

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
3100 BOARD OF FUNERAL SERVICES
Statutory Authority: 24 Delaware Code, Section 3105(a)(1) (24 **Del.C.** §3105(a)(1))
24 DE Admin. Code 3100

FINAL

ORDER

3100 Board of Funeral Services

On January 1, 2018 the Delaware Board of Funeral Services published proposed changes to its regulations in the Delaware *Register of Regulations*, Volume 21, Issue 7. The notice indicated that written comments would be accepted by the Board, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on January 23, 2018 at a regularly scheduled meeting of the Board of Funeral Services to receive verbal comments regarding the Board's proposed amendments to its regulations.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

At the time of the deliberations, the Board considered the following documents:

Board Exhibit 1- Affidavit of publication of the public hearing notice in the *News Journal*; and

Board Exhibit 2- Affidavit of publication of the public hearing notice in the *Delaware State News*.

No verbal testimony was provided at the public hearing. No written comments were received by the Board.

FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments on the proposed amendments to the Board's regulations in writing and by testimony at the public hearing.
2. There were no public comments provided to the Board during the written public comment periods.
3. Pursuant to 24 **Del.C.** §3105(a)(1) the Board has the statutory authority to promulgate rules and regulations to implement or clarify specific statutory sections of its statute.
4. Having received no public comments, the Board finds no reason not to amend the regulations as proposed with the correction of one typographical error in subsection 13.2.12. That subsection has been corrected in this Final Order by striking "Board of Professional Licensing" and substituting in its place "Board of Funeral Services".

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, pursuant to 24 **Del.C.** §3105(a)(1) and for the reasons set forth above, the Board does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth in the Delaware *Register of Regulations* on January 1, 2018 with the typographical error corrected. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, pursuant to 29 **Del.C.** §10118(g).

The new regulations are attached hereto as Exhibit A.

SO ORDERED this 27th day of March, 2018.

DELAWARE BOARD OF FUNERAL SERVICES

Kevin Parsell, President

Chad Chandler

Jane Hovington

Danna Levy (absent)

Harvey Smith, Jr. (absent)

William Torbert

Elizabeth Happoldt

3100 Board of Funeral Services

1.0 Duties of the Officers

- 1.1 The President shall preside at all meetings, call meetings, sign certificates with other Board members or other forms that may be required by him or her by law.
- 1.2 In the absence of the President, the Secretary shall preside at the meetings and call meetings when the President is absent. However, the signatory duties of the President may not be transferred to the Secretary.
- 1.3 In accordance with 29 **Del.C.** §8807, the Division of Professional Regulation shall maintain and keep all records of licensed funeral directors in the State of Delaware issuing a number and date to each license.
- 1.4 The Division shall also cause to be collected all fees including license application fees, renewal fees or any other fee required to be paid in accordance with the provisions of 24 **Del.C.** Ch. 31, et.seq.
- 1.5 In accordance with the Freedom of Information Act, 29 **Del.C.** §10004(c), the Division of Professional Regulation shall publish an agenda of all meetings which shall include the time, dates and places of said meetings and an agenda. The Board shall also give public notice of the regular meetings and its intent to hold an executive session closed to the public at least seven days in advance. However, the agenda may be subject to change to include additional items not on the agenda including executive sessions closed to the public which arise at the time of the Board's meeting.
- 1.6 The Division of Professional Regulation shall insure that accurate and detailed minutes of all business to come before the Board at all Board meetings be transcribed in accordance with 29 **Del.C.** §8807 and 24 **Del.C.** §3103(d).

