

239 CMR: BOARD OF REGISTRATION IN EMBALMING
AND FUNERAL DIRECTING

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

Section

- 3.01: Definitions
- 3.02: Registration Requirements and Examinations
- 3.03: Employment of Apprentice Embalmers
- 3.04: Ownership of Licensed Funeral Establishments; Disclosure of Ownership
- 3.05: Inspections; Powers and Duties of Investigators
- 3.06: Establishments
- 3.07: Preparation Room
- 3.08: Office of the Chief Medical Examiner
- 3.09: Control Over Arrangements and Disposition of Human Remains
- 3.10: Removal, Preparation and Transportation - Other General Requirements
- 3.11: Conduct of Funerals
- 3.12: Required Precautions Against Bloodborne and Other Pathogens
- 3.13: Code of Conduct and Professional Ethics
- 3.14: Price Disclosure to Consumer
- 3.15: Advisory Ruling
- 3.16: Corporations, LLCs, LLPs, and Other Entities
- 3.17: Required Insurance and Capital Program
- 3.18: Employment of Funeral Home Assistants
- 3.19: Advertising
- 3.20: Regulation Review

3.01: Definitions

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

Advertising. The use of any marketing or public relations materials including but not limited to all print or electronic media, letters, signs, business cards, and stationery to promote the availability of services of a registrant of the Board or Licensed Funeral Establishment.

Apprentice Embalmer. Any individual engaged in learning the practice of embalming and funeral directing who is duly registered by the Board and who is registered to a Licensed Funeral Establishment and working under the instruction and Personal Supervision of a Type 3 or a Type 6 employed by the Type 3; provided that no individual shall begin to serve as an Apprentice Embalmer unless he or she 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 unless given special Board approval.

Board. The Massachusetts Board of Registration in Embalming and Funeral Directing established pursuant to M.G.L. c. 13, § 29.

Embalmer. Any individual engaged, or holding himself or herself out as engaged, in the Profession and Business of Embalming and Funeral Directing, whether on his or her own behalf or in the employ of a Type 3.

Funeral Director. Any individual engaged, or holding himself or herself out as engaged, in the Profession and Business of Embalming and Funeral Directing.

Funeral Home Assistant. Any individual duly registered as a Funeral Home Assistant by the Board who is registered to and working under the Personal Supervision of a Type 3 (that Type 3 may delegate such supervision to an employed Type 6); provided that no individual shall begin to serve as a Funeral Home Assistant unless he or she has been registered as such by the Board pursuant to 239 CMR 3.02. A Funeral Home Assistant may perform only the services outlined in 239 CMR 3.18.

239 CMR: BOARD OF REGISTRATION IN EMBALMING
AND FUNERAL DIRECTING

3.01: continued

Licensed Funeral Establishment. A fixed place or establishment privately 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, § 83 and which is located, constructed, equipped and operated for the purpose of providing sanitary handling, preparation, disposition and care of dead human bodies.

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

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

Person. 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. 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 have same room supervision only for the first 25 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) the 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 acknowledgement 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; and

239 CMR: BOARD OF REGISTRATION IN EMBALMING
AND FUNERAL DIRECTING

3.01: continued

(t) The Profession and Business of Embalming and Funeral Directing shall also include engaging in such other activities, including Advertising, as are considered to be a part of the business, practice, science or profession of embalming or funeral directing, as commonly practiced.

Type 3. A Funeral Director and Embalmer who is duly registered as a Type 3 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 meets the qualifications outlined in 239 CMR 3.02(3)(a).

