

# Notice of Agency Rule-making Proposal

**AGENCY:** Department of Professional and Financial Regulation, Office of Licensing and Registration, State Board of Funeral Service

**RULE TITLE OR SUBJECT:**

- Chapter 1 .....Definitions (amended)
- Chapter 2 .....Meetings and Officers of the Board (repealed)
- Chapter 2-A .....Advisory Rules (new)
- Chapter 3 .....Educational Requirements for Licensure (amended)
- Chapter 4 .....Examination and Application for Licensure as a Practitioner of Funeral Service (repealed)
- Chapter 5 .....Practitioner Trainees (amended)
- Chapter 6 .....Reciprocal Agreements (repealed)
- Chapter 6-A .....Pathways to Licensure as a Practitioner of Funeral Service (new)
- Chapter 7 .....Funeral Establishments (amended)
- Chapter 8 .....Health and Safety Standards (amended)
- Chapter 9 .....Complaints and Inspections (repealed)
- Chapter 10 .....General Rules / Scope of Practice (amended)
- Chapter 11 .....Annual Renewal; Continuing Education; Inactive Status (amended)
- Chapter 12 .....Transportation of Human Remains (amended)
- Chapter 13 .....Disinterment (amended)
- Chapter 14 .....Temporary Storage (amended)
- Chapter 15 .....Code of Ethics (amended)
- Chapter 16 .....Prearranged Funerals – Mortuary Trust Agreements (amended), including Guaranteed Service Mortuary Trust Agreement (amended), Credit for Service Mortuary Trust Agreement (amended) and Life Insurance Mortuary Trust Agreement (new)

**PROPOSED RULE NUMBER:**

(LEAVE BLANK - ASSIGNED BY SECRETARY OF STATE):

**CONCISE SUMMARY** (UNDERSTANDABLE BY AVERAGE CITIZEN):

This is a request for additional written comment on substantial changes to the proposed rules.

The proposed rules, among other subjects, regulate the creation and administration of mortuary trusts in Maine. The rules include standard mortuary trust agreements for each of the following types of mortuary trust: guaranteed service mortuary trusts, credit for service mortuary trusts and life insurance mortuary trusts. A funeral home may not enter into a mortuary trust agreement for performance in Maine unless the agreement substantially conforms to one of the standard agreements.

As a result of comments received earlier in this rulemaking proceeding, the board proposes to permit the purchase of guaranteed service mortuary trust agreements on an installment basis. Provisions relating to installment payments and the consequences of default have been added to Chapters 1 and 16 and the standard guaranteed service mortuary trust agreement. Also in response to comments, the board proposes to increase the maximum permissible fees that funeral homes may charge in connection with guaranteed service and credit for service mortuary trust agreements. The revised fee schedule appears in Chapter 16 and in the two forms of agreement. Chapter 16 now states that a mortuary trust agreement may be guaranteed by a third party.

The board has also made a variety of changes to other rule chapters and the standard agreements in response to comments. These include: (a) a revised definition of “authorized person” in Chapter 1(2); (b) removal of the statutory requirement for public display of an establishment license in Chapter 7, Section 3; (c) revised provisions relating to the transfer of human remains in Chapter 12; (d) a restatement of practitioners’ responsibility to respect and abide by the wishes of persons responsible for the deceased in Chapter 15; (e) elimination of the annual report requirement from the guaranteed service and credit for service mortuary trust agreements; (f) elimination of the final report requirement from the guaranteed service mortuary trust agreement; and (g) allowance of additional time for the production of mortuary trust records by funeral homes.

Because many of the rule chapters are inter-related, the board will accept additional written comment on the revised proposed rules in their entirety at this time. The text of the changes to the proposed rules and an explanation of the reasons for the changes are available on OLR’s web site or may be obtained from the agency contact person.

The statement of economic impact on small business required by 5 MRSA §8052(5-A) may be obtained from the agency contact person.

**THIS RULE WILL  WILL NOT  HAVE A FISCAL IMPACT ON MUNICIPALITIES.**

**STATUTORY AUTHORITY:** 5 MRSA §§8051 and 9001(4); 32 MRSA §§1401(2), 1451, 1501 and 1506

**PUBLIC HEARING):**

(IF ANY, GIVE DATE, TIME, LOCATION)

None

**DEADLINE FOR COMMENTS:** August 21, 2009

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**PROPOSED RULE AVAILABLE ON LINE AT:** [www.maine.gov/professionallicensing](http://www.maine.gov/professionallicensing)

**Board of Funeral Service  
Re-Advertised Proposed Rules  
July 14, 2009 Draft**

**Table of Contents**

<b>CHAPTER 1</b>	<b>DEFINITIONS .....</b>	<b>1</b>
1.	DEFINITIONS .....	1
<b>CHAPTER 2</b>	<b><del>MEETINGS AND OFFICERS OF THE BOARD</del> .....</b>	<b>5</b>
<b>CHAPTER 2-A</b>	<b>ADVISORY RULINGS .....</b>	<b>6</b>
1.	REQUEST AND CONSIDERATION .....	6
2.	RESPONSE .....	6
<b>CHAPTER 3</b>	<b>EDUCATIONAL REQUIREMENTS FOR LICENSURE .....</b>	<b>7</b>
1.	SCOPE OF SUBCHAPTER 1 .....	7
2.	ELIGIBILITY FOR LICENSURE .....	7
3.	SCOPE OF SUBCHAPTER 2 .....	8
<b>CHAPTER 4</b>	<b><del>EXAMINATION AND APPLICATION FOR LICENSURE AS A PRACTITIONER OF FUNERAL SERVICE</del> .....</b>	<b>9</b>
<b>CHAPTER 5</b>	<b>PRACTITIONER TRAINEES .....</b>	<b>11</b>
1.	TRAINEE EXPERIENCE IN ANOTHER JURISDICTION .....	11
2.	APPLICATION .....	11
3.	APPRENTICESHIP AGREEMENT .....	12
4.	TERMINATION OR CHANGE OF EMPLOYMENT .....	12
1.	<i>Notice From Practitioner Trainee; New Agreement Required</i> .....	12
2.	<i>Notice From Supervising Licensed Practitioner</i> .....	12
5.	REQUIRED NUMBER OF HOURS .....	12
6.	DURATION OF TRAINEESHIP .....	12
1.	<i>For Persons Registered Prior to Effective Date of New Amendments</i> .....	12
2.	<i>For Persons Registered On or After Effective Date of New Amendments</i> .....	13
7.	CERTIFICATE OF COMPLETION .....	13
8.	APPLICATION FOR LICENSURE .....	13
9.	NO SUBSEQUENT WORK AS TRAINEE .....	13
10.	ALTERNATE RECOGNITION PROCESS FOR TRAINEESHIP OR APPRENTICESHIP COMPLETED IN ANOTHER JURISDICTION .....	13
<b>CHAPTER 6</b>	<b><del>RECIPROCAL AGREEMENTS</del> .....</b>	<b>15</b>
<b>CHAPTER 6-A</b>	<b>PATHWAYS TO LICENSURE AS A PRACTITIONER OF FUNERAL SERVICE .....</b>	<b>17</b>
1.	PATHWAYS TO LICENSURE .....	17
1.	<i>Pathway 1: Initial Licensure</i> .....	17
2.	<i>Pathway 2: Licensure in Another State</i> .....	17
2.	PATHWAY 1: INITIAL LICENSURE .....	17
1.	<i>Application and Fees; Passing Score on National Board Examination</i> .....	17
2.	<i>State Law and Rule Examination; Practical Examination</i> .....	18
3.	PATHWAY 2: LICENSURE IN ANOTHER STATE .....	19
1.	<i>Application and Fees; License Verification</i> .....	19
2.	<i>State Law and Rule Examination</i> .....	19
<b>CHAPTER 7</b>	<b>FUNERAL ESTABLISHMENTS .....</b>	<b>21</b>

1.	LICENSURE.....	21
2.	APPLICATION FOR LICENSURE.....	21
3.	ISSUANCE OF LICENSE.....	21
4.	INSPECTION.....	21
5.	UNAVAILABILITY OF LICENSEE IN CHARGE.....	22
6.	PROCEDURES UPON CHANGE OF OWNERSHIP.....	22
<b>CHAPTER 8 SAFETY AND HEALTH STANDARDS.....</b>		<b>24</b>
1.	PREPARATION ROOM.....	24
2.	BIOMEDICAL WASTES.....	24
3.	CLEANLINESS AND SANITATION.....	25
4.	FACILITIES AND EQUIPMENT.....	25
5.	GOWN OR SMOCK; GLOVES.....	25
6.	CLEANING AND DISINFECTING.....	25
7.	VENTILATION.....	26
8.	PROTECTION OF POTABLE WATER.....	26
<del>CHAPTER 9 COMPLAINTS AND INSPECTIONS.....</del>		<del>27</del>
<b>CHAPTER 10 GENERAL RULES / SCOPE OF PRACTICE.....</b>		<b>28</b>
1.	HAIRDRESSING AND COSMETOLOGY.....	28
2.	EMBALMING.....	28
3.	FUNERAL DIRECTORS.....	28
4.	FUNERAL ATTENDANTS.....	29
1.	<i>Funeral attendants may:</i> .....	29
2.	<i>Funeral attendants may not:</i> .....	29
3.	<i>Supervision, Training and Licensure of Funeral Attendants</i> .....	29
4.	<i>Termination of Employment, Change of Supervisor or Change of Employment</i> .....	29
7.	FTC FUNERAL RULE.....	30
8.	DISCLOSURE OF OWNERSHIP INTEREST.....	30
10.	COST AND AVAILABILITY OF RENTAL CASKETS.....	30
<b>CHAPTER 11 ANNUAL RENEWAL; CONTINUING EDUCATION ;INACTIVE STATUS.....</b>		<b>32</b>
1.	ANNUAL RENEWAL; CONTINUING EDUCATION.....	32
2.	REQUIRED HOURS.....	32
1.	<i>Practitioners of Funeral Service and Funeral Directors</i> .....	32
2.	<i>Funeral Attendants</i> .....	32
3.	HARDSHIP DEFERMENT.....	33
4.	APPROVED CONTINUING EDUCATION ACTIVITIES.....	33
5.	APPROVAL OF CONTINUING EDUCATION ACTIVITIES.....	34
1.	<i>Activities Deemed Approved</i> .....	34
2.	<i>Application for Approval by Sponsor</i> .....	35
3.	<i>Application for Approval by Licensee</i> .....	35
6.	DOCUMENTATION AND AUDIT.....	35
7.	INACTIVE STATUS LICENSURE.....	36
1.	<i>Application and Renewal</i> .....	36
2.	<i>Prohibition Against Practice</i> .....	36
3.	<i>Continuing Education</i> .....	36
4.	<i>Renewal of Inactive Status License</i> .....	36
5.	<i>Reinstatement to Active Status</i> .....	36
<b>CHAPTER 12 TRANSPORTATION OF HUMAN REMAINS.....</b>		<b>38</b>
1.	GENERALLY.....	38
2.	VEHICLES OWNED OR LEASED BY FUNERAL ESTABLISHMENT OR PRACTITIONER.....	38
3.	TRANSPORTATION OF UNEMBALMED OR DECOMPOSING REMAINS BY COMMON CARRIER.....	38
<b>CHAPTER 13 DISINTERMENT.....</b>		<b>40</b>

