

CHAPTER 36

STATE BOARD OF MORTUARY SCIENCE

Authority

N.J.S.A. 45:7-32 et seq. and 45:1-15.1.

Source and Effective Date

R.2005 d.100, effective March 2, 2005.
See: 36 N.J.R. 4651(a), 37 N.J.R. 1036(b).

Chapter Expiration Date

Chapter 36, State Board of Mortuary Science, expires on March 2, 2010.

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, State Board of Mortuary Science, 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Subchapter 7, Embalming Schools, was repealed by R.1985 d.293, effective June 17, 1985.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, State Board of Mortuary Science, was readopted as R.1989 d.540, effective September 27, 1989. See: 21 N.J.R. 1971(a), 21 N.J.R. 3474(b).

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, State Board of Mortuary Science, was readopted as R.1994 d.523, effective September 19, 1994. See: 26 N.J.R. 2536(a), 26 N.J.R. 4201(a).

Subchapter 10, Continuing Education, was adopted as R.1997 d.162, effective April 7, 1997. See: 29 N.J.R. 408(a), 29 N.J.R. 1340(b).

Subchapter 11, Prepaid Funeral Agreements and Arrangements, was adopted as R.1998 d.15, effective January 5, 1998. See: 29 N.J.R. 3110(a), 30 N.J.R. 90(a).

Pursuant to Executive Order No. 66(1978), Chapter 36, State Board of Mortuary Science, was readopted as R.1999 d.355, effective September 17, 1999. See: 31 N.J.R. 2133(a), 31 N.J.R. 3126(a).

Chapter 36, State Board of Mortuary Science, was readopted as R.2005 d.100, effective March 2, 2005. See: Source and Effective Date. See, also, section annotations.

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APPENDIX

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 Definitions

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

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

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.

(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).

Amended by R.2002 d.76, effective March 18, 2002.

See: 33 N.J.R. 2597(a), 34 N.J.R. 1267(a).

Rewrote (a) and (c).

Amended by R.2003 d.166, effective April 21, 2003 (operative October 21, 2003).

Amended by R.2005 d.100, effective April 4, 2005.

See: 36 N.J.R. 4651(a), 37 N.J.R. 1036(b).

In (a), deleted "Licensee" and substituted "Price reduction statement" for "Prior reduction statement"; substituted references to mortuary for references to facility and deleted references to licensee in charge throughout.

Amended by R.2005 d.100, effective April 4, 2005 (operative date of October 31, 2005).

See: 36 N.J.R. 4651(a), 37 N.J.R. 1036(b).

Rewrote (b).

13:36-5.13 (Reserved)

Administrative Correction.

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

Repealed by R.2005 d.100, effective April 4, 2005.

See: 36 N.J.R. 4651(a), 37 N.J.R. 1036(b).

Section was "Transfer of funeral establishment to new location".

13:36-5.14 Discontinuation of business or bankruptcy

(a) When a mortuary is permanently closed for business, the manager 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 all advertising and notify the Board as to the disposition of the mortuary's telephone service;
4. Furnish the Board with a copy of the preneed ledger required pursuant to N.J.A.C. 13:36-11.16(a); and
5. Submit to the Board a copy of the notice sent to all preneed purchasers regarding the discontinuation as required pursuant to N.J.A.C. 13:36-11.19, and proof of service of such notice to consumers.

(b) When a mortuary files for any form of bankruptcy, the manager 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".

Amended by R.2005 d.100, effective April 4, 2005.

See: 36 N.J.R. 4651(a), 37 N.J.R. 1036(b).

In (a), rewrite 3 and added 5; deleted references to licensee in charge throughout.

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 practice of mortuary science is required by the provisions of the Mortuary Science Act, set forth at N.J.S.A. 45:7-32 et seq.

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.2005 d.100, effective April 4, 2005.
See: 36 N.J.R. 4651(a), 37 N.J.R. 1036(b).
Rewrote the section.

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 remains; 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).
Amended by R.1999 d.355, effective October 18, 1999.
See: 31 N.J.R. 2133(a), 31 N.J.R. 3126(a).

13:36-5.18 Disposition of human remains

(a) Whenever human remains are entrusted to the care of a licensed practitioner of mortuary science for a disposition, the practitioner shall conform to the requirements of N.J.A.C. 8:9 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 in the same manner as the remains and shall be disposed of 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).
Amended by R.1999 d.355, effective October 18, 1999.
See: 31 N.J.R. 2133(a), 31 N.J.R. 3126(a).

