

RULES AND REGULATIONS PERTAINING TO
EMBALMERS, FUNERAL DIRECTORS AND
FUNERAL SERVICE ESTABLISHMENTS
(R5-33.2-EMB)

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Department of Health

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with the provisions of section 42-35-
4.1 of the Rhode Island General
Laws, as amended)**

INTRODUCTION

These Rules and Regulations Pertaining to Embalmers, Funeral Directors and Funeral Service Establishments (R5-33.2-EMB) are promulgated pursuant to the authority conferred under Sections 5-33.2 and 42-35-3 of the General Laws of Rhode Island, as amended. These regulations are established for the purpose of adopting minimum standards for the licensing of embalmers, funeral directors and funeral service establishments.

In accordance with the provisions of Section 42-35-3(c) of the General Laws of Rhode Island, as amended, consideration was given in arriving at these regulations to: (1) alternative approaches to the regulations; (2) duplication or overlap with other state regulations; and (3) any significant economic impact on small business as defined in Chapter 42-35 of the General Laws as a result of the regulations. Based on the available information, no known alternative approach, duplication or overlap or significant economic impact was identified. The protection of the health, safety and welfare of the public necessitates the adoption of these regulations despite the economic impact which may be incurred as a result of the regulations.

These rules and regulations shall supersede any previous rules and regulations pertaining to the licensing of embalmers, funeral directors, and funeral service establishments promulgated by the Department of Health and filed with the Secretary of State.

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PART I DEFINITIONS AND LICENSING PROCEDURES

Section 1.0 *Definitions*

Whenever used in these rules and regulations, the following terms shall be construed as follows:

- 1.1 **"Alternative container"** means a receptacle, other than a casket, in which human remains are transported to the crematory and placed in the cremation chamber for cremation. An alternative container shall be: (1) composed of readily combustible materials suitable for cremation; (2) able to be closed in order to provide a complete covering for the human remains that is resistant to leakage or spillage; (3) rigid enough for handling with ease; and (4) able to provide protection for the health, safety, and personal integrity of crematory personnel.
- 1.2 **"Board"** shall mean the State Board of Funeral Directors/Embalmers.
- 1.3 **"Body parts"** means limbs or other portions of the anatomy that are removed from a person or human remains for medical purposes during treatment, surgery, biopsy, autopsy, or medical research; or human bodies or any portion of bodies that have been donated to science for medical research purposes.
- 1.4 **"Casket"** means a rigid container which is designed for the encasement of human remains and which is usually constructed of wood, metal, fiberglass, plastic, or like material, and ornamented and lined with fabric.
- 1.5 **"Cremated remains"** means all human remains recovered after the completion of the cremation, which may possibly include the residue of any foreign matter including casket material, bridgework, or eyeglasses, that was cremated with the human remains.
- 1.6 **"Cremation"** shall mean a two (2) part procedure whereby a dead human body or body parts shall be reduced by direct flame to residue which includes bone fragments and the pulverization of said bone fragments to coarse powdery consistency.
- 1.7 **"Department"** shall mean the Rhode Island Department of Health.
- 1.8 **"Director"** means the Director of the Rhode Island Department of Health.
- 1.9 **"Division"** shall mean the Division of Professional Regulation at the Rhode Island Department of Health created under Chapter 5-26 of the General Laws, as amended.
- 1.10 **"Embalmer"** shall mean any person who has completed:
 - (i) an internship;
 - (ii) full course of study at an accredited mortuary science school;

- (iii) has passed the national board examination and the practical examination administered by the Board; and
 - (iv) is engaged in the practice or profession of embalming, as hereinbefore defined.
- 1.11 **"Embalming"** shall mean the practice, science or profession of preserving, disinfecting, and preparing in any manner, dead human bodies for burial, cremation or transportation.
- 1.12 **"Funeral"** shall mean a period following death in which there are religious services or other rites or ceremonies with the body of the deceased present.
- 1.13 **"Funeral directing"** shall mean:
- (i) conducting funeral services;
 - (ii) making the arrangements for disposition of dead human bodies, except in the case of any religion where the preparation of the body or the provision of funeral services should be done according to religious custom or belief;
 - (iii) Only funeral directors/embalmers, working for a duly licensed funeral establishment, shall be allowed to meet with families for the purpose of arranging funerals.
 - (iv) Any person who assumed an ownership interest from one's spouse or any widow or widower of a licensed funeral director who, as of 1 November 1995, has been meeting with families to arrange for the conducting of funeral services shall be allowed to continue this practice.
- 1.14 **"Funeral director/embalmer"** shall mean any person engaged, or holding himself or herself out as engaged in the practice, or profession of funeral directing, and the science, practice or profession of embalming as herein before defined, including a funeral director of record, who may be a funeral director at more than one (1) establishment or any other word or title intending to imply or designate him or her as a funeral director/embalmer, undertaker, or mortician. The holder of this license must be the holder of an embalmer's license.
- 1.15 **"Funeral director/embalmer intern"** shall mean any person engaged in learning the practice or profession of funeral directing and the science, practice or profession of embalming under the instruction and supervision of a funeral director/embalmer duly licensed and registered under the provisions of Chapter 5-33.2 of the General Laws of Rhode Island, as amended, and actively engaged in the practice, or profession of funeral directing and embalming in this state.
- 1.16 **"Funeral establishment"** shall mean a fixed place, establishment or premises, licensed by the Department, devoted to the activities which are incident, convenient, or related to the care and preparation, arrangement, financial and otherwise, for the funeral, transportation, burial or other disposition of human dead bodies and including, but not limited to, a suitable room with all instruments and supplies used for the storage and/or preparation of dead human bodies for burial or other disposition.