1.	GENERALLY .....	40
2.	TRANSPORTATION OF DISINTERRED HUMAN REMAINS .....	40
<b>CHAPTER 14 TEMPORARY STORAGE .....</b>		<b>41</b>
1.	LESS THAN EIGHT MONTHS .....	41
2.	EIGHT MONTHS OR LONGER.....	41
3.	TRANSPORTATION OF HUMAN REMAINS REMOVED FROM TEMPORARY STORAGE .....	41
4.	UNEMBALMED HUMAN REMAINS.....	41
<b>CHAPTER 15 CODE OF ETHICS.....</b>		<b>43</b>
1.	ACCURATE AND PRECISE INFORMATION .....	43
2.	STANDARD OF TOTAL HONESTY .....	43
3.	RESPECT ALL FAITHS, CUSTOMS AND CREEDS .....	43
4.	HANDLING AND PREPARATION OF HUMAN REMAINS .....	43
5.	RESPECT, DIGNITY AND COURTESY .....	43
6.	WISHES AND RESPECTS OF PERSONS RESPONSIBLE FOR THE DECEASED.....	43
<b>CHAPTER 16 PREARRANGED FUNERALS – MORTUARY TRUST AGREEMENTS.....</b>		<b>45</b>
1.	CREATION OF MORTUARY TRUST .....	45
2.	EXCLUSIVE FORMS FOR MAINE MORTUARY TRUST AGREEMENTS .....	45
1.	<i>Maine Mortuary Trust Agreement – Credit For Service</i> .....	45
2.	<i>Maine Mortuary Trust Agreement – Guaranteed Service</i> .....	46
3.	<i>Maine Mortuary Trust Agreement – Life Insurance</i> .....	47
3.	SUBSTANTIAL CONFORMANCE .....	47
4.	MINIMUM TYPE SIZE.....	47
5.	SELECTION OF GOODS AND SERVICES MANDATORY IN GUARANTEED SERVICE MORTUARY TRUST .....	47
6.	FEEES.....	48
1.	<i>Life Insurance Mortuary Trust Agreements</i> .....	48
2.	<i>Guaranteed Service Mortuary Trust Agreements; Credit for Service Mortuary Trust Agreements Other Than Life Insurance Mortuary Trust Agreements</i> .....	48
7.	INSPECTION OF RECORDS .....	48
8.	SALE OR TRANSFER OF FUNERAL HOME .....	49
9.	NOTICE OF CHANGE OF TRUSTEE UPON CHANGE OF OWNERSHIP .....	49
	<i>Within thirty (30) days after a change of ownership as defined in Chapter 1, Section 4-A of the board's rules, the new owner, or the funeral home,</i> .....	49
10.	EFFECTIVE DATE.....	50

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

331 MAINE STATE BOARD OF FUNERAL SERVICE

Chapter 1 DEFINITIONS

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SUMMARY: This Chapter sets forth definitions of terms used in the rules of the State Board of Funeral Service.

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1. Definitions

1. Alternative ~~Container~~container. “Alternative container” means an unfinished wood box or other non-metal receptacle without ornamentation or a fixed interior lining, often made of fiberboard, pressed wood or composition materials, ~~and generally lower in cost than easkets~~which is designed for the encasement of human remains.

2. Authorized ~~Person~~person. “Authorized person,” ~~means any person as~~ defined in 22 MRSA §2846 and referenced in 22 MRSA §2843, means other than a practitioner of funeral service a member of the immediate family of the deceased, the domestic partner of the deceased, a person authorized in writing by a member of the immediate family of the deceased if no member of the immediate family of the deceased wishes to assume the responsibility or by the domestic partner of the deceased if the domestic partner does not wish to assume the responsibility or, in the absence of immediate family or a known domestic partner, a person authorized in writing by the deceased. For purposes of the board’s rules, “domestic partner” has the definition set forth in 22 MRSA §2843-A(1)(D)(1-A).

~~3. Board. “Board” means the State Board of Funeral Service, as defined in 32 MRSA §1451.~~

~~3-A. Branch. “Branch” means a chapel, sales office or other facility utilized by a funeral establishment for any aspect of the practice of funeral service whether or not the embalming or preparation of human remains takes place on the premises.~~

4. Casket. “Casket” means a rigid container which is designed for the encasement of human remains and which is usually constructed of wood, wicker, metal, fiberglass, plastic, or like material, and ornamented and lined with fabric.

~~4-A. Change of ownership. “Change of ownership” means the sale or transfer of the entire ownership of a funeral home.~~

~~4-B. Credit for service. “Credit for service” refers to a mortuary trust agreement in which the mortuary trust proceeds are applied to the cost of funeral goods and services selected, but are not guaranteed by the funeral home to cover those costs in full.~~

[NOTE: For a more complete explanation of a credit for service mortuary trust agreement, see Chapter 16, Section 2(1) of the board's rules.]

5. Embalming. “Embalming” means the injection, both arterially and into the body cavities, of an amount of approved embalming fluid at least the equivalent of 10% of the body weight. An approved embalming fluid shall have disinfecting capacities at least the equivalent of 5% of formaldehyde gas when diluted in accordance with the manufacturer’s specifications.

6. Funeral ~~Attendant~~attendant. “Funeral attendant” means ~~any-a~~ any person who is ~~employed part or full-time in funeral service, is engaged in transporting human remains and is not licensed under this chapter~~ licensed to perform the duties described in Chapter 10, §4 of the board’s rules under the supervision of a practitioner of funeral service.

7. Funeral ~~Director~~director. “Funeral director” means a person engaged in the practice of funeral ~~service directing~~ service directing as presently known, whether under the title of “funeral director,” “mortician,” “undertaker” or otherwise.

7-A. Guaranteed service. “Guaranteed service” refers to a mortuary trust agreement in which the funeral home guarantees to provide the funeral goods and services selected for a fixed price set forth in the agreement, with the possible exception of cash advance items.

[NOTE: For a more complete explanation of a guaranteed service mortuary trust agreement, see Chapter 16, Section 2(2) of the board’s rules.]

8. Human ~~Remains~~remains. “Human remains” means a deceased person or any part thereof.

9. Licensee in charge. “Licensee in charge” means the practitioner of funeral service who is in charge of a funeral establishment.

9-A. Maine Apprenticeship Program. “Maine Apprenticeship Program” means the Maine Apprenticeship Program administered by the Department of Labor, Bureau of Employment Services.

10. National ~~Conference-Board~~ Examination. “National ~~Conference-Board~~ Examination” means the examination administered ~~by the International Conference of Funeral Service Examining Boards, Inc. and which is~~ and graded by the International Conference of Funeral Service Examining Boards, Inc. or a successor or other organization approved by the board.

10-A. Payee. “Payee” means the funeral home that serves as trustee of a credit for service or guaranteed price mortuary trust created by a mortuary trust agreement. The funeral home may be an individual, firm, association, partnership or corporation.

10-B. Payor. “Payor” means the person who funds a credit for service or guaranteed service mortuary trust, or the duly appointed legal representative of such person.

11. Practical ~~Examination~~examination. “Practical ~~Examination~~examination” means actual embalming of human remains by an applicant in the presence of a member of the ~~Board~~board who is a practitioner of funeral service.

12. Practitioner of ~~Funeral Service~~funeral service. “Practitioner of funeral service” means any person engaged in the practice of funeral service as defined in 32 MRSA §1400(5), including but not limited to embalmers and funeral directors, whether self-employed or employed by others.

12-A. Practitioner trainee. “Practitioner trainee,” as defined in 32 MRSA §1400(6), means a person licensed by the board for the purpose of acquiring supervised practice experience within the Maine Apprenticeship Program.

~~13. Registered Apprenticeship Division. “Registered Apprenticeship Division” means the Department of Labor, Bureau of Employment Services, Registered Apprenticeship Division.~~

13-A. Settlor. “Settlor” means the person who creates a mortuary trust funded by an existing life insurance policy as described in Chapter 16, §2(3) of the Board’s rules.

14. State Law and Rule Examination. “State Law and Rule Examination” means the written examination on the State laws and rules promulgated by the Board relating to the practice of funeral service in the State of Maine.