2.0 Licensure Requirements

- 2.1 Requirements for licensing of those applying for a Funeral Director's license in the State of Delaware. The qualifications of applicants for licensure as funeral director are contained in 24 **Del.C.** §3107(a)(1)-(9) and 24 **Del.C.** §3109.
- 2.2 An applicant who has attended a school or college fully accredited by the American Board of Funeral Service Education "ABFSE" or its successor and who, after attending such ABFSE accredited school or college, has received an Associate degree or its equivalent in mortuary science, wherein such "degree" required the successful completion of at least sixty (60) semester credit hours, shall be eligible for licensure as a funeral director in accordance with the educational requirements contained within 24 **Del.C.** §3107. The applicant shall request that a copy of an official transcript be sent to the Board.
- 2.3 The equivalent of an Associate Degree as that term is used in 24 **Del.C.** §3107 and herein is a certificate in mortuary science that required a minimum of thirty (30) semester credit hours. In addition to said certificate, sufficient semester credit hours earned from a regionally accredited institution of postsecondary education, so that the applicant has earned a total of at least sixty (60) semester credit hours, are required.
- 2.4 The Division, upon request of a registered intern or applicant seeking licensure via reciprocity, shall administer the State examination required by 24 **Del.C.** §3107(a)(3) based solely upon the laws and regulations of Delaware which may govern, impact on, and relate to the profession including preneed funeral service contracts, consumer protection law and regulations, and laws and regulations governing crematories and cemeteries. An applicant for full licensure, whether via initial or reciprocal licensure, shall be deemed to have successfully passed the state examination with a minimum grade of 70%. The national examination required by 24 **Del.C.** §3107(a)(2) may be taken before or during the internship.
- 2.5 As required by 24 **Del.C.** §3107(a)(4), an applicant other than one seeking licensure via reciprocity shall satisfactorily complete an internship of one year's duration in a licensed Delaware funeral establishment under the auspices of a licensed Delaware funeral service practitioner. In order for an applicant to apply for an internship, the applicant shall have certified on a form approved by the Board that he or she has graduated from an accredited high school or its equivalent, and has received an Associate Degree or its equivalent in mortuary science, consisting of sixty (60) credit hours, from a school fully accredited by the ABFSE or its successor. Satisfactory completion of an internship requires a minimum of twenty-five (25) embalming reports and four (4) completed quarterly work reports evidenced by a notarized statement by the sponsor. An intern may be given one extension of his or her internship for an additional year.

4 DE Reg. 159 (07/01/00)

3.0 Federal Trade Commission Regulations

A licensed funeral director in the State of Delaware shall comply with all Federal Trade Commission Regulations governing the pricing of funeral services and merchandise and the method of payment for funeral services as defined under 24 **Del.C.** §3101(7). Upon the issuance of a funeral director's license, a licensed funeral director represents that he/she is familiar with all Federal Trade Commission rules and regulations and shall abide by the same. A licensee may be subject to discipline pursuant to 24 **Del.C.** Ch. 31, et seq. if these rules or regulations have been violated by the licensee.

4.0 Establishment Permits

- 4.1 The Board shall issue and renew establishment permits as provided in 24 **Del.C.** §3117. As used herein, an establishment is the building or structure where the practice of providing funeral services is conducted.
- 4.2 Unless exempt under 24 **Del.C.** §3101(6), the building in which funeral services are provided shall contain a room having the fixtures necessary for the care and preparation of human remains for funeral service, burial, entombment or cremation. Such fixtures include, at a minimum, embalming machine and table, aspirator, embalming instruments, embalming fluids, an operating drainage system, syringes, needles and surgical supplies and an operating ventilation system.
 - 4.2.1 A satellite funeral establishment is a place where the practice of providing funeral services is conducted at a location separate from the primary place of business.
 - 4.2.2 A satellite funeral establishment retains the exemption only so long as it is continuously operated as an adjunct to the primary place of business.
- 4.3 Unless exempt under 24 **Del.C.** §3117(a)(2), a funeral establishment shall have a licensed funeral director in charge full time therein.
 - 4.3.1 A funeral director is in charge full time so long as the director is on the premises when funeral services are being provided.
 - 4.3.2 A business operating in a funeral establishment since September 6, 1972 retains an exemption under 24 **Del.C.** §3117(a)(2) only so long as the record owner of the business does not change.
- 4.4 All funeral establishments shall conform with the health and safety regulations promulgated by agencies of the State of Delaware have regulatory authority.

5 DE Reg. 606 (09/01/01)

21 DE Reg. 338 (10/01/17)

5.0 Duplicate Certificate

Any licensed funeral director may obtain a duplicate funeral director's certificate upon proof of satisfactory evidence to the Board that the original has been lost or destroyed and a payment of a fee as set by the Division of Professional Regulation.

