establishment, shall provide, handle or serve any food or liquid refreshments in connection with any burial or funeral. However, funeral establishments may serve non-alcoholic beverages in areas apart from where dead human bodies are displayed so long as those refreshments do not interfere with public health or are otherwise prohibited by law.

(4) Disposition of Cremated Human Remains. Upon receipt of any cremated human remains, the licensed funeral establishment receiving such cremated remains shall contact the next of kin or duly authorized representative of the decedent who made the cremation arrangements. If, after a period of at least ten months from the date of cremation, the cremated remains of a deceased person have not been claimed by the next of kin or the duly authorized representative of the decedent, the licensed funeral establishment shall send written notice, by certified mail, return receipt requested, to the next of kin or duly authorized representative of the decedent at their last known address as shown in the records of the funeral establishment. If, after an additional period of two months from the date on which that notice was mailed, the cremated remains still have not been claimed, the funeral establishment may dispose of the cremated remains as provided in M.G.L. c. 114, § 43M. The funeral establishment shall maintain a permanent written record of this final disposition.

3.12: Required Precautions Against Bloodborne and Other Pathogens

(1) For purposes of 239 CMR 3.12, the following terms shall have the following meanings:

Blood - means human blood, human blood components, and products made from human blood.

3.12: continued

Bloodborne Pathogens - means pathogenic microorganisms that are present in human blood and can cause disease in humans. These pathogens include, but are not limited to, hepatitis B virus (HBV) and human immunodeficiency virus (HIV).

Contaminated - means the presence or the reasonably anticipated presence of blood or other potentially infectious materials on an item or surface.

Contaminated Laundry - means laundry which has been soiled with blood or other potentially infectious materials.

Occupational Exposure - means actual or reasonably anticipated skin, eye, mucous membrane or parenteral contact with blood or other potentially infectious materials which results or may result from the performance of an employee's duties.

Other Potentially Infectious Materials - means:

(a) The following human body fluids: semen, vaginal secretions, cerebrospinal fluid, synovial fluid, pleural fluid, pericardial fluid, peritoneal fluid, amniotic fluid, saliva, urine, feces, any body fluid that is visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids;

(b) Any unfixed tissue or organ (other than intact skin) from a human (living or dead); and

(c) HIV-containing cell or tissue cultures, organ cultures, and HIV- or HBV-containing culture medium or other solutions, and blood, organs, or other tissues from experimental animals infected with HIV or HBV.

Personal Protective Equipment - means specialized clothing or equipment worn by an employee for protection against a hazard. General work clothes not intended to function as protection against a hazard are not considered to be personal protective equipment.

Remove - means the moving of a dead human body from a home, hospital, or other place of death to a licensed funeral establishment for the purpose of preparing it for burial or cremation.

Ship or Shipment - means to convey a dead human body by train, boat, airplane, express or motor freight or other means of transportation either within, into or out of Massachusetts after said body has been prepared for burial or cremation.

Source Individual - means any individual, living or dead, whose blood or other potentially infectious materials may be a source of occupational exposure to the employee. Examples include, but are not limited to, hospital or clinic patients, clients in institutions for the developmentally disabled, trauma victims, clients of drug and alcohol treatment facilities, residents of hospices and nursing homes, human remains, and individuals who donate or sell blood or blood components.

Sterilize - means the use of a physical or chemical procedure to destroy all microbial life including highly resistant bacterial endospores.

Transport - means to convey a dead human body in a closed hearse or other appropriately registered vehicle used exclusively for the purpose of transporting dead human bodies and/or funeral equipment, either within, into or out of Massachusetts for any purpose other than that referred to in 239 CMR 3.12: Remove or 239 CMR 3.12: Ship;

Universal Precautions - means an approach to infection control in which all human blood and certain human body fluids are to be treated as if known to be infectious.

(2) As part of their function of being "health care responsible", every embalmer or funeral director shall adopt all proper means to safeguard the public health, including but not limited to the use of "universal precautions" during the embalming or preparation of a body, as set forth in 239 CMR 3.12.

