

NEW MEXICO  
BOARD  
OF  
FUNERAL SERVICES



RULES and STATUTES

2012

# NEW MEXICO STATE BOARD OF FUNERAL SERVICES

## **TITLE 16 CHAPTER 64**

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## **New Mexico State Board of Funeral Services Statutes**

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**TITLE 16        OCCUPATIONAL AND PROFESSIONAL LICENSING**  
**CHAPTER 64    FUNERAL HOMES AND DISPOSERS**  
**PART 1        GENERAL PROVISIONS**

**16.64.1.1        ISSUING AGENCY:** New Mexico Board of Funeral Services.  
[6-15-96; 1-22-99; 16.64.1.1 NMAC - Rn & A, 16 NMAC 64.1.1, 09-15-01; A, 08-08-12]

**16.64.1.2        SCOPE:** 16.64.1 NMAC applies to the board, licensees, applicants for licensure, and the general public.  
[6-15-96; 16.64.1.2 NMAC - Rn & A, 16 NMAC 64.1.2, 09-15-01]

**16.64.1.3        STATUTORY AUTHORITY:** 16.64.1 NMAC is adopted pursuant to the Funeral Services Act, NMSA 1978, Section 61-32-2, 61-32-5, 61-32-6, 61-32-7, and 61-32-12, the Inspection of Public Records Act, Section 14-2-1 et seq. NMSA 1978, and the Open Meeting Act, Section 10-15-1 et seq. NMSA 1978.  
[6-15-96; 16.64.1.3 NMAC - Rn & A, 16 NMAC 64.1.3, 09-15-01; A, 08-08-12]

**16.64.1.4        DURATION:** Permanent.  
[6-15-96; 16.64.1.4 NMAC - Rn, 16 NMAC 64.1.4, 09-15-01]

**16.64.1.5        EFFECTIVE DATE:** September 26, 1993, unless a different date is cited at the end of a section.  
[6-15-96; 16.64.1.5 NMAC - Rn & A, 16 NMAC 64.1.5, 09-15-01]

**16.64.1.6        OBJECTIVE:** 16.64.1 NMAC is to establish the requirements for board meetings, display of certificates of licensure, inspection of public records, and minimum requirements for documents and contracts.  
[6-15-96; 16.64.1.6 NMAC - Rn & A, 16 NMAC 64.1.6, 09-15-01]

**16.64.1.7        DEFINITIONS:**

- A. "board" means the board of funeral services;
- B. "committal service" means a service at a place of interment or entombment that follows a funeral conducted at another location;
- C. "conspicuously displayed" means certificate of licensure and inspection results notice are collectively posted in a location where a member of the general public within the licensee's place of business will be able to observe and read the certificate of licensure and inspection results notice.
- D. "cremains" means cremated remains;
- E. "cremation" means the reduction of a dead human body by direct flame to a residue, which includes bone fragments;
- F. "crematory" means every place or premises that is devoted to or used for cremation and pulverization of the cremains;
- G. "crematory authority" means the individual who is ultimately responsible for the operation of a crematory;
- H. "department" means the regulation and licensing department;
- I. "direct disposer" means a person licensed to engage solely in providing direct disposition at a direct disposition establishment, licensed pursuant to the Funeral Services Act, as provided in that act;
- J. "direct disposition" means only the disposition of a dead human body as quickly as possible, without a direct disposer performing or arranging a funeral, graveside service, committal service or memorial service, whether public or private, and without embalming of the body unless embalming is required by the place of disposition;
- K. "direct supervision" means that the supervising funeral service practitioner is physically present with and in direct control of the person being trained;
- L. "disposition" means the final disposal of a dead human body, whether it be by earth interment, aboveground interment or entombment, cremation, burial at sea or delivery to a medical school, when the medical school assumes complete responsibility for the disposal of the body following medical study;
- M. "embalming" means the disinfection, preservation and restoration, when possible, of a dead human body by a licensed funeral service practitioner or a licensed funeral service intern under the supervision of a licensed funeral service practitioner;
- N. "ennichement" means interment of cremains in a niche in a columbarium, whether in an urn or

not;

O. "entombment" means interment of a casketed body or cremains in a crypt in a mausoleum;

P. "establishment" means every office, premises or place of business where the practice of funeral service or direct disposition is conducted or advertised as being conducted and includes commercial establishments that provide for the practice of funeral service or direct disposition services exclusively to licensed funeral or direct disposition establishments or a school of medicine;

Q. "funeral" means a period following death in which there is an organized, purposeful, time-limited, group centered ceremony or rite, whether religious or not, with the body of the deceased present;

R. "funeral merchandise" means that personal property offered for sale in connection with the transportation, funeralization or disposition of a dead human body, including the enclosure into which a dead human body is or cremains are directly placed, and excluding mausoleum crypts, interment enclosures preset in a cemetery and columbarium niches;

S. "funeral service intern" means a person licensed to be in training for the practice of funeral service under the supervision and instruction of a funeral service practitioner at a funeral establishment or commercial establishment, licensed pursuant to the Funeral Services Act;

T. "funeral service practitioner" means a person licensed to engage in the practice of funeral service at a funeral establishment or commercial establishment that is licensed pursuant to the Funeral Services Act;

U. "funeral services" means those immediate post-death activities related to a dead human body and its care and disposition, whether with or without rites or ceremonies; but 'funeral services' does not include disposition of the body by a school of medicine following medical study;

V. "general supervision" means that the supervising funeral service practitioner is not necessarily physically present in the establishment with the person being trained but is available for advice and assistance;

W. "graveside service" means a funeral held at the graveside only, excluding a committal service that follows a funeral conducted at another location;

X. "jurisprudence examination" means an examination prescribed by the board on the statutes, rules and regulations pertaining to the practice of funeral service or direct disposition, including the Funeral Services Act, the rules of the board, state health regulations governing human remains and the Vital Statistics Act;

Y. "licensee in charge" means a funeral service practitioner who is ultimately responsible for the conduct of a funeral or commercial establishment and its employees; or a direct disposer who is ultimately responsible for the conduct of a direct disposition establishment and its employees;

Z. "make arrangements" means advising or counseling about specific details for a funeral, graveside service, committal service, memorial service, disposition or direct disposition;

AA. "memorial service" means a gathering of persons for recognition of a death without the presence of the body of the deceased;

BB. "practice of funeral service" means those activities allowed under the Funeral Services Act by the funeral service practitioner or funeral service intern; and

CC. "pulverization" means the process that reduces cremains to a granular substance.

[6-15-96; 16.64.1.7 NMAC - Rn & A, 16 NMAC 64.1.7, 09-15-01; A, 08-08-12]

#### **16.64.1.8 GENERAL PROVISIONS:**

A. All certificates of licensure, and renewals thereof, issued by the board shall bear the license number, with a different series for each classification of license.

B. The current license, or renewal thereof, of each establishment and crematory and inspection results notice shall be conspicuously displayed in the establishment or crematory, together with the current license, or renewal thereof, of each licensee. The licensee must carry on their person the state issued wallet card license.

C. Any correspondence from the board will be mailed to a licensee at the last address shown in board records. It shall be incumbent on each licensee to notify the board of any change of address.

[2-7-76...9-26-93; 16.64.1.8 NMAC - Rn & A, 16 NMAC 64.1.8, 09-15-01; A, 08-08-12]

#### **16.64.1.9 BOARD MEETINGS:** The board operates in compliance with the Open Meetings Act.

A. Election of officers shall be held at the first regular board meeting of each fiscal year, and may be held at any other regularly scheduled meeting of the board, or special or emergency meeting called for that purpose.

B. Any member of the board who, after proper notice, fails to attend three consecutive meetings of the board shall be recommended for removal as a board member unless such absences are considered excused. Absences will be considered excused if notice by the board member has been given in advance of any meeting to the chairman or board administrator, and the chairman or board administrator announces at the meeting that notice by

the board member was given in advance of his or her inability to attend the meeting.  
[2-7-76...9-26-93, 1-22-99; 16.64.1.9 NMAC - Rn & A, 16 NMAC 64.1.9, 09-15-01]

**16.64.1.10 INSPECTION OF BOARD RECORDS:** The board operates in compliance with the Inspection of Public Records Act

- A. The board administrator will be the custodian of the board's records.
- B. Except as otherwise provided by law, all records kept by the board shall be available for public inspection pursuant to the Inspection of Public Records Act, except as provided herein:
  - (1) the contents of any examination used to examine an applicant's knowledge or competence;
  - (2) letters of reference;
  - (3) matters of opinion;
  - (4) complaints, and investigative files obtained during the course of an investigation or processing of a complaint, and before the vote of the board as to whether to dismiss the complaint or to issue a notice of contemplated action as provided in the Uniform Licensing Act, NMSA 1978, Section 61-1-1 et seq., and in order to preserve the integrity of the investigation of the complaints, records and documents that reveal confidential sources, methods, information or licensees accused, but not yet charged with a violation, such records shall include evidence in any form received or compiled in connection with any such investigation of the complaint or of the licensee by or on behalf of the board by any investigating agent or agency; upon the completion of the investigation or processing of the complaint, AND upon the decision of the board to dismiss the complaint or to issue a notice of contemplated action, the confidentiality privilege shall dissolve, and the records, documents or other evidence pertaining to the complaint and to the investigation of the complaint shall be available for public inspection; and
  - (5) any other records excepted from disclosure pursuant to the Inspection of Public Records Act.
- C. Only board members and employees may access non-public records unless approved by the board chairman AND the board attorney.
- D. Anyone may examine all public records in the board's custody, provided the person gives notice to the board administrator in accordance with the Inspection of Public Records Act.
- E. The board may charge a reasonable fee to defray copying and mailing charges for copies of public records, lists and labels, pursuant to the Inspection of Public Records Act. The board administrator is not obligated to create lists, labels or any other materials which are not already in existence.
- F. No person shall be permitted to remove original documents from the board's office, except those in the possession of the board administrator that are needed at a meeting of the board.  
[9-27-90...9-26-93, 1-22-99; 16.64.1.10 NMAC - Rn & A, 16 NMAC 64.1.10, 09-15-01]

**16.64.1.11 DOCUMENTS AND CONTRACTS:**

- A. All official documents and contracts of any establishment shall bear the signature of the arranger(s), where applicable, and the licensee signing the document or contract as the representative of the establishment, together with the licensee's license classification and license number, and the date the document or contract was signed by the arranger(s) and licensee. The following classification abbreviations shall be allowed:
  - (1) FSP - funeral service practitioner;
  - (2) FSI - funeral service intern;
  - (3) DD - direct disposer.
- B. Each establishment and crematory shall maintain copies of all official documents and contracts for funeral, direct disposition, cremation, and any other services rendered for services that fall within the scope of the license held pursuant to 61-32-1 et seq., documents shall include, but are not limited to:
  - (1) contracts;
  - (2) authorizations;
  - (3) permits;
  - (4) death certificates;
  - (5) embalming case reports; and
  - (6) cremations.
- C. Each establishment shall maintain documentation with dates and times of all services rendered by the establishment, or on behalf of the establishment by the crematory or other subcontractors, up to and including final disposition.
- D. Each establishment shall maintain copies of all official documents and contracts outlined in 16.16.1.11 NMAC at the establishment for a period of not less than seven (7) years, and shall make such documents and contracts available for inspection by the board or its designee.

[5-15-92...9-26-93; 16.64.1.11 NMAC - Rn & A, 16 NMAC 64.1.11, 09-15-01; A, 08-08-12]

**16.64.1.12 TELEPHONE CONFERENCES:** Pursuant to the provisions of the Open Meetings Act, if it is difficult or impossible for a member of the board to attend a meeting in person, the member may participate through telephone conference. Each member participating by telephone conference must be identified when speaking, all participants must be able to hear each other at the same time and members of the public attending the meeting must be able to hear any member of the board who speaks during the meeting.

[1-22-99; 16.64.1.12 NMAC - Rn & A, 16 NMAC 64.1.12, 09-15-01]

**History of 16.64.1 NMAC:**

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives:

Regulation No. 1, Meeting Dates, 8-15-88.

Regulation 1, Meeting Dates, 4-15-91.

Reg. 1, Board Meetings, 8-27-93.

Regulation No. 2, Forms of Certificates of Qualifications and Licenses, 8-15-88.

Regulation 2, Forms of Certificates of Qualifications and Licenses, 4-15-91.

Reg. 8, Certificates of Licensure, 8-27-93.

Regulation No. 14, Inspection of Board Records, 8-28-90.

Regulation 14, Inspection of Board Records, 4-15-91.

Reg. 2, Inspection of Board Records, 8-27-93.

Regulation 21, Documents and Contracts, 4-15-92.

Reg. 19, Documents and Contracts, 8-27-93.

History of Repealed Material: [Reserved]

**TITLE 16        OCCUPATIONAL AND PROFESSIONAL LICENSING**

**CHAPTER 64    FUNERAL HOMES AND DISPOSERS**  
**PART 2        FEES**

**16.64.2.1        ISSUING AGENCY:** New Mexico Board of Funeral Services.  
[6-15-96, 1-22-99; 16.64.2.1 NMAC - Rn & A, 16 NMAC 64.2.1, 09-15-01; A, 08-08-12]

**16.64.2.2        SCOPE:** 16.64.2 NMAC applies to licensees, applicants for licensure, and the general public.  
[6-15-96; 16.64.2.2 NMAC - Rn, 16 NMAC 64.2.2, 09-15-01]

**16.64.2.3        STATUTORY AUTHORITY:** 16.64.2 NMAC is adopted pursuant to the Funeral Services Act, NMSA 1978, Section 61-32-2, 61-32-6, 61-32-7, 61-32-9, 61-32-11, 61-32-21, 61-32-22 and 61-32-23.  
[6-15-96, 16.64.2.3 NMAC - Rn, 16 NMAC 64.2.3, 09-15-01; A, 08-08-12]

**16.64.2.4        DURATION:** Permanent.  
[6-15-96; 16.64.2.4 NMAC - Rn, 16 NMAC 64.2.4, 09-15-01]

**16.64.2.5        EFFECTIVE DATE:** January 22, 1999, unless a different date is cited at the end of a section.  
[6-15-96, 1-22-99; 16.64.2.5 NMAC - Rn & A, 16 NMAC 64.2.5, 09-15-01]

**16.64.2.6        OBJECTIVE:** 16.64.2 NMAC is to establish the fee schedule needed to generate sufficient revenues required to carry out the board's administrative functions.  
[6-15-96; 16.64.2.6 NMAC - Rn, 16 NMAC 64.2.6, 09-15-01]

**16.64.2.7        DEFINITIONS:** [Reserved.]  
[6-15-96; 16.64.2.7 NMAC - Rn, 16 NMAC 64.2.7, 09-15-01]

**16.64.2.8        FEE SCHEDULE:** The following schedule shall be applicable for fees collected by the board under the Funeral Services Act:

**A.        Funeral service practitioner license:**

- (1) application \$50.00
- (2) licensure \$150.00
- (3) examination (jurisprudence) \$100.00
- (4) renewal \$150.00
- (5) penalty for late renewal \$75.00

**B.        Funeral service intern license - direct supervision:**

- (1) Directing and arranging category:
  - (a) application \$50.00
  - (b) licensure \$150.00
  - (c) renewal \$150.00
  - (d) penalty for late renewal \$75.00
- (2) Preparation/embalming category:
  - (a) application \$50.00
  - (b) licensure \$150.00
  - (c) renewal \$150.00
  - (d) penalty for late renewal \$75.00

**C.        Funeral service intern license - general supervision:**

- (1) Directing and arranging category:
  - (a) application \$50.00
  - (b) licensure \$150.00
  - (c) examination (jurisprudence) \$100.00
  - (d) renewal \$75.00
  - (e) penalty for late renewal \$75.00
- (2) Preparation/embalming category:
  - (a) application \$50.00



(b) licensure \$150.00

(c) renewal \$75.00

(d) penalty for late renewal \$75.00

D. Direct disposer license:

(1) application \$50.00

(2) licensure \$150.00

(3) examination (jurisprudence) \$100.00

(4) renewal \$150.00

(5) penalty for late renewal \$75.00

E. Establishment license:

(1) application \$50.00

(2) licensure \$350.00

(3) renewal \$400.00

(4) penalty for late renewal \$75.00

F. Crematory license:

(1) application. \$50.00

(2) licensure \$350.00

(3) renewal \$400.00

(4) penalty for late renewal. \$75.00

G. Establishments and crematories - re-inspection:

(1) re-inspection actuals not to exceed \$500.00

(2) first non-compliance penalty \$300.00

(3) Second non-compliance penalty (resulting from the first non-compliance. Third non-compliance, resulting from the second non-compliance, will be referred to the board with a recommendation for the issuance of a notice of contemplated action) \$500.00

H. Administrative fees:

(1) copying costs \$0.50/page

(2) lists of licensees \$75.00

(3) mailing labels of licensees \$25.00

(4) return check \$100.00

(5) reinstatement from inactive status (in addition to the renewal fee) \$175.00

(6) Duplicate/replacement \$25.00

(7) other (at the discretion of the board or its designee).