6.0 Suspension - Revocation or Lapse of Funeral Director's License

During any period a licensed funeral director's license has lapsed, been revoked or suspended by the Board in accordance with 24 **Del.C.** §§3111 or 3114, no other licensed funeral director in the State of Delaware may register death certificates or secure burial permits for the licensee whose license has been revoked, suspended or has lapsed. Nor shall the licensee whose license has lapsed, been revoked or suspended by the Board, be able to register death certificates or secure burial permits. The Board may notify the Division of Public Health, the Department of Health and Social Services, the Medical Examiner's Office or other appropriate state or federal agency that said funeral director is prohibited from practicing funeral services as defined by 24 **Del.C.** Ch. 31.

7.0 Cash Advance

- 7.1 A licensed funeral director in the State of Delaware is prohibited from billing or causing to be billed any item that is referred to as a "cash advance" item unless the net amount paid for such item is for funeral services in the same amount as is billed by the funeral director. A cash advance item is payment made by the funeral director for the consumer to a third party including but not limited to cemetery fees, crematory fees, death certificates and florists.
- 7.2 The effective date of these regulations is the 6th day of December, 1989 in accordance with 29 **Del.C.** §10118 (b).
- 7.3 The following rules are adopted by the board as a supplement to the Rules and Regulations governing the State Board of Funeral Services, previously adopted and promulgated on the 6th day of December, 1989 pursuant to 24 **Del.C.** §3105 (a)(1) and the Administrative Procedures Act, 29 **Del.C.** §10115.

8.0 Code of Ethics

- 8.1 The following is adopted as the code of ethics for all funeral service licensees in the State of Delaware.
 - 8.1.1 As funeral directors, we herewith fully acknowledge our individual and collective obligation to the public, especially to those we serve, our mutual responsibilities for the proper welfare of the funeral services profession.

- 8.1.2 To the public we pledge: vigilant support of public health laws; proper legal regulations for the members of our profession; devotion to high moral and service standards; conduct befitting good citizens, honesty in all offerings of service and merchandise to the public and all business transactions.
- 8.1.3 To those we serve we pledge: confidential business and professional relationships; cooperation with the customs, laws, religions and creeds; observance of all respect due to the deceased; high standards of confidence and dignity in conduct of all services; truthful representation of all services and merchandise.
- 8.1.4 To our profession we pledge: support of high educational standards and proper licensing law; encouragement of scientific research; adherence to sound business practices; adoption of improved technique; observance of all the rules of fair competition and maintenance of favorable personnel relations.

9.0 Continuing Education Regulations

9.1 Board Authority

- 9.1.1 This rule is promulgated under the authority of 24 **Del.C.** §3105 which grants the Board of Funeral Services (hereinafter "the Board") authority to provide for rules for continuing funeral services education as a prerequisite for license renewal.

9.2 Requirements

- 9.2.1 Every licensed funeral director in active practice shall complete at least 10 hours/credits of approved continuing education (hereinafter "CE") during the two year licensure period prior to the time of license renewal. Licensed funeral directors who are 65 years of age or older are exempt from the CE requirements.
- 9.2.2 All CE credit hours must further the licensee's skills and understanding in the field of funeral services. Licensees who earn more than the required amount of CE credit hours during a given licensure period may carry over no more than 50% of the total CE credit hours required for the next licensure period.
- 9.2.3 When a Delaware licensee on inactive status files a written application to return to active practice with the Board, the licensee shall submit proof of having completed the required CE credit hours for the period just prior to the request to return to active practice.

9.3 Waiver of the CE Requirement

- 9.3.1 The Board has the power to waive any part of the entire CE requirement for good cause if the licensee files a written request with the Board. For example, exemptions to the CE requirement may be granted due to health, military service or economic hardship. Application for exemption shall be made in writing to the Board by the applicant for renewal and must be received by the Board no later than 60 days prior to the license renewal date. The Board shall decide the merits of each individual case at a regularly scheduled meeting.
- 9.3.2 Newly licensed funeral directors, including those newly licensed by reciprocity, are exempt during the time from initial licensure until the commencement of the first full licensure period.