STATUTORY AUTHORITY: 32 M.R.S.A §§1451 and 1501

EFFECTIVE DATE:

December 20, 1979 - under the title "Rules of Maine State Board of Funeral Service," amended Sections 8 and 12

READOPTED:

December 28, 1979 - as "Rules of Maine State Board of Funeral Service"

AMENDED:

November 23, 1981

REPEALED AND REPLACED:

April 3, 1990 - as "Definitions." Other subject matter split off into separate chapters.

AMENDED:

March 1, 1997

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 18, 1997

REPEALED AND REPLACED:

October 29, 2001

NON-SUBSTANTIVE CORRECTIONS:

March 29, 2004 - character spacing only

~~02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION~~

~~331 MAINE STATE BOARD OF FUNERAL SERVICE~~

~~Chapter 2 MEETINGS AND OFFICERS OF THE BOARD~~

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~~SUMMARY: This Chapter describes the meeting procedures and officers of the Board.~~

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- ~~1. Special meetings of the Board may be called by the Chair, or by a majority of the Board members, provided that written notice shall be mailed to all members of the Board at least seventy two (72) hours before the scheduled time of meeting.~~
  - ~~2. The Board shall elect on an annual basis, by majority vote, a Chair and Vice Chair. Both officers shall serve a term of one year and may be re-elected.~~
  - ~~3. The Chair shall preside at all regular and special meetings. In the absence of the Chair, the Vice Chair shall act as Chair.~~
- 

STATUTORY AUTHORITY: 32 M.R..SA. §§1451 and 1501

EFFECTIVE DATE:

April 3, 1990 - as a Chapter entitled "Meetings of the Board." Previously the subject matter was Section 2 of Chapter 1.

AMENDED:

March 1, 1997

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 18, 1997

REPEALED AND REPLACED:

October 29, 2001 - as "Meetings and Officers of the Board"

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02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

331 MAINE STATE BOARD OF FUNERAL SERVICE

Chapter 2-A ADVISORY RULINGS

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SUMMARY: This chapter provides for the discretionary issuance of advisory rulings by the board.

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1. Request and Consideration

Upon written request of any interested person, the board may issue an advisory ruling pursuant to 5 M.R.S.A. §9001 with respect to the applicability of any statute or rule it administers. Requests for advisory rulings must set forth in detail all facts pertinent to the question. The board may decline to issue an advisory ruling if the question is hypothetical, if there is insufficient information upon which to base a ruling, or for any other reason the board deems proper.

2. Response

The board shall acknowledge receipt of a request for an advisory ruling within 15 days after receipt. The board shall respond to every written request for an advisory ruling within 90 days of its receipt of the request, indicating whether or not a ruling will be issued by the board.

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STATUTORY AUTHORITY: 5 M.R.S.A. §§ 8051, 9001(4)

EFFECTIVE DATE:

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

331 MAINE STATE BOARD OF FUNERAL SERVICE

Chapter 3 EDUCATIONAL REQUIREMENTS FOR LICENSURE

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SUMMARY: This chapter sets forth the educational requirements for licensure as a practitioner of funeral service.

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**Subchapter 1 (Associate or higher degree in funeral service optional)**

**1. Scope of subchapter 1**

This subchapter applies to:

1. A person who is a registered practitioner trainee as of the effective date of this amendment; and

2. Any other person who files a complete application for licensure as a practitioner of funeral service prior to March 1, 2011.

**2. Requirements-Eligibility** for licensure

To be eligible for licensure as a practitioner of funeral service, an applicant for initial licensure shall meet all requirements set forth in 32 MRSA §1501 and shall satisfy the educational requirements of either ~~Section 2 or Section 3~~subsection 1 or subsection 2 below.

1. Receipt of an Associate Degree or higher from a ~~two-year~~ college of mortuary science accredited by the American Board of Funeral Service Education or a successor or other organization approved by the board, ~~or~~

OR

2.

A. Successful completion of at least fifty (50) credit hours of study at a college of mortuary science accredited by the American Board of Funeral Service Education or a successor or other organization approved by the board, and

B. Successful completion of a sufficient number of college semester credit hours to entitle the applicant to admission as a member in good standing of the second year class of any college or university approved by a recognized accrediting authority, ~~provided, however, that such college~~

~~credits shall include courses in each of the following general areas of study:~~

~~(1)English;~~

~~(2)physical science;~~

~~(3)economics;~~

~~(4)sociology;~~

~~(5)public speaking; and~~

~~(6)contemporary religion or philosophy.~~

### **Subchapter 2 (Associate or higher degree in funeral service required)**

#### **3. Scope of subchapter 2**

This subchapter applies to a person who files a complete application for licensure as a practitioner of funeral service on or after March 1, 2011 other than a person who is a registered practitioner trainee as of the effective date of this amendment.

1. To be eligible for licensure as a practitioner of funeral service, an applicant shall have an Associate Degree or higher from a program in funeral service accredited by the American Board of Funeral Service Education or a successor or other organization approved by the board.

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STATUTORY AUTHORITY: 32 M.R.S.A. §§ 1451 and 1501

EFFECTIVE DATE:

April 3, 1990 - as a Chapter entitled "Educational Requirements." Previously the subject matter was Section 3 of Chapter 1.

AMENDED:

March 1, 1997

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 18, 1997

REPEALED AND REPLACED:

October 29, 2001

~~02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION~~

~~331 MAINE STATE BOARD OF FUNERAL SERVICE~~

~~Chapter 4 EXAMINATION AND APPLICATION FOR LICENSURE AS A  
PRACTITIONER OF FUNERAL SERVICE~~

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~~SUMMARY: This Chapter outlines the type of examinations administered and other specific information pertaining to the examination and application process for persons applying for licensure as a practitioner of funeral service.~~

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- ~~1. Application for examination and licensure as a practitioner of funeral service shall be made on a form provided by the Board. The applicant shall submit with the application:
  - ~~A. Academic transcripts showing satisfaction of the educational requirements contained in Chapter 3,~~
  - ~~B. A certificate of completion from the Registered Apprenticeship Division, as described in Chapter 5, §7,~~
  - ~~C. Documentation that the applicant has attained a minimum passing score of 75% on each of the major sections of the National Conference Examination (or its equivalent as determined by the Board), and~~
  - ~~D. The required license and examination fees.~~

~~A passing score on a major section of the National Conference Examination (or its equivalent) shall be recognized by the Board for the two year period following the date of the examination.~~~~
- ~~2. A person whose application has been approved by the Board shall appear before a member of the Board at a time and place designated by the Board for the purpose of taking the State Law and Rule Examination and the Practical Examination. If an applicant has a handicapping condition which would interfere with the ability to take either examination, the applicant may submit verification of the handicapping condition to the Board and request an alternative examination.~~
- ~~3. The minimum passing score on the State Law and Rule Examination and the Practical Examination is 75%. The Board shall notify an applicant in writing of the applicant's scores within thirty (30) days of an examination. A license shall be issued to an approved applicant who passes both examinations. A passing score on the State Law and Rule Examination or the Practical Examination shall be recognized by the Board for the two-year period following the date of the examination.~~

4. ~~An applicant who fails the State Law and Rule Examination or the Practical Examination may re take the examination following submission of a new application and examination fee to the Board. (The original license fee need not be repaid.)~~
  5. ~~An otherwise eligible applicant less than 18 years of age who has satisfied the educational requirements contained in Chapter 3 may take the required examinations. If the applicant successfully passes, the license shall issue once the applicant has attained the age of 18.~~
  6. ~~All written examination questions shall be the property of the Board, and must be returned to the Board by the Board member who conducted the examination. Completed examinations shall not leave the Board Office and may not be reviewed except by office staff and members of the Board.~~
- 

STATUTORY AUTHORITY: 32 M.R.S.A. §§ 1451 and 1501

EFFECTIVE DATE:

April 3, 1990 - as a Chapter entitled "Examination." Previously the subject matter was Section 4 of Chapter 1.

AMENDED:

March 1, 1997

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 18, 1997

REPEALED AND REPLACED:

October 29, 2001 - as "Examination and Application for Licensure as a Practitioner of Funeral Service"

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

331 MAINE STATE BOARD OF FUNERAL SERVICE

Chapter 5 PRACTITIONER TRAINEES

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SUMMARY: This chapter describes the 2000-hour ~~apprenticeship-traineeship~~ to be completed by practitioner trainees through the ~~Registered Apprenticeship Division~~ Maine Apprenticeship Program prior to application for licensure as a practitioner of funeral service.

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### 1. Trainee Experience in Another Jurisdiction

Upon receiving from the applicant proof of ~~documentation of~~ licensure as a practitioner trainee ~~/ or~~ apprentice in another jurisdiction, the ~~Board~~ board may accept the determination made by the ~~Registered Apprenticeship Division~~ Maine Apprenticeship Program with respect to any partial or complete ~~waiver or acceptance of job training~~ recognition of the hours completed in the other jurisdiction.

### 2. Application

Application for ~~registration~~ licensure as a practitioner trainee ~~shall~~ must be made on a form provided by the ~~Board~~ board. The applicant shall submit the ~~required~~ fee required by Chapter 10, Section 5(18) of the rules of the Office of Licensing and Registration, entitled "Establishment of License Fees," with the application. The ~~Board~~ board shall approve the applications of qualified applicants and shall forward the names of the qualified applicants to the ~~Registered Apprenticeship Division~~ Maine Apprenticeship Program.