Type 6. A Funeral Director and Embalmer who is duly registered as a Type 6 by the Board pursuant to M.G.L. c. 112, § 83, who meets the qualifications outlined in 239 CMR 3.02(2) and who has been sworn in by the Board. A Type 6 may practice embalming, but may otherwise practice funeral directing only when holding a license issued by a city or town pursuant to M.G.L. c. 114, § 49 and when working as an employee in a Licensed Funeral Establishment. A Type 6 who performs funeral services when not so employed shall be considered acting outside the scope of his or her registration and shall face disciplinary action. Said registrants may not sign death certificates and may utilize only stationery, or other funeral related contracts or documents on behalf of his or her employing Licensed Funeral Establishment and Type 3. Type 6s may conduct pre-need funeral arrangements only pursuant to 239 CMR 3.04(5).

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 and pay any applicable fees. Said application shall contain the following:

- (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 (at least 30 hours per week, up to half of which may be on call hours) by only one business entity which operates one or more Licensed Funeral Establishments in Massachusetts;
- (d) the name and address of the business entity which employs or will employ the applicant;
- (e) the name(s) and registration number(s) of the Type 3(s) to whom the Licensed Funeral Establishment's certificate was issued; and
- (f) satisfactory written proof that the applicant has 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. Any individual desiring to become a Type 6 shall make application to the Board on a form provided for that purpose and pay any applicable fees. Said application shall contain the following:

- (a) satisfactory written proof that the applicant is 18 years of age or older;
- (b) satisfactory written proof that the applicant is of good moral character;
- (c) satisfactory written proof that the applicant holds a high school diploma or its equivalent;
- (d) satisfactory written proof that the applicant has served as an Apprentice Embalmer for a period of not less than two years under the instruction and Personal Supervision of a Type 3;
- (e) satisfactory written proof that 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;
- (f) satisfactory written proof that the applicant has attended at least 25 funeral or pre-need conferences with consumers;
- (g) satisfactory written proof that the applicant has achieved an associate's 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;
- (h) satisfactory written proof that the applicant has achieved a passing grade on the examination prescribed by the Board; and

239 CMR: BOARD OF REGISTRATION IN EMBALMING
AND FUNERAL DIRECTING

3.02: continued

(i) a certification that said applicant will act as a Funeral Director only in the employ of a Type 3 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) Registration as a Type 3. Any Type 6 desiring to become a Type 3 shall make application to the Board on a form provided for that purpose and pay any applicable fees. Said application shall contain satisfactory written proof that the applicant holds an ownership interest of at least 10% in the business entity which holds the funeral establishment certificate for, and operates, the Licensed Funeral Establishment to which he or she will be registered. Where such business entity is a corporation, the applicant must show that he or she owns at least 10% of the authorized and issued stock of that corporation. Where the Licensed Funeral Establishment is operated by a partnership, the applicant must show that he or she owns at least a 10% share of that partnership.

(4) Registration as a Funeral Home Assistant. Any individual desiring to become a Funeral Home Assistant shall make application to the Board on a form provided for that purpose and pay any applicable fees. Said application shall contain the following:

- (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 Licensed Funeral Establishments in Massachusetts;
- (d) the name and address of the business entity which employs or will employ the applicant;
- (e) the name and registration number of the Type 3 to whom the applicant will be registered, and who will be responsible for providing supervision of the applicant's activities as Funeral Home Assistant;
- (f) satisfactory written proof that the applicant has completed OSHA training related to biohazards/blood borne pathogens within 30 days prior to applying for the registration; and
- (g) satisfactory written proof that the applicant meets one of the following educational criteria:
 1. holds an associate's degree in mortuary science from a program meeting the accreditation requirements of the American Board of Funeral Service Education;
 2. has 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 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 or education be considered for approval as the equivalent of the education requirements.

(5) Inactive Status Registrations. A Type 3 or Type 6 who does not engage in the Profession and Business of Embalming and Funeral Directing in the Commonwealth may have his or her registration placed on inactive status by requesting such status in writing in a form prescribed by the Board. To maintain an inactive status registration, the Type 3 or Type 6 must annually renew his or her registration under inactive status and complete normally required continuing education. While registered under inactive status, the Type 3 or Type 6 shall no longer be eligible to engage in the Profession and Business of Embalming and Funeral Directing in the Commonwealth. Engaging in the Profession and Business of Embalming and Funeral Directing while registered under inactive status shall constitute unregistered practice under M.G.L. c. 112, § 65(b).