9.4 Continuing Education Program Approval

- 9.4.1 Each contact hour (at least fifty minutes) is equivalent to 1.0 CE credit hour. One college credit hour is equivalent to 5 CE credit hours.
- 9.4.2 Eligible program providers or sponsors include but are not limited to, educational institutions, government agencies, professional or trade associations and foundations and private firms.
- 9.4.3 Programs approved by the Academy of Funeral Service Practitioners (AFSP) are automatically approved and need not be submitted to the Board.
- 9.4.4 Sources of CE credits include but are not limited to the following:
 - Programs sponsored by national funeral service organizations.
 - Programs sponsored by state associations.
 - Program provided by local associations.
 - Programs provided by suppliers.
 - Independent study courses for which there is an assessment of knowledge.
 - College courses.
- 9.4.5 The recommended areas include but are not limited to the following:
 - Grief counseling
 - Professional conduct, business ethics or legal aspects relating to practice in the profession.
 - Business management concepts relating to delivery of goods and services.
 - Technical aspects of the profession.
 - Public relations.
 - After care counseling.

9.4.6 Application for CE program approval shall include the following:

9.4.6.1 Date and location.

9.4.6.2 Description of program subject, material and content.

9.4.6.3 Program schedule to time segments in subject content areas for which approval of, and determination of credit is required.

9.4.6.4 Name of instructor(s), background, expertise.

9.4.6.5 Name and position of person making request for program approval.

9.4.7 Requests for CE program approval shall be submitted to the Board on the application provided by the Board. Application for approval may be made after the program; however, if the program is not approved, the applicant will be notified and no credit given.

9.4.8 The CE credits shall be valid for the biennial renewal cycle in which they are approved. Changes in any aspect of the approved program shall render the approval invalid and the presenter will be responsible for making reapplication to the Committee.

9.4.9 Upon request, the Board shall mail a current list of all previously approved programs.

9.5 Certification of Continuing Education - Verification and Reporting

9.5.1 The program provider/sponsor has sole responsibility for the accurate monitoring of program attendance. Certificates of attendance shall be supplied by the program provider/sponsor and be distributed only at the completion of the program.

9.5.2 Verification of completion of an independent study program will be made with a student transcript.

9.5.3 The funeral director licensee shall maintain all original certificates of attendance for CE programs for the entire licensure period. A licensee who carries over credits from a prior licensure period must also maintain original certificates of attendance for all CE programs for any period from which credits are carried over.

9.5.4 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the requirements of Rule 9.2.1.

9.5.4.1 Attestation may be completed electronically if the renewal is accomplished online. In the alternative, paper renewal documents that contain the attestation of completion may be submitted.

9.5.4.2 Licensees selected for random audit will be required to supplement the attestation with attendance verification pursuant to Rule 9.3.5.3.

9.5.5 Random audits will be performed by the Board to ensure compliance with the CEU requirements.

9.5.5.1 The Board will notify licensees within sixty (60) days after August 31 that they have been selected for audit.

9.5.5.2 Licensees selected for random audit shall be required to submit verification within ten (10) days of receipt of notification of selection for audit.

9.5.5.3 Verification shall include such information necessary for the Board to assess whether the course or other activity meets the CE requirements in Section 9.4, which may include, but is not limited to, the following information:

- Proof of attendance;
- Date of CE course;
- Instructor of CE course;
- Sponsor of CE course;
- Title of CE course; and
- Number of hours of CE course.

9.5.6 If a licensee fails to meet the CE requirement at the time of renewal, the Board may impose discipline as permitted under Section 3114. In its discretion, the Board may permit the licensee to obtain the CE credits within a time period prescribed by the Board while maintaining an active license.

5 DE Reg. 606 (09/01/01)

9 DE Reg. 262 (08/01/05)

10 DE Reg. 1154 (01/01/07)

12 DE Reg. 1335 (04/01/09)

16 DE Reg. 655 (12/01/12)

10.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

10.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.