3.12: continued

(3) Every person, while engaged in removal of a dead human body from the place of death to a licensed funeral establishment, shall be provided with and shall use the following personal protective clothing and equipment to protect against exposure to bloodborne pathogens:

(a) Disposable OSHA approved gloves shall be worn for barrier protection against contact with blood or other potentially infectious materials. Non-disposable autopsy, kevlar or rubber gloves shall be worn for additional protection if warranted. Non-disposable gloves shall be cleaned and carefully inspected for punctures, tears or other damage after each use. Damaged gloves, whether disposable or non-disposable, shall be replaced immediately. Other soiled clothing shall be removed before the removal of gloves. Gloves shall be carefully removed to avoid skin contact with the exterior of the gloves; and

(b) The body being removed shall be enclosed in a body bag or other suitable, sealed container which will prevent leakage or escape of blood or other potentially infectious materials during removal from the place of death to the licensed funeral establishment accepting responsibility for the care and preparation of said body.

(4) Every person, while engaged in actually preparing a dead human body for burial or cremation, shall be provided with and shall use the following personal protective clothing and equipment to protect against exposure to bloodborne pathogens:

(a) Disposable OSHA approved gloves shall be worn for barrier protection against contact with blood or other potentially infectious materials. Other soiled clothing or equipment shall be removed before the removal of gloves. Gloves shall be carefully removed to avoid skin contact with the exterior of the gloves.

(b) Non-disposable autopsy, kevlar or rubber gloves shall be worn for additional protection if warranted. If non-disposable gloves are used, they shall be cleaned and carefully inspected for punctures, tears or other damage after each use. Damaged gloves shall be replaced immediately. Other soiled clothing or equipment shall be removed before the removal of gloves. Gloves shall be carefully removed to avoid skin contact with the exterior of the gloves.

(c) Disposable face masks shall be worn for barrier protection against sprays of blood or other potentially infectious materials to the mouth or nose. Soiled masks shall be replaced immediately.

(d) Goggles shall be worn for barrier protection against sprays of blood or other potentially infectious materials to the eyes and for vapor protection against exposure to formaldehyde.

(e) Face shields shall be worn for barrier protection against sprays of blood or other potentially infectious materials to the face.

(f) Gowns which are impervious to moisture, are washable or disposable, and are long-sleeved shall be worn for barrier protection against skin contact with chemicals, blood or other potentially infectious materials. Soiled gowns shall be replaced immediately.

(g) Disposable head and shoe covers shall be worn for barrier protection against blood or other potentially infectious materials.

(5) All instruments, appliances and equipment used in the preparation of a dead human body shall be used and maintained in a manner which prevents, insofar as is reasonably possible, conversion of blood or other potentially infectious bodily fluids or materials into aerosols or airborne particles.

(6) Every funeral establishment shall ensure proper disposal of personal protective clothing and equipment. Disposable items contaminated with blood or other potentially infectious materials shall be placed immediately in an appropriately labeled disposal container and removed in accordance with applicable federal, state and local laws and regulations governing hazardous waste disposal. Nondisposable items contaminated with blood or other potentially infectious materials shall be placed immediately in an appropriately labeled laundry container.

3.12: continued

(7) No sheets or linens which have come in contact with a dead human body shall be re-used unless they have first been thoroughly laundered and disinfected. No other materials or supplies of any kind which have come in contact with a dead human body shall be used more than once. Contaminated laundry shall be handled as little as possible with a minimum of agitation, shall be bagged or containerized at the location where it was used, and shall not be sorted or rinsed at the location of use. Contaminated laundry shall be placed and transported in bags or containers which are labeled or color-coded in accordance with the applicable requirements of the United States Occupational Safety and Health Administration.

(8) All instruments, appliances and equipment used in the preparation of a dead human body shall be thoroughly cleansed and sterilized in accordance with all applicable state and federal laws and regulations, including but not limited to all applicable regulations of the United States Occupational Safety and Health Administration and the Massachusetts Department of Public Health, immediately at the conclusion of each individual case.