I. Criminal background fee fees as currently charged by department of public safety.

J. The only fee that may be refunded is the licensure fee, as subscribed in each subsection of 16.64.2 NMAC, only if a temporary license, if applicable, has not been issued. The board office will refund any amount due through the state of New Mexico refund process.

[11-21-86...9-26-93; 1-22-99; 16.64.2.8 NMAC - Rn & A, 16 NMAC 64.2.8, 09-15-01; A, 04-02-10; A, 08-08-12]

**History of 16.64.2 NMAC:**

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives:

Regulation No. 12, Thanatopractice Fees, 8-7-89.

Regulation No. 12, Fee Schedule, 8-28-90.

Regulation No. 12, Fee Schedule, 4-15-91.

Reg. 4, Fee Schedule, 8-27-93.

History of Repealed Material: [Reserved]

**TITLE 16        OCCUPATIONAL AND PROFESSIONAL LICENSING**

**CHAPTER 64    FUNERAL HOMES AND DISPOSERS  
PART 3        REQUIREMENTS FOR LICENSURE**

**16.64.3.1        ISSUING AGENCY:** New Mexico Board of Funeral Services.  
[6-15-96, 1-22-99; 16.64.3.1 NMAC - Rn & A, 16 NMAC 64.3.1, 09-15-01; A, 08-08-12]

**16.64.3.2        SCOPE:** 16.64.3 NMAC applies to all applicants for licensure.  
[6-15-96; 16.64.3.2 NMAC - Rn, 16 NMAC 64.3.2, 09-15-01]

**16.64.3.3        STATUTORY AUTHORITY:** 16.64.3 NMAC is adopted pursuant to the Funeral Services Act, NMSA 1978, Section 61-32-2, 61-32-4, 61-32-6, 61-32-7, 61-32-9, 61-32-10, 61-32-11, 61-32-14, 61-32-15, 61-32-16 and 61-32-17.  
[6-15-96; 16.64.3.3 NMAC - Rn, 16 NMAC 64.3.3, 09-15-01; A, 08-08-12]

**16.64.3.4        DURATION:** Permanent.  
[6-15-96; 16.64.3.4 NMAC - Rn, 16 NMAC 64.3.4, 09-15-01]

**16.64.3.5        EFFECTIVE DATE:** September 26, 1993, unless a different date is cited at the end of a section.  
[6-15-96; 16.64.3.5 NMAC - Rn & A, 16 NMAC 64.3.5, 09-15-01]

**16.64.3.6        OBJECTIVE:** 16.64.3 NMAC is to establish the requirements pertaining to application for licensure and academic requirements for licensure under the New Mexico Funeral Services Act.  
[6-15-96; 16.64.3.6 NMAC - Rn, 16 NMAC 64.3.6, 09-15-01; A, 08-08-12]

**16.64.3.7        DEFINITIONS:**  
A.        "Accredited college or university" means a college or university that was accredited by the American board of funeral service education (ABFSE) at the time of the applicant's graduation or completion of courses.  
B.        [Reserved.]  
[6-15-96; 16.64.3.7 NMAC - Rn & A, 16 NMAC 64.3.7, 09-15-01; A, 08-08-12; A, 10-06-12]

**16.64.3.8        APPLICATIONS:**

A.        An applicant applying for a funeral service intern license must:  
(1) submit a completed application form supplied by the board office;  
(2) pay applicable fees as set forth in 16.64.2.8 NMAC;  
(3) submit satisfactory evidence that the applicant is at least 18 years of age;  
(4) submit satisfactory evidence that the applicant has graduated from high school or the equivalent;  
(5) submit satisfactory proof of employment and proof of supervision;  
(6) successfully complete the jurisprudence examination outlined in Subsection B of 16.64.5.9 NMAC.

B.        An applicant applying for a direct disposer license in the state of New Mexico must:  
(1) submit a completed application form supplied by the board office;  
(2) pay applicable fees as set forth in 16.64.2.8 NMAC;  
(3) submit satisfactory evidence that the applicant is at least 18 years of age;  
(4) successfully complete the jurisprudence examination outlined in Subsection B of 16.64.5.9 NMAC;  
(5) submit satisfactory evidence that the applicant has obtained an associate's degree in funeral science requiring the completion of at least sixty (60) semester hours from an institution whose funeral program is accredited by the American board of funeral service education or any other successor institution offering funeral service education recognized by the United States government.

C.        An applicant applying for a funeral service practitioner license must:  
(1) submit a completed application form supplied by the board office;  
(2) pay applicable fees as set forth in 16.64.2.8 NMAC;  
(3) submit satisfactory evidence that the applicant is at least 18 years of age;  
(4) submit satisfactory evidence that the applicant has served as a licensed funeral service intern for not less than twelve (12) months, under the supervision of a licensed funeral service practitioner. During this training period, the

applicant shall have assisted in embalming at least fifty (50) bodies, making of at least (50) funeral arrangements, and the directing of at least fifty (50) funerals;

(6) submit satisfactory evidence that the applicant has obtained an associate's degree in funeral science requiring the completion of at least sixty (60) semester hours from an institution whose funeral program is accredited by the American board of funeral service education or any other successor institution offering funeral service education recognized by the United States government;

(7) submit satisfactory evidence that the applicant has passed the national board examination;

(8) successfully complete the jurisprudence examination outlined in Subsection B of 16.64.5.9 NMAC;

(9) an applicant applying based on credentials from another state must:

(a) submit a completed application form supplied by the board office;

(b) pay applicable fees as set forth in 16.64.2.8 NMAC;

(c) submit a verification of licensure and good standing;

(d) submit proof of five (5) continuous years of experience/employment as a funeral service practitioner;

(e) submit satisfactory evidence that the applicant has passed the national board examination;

(f) successfully complete the jurisprudence examination outlined in Subsection B of 16.64.5.9 NMAC.

D. The board, in its sole discretion, may require an applicant for licensure to present whatever evidence or affidavits as it deems necessary to establish that the applicant is qualified for licensure.

E. The board may require applicants for licensure to personally appear before the board at the time the application is scheduled to be considered.

F. The burden of knowing and complying with the requirements necessary for licensure rests entirely on the applicant.

G. Applicants for licensure shall be required to provide evidence satisfactory to the board of completion of a course or other training approved by the board concerning contagious and infectious diseases, with the exception of:

(1) funeral service practitioner applicants who have graduated from an accredited school of funeral service education within five (5) years prior to application; and

(2) funeral service intern applicants who are applying under general supervision, provided that the funeral service intern previously met the requirement of Subsection F of 16.64.3.8 NMAC at the time of application for funeral service intern licensure under direct supervision, and provided that the funeral service intern has actively maintained a license under direct supervision for no more than five (5) years.

H. If the application for licensure is deemed to be incomplete when twelve (12) months has elapsed from the date stamped on the application or document the application and documents will be deemed null and void and any fees paid will be forfeited. Application and documents for licensure submitted to the board will be considered filed as of the date stamped on the application or documents by the board office, which shall be the date received by the board.

[2-7-76...6-15-96, 1-22-99; 16.64.3.8 NMAC - Rn & A, 16 NMAC 64.3.8, 09-15-01; A, 04-02-10; A, 10-06-12]

#### **16.64.3.9 [RESERVED]**

[5-15-92...9-26-96; 16.64.3.9 NMAC - Rn & A, 16 NMAC 64.3.9, 09-15-01; Repealed, 08-08-12]

#### **16.64.3.10 PROVISIONS FOR EMERGENCY LICENSURE:**

A. Funeral service practitioners currently licensed and in good standing, or otherwise meeting the requirements for New Mexico licensure in a state in which a federal disaster has been declared, may be licensed in New Mexico during the four months following the declared disaster at no cost upon satisfying the following requirements:

(1) receipt by the board of funeral services a completed application which has been signed and notarized and which is accompanied by proof of identity, which may include a copy of a drivers license, passport or other photo identification issued by a governmental entity;

(2) requirements have been met as set forth in 16.64.3.8, 16.64.3.9, 16.64.5.9, 16.64.6.8, 16.64.6.9 and 16.64.6.10 NMAC.

(3) applicant shall provide a sworn affidavit that provides the name, address, years of employment and supervisors name;

(4) sworn affidavit that the applicant was personally and professionally affected by the disaster;

(5) verification of previous employment will be accepted from co-worker when it is impossible to obtain it from the employer;

(6) nothing in this section shall constitute a waiver of qualifications of the requirements for licensure contained in

16.64.3 NMAC.

B. The board may waive the application fee of \$50.00, licensure fee of \$150.00 only, but not the \$50.00 examination fee.

C. The board may waive the specific forms required under Subsection A of 16.64.3.8 NMAC only if the applicant is unable to obtain documentation from the federal declared disaster areas.

D. Emergency provisional license shall expire four (4) months from date of issue. Application for initial license shall be made on or before June 30, 2007 following the date of issue of the emergency provisional license.

E. The board reserves the right to request additional documentation, including but not limited to, recommendation forms and work experience verification forms prior to approving the initial license.

[16.64.3.10 NMAC - N/E, 11-10-05; A, 08-08-12]

**16.64.3.11 TERMINATION OF EMERGENCY LICENSE:**

A. The emergency license shall terminate upon the following circumstances:

(1) the issuance of an initial license under section 16.64.3 NMAC; or

(2) proof that the emergency license holder has engaged in fraud, deceit or misrepresentation in procuring or attempting to procure a license under this section.

B. Termination of an emergency license shall not preclude application for permanent licensure.

[16.64.3.11 NMAC - N/E, 11-10-05]

**History of 16.64.3 NMAC:**

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives:

Regulation 19, Academic Requirements for Licensure, 4-15-92.

Reg. 7, Academic Requirements for Licensure, 8-27-93.

History of Repealed Material: [Reserved]

**TITLE 16        OCCUPATIONAL AND PROFESSIONAL LICENSING**

**CHAPTER 64    FUNERAL HOMES AND DISPOSERS**  
**PART 4        REQUIREMENTS FOR ESTABLISHMENTS AND CREMATORIES**

**16.64.4.1        ISSUING AGENCY:** New Mexico Board of Funeral Services.

[6-15-96, 1-22-99; 16.64.4.1 NMAC - Rn & A, 16 NMAC 64.4.1, 09-15-01; A, 08-08-12]

**16.64.4.2        SCOPE:** 16.64.4 NMAC applies to all licensees and applicants for establishment and crematory licensure.

[6-15-96; 16.64.4.2 NMAC - Rn, 16 NMAC 64.4.2, 09-15-01]

**16.64.4.3        STATUTORY AUTHORITY:** 16.64.4 NMAC is adopted pursuant to the Funeral Services Act, NMSA 1978, Section 61-32-2, 61-32-4, 61-32-6, 61-32-7, 61-32-8, 61-32-11, 61-32-13, 61-32-18, 61-32-20 and 61-32-21.

[6-15-96; 16.64.4.3 NMAC - Rn, 16 NMAC 64.4.3, 09-15-01; A, 08-08-12]

**16.64.4.4        DURATION:** Permanent.

[6-15-96; 16.64.4.4 NMAC - Rn, 16 NMAC 64.4.4, 09-15-01]

**16.64.4.5        EFFECTIVE DATE:** September 26, 1993, unless a different date is cited at the end of a section.

[6-15-96; 16.64.4.5 NMAC - Rn & A, 16 NMAC 64.4.5, 09-15-01]

**16.64.4.6        OBJECTIVE:** 16.64.4 NMAC is to establish the minimum requirements for establishments and crematories, separate establishments, changes of establishment and crematory licenses and refrigeration of dead human bodies.

[6-15-96; 16.64.4.6 NMAC - Rn, 16 NMAC 64.4.6, 09-15-01]

**16.64.4.7        DEFINITIONS:** [Reserved.]

[6-15-96; 16.64.4.7 NMAC - Rn, 16 NMAC 64.4.7, 09-15-01]

**16.64.4.8        GENERAL PROVISIONS:** The following requirements pertain to all establishments and crematories:

A.        The building in which an establishment or crematory is located shall be in conformity with the requirements of the applicable state and local statutes, rules, ordinances and zoning provisions, of good appearance and devoted primarily to the purpose for which it is licensed; provided, however, that a crematory may be located at any establishment if allowed by local ordinances and zoning provisions.

B.        The site and any rooms or areas within the structure thereon, and the use thereof, shall conform to all applicable state and local statutes, rules, ordinances and zoning provisions, and shall be in clean condition and good repair at all times.

C.        There shall be some identification visible from the street identifying the name of the establishment as licensed by the board; provided, however, that crematories shall not be required to have visible identification.

D.        Within this state there may be presently licensed establishments which were lawful before 16.64 NMAC was effective in its original form on September 14, 1988, but which would not conform to the provisions of 16.64.4 NMAC, or future amendment. It is the intent of 16.64 NMAC to permit these physical structure nonconformities in accordance with the Funeral Services Act. To effectuate this intent, the application of 16.64 NMAC shall be prospective only from and after its effective date in its original form on September, 14, 1988 and any existing physical structure nonconformity in a presently licensed establishment shall not be deemed grounds for revocation, suspension, denial or non-renewal of an establishment license for facilities existing and approved under the statutes and 16.64 NMAC in force at the date of the adoption hereof. Any such establishment whose license is revoked or not renewed, or any establishment which has any change in ownership as outlined in 16.64.4.11 NMAC shall be subject to the requirements of the board at the time such establishment applies to again become licensed. The provisions of 16.64.4 NMAC shall be deemed severable.

[2-7-76...6-15-96; 16.64.4.8 NMAC - Rn & A, 16 NMAC 64.4.8, 09-15-01; A, 08-08-12]

**16.64.4.9        MINIMUM REQUIREMENTS OF ESTABLISHMENTS:**

A. To be licensed by the board, each funeral establishment shall have and maintain the following minimum requirements:

- (1) a chapel in which funeral services may be conducted, which shall be at least six hundred (600) square feet (inside-wall-to-inside-wall) in size, and shall:
  - (a) have the capacity for seating not less than sixty (60) persons and for the proper display of a casket containing the deceased;
  - (b) have good ventilation;
  - (c) be entirely and completely separated from both the preparation room and the casket display room, except for entrances and exits having doors; and
- (2) a casket display room which shall be not less than four hundred fifty (450) square feet (inside-wall-to-inside-wall) in size and shall:
  - (a) contain burial caskets or a range of models and prices with not less than twelve different adult burial caskets or models normally displayed, and if models are displayed then the burial caskets shall be available and warehoused within 50 miles of the establishment; and
  - (b) be adequately illuminated; and
  - (c) any rental casket considered for interment or cremation services shall have written disclosure as previously used merchandise; consent form shall be provided and signed by the surviving spouse or next of kin; and
- (3) a preparation room which shall be not less than one hundred fifty (150) square feet (inside-wall-to-inside-wall) in size and shall:
  - (a) be equipped with a sanitary flooring of tile or other suitable hard, impervious surface;
  - (b) be equipped with necessary drainage, lighting and ventilation;
  - (c) be equipped with the equipment and supplies necessary to embalm and otherwise prepare the human dead for final disposition and transportation; and
  - (d) be entirely enclosed by flooring, walls and ceiling, except for proper ventilation and entrances and exits having doors.