- 10.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.
- 10.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).
- 10.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.
- 10.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection 10.8 of this section.
- 10.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:
 - 10.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.
 - 10.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.
 - 10.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.
 - 10.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.
 - 10.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.
 - 10.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.
- 10.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.
- 10.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time

during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

- 10.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.
- 10.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.
- 10.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.
- 10.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

11.0 Crimes substantially related to the provision of Funeral Services

- 11.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of the solicitation to commit any of the following crimes, is deemed to be a crime substantially related to the provision of Funeral Services in the State of Delaware without regard to the place of conviction:
 - 11.1.1 Abuse of a pregnant female in the second degree. 11 **Del.C.** §605.
 - 11.1.2 Abuse of a pregnant female in the first degree. 11 **Del.C.** §606.
 - 11.1.3 Assault in the second degree. 11 **Del.C.** §612.
 - 11.1.4 Assault in the first degree. 11 **Del.C.** §613.
 - 11.1.5 Felony abuse of a sports official. 11 **Del.C.** §614.
 - 11.1.6 Assault by abuse or neglect. 11 **Del.C.** §1103B.
 - 11.1.7 Unlawfully administering controlled substance or counterfeit substance or narcotic drugs. 11 **Del.C.** §626.
 - 11.1.8 Manslaughter. 11 **Del.C.** §632.
 - 11.1.9 Murder by abuse or neglect in the second degree. 11 **Del.C.** §633.
 - 11.1.10 Murder by abuse or neglect in the first degree. 11 **Del.C.** §634.
 - 11.1.11 Murder in the second degree. 11 **Del.C.** §635.
 - 11.1.12 Murder in the first degree. 11 **Del.C.** §636.
 - 11.1.13 Promoting suicide. 11 **Del.C.** §645
 - 11.1.14 Abortion. 11 **Del.C.** §651
 - 11.1.15 Unlawful sexual contact in the second degree. 11 **Del.C.** §768
 - 11.1.16 Unlawful sexual contact in the first degree. 11 **Del.C.** §769
 - 11.1.17 Rape in the fourth degree. 11 **Del.C.** §770
 - 11.1.18 Rape in the third degree. 11 **Del.C.** §771
 - 11.1.19 Rape in the second degree. 11 **Del.C.** §772
 - 11.1.20 Rape in the first degree. 11 **Del.C.** §773
 - 11.1.21 Bestiality. 11 **Del.C.** §775
 - 11.1.22 Continuous sexual abuse of a child. 11 **Del.C.** §776
 - 11.1.23 Dangerous crimes against a child. 11 **Del.C.** §777
 - 11.1.24 Female genital mutilation. 11 **Del.C.** §780
 - 11.1.25 Kidnapping in the second degree. 11 **Del.C.** §783
 - 11.1.26 Kidnapping in the first degree. 11 **Del.C.** §783A
 - 11.1.27 Arson in the third degree. 11 **Del.C.** §801
 - 11.1.28 Arson in the second degree. 11 **Del.C.** §802
 - 11.1.29 Arson in the first degree. 11 **Del.C.** §803
 - 11.1.30 Burglary in the third degree. 11 **Del.C.** §824
 - 11.1.31 Burglary in the second degree. 11 **Del.C.** §825
 - 11.1.32 Burglary in the first degree. 11 **Del.C.** §826
 - 11.1.33 Possession of burglar's tools or instruments facilitating theft. 11 **Del.C.** §828