~~Prior to the start of the apprenticeship, the practitioner trainee shall appear before a member of the Board for an interview. The interview is not part of the application process and will have no effect on the application. The purposes of this interview are:~~

- ~~•To assure that the applicant understands the Board's basic requirements of licensure~~
- ~~•To assure that the applicant understands the program requirements of the Registered Apprenticeship Division for funeral service trainees~~
- ~~•To assure that the applicant understands the Board's expectations of trainees~~
- ~~•To discuss the applicant's background and the applicant's expectations of the training program and eventual licensure as a practitioner of funeral service.~~

### 3. Apprenticeship Agreement

Before the practitioner trainee enrolls with the ~~Registered Apprenticeship Division~~Maine Apprenticeship Program, the trainee and the ~~funeral home where the apprenticeship is to take place~~licensed practitioner who will be supervising the trainee shall agree to follow the requirements of the ~~Division~~division and the requirements of the ~~Board~~board. The purpose of this agreement is to ensure that proper training is accomplished and that proper documentation of the training is created.

### 4. Termination or Change of Employment

#### 1. Notice From Practitioner Trainee; New Agreement Required

~~When a practitioner trainee changes his/her current place of employment, the practitioner trainee shall notify the Board in writing within fifteen (15) business days of the name and location of the new funeral home and the responsible licensed practitioner. A practitioner trainee shall notify the board in writing of any termination or change of employment within ten (10) days of the termination or change. Notice of a change of employment must include the name and address of the new funeral home and the name of the new supervising practitioner. The new supervising practitioner must enter into the agreement required by Section 3 of this chapter prior to the accrual of any training hours recognizable under Section 5 of this chapter.~~

#### 2. Notice From Supervising Licensed Practitioner

~~A supervising licensed practitioner shall notify the board in writing of any termination or change of employment of a practitioner trainee under the practitioner's supervision within ten (10) days of the termination or change.~~

### 5. Required Number of Hours

Each practitioner trainee ~~must~~shall ~~serve successfully complete~~ an apprenticeship of 2,000 on-the-job training hours at a licensed establishment. ~~The Board~~board will not recognize training hours that were earned prior to or outside of the trainee's enrollment with the ~~Registered Apprenticeship Division~~Maine Apprenticeship Program, except as described in Sections 1 and 10 of this chapter; nor will the ~~Board~~board recognize training hours earned in any branch of military service. ~~Effective January 1, 2002, the practitioner traineeship shall not be less than one (1) year nor greater than eight (8) years in duration, and must be successfully completed. Application for licensure as a practitioner of funeral service must be made within five (5) years following the completion of apprenticeship training; after five (5) years, the traineeship will no longer be recognized.~~

### 6. Duration of Traineeship

#### 1. For Persons Registered Prior to Effective Date of New Amendments

For persons initially registered as practitioner trainees between January 1, 2002 and the day prior to the effective date of these amendments, the traineeship may not be less than one (1) year nor greater than eight (8) years in duration.

2. For Persons Registered On or After Effective Date of New Amendments

For persons initially registered as practitioner trainees on or after the effective date of these amendments, the traineeship may not be less than one (1) year nor greater than four (4) years in duration, except that the board may extend the duration of the traineeship in the event of unforeseeable circumstances of genuine hardship.

7. Certificate of Completion

The practitioner trainee shall request a certificate of completion from the Maine Apprenticeship Program upon successful completion of the traineeship. The Maine Apprenticeship Program shall send documentation of completion to the board.

8. Application for Licensure

Application for licensure as a practitioner of funeral service must be made within five (5) years following the completion of apprenticeship training; after five (5) years, the traineeship will not be recognized.

9. No Subsequent Work as Trainee

A person may not work as a practitioner trainee following successful completion of a traineeship.

10. Alternate Recognition Process for Traineeship or Apprenticeship Completed in Another Jurisdiction

In lieu of a traineeship completed under the auspices of the Maine Apprenticeship Program, and in the absence of a determination from the Maine Apprenticeship Program pursuant to Section 1 of this chapter, the Board may recognize a traineeship completed in another jurisdiction upon demonstration by the applicant, and submission of such documents as the board may require, that the completed traineeship was substantially similar in nature to the traineeship described in this chapter. The hours, duration and recency provisions of this chapter apply to any such traineeship. The applicant is responsible for corroborating the number of hours served. Recognition by the board substitutes for the certificate of completion described in Section 7 of this chapter and required for licensure by Chapter 6-A, Section 2(1)(B) of the board's rules.

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STATUTORY AUTHORITY: 32 M.R.S.A. §§ 1451 and 1501

EFFECTIVE DATE:

April 3, 1990 - as a Chapter entitled "Practitioner Trainee." Previously the subject matter was Section 5 of Chapter 1.

**AMENDED:**

March 1, 1997

**EFFECTIVE DATE (ELECTRONIC CONVERSION):**

March 18, 1997

**REPEALED AND REPLACED:**

October 29, 2001 - as "Practitioner Trainees"

~~02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION~~

~~331 MAINE STATE BOARD OF FUNERAL SERVICE~~

~~Chapter 6 RECIPROCAL AGREEMENTS~~

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~~SUMMARY: This Chapter describes procedures and requirements for licensure by reciprocal agreement.~~

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- ~~1. The Board may, issue a reciprocal license for the practice of funeral service to a practitioner who is licensed in good standing in another jurisdiction. For purposes of this Chapter, an applicant for reciprocal licensure is licensed in good standing when:
  - ~~A. There are no pending or tabled investigations or disciplinary proceedings arising from the applicant's practice of funeral service in any jurisdiction where the applicant was ever licensed as a practitioner;~~
  - ~~B. The applicant's practice of funeral service is not under suspension, probation, supervision, or consultation or subject to any restrictions or limitations in any jurisdiction where the applicant was ever licensed as a practitioner;~~
  - ~~C. There are no outstanding sanctions against the applicant from closed disciplinary proceedings, regardless of whether such sanctions were contained in a consent agreement/consent order or an adjudicated decision or order; and~~
  - ~~D. The applicant does not present a history or pattern of disciplinary violations or other behavior sufficient to call into question the applicant's character, competence or fitness to practice.~~~~
- ~~2. An applicant for reciprocal licensure shall submit the following to the Board:
  - ~~A. Completed application form;~~
  - ~~B. The required license and examination fees;~~
  - ~~C. Proof that the applicant has been in active practice as a licensed practitioner of funeral service or its equivalent in another jurisdiction for at least the three (3) year period immediately preceding application in Maine, or has received the license from the other jurisdiction by meeting requirements substantially equivalent to those applicable in Maine;~~
  - ~~D. Verification of licensure status from any jurisdiction where the applicant is or previously has been licensed; and~~~~

- ~~E. Two letters of recommendation from licensed practitioners of funeral service in the applicant's home jurisdiction.~~
  - ~~3. Upon approval of the application by the Board, the applicant shall be required to take the State Law and Rule Examination and achieve a minimum passing score of 75%. A license shall be issued to an approved applicant who passes the examination.~~
- 

STATUTORY AUTHORITY: 32 M.R.S.A. §§1451 and 1501

EFFECTIVE DATE:

April 3, 1990 - as a Chapter entitled "Reciprocity." Previously the subject matter was Section 6 of Chapter 1.

AMENDED:

March 1, 1997

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 18, 1997

REPEALED AND REPLACED:

October 29, 2001 - as "Reciprocal Requirements"

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION331 MAINE STATE BOARD OF FUNERAL SERVICEChapter 6-A PATHWAYS TO LICENSURE AS A PRACTITIONER OF FUNERAL SERVICE

SUMMARY: This chapter sets forth the pathways to licensure as a practitioner of funeral service.

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1. Pathways to Licensure

Applicants may qualify for licensure as a practitioner of funeral service in either of two ways:

1. Pathway 1: Initial Licensure

- A. Completing the education requirement contained in Chapter 3 of the board's rules;
- B. Completing a practice traineeship or its equivalent as described in Chapter 5 of the board's rules; and
- C. Achieving passing scores on the National Board Examination, State Law and Rule Examination, and Practical Examination as described in Section 2 of this chapter.

OR

2. Pathway 2: Licensure in Another State

- A. Licensure in another state, as described in Section 3(1) of this chapter; and
- B. Achieving a passing score on the State Law and Rule Examination, as described in Section 3(2) of this chapter.

2. Pathway 1: Initial Licensure1. Application and Fees; Passing Score on National Board Examination

Application for examination and licensure as a practitioner of funeral service must be made on forms provided by the board. The applicant shall submit with the application:

- A. Academic transcripts showing satisfaction of the educational requirements contained in Chapter 3 of the board's rules;

- B. A certificate of completion from the Maine Apprenticeship Program, as described in Chapter 5, Section 7 of the board's rules, including acceptance or recognition of trainee hours completed in another jurisdiction pursuant to Chapter 5, Sections 1 and 10 of the board's rules;
- C. Documentation that the applicant has attained a minimum passing score of 75% on each of the major sections of the National Board Examination, or its successor or equivalent; and
- D. The license and examination fees required by Chapter 10, Section 5(18) of the rules of the Office of Licensing and Registration, entitled "Establishment of License Fees."

All applications must be complete. Incomplete applications may be discarded by the board after one year from the date of the initial submission.

## 2. State Law and Rule Examination; Practical Examination

A person whose application has been approved by the board shall appear before a member of the board at a time and place designated by the board for the purpose of taking the Practical Examination. If an applicant has a handicapping condition which would interfere with the ability to take either examination, the applicant may submit verification of the handicapping condition to the board and request an alternative examination.

~~[NOTE: The State Law and Rule Examination is currently a paper and pencil test administered by the board at its office in Gardiner. The board may adopt a computer-based format for this examination in the future.]~~

An applicant shall achieve passing scores on the State Law and Rule Examination and the Practical Examination within one year from the date that the applicant's application was approved by the board. An applicant who fails an examination may re-take the examination following re-payment of the ~~combined~~ examination fee. The original license fee need not be repaid.

