

(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 and advertisements must indicate the true firm name as registered with the Board of Mortuary Science; however, this shall not apply to small novelty items where the space of advertising is limited.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

(g) 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.

(h) All advertisements shall contain the name, address, and telephone number of a licensee who is responsible for the fulfillment of the advertised terms and conditions.

(i) 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).

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).