- 11.1.34 Robbery in the second degree. 11 **Del.C.** §831
- 11.1.35 Robbery in the first degree. 11 **Del.C.** §832
- 11.1.36 Carjacking in the second degree. 11 **Del.C.** §835
- 11.1.37 Carjacking in the first degree. 11 **Del.C.** §836
- 11.1.38 Felony theft. 11 **Del.C.** §841
- 11.1.39 Theft; lost or mislaid property. 11 **Del.C.** §842
- 11.1.40 Theft; false pretense. 11 **Del.C.** §843
- 11.1.41 Extortion 11 **Del.C.** §846
- 11.1.42 Theft, extortion; claim of right as an affirmative defense. 11 **Del.C.** §847
- 11.1.43 Misapplication of property. 11 **Del.C.** §848
- 11.1.44 Use, possession manufacture, distribution and sale of unlawful telecommunication and access devices. 11 **Del.C.** §850
- 11.1.45 Receiving stolen property. 11 **Del.C.** §851
- 11.1.46 Identity theft. 11 **Del.C.** §854
- 11.1.47 Forgery. 11 **Del.C.** §861
- 11.1.48 Possession of forgery devices. 11 **Del.C.** §862
- 11.1.49 Falsifying business records. 11 **Del.C.** §871
- 11.1.50 Tampering with public records in the second degree. 11 **Del.C.** §873
- 11.1.51 Tampering with public records in the first degree. 11 **Del.C.** §876
- 11.1.52 Offering a false instrument for filing. 11 **Del.C.** §877
- 11.1.53 Issuing a false certificate. 11 **Del.C.** §878
- 11.1.54 Unlawful use of credit card. 11 **Del.C.** §903
- 11.1.55 Reencoder and scanning devices. 11 **Del.C.** §903A
- 11.1.56 Criminal impersonation, accident related. 11 **Del.C.** §907A
- 11.1.57 Criminal impersonation of a police officer. 11 **Del.C.** §907B
- 11.1.58 Unlawfully concealing a will. 11 **Del.C.** §908
- 11.1.59 Insurance fraud. 11 **Del.C.** §913
- 11.1.60 Use of consumer identification information. 11 **Del.C.** §914
- 11.1.61 Use of credit card information. 11 **Del.C.** §915
- 11.1.62 Unauthorized access. 11 **Del.C.** §932
- 11.1.63 Misuse of computer system information. 11 **Del.C.** §935
- 11.1.64 Endangering the welfare of a child. 11 **Del.C.** §1102
- 11.1.65 Sexual exploitation of a child. 11 **Del.C.** §1108
- 11.1.66 Unlawfully dealing in child pornography. 11 **Del.C.** §1109
- 11.1.67 Possession of child pornography. 11 **Del.C.** §1111
- 11.1.68 Sexual solicitation of a child. 11 **Del.C.** §1112A
- 11.1.69 Perjury in the second degree. 11 **Del.C.** §1222
- 11.1.70 Perjury in the first degree. 11 **Del.C.** §1223
- 11.1.71 Tampering with physical evidence. 11 **Del.C.** §1269
- 11.1.72 Hate crimes. 11 **Del.C.** §1304
- 11.1.73 Abusing a corpse. 11 **Del.C.** §1332
- 11.1.74 Trading in human remains and associated funerary objects. 11 **Del.C.** §1333
- 11.1.75 Adulteration. 11 **Del.C.** §1339
- 11.1.76 Desecration of a burial place. 11 **Del.C.** §1340
- 11.1.77 Act of intimidation. 11 **Del.C.** §3532
- 11.1.78 Aggravated act of intimidation. 11 **Del.C.** §3533
- 11.1.79 Attempt to intimidate. 11 **Del.C.** §3534.
- 11.1.80 Alteration, theft, or destruction of will. 12 **Del.C.** §210
- 11.1.81 Duty of driver involved in accident resulting in injury or death to any person. 21 **Del.C.** §4202
- 11.2 Crimes substantially related to the provision of Funeral Services shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

12.0 Standards for Advertising by Funeral Directors.

The Purpose of these standards is to protect the general public and to prohibit false, misleading, untrue or deceptive advertising practices by licensees.

12.1 Definitions

12.1.1 **"Advertise," "advertising," or "promotional medium"** means the use of printed media, radio, television, billboards, the internet, stationary, contracts, price lists, calendars, fans, novelty items, or any other advertising method or medium.

12.1.2 For the purposes of this rule, "funeral establishment" means any licensed place used in the care and preparation of human remains for funeral services.

12.2 General Rule

12.2.1 A licensee may not make or cause to be made an inaccurate or deceptive statement, representation, guaranty, warranty, testimonial or endorsement through advertising or promotional medium.

12.2.2 A licensee shall be accountable under this regulation if the licensee uses an agent or partnership to implement actions prohibited by this regulation.

12.2.3 A licensee who violates these regulations regarding advertising may be guilty of consumer fraud, deception, restraint of completion, or price fixing and may be disciplined pursuant to 24 Del.C. §3112(a)(5) and subjected to the disciplinary sanctions set forth in 24 Del.C. §3114.

12.3 Prohibitions

12.3.1 A licensee shall not use, publish or disseminate any false, misleading, untrue or deceptive advertising in any manner.