B. To be licensed by the board, each commercial establishment shall have and maintain the following minimum requirements:

- (1) a preparation room as outlined in Paragraph (3) of Subsection A of 16.64.4.9 NMAC; and
- (2) an office which is entirely enclosed by flooring, walls and ceiling, except for proper ventilation and entrances and exits having doors, and which is totally separate from the preparation room except for entrances and exits having doors; and
- (3) commercial establishments shall be exempt from the requirements of Paragraphs (1) and (2) of Subsection A of 16.64.4.9 NMAC, provided the licensee in charge certifies to the board that the commercial establishment will not exceed the provisions allowed for commercial establishments in the Funeral Services Act.

C. To be licensed by the board, each direct disposition establishment shall have and maintain the following minimum requirements:

- (1) a room for sheltering dead human bodies which shall:
  - (a) be equipped with a sanitary flooring of tile or other suitable hard, impervious surface;
  - (b) be equipped with necessary drainage, lighting and ventilation;
  - (c) have a refrigeration unit thermostatically controlled with a minimum storage area of twelve and one-half (12.5) cubic feet per body;
  - (d) be entirely enclosed by flooring, walls and ceiling, except for proper ventilation and entrances and exits having doors;
- (2) an office which is entirely enclosed by flooring, walls and ceiling, except for proper ventilation and for entrances and exits having doors, and which is totally separate from the room where bodies are sheltered except for entrances and exits having doors; and
- (3) if the establishment contains burial caskets or a range of models the establishment shall comply with the requirements of Paragraph (2) of Subsection A of 16.64.4.9 NMAC.

D. To be licensed by the board, each funeral establishment shall:

- (1) entirely complete a body tracking sheet as provided by regulation and licensing which shall be kept in the deceased file; and
- (2) obtain and maintain body transport record log at the time of which the deceased is transported to the establishment which shall be kept in the deceased file; the log shall include:
  - (a) name of deceased;
  - (b) date of death;
  - (c) date and time placed in refrigeration;

- (d) date and time removed from refrigeration;
- (e) condition of body prior to transport;
- (f) condition of body at the time of delivery;
- (g) weather conditions during time of transport.

[2-7-76...9-26-93, 1-22-99; 16.64.4.9 NMAC - Rn & A, 16 NMAC 64.4.9, 09-15-01; A, 04-02-10; A, 08-08-12]

#### **16.64.4.10 LICENSEE IN CHARGE AND SEPARATE ESTABLISHMENTS:**

A. Each establishment shall have in charge, full-time therein, a funeral service practitioner.

(1) The licensed funeral service practitioner for a funeral establishment shall live within ninety (90) minutes by legal road travel of the establishment.

(2) The licensed funeral service practitioner of a commercial establishment shall live within ninety (90) minutes by legal road travel of the establishment.

(3) The licensee in charge of a direct disposition establishment shall be a licensed direct disposer, and shall live within (90) minutes by legal road travel of the establishment.

B. A licensee in charge may be licensee in charge of more than one establishment provided that the requirements outlined in Subsection A of 16.64.4.10 NMAC have been met, and:

(1) the establishments are within fifty (50) miles by legal road travel of each other;

(2) the licensee in charge lives within (90) minutes by legal road travel of each establishment; and

(3) application is made in accordance with the requirements outlined in 16.64.4.11 NMAC for a change in the licensee in charge.

[2-7-76...9-26-93; 16.64.4.10 NMAC - Rn & A, 16 NMAC 64.4.10, 09-15-01; A, 10-06-12]

#### **16.64.4.11 CHANGES OF ESTABLISHMENT AND CREMATORY LICENSES:**

A. An establishment or crematory license is an authority granted to the person, firm partnership, corporation, association, joint venture, or other organization, or any combination thereof, and is not transferable. A change in business designation of an establishment or crematory or of a licensee in charge of an establishment may have the legal effect of attempting to transfer the license and of operating without a license. Therefore, all such changes shall be filed with the board on an application form prescribed by the board, accompanied by the required fees, within thirty (30) days following any such change.

(1) Incorporation creates a new legal entity which requires a new license even though one or more stockholders, officers or directors have been previously issued a license. A license to practice funeral service or direct disposition held by a stockholder, officer of director is not authority to the corporation to operate as a funeral or direct disposition establishment.

(2) The organization of a partnership or joint venture creates a new legal entity which requires a new license, even though one or more of the partners have previously been issued a license.

(3) The dissolution of a corporation or partnership which has been issued a license, operates to terminate the license and no individual or firm may operate under such a terminated license.

(4) The change of members of a general partnership, or in the general partner membership of a limited partnership, either the addition or withdrawal of a partner or partners, establishes a new legal entity which requires a new license and such partnership cannot operate on a license of the former partnership.

(5) The change of ownership of fifty (50) percent or more of the stock in a corporation or shares in a partnership operates to terminate the license and a new license is required, even if the licensee in charge does not change.

(6) A change in the licensee in charge operates to terminate the establishment license and the establishment can continue to operate only under a new license granted by the board and designating the new licensee in charge. The revocation, suspension, lapse or other loss of the license of the licensee in charge shall likewise cause a termination of the existing establishment license.

(7) A change in location of an establishment or crematory shall require a new establishment or crematory license.

(8) A change in the name of an establishment or crematory shall require a new establishment or crematory license.

(a) Any change in name shall not be announced, used, or in any way conveyed to the public until the new license is issued by the board.

(b) All advertising, signs, listings, newspaper notices, as well as all stationery, business cards, etc., of an establishment or crematory licensed by the board shall include the name of the establishment or crematory, exactly as licensed by the board, and all references to the new name shall be changed within thirty (30) days following the board meeting at which the new license was issued.

B. Prior to the issuance of a new license under Subsection A of 16.64.4.11 NMAC the board may require an inspection of the establishment or crematory, however an inspection of the establishment or crematory

shall be required for a change under Paragraph (7) of Subsection A of 16.64.4.11 NMAC prior to the issuance of a new license.

C. Failure to file for a change of an establishment or crematory license within the thirty (30) day period shall be grounds for termination of licenses of the establishment and the licensee in charge, or of the crematory license.

D. Upon filing for any change, the establishment or crematory shall continue to operate under its current license until the next board meeting, provided all other provisions of the Funeral Services Act are followed.

E. Re-inspections.

(1) The requirement for a re-inspection is based on the following:

(a) the inspector has attempted on two occasions to inspect the establishment or crematory to no avail, and would include the situation where the establishment or crematory is closed during normal business hours and that the licensee in charge is not available within one (1) hour of contact made or attempted by the inspector; or

(b) the establishment or crematory is found to be in non-compliance with the board's inspection requirements.

(2) A re-inspection and penalty fee will be imposed on any establishment or crematory if a re-inspection is required. The licensee in charge of an establishment or a crematory authority will be informed that a re-inspection and penalty fee is being assessed and the reason for the re-inspection.

(3) If the board has good reason to believe that the Funeral Services Act or 16.64 NMAC, governing the inspection requirements have been violated, a re-inspection and penalty fee will be assessed only if a violation exists.

[2-7-76...9-26-93; 1-22-99; 16.64.4.11 NMAC - Rn & A, 16 NMAC 64.4.11, 09-15-01; A, 08-08-12]

**16.64.4.12 REFRIGERATION:** All bodies which are refrigerated in lieu of, or prior to, embalming shall be stored at a temperature not to exceed forty (40) degrees fahrenheit {five (5) degrees celsius} and shall not be taken out of refrigeration until such time as the dead human body is being prepared to be embalmed, upon final disposition, or for identification purposes only not to exceed thirty (30) minutes.

[2-6-82...9-26-93; 16.64.4.12 NMAC - Rn & A, 16 NMAC 64.4.12, 09-15-01]

#### **History of 16.64.4 NMAC:**

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives:

Regulation No. 10, Necessary Drainage, Ventilation, Sanitary Flooring and Necessary and Suitable Instruments, Supplies and Merchandise in a Funeral Establishment, 8-15-88.

Regulation 10, Minimum Requirements of Funeral Establishments, Commercial Embalming Establishments, Direct Disposition Establishments and Crematories, 4-15-91.

Reg. 11, Minimum Requirements of Establishments and Crematories, 8-27-93.

Regulation No. 7, Transfer of Funeral Establishment License, 8-28-90.

Regulation 7, Changes of Establishment and Crematory Licenses, 4-15-91.

Reg. 13, Changes of Establishment and Crematory Licenses, 8-27-93.

Regulation No. 8, Separate Establishment, 8-15-88.

Regulation 8, Separate Funeral Establishment, 4-15-91.

Regulation 8, Separate Funeral and Direct Disposition Establishments, 4-15-92.

Reg. 12, Separate Establishments, 8-27-93.

Regulation No. 22, Embalming, 1-7-81.

Regulation No. 11, Embalming, 8-15-88.

Regulation 11, Embalming, 4-15-91.

Reg. 14, Refrigeration, 8-27-93.

Section 5, Direct Disposition Rules and Regulations - Establishment, 12-9-88.

Section 7, Crematory Rules and Regulations - Crematories - Inspections, 12-9-88.

History of Repealed Material: [Reserved]



**TITLE 16        OCCUPATIONAL AND PROFESSIONAL LICENSING**  
**CHAPTER 64    FUNERAL HOMES AND DISPOSERS**  
**PART 5         EXAMINATIONS**

**16.64.5.1        ISSUING AGENCY:** New Mexico Board of Funeral Services.  
[6-15-96; 16.64.5.1 NMAC - Rn & A, 16 NMAC 64.5.1, 09-15-01; A, 08-08-12]

**16.64.5.2        SCOPE:** 16.64.5 NMAC applies to applicants for licensure as a funeral service practitioner, associate funeral service practitioner, and direct disposer.  
[6-15-96; 16.64.5.2 NMAC - Rn & A, 16 NMAC 64.5.2, 09-15-01]

**16.64.5.3        STATUTORY AUTHORITY:** 16.64.5 NMAC is adopted pursuant to the Funeral Services Act, NMSA 1978, Section 61-32-2, 61-32-6, 61-32-7, 61-32-9 and 61-32-10.  
[6-15-96; 16.64.5.3 NMAC - Rn, 16 NMAC 64.5.3, 09-15-01; A, 08-08-12]

**16.64.5.4        DURATION:** Permanent.  
[6-15-96; 16.64.5.4 NMAC - Rn, 16 NMAC 64.5.4, 09-15-01]

**16.64.5.5        EFFECTIVE DATE:** April 10, 1994, unless a different date is cited at the end of a section.  
[6-15-96; 16.64.5.5 NMAC - Rn & A, 16 NMAC 64.5.5, 09-15-01]

**16.64.5.6        OBJECTIVE:** 16.64.5 NMAC is to establish the examination requirements for licensure. The examination(s) is to determine that each applicant for licensure possesses the minimum skills and knowledge to practice competently.  
[6-15-96; 16.64.5.6 NMAC - Rn, 16 NMAC 64.5.6, 09-15-01]

**16.64.5.7        DEFINITIONS:** [Reserved.]  
[6-15-96; 16.64.5.7 NMAC - Rn, 16 NMAC 64.5.7, 09-15-01]

**16.64.5.8        GENERAL PROVISIONS:**

A.        The examination outlined in Subsection A of 16.64.5.9 NMAC shall be given at such times and places as determined by the board.

B.        The examination outlined in Subsection B of 16.64.5.9 NMAC may be given at any meeting of the board, or at such other times and places determined by the board.

C.        No applicant may take any specific examination more than twice in any six (6) month period; and an applicant must wait a minimum of thirty (30) days from the examination date prior to retaking any examination. An applicant shall pay all costs and fees to retake any examination.

D.        No applicant shall be permitted to take any examination until his or her application is complete, as determined by the board.

[2-7-76...4-10-94; 16.64.5.8 NMAC - Rn & A, 16 NMAC 64.5.8, 09-15-01; A, 08-08-12]

**16.64.5.9        EXAMINATIONS:**

A.        Each applicant for a license as a funeral service practitioner shall take a written comprehensive examination, comparable to the examination taken by graduates of funeral service education. An applicant must answer not less than 75% of the questions correctly to successfully complete the examination. The candidate shall pay all costs of the examination charged by examining agency together with the administrative costs of the board. The pass/fail decision of the board shall be binding.

B.        Each applicant for licensure, including any licensee who wishes to reinstate an inactive license, shall take a written jurisprudence examination prescribed by the board. An applicant must answer not less than 75% of the questions correctly to successfully complete the jurisprudence examination. An applicant who does not successfully complete the jurisprudence examination may protest to the board, not later than the following board meeting, if he or she feels the grading of the examination was incorrect or unfair. The decision of the board following a protest shall be binding.

[2-7-76...4-10-94; 16.64.5.9 NMAC - Rn & A, 16 NMAC 64.5.9, 09-15-01; A, 08-08-12]

**HISTORY OF 16.64.5 NMAC:**

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives:

Regulation No. 3, Examinations, 8-15-88.

Regulation 3, Examinations, 4-15-91.

Reg. 6, Examinations, 8-27-93.

Reg. 6, Examinations, 3-11-94.

History of Repealed Material: [Reserved]

**TITLE 16        OCCUPATIONAL AND PROFESSIONAL LICENSING**  
**CHAPTER 64    FUNERAL HOMES AND DISPOSERS**  
**PART 6         CONTINUING EDUCATION**

**16.64.6.1        ISSUING AGENCY:** New Mexico Board of Funeral Services.  
[6-15-96; 16.64.6.1 NMAC - Rn & A, 16 NMAC 64.6.1, 09-15-01; A, 08-08-12]

**16.64.6.2        SCOPE:** 16.64.6 NMAC applies to licensed funeral service practitioners, associate funeral service practitioners, assistant funeral service practitioners, direct disposers, and funeral service interns under general supervision.  
[6-15-96; 16.64.6.2 NMAC - Rn & A, 16 NMAC 64.6.2, 09-15-01]

**16.64.6.3        STATUTORY AUTHORITY:** 16.64.6 NMAC is adopted pursuant to the Funeral Services Act, NMSA 1978, Section 61-32-2, 61-32-6, 61-32-7, 61-32-21 and 61-32-22.  
[6-15-96; 16.64.6.3 NMAC - Rn, 16 NMAC 64.6.3, 09-15-01; A, 08-08-12]

**16.64.6.4        DURATION:** Permanent.  
[6-15-96; 16.64.6.4 NMAC - Rn, 16 NMAC 64.6.4, 09-15-01]

**16.64.6.5        EFFECTIVE DATE:** September 26, 1993, unless a different date is cited at the end of a section.  
[6-15-96; 16.64.6.5 NMAC - Rn & A, 16 NMAC 64.6.5, 09-15-01]

**16.64.6.6        OBJECTIVE:** 16.64.6 NMAC is to establish the continuing education requirements and procedures, to ensure that licensees provide the highest quality professional service. Therefore licensees should engage in education activities that foster this objective.  
[6-15-96; 16.64.6.6 NMAC - Rn, 16 NMAC 64.6.6, 09-15-01]

**16.64.6.7        DEFINITIONS:**

A.        "Continuing education" means that education which is obtained by a licensee to develop, maintain, improve or expand skills and knowledge. This education may be obtained through formal or informal education processes, school study, research and participation in professional, technical and occupational societies and by other similar means as authorized by the board.

B.        "Approved provider" means any provider approved by the board or its designee.

C.        "Renewal period" means July 1<sup>st</sup> through June 30<sup>th</sup>.

[9-14-88...9-26-93; 16.64.6.7 NMAC - Rn & A, 16 NMAC 64.6.7, 09-15-01]

**16.64.6.8        GENERAL PROVISIONS:**

A.        Requests for approval of continuing education activities shall be submitted to the board on a form prescribed by the board. No license renewal shall be issued without board action if there exists any question by the board administrator as to the acceptance of a particular continuing education activity. The burden shall be on the licensee to ascertain from the board if a continuing education activity is acceptable, and to provide proof of completion of the continuing education activity for the renewal period.

B.        Ten (10) hours of continuing education shall equal one (1) continuing education unit (CEU).

C.        Regardless of what part of the year a person becomes licensed, there shall be no reduction or pro-rating of continuing education hours required for the next renewal period; provided however, that any person who was first licensed during the same renewal period as he or she graduated from an accredited school of funeral service education shall not be required to earn continuing education for the next renewal.