- 1.17 **"Funeral merchandise"** shall mean those items which are normally presented for sale as part of the funeral home operation on a for-profit basis. These items include: caskets, sealed warranted outer burial containers and burial clothing. Items not included are urns, grave markers, and non-sealed outer burial containers.

All persons engaged in the sale of funeral merchandise must comply with the provisions of Chapter 5-33.1 of the General Laws of Rhode Island, as amended.

- 1.18 **"Licensing agency"** shall mean the Department of Health.
- 1.19 **"Person"** shall include individuals, partnerships, corporations, limited liability companies, associations and organizations of all kinds.
- 1.20 **"Practice of funeral service"** shall mean a person engaging in:
- (i) providing shelter, care and custody of human dead remains;
 - (ii) the practice of preparing of the human dead remains by embalming or other methods for burial or other disposition;
 - (iii) entering into a funeral service contract; and
 - (iv) engaging in the functions of funeral directing and/or embalming, as presently known, including those stipulated in Chapter 5-33.2 of the General Laws of Rhode Island, as amended, and as defined in the Federal Trade Commission's "funeral rule" of reference 1.

Section 2.0 *Qualifications of Funeral Directors/Embalmers*

2.1 *Requirements for Licensure*

A Funeral Director/Embalmers' license shall be issued only to an individual. No corporation, partnership, association, limited liability company or organization shall be entitled to obtain such a license.

2.2 *Qualifications for Licensure*

In order to qualify for a funeral director/embalmer's license, the applicant must meet the following requirements:

- (i) be at least eighteen (18) years of age;
- (ii) be a citizen of the United States or have lawful entry into the country;
- (iii) show to the satisfaction of the Division that he/she is of good moral character;
- (iv) be a high school graduate or its equivalent;
- (v) on and after 1 January 1996, have graduated from a school of mortuary science accredited by the American Board of Funeral Service Education, Inc.;
- (vi) on and after 1 January 1996, must have at least an associate degree or the equivalent of sixty (60) semester hours from an approved college or university or be currently enrolled in a school accredited by the American Board of Funeral Service Education, Inc.;
- (vii) have completed a registered funeral director/embalmer internship;
- (viii) have satisfactorily passed the funeral director and embalmer portions of the written examination of the Conference of Funeral Service Examining Boards;
- (ix) have satisfactorily passed a practical examination as the board may deem proper to ascertain his or her efficiency and qualifications to engage in the business of funeral directing and embalming;
- (x) Upon the effective date of these regulations, all individuals holding an embalmer and/or funeral director license will be issued a funeral director/embalmer license upon payment of the required annual license renewal fee.
- (xi) At a minimum, the name and title of the funeral director/embalmer registered with the Department as the licensee in charge of the funeral establishment or funeral establishment branch shall appear in all printed advertising.

2.3 *Armed Forces Embalming Experience*

2.3.1 Any person who has:

- (i) served in, and been honorably discharged from, the U.S. Armed Forces; and
- (ii) prior to his/her induction into the Armed Forces, completed high school and a full course of instruction in a funeral director/embalming school, as provided in Section 5-33.2-6 of the Rhode Island General Laws, as amended; and
- (iii) prior to that induction commenced his/her internship, as provided in Section 5-33.2-6 of the Rhode Island General Laws, as amended; and
- (iv) while in the Armed Forces, assisted in the embalming of human bodies,

shall be conclusively presumed to have been continuing that course of training during the time he/she was so engaged in assisting in embalming human bodies while in the Armed Forces, and all bodies in the embalming of which he/she assisted, while in the Armed Forces, shall be deemed to have been embalmed during his/her internship, and in compliance with the provisions of Section 5-33.2-6 of the Rhode Island General Laws, as amended.

- 2.3.2 Each such person described in Section 2.3.1 shall submit to the Division proof of his/her having assisted in the embalming of bodies while in the Armed Forces, and of the number thereof, by filing with the Division his/her sworn affidavit of the facts relating thereto, which shall, in the absence of specific proof to the contrary, be presumed to be true and authentic.

2.4 *Unlicensed Practice*

- 2.4.1 In this state, it shall be unlawful for any person to engage in, conduct, or hold himself/herself out as engaged in the practice of funeral directing and/or embalming, or of preparing for or disposing of dead human remains by any means whatever, or preserving in any manner, dead human bodies, unless he/she holds a funeral director/embalmer's license issued in accordance with the provisions of the regulations herein; and
- 2.4.2 It shall be unlawful for any person, partnership, association, corporation, limited liability company, or other organization to open or maintain a place or establishment at which to engage in or conduct, or hold himself/herself/itself out as engaging in or conducting the business of funeral directing without that place or establishment being duly licensed under the provisions of these regulations as a funeral establishment.
- 2.4.3 Notwithstanding the provisions of this section, a person under the supervision of a licensed funeral director/embalmer shall be allowed to fulfill duties not specifically prohibited by Chapter 5-33.2 of the General Laws, as amended, and those duties allowed by the Federal Trade Commission "funeral rule" of reference 1.

