

CHAPTER 36

STATE BOARD OF MORTUARY SCIENCE

Authority

N.J.S.A. 45:7-38.

Source and Effective Date

R.1994 d.523, effective September 19, 1994.
See: 26 N.J.R. 2536(a), 26 N.J.R. 4201(a).

Executive Order No. 66(1978) Expiration Date

Chapter 36, State Board of Mortuary Science, expires on September 19, 1999.

Chapter Historical Note

Chapter 36, State Board of Mortuary Science, was filed and became effective prior to September 1, 1969. Pursuant to Executive Order No. 66(1978), Chapter 36, Subchapters 1 through 8, was readopted as R.1984 d.341, effective July 23, 1984. See: 16 N.J.R. 505(a), 16 N.J.R. 2143(b). Subchapter 9, Prevention of Unfair or Deceptive Acts and Practices, was adopted as R.1984 d.525, effective November 19, 1984. See: 16 N.J.R. 1315(a), 16 N.J.R. 3210(a). Subchapter 7, Embalming Schools, was repealed by R.1985 d.293, effective June 17, 1985. See: 17 N.J.R. 797(a), 17 N.J.R. 1580(a). Pursuant to Executive Order No. 66(1978), Chapter 36 was readopted as R.1989 d.540, effective September 27, 1989. See: 21 N.J.R. 1971(a), 21 N.J.R. 3474(b). A new Subchapter 7, Special Rules of Practice, was adopted as R.1994 d.288, effective June 6, 1994. See: 26 N.J.R. 1302(a), 26 N.J.R. 2293(b).

Pursuant to Executive Order No. 66(1978), Chapter 36 was readopted as R.1994 d.523. See: Source and Effective Date. See, also, section annotations.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. ADMINISTRATION

- 13:36-1.1 Seal of the Board
- 13:36-1.2 (Reserved)
- 13:36-1.3 Board meetings
- 13:36-1.4 Duties of Executive Director
- 13:36-1.5 Inspector's duties
- 13:36-1.6 Fees and charges
- 13:36-1.7 (Reserved)
- 13:36-1.8 Record keeping by practitioner of mortuary science
- 13:36-1.9 Statement of Funeral Goods and Services Selected
- 13:36-1.10 Limited exemption for anatomical associations of a medical school established and operated by the State of New Jersey for the acceptance and disposition of human remains donated pursuant to the Uniform Anatomical Gift Act

SUBCHAPTER 2. INTERNS

- 13:36-2.1 Qualification for intern registration
- 13:36-2.2 Request for application
- 13:36-2.3 Availability of interns
- 13:36-2.4 Intern identification card
- 13:36-2.5 Reporting embalmments and funeral attendance; form
- 13:36-2.6 Credit for embalming body
- 13:36-2.7 Intern qualifications for employment
- 13:36-2.8 Absence from training
- 13:36-2.9 Termination of training
- 13:36-2.10 Return of intern identification card
- 13:36-2.11 Affidavit recommendation form
- 13:36-2.12 Extension of internship

- 13:36-2.13 (Reserved)
- 13:36-2.14 Preceptors' responsibility for training

SUBCHAPTER 3. EXAMINATIONS

- 13:36-3.1 Application for examination
- 13:36-3.2 Waiver of practical training and experience
- 13:36-3.3 Examination procedure
- 13:36-3.4 Examination subjects
- 13:36-3.5 Passing grades
- 13:36-3.6 Examination review procedure
- 13:36-3.7 Practical examination requirements
- 13:36-3.8 (Reserved)

SUBCHAPTER 4. LICENSE AND REGISTRATION
GENERALLY

- 13:36-4.1 License renewals
- 13:36-4.2 Notice of residence address change; corporate structure
- 13:36-4.3 Legal name change
- 13:36-4.4 New installations
- 13:36-4.5 Change of ownership
- 13:36-4.6 Corporation's application for registration of funeral establishment
- 13:36-4.7 Corporate applicant's charter
- 13:36-4.8 Full-time licensed manager
- 13:36-4.9 Participation of unlicensed persons
- 13:36-4.10 Partnership's application for registration of funeral establishment
- 13:36-4.11 Trade names
- 13:36-4.12 Death of licensee or owner
- 13:36-4.13 Use of a registered mortuary owned by another
- 13:36-4.14 Active or inactive status; unauthorized practice as professional misconduct

SUBCHAPTER 5. MORTUARIES

- 13:36-5.1 Display of "Manager" sign
- 13:36-5.2 Application approved for specific locations; separate facilities construed
- 13:36-5.3 Transferability of registration certificates
- 13:36-5.4 Physical structure of mortuary; separation from living quarters
- 13:36-5.5 Preparation room requirements
- 13:36-5.6 Equipment requirements
- 13:36-5.7 Potable water supply
- 13:36-5.8 (Reserved)
- 13:36-5.9 Multiple funeral establishments in same location
- 13:36-5.10 Display of establishment sign
- 13:36-5.11 Burial preparation performed in separate room
- 13:36-5.12 Advertising
- 13:36-5.13 Transfer of funeral establishment to new location
- 13:36-5.14 Discontinuation of business or bankruptcy
- 13:36-5.15 Unlicensed persons in funeral directing or embalming practice
- 13:36-5.16 Notice of absence from practice
- 13:36-5.17 Removal of human bodies; authorization
- 13:36-5.18 Disposition of dead human remains
- 13:36-5.19 Public accommodations
- 13:36-5.20 Referral fees

SUBCHAPTER 6. EMBALMING PROCEDURE

- 13:36-6.1 Privacy of burial preparation
- 13:36-6.2 Dress requirement for embalming
- 13:36-6.3 Use of poisons
- 13:36-6.4 Disposal of blood and excretion
- 13:36-6.5 Marking receptacles
- 13:36-6.6 Unnatural deaths
- 13:36-6.7 Interns
- 13:36-6.8 (Reserved)

SUBCHAPTER 7. SPECIAL RULES OF PRACTICE

13:36-7.1 Handling and embalming bodies dead of an infectious or contagious disease

SUBCHAPTER 8. GENERAL RULES OF PRACTICE

13:36-8.1 Carrying license identification card
 13:36-8.2 Divulging secrets
 13:36-8.3 Safeguarding public health and decedent's dignity
 13:36-8.4 Restrictions on employment
 13:36-8.5 Unauthorized license use
 13:36-8.6 (Reserved)
 13:36-8.7 Authorized surrender of cadavers
 13:36-8.8 Authorization to embalm cadaver
 13:36-8.9 Funeral arrangements or quotation of funeral prices
 13:36-8.10 Presence of licensee for disposition of dead human body
 13:36-8.11 Multiple burials

SUBCHAPTER 9. PREVENTION OF UNFAIR OR DECEPTIVE ACTS AND PRACTICES

13:36-9.1 Definitions
 13:36-9.2 Violations
 13:36-9.3 Failure to disclose required price information: An unfair or deceptive practice
 13:36-9.4 Telephone price disclosures
 13:36-9.5 Casket price list
 13:36-9.6 Outer burial container price list
 13:36-9.7 General price list
 13:36-9.8 Statement of funeral goods and services selected
 13:36-9.9 Embalming provisions
 13:36-9.10 Casket for cremation provisions
 13:36-9.11 Outer burial container provisions
 13:36-9.12 General provisions on legal and cemetery requirements
 13:36-9.13 Provisions on preservative and protective value claims
 13:36-9.14 Cash advance provisions
 13:36-9.15 Required purchase of caskets for direct cremations
 13:36-9.16 Other required purchases
 13:36-9.17 Services provided without prior approval
 13:36-9.18 Retention of documents
 13:36-9.19 Comprehension of disclosures

SUBCHAPTER 10. CONTINUING EDUCATION

13:36-10.1 Purpose and scope
 13:36-10.2 Definitions
 13:36-10.3 Minimum credit hours for biennial license renewal
 13:36-10.4 Exemption
 13:36-10.5 Waiver of continuing competency requirement
 13:36-10.6 Credentials Committee
 13:36-10.7 Criteria for continuing competency programs
 13:36-10.8 Presumptive accreditation and list of accredited courses
 13:36-10.9 Approval of course offerings
 13:36-10.10 Credit hour reporting procedure
 13:36-10.11 License restoration; activation

SUBCHAPTER 11. PREPAID FUNERAL AGREEMENTS AND ARRANGEMENTS

13:36-11.1 Definitions
 13:36-11.2 License and registration required; statement of funeral goods and services and preneed arrangement required; price lists; compliance with at need laws
 13:36-11.3 Contents of a prepaid funeral agreement
 13:36-11.4 Additional requirements of prepaid funeral agreements funded by funeral insurance policies; signing of insurance documents; providers not beneficiaries
 13:36-11.5 Funeral trust converted to funeral insurance policy
 13:36-11.6 Irrevocable funeral agreements
 13:36-11.7 Pooled trusts
 13:36-11.8 Commissions for trustees of pooled trust
 13:36-11.9 Cash advance items; application of interest income
 13:36-11.10 Periodic statements of status of funeral trusts
 13:36-11.11 Purchaser to sign completed documentation

13:36-11.12 Deposit of preneed funds; commingling of funds prohibited; proof of establishment of trust
 13:36-11.13 Return of prepaid moneys upon revocation or impossibility to perform; transfer of preneed arrangements or prepaid agreements; presumption of intent
 13:36-11.14 Other prohibited acts
 13:36-11.15 Presumption; aiding and abetting; vicarious liability; duty to report violations
 13:36-11.16 Preneed ledgers of active prepaid funeral agreements and preneed funeral arrangements; maintenance of records of prepaid agreements and preneed arrangements; compilation of preneed ledger; biennial registration
 13:36-11.17 Records provided to the Board and to successors in interest
 13:36-11.18 Notification of purchaser of transfer of ownership
 13:36-11.19 Notification of dissolution or bankruptcy

SUBCHAPTER 1. ADMINISTRATION**13:36-1.1 Seal of the Board**

The Seal of the Board shall be the Seal of New Jersey encircled with the words "State Board of Mortuary Science of New Jersey."

13:36-1.2 (Reserved)

Repealed by R.1984 d.341, effective August 6, 1984.
 See: 16 N.J.R. 505(a), 16 N.J.R. 2143(b).
 Section was "Office of the Board."

13:36-1.3 Board meetings

(a) The Board shall hold an annual meeting in May each year, or at such other time as the President may direct, at which time the President and Secretary of the Board shall be elected for the ensuing year.

(b) Special meetings of the Board may be called by the President upon reasonable notice being given to the members. In the event of unavailability of the President for illness or otherwise, three members of the Board shall have the power to call a special meeting in cases of emergency.

Amended by R.1984 d.341, effective August 6, 1984.
 See: 16 N.J.R. 505(a), 16 N.J.R. 2143(b).

"July" changed to "May"; "five days" changed to "reasonable".

13:36-1.4 Duties of Executive Director

(a) The Executive Director shall be in full charge of office administration. It shall be his or her duty to:

1. Receive complaints and answers;
2. Set and calendar cases for hearings;
3. Issue notices of hearing and statements to respondents;
4. Perform any and all duties which the Board may from time to time impose upon him or her.

Amended by R.1994 d.523, effective October 17, 1994.
 See: 26 N.J.R. 2536(a), 26 N.J.R. 4201(a).

IF ANY LAW, cemetery or crematory requirements have required the purchase of any of the items listed above, the law or requirement is described below.

- Crematory requires container to surround the remains.
- Your cemetery requires an outer burial container
- Other: _____

REASONS FOR EMBALMING:

- Family authorized.
- Other: _____

(e) A practitioner who offers the Optional Packaged Services and has that offer accepted by a consumer shall not be required to detail the charges for Categories I through III, which are then not applicable. It shall not be mandato-

ry for practitioners to include the category of "Optional Packaged Services" on the Statement of Funeral Goods and Services Selected form if they do not offer for sale the services of Direct Cremation, Immediate Burial, Forwarding of Remains and/or Receiving of Remains.

(f) Immediately upon completing the "Statement of Funeral Goods and Services Selected" form, the practitioner and the consumer shall sign the form where indicated. The practitioner shall immediately provide a copy to the person for whom the form was prepared.

(g) Any change, addition or deletion authorized by the purchaser after the completion of the form shall be included on the final bill.

Amended by R.1973 d.119, effective May 1, 1973.
See: 5 N.J.R. 115(a), 5 N.J.R. 195(a).
Amended by R.1984 d.341, effective August 6, 1984.

See: 16 N.J.R. 505(a), 16 N.J.R. 2143(b).

Old text deleted, new text substituted.

Amended by R.1987 d.243, effective June 15, 1987.

See: 18 N.J.R. 2186(a), 19 N.J.R. 1100(b).

Added text to (b): "except that a ... the itemization form:" and added new (b)1.-3.

Repeal and New Rule, R.1994 d.523, effective October 17, 1994.

See: 26 N.J.R. 2536(a), 26 N.J.R. 4201(a).

Section was "Itemization of funeral expenses".

Case Notes

Rule cited in support of "good faith" defense to overtime claim based upon mortuary science being a profession rather than an occupation. *State v. Frech Funeral Home*, 185 N.J.Super. 385, 448 A.2d 1037 (Law Div.1982).

13:36-1.10 Limited exemption for anatomical associations of a medical school established and operated by the State of New Jersey for the acceptance and disposition of human remains donated pursuant to the Uniform Anatomical Gift Act

(a) The provisions of this chapter shall apply to the operation, maintenance and use of mortuaries by licensed practitioners of mortuary science for the benefit of anatomical associations of medical schools established and operated by the State of New Jersey, which association is the vehicle for the acceptance and disposition of human remains donated pursuant to the Uniform Anatomical Gift Act, N.J.S.A. 26:6-57 et seq., for the purpose of medical research and education.

(b) Upon the Board's receipt of an application for registration of a mortuary at such an association as described in (a) above, the Board may exempt said association from the following provisions of this chapter:

1. N.J.A.C. 13:36-4.6, Corporation's application for registration of funeral establishment;
2. N.J.A.C. 13:36-4.7, Corporate applicant's charter;
3. N.J.A.C. 13:36-5.1, Display of "Manager" sign;
4. N.J.A.C. 13:36-5.4, Physical structure of mortuary; separation from living quarters;
5. N.J.A.C. 13:36-5.10, Display of establishment sign;
6. N.J.A.C. 13:36-5.19, Public accommodations; and
7. N.J.A.C. 13:36-6.1, Privacy of burial preparation.

(c) Factors the Board shall consider in granting these exemptions include whether the exemptions, if granted, will promote medical research and education and whether the public health, safety and welfare will be safeguarded if the exemptions are granted.

(d) The exemptions, if granted by the Board, shall be specifically identified on the certificate of registration and shall apply only to licensees of the Board of Mortuary Science who are employed by such association as described in (a) above. Unless otherwise provided by the Board, upon expiration of the certificate of registration, any exemp-

tions granted pursuant to this paragraph shall be invalid unless renewed by the Board upon application by said association.

(e) Any association granted such exemptions shall not charge a fee for the operation, maintenance and use of a mortuary pursuant to N.J.S.A. 45:7-61 and this chapter, except for the actual costs of shipping of cremains.

New Rule, R.1997 d.16, effective January 6, 1997.

See: 28 N.J.R. 4723(a), 29 N.J.R. 149(a).

SUBCHAPTER 2. INTERNS

13:36-2.1 Qualification for intern registration

(a) The following words and terms, when used in this section, have the following meaning, unless the context clearly indicates otherwise:

1. "Two years of academic instruction" means the successful completion of 60 degree credits at a community college or one-half the credits required to complete a degree at a four year college or university.
2. "Remedial or basic course" means a non-degree credit course required by a college or university to be completed by a student before being admitted to a specific college level course or degree program course.

(b) An applicant to be registered as an intern shall have satisfactorily completed two years of academic instruction in a college or university approved by the New Jersey State Department of Higher Education or shall be completing the requirement while registered as an intern.

(c) An intern who is registered while concurrently attending college to complete the two year academic educational licensure requirement shall:

1. Attend college in the Fall and Spring semester of each year until the requirement is met.
2. Achieve a minimum of eight degree program credits per semester with a minimum cumulative average of 2.0 or its academic equivalent throughout the concurrent registration program. A person who receives less than a 2.0 cumulative average, withdraws from a course, or who takes more than one remedial or basic course per semester shall have his or her internship terminated unless good cause is established for the continuation of the internship.
3. Have an official transcript of credits forwarded directly to the Board by the institution being attended immediately at the completion of every semester.
4. Notify the Board immediately if the college program is interrupted for any reason.

(d) An out of state resident may be registered as an intern, provided that the applicant is registered with a New Jersey practitioner of mortuary science.

(e) CLEP credits may be included in an academic evaluation by the New Jersey State Department of Higher Education.

(f) Any credit granted to a student by a college or university for completion of any remedial or basic course shall not be recognized by the Board in any transcript evaluation made by the New Jersey State Department of Higher Education for an academic qualifying certificate.