12.3.2 The contents of any advertising shall include the name of the funeral establishment, its address and its business phone number.

12.3.3 An advertisement shall not contain any representations that the licensee is willing to provide services which are illegal under the laws or regulations of the State of Delaware or the United States.

12.3.4 A licensee shall not engage in solicitation from a dying individual or the relatives of a dying individual other than through general advertising.

12.3.5 Any mention of fees in an advertisement shall disclose any relevant variables that would affect that fee so that the statement can not be misunderstood or deceptive to the general public.

16 DE Reg. 106 (07/01/12)

13.0 Cremation and Crematoriums

13.1 Definitions

"Certified Crematory Operator" means a natural person who has received official certification as a crematory operator from CANA, ICCFA or another officially recognized certification agency approved by the Board of Funeral Service.

"Cremated Human Remains/Cremains" means all particulate matter of a deceased human body following the cremation and subsequent mechanical pulverization of said remains.

"Cremation Process" means the procedure necessary to render a human remains to a particulate and ash consistency using extreme heat, cold, direct fire or any other type of thermal process.

"Cremator/Retort" means the mechanical combustion chamber in which cremation of a deceased human body takes place.

"Crematory/Crematorium" means a facility which houses the mechanical equipment and appurtenances used during the cremation of a deceased human body.

"Offsite crematory/crematorium" means a facility which houses the mechanical equipment and appurtenances used during the cremation of a deceased human body and is not located within the confines of a funeral establishment or adjacent to the funeral establishment.

"Onsite funeral home crematory/crematorium" means a facility which houses the mechanical equipment and appurtenances used in the cremation of a deceased human body when the facility is located within the confines of funeral establishment or adjacent to the funeral establishment.

13.2 Cremation

13.2.1 An identifying label, tag or other bracelet shall be used and placed on the decedent at the time of identification if one has not already been affixed at the time of transfer to the care of the funeral home. At the conclusion of cremation, a delivery receipt to the receiving party of the cremated remains shall be

- signed and maintained by the crematory/crematorium of record along with a copy of the formal identification of the decedent by the funeral home of record.
- 13.2.2 All portions of cremated remains shall have identification with the name of the decedent and name of the crematory performing cremation affixed to the outside of the vessel in some fashion as well as the inside of the vessel, with the exception of cremation jewelry. Labeling shall be present on the outside of the box or container holding the cremation jewelry.
- 13.2.3 A metal cremation identification disc shall be utilized in the cremation chamber and throughout the cremation process and shall be attached with the largest primary portion of cremated remains.
- 13.2.4 Unembalmed human remains may not be kept in a refrigerated state for more than seven calendar days unless medical/legal investigation requires further holding in such state or unless religious reasons demand further holding in such state.
- 13.2.5 No cremation of other than deceased human remains shall occur in any cremation chamber at any time nor shall any processing equipment be utilized for any other purposes other than for deceased human remains.
- 13.2.6 No cremation of more than one deceased human remains shall occur in any cremation chamber at any time.
- 13.2.7 Comingling of cremated remains shall only occur with formal written authorization by the legal next of kin.
- 13.2.8 Following cremation, the cremated human remains must be returned to the responsible party in a secure container or vessel of no less construction than that of a minimum metal material, ridged plastic material or heavy grade corrugated material. Any container, if used, or any type of cremation urn shall be clearly affixed with a label clearly identifying the contents, which shall include the name of decedent, date of passing, date of cremation, name of funeral home and name, address and phone number of the crematory of record.
- 13.2.9 All electronic and radio active devices or implants, including pacemakers, defibrillators or radioactive pain management seedings, shall be removed prior to cremation.
- 13.2.10 No funeral home licensed in this state shall publicize themselves as a crematorium or crematory unless they have said facility on premise or have a financial interest in a third party crematory.
- 13.2.11 All Authority to Cremate forms shall indicate the name and address of the cremation as well as the location of refrigeration of the decedent prior to cremation, if the time parameters require such refrigeration.
- 13.2.12 All crematories and crematoriums which are not part of a licensed funeral home operation must register with the Board of **Professional Licensing Funeral Services** for an official establishment permit. The establishment shall meet the requirements set forth by the Board of Funeral Services in their regulations. No viewing of decedents would be permitted at these types of crematories or crematoriums.
- 13.2.13 Crematories and Crematoriums which are part of a licensed funeral home operation and within its confines or on an adjacent property to the immediate funeral home facility would be considered an integral part of the operation and would not require separate registration with the Board. Such facility shall, however, be subject to inspection at the time of the funeral home inspection. The crematorium location shall be noted on the funeral home establishment permit at time of licensing or renewal.
- 13.2.14 Crematories and crematoriums shall have a certified crematory operator on the premises during the process of cremation.
- 13.2.15 Crematories and crematoriums shall abide by all regulations and rules put forth by any state or federal agency regarding emissions created from the act of cremation.
- 13.2.16 All individuals assisting in crematory or crematorium operations, and hired after the effective date of these regulations, must have a minimum of a GED.
- 13.2.17 Third party crematories and crematoriums shall not hold un-embalmed human remains after their delivery to their facility for a period longer than six hours prior to cremation unless the facility has the capability to storage in refrigeration on premises at a temperature not to exceed 38 degrees. Third party crematories and crematoriums may only hold in refrigeration those human remains which have been delivered to them along with all the necessary documentation for cremation for a period not to exceed 24 hours. Third party crematories and crematoriums are not a registered funeral home establishment; therefore, they shall not extend the services of being a depository for the process of refrigeration. The refrigeration system shall have its own secure locking system. The presence and location of refrigeration shall be noted on the Crematory Establishment License in the case of offsite crematory or the Funeral Home Establishment License in the case of onsite funeral home crematory.
- 13.2.18 No third party crematory may hold itself out to offer services direct to the public unless said facility meets all the requirements of a funeral establishment.