(9) Each preparation room in a funeral establishment shall be equipped with proper and convenient receptacles for refuse, bandages, cotton and other waste materials and supplies, and all such refuse, bandages, cotton and other waste materials shall be disposed of in accordance with all applicable federal, state and local laws governing disposal of hazardous waste.

(10) Whenever a dead human body is transported within, into or out of Massachusetts prior to being embalmed or otherwise prepared for burial or cremation, all persons engaged in the transportation of said body or who may come into physical contact with that body during transportation shall follow the precautions required by 239 CMR 3.12(3).

(11) Whenever a dead human body is transported or shipped within, into or out of Massachusetts after being embalmed or otherwise prepared for burial or cremation, the use of disposable gloves shall be required only for persons who come into actual physical contact with the body itself. Said body shall be transported or shipped in a sealed casket, body bag or other appropriate sealed container which will prevent leakage or escape of blood or other potentially infectious materials during such shipment or transportation.

(12) Notwithstanding the provisions of 239 CMR 3.12(1) through (11), where a body is dead of a disease which has been identified by the Massachusetts Department of Public Health or the Center for Disease Control as one which requires precautions above and beyond those required by 239 CMR 3.12(1) through (11), a licensed funeral establishment and its agents and employees shall follow such additional precautions as may be required or recommended by the Center for Disease Control with respect to said body.

(13) In accordance with the regulations of the United States Occupational Safety and Health Administration (29 CFR 1910.1030), every embalmer or funeral director shall inform all workers performing tasks in and for any funeral establishment, including any trade embalmers or other workers who are not directly employed by that establishment, about bloodborne pathogen exposure risks associated with specific tasks, how to protect themselves and others from exposure, and the actions to be taken in the event of an exposure incident.

3.13: Code of Conduct and Professional Ethics

(1) No person who is registered with the Board, nor any person who holds an ownership interest in or is employed by any funeral establishment licensed by the Board, shall engage in, or hold any ownership interest in, any other business which is related to the disposition of human remains, including but not limited to any cemetery; crematorium; retail or wholesale casket, urn or vault sales or rental enterprise; monument sales enterprise; or other similar business.

(2) All functions or services which fall within the scope of 239 CMR 3.01 must be provided by or through one or more funeral establishments.

3.13: continued

(3) No person who is registered with the Board, nor any person who holds an ownership interest in or is employed by a funeral establishment licensed by the Board, shall establish, maintain, own or operate any corporation, partnership, limited liability company, limited liability partnership, society, association or other business entity, however named, for the purpose of referring members of the general public to licensed funeral establishments in which he or she holds an ownership interest or is employed.

(4) No person who is registered with the Board, nor any person who holds an ownership interest in or is employed by a funeral establishment licensed by the Board, shall make or cause to be made any representation which indicates that an organization or other entity which performs any function or service which falls within the scope of 239 CMR 3.01 is a society, fund, trust or other not-for-profit organization or entity unless such organization or entity is, in fact, a not-for-profit organization or entity.

(5) A person who is registered with the Board, or who holds an ownership interest in or is employed by any funeral establishment licensed by the Board, shall not, either directly or through any other person acting with his or her express or implied knowledge or consent:

(a) Solicit for human remains (except through general advertising), or give anything of value to anyone who solicits or refers any business to him or her or to the licensed funeral establishment in which he or she holds an ownership interest or is employed; or

(b) Solicit or accept anything of value in exchange for recommending, referring any person to, or employing any business or service related to the disposition of human remains.

(6) A person who is registered with the Board, or who holds an ownership interest in or is employed by any funeral establishment licensed by the Board, shall not, either directly or through another person acting with his or her express or implied knowledge or consent, recommend, refer any person to, or employ any business or service related to the disposition of human remains if that business or service is owned, operated or controlled by one or more of his or her relatives. For purposes of 239 CMR 3.13(6), a relative is a person's spouse, parent, grandparent, step-parent, child, grandchild, step-child, brother, sister, half-brother, half-sister, son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, sister-in-law, niece, nephew, aunt or uncle.