Section 3.0 *Burial Certificate Plan*

- 3.1 No person who has promoted or is promoting, or has participated in or is participating in any scheme or plan in the nature of a burial association or a burial certificate plan, or wherein there is any element of fraud, shall be entitled to any license under the provisions of these regulations.
- 3.2 The Board shall revoke the license of any holder thereof who has engaged, directly or indirectly, in the practices enumerated in this section.
- 3.3 Nothing herein shall be construed so as to prevent any such person from performing his/her obligations under any contract executed prior to April 25, 1952.

Section 4.0 ***Cemetery Operations***

- 4.1 Any person(s), association or corporation having charge of, or conducting a cemetery, shall not engage in the business of funeral directing.
- 4.2 No funeral home will be licensed, nor will it be permitted to operate as such, if it is located on property owned by a cemetery, or is contiguous with cemetery property.

Section 5.0 ***Application and Renewal of License***

- 5.1 Any person who desires to engage in embalming or funeral directing, or both, shall submit in writing to the Division, an application for a license.
 - 5.1.1 Said application shall be accompanied by a fee of ninety-three-dollars and seventy-five_cents (\$93.75) payable to the General Treasurer, state of Rhode Island.

5.2 ***Expiration & Renewal of Licenses***

- 5.2.1 All licenses issued under the provisions of these regulations shall be renewed annually by the holders thereof. All licenses shall expire on the thirty-first (31st) day of December each year, unless previously suspended or revoked.
- 5.2.2 On or before the fifteenth (15th) day of November in each year, the Division shall mail to each licensed funeral director/embalmer a renewal application.
- 5.2.3 Each licensee shall pay to the Division a yearly fee of ninety-three-dollars and seventy-five cents (\$93.75) for the renewal of the funeral director/embalmer's license.
- 5.2.4 Applications, accompanied by the renewal fee, shall be filed with the Division on or before the thirty-first day of December in each year.
 - (i) Applications filed after the thirty-first day of December, and on or before the fifteenth day of January, must be accompanied by a fee of fifty dollars (\$50.00) in addition to the renewal fee cited above.

- 5.2.5 Any funeral director/embalmer who acts or holds himself/herself out as such after his/her license has lapsed shall be punished as provided herein.
- 5.2.6 The Division shall keep a register in which the names of all persons to whom licenses are issued under this section shall be entered. That register shall be open to public inspection at the office of the Administrator of the Division.

5.3 ***Display of Licenses***

Every license issued as a funeral director/embalmer shall specify the name of the person to whom it was issued. It shall be displayed conspicuously in his/her place of business or employment.

Section 6.0 ***Funeral Director/Embalmer Internship***

- 6.1 Nothing in this section shall be construed as prohibiting any person from serving as a funeral director/embalmer intern.
- 6.2 Before an internship shall begin, the person desiring to become an intern shall register on forms prescribed by the Division.
- 6.3 No person under the age of eighteen (18) years shall be permitted to register as an intern.
- 6.4 All persons registering as an intern shall pay a fee of twenty-five dollars (\$25.00) at the time of such registration.
- 6.5 No intern shall be permitted to advertise or hold himself/herself out to the public as a registered funeral director/embalmer.
- 6.6 The term of internship shall be not less than one (1) year; provided, however, that if an intern, after having served his/her internship, fails to pass the examination for a funeral director/embalmer's license or fails to embalm fifty (50) human remains during his/her internship, he/she may continue the internship. The total term of internship must be completed within five (5) years from the date of original registration.
 - 6.6.1 Prior to a practical state licensing embalming examination being administered by members of the Board in consultation with the funeral director/embalmer preceptor, a written consent to perform the state licensing embalming examination shall be obtained by the funeral director/embalmer preceptor from the decedent's next-of-kin or other person legally charged with the disposition of the human remains.
 - 6.6.2 A quarterly report shall be submitted to the Division summarizing the number of human remains embalmed by the intern during the most recent three (3) month period.
 - 6.6.3 The intern must have assisted in embalming at least fifty (50) bodies if the period for registered internship is to be satisfied in one (1) year.

- 6.6.4 If the internship is for more than one (1) year, the applicant must embalm at least twenty-five (25) bodies for each year of the internship.
- 6.7 The term of internship may be served before, after, or during attendance at mortuary school, at the option of the intern and the preceptor.
- 6.8 Each licensed funeral establishment embalming up to one hundred-fifty (150) human remains per year shall be allowed to register one (1) intern at one (1) time.
- 6.9 Each establishment embalming more than one hundred-fifty (150) but less than three hundred (300) human remains per year shall be allowed to register two (2) interns at one (1) time.
- 6.10 Each establishment embalming three hundred (300) or more human remains per year shall be allowed to register three (3) interns at one (1) time.
- 6.10.1 If more than one (1) intern is completing an internship with a funeral director/embalmer preceptor, each intern shall be responsible for embalming no less than fifty (50) human remains, as stipulated in section 6.6 above; further, each set of human remains shall only be counted once towards the required total for each intern.