Repealed by R.1973 d.181, effective July 3, 1973.
See: 5 N.J.R. 52(a), 5 N.J.R. 290(c).

Section was "Qualifications for registration."
New Rule R.1984 d.341, effective August 6, 1984.
See: 16 N.J.R. 505(a), 16 N.J.R. 2143(b).
Amended by R.1988 d.111, effective March 7, 1988.
See: 19 N.J.R. 2245(a), 20 N.J.R. 542(a).

(a) substantially amended.
Administrative corrections to (b), (c), (d), (e) and added new (f).
See: 21 N.J.R. 1830(a).
Amended by R.1994 d.523, effective October 17, 1994.
See: 26 N.J.R. 2536(a), 26 N.J.R. 4201(a).

13:36-2.2 Request for application

An application for intern registration shall be requested, in writing, by the prospective intern's preceptor. Upon receipt of the request, an application shall be issued. The application shall be executed by the preceptor and intern and certified in affidavit form, and returned to the Board office immediately.

Amended by R.1984 d.341, effective August 6, 1984.
See: 16 N.J.R. 505(a), 16 N.J.R. 2143(b).

"Trainee" is now "intern"; added "and returned . . . office immediately".

13:36-2.3 Availability of interns

Registered interns shall be available for funerals, embalmings, removals and other training instruction in accordance with N.J.A.C. 13:36-2.14 and shall assist in the embalmings of at least 75 bodies and the conduct of at least 75 funerals during the one or two year Practical Training period, whichever is applicable.

Amended by R.1984 d.341, effective August 6, 1984.
See: 16 N.J.R. 505(a), 16 N.J.R. 2143(b).

Deleted old text and substituted new.

13:36-2.4 Intern identification card

During the course of his or her training, every student intern shall at all times carry the intern card issued by the Board.

Amended by R.1984 d.341, effective August 6, 1984.
See: 16 N.J.R. 505(a), 16 N.J.R. 2143(b).
Substituted "intern" for "trainee".
Amended by R.1994 d.523, effective October 17, 1994.
See: 26 N.J.R. 2536(a), 26 N.J.R. 4201(a).

13:36-2.5 Reporting embalmments and funeral attendance; form

(a) The Board shall furnish monthly report forms to the intern for reporting embalmments and funerals attended, which shall be signed by the intern and preceptor and dated and filed with the Board no later than 15 days after the last day of each month. The intern shall complete such report setting forth all information required therein and file the forms with the Board.

(b) No internship credit shall be granted for the month when a report is received after the prescribed monthly filing date except upon presentation of proof acceptable to the Board that good cause exists for failing to timely file the report.

Amended by R.1984 d.341, effective August 6, 1984.
See: 16 N.J.R. 505(a), 16 N.J.R. 2143(b).
Deleted old text and substituted new.
Administrative correction to (b).
See: 21 N.J.R. 1830(a).

13:36-2.6 Credit for embalming body

No licensed practitioner of mortuary science shall credit more than one student intern for the embalming of any one body.

Amended by R.1984 d.341, effective August 6, 1984.
See: 16 N.J.R. 505(a), 16 N.J.R. 2143(b).
Substituted "intern" for "trainee".
Amended by R.1994 d.523, effective October 17, 1994.
See: 26 N.J.R. 2536(a), 26 N.J.R. 4201(a).

13:36-2.7 Intern qualifications for employment

No licensed practitioner of mortuary science shall engage a student intern unless, prior to such engagement, his or her case volume during the previous calendar year shall meet a minimum requirement of 25 cases which shall not include stillbirths.

Amended by R.1984 d.341, effective August 6, 1984.
See: 16 N.J.R. 505(a), 16 N.J.R. 2143(b).
Substituted "intern" for "trainee".
Amended by R.1994 d.523, effective October 17, 1994.
See: 26 N.J.R. 2536(a), 26 N.J.R. 4201(a).

13:36-2.8 Absence from training

If for any reason it becomes necessary for an intern to absent himself or herself during his or her internship for a period longer than 30 days, the intern must submit to the Board in letter form the reason for his or her absence and the length of time he or she intends to be away.

Amended by R.1984 d.341, effective August 6, 1984.
See: 16 N.J.R. 505(a), 16 N.J.R. 2143(b).
Substituted "intern" for "trainee".
Amended by R.1994 d.523, effective October 17, 1994.
See: 26 N.J.R. 2536(a), 26 N.J.R. 4201(a).

13:36-2.9 Termination of training

Upon termination of any internship, the licensee preceptor shall immediately request of the Board a notice of termination form to be completed by him or her and filed with the Board within five days of its receipt.

Amended by R.1984 d.341, effective August 6, 1984.
See: 16 N.J.R. 505(a), 16 N.J.R. 2143(b).

Substituted "internship" for "traineeship".
Amended by R.1994 d.523, effective October 17, 1994.
See: 26 N.J.R. 2536(a), 26 N.J.R. 4201(a).

13:36-2.10 Return of intern identification card

Upon completion or termination of an internship for any reason, the intern shall be charged with the responsibility of returning his or her intern identification card immediately to the Board.

Amended by R.1984 d.341, effective August 6, 1984.
See: 16 N.J.R. 505(a), 16 N.J.R. 2143(b).

Substituted "intern" for "trainee".
Amended by R.1985 d.293, effective June 17, 1985.
See: 17 N.J.R. 797(a), 17 N.J.R. 1580(a).

Text "When an internship . . . internship is completed" is deleted.
Amended by R.1994 d.523, effective October 17, 1994.
See: 26 N.J.R. 2536(a), 26 N.J.R. 4201(a).

13:36-2.11 Affidavit recommendation form

(a) Upon termination of an internship, an affidavit recommendation form shall be filed with the Board. Any licensed practitioner of mortuary science who refuses to certify any intern for the internship served under his or her license shall furnish the Board with a statement under oath setting forth the reasons for such refusal. If not satisfied with such statement, the Board may take such action as it may deem proper.

(b) In the event a preceptor or licensee is not available when the affidavit is to be executed, the Board may in its discretion, upon proper proof of satisfactory internship, select someone to sign the affidavit.

Amended by R.1984 d.341, effective August 6, 1984.
See: 16 N.J.R. 505(a), 16 N.J.R. 2143(b).

Substituted "intern" for "trainee".
Amended by R.1994 d.523, effective October 17, 1994.
See: 26 N.J.R. 2536(a), 26 N.J.R. 4201(a).

13:36-2.12 Extension of internship

No intern shall be permitted to continue his or her period of practical training as a registered intern for more than three years.

Repealed by R.1984 d.341, effective August 6, 1984.
See: 16 N.J.R. 505(a), 16 N.J.R. 2143(b).

Section was "Recognition of traineeship".
New Rule, R.1985 d.293, effective June 17, 1985.
See: 17 N.J.R. 797(a), 17 N.J.R. 1580(a).

13:36-2.13 (Reserved)

Repealed by R.1984 d.341, effective August 6, 1984.
See: 16 N.J.R. 505(a), 16 N.J.R. 2143(b).

Section was "Concurrence of traineeship and school attendance".

13:36-2.14 Preceptors' responsibility for training

(a) The preceptor shall be charged with the professional responsibility of insuring bona fide internships for all student interns by seeing to it that such interns are thoroughly trained in the theory and practice of mortuary science, the laws, rules and regulations pertaining thereto, and are proficient in the following areas:

1. Removal of remains, embalming, restorative art, dressing and casketing remains;

2. Making funeral arrangements with families which includes selling of merchandise, arranging flowers, taking statistical information from families, filing death certificates, preparing obituary notices and placing same with newspapers, completing funeral cortege lists, arranging cortege cars in proper order on the day of the funeral, attending viewings;

3. Ordering and pricing funeral merchandise, arranging for and coordinating a schedule for the clergyman, church, crematory or cemetery, livery, pallbearers, visitation of various organizations, transportation by common carrier, delivery of outer enclosures to cemetery and;

4. Performing such other incidental duties related to the practice of mortuary science and the maintenance of the funeral establishment.

Amended by R.1984 d.341, effective August 6, 1984.
See: 16 N.J.R. 505(a), 16 N.J.R. 2143(b).
Old text deleted and new text substituted.

Case Notes

Belief in professional nature of mortuary science by funeral director provided "good faith" defense against action for overtime pay by mortician trainee. *State v. Frech Funeral Home*, 185 N.J.Super. 385, 448 A.2d 1037 (Law Div.1982).

SUBCHAPTER 3. EXAMINATIONS

13:36-3.1 Application for examination

(a) Upon request, an application for examination shall be forwarded to the applicant. The form shall be signed by the applicant and certified, unless notified otherwise. All applications shall be filed with the Board on or before the first day of the month in which the examination is to be held.

(b) The statements contained in the application must be complete and accurate before the application is processed or accepted by the Board.

(c) Any candidate who fails to appear, without good cause, shall forfeit the examination fee.

(d) An out of state resident may make application for a written examination administered by the Board, provided the applicant meets all admission requirements.

Amended by R.1984 d.341, effective August 6, 1984.
See: 16 N.J.R. 505(a), 16 N.J.R. 2143(b).

Old (a) deleted and new (a) substituted; new (d) added.

13:36-3.2 Waiver of practical training and experience

(a) An applicant for examination having satisfactorily completed two years of academic instruction in a college or university approved by the New Jersey Department of Education and one year of instruction in a school of mortuary science approved by the Board, may be admitted to the

written examination without having first served the required period of practical training. However, a license to enter into the practice of mortuary science shall not be issued or granted to any such applicant unless and until the applicant has served the required period of practical training and experience as a registered intern.

(b) Such period of training and experience may be served in whole or in part before or after the applicant's commencement of instruction in an approved school of mortuary science.

Amended by R.1984 d.341, effective August 6, 1984.
See: 16 N.J.R. 505(a), 16 N.J.R. 2143(b).

Deleted "or a minimum ... or co-op program"; substituted "intern" for "trainee".

Case Notes

Rule cited in support of "good faith" defense to overtime claim based upon mortuary science being a profession rather than an occupation. *State v. Frech Funeral Home*, 185 N.J.Super. 385, 448 A.2d 1037 (Law Div.1982).

13:36-3.3 Examination procedure

All examination papers shall be designated by numbers. Each applicant shall be given, at the time of appearing for examination, a sealed envelope containing a certain number. The applicant shall use the number contained therein in his or her examination papers, writing his or her name and address upon a card bearing the same number and sealing the same in an envelope. This envelope shall not be opened by the Board until all of the examination papers are finally rated and marked. The applicant shall not, under penalty of forfeiture of examination, disclose to any member of the Board, or to any other person, the number so assigned to him or her.

Amended by R.1994 d.523, effective October 17, 1994.
See: 26 N.J.R. 2536(a), 26 N.J.R. 4201(a).

13:36-3.4 Examination subjects

(a) The scope, character and content of the examination to be conducted by the Board shall be determined by the Board, shall be the same for all candidates at each examination and may include the following subjects:

1. Anatomy, including histology and embryology;
2. Pathology;
3. Chemistry, including toxicology;
4. Disinfection, hygiene, sanitary science;
5. Funeral directing;
6. Business law;
7. Public health;
8. Embalming;
9. Microbiology;

10. Restorative art;
11. The care, preservation, embalming, transportation, burial or disposal of dead human bodies, including those deaths which occur as a result of contagious and infectious diseases;
12. The signs of death and the manner in which death may be determined;
13. Laws and rules governing vital statistics and the preparation and transportation and burial of dead human bodies;
14. The provisions of the Mortuary Science Act and the rules and regulations adopted by the Board;
15. Professional ethics;
16. Accounting;
17. Sociology;
18. Psychology;
19. Funeral service law; and
20. Funeral merchandising.

Amended by R.1982 d.409, effective November 15, 1982.

See: 14 N.J.R. 897(a), 14 N.J.R. 1309(c).

Added 17 through 20 to (a).

Amended by R.1994 d.523, effective October 17, 1994.

See: 26 N.J.R. 2536(a), 26 N.J.R. 4201(a).

Case Notes

Rule cited in support of "good faith" defense to overtime claim based upon mortuary science being a profession rather than an occupation. *State v. Frech Funeral Home*, 185 N.J.Super. 385, 448 A.2d 1037 (Law Div.1982).

13:36-3.5 Passing grades

(a) To successfully fulfill the examination requirement of N.J.S.A. 45:7-49, a candidate shall:

1. Achieve an average score of not less than 75 on each of the two parts of the National Board Examination and shall not score less than 70 on more than one section in each part; and the candidate shall achieve an average score of not less than 70 on the Mortuary Jurisprudence examination given by the State Board; or
2. When the Board gives a written examination, including a section on mortuary jurisprudence, the candidate shall achieve a score of not less than 70.

(b) The State Board will not admit any candidate who has taken the National Board Examination to the Mortuary Jurisprudence examination until the results of the candidate's National Board Examination are on file with the Board.

Amended by R.1980 d.543, effective December 15, 1980.

See: 12 N.J.R. 670(b), 13 N.J.R. 104(b).

Deleted (b) concerning reexaminations.

Repeal and New Rule, R.1990 d.273, effective May 21, 1990.

See: 21 N.J.R. 1820(a), 22 N.J.R. 1614(a).

Revised rule specifying examination requirements.

Case Notes

Claimant eligible for unemployment benefits due to discharge by hospital from licensed practical nurse position after her failure to pass second licensing examination; discharge from position required by nursing regulations (citing former N.J.A.C. 13:37-9.5). *Means v. Bd. of Review, Dep't of Labor and Industry*, 172 N.J.Super. 465, 412 A.2d 1053 (App.Div.1980), certification denied 84 N.J. 451, 420 A.2d 348 (1980).

13:36-3.6 Examination review procedure

(a) An unsuccessful candidate may apply to the Board for a review of his or her examination papers. Such application shall be submitted to the Board secretary in writing within 10 calendar days following notification of examination results. The Board secretary shall, upon receipt of the candidate's application within the allotted time, arrange a date for the candidate to compare his or her examination sheet with the key answer sheet to ascertain mechanical grading errors, if any.

(b) Such review will take place in the Board office with an observer. The candidate will receive a copy of his or her answer sheet, a copy of the key answer sheet and one blank paper on which to take notes. These documents cannot be removed from the Board office.

Amended by R.1975 d.309, effective October 20, 1975.

See: 7 N.J.R. 509(a).

Amended by R.1980 d.542, effective December 15, 1980.

See: 12 N.J.R. 670(c), 13 N.J.R. 104(a).

"one month" application submission period was "three months";

"convenient date" for exam review was "mutually convenient date".

Amended by R.1990 d.273, effective May 21, 1990.

See: 21 N.J.R. 1820(a), 22 N.J.R. 1614(a).

Added text to create new (a)-(b).

In (a): changed "one month" to "10 days" regarding submission of application. Added text to final sentence regarding answer sheets.

13:36-3.7 Practical examination requirements

(a) No candidate will be given the practical examination until after he or she has successfully completed both the written examinations prescribed under N.J.S.A. 45:7-49 and the prescribed period of internship.

(b) Such practical examination shall be held at a place determined by the Board and the examination shall be conducted by one or more Board members. A candidate who has failed the practical examination must wait three months before being scheduled for re-examination.

Amended by R.1984 d.341, effective August 6, 1984.

See: 16 N.J.R. 505(a), 16 N.J.R. 2143(b).

Deleted old text from (a) and (a)1, and substituted new text therefor.

Amended by R.1990 d.273, effective May 21, 1990.

See: 21 N.J.R. 1820(a), 22 N.J.R. 1614(a).

Deleted (a)1 and 2 and specified practical examination requirements with new text in (a). In (b): deleted language regarding absence of a preceptor and scheduling of the candidate's examination.

13:36-3.8 (Reserved)

Repealed by R.1984 d.341, effective August 6, 1984.
See: 16 N.J.R. 505(a), 16 N.J.R. 2143(b).
Section was "Presentation of certificates of licensure."

SUBCHAPTER 4. LICENSE AND REGISTRATION GENERALLY

13:36-4.1 License renewals

(a) All applications for biennial license renewal shall be filed with the Board on or before the last day of February of every odd-numbered year or such other date established for renewal by the Division of Consumer Affairs. If the licensee fails to receive such renewal application on or before 30 days prior to the renewal date, he or she shall notify the Board in writing and request that the Board forward the necessary form.

(b) All applications for biennial establishment registration renewal shall be filed with the Board on or before the last day of December of every odd-numbered year or such other date established for renewal by the Division of Consumer Affairs. If the applicant fails to receive such renewal application on or before 30 days prior to the renewal date, he or she shall notify the Board in writing and request that the Board forward the necessary form.

Amended by R.1982 d.333, effective October 4, 1982.
See: 14 N.J.R. 751(a), 14 N.J.R. 1100(a).