D.        Any person who holds more than one license issued by the board may use the same continuing education hours for renewal of both licenses without having to earn separate continuing education hours for each license renewal.

[9-14-88...9-26-93; 16.64.6.8 NMAC - Rn & A, 16 NMAC 64.6.8, 09-15-01; A, 04-02-10]

**16.64.6.9        CONTINUING EDUCATION:** The board may, subject to Subsection A of 16.64.6.10 NMAC, recognize continuing education in the following areas related to funeral services.

A.        Academic activities:

- (1) completion of courses offered by accredited institutions of higher education; and
- (2) completion of home study courses offered by approved sponsors of such courses.

B. Professional activities:

- (1) attendance at workshops, conferences, seminars and institutions of approved funeral service educational opportunities;
- (2) service on a board of directors of a funeral service organization, including the New Mexico board of funeral services; and
- (3) published literary contributions.

C. Public education and service:

- (1) conducting or participating as an instructor in school presentations and other related workshops, conferences, seminars and institutions;
- (2) speeches on funeral service before religious or civic organizations; and
- (3) attendance at meetings of the board.

[9-14-88...9-26-93; 16.64.6.9 NMAC - Rn & A, 16 NMAC 64.6.9, 09-15-01; A, 08-08-12]

**16.64.6.10 LIMITATIONS:**

A. The amount of continuing education credit the board will recognize for any activity will be at the sole discretion of the board, provided however, that the board will grant credit for activities offered by any approved provider of continuing education subject to the limitation imposed in Subsection B of 16.64.6.10 NMAC.

B. No more than four (4) hours {.4 CEU} of continuing education credit shall be granted in any renewal period for activities as outlined in Subsection C of 16.64.6.9 NMAC.

C. Upon application for renewal of a license, the applicant shall furnish evidence of having completed continuing education hours to the following extent.

- (1) Funeral service practitioners shall be required to complete ten (10) hours {1.0 CEU}.
- (2) Funeral service interns who are allowed to practice under the general supervision of a funeral service practitioner in any category shall be required to complete ten (10) {1.0 CEU}.
- (3) Direct disposers shall be required to complete ten (10) hours {1.0 CEU}.

[11-21-86...9-26-93; 16.64.6.10 NMAC - Rn & A, 16 NMAC 64.6.10, 09-15-01; A, 08-08-12]

**HISTORY OF 16.64.6 NMAC:**

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives:

Regulation No. 6, Continuing Education, 8-15-88.

Regulation No. 6, Continuing Education, 8-28-90.

Regulation 6, Continuing Education, 4-15-91.

Reg. 10, Continuing Education, 8-27-93.

History of Repealed Material: [Reserved]

**TITLE 16        OCCUPATIONAL AND PROFESSIONAL LICENSING**  
**CHAPTER 64    FUNERAL HOMES AND DISPOSERS**  
**PART 7         LICENSE RENEWAL**

**16.64.7.1        ISSUING AGENCY:** New Mexico Board of Funeral Services.  
[6-15-96; 16.64.7.1 NMAC - Rn & A, 16 NMAC 64.7.1, 09-15-01; A, 08-08-12]

**16.64.7.2        SCOPE:** 16.64.7 NMAC applies to all licensees.  
[6-15-96; 16.64.7.2 NMAC - Rn, 16 NMAC 64.7.2, 09-15-01]

**16.64.7.3        STATUTORY AUTHORITY:** 16.64.7 NMAC is adopted pursuant to the Funeral Services Act, NMSA 1978, Section 61-32-4, 61-32-6, 61-32-7, 61-32-11, 61-32-21 and 61-32-22.  
[6-15-96; 16.64.7.3 NMAC - Rn, 16 NMAC 64.7.3, 09-15-01; A, 08-08-12]

**16.64.7.4        DURATION:** Permanent.  
[6-15-96; 16.64.7.4 NMAC - Rn, 16 NMAC 64.7.4, 09-15-01]

**16.64.7.5        EFFECTIVE DATE:** September 26, 1993, unless a different date is cited at the end of a section.  
[6-15-96; 16.64.7.5 NMAC - Rn & A, 16 NMAC 64.7.5, 09-15-01]

**16.64.7.6        OBJECTIVE:** 16.64.7 NMAC is to establish the requirements for renewal, and inactive status and reinstatement of an inactive license.  
[6-15-96; 16.64.7.6 NMAC - Rn, 16 NMAC 64.7.6, 09-15-01]

**16.64.7.7        DEFINITIONS:** [Reserved.]  
[6-15-96; 16.64.7.7 NMAC - Rn, 16 NMAC 64.7.7, 09-15-01]

**16.64.7.8        GENERAL PROVISIONS:** All licenses issued by the board expire June 30 of each year and shall be renewed by submitting a completed renewal application, accompanied by the required fees, on a form prescribed by the board.  
[2-7-76...9-26-93; 16.64.7.8 NMAC - Rn, 16 NMAC 64.7.8, 09-15-01]

**16.64.7.9        INACTIVE STATUS:**

A.        Any licensee, excluding funeral service intern licensees, who wishes to place his or her license on inactive status shall notify the board in writing, on a form prescribed by the board, prior to the expiration of his or her current license.

B.        The board administrator shall determine if the inactive status of any license will be approved until the next scheduled board meeting.

C.        Upon approval by the board of an inactive request, the licensee shall be exempt from the payment of the annual renewal fee during the period of inactive status.

D.        No license will automatically be placed on inactive status by failure of the licensee to renew his or her license.

E.        No license shall be placed on inactive status if the licensee is under investigation or if disciplinary proceedings have been initiated.

F.        Any licensee who has placed his or her license on inactive may, within five (5) years from the date of acceptance by the board of the inactive status, notify the board of his or her desire to reinstate the inactive license. Upon receipt of such notice, the board administrator shall send to the inactive licensee an application for reinstatement.

G.        The applicant shall submit the application to the board together with the applicable fee(s) and proof of completion of one (1) CEU, as outlined in 16.64.6 NMAC, for the year in which reinstatement is sought.

H.        If the board finds the application in order, the applicant shall be issued a license after successfully completing the written jurisprudence examination outlined in Subsection B of 16.64.5.9 NMAC. No person whose license is on inactive status shall practice funeral service in this state until receiving a reinstated license.

I.        Any person who, after five (5) years of inactive status, desires to reinstate his or her license, must

make application to the board and comply with the same requirements as any previously unlicensed applicant.

J. If a request for reinstatement of an inactive license occurs in the same renewal period, as defined in Subsection C of 16.64.6.7 NMAC, that the inactive status was granted, the applicant shall not be required to complete additional continuing education requirements or the jurisprudence exam in order for the inactive license to be reinstated.

[9-27-90...9-26-93; 16.64.7.9 NMAC - Rn & A, 16 NMAC 64.7.9, 09-15-01; A, 04-02-10; A, 08-08-12]

**HISTORY OF 16.64.7 NMAC:**

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives:

Reg. 9, License Renewals, 8-27-93.

History of Repealed Material: [Reserved]

**TITLE 16        OCCUPATIONAL AND PROFESSIONAL LICENSING**  
**CHAPTER 64    FUNERAL HOMES AND DISPOSERS**  
**PART 8        FUNERAL SERVICE INTERN PRACTICES**

**16.64.8.1        ISSUING AGENCY:** New Mexico Board of Funeral Services.  
[6-15-96; 1-22-99; 16.64.8.1 NMAC - Rn & A, 16 NMAC 64.8.1, 09-15-01; A, 08-08-12]

**16.64.8.2        SCOPE:** 16.64.8 NMAC applies to funeral service intern licensees.  
[6-15-96; 16.64.8.2 NMAC - Rn, 16 NMAC 64.8.2, 09-15-01]

**16.64.8.3        STATUTORY AUTHORITY:** 16.64.8 NMAC is adopted pursuant to the Funeral Services Act, NMSA 1978, Section 61-32-2, 61-32-6, 61-32-7 and 61-32-14.  
[6-15-96; 16.64.8.3 NMAC - Rn, 16 NMAC 64.8.3, 09-15-01; A, 08-08-12]

**16.64.8.4        DURATION:** Permanent.  
[6-15-96; 16.64.8.4 NMAC - Rn, 16 NMAC 64.8.4, 09-15-01]

**16.64.8.5        EFFECTIVE DATE:** September 26, 1993, unless a different date is cited at the end of a section.  
[6-15-96; 16.64.8.5 NMAC - Rn & A, 16 NMAC 64.8.5, 09-15-01]

**16.64.8.6        OBJECTIVE:** 16.64.8 NMAC is to establish the scope of practice for funeral service interns.  
[6-15-96; 16.64.8.6 NMAC - Rn, 16 NMAC 64.8.6, 09-15-01]

**16.64.8.7        DEFINITIONS:** [Reserved.]  
[6-15-96; 16.64.8.7 NMAC - Rn, 16 NMAC 64.8.7, 09-15-01]

**16.64.8.8        GENERAL PROVISIONS:**

A. Each funeral service intern shall inform the board, on quarterly reports prescribed by the board, of the work completed by the funeral service intern, and the name(s) of the funeral service practitioner(s) who supervised each activity, and shall be for the periods as follows, until such time as the minimum requirements are met, as determined by the board:

- (1) July 1 thru September 30, inclusive;
- (2) October 1 thru December 31, inclusive;
- (3) January 1 thru March 31, inclusive;
- (4) April 1 thru June 30, inclusive.

B. Original quarterly reports shall be due at the office of the board within thirty (30) days of the close of the quarter (faxed reports will not be accepted). Any quarter for which a report is not received by the date due shall not count as time toward the internship.

C. A funeral service intern may be employed by, or receive training at, more than one (1) funeral or commercial establishment concurrently provided that:

- (1) the establishments are part of the same company;
- (2) the establishments are within 50 miles by road travel of each other; and
- (3) application is made, together with the application fee for each license held, thirty (30) days prior to employment or training.

D. A funeral service intern shall make it known that he or she is a funeral service intern under the supervision of a funeral service practitioner, and that he or she is not licensed as a funeral service practitioner nor the licensee in charge.

E. A funeral service intern shall not use the title funeral director and shall use the title funeral service director intern. The titles funeral practitioner, funeral director or mortician are reserved for fully licensed practitioners in order to prevent the general public from misunderstanding the terms.

F. A funeral service intern shall practice funeral service only under the supervision of a funeral service practitioner, provided:

- (1) when a funeral service intern has made arrangements for fifty (50) funerals under direct supervision, he or she may request approval from the board to make arrangements under general supervision; the request shall be made on an application form prescribed by the board, accompanied by the required fees, provided that if the fees were

previously paid for a request in accordance with Paragraph (3) of Subsection F of 16.64.8.8 NMAC, the fees shall not be required; and

(2) when a funeral service intern has assisted in embalming of fifty (50) bodies under direct supervision, he or she may request approval from the board to embalm under general supervision; the request shall be made on an application form prescribed by the board, accompanied by the required fees; and

(3) when a funeral service intern has assisted in the directing of fifty (50) funerals, committal services, grave side services or memorial services under direct supervision, he or she may request approval from the board to direct such services under general supervision; the request shall be made on an application form prescribed by the board, accompanied by the required fees, provided that if the fees were previously paid for a request in accordance with Paragraph (1) of Subsection F of 16.64.8.8 NMAC, the fees shall not be required.

G. A funeral service intern shall not practice funeral service in any category under general supervision until application is made, together with the required fees, and approval has been granted by the board.

H. A funeral service intern shall be required to make arrangements during his or her internship in order to qualify for a license as a funeral service practitioner.

I. A funeral service intern shall not be required to practice funeral service under general supervision in any category regardless of the amount of time served or work completed as a funeral service intern.

J. A funeral service intern who is practicing funeral service under general supervision in any category shall be subject to the continuing education requirements of 16.64.6 NMAC.

K. A funeral service intern may receive training under more than one (1) licensed funeral service practitioner, provided the board is notified, in writing, of any changes within thirty (30) days following a change.

L. Any time served, and properly reported to the board, as a resident trainee under prior law will be considered the same as time served as a funeral service intern.

M. A funeral service intern who is practicing funeral service under direct supervision in any category is required to have the licensed funeral service practitioner review and co-sign all contracts prepared by the funeral service intern.

N. A funeral service intern who has a change of employment shall:

(1) return the old license; and

(2) make application for each license held, together with the application fee for each license held as outlined in Subsection D or E of 16.64.2.8 NMAC, within thirty (30) days of the change.

[9-14-88...9-26-93, 6-15-96, 1-22-99; 16.64.8.8 NMAC - Rn & A, 16 NMAC 64.8.8, 09-15-01; A, 04-02-10; A, 08-08-12]

#### **HISTORY OF 16.64.8 NMAC:**

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives:

Regulation No. 4, Resident Trainees, 8-15-88.

Regulation 4, Resident Trainees, 4-15-91.

Reg. 16, Funeral Service Interns, 8-27-93.

History of Repealed Material: [Reserved]



**TITLE 16        OCCUPATIONAL AND PROFESSIONAL LICENSING**  
**CHAPTER 64    FUNERAL HOMES AND DISPOSERS**  
**PART 9        DIRECT DISPOSITION PRACTICES**

**16.64.9.1        ISSUING AGENCY:** Regulation and Licensing Department, Board of Funeral Services, P.O. Box 25101, Santa Fe, New Mexico 87504, (505) 827-7013.  
[6-15-96; 16.64.9.1 NMAC - Rn, 16 NMAC 64.9.1, 09-15-01; A, 08-08-12]

**16.64.9.2        SCOPE:** 16.64.9 NMAC applies to all licensed direct disposers, and direct disposition establishments.  
[6-15-96; 16.64.9.2 NMAC - Rn, 16 NMAC 64.9.2, 09-15-01]

**16.64.9.3        STATUTORY AUTHORITY:** 16.64.9 NMAC is adopted pursuant to the Funeral Services Act, NMSA 1978, Section 61-32-2, 61-32-6, 61-32-7 and 61-32-17.  
[6-15-96; 16.64.9.3 NMAC - Rn, 16 NMAC 64.9.3, 09-15-01; A, 08-08-12]

**16.64.9.4        DURATION:** Permanent.  
[6-15-96; 16.64.9.4 NMAC - Rn, 16 NMAC 64.9.4, 09-15-01]

**16.64.9.5        EFFECTIVE DATE:** June 4, 1995, unless a different date is cited at the end of a section or paragraph.  
[6-15-96; 16.64.9.5 NMAC - Rn, 16 NMAC 64.9.5, 09-15-01]

**16.64.9.6        OBJECTIVE:** 16.64.9 NMAC is to establish the scope of practice for direct disposers and direct disposition establishments.  
[6-15-96; 16.64.9.6 NMAC - Rn, 16 NMAC 64.9.6, 09-15-01]

**16.64.9.7        DEFINITIONS:** [Reserved.]  
[6-15-96; 16.64.9.7 NMAC - Rn, 16 NMAC 64.9.7, 09-15-01]

**16.64.9.8        DIRECT DISPOSITION PRACTICES:**

A.        Every direct disposer in this state shall give or cause to be given to the person or persons arranging for a direct disposition, prior to the time of direct disposition, in addition to any other disclosure required by any statute or regulations, a written statement disclosing:

- (1) that prior to interment, entombment, or final disposition of a dead human body or cremains, the direct disposer cannot participate in any rites or ceremonies in connection with the final disposition of the remains;
- (2) that prior to interment, entombment, or final disposition of a dead human body or cremains, the direct disposer cannot provide facilities for rites or ceremonies in connection with the final disposition of the remains;
- (3) that a body cannot be embalmed unless embalming is required by the place of disposition, and then only by a person licensed to embalm;
- (4) that there can be no viewing of the body except for the purpose of identification;
- (5) that the purchase of any funeral merchandise, and the price thereof, from the direct disposer, does not include any rites or ceremonies or other use of facilities not inherent to the direct disposition; and
- (6) that a direct disposer may transport, or cause transportation of, a body to a place where services will be conducted with the body present, provided the direct disposer or his agent obtains a signed release from the person accepting the body, which person shall be the person having the right to control the disposition of the body, that person's agent, and the direct disposer or his agent cannot thereafter transport, or cause transportation of, the body to any place; such signed release shall be kept on file at the direct disposition establishment for a period of not less than five (5) years.