6.11 ***Supervision of Interns***

While an embalmer intern is working in the preparation room at a funeral service establishment, the funeral director/embalmer preceptor shall remain on-site in the preparation room at all times.

PART II *LICENSING PROCEDURES FOR FUNERAL ESTABLISHMENTS*

Section 7.0 *Licensure Requirements*

- 7.1 No person, association, co-partnership, corporation, limited liability company or otherwise, shall conduct, maintain, manage or operate a funeral establishment or branch office unless a license for each such funeral establishment and branch office has been issued by the Department and is conspicuously displayed.
- 7.2 In the case of funeral services conducted under the license of a funeral establishment held in any private residence, public building, or church, no separate establishment license shall be required.
- 7.3 A licensed funeral establishment must be distinct and separate from other non-funeral service related activities for which it is licensed.
- 7.4 No license to operate a funeral establishment shall be issued by the Department unless the applicant for the funeral establishment license has registered with the Department a licensed funeral director/embalmer who shall be in charge therein as the funeral director-of-record.

Section 8.0 *Branch Office Licenses*

- 8.1 The branch office of a funeral establishment must have a separate branch office establishment license, but not a separate funeral director-of-record.
 - 8.1.1 One (1) branch office shall be allowed to operate under the funeral establishment license, and this one (1) branch office may be permitted to operate without a preparation room.

Section 9.0 *License Application and Fees*

- 9.1 Applications for the funeral establishment license and branch office shall be made on forms furnished by the Division.
 - 9.1.1 Said applications shall be accompanied by the application fee of sixty-two dollars and fifty cents (\$62.50) for the funeral establishment and sixty-two dollars and fifty cents (\$62.50) for a branch office.
- 9.2 Upon receipt of a completed application and the recommendation of the Board, the Division shall issue a license.

Section 10.0 *License Renewals*

- 10.1 All licenses issued under the provisions of these regulations must be renewed annually by the holders thereof. On or before the fifteenth (15th) day of November in each year, the Division shall mail to each licensed funeral establishment and funeral establishment branch office an application for the renewal thereof.

- 10.2 All funeral establishment and branch office licenses shall expire on 31 December of each year, unless sooner suspended or revoked.
- 10.3 The license holder shall pay to the Division a yearly renewal fee of sixty-two dollars and fifty cents (\$62.50) for the funeral establishment license and sixty-two dollars and fifty cents (\$62.50) for each funeral establishment branch office license.
- 10.4 Applications, accompanied by the renewal fee, shall be filed with the Division on or before the 31st day of December in each year.
- 10.4.1 Applications filed after the thirty-first day of December, and on or before the fifteenth day of January, must be accompanied by a fee of fifty dollars (\$50.00) in addition to the renewal fee cited above.
- 10.5 Any funeral establishment or funeral establishment branch office that acts or holds itself out as such after its license has lapsed shall be punished as provided herein.

Section 11.0 ***Display of Licenses***

- 11.1 Every license issued as a funeral establishment or branch office shall specify the name of the establishment as listed on the application. Licenses issued under the provisions of these regulations shall not be assignable.

Section 12.0 ***Change of Ownership, Operation or Location***

- 12.1 A license shall be issued to a specific licensee for a specific location and shall not be transferable.
- 12.2 The funeral establishment licensee shall notify the Division in writing, delivered in person or by certified mail, within ten (10) days from the date of termination of employment, for any cause, of the funeral director/embalmer of record for the funeral establishment.
- 12.2.1 The license of the funeral establishment shall expire forty-five (45) days from the date the Division was notified by the licensee, if no new funeral director/embalmer is registered with the Division.
- 12.2.2 No funeral services shall be conducted at the funeral establishment without a funeral director/embalmer being registered with the Division as the funeral director of record for that funeral establishment.
- 12.3 Two (2) licensed funeral directors may operate jointly at one (1) location if one of their existing funeral establishments closes its place of business and joins an existing licensed funeral establishment. Each firm will hold its own separate establishment license. One cannot open a branch office by invoking this section.
- 12.4 Any person who inherits any ownership interest to a funeral establishment may continue to conduct the business of that establishment as their ownership interest would allow contingent upon the following:

12.4.1 Filing with the Division a statement of change-of-fact concerning that inheritance; and

12.4.2 Conducting the business of the establishment in compliance with all the requirements of Chapter 5-33.2 of the General Laws of Rhode Island, as amended.

Section 13.0 ***General Operational Requirements***

13.1 The practice of conducting funeral services shall be conducted in the presence of a licensed funeral director/embalmer.

13.2 Human dead remains shall not be held more than forty-eight (48) hours without embalming or without refrigeration for the purpose of maintaining public health.