The minimum passing score on the State Law and Rule Examination and the Practical Examination is 75% on each. The board shall notify an applicant in writing of the applicant's scores within thirty (30) days of an examination. A license may be issued to an approved applicant who passes both examinations. A passing score on the State Law and Rule Examination or the Practical Examination will be recognized by the board for the two-year period following the date of the examination.

An otherwise-eligible applicant less than 18 years of age who has satisfied the educational requirements contained in Chapter 3 may take the required examinations. If the applicant passes the examinations, the license shall issue once the applicant attains the age of 18.

### 3. Pathway 2: Licensure in Another State

#### 1. Application and Fees; License Verification

Application for licensure as a practitioner of funeral service must be made on forms provided by the board. The applicant shall submit with the application:

##### A. Proof that the applicant –

(1) Has been in continuous active practice as a licensed practitioner of funeral service of another state for the 3-year period immediately preceding submission of the application to the board; or

(2) Holds an active license to practice funeral service from another state that was obtained on the basis of license requirements that are substantially similar to the requirements of Maine law and these rules of the board.

B. Verification of licensure status and disciplinary history from every jurisdiction where the applicant is or previously has been licensed;

C. Two letters of recommendation from licensed practitioners of funeral service in the applicant's home jurisdiction; and

D. The license and examination fees required by Chapter 10, Section 5(18) of the rules of the Office of Licensing and Registration, entitled "Establishment of License Fees."

All applications must be complete. Incomplete applications may be discarded by the board after one year from the date of the initial submission.

#### 2. State Law and Rule Examination

An applicant shall achieve a passing score on the State Law and Rule Examination within one year from the date that the applicant's application was approved by the board. An applicant who fails the examination may re-take the examination following re-payment of the ~~combined~~ examination fee. The original license fee need not be repaid.

~~[NOTE: The State Law and Rule Examination is currently a paper and pencil test administered by the board at its office in Gardiner. The board may adopt a computer-based format for this examination in the future.]~~

The minimum passing score on the State Law and Rule Examination is 75%. The board shall notify an applicant in writing of the applicant's score within thirty (30) days of an examination. A license may be issued to an approved applicant who passes the examination. A passing score on the State Law and Rule Examination will be recognized by the board for the two-year period following the date of the examination.

STATUTORY AUTHORITY: 32 M.R.S.A. §1451 and 1501

EFFECTIVE DATE:

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

331 MAINE STATE BOARD OF FUNERAL SERVICE

Chapter 7 FUNERAL ESTABLISHMENTS

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SUMMARY: This ~~Chapter~~chapter describes ~~registration~~the licensure obligations ~~for~~of funeral establishments.

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### 1. Licensure

Every funeral establishment and every branch thereof ~~shall~~must be ~~registered~~licensed with the ~~Board~~board by a licensee in charge. ~~Except as set forth in sections 4 and 5, no~~A funeral establishment or branch thereof may not operate unless the funeral establishment or branch is ~~registered~~licensed with the ~~Board~~board. The licensee in charge is responsible for the establishment's or branch's compliance with the funeral laws and rules of the board. A funeral establishment or branch thereof may not operate without a licensee in charge.

### 2. Application for Licensure

Application for ~~registration~~licensure of a funeral establishment or branch ~~shall~~must be made by the licensee in charge on a form provided by the ~~Board~~board. The applicant shall submit the ~~required~~fee required by Chapter 10, Section 5(18) of the rules of the Office of Licensing and Registration, entitled "Establishment of License Fees," with the application. ~~The funeral inspector will then conduct an inspection of the premises. The Board will act on the application following receipt of the inspection report.~~

### 3. Issuance of License

The ~~Board~~board will issue a ~~registration~~certificatelicense to each ~~registered~~licensed funeral establishment and branch. The ~~certificate~~license must be ~~publicly displayed on the premises at all times and must be~~ renewed annually.

### 4. Inspection

An initial inspection of the premises and records may be scheduled after initial issuance of the license. However, a licensee is responsible at all times for complying with the funeral laws and the rules of the board. A funeral inspector or authorized employee of the Office of Licensing and Registration may enter any funeral establishment during reasonable business hours without prior notice for the purpose of inspecting the premises, the records, including mortuary trust records, and the work of licensees and practitioner trainees conducted therein.

~~3. The registration of a funeral establishment or branch automatically terminates forty five (45) days after the death or incapacity of the licensee in charge. Under no circumstances may any funeral services be provided at the establishment or branch within this 45-day period unless and until a licensee in charge has been engaged to operate the facility.~~

~~The establishment or branch may not operate beyond this 45-day period unless a licensee in charge has first submitted an application for registration of the facility. A licensee in charge who submits a timely application may operate the establishment or branch pending disposition of the application by the Board.~~

~~The original registration certificate shall be returned to the board no later than forty five (45) days after the death or incapacity of the licensee.~~

5. Unavailability of Licensee in Charge

A funeral establishment shall immediately notify the board in writing upon the death, incapacity, resignation or unavailability for any reason of a licensee in charge. The establishment or branch may not operate until the establishment has notified the board in writing that a replacement licensee in charge has been engaged. The establishment shall furnish the name and address of the replacement licensee in charge and such additional information as the board may require.

~~4. The registration of a funeral establishment automatically terminates ten (10) days after a change of ownership of the facility. Under no circumstances may any funeral services be provided at the establishment or branch within this 10-day period unless and until a licensee in charge has been engaged to operate the facility. The establishment or branch may not operate beyond this 10-day period unless a licensee in charge has first submitted an application for registration of the facility. A licensee in charge who submits a timely application may operate the establishment or branch pending disposition of the application by the Board.~~

~~The original registration certificate shall be returned to the board no later than ten (10) days after the change of ownership.~~

6. Procedures Upon Change of Ownership

A funeral establishment shall take the following steps within thirty (30) days of a change of ownership as defined in Chapter 1, Section 4-A of the board's rules:

1. Apply for licensure of the establishment and branches by a licensee in charge as described in Section 2 of this chapter; and
2. Send proof to the board that the funeral establishment has given the notices required by Chapter 16, Section 9 of the board's rules.

**EFFECTIVE DATE:**

April 3, 1990 - as a Chapter entitled "Funeral Establishments." Previously the subject matter was Section 8 of Chapter 1.

**AMENDED:**

December 15, 1993

March 1, 1997

**EFFECTIVE DATE (ELECTRONIC CONVERSION):**

March 18, 1997

**REPEALED AND REPLACED:**

October 29, 2001

**NON-SUBSTANTIVE CORRECTIONS:**

March 29, 2004

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

331 MAINE STATE BOARD OF FUNERAL SERVICE

Chapter 8 SAFETY AND HEALTH STANDARDS

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SUMMARY: This ~~Chapter~~ ~~chapter is promulgated to protect the safety and health of the general public by setting sets~~ forth the equipment- and health-related requirements applicable to licensed funeral establishments.

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### 1. Preparation Room

Every funeral establishment maintained or used for the purpose of embalming ~~shall~~ must contain at least one room of adequate size to be used exclusively as a preparation or embalming room. No other room ~~shall~~ may be used for embalming. A preparation room ~~shall~~ may not be accessible to the public when human remains are being prepared. Restrictions on entry into a preparation room ~~shall~~ must be posted on all doors to the room. Only the following persons may be admitted to a preparation room:

1. Licensed practitioners of funeral service;
2. ~~Registered~~ Licensed funeral attendants;
3. Practitioner trainees;
4. Unlicensed students who are currently enrolled in a college of mortuary science accredited by the American Board of Funeral Service Education;
5. Medical examiners, consulting physicians or other experts, and their support personnel;
6. Law enforcement officers ~~and authorized personnel~~;
7. Physician(s) of the deceased or the immediate family of the deceased;
8. Licensed cosmetologists; and
9. ~~Members of the immediate family of the deceased~~ Authorized persons as defined in Chapter 1, Section 2 of the board's rules.

### 2. Biomedical Wastes

Every funeral establishment shall comply with Chapter 900 of the rules of the Department of Environmental Protection, 06-096, entitled "Biomedical Waste Management Rules," dated May 4, 1996, to the extent that chapter is applicable to the funeral establishment.

[NOTE: Chapter 900 is enforced by the Department of Environmental Protection.]

### 3. Cleanliness and Sanitation

The preparation or embalming room ~~shall~~must be maintained in a clean and sanitary condition at all times.

### 4. Facilities and Equipment

The facilities and equipment required in preparation or embalming rooms ~~shall~~must include, but not be limited to, the following:

1. Hot and cold running water~~;~~;
2. Flush or slop sink connected to a public sewerage system or a septic tank~~;~~;
3. Morgue table which is covered with an impervious material~~;~~;
4. Covered waste container~~;~~;
5. First aid emergency kit~~;~~;
6. Heavy latex (or hypo-allergenic) gloves~~;~~;
7. Necessary instruments and apparatus for the embalming process~~;~~;
8. A method of sterilization of instruments~~;~~;
9. Walls constructed of, or covered with, impervious material which extend from floor to ceiling~~;~~;
10. Floor of cement, tile, or composition and which extends from wall to wall~~;~~;
11. Necessary antiseptics and disinfectants~~;~~ and
12. Clean gowns or aprons.

### 5. Gown or Smock; Gloves

Each person engaged in the preparation of human remains ~~must~~shall be attired in appropriate protective equipment and a clean and sanitary smock or gown. The gown or smock ~~will~~must cover the person from the neck to below the knees. The gown or smock ~~shall~~must be properly laundered or disposed of. Each person shall wear heavy latex (or hypo-allergenic) gloves at all times during the embalming process.