B.        A direct disposer or direct disposition establishment shall not be listed in any listing, advertisement or newspaper notice which may give the impression to the public that the direct disposer or direct disposition establishment is, in any way, engaged in the practice of funeral service.

C.        No direct disposer shall allow or cause his or her name or the name of the direct disposition establishment to be used in any obituary or death notice in which a ceremony or rite for the deceased is announced,

unless such obituary or death notice makes it specifically clear that the direct disposer and direct disposition establishment are not connected in any way to the ceremony or rite.

[11-21-86...6-15-96; 16.64.9.8 NMAC - Rn, 16 NMAC 64.9.8, 09-15-01]

**HISTORY OF 16.64.9 NMAC:**

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives:

Regulation 16, Direct Disposers Practices, 4-15-91.

Reg. 17, Direct Disposition Practices, 8-27-93.

Reg. 17, Direct Disposition Practices, 5-5-95.

Section 3, Direct Disposition Rules and Regulations - Disclosure, 12-9-88.

Section 7, Direct Disposition Rules and Regulations - Advertising, 12-9-88.

History of Repealed Material: [Reserved]

**TITLE 16        OCCUPATIONAL AND PROFESSIONAL LICENSING**  
**CHAPTER 64    FUNERAL HOMES AND DISPOSERS**  
**PART 10       CREMATION PRACTICES**

**16.64.10.1       ISSUING AGENCY:** New Mexico Board of Funeral Services.  
[6-15-96; 16.64.10.1 NMAC - Rn & A, 16 NMAC 64.10.1, 09-15-01; A, 08-08-12]

**16.64.10.2       SCOPE:** 16.64.10 NMAC applies to licensed crematories and establishment.  
[6-15-96; 16.64.10.2 NMAC - Rn & A, 16 NMAC 64.10.2, 09-15-01]

**16.64.10.3       STATUTORY AUTHORITY:** 16.64.10 NMAC is adopted pursuant to the Funeral Services Act, NMSA 1978, Section 61-32-2, 61-32-6, 61-32-7 and 61-32-19.  
[6-15-96; 16.64.10.3 NMAC - Rn, 16 NMAC 64.10.3, 09-15-01; A, 08-08-12]

**16.64.10.4       DURATION:** Permanent.  
[6-15-96; 16.64.10.4 NMAC - Rn, 16 NMAC 64.10.4, 09-15-01]

**16.64.10.5       EFFECTIVE DATE:** September 26, 1993, unless a different date is cited at the end of a section.  
[6-15-96; 16.64.10.5 NMAC - Rn & A, 16 NMAC 64.10.5, 09-15-01]

**16.64.10.6       OBJECTIVE:** 16.64.10 NMAC is to establish the scope of practice for crematories, cremation requirements and requirement of crematories and establishments for maintaining records and disposing of cremains.  
[6-15-96; 16.64.10.6 NMAC - Rn & A, 16 NMAC 64.10.6, 09-15-01]

**16.64.10.7       DEFINITIONS:**

- A. "Cremation" and "calcination" are considered synonymous, and means the final disposition of the dead human body to a residue of cremains.
  - B. "Authorizing agent(s)" means the person(s) legally entitled to order the cremation.
  - C. "Cremains container" means any container in which cremated remains may be enclosed which will avoid leakage and prevent the entrance of foreign substances.
  - D. "Cremation container" means an enclosure in which a dead human body is placed for delivery to a crematory and subsequently cremated with the body.
  - E. "Crematory authority" means an authorized representative of a crematory.
  - F. "Urn" means a cremains container considered to be decorative, that varies in size, styling and composition.
- [11-21-86...9-26-93; 16.64.10.7 NMAC - Rn & A, 16 NMAC 64.10.7, 09-15-01]

**16.64.10.8       CREMATION PRACTICES:**

- A. No cremation shall take place until all necessary documentation is obtained or a court order has been issued authorizing the cremation; such documentation shall include:
  - (1) signed authorization by the authorizing agent(s);
  - (2) signed permit from the office of the medical investigator of the state, or its equivalent if the death occurred outside this state; provided no such permit shall be required for the cremation of fetal deaths; and
  - (3) any other form(s) which may be required by the crematory in order for the cremation to take place.
- B. For acceptance by the crematory, a dead human body must be enclosed in an acceptable cremation container and identification of the dead body must be noted on the outside of the cremation container.
  - (1) A cremation container is considered acceptable if it meets or exceeds the following minimum standards:
    - (a) is composed of a suitable combustible material;
    - (b) is rigid and secure for handling with ease, which includes a rigid bottom and full dome enclosure;
    - (c) provides for complete covering of the enclosed dead human body; and
  - (2) A cremation container is considered unacceptable if it is composed of any explosive material or such other material as fiberglass, plastic resin compound, or other synthetic material not suitable for combustion in a cremation retort.
  - (3) Any crematory may make its own requirements as to the acceptability of a cremation container, provided they

are not less than outlined in 16.64.10 NMAC, and are not otherwise in any way in violation of any statute, ordinance or rule.

C. The crematory authority may require that all pacemakers, radium implants and all explosive devices implanted in the body, or attached thereto, be removed, at the expense of the authorizing agent(s), prior to the cremation.

D. The unauthorized simultaneous cremation of more than one dead human body within the same cremation retort is specifically prohibited.

E. A crematory may simultaneously cremate more than one dead human body in the same cremation retort upon receipt of written authorization to do so from the authorizing agent(s) of each dead human body. Such written authorization shall also exempt the crematory authority from all liability in commingling the cremains of simultaneous cremation.

F. No crematory authority shall be required to simultaneously cremate more than one dead human body even if authorized by the authorizing agent(s).

G. Immediately prior to placing a dead human body into the cremation retort, the identification of the cremation container shall be verified and identification of the body shall be placed on the cremation retort panel, where it shall remain in place until the cremation is completed.

H. To the extent that is reasonably practical, all residue of each cremation shall be removed from the cremation retort, and shall not be commingled with any other cremains unless directed by the authorizing agent(s) and agreed to by the crematory authority.

I. All body prosthetics, dental work or similar items separated from any cremains shall be disposed of by the crematory authority, unless otherwise ordered by the authorizing agent(s) at the time the cremation authorization is executed.

J. Properly identified cremains shall be placed in a cremains container as directed by the authorizing agent(s) or crematory authority. The crematory authority is required to provide a cremains container of adequate size to accommodate all the cremains from each cremation unless a cremains container is furnished by the authorizing agent(s). In either case, the crematory authority shall have a written agreement with the authorizing agent(s) if the cremains container is not of sufficient size to enclose the cremains.

K. Cremains may be disposed in any lawful manner by any establishment, crematory authority, cemetery or person having the right to control the disposition of the cremains, or that person's agent.

L. Establishments and crematories shall keep an accurate record of all cremations performed, and the place of disposition of the cremains, for a period of not less than seven (7) years.

M. Any legal forms for cremation authorization shall contain wording that will hold harmless a crematory authority, or establishment from disposing of unclaimed cremains in any lawful manner after a period of one (1) year.

[11-21-86...9-26-93; 16.64.10.8 NMAC - Rn & A, 16 NMAC 64.10.8, 09-15-01]

#### **HISTORY OF 16.64.10 NMAC:**

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives:

Regulation 17, Cremation, 4-15-91.

Reg. 18, Cremation Practices, 8-27-93.

TB 86-2, Crematory Rules and Regulations, 10-22-86.

Section 1, Crematory Rules and Regulations - Terminology (Definitions), 12-9-88.

Section 3, Crematory Rules and Regulations - Cremation Requirements, 12-9-88.

Section 4, Crematory Rules and Regulations - Cremation of Human Remains, 12-9-88.

Section 5, Crematory Rules and Regulations - Processing of Cremated Remains, 12-9-88.

Section 6, Crematory Rules and Regulations - Disposition of Cremated Remains, 12-9-88.

History of Repealed Material: [Reserved]

**TITLE 16        OCCUPATIONAL AND PROFESSIONAL LICENSING**  
**CHAPTER 64    FUNERAL HOMES AND DISPOSERS**  
**PART 11       COMPLAINTS**

**16.64.11.1       ISSUING AGENCY:** New Mexico Board of Funeral Services.  
[2-21-97, 1-22-99; 16.64.11.1 NMAC - Rn & A, 16 NMAC 64.11.1, 09-15-01; A, 08-08-12]

**16.64.11.2       SCOPE:** 16.64.11 NMAC applies to the board, licensees, applicants for licensure, and the general public.  
[2-21-97; 16.64.11.2 NMAC - Rn & A, 16 NMAC 64.11.2, 09-15-01]

**16.64.11.3       STATUTORY AUTHORITY:** 16.64.11 NMAC is adopted pursuant to the Funeral Services Act, NMSA 1978, Section 61-32-2, 61-32-6, 61-32-7, 61-32-24 and the Uniform Licensing Act, Section 61-1-1 et seq., NMSA 1978.  
[2-21-97; 16.64.11.3 NMAC - Rn, 16 NMAC 64.11.3, 09-15-01; A, 08-08-12]

**16.64.11.4       DURATION:** Permanent.  
[2-21-97; 16.64.11.4 NMAC - Rn, 16 NMAC 64.11.4, 09-15-01]

**16.64.11.5       EFFECTIVE DATE:** February 21, 1997, unless a different date is cited at the end of a section.  
[2-21-97, A, 5-11-97; 16.64.11.5 NMAC - Rn & A, 16 NMAC 64.11.5, 09-15-01]

**16.64.11.6       OBJECTIVE:** 16.64.11 NMAC is to establish the procedures for filing and processing complaints and for taking disciplinary action against licensees and applicants for licensure, for violation of the Funeral Services Act or any provisions of 16.64 NMAC.  
[2-21-97; 16.64.11.6 NMAC - Rn, 16 NMAC 64.11.6, 09-15-01; A, 08-08-12]

**16.64.11.7       DEFINITIONS:**

- A.        **"Complaint"** means a complaint filed with the board.
- B.        **"Complainant"** means the complaining party of a complaint filed against a licensee(s), or applicant for licensure, who is/are governed under the Funeral Services Act.
- C.        **"Respondent"** means a licensee, or applicant for licensure who is governed under the Funeral Services Act and who is the subject of a complaint.
- D.        **"Notice of contemplated action"** means the administrative process used by the board for a licensee or applicant for licensure to be afforded notice and an opportunity to be heard in a formal hearing setting before the board has authority to take any action which would have the effect of denying, revoking, or suspending a license or application for licensure governed by the Uniform Licensing Act.  
[2-21-97; 16.64.11.7 NMAC - Rn, 16 NMAC 64.11.7, 09-15-01; A, 08-08-12]

**16.64.11.8       GENERAL PROVISIONS:**

- A.        **Inquiries regarding making a complaint:** Any person, including any member of the board or board staff, may initiate a complaint in writing. Complaints should be submitted on a form prescribed by the board.
- B.        Complaints must contain factual allegations, constituting the alleged violations of any provisions of the Funeral Services Act or 16.64 NMAC.  
[2-21-97; 16.64.11.8 NMAC - Rn & A, 16 NMAC 64.11.8, 09-15-01; A, 08-08-12]

**16.64.11.9       PROCEDURES FOR RECEIPT OF A COMPLAINT:**

- A.        The board's designee will maintain a written log of all complaints received which records at a minimum, the date the complaint was received, and name, addresses of the complainant and respondent.
- B.        Upon receipt of a complaint the board's designee will:
  - (1) log in the date the complaint was received;
  - (2) determine whether the respondent is licensed, or an applicant for licensure with the board;
  - (3) send the complainant written acknowledgment of receipt of the complaint; and
  - (4) immediately forward the complaint to the complaint committee; the complaint committee chair will be

responsible for convening the complaint committee to review the complaint(s).  
[2-21-97, 1-22-99; 16.64.11.9 NMAC - Rn, 16 NMAC 64.11.9, 09-15-01; A, 04-02-10]

**16.64.11.10 COMPLAINT COMMITTEE:**

- A. The board chair will appoint a complaint committee consisting of at least one person, who will be a professional member on the board. The board chair may also appoint to the complaint committee the board administrator and/or a complaint manager.
- B. The complaint committee will handle complaints in a confidential manner as required by law.
- C. The complaint committee will review all complaints received by the board, conduct whatever action it deems necessary in the course of gathering information, and make recommendations for disposition of the complaint to the full board in executive session to maintain the confidentiality of the complaint.
- D. No complaint committee meeting will be held without the presence of the professional board member.
- E. A complaint committee member who is partial or who believes he or she is not capable of judging a particular controversy fairly on the basis of its own circumstances will not participate and another member will be appointed by the chair to serve on the committee if required.
- F. For any complaint which the complaint committee reasonably anticipates may be referred to the board for consideration of the issuance of a notice of contemplated action, the respondent will be provided a copy of the complaint and will be allowed a reasonable time in which to respond to the allegations in the complaint. The foregoing notwithstanding, the complaint committee will not be required to provide the respondent with a copy of the complaint, or with notice of the filing of a complaint or any related investigation, prior to the issuance of a notice of contemplated action if the committee determines that disclosure may impair, impede or compromise the efficacy or integrity of the investigation.
- G. If the complaint committee determines that further information is needed, it may issue investigative subpoenas, pursuant to the Uniform Licensing Act; employ an investigator, or experts, or other persons whose services are determined to be necessary, in order to assist in the processing and investigation of the complaint. The complaint committee will have independent authority to employ such persons, without prior approval of the board. The board administrator will determine budgetary availability, and will contract for investigative services.
- H. Upon completion of its review or investigation of a complaint, the complaint committee will present a summary of the case to the board for the purpose of enabling the board to decide whether to proceed with the case or to dismiss the case. The summary will be identified by complaint number without identifying the complainant(s) or respondent(s) by name.

[2-21-97, 1-22-99; 16.64.11.10 NMAC - Rn & A, 16 NMAC 64.11.10, 09-15-01]

**16.64.11.11 BOARD ACTION:**

- A. If the board determines that it lacks jurisdiction or that there is not sufficient evidence or cause to issue a notice of contemplated action, the case will be closed. The board's designee will send a letter of the board's decision to both the complainant and respondent. The letter will state the board's actions and the reasons for its decision.
- B. If the board determines that there is sufficient evidence or cause to issue a notice of contemplated action, the board may vote to issue a notice of contemplated action. The board's designee will forward a complete copy of the complaint file, including exhibits to the attorney general's office for assignment of an administrative prosecutor.
- C. The board may take any other action with regard to a complaint which is within its authority and which is within the law, including referring the complaint to the attorney general for injunctive proceedings, or referrals to the attorney general and/or district attorney for prosecution of persons alleged to be practicing without a proper license.
- D. Any board member who is partial or who believes he or she is not capable of judging a particular controversy fairly on the basis of its own circumstances will not participate in the decision whether to issue a notice of contemplated action and will not participate in the hearing, deliberation, or decision of the board.
- E. Members of the complaint committee will not participate in the decision whether to issue a notice of contemplated action, other than making a recommendation to the board whether to issue a notice of contemplated action, and will not participate in the hearing, deliberation, or decision of the board.