Change renewal deadline from September to March or such other established day. Also changed failure to receive renewal from August 1 to 30 days prior to renewal date.

Amended by R.1994 d.523, effective October 17, 1994.
See: 26 N.J.R. 2536(a), 26 N.J.R. 4201(a).

13:36-4.2 Notice of residence address change; corporate structure

(a) Every licensee shall give notice in writing to the Board of Mortuary Science of any change of his or her residence address within 10 days after such change of address.

(b) When a funeral establishment is operated by a corporation, a limited partnership or a limited liability corporation, the licensee in charge shall notify the Board within 10 days of any change in the information requested pursuant to N.J.A.C. 13:36-4.6(a)2.

Amended by R.1994 d.523, effective October 17, 1994.
See: 26 N.J.R. 2536(a), 26 N.J.R. 4201(a).
Amended by R.1998 d.15, effective January 5, 1998.
See: 29 N.J.R. 3110(a), 30 N.J.R. 90(a).
Inserted (b).

13:36-4.3 Legal name change

(a) If a licensee changes his or her name, the change will only be recorded by the Board upon receipt of legal documentation to substantiate the name change.

(b) If it is necessary to issue a duplicate license certificate, the original certificate must be returned for cancellation, if possible.

Amended by R.1984 d.341, effective August 6, 1984.
See: 16 N.J.R. 505(a), 16 N.J.R. 2143(b).
Substituted new text for (a) and deleted old text.

13:36-4.4 New installations

(a) Except as provided in N.J.A.C. 13:44-4.13, any person desiring to operate, maintain or use a mortuary after adoption of these rules and regulations, shall first apply to the Board for a new installation inspection and an application for certificate of registration.

(b) A new installation inspection of the premises shall be made by the inspector before an application is granted.

(c) When the new installation inspection is made, temporary approval may be granted to operate until a certificate of registration is issued.

Amended by R.1984 d.341, effective August 6, 1984.
See: 16 N.J.R. 505(a), 16 N.J.R. 2143(b).
Section substantially amended.
As amended, R.1985 d.293, effective June 17, 1985.
See: 17 N.J.R. 797(a), 17 N.J.R. 1580(a).
(a) substantially amended.

13:36-4.5 Change of ownership

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

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

Amended by R.1984 d.341, effective August 6, 1984.
See: 16 N.J.R. 505(a), 16 N.J.R. 2143(b).

Deleted "apply in advance of ownership" and added "notify the ... ownership changes".

Amended by R.1994 d.523, effective October 17, 1994.
See: 26 N.J.R. 2536(a), 26 N.J.R. 4201(a).
Amended by R.1998 d.15, effective January 5, 1998.
See: 29 N.J.R. 3110(a), 30 N.J.R. 90(a).
Inserted (b).

13:36-4.6 Corporation's application for registration of funeral establishment

(a) Applications for registration of a funeral establishment to be operated by a corporation, a limited partnership and/or a limited liability company shall be accompanied by:

1. A copy of the certificate of incorporation or certificate or agreement of formation certified by the Secretary of State;
2. The name, residence addresses and residence telephone numbers of the following:
 - i. The officers of the corporation;
 - ii. The general partner(s) of a limited partnership (and, if a general partner is a corporation, the officers of the corporation); and/or
 - iii. The managing or operating members of a limited liability company (and, if a member of a limited liability company is a corporation, the officers of the corporation);
3. A copy of the corporate resolution (certified by the secretary of the corporation and impressed with the corporate seal) or limited partnership or limited liability company statement (certified by the general partner of the limited partnership or the managing or operating member of the limited liability company) designating the licensed practitioner of mortuary science; and
4. A letter forwarded to the Board by the funeral establishment manager indicating that he or she accepts the position.

Amended by R.1994 d.523, effective October 17, 1994.
See: 26 N.J.R. 2536(a), 26 N.J.R. 4201(a).

Cross References

Exemption from provisions of this section, see N.J.A.C. 13:36-1.10.

13:36-4.7 Corporate applicant's charter

(a) All corporate charters are required to contain a provision stating that the practice of mortuary science, funeral directing and embalming shall be performed only by persons duly licensed by the State Board of Mortuary Science to do so.

(b) The following clause is an illustration of what the State Board of Mortuary Science shall accept as compliance with the Section.

To own, maintain, conduct, carry on and operate one or more funeral homes in the State of New Jersey, and for that purpose to hire, employ and engage the services of one or more embalmers and/or funeral directors duly licensed as such by the State of New Jersey, and to employ such other person or persons which the directors shall deem necessary to carry on and conduct such practice.

Subject to the rules and regulations heretofore made or promulgated by the State Board of Mortuary Science, and the said rules and regulations to be hereafter made or promulgated and other applicable laws of the State of New Jersey, to engage in the business and/or profession of mortuary science, embalming and funeral directing.

(c) It is the sense of this Section that a corporate funeral establishment shall at no time be operated by persons other than those duly licensed by the State Board of Mortuary Science.

(d) No corporate applicant will be denied a certificate of registration where the objects of the charter comply substantially with the subsection (c) of this Section, in addition to the other requisites set forth in the rules.

Cross References

Exemption from provisions of this section, see N.J.A.C. 13:36-1.10.

13:36-4.8 Full-time licensed manager

(a) Every establishment operating under corporate, limited partnership or limited liability company ownership, authorized to carry on the practice of mortuary science, shall be under the direct supervision of a full-time licensed manager.

(b) The manager shall be responsible for the direction, management and control of all work emanating from the establishment.

(c) Whenever the manager's services are terminated, the manager and the licensee in charge of the establishment shall notify the Board, in writing, within 30 days of the termination.

(d) Whenever the manager's services are terminated, the manager or licensee in charge shall provide the new manager with the records of prepaid funeral agreements required to be maintained pursuant to N.J.A.C. 13:36-11.16 no later than 10 days prior to such change, or as soon thereafter as mutually agreed upon by the parties. The licensee in charge shall notify the Board of compliance with this subsection at the same time the licensee files the notice of change in manager with the Board.

(e) Except as set forth in (e) below, the licensee in charge of the establishment shall within 30 days of such termination give notice to the Board of the name of the newly designated manager, whether permanent or temporary. Within 30 days of accepting the manager's position, the newly designated manager shall submit to the Board the following:

1. A letter indicating such acceptance;
2. An application to become a manager; and
3. The fee prescribed for the application.

(f) The licensee in charge of the establishment may within 30 days of such termination submit to the Board documented evidence of hardship or extenuating circumstance. The Board, if it deems such evidence acceptable, may grant the establishment an extension of time up to, but not exceeding, six months after the termination of the former manager in which to secure the services of a new manager.

Administrative Correction to (a).

See: 21 N.J.R. 1830(a).

Amended by R.1994 d.523, effective October 17, 1994.

See: 26 N.J.R. 2536(a), 26 N.J.R. 4201(a).

Amended by R.1998 d.15, effective January 5, 1998.

See: 29 N.J.R. 3110(a), 30 N.J.R. 90(a).

Inserted new (d) and recodified existing (d) and (e) as (e) and (f).

13:36-4.9 Participation of unlicensed persons

(a) No unlicensed person shall actively participate in any capacity in the actual funeral arrangements, preservation, preparation or disposal of dead human bodies.

(b) The use by an unlicensed person of the words "mortician," "funeral director," "undertaker" or any other words or title of like import or signification, including, but not limited to, "consultant," "counselor" or "provider" in connection with the offering of any funeral service or merchandise, shall constitute a deceptive practice pursuant to N.J.S.A. 45:7-47.

Amended by R.1984 d.341, effective August 6, 1984.

See: 16 N.J.R. 505(a), 16 N.J.R. 2143(b).

Deleted text "financially interested in the corporation in any manner whatsoever".

Amended by R.1994 d.523, effective October 17, 1994.

See: 26 N.J.R. 2536(a), 26 N.J.R. 4201(a).

13:36-4.10 Partnership's application for registration of funeral establishment

(a) A new application for registration of a funeral establishment operated by a new partnership must be signed by all partners and must be accompanied by a certified copy of the partnership agreement and the certificate of assumed name, if any, filed in the office of the county clerk.

(b) Any limited partnership seeking a certificate of registration shall conform to the requirements of N.J.S.A. 42:3-1 and not N.J.S.A. 42:2-1.

13:36-4.11 Trade names

(a) An application for registration of a funeral establishment operated under a trade name or other assumed name must be accompanied by a certified copy of the trade name certificate as filed in the county clerk's office.

(b) Application for registration of a funeral establishment must be accompanied by an affidavit by the applicant setting forth the true full names, residences and residence telephone numbers of any and all persons having a proprietary or financial interest in the business.

(c) The trade name firm shall forward to the Board the name of the full-time manager in charge. The manager shall also forward to the Board an affidavit stating he or she accepts said position.

(d) Whenever an individual licensed owner conducts an establishment under his or her own surname, then such use of the surname shall not be considered a trade name.

Amended by R.1994 d.523, effective October 17, 1994.

See: 26 N.J.R. 2536(a), 26 N.J.R. 4201(a).

13:36-4.12 Death of licensee or owner

(a) The practice of a mortuary establishment shall cease and the certificate of registration shall become void upon the death of an owner and shall not be renewed unless the executor or administrator of the estate or the deceased owner's heir or heirs informs the Board within 30 days of their intention to continue the mortuary practice and apply for a certificate of registration. Such notice must be in writing and conform with the following requirements:

1. It shall state the practice shall be under the direct supervision of a licensed temporary or full-time manager, whichever is applicable, and contain the name of the licensee selected.

2. The firm may operate under the supervision of a temporary manager for a period not longer than 60 days to secure the services of a full-time licensed manager; provided, however, upon making a further request, the Board may grant an extension of time during which the temporary manager may serve.

3. The manager shall simultaneously submit to the Board an affidavit stating his or her willingness to act in such capacity.

4. When the firm is to be operated under an estate, a trade name certificate certified by the county clerk shall be submitted with the notice. This rule shall not apply to corporate firms.

(b) Prior to operating pursuant to (a) above, the executor or administrator of the estate or the deceased owner's heir or heirs shall furnish to the Board a copy of the preneed ledger maintained pursuant to N.J.A.C. 13:36-11.16 within 30 days of the owner's death.

Amended by R.1994 d.523, effective October 17, 1994.

See: 26 N.J.R. 2536(a), 26 N.J.R. 4201(a).

Amended by R.1998 d.15, effective January 5, 1998.

See: 29 N.J.R. 3110(a), 30 N.J.R. 90(a).

Inserted (b).

13:36-4.13 Use of a registered mortuary owned by another

(a) A person who owns a registered mortuary may use another registered mortuary without obtaining a certificate of registration or complying with new funeral home installation requirements up to but not exceeding three times a year. The owner of a registered mortuary may permit the owner of another registered mortuary to use his or her mortuary up to but not exceeding three times a year. The Board may waive such limits of three times a year upon receipt of a special application showing good cause for the waiver.

(b) All parties involved in such a special use agreement shall immediately forward written notice to the Board be-

fore each use of the establishment. This notice shall include the following information:

1. Title and address of the firm being used and the name of the manager;
2. The name and address of the firm using the establishment and the name of the licensee in charge;
3. Name of decedent; and
4. The exact date(s) the establishment is to be used.

(c) The name of the establishment using the facility is not to be inserted in obituary and death notices unless the name of the firm registered at that location is also inserted.

New Rule, R.1985 d.293, effective June 17, 1985.
See: 17 N.J.R. 797(a), 17 N.J.R. 1580(a).
Amended by R.1994 d.523, effective October 17, 1994.
See: 26 N.J.R. 2536(a), 26 N.J.R. 4201(a).

13:36-4.14 Active or inactive status; unauthorized practice as professional misconduct

(a) As used in this section, the following terms have the following meanings unless the context indicates otherwise:

1. "Active" means a licensee eligible to engage in the practice of mortuary science as set forth by the Mortuary Science Act, N.J.S.A. 45:7-32 et seq., and pursuant to the rules contained in this chapter.
2. "Board" means the State Board of Mortuary Science of New Jersey.
3. "Inactive" means a person licensed by the Board and in good standing, but who is not eligible to engage in the practice of mortuary science as set forth by the Mortuary Science Act, N.J.S.A. 45:7-32 et seq., and pursuant to the rules contained in this chapter.
4. "Licensee" means any person authorized to engage in the practice of mortuary science as regulated by the Board.

(b) All biennial renewal applications shall provide licensees with the option of either active or inactive license renewal.

1. Licensees may elect to be active or inactive for any biennial period regardless of their status during any prior biennial period.
2. If a licensee elects to return from inactive status to active status, he or she shall provide the Board with proof of compliance with N.J.A.C. 13:36-10.11(b).
3. Board-issued licenses shall conspicuously disclose whether the licensee is active or inactive.

(c) A licensee who elects to be inactive shall remain inactive for the entire biennial period unless, upon application to the Board, the Board elects to return an inactive licensee to active status provided such licensee has demonstrated compliance with N.J.A.C. 13:36-10.11(b).

(d) Any inactive licensee who engages in the practice of mortuary science shall be deemed to be practicing without a license and shall be deemed to have engaged in professional misconduct.

(e) Any licensee or registrant of the Board who permits, solicits, assists, aids, abets, or knowingly acquiesces in the unauthorized practice of mortuary science by an inactive licensee shall be deemed to have engaged in professional misconduct.

New Rule, R.1997 d.514, effective December 1, 1997.
See: 29 N.J.R. 4072(a), 29 N.J.R. 5071(a).

SUBCHAPTER 5. MORTUARIES

13:36-5.1 Display of "Manager" sign

(a) Whenever a firm is required to be operated under the supervision, management and control of a licensed manager, the name of the manager shall be conspicuously displayed with the title "manager" on a sign at or about the main entrance of the establishment or on the firm sign, provided, however, that at the option of the firm the term, "senior director" or "executive director" may be substituted for "manager." This sign shall contain legible letters that are no less than 1½ inches in height.

(b) The name of the licensee in charge must also appear with the title "manager," "senior director" or "executive director" on all stationery, billheads, advertising, and in all other instances where the firm name is used.

Amended by R.1985 d.293, effective June 17, 1985.
See: 17 N.J.R. 797(a), 17 N.J.R. 1580(a).
Substantially amended.
Amended by R.1994 d.523, effective October 17, 1994.
See: 26 N.J.R. 2536(a), 26 N.J.R. 4201(a).

Cross References

Exemption from provisions of this section, see N.J.A.C. 13:36-1.10.

13:36-5.2 Application approved for specific locations; separate facilities construed

(a) An application for registration of a funeral establishment shall be approved for a specified address and location only.

(b) In the event that the applicant maintains a chapel, preparation room or other funeral service facility in a building or portion thereof physically separated from, and located at a location designated by an address differing from the office and/or chapel or other facilities of the applicant, such chapel, preparation room or other funeral facility shall be deemed a separate funeral establishment or funeral establishments, for which a separate application for registration shall be made.

(c) Nothing contained in this Section shall be construed or interpreted to require a separate registration for such a building, if the building or part thereof is joined or connected by any private passage, walk or driveway existing between the registered establishment and such other building.

13:36-5.3 Transferability of registration certificates

A certificate of registration is not transferable. When a business is discontinued at the registered address the certificate shall be immediately returned to the Board office for cancellation.

13:36-5.4 Physical structure of mortuary; separation from living quarters

(a) All mortuaries must have at least one viewing room, equipment, facilities and private lavatories suitable to serve the general public.

(b) The mortuary must be maintained on floor levels which are separate and distinct from living quarters, kitchens or other rooms that are ordinarily a part of the domestic household unit.

(c) In the case of ranch type establishments or other cases in which the architectural structure makes it impossible to have suitable parlors and facilities on a different floor level, the owner must prove to the Board's satisfaction the existence of a proper division between the mortuary section and the living quarters of the building.

Cross References

Exemption from provisions of this section, see N.J.A.C. 13:36-1.10.

13:36-5.5 Preparation room requirements

(a) Every mortuary must contain a preparation room on the premises which is suitably located and private and shall comply with the following requirements:

1. The walls shall extend from floor to ceiling. The ceiling and walls must be covered with tile, finished plaster, composition wall board or other composition material or combination of these materials. With exception of tile, all of these materials must be finished with enamel, varnish or some other smooth-hard waterproof material.

2. Outside ventilation must be provided for by windows, transoms or air conditioning, and every preparation

room shall comply in respect to ventilation with State and local laws, ordinances and regulations. It is also to be ventilated so that no deleterious odors shall be permitted to enter into any other part of the premises of the funeral establishment or into any other adjoining premises or property.

3. The floor shall be concrete or tile with glazed surface. Wood flooring may be used provided it is covered with linoleum or other composition material that is impervious to water.

4. All preparation rooms shall contain only equipment necessary for the preparation or care of dead human bodies for disposal or transportation, and shall not have an opening or doorway into a lavatory which is designated to serve the general public.