239 CMR: BOARD OF REGISTRATION IN EMBALMING
AND FUNERAL DIRECTING

3.02: continued

(6) Reinstatement of a Lapsed Registration. Pursuant to M.G.L. c. 112, § 84, where a registrant fails or is unable to renew his or her registration within one year of its expiration, the former registrant shall be required to provide satisfactory proof of the completion of continuing education Contact Hours required for each year of lapsed registration status and meet the provisions of M.G.L. c. 112, § 83 relative to original registration in order to reinstate his or her registration which includes payment of applicable fees and examination.

(7) Registration by Endorsement. An individual who holds out of state credentials may be permitted to take the Massachusetts examination without further apprentice requirements upon written petition to the Board showing the following:

- (a) The applicant holds a license/certificate/registration in another state in funeral directing and embalming which is valid and in good standing and is substantially equivalent to the Massachusetts Funeral Director Registration;
- (b) The applicant holds an associate's degree in mortuary sciences; and
- (c) Evidence that the applicant is of good moral character.

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 (at least 30 hours per week, up to half of which may be on call hours) by only one business entity which operates one or more Licensed Funeral Establishments in the Commonwealth of Massachusetts.

(3) Each Apprentice Embalmer so employed is registered to a Licensed Funeral Establishment operated by the business organization which employs that Apprentice Embalmer. The Apprentice Embalmer shall work at all times under the instruction and Personal Supervision of a Type 3 employed by the business organization which operates said Licensed Funeral Establishment and/or a Type 6 employed by the Type 3.

(4) The Type 3(s) to whom the funeral establishment certificate was issued for the Licensed Funeral Establishment under which that Apprentice Embalmer is registered as well as any supervising Type 6(s) 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 M.G.L. c. 112, §§ 61 through 65A, 82 through 87, and 239 CMR;

(6) The business entity which employs an Apprentice Embalmer notifies the Board, in writing, within seven business days 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 business 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.

(8) The total number of Apprentice Embalmers 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 two calendar years.

(9) The address of the license for an Apprentice Embalmer shall be the Licensed Funeral Establishment where the Apprentice Embalmer is employed.

239 CMR: BOARD OF REGISTRATION IN EMBALMING
AND FUNERAL DIRECTING

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 Licensed 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 as an Apprentice Embalmer.

(12) 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 Licensed Funeral Establishment and registered under 239 CMR 3.03.

3.04: Ownership of Licensed Funeral Establishments; Disclosure of Ownership

(1) A business entity may engage in the Profession and Business of Embalming and Funeral only if:

- (a) a controlling interest, reflected by a majority of authorized stock in said entity, is held by one or more Type 3(s);
- (b) the business of that entity is under the direction and control of a Type 3, 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 3.17.

(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 Licensed Funeral Establishment;
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 Licensed Funeral Establishment; and
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, invoices, and all Advertising used by said Licensed Funeral Establishment.

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

(a) Whenever the ownership of a Licensed 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(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. For purposes of changes of ownership, a Type 3 registered to a Licensed Funeral Establishment for ten years or more at the time of a transfer in ownership shall be deemed to be an original owner by the Board.

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

239 CMR: BOARD OF REGISTRATION IN EMBALMING
AND FUNERAL DIRECTING

3.04: continued

(d) A Type 3 and the Licensed Funeral Establishment to which he or she is registered shall notify the Board where said Type 3 no longer maintains at least a 10% ownership interest as required under 239 CMR 3.02. Said notice to the Board shall be made within 30 days of the date in which the Type 3 no longer maintains at least a 10% ownership interest.

(e) At least 30 days prior to a closure or change of ownership, a Licensed Funeral Establishment must submit to the Board a closure or change of ownership form which includes but is not limited to information relative to pre-need accounts and cremated remains held by the Licensed Funeral Establishment. Said form shall be prescribed by the Board.