[2-21-97, 1-22-99; 16.64.11.11 NMAC - Rn, 16 NMAC 64.11.11, 09-15-01]

**16.64.11.12 SETTLEMENT AGREEMENT:** The board may enter into a settlement agreement with the respondent as a means of resolving the complaint. Any proposed settlement agreement must be approved by the board, and must be approved further by the respondent, upon a knowing and intentional waiver by the respondent of his or her right to a hearing as provided by the Uniform Licensing Act. The settlement agreement must be signed by the respondent and respondent's attorney, if represented by an attorney. If the respondent is not represented by an attorney then the respondent must acknowledge that he/she has been advised to seek the advice of an attorney.  
[2-21-97; 16.64.11.12 NMAC - Rn & A, 16 NMAC 64.11.12, 09-15-01]

**16.64.11.13 NOTICE OF CONTEMPLATED ACTION:**

- A. All disciplinary proceedings will be conducted in accordance with the Uniform Licensing Act.
  - B. The chair of the board, or his/her designee, will serve as hearing officer for disciplinary proceedings for the purpose of administering pre-hearing procedural matters. The hearing officer will be fully authorized to make all necessary procedure decisions on behalf of the board, including, but not limited to, matters related to discovery, continuances, time extensions, amendments, pre-hearing conferences, and proposed findings of fact and conclusions of law.
  - C. The hearing officer may make such orders as he/she determines may be necessary to implement the authority conferred by Subsection B of 16.64.11.13 NMAC, including, but not limited to, discovery schedules, pleading schedules, and briefing schedules.
  - D. No party will engage in ex-parte communications with the hearing officer or any member of the board in any matter in which a notice of contemplated action has been issued.
  - E. Licensees and applicants for licensure who have been found culpable and sanctioned by the board will be responsible for the payment of all costs of the disciplinary proceedings.
  - F. Any license, including a wall certificate, issued by the board and subsequently suspended or revoked, will be promptly returned to the board office, in person or by registered mail, no later than 30 days of receipt of the board's order suspending or revoking the license.
- [2-21-97; 1-22-99; 16.64.11.13 NMAC - Rn & A, 16 NMAC 64.11.13, 09-15-01]

**HISTORY OF 16.64.11 NMAC:**

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives:

Regulation No. 15, Complaints, 8-28-90.

Regulation 15, Complaints, 4-15-91.

Reg. 3, Complaints, 8-27-93.

History of Repealed Material: [Reserved]

**TITLE 16        OCCUPATIONAL AND PROFESSIONAL LICENSING**  
**CHAPTER 64    FUNERAL HOMES AND DISPOSERS**  
**PART 12       PARENTAL RESPONSIBILITY ACT COMPLIANCE**

**16.64.12.1       ISSUING AGENCY:** New Mexico Board of Funeral Services  
[6-15-96; 16.64.12.1 NMAC - Rn, 16 NMAC 64.12.1, 09-15-01; A, 04-02-10; A, 08-08-12]

**16.64.12.2       SCOPE:** 16.64.12 NMAC applies to all licensees and applicants for licensure under the New Mexico Funeral Services Act.  
[6-15-96; 16.64.12.2 NMAC - Rn, 16 NMAC 64.12.2, 09-15-01; A, 08-08-12]

**16.64.12.3       STATUTORY AUTHORITY:** 16.64.12 NMAC is adopted pursuant to the New Mexico Parental Responsibility Act, Section 40-5A-1 et seq., NMSA 1978 (Ch. 25, Laws of 1995), the New Mexico Funeral Services Act, Section 61-32-1 et seq., NMSA 1978 and the Uniform Licensing Act, Section 61-1-1 et seq., NMSA 1978.  
[6-15-96; 16.64.12.3 NMAC - Rn, 16 NMAC 64.12.3, 09-15-01; A, 08-08-12]

**16.64.12.4       DURATION:** Permanent.  
[6-15-96; 16.64.12.4 NMAC - Rn, 16 NMAC 64.12.4, 09-15-01]

**16.64.12.5       EFFECTIVE DATE:** June 15, 1996.  
[6-15-96; 16.64.12.5 NMAC - Rn, 16 NMAC 64.12.5, 09-15-01]

**16.64.12.6       OBJECTIVE:** 16.64.12 NMAC is established to facilitate the operation of the Parental Responsibility Act as it pertains to licensees and applicants for licensure, by delegating authority to issue notices of contemplated action and to refer such cases for administrative prosecution to the board administrator.  
[6-15-96; 16.64.12.6 NMAC - Rn, 16 NMAC 64.12.6, 09-15-01]

**16.64.12.7       DEFINITIONS:** [Reserved.]  
[6-15-96; 16.64.12.7 NMAC - Rn, 16 NMAC 64.12.7, 09-15-01]

**16.64.12.8       DELEGATION OF AUTHORITY:** The authority of the board of funeral services to issue a notice of contemplated action against any licensee or applicant for licensure whose name appears on the certified list issued by the New Mexico department of human services, as provided in NMSA 1978, Section 40-5A-1, et seq., and as provided further in 16.1.1 NMAC, of the New Mexico Administrative Code, which is incorporated herein by reference, and to refer cases in which notices of contemplated action have been issued for administrative prosecution, is delegated to the administrator of the New Mexico board of funeral services. 16.64.12 NMAC shall not be construed to deprive the board of its authority and power to issue a notice of contemplated action for any apparent violation of the Parental Responsibility Act, and to refer any such case for administrative prosecution.  
[6-15-96; 16.64.12.8 NMAC - Rn, 16 NMAC 64.12.8, 09-15-01; A, 08-08-12]

**HISTORY OF 16.64.12 NMAC:** [Reserved]





## **Board of Funeral Services STATUTES**

### **61-32-1. Short title. (Repealed effective July 1, 2018.)**

Chapter 61, Article 32 NMSA 1978 may be cited as the "Funeral Services Act".

History: 1978 Comp., § 61-32-1, enacted by Laws 1993, ch. 204, § 1; 1999, ch. 284, § 1; 2012, ch. 48, § 3.

### **61-32-2. Purpose. (Repealed effective July 1, 2018.)**

In the interest of public health, safety and welfare and to protect the public from the unprofessional, improper, incompetent and unlawful practice of the care and disposition of the dead human body, it is necessary to provide laws and regulations to govern the handling and care of the dead and the sensitivities of those who survive, whether they wish or do not wish rites or ceremonies. The primary responsibility and obligation of the board of funeral services is to protect the public.

History: 1978 Comp., § 61-32-2, enacted by Laws 1993, ch. 204, § 2; 2012, ch. 48, § 4.

### **61-32-3. Definitions. (Repealed effective July 1, 2018.)**

As used in the Funeral Services Act:

- A. "board" means the board of funeral services;
- B. "committal service" means a service at a place of interment or entombment that follows a funeral conducted at another location;
- C. "cremains" means cremated remains;
- D. "cremation" means the reduction of a dead human body by direct flame to a residue, which includes bone fragments;
- E. "crematory" means every place or premises that is devoted to or used for cremation and pulverization of the cremains;
- F. "crematory authority" means the individual who is ultimately responsible for the operation of a crematory;
- G. "department" means the regulation and licensing department;
- H. "direct disposer" means a person licensed to engage solely in providing direct disposition at a direct disposition establishment, licensed pursuant to the Funeral Services Act, as provided in that act;
- I. "direct disposition" means only the disposition of a dead human body as quickly as possible, without a direct disposer performing or arranging a funeral, graveside service, committal service or memorial service, whether public or private, and without embalming of the body unless embalming is required by the place of disposition;
- J. "direct supervision" means that the supervising funeral service practitioner is physically present with and in direct control of the person being trained;
- K. "disposition" means the final disposal of a dead human body, whether it be by earth interment, above-ground interment or entombment, cremation, burial at sea or delivery to a medical school, when the medical school assumes complete responsibility for the disposal of the body following medical study;

L. "embalming" means the disinfection, preservation and restoration, when possible, of a dead human body by a licensed funeral service practitioner or a licensed funeral service intern under the supervision of a licensed funeral service practitioner;

M. "ennichement" means interment of cremains in a niche in a columbarium, whether in an urn or not;

N. "entombment" means interment of a casketed body or cremains in a crypt in a mausoleum;

O. "establishment" means every office, premises or place of business where the practice of funeral service or direct disposition is conducted or advertised as being conducted and includes commercial establishments that provide for the practice of funeral service or direct disposition services exclusively to licensed funeral or direct disposition establishments or a school of medicine;

P. "funeral" means a period following death in which there is an organized, purposeful, time-limited, group-centered ceremony or rite, whether religious or not, with the body of the deceased present;

Q. "funeral merchandise" means that personal property offered for sale in connection with the transportation, funeralization or disposition of a dead human body, including the enclosure into which a dead human body is or cremains are directly placed, and excluding mausoleum crypts, interment enclosures preset in a cemetery and columbarium niches;

R. "funeral service intern" means a person licensed to be in training for the practice of funeral service under the supervision and instruction of a funeral service practitioner at a funeral establishment or commercial establishment, licensed pursuant to the Funeral Services Act;

S. "funeral service practitioner" means a person licensed to engage in the practice of funeral service at a funeral establishment or commercial establishment that is licensed pursuant to the Funeral Services Act;

T. "funeral services" means those immediate post-death activities related to a dead human body and its care and disposition, whether with or without rites or ceremonies; but "funeral services" does not include disposition of the body by a school of medicine following medical study;

U. "general supervision" means that the supervising funeral service practitioner is not necessarily physically present in the establishment with the person being trained but is available for advice and assistance;

V. "graveside service" means a funeral held at the graveside only, excluding a committal service that follows a funeral conducted at another location;

W. "jurisprudence examination" means an examination prescribed by the board on the statutes, rules and regulations pertaining to the practice of funeral service or direct disposition, including the Funeral Services Act, the rules of the board, state health regulations governing human remains and the Vital Statistics Act [Chapter 24, Article 14 NMSA 1978];

X. "licensee in charge" means a funeral service practitioner who is ultimately responsible for the conduct of a funeral or commercial establishment and its employees; or a direct disposer who is ultimately responsible for the conduct of a direct disposition establishment and its employees;

Y. "make arrangements" means advising or counseling about specific details for a funeral, graveside service, committal service, memorial service, disposition or direct disposition;

Z. "memorial service" means a gathering of persons for recognition of a death without the presence of the body of the deceased;

AA. "practice of funeral service" means those activities allowed under the Funeral Services Act by a funeral service practitioner or funeral service intern; and

BB. "pulverization" means the process that reduces cremains to a granular substance.

History: 1978 Comp., § 61-32-3, enacted by Laws 1993, ch. 204, § 3; 1995, ch. 158, § 1; 1999, ch. 284, § 2; 2012, ch. 48, § 5.

**61-32-4. License required. (Repealed effective July 1, 2018.)**

A. Unless licensed to practice under the Funeral Services Act, a person shall not:

(1) practice as a funeral service practitioner, funeral service intern or direct disposer;

(2) use the title or make any representation as being a funeral service practitioner, funeral service intern or direct disposer or use any other title, abbreviation, letters, figures, signs or devices that indicate the person is licensed to practice as a funeral service practitioner, funeral service intern or direct disposer; or

(3) maintain, manage or operate a funeral establishment, a commercial establishment, a direct disposition establishment or a crematory.

B. A person who engages in the practice or acts in the capacity of a funeral service practitioner, funeral service intern or direct disposer in this state, with or without a New Mexico license, is subject to the jurisdiction of the state and to the administrative jurisdiction of the board and is subject to all penalties and remedies available for a violation of a provision of the Funeral Services Act.

C. A person who maintains, manages or operates a funeral establishment, commercial establishment, direct disposition establishment or a crematory in this state, with or without a New Mexico establishment or crematory license, is subject to the jurisdiction of the state and to the administrative jurisdiction of the board and is subject to all penalties and remedies available for a violation of a provision of the Funeral Services Act.

History: 1978 Comp., § 61-32-4, enacted by Laws 1993, ch. 204, § 4; 2003, ch. 420, § 1; 2012, ch. 48, § 6.

**61-32-5. Board created. (Repealed effective July 1, 2018.)**

A. There is created the "board of funeral services".

B. The board is administratively attached to the department.

C. The board consists of six members. Three members shall be funeral service practitioners who have been licensed in this state for at least five years; two members shall represent the public and shall not have been licensed for the practice of funeral service or direct disposition in this state or any other jurisdiction and shall not ever have had any financial interest, direct or indirect, in any funeral, commercial or direct disposition establishment or crematory; and one member shall be a licensed direct disposer or health care practitioner from the office of the state medical investigator who has been licensed in this state for at least five years.

D. Members of the board shall be appointed by the governor for terms of four years. Each member shall hold office until the member's successor is duly qualified and appointed. Vacancies shall be filled for an unexpired term in the same manner as original appointments.

E. Members of the board shall be reimbursed per diem and mileage as provided in the Per Diem and Mileage Act [Chapter 10, Article 8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

F. A simple majority of the board members currently serving constitutes a quorum.

G. The board shall hold at least two regular meetings each year and shall meet at such other times as it deems necessary.

H. No board member shall serve more than two full consecutive terms. The board shall recommend removal of any board member who has three unexcused absences from properly noticed meetings within a twelve-month period and may recommend removal of a board member for any other just cause.

I. The board shall elect a chair and other officers as deemed necessary to administer its duties.

History: 1978 Comp., § 61-32-5, enacted by Laws 1993, ch. 204, § 5; 1999, ch. 284, § 3; 2012, ch. 48, § 7.

**61-32-6. Board powers. (Repealed effective July 1, 2018.)**

A. In addition to any other authority provided by law, the board has the power to:

(1) adopt, in accordance with the provisions of the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978], and file, in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978], rules necessary to carry out the provisions of the Funeral Services Act;

(2) adopt rules implementing continuing education requirements;

(3) conduct hearings upon charges relating to the discipline of licensees and take administrative actions pursuant to Section 61-1-3 NMSA 1978;

(4) establish reasonable fees to carry out the provisions of the Funeral Services Act;

(5) provide for investigations necessary to determine violations of the Funeral Services Act;

(6) establish committees as the board deems necessary for carrying out the provisions of the Funeral Services Act;

(7) apply for injunctive relief to enforce the provisions of the Funeral Services Act or to restrain any violation of that act;

(8) impose a fine not to exceed five thousand dollars (\$5,000) for each violation, in addition to other administrative or disciplinary costs, and all fines shall be deposited in the funeral services fund; and

(9) conduct criminal background checks on applicants for licensure.

B. No action or other legal proceedings for damages shall be instituted against the board, any board member or employee of the board for any act performed in good faith and in the intended performance of any power or duty granted under the Funeral Services Act or for any neglect or default in the good faith performance or exercise of any such power or duty.

History: 1978 Comp., § 61-32-6, enacted by Laws 1993, ch. 204, § 6; 1999, ch. 284, § 4; 2012, ch. 48, § 8.

**61-32-7. Board duties. (Repealed effective July 1, 2018.)**

The board shall:

A. administer the provisions of the Funeral Services Act;

B. provide for the examination, licensing and renewal of applicants or licensees; and

C. provide for the inspection of establishments and crematories.

History: 1978 Comp., § 61-32-7, enacted by Laws 1993, ch. 204, § 7; 2012, ch. 48, § 9.

**61-32-8. Inspection; access; counsel. (Repealed effective July 1, 2018.)**

A. Inspection of establishments and crematories, including all records, financial or otherwise, is authorized during regular business hours. Acceptance of a license shall include permission for the board or its designee to enter the premises without legal process.

B. An establishment or crematory shall maintain business records required by law or rule at the establishment or crematory.

C. The board shall be represented by the attorney general. The board may employ special counsel, upon approval of the attorney general, to review and prosecute cases of consumer complaints against any person, establishment or crematory licensed pursuant to the Funeral Services Act. Payment for the services shall be by the board.

History: 1978 Comp., § 61-32-8, enacted by Laws 1993, ch. 204, § 8; 1999, ch. 284, § 5; 2003, ch. 420, § 2; 2012, ch. 48, § 10.

**61-32-9. Requirements for licensure; funeral service practitioner; funeral service intern; direct disposer; conversion of certain licenses; temporary licenses. (Repealed effective July 1, 2018.)**

A. A license to practice as a funeral service practitioner shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that the person:

(1) is at least eighteen years of age;

(2) has served as a licensed funeral service intern for not less than twelve months, under the supervision of a licensed funeral service practitioner. During the training period, the applicant shall have assisted in the embalming of at least fifty bodies, making of at least fifty funeral arrangements and the directing of at least fifty funerals;

(3) has successfully completed an examination, including a jurisprudence examination, prescribed by board rules;

(4) has not been convicted of unprofessional conduct or incompetency; and

(5) has obtained an associate's degree in funeral science requiring the completion of at least sixty semester hours from an institution whose funeral program is accredited by the American board of funeral service education or any other successor institution offering funeral service education recognized by the United States government.