5. All doors leading from the preparation room or embalming room must have a smooth surface or covered with material impervious to dirt and liquids. All windows and outside doors must be screened.

Amended by R.1973 d.181, effective July 3, 1973.
See: 5 N.J.R. 52(a), 5 N.J.R. 290(c).

13:36-5.6 Equipment requirements

(a) Every funeral establishment in the State shall have in its preparation or embalming room and shall be equipped with, but not limited to the following:

1. Sterilizer;
2. Leakproof trash can;
3. Instrument cabinet;
4. Sterilizing agents;
5. Drainage or viscera bucket;
6. Embalming table, porcelain or metal with a drainage opening in the lower end;
7. Hydro-aspirator with approved vacuum breaker or other approved aspirator;
8. Slop sink with a three inch drain with hot and cold water attachments and sewer connections;
9. Wash basin with hot and cold running potable water;
10. One leakproof container for storing dirty linens;
11. For each licensee and trainee, protection, apparel and/or equipment as required by all applicable standards of the Occupational Safety and Health Administration Agency (OSHA).
12. One container of hardening compound;
13. One set metal or rubber drain tubes (large, medium, small);
14. One set metal injection tubes (large, medium, small);

15. One grooved director equal;
16. One aneurism needle;
17. One large trocar;
18. One small trocar;
19. One scalpel;
20. One pair scissors;
21. At least two hemostats;
22. Two forceps;
23. One hypodermic syringe;
24. Hypodermic needles (assorted);
25. Suture needles;
26. Suture thread;
27. Disinfectant.

(b) All instruments and appliances used in embalming shall be thoroughly cleansed and sterilized immediately after the conclusion of each individual case.

Amended by R.1985 d.293, effective June 17, 1985.
See: 17 N.J.R. 797(a), 17 N.J.R. 1580(a).

(b) added.

Amended by R.1994 d.523, effective October 17, 1994.
See: 26 N.J.R. 2536(a), 26 N.J.R. 4201(a).

Case Notes

Bankruptcy court order approving sale of Chapter 11 debtor's funeral home's assets was clear and unambiguous with respect to items of personal property included in sale, as required to hold former operator of funeral home in contempt. In re Baker, Bkrcty.D.N.J. 1996, 195 B.R. 309.

13:36-5.7 Potable water supply

(a) All licensed owners and managers of funeral establishments are charged with the responsibility of insuring that the potable water supply is not open to the danger of contamination from any source.

(b) This responsibility may be satisfied by the installation of any approved hydro-aspirator and such other devices as may be necessary to accomplish the purpose of this rule.

(c) Any infraction of this rule shall be reported immediately to the Board.

13:36-5.8 (Reserved)

Repealed by R.1994 d.523, effective October 17, 1994.
See: 26 N.J.R. 2536(a), 26 N.J.R. 4201(a).

Section was "Employment of licensed embalmer".

13:36-5.9 Multiple funeral establishments in same location

(a) Any individual, partnership, corporation or limited liability company that applies to register any additional funeral establishment(s) in a location already registered as a funeral establishment by the State of New Jersey shall comply with N.J.A.C. 13:36-4 and this subchapter.

(b) In the event an establishment has the same or similar ownership of individuals, partnerships, corporations or limited liability companies as the primary funeral establishment, prices quoted and charged to consumers shall be the same for all establishments in that location.

(c) No more than three funeral establishments shall operate in one facility unless, upon application, the Board in its discretion finds that permitting an additional establishment will be in the best interest of consumers.

Repealed by R.1985 d.293, effective June 17, 1985.

See: 17 N.J.R. 797(a), 17 N.J.R. 1580(a).

Section was "Branch mortuaries".

New Rule, R.1994 d.523, effective October 17, 1994.

See: 26 N.J.R. 2536(a), 26 N.J.R. 4201(a).

13:36-5.10 Display of establishment sign

Every funeral home, except a trade service, shall display the firm name as registered in the certificate of registration on a sign located reasonably near the main entrance or clearly visible from the street and the main entrance.

Amended by R.1994 d.523, effective October 17, 1994.

See: 26 N.J.R. 2536(a), 26 N.J.R. 4201(a).

Cross References

Exemption from provisions of this section, see N.J.A.C. 13:36-1.10.

13:36-5.11 Burial preparation performed in separate room

No embalming or other preparation for burial or disposition of a dead human body shall be performed in any funeral establishment except in a room set aside exclusively and approved by the Board for such purpose.

13:36-5.12 Advertising

(a) Definitions: The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise.

1. "Advertisement" means any attempt, direct or indirect, by publication, dissemination, circulation or broadcast through the public media to induce any person or entity to purchase or enter into an agreement to accept mortuary or funeral services or merchandise.

2. "Public media" means newspapers, magazines, periodicals, professional journals, telephone directories, circulars, handbills, flyers, letters, billboards, aerial displays, signs, television, radio, and any other similar item, document, publication or device used to communicate to the general public or to a specific group.

3. "Licensee" means licensed practitioner of mortuary science as defined by N.J.S.A. 45:7-34(g).

4. "Price reduction statement" means a statement, suggestion or implication, direct or indirect, that a service or merchandise is being offered or made available for sale at a price less than the advertiser's routine price. The following words, terms and phrases or their substantial equivalent shall be deemed to indicate a price reduction statement: sale, discount, savings, price cut, bargain, reduced, prices slashed, clearance, regularly, usually, cut rate, originally, formerly, at cost, below cost, wholesale.

5. "Testimonial" means a statement by a person referring to his or her family's personal experience with a mortuary or licensee.

(b) All stationery must indicate the true firm name as registered with the Board of Mortuary Science.

(c) Advertisements shall contain the true firm name, address, and telephone number of the facility as registered with the Board. Advertisements shall also contain the name of the manager or licensee in charge.

(d) An advertisement that makes reference to more than one registered facility shall comply with (c) above regarding one facility provided that only the municipality where the facility is located and the true firm name as it is registered with the Board is disclosed for any additional facilities listed. If an advertisement for any additional facility discloses any further information than the municipality where the facility is located and the true firm name as it is registered with the Board, the advertisement shall satisfy the requirements of (c) above.

(e) Telephone book listings of two lines or less or small novelty items where the space of advertising is limited shall disclose the municipality where the facility is located and the true firm name as it is registered with the Board.

(f) No licensee or owner of a mortuary shall cause to be published, disseminated, circulated or broadcast any advertisement which is false, fraudulent, deceptive or misleading or which misrepresents, suppresses, conceals, obscures or distorts any material fact.

(g) In addition, it shall be deceptive and misleading for any advertisement to contain the following:

1. The name of a person not licensed by the Board in connection with the name of a mortuary in any manner whatsoever, unless the unlicensed person is clearly and obviously identified in the advertisement as such by the

use of the phrase "unlicensed and not qualified to make funeral arrangements, embalm or conduct funerals". The surname of an unlicensed person may appear in the title of a mortuary as registered with the Board.

2. A price reduction statement where the advertisement or current price is in fact no less than the price at which the service or merchandise was offered for sale by the advertiser for a reasonable period of time at least 30 days prior to the advertisement. In the absence of the disclosure of the period during which an advertised price reduction will remain in effect, the period shall be deemed to be 30 days from the date of initial publication.

3. An offer of professional services or merchandise where such services or merchandise are in fact not available from the mortuary or are beyond the ability of the licensee to perform or supply.

4. A license number which has not been issued to the alleged licensee, has lapsed or has been revoked or currently suspended.

5. The name, address and telephone number of a mortuary which does not exist, has not been completely constructed or is not currently open for business.

6. A claim of professional superiority or superior quality of services or merchandise, unless such claim can be substantiated by the licensee upon demand by the Board.

7. Intimidation, undue pressure or undue influence.

(h) An advertisement may contain either a lay or expert testimonial, provided that such testimonial is based upon personal knowledge or experience obtained from a provider relationship with the licensee or direct personal knowledge of the subject matter of the testimonial. A lay person's testimonial shall not attest to any technical matter beyond the testimonial giver's competence to comment upon. An expert testimonial shall be rendered only by an individual possessing specialized expertise sufficient to allow the rendering of a bona fide statement or opinion. An advertiser shall be able to substantiate any objective, verifiable statement of fact appearing in a testimonial, and the failure to do so, if required by the Board, may be deemed occupational misconduct.

1. The name of a person not licensed by the Board when appearing in any testimonial for a mortuary shall be accompanied by the following: "unlicensed and not qualified to make funeral arrangements, embalm or conduct a funeral". The surname of an unlicensed person may appear in the title of a mortuary as registered with the Board.

(i) An advertisement which refers to or sets forth a price shall disclose all services or merchandise which will be provided for that price. The name of the manufacturer and the model number of any casket which will be included for that price also shall be disclosed in the advertisement. Where a price is advertised, no additional charges shall be

made for the advertised service or disposition unless the advertisement includes a specific delineation of additional services or merchandise which may be necessary.

(j) The responsibility for the form and content of any advertisement shall be joint and several among all licensees who are principals, partners, or officers of the mortuary identified in the advertisement.

(k) An advertisement may include the name of an inactive licensee as defined in N.J.A.C. 13:36-4.14 provided that the inactive licensee is not held out as the manager or licensee in charge.

(l) A copy of each printed advertisement and a video or audio tape recording of each broadcast advertisement shall be retained by the licensee for a period of three years from the date of initial publication or dissemination. Each such copy or tape shall be made available for review upon request by the Board.

Amended by R.1981 d.349, effective September 10, 1981.

See: 13 N.J.R. 368(a), 13 N.J.R. 609(a).

Section substantially amended.

As amended, R.1982 d.404, eff. November 15, 1982.

See: 14 N.J.R. 898(a), 14 N.J.R. 1309(d).

In (g) deleted requirement that license number be included in advertisement.

Administrative Correction to (d)1 and 2.

See: 21 N.J.R. 1830(a).

Amended by R.1993 d.76, effective February 16, 1993.

See: 24 N.J.R. 3016(a), 25 N.J.R. 709(b).

Deleted (d)1 and added new (d); revised (d)6; added new (e); redesignated existing (e) through (h) as (f) through (i) without change.

Amended by R.1994 d.523, effective October 17, 1994.

See: 26 N.J.R. 2536(a), 26 N.J.R. 4201(a).

Amended by R.1998 d.180, effective April 6, 1998.

See: 29 N.J.R. 5182(a), 30 N.J.R. 1297(a).

Added new (c), (d) and (e); recodified former (c) through (g) as (f) through (j); deleted former (h); added a new (k); and recodified former (i) as (l).

13:36-5.13 Transfer of funeral establishment to new location

Whenever a funeral establishment is to be moved to a new location, it shall be necessary to apply for certificate of registration and to notify the Board, in writing, at least 15 days in advance of the proposed date of opening at the new location in order to allow time for an inspection and registration. A certificate of registration is not transferable.

Administrative Correction.

See: 21 N.J.R. 1830(a).

13:36-5.14 Discontinuation of business or bankruptcy

(a) When a mortuary is permanently closed for business, the manager or licensee in charge shall immediately:

1. Surrender the mortuary's Certificate of Registration to the Board;
2. Remove all signs from the exterior of the closed mortuary;

3. Discontinue the telephone service and all advertising; and

4. Furnish the Board with a copy of the preneed ledger required pursuant to N.J.A.C. 13:36-11.16(a).

(b) When a mortuary files for any form of bankruptcy, the manager or licensee in charge shall, within 10 days of such filing, furnish the Board and the trustee in bankruptcy with a copy of the preneed ledger required pursuant to N.J.A.C. 13:36-11.16(a), and upon request, with all other records required pursuant to N.J.A.C. 13:36-11.16.

Repeal and New Rule, R.1998 d.15, effective January 5, 1998.

See: 29 N.J.R. 3110(a), 30 N.J.R. 90(a).

Section was "Discontinuation of business".

13:36-5.15 Unlicensed persons in funeral directing or embalming practice

A licensed practitioner of mortuary science shall not permit any unlicensed person to engage in or take charge of the activities for which a license to engage in the business or practice of funeral directing or embalming is required by the provisions of the Mortuary Science Act.

Amended by R.1994 d.523, effective October 17, 1994.

See: 26 N.J.R. 2536(a), 26 N.J.R. 4201(a).

13:36-5.16 Notice of absence from practice

In cases where a licensed practitioner of mortuary science in charge of an establishment intends to remain away from his or her establishment or practice for a period in excess of 30 days, he or she shall so notify the Board and furnish it with the name of the licensed employee who will remain in charge.

Amended by R.1994 d.523, effective October 17, 1994.

See: 26 N.J.R. 2536(a), 26 N.J.R. 4201(a).

13:36-5.17 Removal of human bodies; authorization

No person shall remove human remains from any residence or institution without first securing authorization consenting to the removal from the next of kin or a person legally entitled to grant said authorization.

Amended by R.1994 d.523, effective October 17, 1994.

See: 26 N.J.R. 2536(a), 26 N.J.R. 4201(a).

13:36-5.18 Disposition of dead human remains

(a) Whenever dead human remains are entrusted to the care of a licensed practitioner of mortuary science for a disposition, the practitioner shall conform with N.J.A.C. 8:9-1 et seq. and shall not remove any part or dispose of the remains in any manner whatsoever except as permitted by law and as authorized by the person legally entitled to grant said authorization.

(b) Viscera shall be treated with embalming fluid and hardening compound containing formaldehyde preservatives and interred with the remains.

Amended by R.1984 d.341, effective August 6, 1984.

See: 16 N.J.R. 505(a), 16 N.J.R. 2143(b).

Changed cross-reference.

Amended by R.1994 d.523, effective October 17, 1994.

See: 26 N.J.R. 2536(a), 26 N.J.R. 4201(a).

13:36-5.19 Public accommodations

All funeral establishments are places of public accommodation and subject to public accommodation laws including the laws against discrimination.

Cross References

Exemption from provisions of this section, see N.J.A.C. 13:36-1.10.

13:36-5.20 Referral fees

It shall be occupational misconduct for a licensee to pay, offer to pay, or to receive from any person any fee or other form of compensation for the referral of a purchaser of goods and services. The within prohibition shall not prohibit the division of fees among licensees engaged in a bona fide employment, partnership or corporate relationship for the delivery of occupational services.

New Rule, R.1993 d.76, effective February 16, 1993.

See: 24 N.J.R. 3016(a), 25 N.J.R. 709(b).

SUBCHAPTER 6. EMBALMING PROCEDURE

13:36-6.1 Privacy of burial preparation

(a) The preparation for burial or other disposition of all dead human bodies shall be performed in privacy. No one shall be permitted to be present in the embalming, operating or preparation room while a dead human body is being embalmed, washed or otherwise prepared for burial or other disposition, except the following:

1. Licensed practitioner of mortuary science and their employees;
2. Duly authorized instructors of funeral directing schools;
3. Duly registered funeral director students and trainees;
4. Public officials or representatives in the discharge of their duties;
5. Duly accredited doctors or nurses;
6. Members of the immediate family of the deceased and their designated representatives.

Amended by R.1994 d.523, effective October 17, 1994.

See: 26 N.J.R. 2536(a), 26 N.J.R. 4201(a).

Cross References

Exemption from provisions of this section, see N.J.A.C. 13:36-1.10.

13:36-6.2 Dress requirement for embalming

(a) Every person, while engaged in the actual embalming of a dead human body, shall be attired in a clean and sanitary smock or gown, which does not permit blood or other potentially infectious materials to pass through to or reach the employee's work clothes, street clothes, undergarments, skin, eyes, mouth or other mucous membranes, and shall while so engaged wear protective apparel in compliance with OSHA regulations (see 29 CFR 1910.1030).

(b) The body being embalmed shall at all times be so covered as to insure privacy of the body.

Amended by R.1994 d.523, effective October 17, 1994.

See: 26 N.J.R. 2536(a), 26 N.J.R. 4201(a).

13:36-6.3 Use of poisons

The use of any fluid or compound which contains arsenic, lead, mercury, zinc, silver, antimony or chloral or any poisonous alkaloid in the embalming of a dead human body is prohibited.

13:36-6.4 Disposal of blood and excretion

All blood and excretions of a dead human body shall be disposed of in a sanitary manner. Licensees shall comply with the OSHA regulations (see 29 CFR 1910.1030) in the operation of a licensed funeral establishment and shall use universal precautions according to the Centers for Disease Control recommendations (see Morbidity and Mortality Weekly Reports, including Volume 38, S-6, June 23, 1989, and subsequent volumes available from the Centers for Disease Control, Atlanta, Georgia 30333), incorporated herein by reference. These precautions shall include taking due care to prevent any spread of infection in the handling of dead human body during transportation, in preparing and during embalming, and after contact with such body, and shall also include the disinfecting of hands and the removal of any soiled clothing.

Amended by R.1994 d.523, effective October 17, 1994.

See: 26 N.J.R. 2536(a), 26 N.J.R. 4201(a).