13.3 A funeral establishment must, at a minimum, contain a preparation room equipped with tile, cement, or composition floor, necessary drainage and ventilation, and containing necessary instruments and supplies for the preparation and embalming of dead human remains for burial, transportation, or other disposition.

Medical Waste

13.4 Funeral establishments and branch offices shall be in compliance with applicable sections of Chapter 23-19.12 of the Rhode Island General Laws, as amended, and the rules and regulations of reference 3.

Casket Rentals

13.5 When caskets are made available for rental on a temporary basis, the following provisions shall apply:

13.5.1 Said caskets shall be manufactured specifically for multi-use purposes. No casket manufactured for a single use shall be used more than once.

13.5.2 Funeral directors/embalmers shall obtain written authorization from the next-of-kin, or other responsible party, attesting to the fact that the funeral merchandise provided has been previously used in whole or in part.

Infection Control

13.6 Funeral directors/embalmers shall comply with the Occupational Safety and Health Administration's (OSHA) Blood borne Pathogen Standards of reference 4 in order to protect themselves and their employees against occupational exposure to bloodborne pathogens.

13.6.1 Compliance shall include, but not be limited to:

- i) a written exposure control plan;
- ii) staff training;
- iii) engineering and work practice controls;

- iv) adoption of universal precautions;
- v) personal protective equipment;
- vi) hepatitis B vaccinations; and
- vii) a protocol for evaluation in the event that an exposure occurs.

Transport of Human Remains

- 13.7 Human remains to be transported by common carrier shall be embalmed. If embalming is not possible, or if the body is in a state of decomposition, it shall be transported only after enclosure in a strong, sealed outer case, to prevent seepage of body fluids to the outside.

Section 14.0 Inspections

- 14.1 Any licensed funeral director/embalmer employed by the Division duly authorized and empowered may enter any funeral establishment, funeral establishment or branch office licensed under the provisions of these regulations, during the hours the funeral establishment or funeral establishment branch office shall be open for business, for the purpose of inspecting the sanitary conditions, complaint investigations, and ascertaining if the provisions of these rules and regulations are being observed in the operation of the funeral establishment or funeral establishment branch office.
- 14.2 Funeral establishments and branch offices licensed under the provisions of these regulations shall be inspected at least twice each year.
- 14.3 Inspections shall include all areas of sanitation and public health, complaint investigations, as well as conformity with applicable sections of Chapter 5-33.2 of the General Laws, as amended, and the rules and regulations herein.

Denial, Suspension or Revocation of Licensure

- 14.4 The inspector may request permission from the Department to be accompanied by another employee of the Department prior to an inspection. Failure or refusal of the person in charge of that funeral establishment or funeral establishment branch office to permit such inspection at all reasonable times shall be deemed sufficient cause for the revocation of any license issued to the funeral establishment or funeral establishment branch office and any certificate of approval issued by the Division.
- 14.5 Every funeral establishment, funeral director/embalmer, or the agent or representatives thereof, who pays, or causes to be paid, directly or indirectly, any sum of money or other valuable consideration for the securing of business, and every person who accepts any sum of money or other valuable consideration, directly or indirectly, from a funeral director/embalmer or an agent or owner of a funeral establishment in order that the latter may obtain business, shall be guilty of a misdemeanor and upon conviction shall be punished as hereinafter provided, and the certificate of any funeral director/embalmer or the license of any funeral establishment violating the provisions of this section or whose agents or servants violate the provisions thereof, shall be revoked by the Division. This section shall not prohibit the funeral establishment or funeral director/embalmer from advertising.

PART III *LICENSING FOR CREMATORIES*

Section 15.0 *Licensure Application and Fees*

- 15.1 No person shall operate a crematory without first obtaining a crematory license from the Department.
- 15.2 Applications for the crematory license shall be made on forms furnished by the Division accompanied by the application fee of sixty-two dollars and fifty cents (\$62.50).
- 15.3 Upon receipt of a completed application, the Department shall issue a license.
- 15.4 A license shall be issued to a specific licensee for a specific location and shall not be transferable.
- 15.5 The facility and licensee shall meet all requirements as set forth by these rules and regulations, consistent with Chapter 5-33.2 of the Rhode Island General Laws, as amended.

Section 16.0 *Renewal of Licenses*

- 16.1 All licenses issued under the provisions of these regulations must be renewed annually by the holders thereof who shall pay to the Division a yearly renewal fee of sixty-two dollars and fifty cents (\$62.50) for the crematory license.
- 16.2 On or before the fifteenth (15th) day of November in each year, the Division shall mail to each licensed crematory a renewal application.
- 16.3 Applications, accompanied by the renewal fee, shall be filed with the Division on or before the 31st day of December in each year.
 - 16.3.1 Applications filed after the 31st day of December, and on or before the 15th day of January, must be accompanied by a fee of fifty dollars (\$50.00) in addition to the renewal fee cited above.
- 16.4 Any crematory that acts or holds itself out as such after its license has lapsed shall be punished as provided herein.