(7) A person who is registered with the Board, or who holds an ownership interest in or is employed by any funeral establishment licensed by the Board, shall not disclose confidential or private information, such as causes of death, financial information, or other such personal information about a client or any member of any household or family which he or she serves, comment on the condition of any dead human body entrusted to his or her care, or engage in any other conduct adverse to the interests of that client based on information obtained in confidence. Notwithstanding 239 CMR 3.13(1) through (6), 239 CMR 3.13(7) shall not be interpreted to bar cooperation with a Board investigation or from making other disclosures as required by law or for purposes of insurance and debt collection activities.

(8) No person who is registered with the Board, nor any person who holds an ownership interest in or is employed by any funeral establishment licensed by the Board, shall engage in any unfair or deceptive business practice, misrepresent merchandise in any manner, deceptively alter merchandise labels, or knowingly attempt to induce any person to spend more money on funeral arrangements than is commensurate with the means of the person liable for such expense.

(9) No person who is registered with the Board, nor any person who holds an ownership interest in or is employed by any funeral establishment licensed by the Board, shall engage in any false, deceptive or misleading advertising or marketing practices.

(10) No person who is registered with the Board, nor any person who holds an ownership interest in or is employed by any funeral establishment licensed by the Board, shall:

(a) fail or refuse to give a general price list containing all information required by 15 CFR Part 453 to any person who requests one in person; or

3.13: continued

(b) fail or refuse to give out accurate information from that general price list, and any other readily available information requested, to any person who contacts that person or funeral establishment by telephone, to the extent required by 15 CFR Part 453.

(11) No person who is registered with the Board as a funeral director, or who is employed in a funeral establishment licensed by the Board, shall fail or refuse to give an itemized written statement of funeral costs to any person making funeral arrangements or arranging for the shipment, transportation or other disposition of a deceased person, in accordance with the requirements of M.G.L. c. 112, § 84B.

(12) No person who is registered with the Board, nor any person who holds an ownership interest in or is employed by any funeral establishment licensed by the Board, shall discriminate in any way against employees or present or prospective customers on the basis of race, color, religious creed, national origin, sex, sexual orientation, age, ancestry, marital status, status as a veteran or member of the armed forces, blindness, hearing impairment, or any physical or mental disability with respect to terms or conditions of employment or the availability, provision or performance of any function or service.

(13) No person who is registered with the Board, nor any person who holds an ownership interest in or is employed by any funeral establishment licensed by the Board, shall provide or offer to provide grief or bereavement counseling services unless:

(a) The person actually providing such grief or bereavement counseling services is registered by the Board as a funeral director; or

(b) The person actually providing such grief or bereavement counseling services is an independent contractor providing such services through an arms-length contractual agreement with one or more licensed funeral establishments, and is duly licensed by the Commonwealth as a psychiatrist, clinical psychologist, social worker, psychiatric nurse mental health specialist, or allied mental health professional.

(14) No person who is registered with the Board, nor any person who holds an ownership interest in or is employed by any funeral establishment licensed by the Board, shall solicit, receive or agree to receive any fee, monetary compensation or other valuable consideration in exchange for referring a customer or member of a deceased person's family to any person who provides grief and bereavement counseling services.

(15) Persons registered with the Board, and persons who hold an ownership interest in or are employed by any funeral establishment licensed by the Board, shall be fair with present or prospective customers with respect to quality of merchandise, freedom of choice, quality of service, and reasonableness of price, and shall not misrepresent any material fact with respect to such matters.

(16) Persons registered with the Board, and persons who hold an ownership interest in or are employed by any funeral establishment licensed by the Board, shall be fair with competitors; shall respect contractual arrangements which those competitors have made with customers; shall act equitably in forwarding or transferring cases; shall respect customary or contractual arrangements with employees of such competitors; and shall refrain from disparaging or defaming competitors with respect to price, service, merchandise or professional reputation.

(17) Persons registered with the Board, and persons who hold an ownership interest in any funeral establishment licensed by the Board, shall provide safe and healthful working conditions for all employees; and shall comply with 239 CMR 3.00 through 5.00, and M.G.L. c. 112, §§ 61 through 65A, 82 through 87.