13.2.19 No members of the general public may permitted to witness the placement of a cremation container or casket into a cremation chamber unless the crematory of record has this procedure as a general company policy.

14.0 Inspections

14.1 Embalming areas shall include, at a minimum, the following:

- 14.1.1 A secure working lock on all doors and windows. Doors and windows should be covered in some fashion so as to not permit the visibility from outside of any areas inside the preparation room and shall close tightly;
- 14.1.2 An entrance door to the embalming room identified by a sign indicating that entry may be hazardous and only authorized personnel are permitted;
- 14.1.3 Floors, walls, ceilings, counters, and cabinets covered in an impervious material such as tile or finished in a coating that may be easily cleaned and disinfected;
- 14.1.4 Hot and cold running water along with drainage that meets all state and federal regulations;
- 14.1.5 Embalming and dressing tables in good, clean working order;
- 14.1.6 An area for storage of all embalming chemicals that is within the locked confines of the preparation area or, alternatively, a separate securely locked and identified closet;
- 14.1.7 Clearly labeled cabinets and drawers specifying their contents;
- 14.1.8 Ventilation according to OSHA standards in working order;
- 14.1.9 A copy of the most recent formaldehyde short and long term exposure rates;
- 14.1.10 A copy of the most recent hazardous waste disposal receipts shall be available for inspection;
- 14.1.11 A copy of the most recent Safety Data Sheets;
- 14.1.12 Hazardous waste containers and sharps containers with their locations noted;
- 14.1.13 A preparation room with a working embalming machine, embalming table, aspiration device, surgical instruments and embalming fluids customary for use during an embalming procedure;
- 14.1.14 Emergency eye wash and shower equipment must be present and in working order;
- 14.1.15 A minimum of 120 square feet;
- 14.1.16 If a refrigeration unit is on the premises, the refrigeration unit shall be in a clean and sanitary working condition secured with locks in order to prevent the entrance by anyone other than authorized personnel;
- 14.1.17 A first aid kit available near the embalming room.

4 DE Reg. 159 (07/01/00)

5 DE Reg. 606 (09/01/01)

8 DE Reg. 1285 (03/01/05)

9 DE Reg. 262 (08/01/05)

10 DE Reg. 1154 (01/01/07)

12 DE Reg. 1335 (04/01/09)

16 DE Reg. 106 (07/01/12)

16 DE Reg. 655 (12/01/12)

21 DE Reg. 338 (10/01/17)

21 DE Reg. 904 (05/01/18) (Final)