Section 17.0 *Inspections*

- 17.1 Any licensed funeral director/embalmer employed by the Division of Professional Regulation duly authorized and empowered may enter any crematory licensed under the provisions of these regulations, during the hours the crematory shall be open for business, for the purpose of inspecting the sanitary conditions, complaint investigations, and ascertaining if the provisions of these rules and regulations are being observed in the operation of the crematory.
- 17.2 The inspector may request permission from the Department to be accompanied by another Departmental employee prior to an inspection. Failure or refusal of the person in charge of that

crematory to permit such inspection at all reasonable times shall be deemed sufficient cause for the revocation of any license issued to the crematory and any certificate of approval issued by the Division.

- 17.3 Crematories licensed under the provisions of these regulations shall be inspected at least twice (2) each year.
- 17.4 Inspections shall include all areas of sanitation and public health, complaint investigations, as well as conformity with applicable sections of these rules and regulations.

Section 18.0 ***General Operational Requirements***

18.1 ***Practice of Cremation***

The practice of cremation shall include no less than the following provisions:

18.1.1 Cremation shall not take place until the necessary permits and consents are issued pursuant to Section 23-3-18 of the General Laws of Rhode Island, as amended, and as cited below:

- (a) The funeral director, his/her duly authorized agent, or other person acting as such, who first assumes custody of a dead body or fetus shall prepare a burial-transit permit prior to final disposition or removal from the state of the body or fetus within seven (7) calendar days after death.
- (b) The burial-transit permit shall be signed by the funeral director and by the certifying physician as designated in Chapter 23-3-16(c) of the Rhode Island General Laws, as amended.
- (c) A burial-transit permit issued under the law of another state which accompanies a dead body or fetus brought into this state shall be authority for final disposition of the body or fetus in this state.
- (d) A permit for disinterment and reinterment shall be required prior to disinterment of a dead body or fetus except as authorized by regulation or otherwise provided by law. The permit shall be issued by the local registrar of vital records at the place of disinterment to a licensed funeral director, embalmer, his/her duly authorized agent, or other person acting as such, upon proper application.
- (e) The body of a deceased person shall not be cremated within twenty-four (24) hours after his/her death unless he/she dies of a contagious or infectious disease. The body shall not be received or cremated by any corporation authorized to cremate the bodies of the dead until its officers have received the burial permit required by law before burial, and a cremation certificate issued by the Rhode Island Office of the State Medical Examiner. A cremation certificate shall be issued only if the Office of the State Medical Examiner determines that the cause and manner of death is such that no further examination or judicial inquiry concerning the same is necessary.

- (f) The cremation certificate issued to the funeral director by the Medical Examiner, in duplicate, shall accompany the body to the crematory. The crematory shall retain the duplicate copy and mail the original copy to the state Division of Vital Records.
- 18.1.2 A crematory shall not take custody of unidentified human remains.
- 18.1.3 Human remains designated for cremation shall be cremated without unreasonable delay.
- 18.1.4 When the crematory is unable to cremate the human remains immediately upon taking custody, the crematory shall provide a secured holding facility that shall comply with any applicable public health laws that shall preserve the dignity of the human remains.
- 18.1.5 Holding facilities shall be secure from access by all unauthorized persons.
- 18.1.6 A metal, indestructible identifying disk shall be placed in the cremation chamber with the human remains for the purpose of identifying said remains. The name of the crematory or its license number shall be imprinted on said disk.
- 18.1.7 The crematory shall not simultaneously cremate more than one (1) human remains within the same cremation chamber.
 - (i) Upon completion of each cremation, the human remains shall be removed and the retort shall be cleaned and all recoverable residue of the cremation process shall be removed from the retort before each successive set of human remains are inserted.
- 18.1.8 In cases where the human remains are to be cremated, the funeral director/embalmer shall remove a pacemaker or other medical device(s) from the remains and transmit said device(s) to the next-of-kin or other responsible party.
- 18.1.9 In cases where the human remains are to be cremated, the next-of-kin or other responsible party shall personally identify the body prior to cremation. If this is not possible, the funeral director/embalmer shall obtain a written consent (see Appendix "B") from the next-of-kin, or other responsible party, assuming all responsibility for the disposition of the human remains.
- 18.1.10 A crematory authority shall not accept a casket or alternative container from which there is any evidence of the leakage of body fluids.
- 18.1.11 Crematory authorities shall abide by all applicable state and federal laws and regulations.

Disposition of Human Remains

- 18.1.12 A crematory or funeral home shall be authorized to arrange for disposition of cremated remains, in a dignified manner, that have been abandoned at the crematory or funeral home for more than six (6) months.
- (i) All reasonable attempts must be made and due diligence exercised to contact the person in charge who authorized the cremation.
 - (ii) Records shall be maintained to indicate the disposition of the human remains after cremation.
- 18.1.13 This section shall not apply to the cremation of various body parts from different human bodies.

Medical Waste

- 18.2 The facility shall be in compliance with applicable sections of Chapter 23-19.12 of the Rhode Island General Laws, as amended, and the *Rules and Regulations Governing the Generation, Transportation, Storage, Treatment, Management and Disposal of Regulated Medical Waste in Rhode Island* (see reference 3).