(18) No person registered with the Board, nor any person who holds an ownership interest in or is employed by any funeral establishment licensed by the Board, shall engage in, authorize, or aid or abet fraud, deceit, misrepresentation of any material fact, provision of any false or forged evidence, or bribery.

3.13: continued

(19) The Board may take disciplinary action against any person registered with the Board who has been subjected to disciplinary action or denial of licensure by another jurisdiction.

(20) The Board may take disciplinary action against any person registered with the Board who has been convicted of, or who has pleaded guilty or no lo contendere to, any criminal offense.

(21) Violation of any provision of 239 CMR 3.14, any other provision of 239 CMR 3.00 through 5.00, any provision of M.G.L. c. 112, §§ 61 through 65A or 82 through 87 by any person registered with the Board shall be grounds for disciplinary action by the Board.

(22) The Type 3 Funeral Director and Embalmer who serves as the chief executive officer or chief operating officer of any funeral establishment licensed by the Board shall be responsible for any and all acts or omissions of any person who holds an ownership interest in, or is employed by, that funeral establishment, and may be disciplined by the Board for any such acts or omissions which constitute violations of 239 CMR 3.00 through 5.00, and M.G.L. c. 112, §§ 61 through 65A or 82 through 87.

(23) The Board may also, after hearing, suspend, revoke, or take other disciplinary action against, the funeral establishment certificate of any funeral establishment licensed by the Board for any acts or omissions of any person who holds an ownership interest in, or is employed by, that funeral establishment if such acts or omissions constitute violations of 239 CMR 3.00 through 5.00, and M.G.L. c. 112, §§ 61 through 65A, 82 through 87.

(24) As described in M.G.L. c. 112, § 84, the Board may take disciplinary action against any person registered with the Board who engages in unprofessional conduct. Unprofessional conduct shall include, but not be limited to, failing to cooperate with a Board investigation, practicing or offering to practice beyond the scope of the Board issued license, accepting and performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform, and engaging in any course of conduct which constitutes a failure to conform to generally accepted standard(s) of professional conduct in the funeral industry.

(25) It shall be deemed outside the scope of registration and/or unregistered practice for an individual not holding a funeral director registration to register a hearse with the Registry of Motor Vehicles. 239 CMR 3.13(25) shall not apply to non-funeral businesses that register hearses for the sole purpose of leasing the vehicles to properly licensed funeral establishments.

3.14: Price Disclosure to Consumer

A licensed funeral establishment, and/or its agents or employees, shall give, or cause to be given to the person or persons making funeral arrangements, or otherwise arranging for shipment, transportation or other disposition of a deceased person, at the time such arrangements are completed or prior to the time of rendering the service, including the selected merchandise, a written statement showing to the extent then known:

(a) The price of the merchandise and service that the person or persons making such arrangements have selected and what basically is included therein.

(b) The price of each of the supplemental items of service and/or merchandise agreed upon by the parties involved.

(c) The estimated amount involved for each of the items for which the licensed funeral establishment will advance monies as an accommodation to the person or persons making such funeral arrangements.

(d) No licensed funeral establishment in the Commonwealth of Massachusetts shall bill or cause to be billed, any item that is referred to as a "Cash Advanced" item unless the net amount paid for such item or items by the funeral service item is the same amount as is billed the licensed funeral establishment.

3.15: Advisory Ruling

Any interested person or his or her attorney may at any time request an advisory ruling with respect to the applicability to any person, property or factual situation of any statute or regulation enforced or administered by the Board. The request shall be addressed to the Board and sent to the secretary by certified mail or delivered in person during normal business hours. All requests shall be signed by the person making it or his or her attorney, contain his or her address or the address of his or her attorney, and state clearly and concisely the substance or nature of the request. The request may be accompanied by any supporting data, views or arguments. Upon receipt of the request, the Board shall consider it and render its opinion in writing. The Board may at any time rescind an advisory ruling. When an advisory ruling is rendered, a copy of the ruling shall be sent to the person requesting it or his or her attorney.