### 6. Cleaning and Disinfecting

Sheets, linens, materials, supplies and all instruments and appliances which have come in contact with human remains ~~shall~~must be thoroughly cleansed and ~~sterilized~~disinfected at the conclusion of each preparation.

## 7. Ventilation

The preparation room ~~shall~~must be ventilated so that no deleterious odors stay in the room, and no deleterious odors may enter any other part of the premises.

## 8. Protection of Potable Water

Construction of nonpotable water systems or systems carrying any other nonpotable substance ~~shall~~must be such as to prevent backflow or backsiphonage into a potable water system.

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STATUTORY AUTHORITY: 32 M.R.S.A. §§1451 and 1501

EFFECTIVE DATE:

April 3, 1990 - as a Chapter entitled "Safety and Health Standards." Previously the subject matter was Section 9 of Chapter 1.

AMENDED:

March 1, 1997

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 18, 1997

REPEALED AND REPLACED:

October 29, 2001

NON-SUBSTANTIVE CORRECTIONS:

March 29, 2004

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

331 MAINE STATE BOARD OF FUNERAL SERVICE

Chapter 9 COMPLAINTS AND INSPECTIONS

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~~SUMMARY: This Chapter describes the procedure by which complaints and inspections are handled by the Board.~~

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- ~~1. All complaints must be submitted in writing and signed by the complainant before action may be taken. The Board will follow the procedures for investigating and processing complaints contained in the Administrative Complaint Procedure followed by the Department of Professional and Financial Regulation, Office of Licensing and Registration for the professional and occupational licensing boards and registration programs administered by OLR.~~
  - ~~2. The Funeral Inspector may enter any funeral establishment during reasonable business hours without prior notice for the purpose of inspecting the premises, the records, including mortuary trust records, and the work of licensees and practitioner trainees conducted therein. No Board member may inspect a funeral establishment unless accompanied by the Funeral Inspector.~~
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STATUTORY AUTHORITY: 32 M.R.S.A. §§1451 and 1501

EFFECTIVE DATE:

April 3, 1990 - as a Chapter entitled "Complaints." Previously the subject matter was Section 10 of Chapter 1.

AMENDED:

March 1, 1997 - as "Complaints and Inspections"

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 18, 1997

REPEALED AND REPLACED:

October 29, 2001

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

331 MAINE STATE BOARD OF FUNERAL SERVICE

Chapter 10 GENERAL RULES / SCOPE OF PRACTICE

SUMMARY: This ~~Chapter~~ chapter contains general rules regarding: (1) hairdressing and cosmetology, (2) the scope of practice of funeral directors and funeral attendants, (3) licensure of funeral attendants, (3) the referral of inquiries to a licensed practitioner (4) compliance with the FTC Funeral Rule, and (4)(5) mandatory notices and disclosures, and other topics.

1. Hairdressing and Cosmetology

Hairdressing and cosmetology of the deceased may only be performed by a practitioner of funeral service, ~~by~~ a licensed cosmetologist or ~~by~~ an authorized person.

2. Embalming

Embalming ~~shall~~ may only be performed only by a practitioner of funeral service or a practitioner trainee who is ~~in contact with~~ under the supervision of a practitioner of funeral service.

3. Funeral Directors

A funeral director may engage in all activities of a practitioner of funeral service other than embalming. These may include one or more of the following:

1. Directing or supervising funerals;
2. Preparing, other than by embalming, or disposing of human remains by any legal means; and
3. Operating a funeral establishment which is advertised or used for funeral services.

~~4. Funeral attendants shall not engage in funeral directing or embalming. All funeral attendants shall work under the personal supervision and legal responsibility of a licensed practitioner of funeral service or licensed funeral director who is actively associated with a funeral practitioner. A practitioner of funeral service who employs a funeral attendant shall register the attendant on a form supplied by the Board and shall pay the required fee. Each funeral attendant shall receive annual training in the OSHA rules governing bloodborne pathogens and highly hazardous chemicals found in 29 CFR §§1900.1030 and 1099.119, respectively. When a funeral attendant leaves the employ of a licensee, the practitioner shall promptly notify the Board of the termination of employment. The registration automatically expires upon the termination of employment, and the attendant shall promptly return the registration certificate to the Board.~~

#### 4. Funeral Attendants

##### 1. Funeral attendants may:

- A. Remove human remains from the place of death;
- B. Dress human remains;
- C. Place human remains in a casket;
- D. Assist a practitioner of funeral service at a funeral service, graveside service or memorial service; and
- E. Supervise a visitation.

##### 2. Funeral attendants may not:

- A. Conduct a funeral service, graveside service or memorial service;
- B. Embalm human remains;
- C. Make, negotiate or discuss funeral arrangements with members of the public; or
- D. Make, negotiate or discuss mortuary trust agreements with members of the public.

##### 3. Supervision, Training and Licensure of Funeral Attendants

A funeral attendant may only work under the personal supervision and legal responsibility of a licensed practitioner of funeral service or licensed funeral director who is actively associated with a funeral establishment. "Personal supervision" means that the funeral attendant reports to the funeral practitioner. A practitioner of funeral service who employs a funeral attendant shall apply for licensure of the attendant on a form supplied by the board and shall pay the fee required by Chapter 10, Section 5(18) of the rules of the Office of Licensing and Registration, entitled "Establishment of License Fees." Each funeral attendant shall receive annual training of at least one hour in duration in the OSHA rules governing bloodborne pathogens and highly hazardous chemicals found in 29 CFR §§1910.1030 and 1910.119, respectively.

##### 4. Termination of Employment, Change of Supervisor or Change of Employment

- A. A funeral attendant shall notify the board in writing of any termination of employment, change of supervisor or change of employment within ten (10) days of the termination or change. Notice of a change of supervisor or change of employment must include the name of the new supervisor and the name and address of the new funeral home, if applicable.

B. A licensed practitioner of funeral service or funeral director shall notify the board in writing of any termination of employment, change of supervisor or change of employment of a funeral attendant under the supervision of the practitioner or director within ten (10) days of the termination or change. Notice of a change of supervisor must include the name of the new supervisor.

~~5. All inquiries, directions and/or instructions with respect to making or revising funeral arrangements must be referred to a practitioner of funeral service or funeral director.~~

~~6. In the event any holder of a license issued by the Board has a change of address and/or employment, it is the responsibility of that licensee to promptly notify the Board in writing within fifteen (15) business days.~~

#### 7. FTC Funeral Rule

The Board incorporates by reference into this chapter the Funeral Industry Practices Revised Rule issued by the Federal Trade Commission effective July 19, 1994, and codified at 16 CFR Part 453 (~~1/1/99~~1/08 ed.). Copies are available at cost from the Board or from the U.S. Government Printing Office, Superintendent of Documents, ~~Mail Stop SSOP, Washington, DC 20402-9328~~P.O. Box 371954, Pittsburgh, PA 15250-7954 or at no charge on the world wide web at ~~<http://www.access.gpo.gov/nara/cfr/cfr-table-search.html>~~ [www.gpoaccess.gov/cfr/index.html](http://www.gpoaccess.gov/cfr/index.html).

#### 8. Disclosure of Ownership Interest

A funeral establishment shall disclose the name and address of each person holding an ownership interest in the funeral establishment on each contract or agreement for provision of funeral services or supplies and on the following documents:

- Statement of Funeral Goods and Services Selected
- General Price List (“GPL”)
- Casket Price List (“CPL”)
- Outer Burial Container (“vault”) Price List
- Mortuary Trust Agreement

~~9. Any licenses issued by clerical error shall be void.~~

#### 10. Cost and Availability of Rental Caskets

A funeral establishment shall disclose to customers whether or not rental caskets are offered. The cost and availability of rental caskets ~~shall~~must be disclosed on the General and Casket Price Lists, along with a description of said caskets. If caskets available for rental purposes have been used previously, this also must be disclosed.

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STATUTORY AUTHORITY: 32 MRSA §§1451 and 1501

EFFECTIVE DATE:

HISTORY:

<b>Chapter 10, "Fees"</b>	<b>Chapter 11, "General Rules"</b>
<p>EFFECTIVE DATE: April 3, 1990 - as a Chapter entitled "Fees." Previously the subject matter was Section 12 of Chapter 1.</p>	<p>EFFECTIVE DATE: April 3, 1990 - as a Chapter entitled "General Rules." Previously the subject matter was part of Chapter 1.</p>
<p>AMENDED: November 26, 1991 December 15, 1993 March 1, 1997</p>	<p>AMENDED: March 1, 1997</p>
<p>EFFECTIVE DATE (ELECTRONIC CONVERSION): March 18, 1997</p>	<p>EFFECTIVE DATE (ELECTRONIC CONVERSION): March 18, 1997</p>
<p>AMENDED: December 21, 1999</p>	<p>REPEALED AND REPLACED: October 29, 2001 - as "Continuing Education Requirements" -- see Chapter 11 for any later changes.</p>
<p>REPEALED AND REPLACED: October 29, 2001 - as "General Rules / Scope of Practice." Fee provisions for this board and certain others became part of 02-041, Chapter 10.</p>	

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

331 MAINE STATE BOARD OF FUNERAL SERVICE

Chapter 11 ANNUAL RENEWAL; CONTINUING EDUCATION  
REQUIREMENT; INACTIVE STATUS

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SUMMARY: This chapter, ~~in conjunction with 32 MRSA §1506, sets forth continuing education requirements for license renewal~~ describes the continuing education requirement and sets forth procedures regarding inactive status licensure.