13:36-6.5 Marking receptacles

(a) All receptacles containing embalming fluid, formaldehyde or any poisonous or dangerous substances shall be plainly marked to indicate the contents thereof in compliance with 29 CFR 1910.1048.

(b) Receptacles containing blood or other potentially infectious materials shall be placed in a container that prevents leakage during collection or storage.

Amended by R.1994 d.523, effective October 17, 1994.

See: 26 N.J.R. 2536(a), 26 N.J.R. 4201(a).

13:36-6.6 Unnatural deaths

No licensed practitioner of mortuary science shall permit the embalming of a dead human body where he or she has

information reasonably indicating that death occurred as a result of accidental, homicidal or suicidal means or under suspicious or unnatural circumstances, until the body has been duly released to him or her for embalming or other preparation by the proper authority in accordance with the State Medical Examiners Act (N.J.S.A. 52:17B-87).

Amended by R.1994 d.523, effective October 17, 1994.
See: 26 N.J.R. 2536(a), 26 N.J.R. 4201(a).

13:36-6.7 Interns

An intern may not embalm or perform any part of embalming procedure on a dead body unless such activity is performed under the immediate and direct supervision and control of a licensed practitioner of mortuary science holding a New Jersey license.

Amended by R.1984 d.341, effective August 6, 1984.

See: 16 N.J.R. 505(a), 16 N.J.R. 2143(b).

"Trainee" changed to "interns".

13:36-6.8 (Reserved)

Repealed by R.1985 d.293, effective June 17, 1985.

See: 17 N.J.R. 797(a), 17 N.J.R. 1580(a).

Section was "Sterilizing instruments."

SUBCHAPTER 7. SPECIAL RULES OF PRACTICE

13:36-7.1 Handling and embalming bodies dead of an infectious or contagious disease

(a) Except as otherwise provided by law, including, but not limited to, regulation, no person in the conduct of the practice of mortuary science shall:

1. Deny funeral services for any deceased person based upon the cause of death;
2. Place any condition upon the provision of funeral services for any deceased person based upon the cause of death; or
3. Represent that state or local law requires that any condition be placed upon the provision of funeral services for any deceased person based upon the cause of death.

(b) In the preparation for burial or transportation of a dead body, the funeral director, the embalmer and assistants shall use universal precautions according to the Centers for Disease Control recommendations (see Morbidity and Mortality Weekly Reports, including Volume 38, S-6, June 23, 1989, and subsequent volumes available from the Centers for Disease Control, Atlanta, Georgia 30333), incorporated herein by reference, which shall include taking due care to prevent any spread of infection in the handling of such body during transportation, in preparation and during embalming, and after contact with such body, and shall disinfect their hands and remove any soiled clothing. All instruments, gloves, coverings and utensils used in embalming or in handling the body shall be disinfected immediately after being used. All fluids or other matters removed from such body in the process of embalming shall be disposed of in accordance with all applicable State, Federal and local laws and regulations governing medical and infectious waste.

SUBCHAPTER 8. GENERAL RULES OF PRACTICE

13:36-8.1 Carrying license identification card

Every licensed practitioner of mortuary science shall in the conduct of business carry on his or her person the current license identification card.

Amended by R.1994 d.523, effective October 17, 1994.

See: 26 N.J.R. 2536(a), 26 N.J.R. 4201(a).

13:36-8.2 Divulging secrets

A licensed practitioner of mortuary science shall not divulge or permit his or her agents or employees to divulge any privacies, confidences or secrets that may come to his or her attention through the practice of mortuary science. However, this rule shall not be invoked to circumvent the Board's legal powers to carry out its duties and responsibilities under the law, nor the powers of the courts and other public bodies to compel the giving of testimony.

Amended by R.1994 d.523, effective October 17, 1994.

See: 26 N.J.R. 2536(a), 26 N.J.R. 4201(a).

13:36-8.3 Safeguarding public health and decedent's dignity

Every licensed practitioner of mortuary science shall adopt all proper means and methods to safeguard the public health and dignity of the decedent.

Amended by R.1994 d.523, effective October 17, 1994.

See: 26 N.J.R. 2536(a), 26 N.J.R. 4201(a).

13:36-8.4 Restrictions on employment

A licensed practitioner of mortuary science shall not employ or engage the services of any person other than his or her registered intern or interns or another practitioner in the embalming of cadavers or in the practice of funeral management pursuant to N.J.S.A. 45:7-47.

Amended by R.1994 d.523, effective October 17, 1994.

See: 26 N.J.R. 2536(a), 26 N.J.R. 4201(a).

13:36-8.5 Unauthorized license use

No licensed practitioner of mortuary science shall lend his or her license to any other person, or employ it in such a way as to defeat the purposes of the law; provided, however, this rule shall not prevent the aforesaid licensee from embalming cadavers or supervising funerals and burials on behalf of out-of-State practitioners of mortuary science, funeral directors, or embalmers.

Amended by R.1994 d.523, effective October 17, 1994.

See: 26 N.J.R. 2536(a), 26 N.J.R. 4201(a).

13:36-8.6 (Reserved)

Amended by R.1973 d.16, effective January 10, 1973.

See: 4 N.J.R. 130(a), 5 N.J.R. 54(a).

Amended by R.1984 d.341, effective August 6, 1984.

See: 16 N.J.R. 505(a), 16 N.J.R. 2143(b).

(d): Changed "45" to "44".

Amended by R.1994 d.523, effective October 17, 1994.

See: 26 N.J.R. 2536(a), 26 N.J.R. 4201(a).

Repealed by R.1998 d.15, effective January 5, 1998.

See: 29 N.J.R. 3110(a), 30 N.J.R. 90(a).

Section was "Funeral arrangements involving cash or negotiable instruments".

13:36-8.7 Authorized surrender of cadavers

A licensed practitioner of mortuary science shall promptly surrender a cadaver upon proper direction and authorization of the person lawfully entitled to its custody.

Amended by R.1994 d.523, effective October 17, 1994.

See: 26 N.J.R. 2536(a), 26 N.J.R. 4201(a).

13:36-8.8 Authorization to embalm cadaver

No licensed practitioner of mortuary science shall take possession of or embalm a cadaver without first being directed and fully authorized to do by those charged with the duties of interment.

Amended by R.1994 d.523, effective October 17, 1994.

See: 26 N.J.R. 2536(a), 26 N.J.R. 4201(a).

13:36-8.9 Funeral arrangements or quotation of funeral prices

(a) No unlicensed person shall be permitted to make funeral arrangements on behalf of any licensed practitioner of mortuary science, except that duly registered interns may make such arrangements pursuant to N.J.S.A. 45:7-47.

(b) When funeral arrangements are being made, no one but a duly licensed practitioner of mortuary science shall quote prices to a consumer in connection with any funeral services and/or goods. Nothing contained in this section shall preclude quotation of prices when funeral arrangements are not being made.

Amended by R.1994 d.523, effective October 17, 1994.

See: 26 N.J.R. 2536(a), 26 N.J.R. 4201(a).

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

Pursuant to N.J.A.C. 3:41-7.4, no interment, cremation or other disposition of a dead human body, or any disinterment thereof, shall be made in the State of New Jersey unless a New Jersey licensed practitioner of mortuary science is present at the time of disposition, provided, however, that this rule shall not apply to a disinterment resulting from a court order in connection with a criminal investigation.

Amended by R.1984 d.341, effective August 6, 1984.

See: 16 N.J.R. 505(a), 16 N.J.R. 2143(b).

Amended by R.1994 d.523, effective October 17, 1994.

See: 26 N.J.R. 2536(a), 26 N.J.R. 4201(a).

13:36-8.11 Multiple burials

(a) No licensed practitioner of mortuary science shall place the remains, or any part of the remains, of more than one deceased person, stillborn infant, or fetus in a coffin, casket, or other container for the purpose of interment or cremation, or cause the remains, or any part of the remains, of more than one deceased person, stillborn infant, or fetus, to be interred or cremated together unless specific, written authorization to do so has been signed by a person charged with the duties of interment, or by a court of competent jurisdiction.

(b) For the purposes of this section, the only persons who may authorize a licensee to perform a multiple burial are limited to the following:

1. The decedent;
2. A relative or relatives in the order of:
 - i. Surviving spouse;
 - ii. A majority of surviving children of the decedent or the surviving child if one;
 - iii. The surviving parent or parents of the decedent;
 - iv. A majority of the brothers and sisters of the decedent if no child or parent is living; or
 - v. Other next of kin according to the degree of consanguinity.
3. City or county welfare director in cases involving the indigent.
4. Chief medical examiner in cases involving unidentified or unclaimed bodies.
5. A court of competent jurisdiction.

(c) The written authorization to be obtained by the funeral director shall include the name and address, and signature of the person authorizing the multiple burial, the names, ages, and addresses of the deceased, the dates, places and times of their death, the names and addresses of the hospitals or institutions from which the bodies were obtained, the name and address of the cemetery or crematory where the remains are to be interred, or cremated, and the location of the grave in which any interment is to be made.

(d) Each written authorization shall bear a number corresponding to the funeral record number required by the funeral record keeping rule of this chapter, and a signed copy shall be retained by the funeral director making such arrangements for at least seven years thereafter.

Amended by R.1979 d.420, effective October 18, 1979.

See: 11 N.J.R. 454(c), 11 N.J.R. 582(b).

Amended by R.1994 d.523, effective October 17, 1994.

See: 26 N.J.R. 2536(a), 26 N.J.R. 4201(a).

SUBCHAPTER 9. PREVENTION OF UNFAIR OR
DECEPTIVE ACTS AND PRACTICES

13:36-9.1 Definitions

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

“Accounting year” refers to the particular calendar year or other one year period used by a funeral provider in keeping financial records for tax or accounting purposes.

“Alternative container” means a non-metal receptacle or enclosure, without ornamentation or a fixed interior lining, which is designed for the encasement of human remains and which is made of cardboard, pressed-wood, composition materials (with or without an outside covering) or pouches of canvas or other materials.

“Board” refers to the New Jersey State Board of Mortuary Science.

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

“Casket” means a rigid container which is designed for the encasement of human remains and which is usually constructed of wood, metal, or like material, and ornamented and lined with fabric.

“Cremation” means a heating process which incinerates human remains.

“Crematory” means any person, partnership or corporation that performs cremation.

“Direct cremation” means a disposition of human remains by cremation, without formal viewing, visitation, or ceremony with the body present.

“Funeral goods” means goods which are sold or offered for sale directly to the public for use in connection with funeral services including, but not limited to, merchandise such as casket, vault or other enclosure, clothing, prayer cards, register book, religious artifacts and any other items purchased by the licensed practitioner of mortuary science for resale without substantial alteration.

“Funeral provider” means any person, partnership or corporation that sells or offers to sell funeral goods and funeral services to the public and is a licensed practitioner of mortuary science or the holder of a certificate of registration to operate a mortuary in the State of New Jersey.

“Funeral services” means any services which may be used to care for and prepare deceased human bodies for burial, cremation or other final disposition; and arrange, supervise or conduct the funeral ceremony or the final disposition of deceased human bodies.

“Immediate burial” means a disposition of human remains by burial, without formal viewing, visitation, or ceremony with the body present, except for a graveside service.

“Outer burial container” means any container which is designed for placement in the grave around the casket including, but not limited to, containers commonly known as burial vaults, grave boxes, and grave liners.

“Person” means any individual, partnership, corporation, association, government or governmental subdivision or agency, or other entity.

“Services of funeral director and staff” means the services, not included in prices of other categories in N.J.A.C. 13:36-9.7 which may be furnished by a funeral provider in arranging and supervising a funeral, such as conducting the arrangements conference, planning the funeral, obtaining necessary permits and placing obituary notices.

“Unfinished wood box” means an unornamented casket made of wood which does not have a fixed interior lining.

Amended by R.1994 d.523, effective October 17, 1994.
See: 26 N.J.R. 2536(a), 26 N.J.R. 4201(a).

13:36-9.2 Violations

It shall be a violation of the rules of this subchapter to engage in unfair or deceptive acts or practices as defined herein or to fail to comply with the preventive requirements specified herein and failure to comply with such preventive requirements may be deemed to be professional misconduct.

13:36-9.3 Failure to disclose required price information: An unfair or deceptive practice

(a) In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for a funeral provider to fail to furnish price information disclosing the cost to the purchaser for each of the specific funeral goods and funeral services used in connection with the disposition of deceased human bodies, including at least the price of embalming, transportation of remains, use of facilities, caskets, outer burial containers, immediate burials, or direct cremations, to persons inquiring about the purchase of funerals. Any funeral provider who complies with the preventive requirements in (b) below is not engaged in the unfair or deceptive acts or practices defined here.

(b) To prevent the unfair or deceptive acts and practices mentioned in (a) above as well as those defined in N.J.A.C. 13:36-9.15(a), funeral providers must comply with the provisions of N.J.A.C. 13:36-9.4, 9.5, 9.6, 9.7 and 9.8.

Administrative Correction to (b): changed cite from 13:35 to 13:36.
See: 22 N.J.R. 3384(b).

13:36-9.4 Telephone price disclosures

(a) Funeral providers shall tell persons who call the funeral provider’s place of business and ask about the terms, conditions, or prices at which funeral goods or funeral services are offered, that price information is available over the telephone.

(b) Funeral providers shall tell persons who ask by telephone about the funeral provider's offerings or prices any accurate information from the price lists described in N.J.A.C. 13:36-9.5, 9.6 and 9.7 which reasonably answers the question and any other information which reasonably answers the question and which is readily available.

13:36-9.5 Casket price list

(a) Funeral providers shall give a printed or typewritten price list to people who inquire in person about the offerings or prices of caskets or alternative containers. The funeral provider shall offer the list upon beginning discussion of, but in any event before showing caskets. The list shall contain at least the retail prices of all caskets and alternative containers offered which do not require special ordering, enough information to identify each, and the effective date for the price list.

1. In lieu of a written list, other formats, such as notebooks, brochures, or charts may be used if they contain the same information as would the printed or typewritten list, displayed in a clear and conspicuous manner. Provided however, that funeral providers do not have to make a casket price list available if the funeral providers place on the general price list, specified in N.J.A.C. 13:36-9.7, the information which is required by this section.

(b) Funeral providers shall place on the list, whether a printed or typewritten list, or on any other format it used, the name of the funeral provider's place of business and a caption describing the list as a "casket price list".

13:36-9.6 Outer burial container price list

(a) Funeral providers shall give a printed or typewritten price list to persons who inquire in person about outer burial container offerings or prices. The funeral provider shall offer the list upon beginning discussion of, but in any event before showing the containers. The list shall contain at least the retail prices of all outer burial containers offered which do not require special ordering, enough information to identify each container, and the effective date for the price listed.

1. In lieu of a written list, the funeral provider may use other formats, such as notebooks, brochures, or charts, if they contain the same information as the printed or typewritten list, displayed in a clear and conspicuous manner. Provided however, that funeral providers do not have to make an outer burial container price list available if the funeral providers place on the general price list, specified in N.J.A.C. 13:36-9.7, the information which is required by this section.

(b) Funeral providers shall place on the list, whether a printed or typewritten list or on any other format it used, the name of the funeral provider's place of business and a caption describing the list as an "outer burial container price list."

13:36-9.7 General price list

(a) Funeral providers shall give a printed or typewritten price list for retention to persons who inquire in person about funeral arrangements or the prices of funeral goods or funeral services. When people inquire in person about funeral arrangements or the prices of funeral goods or funeral services, the funeral provider shall offer them the list upon beginning discussion either of funeral arrangements or of the selection of any funeral goods or funeral services. This list shall contain at least the following information:

1. The name, address, and telephone number of the funeral provider's place of business;
2. A caption describing the list as a "general price list";
3. The effective date for the price list; and
4. In immediate conjunction with the price disclosures required by (b) below, the statement: "This list does not include prices for certain items that you may ask us to buy for you, such as cemetery or crematory services, flowers, and newspaper notices. The prices for those items will be shown on your bill or the statement describing the funeral goods and services you selected."

(b) Funeral providers shall include on the price list, in any order, the retail prices (expressed either as the flat fee, or as the price per hour, mile or other unit of computation) and the other information specified below for at least each of the following items, if offered for sale:

1. Forwarding the remains to another funeral home, together with a list of the services provided for any quoted price;
2. Receiving remains from another funeral home, together with a list of the services provided for any quoted price;
3. The price range for the direct cremations offered by the funeral provider, together with a separate price for a direct cremation where the purchaser provides the container; separate prices for each direct cremation offered including an unfinished wood box or alternative container; and a description of the services and container (where applicable), included in each price;
4. The price range for the immediate burials offered by the funeral provider, together with a separate price for an immediate burial where the purchaser provides the casket; separate prices for each immediate burial offered including a casket or alternative container; and a description of the services and container (where applicable) included in that price;
5. Transfer of remains to funeral home;
6. Embalming;
7. Other preparation of the body;
8. Use of facilities for viewing;

9. Use of facilities for funeral ceremony;
10. Other use of facilities, together with a list of facilities provided by any quoted price;
11. Hearse;
12. Limousine;
13. Other automotive equipment, together with a description of the automotive equipment provided for any quoted price; and
14. Acknowledgement cards.