3.16: Corporations, LLC's, LLP's, and Other Entities

(1) A corporation, LLC, LLP, or other such entities may engage in the profession and business of embalming and funeral directing only if:

(a) A controlling interest in that entity is held by one or more individuals holding a Type 3 Funeral Director and Embalmer license. This shall be determined based on the distribution of authorized stock or other such evidence of ownership;

(b) The business of that entity is under the direction and control of a Type 3 Funeral Director and Embalmer, who shall be held responsible for ensuring that the entity complies with 239 CMR 3.00 through 5.00, and M.G.L. c. 112, §§ 61 through 65A, 82 through 87;

(c) The entity meets the professional liability insurance requirements set forth in 239 CMR 3.17; and

(d) The entity does not hold an ownership interest in, or engage in, any business other than the profession and business of embalming and funeral directing as defined in 239 CMR 3.01.

(2) Changes in the controlling interest held by a Type 3 Funeral Director and Embalmer in a corporation, LLC, LLP, or other such entity operating a funeral establishment which causes the individual(s) holding the controlling interest to change shall be construed as a change in ownership in the funeral establishment itself as described in 239 CMR 3.04 and 3.06.

3.17: Required Insurance and Capital Program

(1) A funeral establishment which engages in the profession and business of embalming and funeral directing in Massachusetts shall maintain in good standing professional liability insurance which meets the following minimum standards:

(a) The insurance shall cover negligence, wrongful acts, and errors and omissions;

(b) The insurance shall be in an amount of at least $50,000, plus the product of $15,000 multiplied by the number of owners and employees of the funeral establishment who are Type 3 Funeral Directors and Embalmers, but not in excess of $500,000 in the aggregate;

(c) The requirements of 239 CMR 3.17(1) shall be considered satisfied if the funeral establishment maintains insurance sufficient to provide coverage at a level of at least $300,000 for each claim with an aggregate top limit of liability for all claims during any one year of at least $1,000,000; and

(d) Such insurance policies may contain reasonable provisions with respect to policy periods, territory, claims, conditions and other usual matters.

(2) A funeral establishment which engages in the profession and business of embalming and funeral directing in Massachusetts is not required to maintain the insurance required by 239 CMR 3.17 if:

(a) That funeral establishment maintains a designated and segregated capital fund equal to the amount of insurance required by 239 CMR 3.17(2); and

(b) Such funds are specifically designated and segregated for the satisfaction of judgments against the funeral establishment and/or its owners, based on negligence, wrongful acts, or errors and omissions, by means of:

1. Deposit in trust, or in bank escrow, of such funds in the form of cash, bank certificates of deposit, or United States Treasury obligations; or
2. A bank letter of credit or insurance company bond.

3.17: continued

(3) Upon any cancellation or other interruption in the insurance coverage required by 239 CMR 3.17, or any failure to maintain the designated and segregated capital required by 239 CMR 3.17 shall immediately cease engaging in the profession and business of embalming and funeral directing until such time as the funeral establishment is in compliance with 239 CMR 3.17.

(4) A funeral establishment shall notify the Board in writing, within five business days, if the insurance coverage required by 239 CMR 3.17 is cancelled or otherwise interrupted, or if the designated and segregated capital falls below the amount required. Failure to provide such notice to the Board shall subject the funeral establishment and its related Type 3 Funeral Directors and Embalmers, to disciplinary action by the Board pursuant to M.G.L. c. 112, § 84(j).

(5) A funeral establishment may be required to provide verification of compliance with 239 CMR 3.17, satisfactory to the Board, at the time it applies for a new funeral establishment certificate, or at any other time upon request by the Board.