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### 1. Annual Renewal; Continuing Education

~~Continuing education credits shall be required as a condition of license renewal in order to ensure that practitioners of funeral service maintain the quality of their skills and have contemporary working knowledge to enhance and improve the quality of their service to the public. Licenses issued by the board are renewable annually upon application to the board and payment of the license fee required by Chapter 10, Section 5(18) of the rules of the Office of Licensing and Registration, entitled "Establishment of License Fees," plus any applicable late fee. Practitioners of funeral service, funeral directors and funeral attendants shall certify to compliance with the continuing education requirement set forth in this chapter at time of renewal.~~

### 2. Credit Required Hours

#### 1. Practitioners of Funeral Service and Funeral Directors

Six (6) ~~clock~~ contact hours of approved continuing education during the preceding one-year licensing period are required for renewal of the practitioner and funeral director licenses. Licensees ~~must~~ shall spend these hours in actual attendance at or completion of approved continuing education activities. No more than two (2) of the six (6) hours may be earned through: ~~home study courses, videos, caregiver manuals, and the like~~ (a) on line, internet or distance education activities, or (b) self study activities, whether in written, audio, audiovisual or electronic form. No more than three (3) of the six (6) hours may be earned through ~~funeral home based (i.e., in-house) in-service training offered by a funeral establishment only for practitioners and funeral attendants employed by the establishment. There shall be no carryover~~ Carryover of hours from any one-year licensing period to another is not permitted.

#### 2. Funeral Attendants

Licenses renewing on or after March 1, 2011 must meet the following continuing education requirement:

Completion of the annual training in bloodborne pathogens and highly hazardous chemicals required by Chapter 10, Section 4(3) of the board's rules is required for renewal of the funeral attendant license.

### 3. Hardship Deferment

~~A licensee may request an extension of time for completion of continuing education by submitting to the Board:~~

- ~~1. Proof that a serious disabling illness or physical disability prevented the licensee from meeting the continuing education requirement; or~~
- ~~2. Proof that service in the armed forces prevented the licensee from meeting the continuing education requirement.~~

A licensee may request a deferment of continuing education from the board due to health reasons, military service or other unforeseeable circumstances of genuine hardship. Any licensee who receives a deferment shall make up the deferred continuing education according to a schedule determined by the board in consultation with the licensee.

Deferred continuing education, once completed by a licensee, may not also be used to satisfy the continuing education requirement for a license year other than the year for which the deferment was granted.

### ~~Renewal of Lapsed License~~

~~A licensee applying for renewal of a license that has lapsed for less than two years shall, as a condition of renewal, demonstrate completion of continuing education in a form and amount that the Board, in the exercise of its discretion and upon a consideration of all relevant factors, deems appropriate.~~

~~8. Continuing Education Committee—the Board shall establish a continuing education committee consisting of five licensed practitioners and one member of the Board. The Board member shall be appointed by the Chair to serve as committee chairman for continuing education. The continuing education committee shall, subject to approval by the Board:~~

- ~~A. Review and approve programs for continuing education credit;~~
- ~~B. Assign credit hours to approved programs;~~
- ~~C. Randomly monitor approved educational activities.~~

### 5.4. Approved Continuing Education Activities

The continuing education committee shall recommend that the Board approve for credit continuing education activities that relate to the following subject areas are eligible for approval pursuant to Section 5 of this chapter:

[Text applicable to license renewals effective prior to March 1, 2011]

1. Professional competency, professional conduct, business ethics, or legal aspects relating to the practice of the profession-;
2. Programs relating to new techniques, scientific and clinical advances and achievements in research relating to funeral directing and embalming-;
3. Programs relating to business management, personnel management, or programs helping to improve services to the consumer-; and
4. Courses, seminars, lectures, home study courses, videos or other instructional programs which meet the above qualifications and which the ~~committee~~ board determines are of benefit in improving the knowledge or service capability of licensees.

[Text applicable to license renewals effective on or after March 1, 2011]

1. Professional competency, professional conduct, business ethics, or legal aspects relating to the practice of the profession-; and
2. ~~Programs relating to new~~ New techniques, including scientific and clinical advances ~~and achievements in research~~ relating to ~~funeral directing and embalming~~ and funeral arranging.
- ~~5. Programs relating to business management, personnel management, or programs helping to improve services to the consumer.~~
- ~~6. Courses, seminars, lectures, home study courses, videos or other instructional programs which meet the above qualifications and which the committee determines are of benefit in improving the knowledge or service capability of licensees.~~

#### 5. Approval of ~~Programs and~~ Continuing Education Activities

All continuing education activities must be approved as set forth in Section 5(1), (2) or (3) of this chapter:

##### 1. Activities Deemed Approved

The following ~~programs-activities~~ are deemed approved for continuing education credit without further action of the ~~Board~~ board:

- A. ~~Any program~~ Programs approved for continuing education credit by the ~~American~~ Academy of Professional Funeral Service Practice-; and
- B. ~~Any program~~ Programs hosted/sponsored and approved for continuing education credit by any state funeral board or state licensing authority.

The board may monitor activities deemed approved for compliance with the subject matter criteria set forth in Section 4 of this chapter and for accuracy of all representations made.

## 2. Application for Approval by Sponsor

~~All other persons, corporations or organizations that wish to have a program approved for continuing education credit must apply to the continuing education committee, which shall present its recommendation to the Board.~~ The sponsor of a continuing education activity may apply to the board for approval of the activity. A sponsor may not represent a course as approved for continuing education credit until approval has been conferred by the Board. The application shall contain information pertaining to the nature and history of the ~~organization, person or corporation~~ sponsor, approximate dates of the ~~presentation~~ activity, subject offered, total hours of presentation, plus the name and qualifications of the instructor. The application will be evaluated under the subject matter criteria contained in Section 4 of this chapter and for accuracy of all representations made. Programs are approved for a twelve-month period. A sponsor may not represent an activity as approved for continuing education credit until approval has been conferred by the board.

If the board is unable to timely consider an application for approval, a continuing education activity may be approved by board staff following consultation with the board chair or, if the chair is unavailable, with another member of the board.

## 3. Post Approval of Activities Application for Approval by Licensee

~~Any licensee seeking credit for attendance at a program that has not been approved as described in paragraph A or B shall submit a syllabus of the program to the continuing education committee, which shall present its recommendation to the Board.~~ A licensee who participated in or plans to participate in a continuing education activity that has not been approved pursuant to Section 5(1) or (2) of this chapter may apply for approval to the board. The licensee shall submit a syllabus of the activity with the application and such other information as the board may require. The application will be evaluated under the subject matter criteria contained in Section 4 of this chapter and for accuracy of all representations made.

~~1. Review of Programs—The continuing education committee may monitor or review any continuing education program already approved by the Board to verify the representations made by the sponsor.~~

## 6. Credit Reporting Procedure Documentation and Audit

It is the responsibility of each licensee to maintain records, certificates, or other evidence of compliance with the continuing education requirement. ~~Such evidence shall be signed or stamped by the program sponsor and submitted by the licensee at the time of license renewal. The licensee shall also submit at the time of license renewal a continuing education summary sheet, provided in blank by the Board, showing all approved programs attended by the licensee and the number of credit hours earned for each.~~ Reporting, verification and audit of continuing education is governed by Chapter 13 of the rules of the Department of Professional and Financial Regulation, Office of Licensing

and Registration, entitled “Uniform Rule for the Substantiation of Continuing Education Requirements.”

## 7. Inactive Status Licensure

### 1. Application and Renewal

A practitioner of funeral service or funeral director may apply for an inactive status license. A licensee who applies for inactive status during the 3 months prior to expiration of the license shall demonstrate compliance with the continuing education requirement license year during which application is made. The board may refuse to issue an inactive status license to a licensee who:

- A. Is ineligible for renewal of an active license; or
- B. Applies for an inactive status license during the 3 months prior to expiration and fails to demonstrate compliance with the continuing education requirement for the license year during which application is made.

### 2. Prohibition Against Practice

A licensee may not engage in the practice of funeral service while in inactive status.

### 3. Continuing Education

A licensee need not comply with the continuing education requirement contained in Chapter 11 of the board’s rules while in inactive status.

### 4. Renewal of Inactive Status License

A licensee may renew an inactive status license by:

- A. Submitting a renewal application;
- B. Paying the license fee required by Chapter 10, Section 5(18) of the rules of the Office of Licensing and Registration, entitled “Establishment of License Fees;” and
- C. Providing such other information as the board may require.

### 5. Reinstatement to Active Status

The holder of an inactive status license may return to active status upon application to the board, payment of the required license or reinstatement fee, and certification of completion of six (6) contact hours of continuing education during the one-year period prior to application.

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STATUTORY AUTHORITY: 32 M.R.S.A. §§1451, 1501 and 1506

EFFECTIVE DATE:

<p align="center"><b>Chapter 11, "General Rules"</b></p>	<p align="center"><b>Chapter 12, "Continuing Education Requirements"</b></p>
<p><b>Pre-APA</b></p>	
<p>EFFECTIVE DATE:                      May 1, 1970 - all board rule language part of Chapter 1, "Rules of Maine State Board of Funeral Service"</p>	<p>EFFECTIVE DATE:                      December 28, 1979 - all board rule language part of Chapter 1, "Rules of Maine State Board of Funeral Service"</p>
<p>AMENDED:                      January 26, 1971                      June 18, 1974                      March 17, 1977                      August 18, 1977                      December 4, 1979</p>	<p>AMENDED:                      September 7, 1992 - as "Continuing Education Requirement"                      March 1, 1997</p>
<p><b>APA</b></p>	
<p>READOPTED:                      December 28, 1979</p>	<p>AMENDED:                      December 21, 1999</p>
<p>EFFECTIVE DATE:                      April 3, 1990 - as a Chapter entitled "General Rules."</p>	<p>EFFECTIVE DATE (ELECTRONIC CONVERSION):                      March 18, 1997</p>
<p>AMENDED:                      March 1, 1997</p>	<p>REPEALED AND REPLACED:                      October 29, 2001 - as Transportation of Human Remains." Former subject matter moved to Chapter 11.</p>
<p>EFFECTIVE DATE (ELECTRONIC CONVERSION):                      March 18, 1997</p>	
<p>REPEALED AND REPLACED:                      October 29, 2001 - as "Continuing Education Requirements."</p>	
<p>NON-SUBSTANTIVE CORRECTIONS:                      March 29, 2004</p>	

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

331 MAINE STATE BOARD OF FUNERAL SERVICE

Chapter 12 TRANSPORTATION OF HUMAN REMAINS

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SUMMARY: This ~~Chapter~~chapter contains rules regarding the transportation of human remains.