B. A license to practice as a funeral service intern shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that the person:

(1) is at least eighteen years of age;

(2) has graduated from high school or the equivalent;

(3) has submitted proof of employment and supervision as required by board rules. Except as may be allowed by board rule, a license as a funeral service intern is issued only for a specific funeral establishment or an establishment that is part of a multi-establishment enterprise;

(4) has successfully completed an examination, including a jurisprudence examination, prescribed by board rules; and

(5) has not been convicted of unprofessional conduct or incompetency.

C. A license to practice as a direct disposer shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that the person:

(1) is at least eighteen years of age;

(2) has obtained an associate's degree in funeral science requiring the completion of at least sixty semester hours from an institution whose funeral program is accredited by the American board of funeral service education or any other successor institution offering funeral service education and recognized by the United States government;

(3) has successfully completed any examination, including a jurisprudence examination, prescribed by board rules; and

(4) has not been convicted of unprofessional conduct or incompetency.

D. On and after July 1, 2012, the board shall not issue a new license that was formerly designated an "assistant funeral services practitioner" or "associate funeral services practitioner" license under a version of the Funeral Services Act in effect on June 30, 2012. A person holding one of these licenses that is valid as of June 30, 2012 shall be considered as holding a valid, renewable funeral services intern license subject to the general supervision of a licensed funeral services practitioner pursuant to the Funeral Services Act.

E. The board may adopt by rule requirements for issuing a temporary license that will be valid until the next scheduled board meeting.

History: 1978 Comp., § 61-32-9, enacted by Laws 1993, ch. 204, § 9; 1999, ch. 284, § 6; 2003, ch. 420, § 3; 2012, ch. 48, § 11.

#### **61-32-10. Licensure by credentials. (Repealed effective July 1, 2018.)**

After successful completion of a jurisprudence examination, the board may license an applicant as a funeral service practitioner, provided the applicant possesses a valid license or its equivalent for the practice of funeral service issued by the appropriate examining board under the laws of any other state or territory of the United States, the District of Columbia or any foreign nation, and provided the applicant has actively practiced five out of the last ten years in another state, territory or foreign nation as a licensed funeral service practitioner or its equivalent.

History: 1978 Comp., § 61-32-10, enacted by Laws 1993, ch. 204, § 10; 1999, ch. 284, § 7; 2003, ch. 420, § 4.

#### **61-32-11. Licensure of establishments; funeral establishments; commercial establishments; direct disposition establishments; crematories. (Repealed effective July 1, 2018.)**

##### **A. Funeral establishment licenses shall only be granted under the following terms and conditions:**

(1) applications for licensure shall be upon forms furnished by the board and shall be accompanied by the required fee;

(2) the establishment shall be maintained at a specific location primarily devoted to the practice of funeral service and shall comply with the following minimum requirements:

(a) a chapel shall be present in which funerals may be conducted;

(b) a display room shall be present for displaying caskets and other funeral merchandise; and

(c) a preparation room shall be present with necessary drainage and ventilation and necessary instruments and supplies for the preparation and embalming of dead human bodies for burial or other disposition or transportation; and

(3) a license shall not be issued or renewed by the board unless the establishment is in compliance with the Funeral Services Act and board rules.

B. Commercial establishment licenses shall only be granted under the following terms and conditions:

- (1) applications for licensure shall be upon forms furnished by the board and shall be accompanied by the required fee;
- (2) the establishment shall be maintained at a specific location primarily devoted to the practice allowed for a commercial establishment and shall comply with the following minimum requirements:
  - (a) a preparation room shall be present with the necessary drainage and ventilation and necessary instruments and supplies for the preparation and embalming of dead human bodies for burial or other disposition and transportation; and
  - (b) an office shall be present for conducting business; and
- (3) a license shall not be issued or renewed by the board unless the establishment is in compliance with the Funeral Services Act and board rules.

C. Direct disposition establishment licenses shall only be granted under the following terms and conditions:

- (1) applications for licensure shall be upon forms furnished by the board and shall be accompanied by the required fee;
- (2) the establishment shall be maintained at a specific location primarily devoted to the practice allowed for a direct disposer and shall comply with the following minimum requirements:
  - (a) a room shall be present with necessary drainage and ventilation for housing a refrigeration unit;
  - (b) a refrigeration unit, thermodynamically controlled with a minimum storage area of twelve and one-half cubic feet per body, shall be present for sheltering of dead human bodies prior to burial or other disposition or transportation;
  - (c) an office shall be present for conducting business;
  - (d) necessary supplies for safely handling unembalmed dead human bodies; and
  - (e) if funeral merchandise is made available, a display room shall be present for displaying caskets and other funeral merchandise; and
- (3) no license shall be issued or renewed by the board unless the establishment is in compliance with the Funeral Services Act and board rules.

D. Crematory licenses shall only be granted under the following terms and conditions:

- (1) applications for licensure shall be upon forms furnished by the board and shall be accompanied by the required fee;
- (2) the crematory shall be maintained at a specific location, including a funeral, commercial or direct disposition establishment, primarily devoted to the practice allowed for a crematory and shall comply with the following minimum requirements:
  - (a) a room shall be present with necessary ventilation for housing a cremation retort;
  - (b) a cremation retort shall be present for cremating dead human bodies; and
  - (c) a unit to pulverize cremated dead human bodies shall be present; and
- (3) no license shall be issued or renewed by the board unless the crematory is in compliance with the Funeral Services Act and board rules.

E. The board may adopt by rule additional requirements in the interest of public health, safety and welfare.

History: 1978 Comp., § 61-32-11, enacted by Laws 1993, ch. 204, § 11; 1999, ch. 284, § 8; 2003, ch. 420, § 5; 2012, ch. 48, § 12.

**61-32-12. License; display of license. (Repealed effective July 1, 2018.)**



A. Initial licenses shall be issued for the remainder of the year in which the license is granted, as established by rule.

B. A license issued by the board shall at all times be posted in the establishment or crematory in a conspicuous place.

**History:** 1978 Comp., § 61-32-12, enacted by Laws 1993, ch. 204, § 12.

**61-32-13. Establishments; requirements; temporary licenses. (Repealed effective July 1, 2018.)**

A. Each establishment shall have a full-time funeral service practitioner; provided the establishment license is a privilege granted to the person to whom it is issued and is not transferable to other owners or operators or to another location than that designated on the license. Whenever an establishment no longer employs or otherwise has a full-time licensee in charge, the establishment shall immediately cease the practice of funeral service or direct disposition and the person to whom the establishment license is granted shall immediately return the establishment license to the board by certified mail, return receipt requested, or by another delivery service that provides a means of tracking an item in its delivery system.

B. The board may adopt by rule special requirements for multi-establishment enterprises where the establishments are located within fifty miles of each other and wish to share a licensee in charge.

C. The board may adopt by rule the requirements for reapplication or reinspection.

D. The board may adopt by rule requirements for issuing a temporary establishment or crematory license that will be valid until the next scheduled board meeting.

**History:** 1978 Comp., § 61-32-13, enacted by Laws 1993, ch. 204, § 13; 1999, ch. 284, § 9; 2012, ch. 48, § 13.

**61-32-14. Funeral service intern; scope of practice; limitations. (Repealed effective July 1, 2018.)**

A. A funeral service intern does not have the rights and duties of a funeral service practitioner and is only subordinate to the funeral service practitioner. The scope of what a funeral service intern is permitted to do depends on the activity and the experience of the funeral service intern, provided that a funeral service intern:

(1) may make arrangements only under the direct supervision of a licensed funeral service practitioner. After the completion of fifty arrangements under direct supervision, the funeral service intern may request approval from the board to make arrangements under the general supervision of a licensed funeral service practitioner;

(2) may embalm or otherwise prepare dead human bodies for disposition only under the direct supervision of a licensed funeral service practitioner. After the funeral service intern has assisted with the embalming of at least fifty bodies under direct supervision, the funeral service intern may request approval from the board to embalm under the general supervision of a licensed funeral service practitioner;

(3) may direct a funeral, committal service, graveside service or memorial service only under the direct supervision of a licensed funeral service practitioner. After the funeral service intern has directed at least fifty services under direct supervision, the funeral service intern may request approval from the board to direct such services under the general supervision of a licensed funeral service practitioner; and

(4) shall at no time act under the general supervision of a funeral service practitioner until he is notified in writing of board approval to so act.

B. A funeral service intern shall be employed by and receive training at only one establishment. The board may adopt rules that will allow training at more than one establishment under special circumstances.

C. Any funeral service intern's change of employment shall be reported to the board in writing within thirty days of the change. A change of employment that is not reported shall cause the period worked at the new establishment not to count as time served toward completion of the internship. It is the responsibility of the funeral service intern and the licensee in charge to report changes of employment.

D. A funeral service intern may be under the supervision of more than one funeral service practitioner at the establishment at which he is employed, provided that the board has received notice in writing prior to any changes in supervision. The board may adopt rules specifying the maximum number of persons that may be supervised by a funeral service practitioner.

E. Each funeral service intern shall report to the board quarterly, upon forms provided by the board, showing the work that has been completed during the preceding three months. All quarterly reports are due in the board office within thirty days of the close of the quarter. If a report is not received by the date due, the work completed during the reporting period shall not be counted when the board tabulates requirements for general supervision or for licensure as a funeral service practitioner.

F. Once a funeral service intern is under the general supervision of a funeral service practitioner, the funeral service intern need not submit to the board the quarterly reports required in this section.

**History:** 1978 Comp., § 61-32-14, enacted by Laws 1993, ch. 204, § 14; 1999, ch. 284, § 10.

**61-32-14.1. Repealed.**

**61-32-15. Repealed.**

**61-32-16. Repealed.**

**61-32-17. Direct disposer; scope of practice; limitations. (Repealed effective July 1, 2018.)**

A. Except as otherwise provided in the Funeral Services Act, a direct disposer may transport and dispose of a dead human body and participate in any rites or ceremonies after final disposition of the body.

B. Prior to interment, entombment or other final disposition of the body, a direct disposer shall not:

- (1) participate in any rites or ceremonies in connection with the final disposition of the body;
- (2) provide facilities for any such rites or ceremonies; and
- (3) have the body embalmed unless embalming is required by the place of disposition.

**History:** 1978 Comp., § 61-32-17, enacted by Laws 1993, ch. 204, § 17; 1995, ch. 158, § 2; 1999, ch. 284, § 11; 2012, ch. 48, § 14.

**61-32-17.1. Repealed.**

**61-32-18. Commercial establishments; scope of practice; limitations. (Repealed effective July 1, 2018.)**

A. The scope of practice of a commercial establishment depends on the entity for whom the commercial establishment is acting as an agent and is subject to the following terms and conditions:

(1) when acting under the direction of a licensed funeral establishment, the commercial establishment may:

(a) engage in transportation of dead human bodies, file a certificate of death, obtain certified copies thereof and obtain necessary permits for transportation or cremation;

(b) embalm;

(c) provide forwarding services;

(d) provide direct disposition; and

(e) arrange for identification of a dead human body by family members only, prior to disposition or transportation;

(2) when acting under the direction of a licensed direct disposition establishment, the commercial establishment may:

(a) engage in transportation of dead human bodies, file a certificate of death, obtain certified copies thereof and obtain necessary permits for transportation or cremation;

(b) embalm only when embalming is required by the place of disposition; and

(c) provide direct disposition; and

(3) when acting under the direction of a school of medicine, the commercial establishment may:

(a) engage in transportation of dead human bodies, file a certificate of death, obtain certified copies thereof and obtain necessary permits for transportation or cremation; and

(b) embalm.

B. A licensed commercial establishment shall not engage in any activity, or act for any entity, not specifically permitted in this section.

C. The licensee in charge shall certify to the board that the establishment will not exceed the scope of practice allowed by law.

**History:** 1978 Comp., § 61-32-18, enacted by Laws 1993, ch. 204, § 18; 2003, ch. 420, § 6.

**61-32-19. Cremation; requirements; right to authorize cremation; disposition of cremains. (Repealed effective July 1, 2018.)**

A. No cremation shall be performed until all necessary documentation is obtained authorizing the cremation.

B. An adult person may authorize the person's own cremation and the lawful disposition of the person's cremains by:

(1) stating the person's desire to be cremated in a written statement that is signed by the person and notarized or witnessed by two other persons; or

(2) including an express statement in the person's will indicating that the testator desired that the testator's remains be cremated upon the testator's death.

C. A personal representative acting pursuant to the Uniform Probate Code or an establishment or crematory shall comply with a statement made in accordance with the provisions of this section. A statement that conforms to the provisions of this section authorizes a personal representative, establishment or crematory to cremate a decedent's remains, and the permission of next of kin or any other person shall not be required for such authorization. Statements dated prior to June 18, 1993 shall be given effect if they meet this section's requirements.

D. A personal representative, establishment or crematory acting in reliance upon a document executed pursuant to the provisions of this section, who has no actual notice of revocation or contrary indication, is presumed to be acting in good faith.

E. No establishment, crematory or employee of an establishment or crematory or other person that relies in good faith on a statement written pursuant to this section shall be subject to liability for cremating the remains in accordance with the provisions of this section. The written authorization is a complete defense to a cause of action by a person against any other person acting in accordance with that authorization.

F. Except as provided in Subsection G of this section, if a decedent has left no written instructions regarding the disposition of the decedent's remains, the following persons in the order listed shall determine the means of disposition, not to be limited to cremation, of the remains of the decedent:

- (1) the surviving spouse;
- (2) a majority of the surviving adult children of the decedent;
- (3) the surviving parents of the decedent;
- (4) a majority of the surviving siblings of the decedent;
- (5) an adult person who has exhibited special care and concern for the decedent, who is aware of the decedent's views and desires regarding the disposition of the decedent's body and who is willing and able to make a decision about the disposition of the decedent's body; or
- (6) the adult person of the next degree of kinship in the order named by New Mexico law to inherit the estate of the decedent.

G. If a decedent left no written instructions regarding the disposition of the decedent's remains, died while serving in any branch of the United States armed forces, the United States reserve forces or the national guard and completed a United States department of defense record of emergency data form or its successor form, the person authorized by the decedent to determine the means of disposition on a United States department of defense record of emergency data form shall determine the means of disposition, not to be limited to cremation.

H. A licensed establishment or crematory shall keep an accurate record of all cremations performed and the place of disposition of the cremains for a period of not less than seven years.

I. Cremains may be disposed of by any licensed establishment, crematory authority, cemetery or person having the right to control the disposition of the cremains, or that person's agent, in a lawful manner.

J. Legal forms for cremation authorization shall provide that persons giving the authorization will hold harmless an establishment from any liability for disposing of unclaimed cremains in a lawful manner after a period of one year following the return of the cremains to the establishment.

History: 1978 Comp., § 61-32-19, enacted by Laws 1993, ch. 204, § 19; 1995, ch. 17, § 2; 1999, ch. 284, § 12; 2011, ch. 22, § 3.

**61-32-19.1. Crematory; scope of practice; limitations. (Repealed effective July 1, 2018.)**

A. The scope of practice of a crematory and its crematory authority is limited to cremation of dead human bodies and pulverization of cremains. A crematory and its crematory authority shall act as an agent of licensed funeral, commercial or direct disposition establishments and schools of medicine. A crematory and its crematory authority may:

- (1) engage in transportation of dead human bodies to the crematory; and
- (2) cremate dead human bodies and pulverize cremains.

B. After completion of the cremation process, if a crematory and its crematory authority have not been instructed by its agent to return the cremains to the person that initiated the cremation services contract or to arrange for the interment, entombment or enichement of the cremains, the crematory authority shall return, or cause to be returned, the cremains to the establishment no later than thirty days after the date of cremation.

C. A crematory and its crematory authority shall maintain a system or process that ensures that any dead human body in the crematory's possession can be specifically identified throughout all phases of the cremation process.

D. A crematory shall keep an accurate record of all cremations performed for a period of not less than seven years.

E. The crematory and its crematory authority shall certify to the board that the crematory will not exceed the scope of practice allowed by law.