(f) For purposes of 239 CMR 3.04(3)(a) through (f), should a registered Type 3 pass away, the direct passage of their ownership interest in a funeral establishment to a widow or widower shall not be deemed a change of ownership. However, if said widow or widower does not hold a Funeral Director registration, and no other original owners of the establishment are so registered, the widow/widower must obtain the services of a validly registered Type 3 to continue operating the funeral establishment.

(4) Temporary Absence of a Type 3.

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

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

(c) Notwithstanding any other restrictions in 239 CMR 3.00, the Board may, after a majority vote, allow a Type 6 to fill in for a Type 3 for a period in excess of 90 days for good cause shown.

(5) Pre-need Funeral Arrangements. A Type 6 may conduct pre-need funeral arrangements at any Licensed Funeral Establishment owned by their employer(s) under the following conditions:

(a) the Type 6 has been employed by the Type 3 at the subject Licensed Funeral Establishment for at least 30 days; and

(b) the Type 6 has written authorization from the employing Type 3 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. Notwithstanding this authorization, the employing Type 3 shall remain obligated to review all pre-need contracts entered into by a Type 6.

(6) Closing of a Funeral Establishment.

(a) The Type 3(s) owning a Licensed Funeral Establishment must notify the Board within ten calendar days upon the closure of that funeral establishment.

(b) With regards to pre-need funeral arrangements, a closing Licensed Funeral Establishment must meet the requirements of 239 CMR 4.03(1).

(c) All signage must be removed or covered upon closure of the Licensed Funeral Establishment or cancellation of the establishment registration.

(d) All advertisements for a Licensed Funeral Establishment, including websites, must cease and/or be taken down upon the closure of said establishment.

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 for the purpose of inspecting such records and conducting such investigations as may reasonably be necessary to ensure that that Licensed Funeral Establishment, and its agents or employees, are in compliance with all applicable requirements of M.G.L. c. 112, §§ 61 through 65A, 82 through 87, and 239 CMR.

(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 Type 3 or Type 6 in any Licensed Funeral Establishment.

239 CMR: BOARD OF REGISTRATION IN EMBALMING
AND FUNERAL DIRECTING

3.05: continued

(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 521 CMR: *Architectural Access Board*, M.G.L. c. 112, §§ 61 through 65A, 82 through 87, and 239 CMR;

(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 Licensed 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;

(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 Licensed Funeral Establishment consists of more than one building or more than one lot of land, ensure that said buildings and/or lots shall be adjoining and connecting (239 CMR 3.06(1)(f) shall not apply to any Licensed Funeral Establishment opened prior to December 3, 1943 unless there has been a change of address for said establishment since that date);

(g) where the Licensed Funeral Establishment was established after December 1, 1949, make removals of dead human bodies into the Licensed Funeral Establishment completely concealed from public view; and

(h) meet the insurance requirements of 239 CMR 3.17.

(2) No funeral establishment certificate shall be granted to any Licensed Funeral Establishment unless the owners of said establishment certify, in writing and under the pains and penalties of perjury, that said Licensed Funeral Establishment is in compliance with all applicable requirements of 521 CMR: *Architectural Access Board* 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 this section 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 Licensed Funeral Establishments not meeting the rules and regulations of 521 CMR: *Architectural Access Board* because they are grandfathered under old rules do not need to conform to the newer accessibility rules adopted by 239 CMR 3.00 unless:

(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.

(4) Funeral Establishments that require renovations creating a violation of 239 CMR 3.06 may continue operating if first entering into a written compliance agreement with the Board. Such agreements are fully discretionary on the part of the Board, the ability to grant such an agreement shall not be deemed to grant funeral establishments any right or entitlement to such an agreement.