(c) Funeral providers shall include on the price list in any order, the following information:

1. Either of the following:
 - i. The price range for the caskets offered by the funeral provider, together with the statement: "A complete price list will be provided at the funeral home."; or
 - ii. The prices of individual caskets disclosed in the manner specified by N.J.A.C. 13:36-9.5; and
2. Either of the following:
 - i. The price range for the outer burial containers offered by the funeral provider, together with the statement: "A complete price list will be provided at the funeral home."; or
 - ii. The prices of individual outer burial containers, disclosed in the manner specified by N.J.A.C. 13:36-9.6; and
3. The price for the services of funeral director and staff, together with a list of the principal services provided for any quoted price and, if the charge cannot be declined by the purchaser, the statement: "This fee for our services will be added to the total cost of the funeral arrangements you select. (This fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving remains.)"

13:36-9.8 Statement of funeral goods and services selected

(a) Funeral providers shall give an itemized written statement for retention to each person who arranges a funeral or other disposition of human remains, at the conclusion of the discussion of arrangements. This statement shall conform to the requirements of N.J.A.C. 13:36-1.9.

(b) The itemized cash advance prices shall be given to the extent known or reasonably ascertainable. If the cash advance prices are not known or reasonably ascertainable, a good faith estimate shall be given and a written statement of the actual charges shall be provided before the final bill is paid.

(c) Funeral providers may give persons any other price information in any other format, in addition to that required

by N.J.A.C. 13:36-9.5, 9.6 and 9.7 so long as the statement required by this section is given when required.

13:36-9.9 Embalming provisions

(a) In seeking or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

1. Represent that State or local law requires that a deceased person be embalmed when such is not the case;
2. Fail to disclose that embalming is not required by law except in certain special cases.

(b) To prevent deceptive acts or practices mentioned in (a) above, as well as the unfair or deceptive acts or practices defined in N.J.A.C. 13:36-9.16 and 9.17(a), funeral providers shall:

1. Not represent that a deceased person is required to be embalmed for direct cremation, immediate burial, a funeral using a sealed casket, or if refrigeration is available and the funeral is without viewing or visitation and with a closed casket when State or local law does not require embalming; and
2. Place the following disclosure on the general price list, required by N.J.A.C. 13:36-9.7, in immediate conjunction with the price shown for embalming; "Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement which does not require you to pay for it, such as direct cremation or immediate burial."

13:36-9.10 Casket for cremation provisions

(a) In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

1. Represent that State or local law requires a casket for direct cremations;
2. Represent that a casket (other than an unfinished wood box) is required for direct cremations.

(b) To prevent the deceptive acts or practices mentioned in (a) above, as well as the unfair or deceptive acts or practices defined in N.J.A.C. 13:36-9.15(a), funeral providers shall place the following disclosure in immediate conjunction with the price range shown for direct cremations: "If you want to arrange a direct cremation, you can use an unfinished wood box or an alternative container. Alternative containers can be made of materials like heavy cardboard or composition materials (with or without an outside covering), or pouches of canvas." This disclosure only has to be placed on the general price list if the funeral provider arranges direct cremations.

13:36-9.11 Outer burial container provisions

(a) In selling or offering to sell funeral goods and funeral services to the public, it is a deceptive act or practice for a funeral provider to:

1. Represent that State or local laws or regulations, or particular cemeteries, require outer burial containers when such is not the case;
2. Fail to disclose to persons arranging funerals that State does not require the purchase of an outer burial container.

(b) To prevent the deceptive acts or practices mentioned in (a) above, funeral providers must place the following disclosure on the outer burial container price list, required by N.J.A.C. 13:36-9.7, in immediate conjunction with those prices: "In most areas of the country, no state or local law makes you buy a container to surround the casket in the grave. However, many cemeteries ask that you have such a container so that the grave will not sink in. Either a burial vault or a grave liner will satisfy these requirements."

13:36-9.12 General provisions on legal and cemetery requirements

(a) In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for funeral providers to represent that Federal, State or local laws, or particular cemeteries or crematories, require the purchase of any funeral goods or funeral services when such is not the case.

(b) To prevent the deceptive acts or practices mentioned in (a) above, as well as the deceptive acts or practices identified in N.J.A.C. 13:36-9.9, 9.10 and 9.11, funeral providers shall identify and briefly describe in writing on the statement of funeral goods and services selected (required by N.J.A.C. 13:36-9.8) any legal, cemetery, or crematory requirement which the funeral provider represents to persons as compelling the purchase of funeral goods or funeral services for the funeral which that person is arranging.

13:36-9.13 Provisions on preservative and protective value claims

(a) In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

1. Represent that funeral goods have protective features or will protect the body from gravesite substances when such is not the case.

13:36-9.14 Cash advance provisions

In selling or offering to sell funeral goods and funeral services to the public any cash advance items shall reflect the actual cost to the funeral provider.

13:36-9.15 Required purchase of caskets for direct cremations

(a) In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for a funeral provider to require that a casket other than an unfinished wood box be purchased for direct cremation.

(b) To prevent the unfair or deceptive act or practice mentioned in (a) above, funeral providers must make an unfinished wood box or alternative container available for direct cremations, if they arrange direct cremations.

13:36-9.16 Other required purchases

(a) In selling or offering to sell funeral goods or funeral services, it is an unfair or deceptive act or practice for a funeral provider to condition the furnishing of any funeral good or funeral service to a person arranging a funeral upon the purchase of any other funeral good or funeral service, except as required by law or as otherwise permitted by this section.

(b) To prevent the unfair or deceptive act or practice mentioned in (a) above, funeral providers shall:

1. Place the following disclosure in the general price list, immediately above the price required by N.J.A.C. 13:36-9.7(b) and (c): "the goods and services shown below are those we can provide to our customers. You may choose only the items you desire. If legal or other requirements mean you must buy any items you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the funeral goods and services you selected." Provided, however, that if the charge for "services of funeral director and staff" cannot be declined by the purchaser, the statement shall include the sentence: "However, any funeral arrangements you select will include a charge for our services" between the second and third sentences of the statement specified above herein; and

2. Place the following disclosure on the statement of funeral goods and services selected, required by N.J.A.C. 13:36-9.8: "Charges are only for those items that are used. If we are required by law to use any items, we will explain the reasons in writing below."

(c) A funeral provider shall not violate this section by failing to comply with a request for a combination of goods or services which would be impossible, impractical, or excessively burdensome to provide.

13:36-9.17 Services provided without prior approval

(a) In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for any provider to embalm a deceased human body for a fee unless:

1. State or local law or regulation requires embalming in the particular circumstances regardless of any funeral choice which the family might make; or

2. Prior approval for embalming (expressly so described) has been obtained from a family member or other authorized person; or

3. The funeral provider is unable to contact a family member or other authorized person after exercising due diligence, has no reason to believe the family does not want embalming performed, and obtains subsequent approval for embalming already performed (expressly so described). In seeking approval, the funeral provider shall disclose that a fee will be charged if the family selects a funeral which requires embalming, such as a funeral with a viewing, and that no fee will be charged if the family selects a service which does not require embalming, such as direct cremation or immediate burial.

(b) To prevent the unfair or deceptive acts or practices mentioned in (a) above, funeral providers shall include on the contract, final bill, or other written evidence of the agreement or obligation given to the customer, the statement: "If you selected a funeral which requires embalming, such as a funeral with viewing you may have to pay for embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as direct cremation or immediate burial. If we charged for embalming, we will explain why below."

13:36-9.18 Retention of documents

To prevent the unfair or deceptive acts or practices specified in this subchapter, funeral providers shall retain and make available for inspection by Board officials true and accurate copies of the price lists specified in N.J.A.C. 13:36-9.5, 9.6 and 9.7, as applicable, for at least one year after the date of their last distribution to customers, and a copy of each statement of funeral goods and services selected, as required by N.J.A.C. 13:36-9.8 for at least six years from the date on which the statement was signed, in conformity with N.J.A.C. 13:36-1.9.

13:36-9.19 Comprehension of disclosures

To prevent the unfair or deceptive acts or practices specified in this subchapter, funeral providers shall make all disclosures required in a clear and conspicuous manner.

SUBCHAPTER 10. CONTINUING EDUCATION

Authority

N.J.S.A. 45:7-72.1, and 72.2 (P.L. 1995, c.192).

Source and Effective Date

R.1997 d.162, effective April 7, 1997.
See: 29 N.J.R. 408(a), 29 N.J.R. 1340(b).

13:36-10.1 Purpose and scope

(a) The rules established by this subchapter are designed to ensure that the practitioners of mortuary science maintain the highest degree of quality in their profession.

(b) The requirements set forth under this subchapter apply to all Board licensees practicing mortuary science in the State of New Jersey as a condition of biennial licensure, except where the rules provide for exemption or waiver.

13:36-10.2 Definitions

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

"Board" means the State Board of Mortuary Science of New Jersey.

"Committee" means the Credentials Committee established by the Board pursuant to N.J.A.C. 13:36-10.5.

"Person" means any person as defined in N.J.S.A. 56:8-1.

"United States Armed Forces" means the United States Army, United States Navy, United States Air Force, United States Marine Corps, and United States Coast Guard.

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

(a) The Board shall not renew a mortuary science license for the biennial renewal period commencing March 1, 1999, or any following year, unless the licensee submits with the renewal application proof that he or she has completed courses of continuing professional competency of the types and number of credits specified in this subchapter. Proof of completion of the required number of professional development hours shall be in the form outlined in N.J.A.C. 13:36-10.10.

(b) By the end of each biennial licensing period, every licensee shall, as a condition of license renewal, have successfully completed 10 credit hours of continuing education courses or seminars accredited by the Board. No more than three credit hours may be obtained, during each biennial license period, in courses or seminars dealing with funeral merchandise, such as caskets, outer burial containers and clothing.

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

Amended by R.1999 d.119 effective April 5, 1999.

See: 31 N.J.R. 26(a), 31 N.J.R. 882(a).

In (b), added a second sentence.

13:36-10.4 Exemption

(a) A person employed on a full-time basis by the Federal, State, county or municipal government who is not permitted by law or rule to actively engage in the practice of mortuary science shall be exempt from complying with the continuing education requirements of N.J.A.C. 13:36-10.3.

(b) A licensee who elects to become inactive shall not be required to demonstrate compliance with N.J.A.C. 13:36-10.3.

(c) A licensee who elects to be inactive pursuant to N.J.A.C. 13:36-4.14 shall be exempt from compliance with the continuing education requirements of N.J.A.C. 13:36-10.3 for any biennial period, or portion thereof, during which a licensee is inactive.

Amended by R.1997 d.514, effective December 1, 1997.

See: 29 N.J.R. 4072(a), 29 N.J.R. 5071(a).

Denoted the existing paragraph as (a); and added (b) and (c).

13:36-10.5 Waiver of continuing competency requirement

(a) The Board may, in its discretion, waive continuing competency requirements on an individual basis for reasons of hardship, such as illness or disability, or other good cause shown.

(b) Any licensee seeking a waiver of the continuing competency requirement must apply to the Board, in writing, no later than three months prior to the expiration of the biennial licensing period then in effect, and set forth with specificity the reasons for requesting the waiver. The licensee shall also provide the Board with such additional information as it may reasonably request in support of the waiver request.

(c) A person licensed for the first time by the Board shall have all continuing competency requirements waived solely for the remainder of that biennial licensing period.

(d) A licensee serving on active duty in the United States Armed Forces for a period of time exceeding 200 consecutive days in a biennial period shall have all continuing competency requirements waived for that biennial period.

13:36-10.6 Credentials Committee

(a) The Board shall appoint a Credentials Committee to assist it in establishing guidelines and criteria for the approval of continuing education courses and seminars. The Committee shall consist of three members of the Board. Members of the Committee shall serve for one year from the date of appointment, unless they are serving the unexpired term of a former member, in which event they shall serve for the remainder of the unexpired term.

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

1. Making recommendations to the Board regarding the approval of continuing education courses and seminars and the number of credit hours to be assigned to courses or seminars in satisfaction of the requirements of N.J.A.C. 13:36-10.3;

2. Developing procedures for the internal operation of the Committee; and

3. Maintaining substantive criteria for continuing education courses or seminars, which courses or seminars may include topics which:

i. Concern professional competency, ethics and legal developments relating to the practice of mortuary science;

ii. Examine and train licensees in the utilization and application of new techniques and scientific and clinical advances relating to mortuary science; and

iii. Deal with business management concepts as they relate to the delivery of efficient professional services to consumers.

13:36-10.7 Criteria for continuing competency programs

(a) A course of acceptable subject matter shall directly and materially relate to the practice of mortuary science and shall be:

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

2. At least one instructional hour in duration; and

3. Conducted by a qualified instructor or workshop leader.

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

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

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

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

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

(a) The Board shall grant credit for successful completion of the following, provided that the course or program meets the criteria of N.J.A.C. 13:36-10.7 and that any other source of credit directly and materially relates to the practice of mortuary science:

1. College courses;
2. Continuing education courses;
3. Correspondence, televised, videotaped and other short courses/tutorials;
4. Seminars, in-house courses, workshops and technical programs at professional meetings and conferences;
5. Teaching or instruction in (a)1, 2 and 4 above; and
6. Published papers, articles or books authored by the licensee.

(b) The Board may presumptively approve continuing education courses or seminars which are accredited by any nationally-recognized association or entity whose primary function is to accredit continuing education courses or seminars regarding the practice of mortuary science anywhere in the United States.

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

13:36-10.9 Approval of course offerings

(a) A continuing competency provider may receive approval for a continuing competency course or program pursuant to the provisions of N.J.A.C. 13:36-10.7. Prior to offering the course or program, the provider may apply for approval. However, the provider may also apply after the event to eliminate the need for individual licensees to apply under (b) below.

(b) A licensee seeking to take a course or program which the provider has not had pre-approved by the Board may apply to the Board for pre-approval or post-approval of the course or program offering. The licensee shall submit information similar to that which is required to be supplied by course providers pursuant to N.J.A.C. 13:36-10.7.

(c) An individual, group or association seeking course or program approval may impose a reasonable differential in course or program fees based upon membership within a group or association. However, in no event shall a sponsoring individual, group or association completely exclude from the course or program any licensee who is not a member of the group or association.

13:36-10.10 Credit hour reporting procedure

(a) At the time of application for biennial license renewal, a licensee shall provide, on a form approved by the Board, a signed statement certifying that the licensee has completed the required number of continuing education credits. The statement shall include, where applicable, the following:

1. The date of each course or program attended;
2. Continuing education credits claimed;
3. The title of the course and a description of its content;
4. The school, firm, or organization providing the course;
5. The instructor; and
6. The course location.

(b) Each licensee shall maintain all evidence, as set forth in (e) below, of completion of continuing education credit

requirements for two biennial periods after completion and shall submit such documentation to the Board upon request.

(c) Failure to maintain records or falsification of any information submitted with the renewal application may result in an appearance before the Board and, upon notice to the licensee and the opportunity for a hearing, penalties and/or suspension of the license.

(d) The Board shall review the records of licensees from time to time, on a random basis, to determine compliance with continuing competency requirements.

(e) Documentation of continuing competency requirements shall consist of the following:

1. A log showing the type and titles of courses, programs or seminars completed, the sponsoring organizations, locations of the courses, programs or seminars, duration, instructor's or speaker's name and credits claimed;
2. Attendance verification records in the form of college transcripts, completion certificates, paid receipts, and any other documents supporting evidence of attendance;
3. For publications, submission of the published article; and
4. For teaching, a statement of appropriate authority verifying the activity.

13:36-10.11 License restoration; activation

(a) The failure on the part of a licensee to renew his or her biennial license as required shall not relieve such person of the responsibility to maintain professional competence. At the time of application for restoration, the licensee shall submit satisfactory proof to the Board that he or she has successfully completed all delinquent continuing education credits acceptable to the Board up to a maximum of 25 credits.

(b) Pursuant to N.J.A.C. 13:36-4.14, any inactive licensee who elects to return to active practice of mortuary science during any biennial license renewal period, or whom the Board permits to resume active practice during any biennial period, shall submit to the Board satisfactory proof that he or she has successfully completed all delinquent continuing education credits for each biennial period during which the licensee was active or inactive, including any part thereof, up to a maximum of 25 credits.

Amended by R.1997 d.514, effective December 1, 1997.
See: 29 N.J.R. 4072(a), 29 N.J.R. 5071(a).

Denoted the existing paragraph as (a); and added (b).