F. A licensed crematory shall not engage in any activity not specifically permitted in this section.

**History:** 1978 Comp., § 61-32-19.1, enacted by Laws 1999, ch. 284, § 13; 2003, ch. 420, § 7.

**61-32-20. Embalming. (Repealed effective July 1, 2018.)**

A. All dead human bodies not disposed of within twenty-four hours after death or release or receipt by the establishment or crematory shall be embalmed in accordance with the Funeral Services Act or stored under refrigeration as determined by board rule, unless otherwise required by regulation of the office of the state medical investigator or the secretary of health or by orders of an authorized official of the office of the state medical investigator, a court of competent jurisdiction or other authorized official.

B. A dead human body shall not be embalmed except by a funeral service practitioner or a funeral service intern under the supervision of a funeral service practitioner.

C. When embalming is not required under the provisions of this section, a dead human body shall not be embalmed without express authorization by the:

- (1) surviving spouse or next of kin;
- (2) legal agent or personal representative of the deceased; or
- (3) person assuming responsibility for final disposition.

D. When embalming is not required, and prior to obtaining authorization for the embalming, a dead human body may be washed and other health procedures, including closing of the orifices, may be performed without authorization.

E. When a dead human body is embalmed, the funeral service practitioner who embalms the body or the funeral service intern who embalms the body and the funeral service practitioner who supervises the embalming shall, within twenty-four hours after the embalming procedure, complete and sign an embalming case report describing the elapsed time since death, the condition of the remains before and after embalming and the embalming procedures used. The

embalming case report shall be kept on file at the establishment for a period of not less than seven years following the embalming.

F. Except as provided in Subsection A of this section, embalming is not required.

History: 1978 Comp., § 61-32-20, enacted by Laws 1993, ch. 204, § 20; 1999, ch. 284, § 14; 2003, ch. 420, § 8; 2012, ch. 48, § 15.

**61-32-21. License renewal. (Repealed effective July 1, 2018.)**

A. All licenses expire annually and shall be renewed by submitting a completed renewal application, accompanied by the required fees, on a form provided by the board.

B. The board may require proof of continuing education or other proof of competency as a requirement for renewal; provided that a licensee who is age sixty-five or above and who has been licensed by the board for at least twenty consecutive years shall not be required to meet continuing education requirements.

C. A sixty-day grace period shall be allowed each licensee after the end of the licensing period, during which time licenses may be renewed upon payment of the renewal fee and a late fee as prescribed by the board and compliance with any other renewal requirements adopted by the board.

D. Any license not renewed at the end of the grace period shall be expired and invalid. A holder of an expired license shall be required to apply as a new applicant.

History: 1978 Comp., § 61-32-21, enacted by Laws 1993, ch. 204, § 21; 1999, ch. 284, § 15; 2001, ch. 84, § 1.

**61-32-22. Inactive status. (Repealed effective July 1, 2018.)**

A. A funeral service practitioner, funeral service intern or direct disposer who has a current license may request that the license be placed on inactive status. Except as provided in Subsection E of this section, the board shall approve each request for inactive status.

B. A license placed on inactive status may be renewed within a period not to exceed five years following the date the board granted the inactive status.

C. Renewal of an inactive license requires payment of renewal and reinstatement fees as set forth by board rule and compliance with the following requirements:

(1) certification by the licensee that the licensee has not engaged in the practice of funeral service or direct disposition in this state during the inactive status;

(2) compliance with continuing education requirements established by board rule; and

(3) successful completion of an examination, which shall be administered at the discretion of the board, to certify continuing competency.

D. Disciplinary proceedings may be initiated or continued against a licensee who has been granted inactive status.

E. A license shall not be placed on inactive status if the licensee is under investigation or if disciplinary proceedings have been initiated.

History: 1978 Comp., § 61-32-22, enacted by Laws 1993, ch. 204, § 22; 1999, ch. 284, § 16; 2003, ch. 420, § 9; 2012, ch. 48, § 16.

**61-32-23. Fees. (Repealed effective July 1, 2018.)**

The board shall establish by regulation a schedule of reasonable fees for applications, examinations, licenses, inspections, renewals, penalties, reinstatements and necessary administrative fees. All fees collected shall be deposited in accordance with Section 61-32-26 NMSA 1978.

**History:** 1978 Comp., § 61-32-23, enacted by Laws 1993, ch. 204, § 23; 1999, ch. 284, § 17.

**61-32-24. Disciplinary proceedings; judicial review. (Repealed effective July 1, 2018.)**

A. The board, in accordance with the procedures set forth in the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978], may take disciplinary action against any licensee, temporary licensee or applicant.

B. The board has the authority to take any action set forth in Section 61-1-3 NMSA 1978 upon a finding by the board that the applicant or licensee is guilty of any of the following acts of commission or omission:

- (1) conviction of an offense punishable by incarceration in a state penitentiary or federal prison; provided the board receives a copy of the record of conviction, certified to by the clerk of the court entering the conviction, which shall be conclusive evidence of the conviction;
- (2) fraud or deceit in procuring or attempting to procure a license;
- (3) gross negligence or incompetence;
- (4) unprofessional or dishonorable conduct, which includes:
  - (a) misrepresentation or fraud;
  - (b) false or misleading advertising;
  - (c) solicitation of dead human bodies by the licensee or the licensee's agents, assistants or employees, whether the solicitation occurs after death or while death is impending, provided that this shall not be deemed to prohibit general advertising;
  - (d) solicitation or acceptance by a licensee of a commission, bonus or rebate in consideration of recommending or causing a dead human body to be disposed of in a cemetery, mausoleum or crematory;
  - (e) using any funeral merchandise previously purchased, in whole or in part, except for transportation purposes, without prior written permission of the person selecting or paying for the use of the merchandise; and
  - (f) failing to make disposition of a dead human body in the enclosure or container that was purchased for that purpose by the arrangers;
- (5) violation of the provisions of the Funeral Services Act or a rule of the board;
- (6) violation of any local, state or federal ordinance, law or regulation affecting the practice of funeral service, direct disposition or cremation, including the Prearranged Funeral Plan Regulatory Law [Chapter 59A, Article 49 NMSA 1978] or any regulations ordered by the superintendent of insurance;
- (7) willful or negligent practice beyond the scope of the license issued by the board;
- (8) refusing to release properly a dead human body to the custody of the person or entity who has the legal right to effect the release, whether or not the authorized cost has been paid. If an establishment receives a dead human body for funeral services but the body is subsequently transferred to another establishment that completes or performs funeral services, the subsequent establishment shall be responsible for all reasonable nonprofessional service charges incurred by

the next previous establishment prior to and including transfer of the body and the subsequent establishment shall reimburse the next previous establishment for those charges;

(9) failure to secure a necessary permit required by law for removal from this state or cremation of a dead human body;

(10) knowingly making a false statement on a certificate of death;

(11) failure to give full cooperation to the board or one of its committees, staff, inspectors, agents or an attorney for the board in the performance of official duties;

(12) having had a license, certificate or registration to practice revoked, suspended or denied in any jurisdiction, territory or possession of the United States or another country for actions of the licensee or applicant similar to acts described in this subsection. A certified copy of the record of the jurisdiction taking the disciplinary action is conclusive evidence of the violation;

(13) failure to supervise adequately subordinate personnel;

(14) conduct unbecoming a licensee or detrimental to the safety or welfare of the public;

(15) employing fraudulent billing practices; or

(16) practicing funeral service or cremation without a current license.

C. In addition to the offenses listed in Subsection B of this section, the board has the authority to take any action set forth in Section 61-1-3 NMSA 1978 upon a finding by the board that a person who is licensed as or is an applicant for a license as a funeral service practitioner or funeral service intern is guilty of any of the following acts of commission or omission:

(1) practicing funeral service without a license or aiding or abetting an unlicensed person to practice funeral service; or

(2) permitting a funeral service intern to exceed the limitations set forth in the provisions of the Funeral Services Act or the rules of the board.

D. In addition to the offenses listed in Subsection B of this section, the board has the authority to take any action set forth in Section 61-1-3 NMSA 1978 upon a finding by the board that a direct disposer licensee or a direct disposition establishment licensee is guilty of any of the following acts of commission or omission:

(1) embalming, restoring, acting as a cosmetician or in any way altering the condition of a dead human body, except for washing and dressing;

(2) causing a body to be embalmed when embalming is not required by a place of disposition;

(3) prior to interment, entombment or other final disposition of a dead human body, participating in any rites or ceremonies in connection with such final disposition of the body, or providing facilities for any such rites or ceremonies;

(4) reclaiming, transporting or causing to be transported a dead human body after written release for disposition; or

(5) practicing direct disposition without a license or aiding or abetting an unlicensed person to practice direct disposition.

E. In addition to the offenses listed in Subsection B of this section, the board has the authority to take any action set forth in Section 61-1-3 NMSA 1978 upon a finding by the board that a crematory licensee or applicant or a crematory authority is guilty of any of the following acts of commission or omission:

(1) engaging or making any representation as engaging in the practice of funeral service or direct disposition, unless the applicant or crematory authority has a license to practice funeral service or direct disposition;

(2) operating a crematory without a license or aiding and abetting a crematory to operate without a license; or



(3) engaging in conduct or activities for which a license to engage in the practice of funeral service or direct disposition is required or aiding and abetting an unlicensed person to engage in conduct or activities for which a license to practice funeral service or direct disposition is required.

F. Unless exonerated by the board, persons who have been subjected to formal disciplinary sanctions by the board shall be responsible for the payment of costs of the disciplinary proceedings, which include costs for:

- (1) court reporters;
- (2) transcripts;
- (3) certification or notarization;
- (4) photocopies;
- (5) witness attendance and mileage fees;
- (6) postage for mailings required by law;
- (7) expert witnesses; and
- (8) depositions.

G. All fees, fines and costs imposed on an applicant, licensee, establishment or crematory shall be paid in full to the board before an initial or renewal license may be issued.

History: 1978 Comp., § 61-32-24, enacted by Laws 1993, ch. 204, § 24; 1995, ch. 158, § 3; 1999, ch. 284, § 18; 2003, ch. 420, § 10; 2012, ch. 48, § 17.

**61-32-25. Additional prohibitions. (Repealed effective July 1, 2018.)**

A. No person licensed pursuant to the provisions of the Funeral Services Act shall advertise under any name that tends to mislead the public or that sufficiently resembles the professional or business name of another license holder or that may cause confusion or misunderstanding.

B. No person licensed pursuant to the provisions of the Funeral Services Act shall transport or cause to be transported by common carrier any dead human body out of this state when the licensee knows or has reason to believe that the dead human body carries any notifiable communicable disease or when the transportation would take place more than twenty-four hours after death, unless the body has been prepared or embalmed as provided in the Funeral Services Act, unless approval for transportation has been given by the office of the medical investigator, the secretary of health, a court of competent jurisdiction or other authorized official or unless the body is placed in a sealed container.

C. No person licensed pursuant to the provisions of the Funeral Services Act shall remove, and no authorized person shall embalm, a dead human body when the authorized person has information indicating crime or violence of any sort in connection with the cause or manner of death, unless in accordance with instructions or regulations of the office of the medical investigator or until permission has been obtained from the office of the medical investigator or other authorized official.

History: 1978 Comp., § 61-32-25, enacted by Laws 1993, ch. 204, § 25; 2012, ch. 48, § 18.

**61-32-26. Fund established. (Repealed effective July 1, 2018.)**

A. There is created in the state treasury the "funeral services fund".

B. All money received or collected by the board or the department pursuant to provisions of the Funeral Services Act shall be deposited with the state treasurer for credit to the funeral services fund. The state treasurer shall invest the fund as other state funds are invested. All balances in

the fund at the end of any fiscal year shall remain in the fund and shall not revert to the general fund.

C. Money in the funeral services fund is appropriated to the board and shall be used only for the purpose of carrying out the provisions of the Funeral Services Act.

History: Laws 1993, ch. 204, § 26; 1999, ch. 284, § 19; 2012, ch. 48, § 19.

**61-32-27. Criminal offender employment act. (Repealed effective July 1, 2018.)**

The provisions of the Criminal Offender Employment Act [Chapter 28, Article 2 NMSA 1978] shall govern any consideration of criminal records required or permitted pursuant to the provisions of the Funeral Services Act.

History: Laws 1993, ch. 204, § 27; 2012, ch. 48, § 20.

**61-32-28. Communications; confidentiality. (Repealed effective July 1, 2018.)**

All written and oral communications made to the board relating to potential disciplinary action shall be subject to the Inspection of Public Records Act [14-2-4 NMSA 1978].

History: Laws 1993, ch. 204, § 28; 1999, ch. 284, § 20.

**61-32-29. Construction. (Repealed effective July 1, 2018.)**

Nothing in the Funeral Services Act shall be construed to:

A. prohibit a funeral service practitioner or funeral service intern under the supervision of a funeral service practitioner from providing a direct disposition at a funeral or commercial establishment; or

B. govern or limit the authority of any personal representative, trustee or other person having a fiduciary relationship with the deceased.

History: Laws 1993, ch. 204, § 29; 2012, ch. 48, § 21.

**61-32-30. Criminal penalties. (Repealed effective July 1, 2018.)**

A person who commits any of the following acts is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000) or by imprisonment of less than one year, or both:

A. violation of any provision of the Funeral Services Act;

B. rendering or offering to render funeral services, direct disposition services or cremation services without a current valid license issued pursuant to the Funeral Services Act; or

C. advertising or using any designation, diploma or certificate tending to imply that the person is a practitioner of funeral services, direct disposition services or cremation services without a current valid license issued pursuant to the Funeral Services Act.

History: Laws 1993, ch. 204, § 30; 1999, ch. 284, § 21; 2012, ch. 48, § 22.

**61-32-30.1. Unlicensed activity; civil penalty. (Repealed effective July 1, 2018.)**

The board may impose a fine and costs as set forth in the Funeral Services Act on a person who is found to have acted without a license in violation of the Funeral Services Act by a court or an administrative proceeding as provided for in the Funeral Services Act.

History: Laws 2003, ch. 420, § 11; 2012, ch. 48, § 23.

**61-32-30.2. Cease and desist orders; fines; finality; hearings. (Repealed effective July 1, 2018.)**

A. Notwithstanding the provisions of Sections 61-1-3 and 61-32-24 NMSA 1978, if the board has reasonable cause to believe a person is committing a violation of a provision of the Funeral Services Act, or a rule adopted pursuant to that act, that creates a health risk for the community or a risk to the orderly or prompt disposition of dead human bodies and immediate enforcement is deemed necessary, the board may serve, in the manner prescribed by Section 61-1-5 NMSA 1978, a cease and desist order on a person to require that person to cease the violation. The order shall:

(1) indicate the violation and the general nature of the evidence of the violation;

(2) include a notice that if the person fails to comply with the order within twenty-four hours, the person may be subject to fines or costs, as provided in Sections 61-32-6 and 61-32-30.1 NMSA 1978, for noncompliance with the order as a violation of the Funeral Services Act, in addition to fines and costs imposed for a violation indicated in the order; and

(3) include a notice that a hearing has been scheduled to occur within five working days after service of the cease and desist order and the hearing will proceed unless waived by the person.

B. If the person waives a hearing as provided in Subsection A of this section, the order shall be final and not subject to review or appeal. The board may apply for injunctive relief to enforce the cease and desist order.

C. If a hearing is held, it shall be conducted pursuant to the hearing procedures of the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978] that are consistent with this section and the consequences of the hearing, including a right to review, shall occur pursuant to that act.

D. An order of the board pursuant to this section or an order of a court to enforce it shall not relieve or absolve a person affected by the order from another liability, penalty or sanction applicable under law.

History: Laws 2012, ch. 48, § 25.

**61-32-31. Termination of agency life; delayed repeal. (Repealed effective July 1, 2018.)**

The board of funeral services is terminated on July 1, 2017, pursuant to the provisions of the Sunset Act [Chapter 12, Article 9 NMSA 1978]. The board shall continue to operate according to the provisions of Section 12-9-18 NMSA 1978 until July 1, 2018. Effective July 1, 2018, the Funeral Services Act is repealed.

History: Laws 1993, ch. 204, § 31; 1999, ch. 284, § 22; 2005, ch. 208, § 24; 2011, ch. 4, § 1; 2012, ch. 48, § 24.