239 CMR: BOARD OF REGISTRATION IN EMBALMING
AND FUNERAL DIRECTING

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 Licensed Funeral Establishment. Failure to post said placards shall constitute grounds for disciplinary action by the Board.
- (3) Each preparation room in a Licensed 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.
- (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 Licensed 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: Office of the Chief Medical Examiner

- (1) Every Type 3 and Type 6 shall report to the medical examiner all deaths which he or she, as an authorized public official, should investigate pursuant to the reporting requirements in M.G.L. c. 38. 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 therefore shall be injected into the body of any person unless the requirements of M.G.L. c. 38, § 12 are met.

3.09: Control Over Arrangements and Disposition of Human Remains

- (1) Every registrant and Licensed Funeral Establishment shall comply with 239 CMR 3.09(1)(a) through (c) with respect to control over funeral arrangements and disposition of human remains:

239 CMR: BOARD OF REGISTRATION IN EMBALMING
AND FUNERAL DIRECTING

3.09: continued

(a) If a Licensed Funeral Establishment is a party to a pre-need funeral services contract, as defined in 239 CMR 4.01: *Definitions*, 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 Licensed Funeral Establishment is ordered to do so by a court of competent jurisdiction.

(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 License 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 Licensed Funeral Establishment and its agents or employees shall follow the directions of the deceased person's surviving kin, in the following order of priority:

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 person 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.

If there is more than one member of a class, the directions of a majority shall prevail; in the event of a tie, the decision of a court of competent jurisdiction will be necessary. Provided, however, that with respect to receiving authorizations to release a decedent from the Office of the Chief Medical Examiner, the Office of the Chief Medical Examiner may require different or additional signatures for release.

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:

Remove or Removal. 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. 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.

Transport. 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).

239 CMR: BOARD OF REGISTRATION IN EMBALMING
AND FUNERAL DIRECTING

3.10: continued

- (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, a medical examiner or another person duly authorized by law, is in the possession of the Type 3. 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.
- (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 Licensed 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 Type 3, Type 6, or Apprentice Embalmer. Said registrant 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 Type 3, Type 6, or Apprentice Embalmer, and shall also be maintained at a temperature between 34°F and 39°F. If the body cannot be maintained at these temperatures, the body must be embalmed unless directed by the client not to in writing. In cases of advanced decomposition where public health may be an issue, a local board of health may direct a funeral director to embalm a body notwithstanding the direction of a client.
- (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 Type 3, Type 6, or Apprentice Embalmer and placed in a receiving vault for not over 30 days shall not be subject to the requirements of 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;

239 CMR: BOARD OF REGISTRATION IN EMBALMING
AND FUNERAL DIRECTING

3.10: continued

- (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 Licensed 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 Licensed 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 or Type 6.
- (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 Licensed 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 Licensed 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. Licensed Funeral Establishments must develop and utilize written disclosure/authorization forms to be obtained by Type 3s and Type 6s 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 Licensed Funeral Establishment shall also obtain written authorization for cremation of said body from the medical examiner or similarly authorized person, 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 Type 3s or Type 6s, provided, however, that Apprentice Embalmers and Funeral Home Assistants may obtain removal and embalming authorization forms.
 - (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 under 239 CMR 3.09(1)(c). 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.
 - (a) No alcoholic beverages may be served in a Licensed Funeral Establishment.
 - (b) No individual registered with the Board, or other agent or employee of any Licensed Funeral Establishment, shall prepare any food or beverages to be served in connection with any burial or funeral.
 - (c) No individual registered with the Board, or other agent or employee of any Licensed Funeral Establishment, shall serve any food or beverages in connection with any burial or funeral unless all of the following conditions are met:

239 CMR: BOARD OF REGISTRATION IN EMBALMING
AND FUNERAL DIRECTING

3.11: continued

1. any food and beverages served in connection with any burial or funeral must be provided by a third party vendor or supplier meeting the requirements of 105 CMR 590.000: *State Sanitary Code Chapter X – Minimum Sanitation Standards for Food Establishments*;
2. the provision of food and beverages served in connection with any burial or funeral must be treated as a "cash advance item" and no Licensed Funeral Establishment shall bill or cause to be billed, the cost for the food and beverages unless the net amount billed for it by the Licensed Funeral Establishment is the same amount as is billed the Licensed Funeral Establishment by the third party vendor or supplier, this shall not bar Funeral Establishments from directly charging for facility usage and cleaning;
3. there shall be no direct opening between the preparation room and any room where food or beverages are stored or served;
4. food and beverages shall be served in an area separate and apart from where dead human bodies are displayed and in a manner that does not interfere with public health; and
5. the Licensed Funeral Establishment shall be in compliance with all other applicable local, state, and federal laws.

(4) Disposition of Cremated Human Remains. Licensed Funeral Establishments shall dispose of cremated human remains as follows:

- (a) 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.
- (b) The Licensed Funeral Establishment shall deliver such cremated remains only to the next of kin or duly authorized representative of the decedent who made the cremation arrangements and obtain a signed acknowledgment of receipt from said next of kin or duly authorized representative.
- (c) 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 Licensed 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 Licensed Funeral Establishment may dispose of the cremated remains as provided in M.G.L. c. 114, § 43M. The Licensed Funeral Establishment shall maintain a permanent written record of this final disposition.
- (d) All cremated human remains in the possession of a Licensed Funeral Establishment shall be stored on the premises of the Licensed Funeral Establishment until disposition is made in accordance with 239 CMR 3.11(4).

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. Human blood, human blood components, and products made from human blood.

Bloodborne Pathogens. 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. The presence or the reasonably anticipated presence of blood or other potentially infectious materials on an item or surface.

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

Occupational Exposure. 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.

239 CMR: BOARD OF REGISTRATION IN EMBALMING
AND FUNERAL DIRECTING

3.12: continued

Other Potentially Infectious Materials:

- (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. 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. 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. 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. 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. The use of a physical or chemical procedure to destroy all microbial life including highly resistant bacterial endospores.

Transport. 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 the definitions of 239 CMR 3.12: Remove and Ship or Shipment;

Universal Precautions. 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 Type 3 and Type 6 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) 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 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.

(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.

239 CMR: BOARD OF REGISTRATION IN EMBALMING
AND FUNERAL DIRECTING

3.12: continued

(4) Every person, while engaged in actually preparing a dead human body for burial or cremation, shall be provided with and shall use 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 Licensed 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. Non-disposable items contaminated with blood or other potentially infectious materials shall be placed immediately in an appropriately labeled laundry container.

(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 Licensed 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.

239 CMR: BOARD OF REGISTRATION IN EMBALMING
AND FUNERAL DIRECTING

3.12: continued

(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 Type 3 and Type 6 shall inform all workers performing tasks in and for any Licensed Funeral Establishment, including any trade Type 6s 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 Licensed Funeral Establishment, 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; provided, however, that 3.13(1) shall not apply to registrants duly registered with the Board in inactive status pursuant to 239 CMR 3.02(5).

(2) All functions or services which fall within the scope of the Profession and Business of Embalming and Funeral Directing, as defined in 239 CMR 3.01 must be provided by or through one or more Licensed Funeral Establishments.

(3) No person who is registered with the Board, nor any person who holds an ownership interest in or is employed by a Licensed Funeral Establishment, 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 Licensed Funeral Establishment, 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 the "Profession and Business of Embalming and Funeral Directing" as defined in 239 CMR 3.01 is a 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 Licensed Funeral Establishment, shall not, either directly or through any other person acting with his or her express or implied knowledge or consent:

239 CMR: BOARD OF REGISTRATION IN EMBALMING
AND FUNERAL DIRECTING

3.13: continued

- (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 Licensed Funeral Establishment, 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 Licensed Funeral Establishment, 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 the above, 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 Licensed Funeral Establishment, 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 Licensed Funeral Establishment, 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 Licensed Funeral Establishment, shall:

- (a) fail or refuse to give a general price list containing all information required by 16 CFR Part 453 to any person who requests one in person; or
- (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 Licensed Funeral Establishment by telephone, to the extent required by 16 CFR Part 453.