SUBCHAPTER 11. PREPAID FUNERAL AGREEMENTS AND ARRANGEMENTS

Authority
N.J.S.A. 45:7-28.

Source and Effective Date

R.1998 d.15, effective January 5, 1998.
See: 29 N.J.R. 3110(a), 30 N.J.R. 90(a).

13:36-11.1 Definitions

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

“Assigned funeral insurance policy” means any insurance policy or annuity contract that is not a newly issued funeral insurance policy, but that, at the time an assignment was made of some or all of its proceeds, was intended to provide funds to the provider, whether directly or indirectly, at the time of the insured’s death in connection with a prepaid funeral agreement.

“At need funeral arrangements” means funeral arrangements made with survivors or personal representatives of a person who has already died for that person’s funeral.

“Board” means the State Board of Mortuary Science of New Jersey.

“Deliver” or “delivery” means the conveyance of actual control and possession of prepaid funeral goods that have been permanently relinquished by a provider, or other person, firm or corporation, or an agent thereof, to the purchaser or person paying the moneys, or personal representative of the intended funeral recipient. Delivery has not been made if the provider, or other person, firm or corporation, or an agent thereof:

1. Arranges or induces the purchaser or person paying the moneys to arrange for the storage or warehousing of prepaid funeral goods ordered pursuant to a prepaid funeral agreement, with or without evidence that legal title has passed; or
2. Acquires or reacquires actual or constructive possession or control of prepaid funeral goods after their initial delivery to the purchaser or person paying the moneys or personal representative of the intended funeral recipient.

“Funeral arrangements” means funeral and burial plans made through a provider, including the selection of plans for the furnishing of funeral goods and services pursuant to a completed plan of bodily disposition and the act of offering the opportunity to purchase or to enroll in a prepaid funeral agreement by the mortuary.

“Funeral insurance policy” means any newly issued funeral insurance policy or assigned funeral insurance policy as defined in this section.

“Funeral trust” means a commingled or non-commingled account held in a pooled trust or P.O.D. account, established in accordance with P.L. 1957, c.182 (N.J.S.A. 2A:102-13 et seq.) or P.L. 1985, c.147 (N.J.S.A. 3B:11-16 et al.), which is intended as the depository for cash payments connected with a prepaid funeral agreement.

“Guaranteed price agreement” means a prepaid funeral agreement under which, in exchange for the proceeds of a funeral trust or funeral insurance policy, the provider agrees to provide the stated goods and services in the future, at the agreed upon price regardless of whether or not the retail value of those goods and services exceeds the funds available from the funeral trust or funeral insurance policy at the time of death of the intended funeral recipient.

“Intended funeral recipient” means the person named in a prepaid funeral agreement for whose bodily disposition the prepaid funeral agreement is intended to provide. The intended funeral recipient may or may not be the purchaser.

“Licensee” means a person licensed to engage in funeral directing or mortuary science in the State of New Jersey.

“Newly issued funeral insurance policy” means any insurance policy or annuity contract that, at the time of issue, was intended to provide, or was explicitly marketed for the purpose of providing, funds to the provider, whether directly or indirectly, at the time of the insured’s death in connection with a prepaid funeral agreement.

“Non-guaranteed price agreement” means a prepaid funeral agreement funded with a funeral trust or funeral insurance policy, the proceeds of which the provider shall apply to the current retail value of the prepaid funeral goods and services previously selected at the time of death of the intended funeral recipient, but which agreement shall not bind the provider to provide the goods and services if the value thereof exceeds the funds available at the time of death of the intended funeral recipient.

“Payable on death account” or “P.O.D. account” means an account payable on request to the purchaser or intended funeral recipient of a prepaid funeral agreement during the lifetime of the intended funeral recipient and on his or her death, to a provider of funeral goods and services.

“Pooled trust” means a pooled trust account established pursuant to P.L. 1985, c.147 (N.J.S.A. 3B:11-16 et al.).

“Preneed funeral arrangements” means funeral arrangements made with an intended funeral recipient or his or her guardian, agent or next of kin, for the funeral of the intended funeral recipient.

“Prepaid funeral agreement” means a written agreement and all documents related thereto made by a purchaser with a provider prior to the death of the intended funeral recipient, with which there is connected a provisional means of paying for preneed funeral arrangements upon the death of the intended funeral recipient by the use of a funeral trust or funeral insurance policy, made payable to a provider and in return for which the provider promises to furnish, make available or provide the prepaid funeral goods or services, or both, specified in the agreement, the delivery of which occurs after the death of the intended funeral recipient.

“Prepaid funeral goods” means personal property typically sold or provided in connection with a funeral, or the final disposition of human remains, including, but not limited to, caskets or the primary containers, cremation or transportation containers, outer burial containers, vaults, as defined in N.J.S.A. 8A:1-2, memorials as defined in N.J.S.A. 8A:1-2, funeral clothing or accessories, monuments, cremation urns, and similar funeral or burial items, which goods are purchased in advance of need and which will not be delivered until the death of the intended funeral recipient named in a prepaid funeral agreement. Prepaid funeral goods shall not mean the sale of interment spaces or any related personal property offered or sold by a cemetery company as provided for in N.J.S.A. 8A:1-1 et seq.

“Prepaid funeral services” means those services typically provided in connection with a funeral, or the final disposition of human remains, including, but not limited to, funeral direction services, embalming services, care of human remains, preparation of human remains for final disposition, transportation of human remains, use of facilities or equipment for viewing human remains, visitation, memorial services or services which are used in connection with a funeral or the disposition of human remains, coordinating or conducting funeral rites or ceremonies and similar funeral or burial services, including limousine services provided in connection therewith, which services are purchased in advance of need and which will not be provided or delivered until the death of the intended funeral recipient named in a prepaid funeral agreement. Prepaid funeral services shall not mean the sale of services incidental to the provision of interment spaces or any related personal services offered or sold by a cemetery company as provided for in N.J.S.A. 8A:1-1 et seq.

“Provider” means a person, firm or corporation duly licensed and registered pursuant to the “Mortuary Science Act,” P.L. 1952, c.340 (N.J.S.A. 45:7-32 et seq.) to engage in the business and practice of funeral directing or mortuary science, or an individual serving as an agent or employee thereof and so licensed:

1. Operating a duly registered mortuary in accordance with P.L. 1952, c.340 (N.J.S.A. 45:7-32 et seq.) and the rules promulgated thereunder;
2. Having his or its business and practice based within the physical confines of the registered mortuary; and
3. Engaging in the practice of making preneed funeral arrangements, including, but not limited to, offering the opportunity to purchase or enroll in prepaid funeral agreements.

“Purchaser” means the person named in a prepaid funeral agreement who purchases the prepaid funeral goods and services to be provided thereunder. The purchaser may or may not be the intended funeral recipient. If the purchaser is different than the intended funeral recipient, it is understood that the relationship of the purchaser to the intended

funeral recipient includes a means to provide administrative control over the agreement on behalf of the intended funeral recipient.

“Retail installment contract” means an agreement to pay with interest the purchase price of goods or services in two or more installments over a period of time.

“Statement of funeral goods and services” means the itemized written statement required to be given to each person making funeral arrangements in accordance with the regulations of the Federal Trade Commission (16 C.F.R. 453.2) and the Board (N.J.A.C. 13:36-1.8 and 9.8).

13:36-11.2 License and registration required; statement of funeral goods and services and preneed arrangement required; price lists; compliance with at need laws

(a) No person, firm or corporation shall sell, offer to sell, or make, or offer to make preneed funeral arrangements or prepaid funeral agreements unless that person, firm or corporation is licensed and registered pursuant to the “Mortuary Science Act” (N.J.S.A. 45:7-32 et seq.) to engage in the business and practice of funeral directing and mortuary science.

(b) Only a provider whose business and practice is located within the physical confines of a mortuary registered by the Board may make prepaid funeral agreements or preneed funeral arrangements, although providers may make prepaid agreements or preneed arrangements outside the actual confines of a registered mortuary.

(c) This section shall not be construed to prohibit an otherwise qualified person, firm or corporation from acting as a provider operating under a trade name or other assumed name or through a subsidiary of a corporation duly licensed and registered pursuant to the “Mortuary Science Act” (N.J.S.A. 45:7-32 et seq.) to engage in the business and practice of funeral directing or mortuary science.

(d) No provider shall offer, enter into, or offer to enter into a prepaid funeral agreement, whether funded by a funeral trust or funeral insurance policy, unless at the time of said transaction the provider furnishes the purchaser with:

1. A prepaid funeral agreement as defined and described by N.J.A.C. 13:36-11.1, 11.3 and 11.4;
2. A separate statement of funeral goods and services for the intended funeral recipient describing and itemizing the prepaid funeral goods and services agreed upon in accordance with N.J.A.C. 13:36-1.9 and 9.8, whether or not the prepaid funeral agreement itself itemizes the funeral goods and services to be furnished at the time of need; and

3. The price lists as required by N.J.A.C. 13:36-9.5, 9.6 and 9.7 to be offered and provided to a purchaser at the time of an at need funeral arrangement.

(e) A provider shall comply with all of the requirements provided by statute and this subchapter for the making of an at need funeral arrangement when making or offering to make prepaid funerals or preneed funeral arrangements.

(f) All newly issued funeral insurance policies sold for the purpose of funding a prepaid funeral agreement shall:

1. Be sold by an individual who is licensed to sell insurance pursuant to N.J.S.A. 17:22A-1 et seq.; and
2. Fully comply with all relevant insurance laws of this State including but not limited to, N.J.S.A. 17B:17-5.1.

13:36-11.3 Contents of a prepaid funeral agreement

(a) Every prepaid funeral agreement shall be signed by the provider, the purchaser or the intended funeral recipient or the intended funeral recipient's guardian, agent or next of kin, shall be in writing and, together with the requisite separate statement of goods and services required pursuant to N.J.A.C. 13:36-11.2, shall be provided to the purchaser at the time of entering into a prepaid funeral agreement. Every written prepaid funeral agreement shall, at a minimum, include the following information:

1. The name and license number of the provider;
2. The name, address, and telephone number of the provider's registered mortuary;
3. The name and address of the purchaser and, if different, the name of the intended funeral recipient;
4. The amount and method of the funding for the prepaid funeral agreement and a statement specifically indicating whether the prepaid funeral agreement is:
 - i. A guaranteed price agreement, including those goods and services guaranteed; or
 - ii. A non-guaranteed price agreement;
5. The name and location of the bank or pooled trust in which the prepaid moneys will be deposited if the funeral agreement is funded by a funeral trust;
6. If a funeral insurance policy, the policy number, if known, and the name and address of:
 - i. The insurance company;
 - ii. The beneficiary of the policy;
 - iii. The purchaser of the policy; and
 - iv. The intended funeral recipient, if different from the purchaser;

7. Notice that all funeral arrangements are revocable and that all funeral funding arrangements are severable from those funeral arrangements by the purchaser if alive, and if not, then by the intended funeral recipient where they are different persons. Upon the death of both the purchaser and the intended funeral recipient, the next of kin of the intended funeral recipient, in the order provided by N.J.S.A. 8A:5-18, shall have the right to revoke the funeral arrangements and to sever the funeral funding arrangements from the funeral arrangements;

8. Notice that a prepaid funeral agreement may be funded by an irrevocable trust or irrevocable funeral insurance policy when the intended funeral recipient is an aged, blind or disabled applicant for or recipient of any of the public assistance programs provided for by N.J.S.A. 44:7-85 et seq. or a similarly situated individual who reasonably anticipates applying for such assistance within six months from the execution of the prepaid funeral agreement;

9. Notice that a prepaid funeral agreement funded by an irrevocable trust or an irrevocable funeral insurance policy shall be nonrefundable during the lifetime of the intended funeral recipient;

10. Notice that, if the intended funeral recipient's death occurs in a location other than that served by the provider, alternate funeral arrangements may be required unless otherwise specified;

11. Notice that a provider may substitute goods or services of equal quality, value and workmanship if those specified in the funeral agreement are unavailable at the time of need. Any resulting change in price will be reflected on a revised statement which shall be furnished at the time of need;

12. Notice that the intended funeral recipient shall automatically assume the same legal rights as the purchaser to administer a prepaid funeral arrangement if the purchaser predeceases the intended funeral recipient;

13. Notice that upon the death of the intended funeral recipient, the provider shall calculate the current retail prices of the prepaid funeral arrangements, and:

i. In the case of a non-guaranteed prepaid funeral agreement, if there are insufficient funds to pay for the current retail prices of the prepaid funeral goods and services requested, the provider shall consult with the appropriate representative of the intended funeral recipient for the supplementation of funds or modification of the funeral arrangements set forth in the agreement prior to the provider's performance under the agreement;

ii. In the case of any agreement funded through a funeral trust, all surplus funds shall be paid to the purchaser, if alive, and if not, then to the personal representative of the estate of the deceased purchaser;

iii. In the case of an agreement funded through any funeral insurance policy, all surplus funds shall be paid to the named beneficiary of the funeral insurance policy;

14. Notice that if a prepaid funeral agreement is a guaranteed price agreement, the provider is liable for the price guarantee, and neither the issuer of a funeral insurance policy nor the trustee of a funeral trust is liable; and

15. Notice that the provider shall present a final and comprehensive bill to the legal representative of the deceased funeral recipient upon completion of performance under the prepaid funeral agreement.

13:36-11.4 Additional requirements of prepaid funeral agreements funded by funeral insurance policies; signing of insurance documents; providers not beneficiaries

(a) A provider who funds a prepaid funeral agreement by selling a newly issued funeral insurance policy shall conspicuously and in plain language disclose to the purchaser:

1. In boldface, that the provider will receive a commission or other remuneration based on the transaction;

2. That the provider is a duly licensed insurance producer in the State of New Jersey and is an agent of the insurance company issuing the policy;

3. The license number of the provider currently on file with the New Jersey Department of Banking and Insurance;

4. That cancellation of the prepaid funeral agreement shall not result in a refund of premiums paid;

5. That cancellation of the prepaid funeral arrangement shall not cancel or otherwise invalidate the newly issued funeral insurance policy, although cancellation may not result in a refund of all premiums paid; and

6. That cancellation or lapse of the newly issued insurance policy, or withdrawals from, or loans against the proceeds or the cash value of the policy, may render the available funds inadequate to pay for the arrangements as originally intended and shall void any price guarantees.

(b) The provider who funds a prepaid funeral agreement by selling a newly issued funeral insurance policy shall sign all documentation pertaining to the funeral insurance policy application and goods and services in the presence of the purchaser.

(c) No provider, while acting in the capacity of a provider or licensee of the Board, shall be named as a beneficiary of a funeral insurance policy, except that nothing in this section shall be construed to prohibit the assignment of the proceeds of the policy to a provider as final payment for a funeral bill, or any other mechanism that provides payment to a provider for the goods or services rendered; in the case

of such assignment or mechanism, any excess proceeds shall be paid to the named beneficiary.

13:36-11.5 Funeral trust converted to funeral insurance policy

(a) A provider shall not replace a funeral trust with a newly issued funeral insurance policy unless and until the provider obtains the written consent of the purchaser. The written consent shall be signed by the purchaser and shall thoroughly advise the purchaser in plain language of the material differences between the original funeral trust and newly issued funeral insurance policy. The written consent shall conspicuously disclose in boldface the provider's earning of a commission based upon the transaction.

(b) The provider shall maintain the documentation required by (a) above pursuant to N.J.A.C. 13:36-11.16.

13:36-11.6 Irrevocable funeral agreements

(a) Notwithstanding the provisions of N.J.A.C. 13:36-11.3(a)8, and in accordance with N.J.S.A. 2A:102-16.1, a prepaid funeral agreement may provide that its funding, whether in the form of a funeral trust or a funeral insurance policy, is irrevocable during the lifetime of the intended funeral recipient, provided that the intended funeral recipient is:

1. An aged, blind or disabled applicant for, or recipient of, benefits pursuant to the Supplemental Security Income program (SSI) (N.J.S.A. 44:7-85 et seq.), a Medicaid program (N.J.S.A. 30:4D-1 et seq.), or General Assistance (N.J.A.C. 10:85); or

2. An aged, blind or disabled person who reasonably anticipates applying for, or receiving, the benefits provided by SSI, Medicaid or General Assistance within six months of the date of the signing of the prepaid funeral agreement.

(b) No provider shall establish an irrevocable prepaid funeral agreement knowing that the intended funeral recipient:

1. Is not, or shall not, become eligible to receive the public assistance referred to in (a) above; or

2. Does not intend to apply for such public assistance.

(c) No provider shall establish an irrevocable prepaid funeral agreement knowing or intending that the personal representative, estate or beneficiary of an intended funeral recipient shall receive a refund at the time of need, except that this prohibition does not include the expectation of an accumulation of interest or earnings on the corpus of the trust or insurance policy.

(d) No provider shall knowingly solicit or induce any person to execute an irrevocable prepaid funeral agreement pursuant to this section with the intent to collect or charge more than the fair market value of the funeral goods or services solicited.