PART IV *DENIAL, SUSPENSION, REVOCATION AND SEVERABILITY*

Section 19.0 *Revocations or Suspensions*

The Division shall have the power to refuse to issue or may revoke or suspend any license issued by it under these regulations, after written notification and hearing before the Board for gross incompetency or for unprofessional conduct.

19.1 Unprofessional conduct is hereby defined to include:

19.1.1 Conviction of a felony;

19.1.2 Misrepresentations made of services, goods, or of funeral prices or fraud committed as a holder of a license for the practice of embalming, funeral directing or the holder of a license as a funeral establishment, funeral establishment branch or crematory;

19.1.3 False or misleading advertising as the holder of a license for the practice of embalming, funeral directing or the holder of a license as a funeral establishment, funeral establishment branch or crematory; violating any regulations relating to "truth in advertising"; or failure to do the following:

- (i) List only full-time employees or those having any ownership interest in the advertisements including his/her title which clearly identifies one's duties;
- (ii) List the name of the funeral director of record for the establishment in all advertising;
- (iii) A deceased founder may be listed in advertisements with the notation "founder" following the name;

19.1.4 Solicitation of dead human bodies by any licensed embalmer, funeral director, funeral attendant or the holder of a license as a funeral establishment, funeral establishment branch or crematory, its agents, assistants or employees, whether such solicitation occurs after death or while death is impending; provided that this shall not be deemed to prohibit general advertising;

19.1.5 Employment directly or indirectly of any intern, agent, assistant, employee, or other person, on part or full time, or on commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular funeral establishment;

19.1.6 The direct or indirect payment or offer of payment of a commission by any funeral establishment, funeral establishment branch or crematory, its agents, assistants, or employees for the purpose of securing business;

19.1.7 Solicitation or acceptance by a licensed funeral director/embalmer, or the holder of a license as a funeral establishment, funeral establishment branch or crematory, of any commission or bonus

or rebate in consideration of recommending or causing a dead human body to be disposed of in any crematory, mausoleum or cemetery;

- 19.1.8 Using any funeral merchandise previously used in whole or in part without prior written permission of the person selecting and/or paying for the use of the merchandise;
 - 19.1.9 Violation of any of the provisions of these regulations;
 - 19.1.10 Violation of any state law or rule or regulation affecting the handling, custody, care, transportation or final disposition of dead human bodies;
 - 19.1.11 Fraud or misrepresentation in obtaining or renewing a license;
 - 19.1.12 Refusing to properly release a dead human body to the custody of the person or entity who has the legal right to affect such release and authorized cost has been paid;
 - 19.1.13 Aiding or abetting an unlicensed person to practice funeral directing and embalming or holding oneself out as a licensed funeral director/embalmer;
 - 19.1.14 Failure to secure any required permit for removal or burial of dead human remains prior to interment or final disposition;
 - 19.1.15 Knowingly making any false statement on a certificate of death;
 - 19.1.16 Violation of Chapter 5-33.1 of the Rhode Island General Laws, as amended, entitled "Funeral Service Contracts";
 - 19.1.17 Discriminating in services because of race, creed, color, or national origin;
 - 19.1.18 Permitting non-funeral service licensees to make arrangements for a funeral prior to, or at, need unless exempted under Chapter 5-33.1 of the General Laws or a registered intern under the supervision of a licensee;
 - 19.1.19 Substantial or repeated violations of the rules and regulations of the Federal Trade Commission (of reference 1); and/or the Occupational Safety and Health Administration; and/or the Department of Environmental Management (of reference 3);
 - 19.1.20 Other violations deemed sufficient.
- 19.2 Each funeral director/embalmer of record shall, on or before the tenth (10th) day of the following month, file a report with the state registrar of vital records listing funerals and/or decedents serviced following deaths or fetal deaths within the month. (This report is to be filed even if there is no activity within the month to report). Failure to file these reports or any of the certificates required under Chapter 23-3-16 of the Rhode Island General Laws, as amended, within the prescribed time limits shall be grounds for disciplinary action, including revocation of license by the Board.

19.3 Before any license shall be so revoked or suspended, the holder thereof shall have notice in writing of the charge or charges against him/her and shall have reasonable opportunity to be heard in his/her defense.

19.4 Any person whose license has been so revoked or suspended may apply to have the certificate reissued, and the certificate shall be reissued to him/her upon a satisfactory showing that disqualification has ceased.

19.5 ***Witnesses***

The Division shall have power through its Administrator to summon any person to appear as a witness and testify at any hearing of the Division under the provisions of Chapter 5-33.2 of the General Laws, and to examine and administer oaths to those witnesses.

19.6 ***Appeals***

All hearings and reviews required under the provisions of Chapter 5-33.2 of the Rhode Island General Laws, as amended, shall be held in accordance with the *Rules and Regulations of the Rhode Island Department of Health Regarding Practices and Procedures Before the Department of Health and Access to Public Records of the Department of Health (R42-35-PP)* of reference 2.

19.7 ***Violations and Penalties***

19.7.1 Any person, partnership, corporation, association or its agents or representatives violating any of the provisions of Chapter 5-33.2 of the General Laws, as amended, or of any rules or regulations of the Division, shall be guilty of a misdemeanor.