(11) No Type 3 or Type 6 who is employed in a Licensed Funeral Establishment 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 Licensed Funeral Establishment, 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 Licensed Funeral Establishment, shall provide or offer to provide grief or bereavement counseling services unless:

239 CMR: BOARD OF REGISTRATION IN EMBALMING
AND FUNERAL DIRECTING

3.13: continued

- (a) the person actually providing such grief or bereavement counseling services is a Type 3 or Type 6; 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 Licensed Funeral Establishment, 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 Licensed Funeral Establishment, shall be fair with competitors; shall respect contractual arrangements which those competitors have made with consumers; 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 Licensed Funeral Establishment, shall provide safe and healthful working conditions for all employees; and shall comply with M.G.L. c. 112, §§ 61 through 65A, 82 through 87, and 239 CMR.

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

(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, 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(s) to whom a funeral establishment certificate is issued shall be responsible for any and all acts or omissions of any person who holds an ownership interest in, or is employed by, that Licensed Funeral Establishment, and may be disciplined by the Board for any such acts or omissions which constitute violations of 239 CMR, 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 Licensed Funeral Establishment for any acts or omissions of any person who holds an ownership interest in, or is employed by, that Licensed Funeral Establishment if such acts or omissions constitute violations of 239 CMR 3.00, and M.G.L. c. 112, §§ 61 through 65A, 82 through 87.

239 CMR: BOARD OF REGISTRATION IN EMBALMING
AND FUNERAL DIRECTING

3.13: continued

(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 considered unregistered practice for an individual who is not a Type 3 or Type 6 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.

(26) All Type 3s, Type 6s, and Apprentice Embalmers shall maintain complete embalming reports for all embalming performed by him or her. Said reports shall be retained as part of the consumer's record.

3.14: Price Disclosure to Consumer

(1) 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 is included therein;
- (b) the price of each of the supplemental items of service and/or merchandise agreed upon by the parties involved; and
- (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.

(2) 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 billed for such item or items by the Licensed Funeral Establishment is the same amount as is billed the Licensed Funeral Establishment by the third party vendor or supplier.

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. 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, LLCs, LLPs, 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. This shall be determined based on the distribution of authorized stock or other such evidence of ownership;

239 CMR: BOARD OF REGISTRATION IN EMBALMING
AND FUNERAL DIRECTING

3.16: continued

- (b) the business of that entity is under the direction and control of one or more Type 3s , who shall be held responsible for ensuring that that the entity complies with M.G.L. c. 112, §§ 61 through 65A, 82 through 87, and 239 CMR;
- (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 in a corporation, LLC, LLP, or other such entity operating a Licensed Funeral Establishment which causes the individual(s) holding the controlling interest to change shall be construed as a change in ownership in the Licensed Funeral Establishment itself as described in 239 CMR 3.04 and 3.06.

3.17: Required Insurance and Capital Program

(1) A Licensed 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 Licensed Funeral Establishment who are Type 3(s), but does not need to be in excess of \$500,000 in the aggregate.
- (c) The requirements of 239 CMR 3.17(1)(c) shall be considered satisfied if the Licensed 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.
- (d) Such insurance policies may contain reasonable provisions with respect to policy periods, territory, claims, conditions and other usual matters.

(2) A Licensed 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(2) if:

- (a) that Licensed 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 Licensed 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) Upon any cancellation or other interruption in the insurance coverage required by 239 CMR 3.17(3), or any failure to maintain the designated and segregated capital required by 239 CMR 3.17(3) shall immediately cease engaging in the Profession and Business of Embalming and Funeral Directing until such time as the Licensed Funeral Establishment is in compliance with 239 CMR 3.17.