(e) A provider shall immediately notify in writing the appropriate social services agency or agencies if at, or subsequent to, the time of need the personal representative or estate of a funeral recipient, or if known by the provider the beneficiary, in the case of a funeral insurance policy, receives a refund from an irrevocable prepaid funeral agreement in excess of \$500.00.

13:36-11.7 Pooled trusts

(a) Moneys used to fund prepaid funeral agreements may be deposited into a pooled trust account in a Federally insured State or Federally chartered bank, savings bank or savings and loan association pursuant to a written trust agreement, the beneficiaries of which shall be the purchasers, or intended funeral recipients, if different persons. Any such trust agreement shall conspicuously disclose in writing to the purchaser or intended funeral recipient, prior to the acceptance of any moneys by the trustees:

1. The right to immediately withdraw on demand any moneys placed in such trust, plus accrued interest;
2. That the purchaser or the intended funeral recipient shall receive periodic statements not less than once per year reflecting the amount of principal and accrued interest, if any, in the trust;
3. The amount or rate of any commissions to be lawfully taken; and
4. The identities and business addresses of each of the trustees of the pooled trust, except in the case of trustees selected by a bona-fide nonprofit organization, in which instance the notice of the availability of the trust document shall suffice.

(b) The provider shall notify the purchaser or intended funeral recipient of any change in the amount or rate of commission within 30 days.

13:36-11.8 Commissions for trustees of pooled trust

The trustees of a pooled trust fund for the benefit of at least 200 purchasers or intended funeral recipients shall be entitled to a commission not to exceed one percent per annum of the corpus of the trust fund, which shall be paid out of any income, and in no event shall the trustees invade the corpus of the trust funds. Any expenses incurred in the administration of such a trust may be recouped from this commission, and such expenses shall not be deducted from any other earnings of the trust.

13:36-11.9 Cash advance items; application of interest income

(a) If a prepaid funeral agreement is a guaranteed price agreement and the provider accepts funds for any cash disbursements at the time that the prepaid funeral agreement is made, then at the time of need, the provider shall first apply the interest earned by the prepaid cash disbursements to any increased costs of those disbursements, and shall refund any surplus funds or interest on the disbursements to the purchaser or legal representative of the intended funeral recipient or apply such surplus to any other use as directed by such persons.

(b) A provider shall not apply any surplus derived from the cash disbursement portion of a guaranteed price agreement to any other part of the agreement without the written consent of the purchaser or legal representative of the intended funeral recipient.

13:36-11.10 Periodic statements of status of funeral trusts

A provider shall immediately furnish to a purchaser any periodic statements received from the trustee of a funeral trust which reflect the amount of principal and accrued interest, if any, in the trust.

13:36-11.11 Purchaser to sign completed documentation

All documentation which is required to be signed by a purchaser of a prepaid funeral agreement shall be completed and signed by the provider prior to the purchaser signing such documentation. In no event shall such documentation be signed in blank by the purchaser.

13:36-11.12 Deposit of preneed funds; commingling of funds prohibited; proof of establishment of trust

(a) Providers shall deposit all moneys received in connection with the establishment of a prepaid funeral agreement in a funeral trust or with the appropriate insurance company within 30 days of the receipt of such moneys by the provider or licensee.

(b) A provider may temporarily deposit all moneys received in connection with the establishment of a prepaid funeral agreement in a separate non-interest bearing account established and used exclusively for the deposit of said moneys, until the moneys are transferred to the funeral trust or insurance company in accordance with the requirements of (a) above.

(c) No provider or licensee shall commingle any funds received in payment for a prepaid funeral agreement or preneed arrangement in any business or personal checking or banking account, or in any other place other than where authorized by (a) and (b) above.

(d) The provider shall forward to the purchaser evidence of the establishment of a funeral trust except when the funds have been deposited in a pooled trust which itself provides purchasers with notification of the establishment of a funeral trust.

(e) No provider or licensee acting on behalf of a provider shall apply any funds, whether principal or interest, from a prepaid funeral trust or funeral insurance policy to pay for any funeral goods or services or for any other expenses or use until the death of the intended funeral recipient except as provided by N.J.S.A. 3B:11-16 and N.J.A.C. 13:36-11.7, Pooled trusts.

13:36-11.13 Return of prepaid moneys upon revocation or impossibility to perform; transfer of preneed arrangements or prepaid agreements; presumption of intent

(a) Any request by a purchaser or other authorized person for revocation or for a refund of a funeral trust fund shall be fully complied with by the provider within 14 days from receipt of the request.

(b) Any request by a purchaser or other authorized person for severing or cancellation of the funding of a newly issued funeral insurance policy shall be forwarded in writing by the provider to the appropriate insurance company no later than three days from receipt of the request.

(c) Any request by a purchaser or other authorized person to assign or to transfer a preneed funeral arrangement or the funding for a prepaid funeral agreement to a new provider and registered mortuary shall be fully complied with by the provider within 10 days of the request.

(d) The new provider (as described in (c) above) shall comply with all of the requirements of this subchapter and the preneed statutes regarding the establishment and maintenance of the preneed funeral agreement and preneed funeral arrangement, including the immediate making of a new prepaid funeral agreement and preneed funeral arrangement.

(e) If a provider is unable to furnish prepaid goods or services requested due to revocation of a prepaid funeral agreement or funding therefore, or is unable to perform due to the impossibility of performance:

1. The moneys used to fund a newly issued funeral insurance policy shall be paid to the named beneficiary of the policy; or

2. The moneys used to fund a funeral trust shall be refunded within 10 days to:

i. The purchaser, if alive; or

ii. The estate or personal representative of the purchaser.

(f) In the case of a funeral agreement funded by a funeral insurance policy, the provider shall make all necessary inquiries of the insurance company after receiving a request for severance or cancellation from an authorized party.

(g) A provider shall be entitled to presume that at the time of need, any prepaid funeral agreement and preneed funeral arrangement on file are those intended, unless the funeral recipient's personal representative, in the order provided in N.J.S.A. 8A:5-18, actually makes changes in said agreement or arrangements.

13:36-11.14 Other prohibited acts

(a) No provider or licensee or person, firm, or corporation acting on behalf of a provider or licensee, including solicitors, agents, canvassers, employees or other persons acting on behalf of such person, firm or corporation, for the purpose of selling, contracting or offering to sell prepaid funeral agreements or preneed funeral arrangements on behalf of said provider or licensee, shall:

1. Directly or indirectly solicit persons in hospitals, rest homes, nursing homes or similar health care facilities by telephone or in person without first having been specifically requested to do so by that person;

2. Directly or indirectly employ any agent, employee, assistant, independent contractor or other person to solicit persons in hospitals, rest homes, nursing homes or similar health care facilities by telephone or in person without first having been specifically requested to do so by that person;

3. Solicit relatives of persons whose death is apparently impending or whose death has recently occurred for the purpose of providing any of those services for that person;

4. Solicit, accept, offer to pay or pay any commission, bonus or rebate in consideration of recommending or causing any person to use the services of a particular funeral director, or the services of a particular crematory, mausoleum or cemetery;

5. Solicit persons at their residences in person or by telephone unless that solicitation is in response to a previous request for or expression of interest in a funeral director's services made by the person solicited or by a member of that person's family; or

6. Accept any consideration for the establishment and deposit of any moneys in a funeral trust, including, but not limited to, a commission, rebate, discount, or direct or indirect price reduction on merchandise.

(b) Nothing in (a) above shall be construed to restrict the right of a provider or an agent or employee of a provider, to communicate, by direct mail or in any other way not specifically prohibited by this section, with persons or provide them with information regarding the services of the provider, or to solicit the business of any person responding to that communication and explicitly requesting further information by personal visit or telephone, or otherwise initiating further discussion of those services, or to provide services or information to persons in connection with services previously rendered.

(c) No provider or person acting on behalf of a provider shall, in the context of prepaid funeral agreements or preneed arrangements, advertise "discounts," "rebates" or other price reduction incentives:

1. Which are not actual reductions of the retail prices of a provider's current price lists; or

2. Which are based solely on a funeral insurance policy's premium rate tables.

(d) No provider shall charge prices at the time of making a prepaid funeral agreement which exceed those prices which appear on the provider's current price lists which are provided to consumers at the time of need pursuant to N.J.A.C. 13:36-9.

(e) No provider shall, in offering to provide preneed funeral arrangements or prepaid funeral agreements, use the term "trust" or "trust funded" in any name, advertisement or solicitation in a misleading manner.

(f) No provider shall fund or finance a preneed funeral arrangement or a prepaid funeral agreement through a retail installment contract or credit life insurance.

(g) No provider shall finance a preneed funeral arrangement or prepaid funeral agreement by any means other than a funeral trust or funeral insurance policy as authorized by these regulations and the preneed statutes.

(h) No provider shall knowingly sell, offer to sell or solicit any insurance product other than a funeral insurance policy in connection with a prepaid funeral agreement as provided in this subchapter and by N.J.S.A. 17B:17-5.1, for the purpose of prepaying or subsidizing, in whole or in part, directly or indirectly, the future funeral expenses of any person.

(i) Any agreement to waive any portion of this subchapter shall render the agreement voidable by the purchaser and shall be a violation of this subchapter.

13:36-11.15 Presumption; aiding and abetting; vicarious liability; duty to report violations

(a) Any provider or licensee acting on behalf of the provider shall be conclusively presumed to know his, her or its obligations relevant to the deposit, maintenance, application and refund of funeral trust funds and funeral insurance policies.

(b) Any provider or any person who knowingly aids, abets or otherwise assists any other person to violate any of the provisions of the preneed statutes or this subchapter, shall be equally as culpable as a principal, and shall be subject to discipline by the Board as a principal.

(c) Any provider shall be liable for any acts performed by any other person in any matter involving the preneed statutes or this subchapter, provided that the provider authorizes said person to act in his, her or its stead or holds out said other person to the public as apparently authorized to act in his, her or its stead.

(d) Any licensee who is actively engaged in the business of funeral directing and mortuary science as a provider or an employee of a provider who has knowledge of any violation of this subchapter or of the preneed statutes by any licensee, person, firm or corporation, shall immediately report such violation to the Board and shall provide to the Board all evidence and knowledge of said violation.

13:36-11.16 Preneed ledgers of active prepaid funeral agreements and preneed funeral arrangements; maintenance of records of prepaid agreements and preneed arrangements; compilation of preneed ledger; biennial registration

(a) Every provider shall maintain in his, her or its registered mortuary, in a single identifiable and accessible location, a ledger of all active prepaid funeral agreements (the "Preneed Ledger").

(b) The Preneed Ledger may be kept manually or electronically, and if kept electronically, updated hard copies of the Ledger shall be printed at least once per month.

(c) The Preneed Ledger shall contain current data and shall be revised and updated at least once per month. The Preneed Ledger shall, at a minimum, contain:

1. The name and address of each purchaser, and if different, the name and address of each intended funeral recipient;

2. The amount of moneys prepaid, including any periodic payments made by the purchaser and the dates of each payment;

3. An identification of the agreement as revocable or irrevocable;

4. The value and balance of each prepaid funeral trust fund or value of each funeral insurance policy, as of the most recent transaction, annual statement or accounting; and

5. The location of all prepaid funds, including:

i. The number of any bank account;

ii. The location of any passbook;

iii. The name of any insurance company receiving funds in payment for a funeral insurance policy; and

iv. The policy number, when available.

(d) All other records of prepaid funeral agreements, including statements of goods and services in connection therewith, and any other writings or notifications, which are required to be made by this subchapter or by the preneed statutes, shall be maintained in the same location as the Preneed Ledger and any computer generated hard copies thereof.

(e) The records of prepaid funeral agreements referred to in (d) above shall accurately reflect:

1. The amount of refunds, if any, including the name and address of the recipient of the refund and the amount thereof;
2. Any assignment or transfer of prepaid funeral agreements to any other registered mortuaries prior to the time of need, including the name of the receiving mortuaries and the dates of said transfers;
3. The death of an intended funeral recipient, including:
 - i. The date of death;
 - ii. The cost of the at need funeral arrangement;
 - iii. The original statement of funeral goods and services and any revised statement;
 - iv. The amount of refund or additional cost if any; and
 - v. The name of any person receiving a refund or paying any additional moneys.

(f) The Preneed Ledger of active prepaid funeral agreements required pursuant to (a) above shall be maintained continuously for as long as the mortuary remains in business, regardless of changes in registration, ownership, managers, deaths of licensees, transfers to new locations or bankruptcy. There shall be no deletions of active prepaid funeral agreements from the Preneed Ledger for any reason other than mistaken entries. When a mistaken entry is corrected, the correction shall include the date of said correction.

(g) All other records made and maintained pursuant to (d) above shall be retained for a period of six years from the date of death of the intended funeral recipient, transfer or assignment, or refund or revocation.

(h) All records required to be maintained by this section shall be made available by the provider to any authorized representative of the Division of Consumer Affairs and, upon request or as required by this subchapter, to the Board and its Executive Director.

(i) By April 5, 1998, all providers having active prepaid funeral agreements shall compile and complete the Preneed Ledger required by (a) above. The Preneed Ledger shall contain all active prepaid funeral agreements as of that date.

(j) The licensee shall certify in the biennial renewal application of all registered mortuaries that all records maintained pursuant to this section are in existence and are available for inspection.

13:36-11.17 Records provided to the Board and to successors in interest

(a) A copy of the Preneed Ledger required to be maintained by N.J.A.C. 13:36-11.16(a) shall be provided to the Executive Director of the Board by the manager or licensee in charge immediately upon:

1. The discontinuation of business in accordance with N.J.A.C. 13:36-5.14;
2. Within 10 days of the death of a licensee or owner in accordance with N.J.A.C. 13:36-4.12; or
3. Immediately upon the filing of any form of bankruptcy by the provider or registered mortuary.

(b) Upon request, any records required to be maintained by N.J.A.C. 13:36-11.16 shall be made available to the Board and its Executive Director upon:

1. Any change in ownership of a registered facility as defined by N.J.A.C. 13:36-4.5;
2. Any change of managers as defined by N.J.A.C. 13:36-4.8(c) and (d);
3. The transfer of a funeral establishment to a new location as defined by N.J.A.C. 13:36-5.13; or
4. For any other reason deemed appropriate by the Board or its Executive Director.

(c) Whenever the records required to be maintained by N.J.A.C. 13:36-11.16 are moved from a provider's existing registered facility, the provider shall notify the Board immediately of the new location of the records and of the identity of the person responsible for their safekeeping.

(d) The records required to be maintained by N.J.A.C. 13:36-11.16 shall be made available by the manager or licensee in charge to any person or entity assuming a new ownership interest, or a part thereof, or any person newly assuming the position of manager, at least 10 days prior to such change in ownership or manager, unless otherwise mutually agreed upon by the parties.

(e) When a provider or registered mortuary files for any form of bankruptcy the manager or licensee in charge shall immediately furnish the records required to be maintained pursuant to N.J.A.C. 13:36-11.16 to the trustee in bankruptcy, together with a notification that the Preneed Ledger has been provided to the Board as required by (a) above.

13:36-11.18 Notification of purchaser of transfer of ownership

(a) Whenever a mortuary is required to obtain a new certificate of registration, the new manager or licensee in charge shall notify in writing the owners of all prepaid funeral agreements then in effect of their options to elect to maintain their prepaid funeral agreements at the present location or to transfer or assign their prepaid funeral agree-

ments and preneed funeral arrangements to a different mortuary within 30 days of the change of ownership, or death of a licensee or owner.

(b) The notice required by (a) above shall advise the owners of all prepaid funeral agreements that they may:

1. Request a refund of any prepaid moneys from a funeral trust, except in the case of irrevocable prepaid funeral arrangements; or
2. Sever the funding of a funeral insurance policy from a prepaid funeral agreement.

(c) Proof that the notice required by (a) above was delivered shall be furnished to the Board by the new manager or licensee in charge within 10 days of said delivery.

13:36-11.19 Notification of dissolution or bankruptcy

(a) Whenever a registered mortuary discontinues business or files for bankruptcy, the manager or licensee in charge shall provide written notice of said discontinuation or bankruptcy to all purchasers of active prepaid funeral agreements.

(b) The notice required by (a) above shall advise the purchasers of the prepaid funeral agreements and preneed funeral arrangements that they may:

1. Revoke the funding of their prepaid agreements and receive a refund, except in the case of irrevocable funding;
2. Sever the funding of a funeral insurance policy from the prepaid agreement; or
3. Transfer or assign their prepaid agreements and preneed arrangements to another registered mortuary.

(c) The notice required by (a) above shall be provided as soon as possible prior to the discontinuation of business or bankruptcy, but no later than five days before the occurrence.

(d) Proof that the required notice was delivered shall be immediately furnished to the Board by the manager or licensee in charge.