3.18: Employment of Registered Funeral Home Assistants

(1) A licensed funeral establishment may employ registered Funeral Home Assistants provided that all of the following conditions are met:

(a) Each registered Funeral Home Assistant so employed is duly registered with the Board pursuant to 239 CMR 3.02;

(b) Each registered Funeral Home Assistant so employed is registered to a duly registered Type 3 Funeral Director employed by the same entity which employs that Funeral Home Assistant. The registered Funeral Home Assistant shall work at all times under the instruction and supervision of that funeral director, who shall be held responsible for all acts or omissions of that registered Funeral Home Assistant which occur while that person is acting within the scope of said employment;

(c) Each registered Funeral Home Assistant so employed complies with any and all applicable requirements of 239 CMR 3.00 through 5.00 and M.G.L. c. 112, §§ 61 through 65A, 82 through 87;

(d) The entity which employs a registered Funeral Home Assistant shall promptly inform the Board, in writing, of any change in the identity of the Type 3 Funeral Director to whom that licensed Funeral Home Assistant is registered, and of any change in the name and address of the licensed funeral establishment(s) in which each registered Funeral Home Assistant works;

(e) If there is a change in the employment status of any such registered Funeral Home Assistant, the registered Funeral Home Assistant as well as the Type 3 Funeral Director and Embalmer who employed that registered Funeral Home Assistant must promptly notify the Board in writing;

(f) The address of the license for a registered Funeral Home Assistant shall be the licensed funeral establishment where the registered Funeral Home Assistant is employed.

(g) Upon termination of employment, a Funeral Home Assistant registration shall become null and void, a new registration must be sought for new employment.

(2) Upon the request of the Board, or a duly authorized representative thereof, a licensed funeral establishment shall furnish to the Board satisfactory written proof of employment for any registered Funeral Home Assistant employed by said funeral establishment and registered under 239 CMR 3.18.

(3) For purposes of upgrading to a funeral director's registration, a registered Funeral Home Assistant shall not be deemed an Apprentice Embalmer and shall not be granted credit for a higher level registration based on that experience without special board approval.

(4) Scope of Practice of Registered Funeral Home Assistants.

(a) Funeral Home Assistants may, while under the personal supervision of a registered Type 3 Funeral Director (that Type 3 Funeral Director and Embalmer may delegate such supervision to an employed Type 6 Funeral Director and Embalmer):

3.18: continued

1. perform the removal or transfer of a dead human body in a vehicle registered as a hearse after requisite permission for such a removal has been obtained by the supervisor (Type 3 or Type 6) without the presence of said supervisor so long as said supervisor has personally accompanied the first 20 removals/transfers performed during the course of their employment;
2. assist in dressing, casketing, and general handling of human remains; and
3. assist in all other funeral related tasks otherwise not requiring a license/registration.

(b) Funeral Home Assistants may not:
1. participate in embalming;
2. arrange or direct any funeral, memorial, or cremation service;
3. arrange, handle, or have any other duties regarding pre-need funds.

3.19: Advertisements

(1) For purposes of 239 CMR 3.00, advertising includes all marketing or public relations materials including but not limited to all print or electronic media advertisements, letters, signs, stationery, *etc*. used to advertise or promote the availability of that function or service in a manner reasonably calculated to attract the attention of the general public.

(2) Business cards may be used by any registrant so long as they include the name of a licensed funeral establishment and includes their registration type.

(3) A Type 3 or Type 6 Funeral Director may properly advertise the services offered so long as said advertising is not false, deceptive, misleading or unfair as prohibited by 239 CMR 3.14(10). Advertising not meeting this requirement includes, but is not limited to:
(a) Advertisements for a service that cannot be legally provided by a funeral establishment;
(b) The services of an apprentice embalmer or registered Funeral Home Assistant;
(c) Advertisements referring to unregistered individuals or unlicensed funeral establishments. However, unregistered owners may utilize their names on signs as required by 239 CMR 3.04(2); and
(d) Services provided by a Type 6 Funeral Director and Embalmer that do not fall within the employment of said registrant at a licensed funeral establishment.

(4) All advertising for a function or service that must be provided through a licensed funeral establishment must include the name of a validly licensed funeral establishment.

REGULATORY AUTHORITY

239 CMR 3.00: M.G.L. c. 112, § 85.

NON-TEXT PAGE