(4) A Licensed Funeral Establishment shall notify the Board in writing, within five business days, if the insurance coverage required by this section 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 Licensed Funeral Establishment and its related Type 3(s), to disciplinary action by the Board pursuant to M.G.L. c. 112, § 84(j).

(5) A Licensed Funeral Establishment may be required to provide verification of compliance with this section, 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.

239 CMR: BOARD OF REGISTRATION IN EMBALMING
AND FUNERAL DIRECTING

3.18: Employment of Funeral Home Assistants

- (1) A Licensed Funeral Establishment may employ Funeral Home Assistants, provided that all of the following conditions are met:
 - (a) Each Funeral Home Assistant so employed is duly registered with the Board pursuant to 239 CMR 3.02.
 - (b) Each Funeral Home Assistant so employed is registered to a Type 3 employed by the same entity which employs that Funeral Home Assistant. The Funeral Home Assistant shall work at all times under the instruction and supervision of that Type 3, who shall be held responsible for all acts or omissions of that Funeral Home Assistant which occur while that person is acting within the scope of said employment.
 - (c) Each Funeral Home Assistant so employed complies with any and all applicable requirements of M.G.L. c. 112, §§ 61 through 65A, 82 through 87, and 239 CMR.
 - (d) The entity which employs a Funeral Home Assistant shall promptly inform the Board, in writing, of any change in the identity of the Type 3 to whom that Funeral Home Assistant is registered, and of any change in the name and address of the Licensed Funeral Establishment(s) in which each Funeral Home Assistant works.
 - (e) If there is a change in the employment status of any such Funeral Home Assistant, the Funeral Home Assistant as well as the Type 3 to whom he or she is registered must notify the Board in writing within seven business days.
 - (f) The address of the license for a Funeral Home Assistant shall be the Licensed Funeral Establishment where the 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 Funeral Home Assistant employed by said Licensed Funeral Establishment and registered under 239 CMR 3.18.

- (3) For purposes of upgrading to a Type 3 or Type 6, a 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 Funeral Home Assistants.
 - (a) Funeral Home Assistants may, while under the supervision of a Type 3 (that Type 3 may delegate such supervision to a Type 6):
 1. perform the removal or transfer of a dead human body in a vehicle registered as a hearse. With permission of a supervisor (Type 3 or Type 6), Funeral Home Assistants may perform removals without the presence of a supervisor so long as a supervisor has personally accompanied the Funeral Home Assistant on the first 20 removals/transfers performed during the course of their licensure;
 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; or
 3. arrange, handle, or have any other duties regarding pre-need funds.

3.19: Advertisements

- (1) 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.

- (2) A Type 3 or Type 6 may properly advertise the services offered so long as said advertising is not false, deceptive, misleading or unfair as prohibited by 239 CMR 3.13(9). Advertising not meeting 239 CMR 3.19(2) includes, but is not limited to:
 - (a) advertisements for a service that cannot be legally provided by a Licensed Funeral Establishment;
 - (b) the listing of services of an Apprentice Embalmer or Funeral Home Assistant;

239 CMR: BOARD OF REGISTRATION IN EMBALMING
AND FUNERAL DIRECTING

3.19: continued

(c) advertisements that state or imply that, with regards to pre-need arrangements, a Type 6, Apprentice Embalmer, or Funeral Home Assistant is a specialist, certified, an expert, or other similar terms.

(d) 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

(e) services provided by a Type 6 that do not fall within the employment of said registrant at a Licensed Funeral Establishment.

(3) All Advertising for a function or service that must be provided through a Licensed Funeral Establishment must include the name of a Licensed Funeral Establishment.

3.20: Regulation Review

The Board shall regularly review its regulations in compliance with M.G.L. c. 30A, § 5A.

REGULATORY AUTHORITY

239 CMR 3.00: M.G.L. c. 112, § 85.