19.7.2 Upon conviction, the person(s) shall be punished by imprisonment for a term not exceeding six (6) months or by a fine not exceeding five hundred dollars (\$500), or by both the fine and imprisonment, within the discretion of the Court.

19.8 ***Violations and Complaints***

19.8.1 Complaints for violation of the provisions of any lawful rules or regulations made by the Division may be made by the Administrator of the Division or by any person authorized by the Administrator, who shall be exempt from giving surety for costs on any such complaint.

19.8.2 All complaints filed with the Division charging a person or establishment with having been guilty of any actions specified in these rules and regulations must be sworn and notarized.

Section 20.0 ***Board of Examiners***

20.1 The Director, with the approval of the Governor, shall appoint to the Division, a Board of Examiners, consisting of three (3) embalmers/funeral directors and two (2) consumers.

20.2 ***Qualification of the Board***

The members of the Board of Examiners in embalming shall be:

- (i) residents of this state for at least five (5) years;
- (ii) three (3) members shall have had at least five (5) years practical experience in embalming dead human bodies and in funeral directing, and shall have been actually engaged therein in this state; and
- (iii) two (2) members shall be private citizens who represent the consumer and who are not involved or affiliated with, financially or otherwise, any funeral establishment and/or funeral director/embalmer;
- (iv) Current members shall serve their present terms as they fulfill the requirements of this section.
- (v) No member shall serve more than two (2) consecutive terms.

20.3 ***Removal of Board Members***

The Director may remove any member of the Board for cause.

20.4 ***Vacancies***

20.4.1 On the expiration of the term of any member, the Director, by and with the consent and advice of the Governor, shall fill the vacancy by appointment for a term of three (3) years.

20.4.2 Upon the death, resignation or removal for cause of any member, the Director, by and with the consent and advice of the Governor, shall fill the vacancy by appointment for the unexpired portion of the term.

20.4.3 Every member shall serve until his/her successor has been appointed and qualified.

Section 21.0 ***Severability***

If any provision of any rule or regulation made or the application thereof to any person or circumstances, is held invalid by a court of competent jurisdiction, the remainder of the rule or regulation, and the application of the provision to other persons or circumstances, shall not be affected thereby.

PART V REFERENCES

1. Federal Trade Commission, "Funeral Industry Practices," 16 *Code of Federal Regulations*, Chapter 1, Part 453.1, pp.323--330, January 1, 1996.
2. *Rules and Regulations of the Rhode Island Department of Health Regarding the Practices and Procedures Before the Department of Health and Access to Public Records of the Department of Health (R42-35-PP)*, Rhode Island Department of Health, October 2000.
3. *Rules and Regulations Governing the Generation, Transportation, Storage, Treatment, Management and Disposal of Regulated Medical Waste in Rhode Island (R01-92-MW)*, Rhode Island Department of Environmental Management, April 1994.
4. *Blood borne Pathogens*, Occupational Safety and Health Administration (OSHA), 29 CFR Part 1910--1000 to end, section 1910.1030, pp. 316--326, July 1, 1994.

October 15, 2001

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APPENDIX "A"

**SAMPLE AUTHORIZATION FOR RELEASE, EMBALMING & REMOVAL OF MEDICAL
DEVICES**

The undersigned hereby authorize

(Name of Institution or Person)

to release the body of _____
(Name of Deceased)

to _____ and/or
(Name of Funeral Home)

its agents, and authorize and direct said funeral home and/or its agents to care, embalm and otherwise prepare said body for earth burial or entombment or cremation or burial at sea or other disposition and to remove a _____
and transmit such device to _____.

I (we) hereby represent that I am (we are) of the same and nearest degree of relationship to the deceased and/or are legally authorized or charged with the responsibility for such burial and/or other disposition.

Name Relationship

Name Relationship

Name Relationship

Witness _____

Date _____

APPENDIX "B"

SAMPLE AUTHORIZATION FOR REMOVAL & DISPOSITION WITHOUT EMBALMING

The undersigned hereby direct and authorize the _____
(Name of Funeral Home)

and/or its agents, to remove and take possession of the body of

_____ and to provide for the final disposition of said body by
(Name of Deceased)

() earth burial () entombment () cremation & disposition of cremated remains

() burial at sea () other _____. We direct that there be no

embalming or other preparation or care of the body. The undersigned also wish hereby to indicate the desire (to have) (not to have) rites/ceremonies with the casketed body present.

The undersigned do further state that they (have) (have not) identified the body of the above-named decedent and assume all responsibility and/or liability of anyone whomsoever for mistaken identity.

The undersigned do hereby agree to indemnify and hold harmless the above-named funeral home, its officers, agents and employees from any claims or causes of action, including a reasonable attorney's fees for the defense thereof arising out of their act of identification or failure to identify, or arising out of their decision not to embalm, or arising out of any other decision indicated by this agreement which may result in mental or physical distress or anguish or harm or financial loss to themselves or to others.

_____ Name	_____ Relationship to Deceased	_____ Date
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_____ Name	_____ Relationship to Deceased	_____ Witness
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_____ Name	_____ Relationship to Deceased
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