In (a), substituted a reference to human remains for a reference to dead human remains.

Amended by R.2005 d.100, effective April 4, 2005.
See: 36 N.J.R. 4651(a), 37 N.J.R. 1036(b).

In (a), substituted "to the requirements of" for "with" preceding "N.J.A.C. 8:9"; rewrote (b).

13:36-5.19 (Reserved)

Repealed by R.2002 d.76, effective March 18, 2002.
See: 33 N.J.R. 2597(a), 34 N.J.R. 1267(a).
Section was "Public accommodations".

Cross References

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

13:36-5.20 (Reserved)

New Rule, R.1993 d.76, effective February 16, 1993.
See: 24 N.J.R. 3016(a), 25 N.J.R. 709(b).
Repealed by R.2002 d.76, effective March 18, 2002.

See: 33 N.J.R. 2597(a), 34 N.J.R. 1267(a).
Section was "Referral fees".

13:36-5.21 Disclosure of ownership information

(a) The registered mortuary shall disclose on all general price lists, casket price lists, and outer burial container price lists, required pursuant to N.J.A.C. 13:36-9.5, 9.6 and 9.7, whether any owner of the registered mortuary also owns 50 percent or greater interest in any other registered mortuary within the State. For purposes of this section, "person" means any individual, partnership, limited liability partnership, limited liability company, corporation or other business entity.

(b) If disclosure of ownership information is required, the following statement shall appear on all required price lists: "A person who owns 50 percent or greater interest in this registered mortuary also owns 50 percent or greater interest in the following registered mortuaries in the State of New Jersey:". This disclosure shall include the municipality in which the registered mortuary is located and the mortuary's true firm name as registered with the Board.

New Rule, R.2003 d.166, effective April 21, 2003 (operative October 21, 2003).
See: 34 N.J.R. 1315(a), 35 N.J.R. 1675(a).

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 practitioners of mortuary science and their employees;
2. Duly authorized instructors of funeral directing schools;
3. Interns;
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; and
7. Persons who perform religious and/or ritual preparations.

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.1999 d.355, effective October 18, 1999.
See: 31 N.J.R. 2133(a), 31 N.J.R. 3126(a).
In (a), rewrote 3, and added 7.
Amended by R.2005 d.100, effective April 4, 2005.
See: 36 N.J.R. 4651(a), 37 N.J.R. 1036(b).

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.

Amended by R.2005 d.100, effective April 4, 2005.
See: 36 N.J.R. 4651(a), 37 N.J.R. 1036(b).
Rewrote (a).

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 education provider may receive approval for a continuing education course or program pursuant to the provisions of N.J.A.C. 13:36-10.7. The provider may apply for approval either prior to or up to six months following the offering of a course or program.

(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.

Amended by R.2005 d.100, effective April 4, 2005.
See: 36 N.J.R. 4651(a), 37 N.J.R. 1036(b).
Rewrote (a).

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.

(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 to be heard, the assessment of penalties and/or suspension of the license pursuant to N.J.S.A. 45:1-21 et seq.

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

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

1. A log showing the type and titles of courses, programs or seminars completed, the sponsoring organizations, the locations of the courses, programs or seminars, the duration of the courses, programs or seminars, the instructors or speakers names and the number of continuing education 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.

Amended by R.1999 d.355, effective October 18, 1999.

See: 31 N.J.R. 2133(a), 31 N.J.R. 3126(a).

In (e)1, substituted a reference to continuing education credits for a reference to credits.

Amended by R.2005 d.100, effective April 4, 2005.

See: 36 N.J.R. 4651(a), 37 N.J.R. 1036(b).

Rewrote the section.

13:36-10.11 License reinstatement; 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 reinstatement pursuant to N.J.A.C. 13:36-4.1, 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).

Amended by R.1999 d.355, effective October 18, 1999.

See: 31 N.J.R. 2133(a), 31 N.J.R. 3126(a).

In (a), substituted a reference to reinstatement for a reference to restoration.

Amended by R.2005 d.100, effective April 4, 2005.

See: 36 N.J.R. 4651(a), 37 N.J.R. 1036(b).

In (a), inserted a N.J.A.C. referencee.

SUBCHAPTER 11. PREPAID FUNERAL AGREEMENTS AND ARRANGEMENTS

13:36-11.1 Definitions

The following words and terms, when used in this subchapter, shall 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.

“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.