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1. Generally

Human remains may be transported only in vehicles owned by or leased to the funeral establishment, a practitioner of funeral service, or an authorized person.

2. Vehicles Owned or Leased by Funeral Establishment or Practitioner

Human remains transported in vehicles owned by or leased to the funeral establishment or practitioner must be enclosed and concealed from public view ~~in a mortuary cot, casket or outer burial vault to prevent exposure and to prevent leakage of fluids and/or offensive odors~~. Such vehicles must:

1. Promote respect for, and preserve the dignity of, the dead human body;
2. Provide ample enclosed area to accommodate ~~an ambulance cot or aircraft ambulance~~a mortuary cot or stretcher in a horizontal position;
3. Permit loading and unloading of the body without excessive tilting of the cot or stretcher; and
4. Protect the body or container from excessive movement within the conveyance.

~~Human remains transported by common carrier must be embalmed and placed in a transfer unit or casket designed to prevent leakage of fluids and/or offensive odors. The container shall be acceptable to the carrier.~~

3. Transportation of Unembalmed or Decomposing Remains by Common Carrier

Human remains which ~~cannot be~~are not embalmed or are in a state of decomposition, ~~if~~when transported by common carrier, ~~shall~~must be enclosed in a galvanized metal, sealed ~~Ziegler~~case (Ziegler or equivalent) or casket designed to prevent leakage of fluids and/or offensive odors.

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STATUTORY AUTHORITY: 32 M.R.S.A. §§1451 and 1501

EFFECTIVE DATE:

<p><b>Chapter 12, "Continuing Education Requirement"</b></p> <p>EFFECTIVE DATE: December 28, 1979 - all board rule language part of Chapter 1, "Rules of Maine State Board of Funeral Service"</p> <p>AMENDED: September 7, 1992 - as "Continuing Education Requirement" March 1, 1997</p> <p>EFFECTIVE DATE (ELECTRONIC CONVERSION): March 18, 1997</p> <p>AMENDED: December 21, 1999</p> <p>REPEALED AND REPLACED: October 29, 2001 - as "Transportation of Human Remains." Former subject matter moved to Chapter 11.</p>	<p><b>Chapter 14, "Transportation of Human Remains"</b></p> <p>EFFECTIVE DATE: March 1, 1997</p> <p>REPEALED AND REPLACED: October 24, 2001 - as "Temporary Storage." Former subject matter moved to Chapter 12.</p>
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02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

331 MAINE STATE BOARD OF FUNERAL SERVICE

Chapter 13 DISINTERMENT

SUMMARY: This ~~Chapter~~chapter contains rules regarding the disinterment of human remains by ~~licensees-practitioners~~ of funeral service.

1. Generally

Except as authorized by the Department of Health and Human Services, disinterment ~~shall~~must be made under the direct supervision of a practitioner of funeral service. The licensee ~~shall be~~is responsible for the proper conduct of the disinterment.

2. Transportation of disinterred human remains

Chapter 12 of the ~~Board's-board's~~ rules ~~shall apply~~applies to disinterments.

STATUTORY AUTHORITY: 32 M.R.S.A. §§1451 and 1501

EFFECTIVE DATE:

<b>Chapter 13, "Inactive Status"</b>	<b>Chapter 15, "Disinterment"</b>
EFFECTIVE DATE: December 15, 1993 - as "Inactive Status"	EFFECTIVE DATE: March 1, 1997
AMENDED: March 1, 1997	REPEALED AND REPLACED: October 29, 2001 - as Code of Ethics."
EFFECTIVE DATE (ELECTRONIC CONVERSION): March 18, 1997	Former subject matter moved to Chapter 13.
REPEALED AND REPLACED: October 29, 2001 - as "Disinterment"	

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

331 MAINE STATE BOARD OF FUNERAL SERVICE

Chapter 14 TEMPORARY STORAGE

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SUMMARY: This ~~Chapter~~chapter contains rules regarding the storage of human remains by licensees of funeral service.

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1. Less Than Eight Months

Temporary storage of human remains for less than eight months, in tombs or other structures constructed for the temporary storage of human remains, is not regarded as final disposition. Removal of the human remains from these structures is not considered disinterment as governed by Chapter 13 of ~~these~~the board's rules.

2. Eight Months or Longer

The storage of human remains for eight months or longer in a tomb or other structure constructed for the purpose of storage is ~~not~~ regarded as final disposition. Removal of the human remains from these structures is considered disinterment as governed by Chapter 13 of ~~these~~the board's rules.

3. Transportation of Human Remains Removed From Temporary Storage

Chapter 12 of the ~~Board's~~board's rules ~~shall apply~~applies to human remains removed from temporary storage.

4. Unembalmed Human Remains

Unembalmed human remains must be placed in a sealed casket or container for temporary storage until final disposition occurs.

[NOTE: Practitioners of funeral service shall be mindful of the permitting requirements in Chapter 146, Section 6 of the rules of the Department of Health and Human Services, Office of Data, Research and Vital Statistics relating to the temporary storage of human bodies. Chapter 146 is enforced by the Department of Health and Human Services.]

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STATUTORY AUTHORITY: 32 M.R.S.A. §§1451 and 1501

EFFECTIVE DATE:

March 1, 1997 - as "Transportation of Human Remains"

**EFFECTIVE DATE (ELECTRONIC CONVERSION):**

March 18, 1997

**REPEALED AND REPLACED:**

October 29, 2001 - as "Temporary Storage." Former subject matter moved to Chapter 12.

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

331 MAINE STATE BOARD OF FUNERAL SERVICE

Chapter 15 CODE OF ETHICS

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SUMMARY: This ~~Chapter~~chapter establishes a code of ethics for licensees of the ~~Board~~board.

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1. Accurate and Precise Information

Licensees have a duty to provide the public with accurate and precise information regarding funerals, ~~including embalming,~~ prices, funeral functions and services.

~~10. Licensees shall not make any misrepresentation or fraudulent statement in obtaining licensure.~~

2. Standard of Total Honesty

Licensees ~~shall~~may not make any false or misleading representation, either written or orally. Licensees shall conduct themselves according to a standard of total honesty at all times.

3. Respect All Faiths, Customs and Creeds

Licensees ~~involved in the practice of funeral service~~ shall respect all faiths, customs and creeds of the deceased and conduct themselves appropriately.

4. Handling and Preparation of Human Remains

Licensees shall treat the handling and preparation of human remains with respect, dignity and courtesy.

5. Respect, Dignity and Courtesy

Licensees shall treat all ~~family members, significant others, friends and acquaintances of the deceased~~persons with respect, dignity and courtesy regardless of race, religion, national origin, gender orientation, education, financial status or cause of death.

6. Wishes and Respects of Persons Responsible for the Deceased

~~Licensees~~Consistent with 22 MRSA §2843-A(5), licensees shall respect and ~~carry out~~abide by the wishes and requests of persons responsible for the deceased, ~~as contracted for.~~

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STATUTORY AUTHORITY: 32 M.R.S.A. §§1451 and 1501

EFFECTIVE DATE:

<b>Chapter 15, "Disinterment"</b>	<b>Chapter 17, "Code of Ethics"</b>
<p>EFFECTIVE DATE: March 1, 1997 - as "Disinterment"</p> <p>REPEALED AND REPLACED: October 29, 2001 - as "Code of Ethics." Former subject matter moved to Chapter 13.</p>	<p>EFFECTIVE DATE: March 1, 1997 - as "Code of Ethics"</p> <p>REPEALED: October 29, 2001. Subject matter moved to Chapter 15.</p>

02	DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
331	MAINE STATE BOARD OF FUNERAL SERVICE
Chapter 16	PREARRANGED FUNERALS <del>AND BURIAL PLANS</del> — MORTUARY TRUST AGREEMENTS

SUMMARY: This chapter adopts forms of mortuary trust agreements for use in Maine.

## 1. Creation of Mortuary Trust

A mortuary trust subject to 32 MRSA §1401 is created when:

- ~~funds~~ Funds are entrusted by a payor to ~~any individual, firm, association, partnership or corporation~~ a funeral home as payee under an agreement that the funds will be used for expenses associated with funeral and burial services to be performed in the future upon the death of a designated ~~person~~ beneficiary. ~~The payee shall have the obligations of a trustee with respect to the funds; or~~
- An existing life insurance policy has been assigned to the funeral home as beneficiary, or owner and beneficiary, under an agreement that the policy proceeds will be used for expenses associated with funeral and burial services to be performed in the future upon the death of the person insured.

The funeral home has the obligations of a trustee with respect to the funds or the insurance policy and policy proceeds.

## 2. Exclusive Forms For Maine Mortuary Trust Agreements

~~No~~ A practitioner of funeral service, funeral director or funeral home ~~shall~~ may not enter into a mortuary trust agreement for performance in this State that does not substantially conform to one of the following forms that is attached to and made a part of this chapter:

### 1. Maine Mortuary Trust Agreement – Credit For Service

*What it is* – A credit for service mortuary trust agreement contains no obligation by the funeral home to provide funeral goods and services for a predetermined price. Rather, the amount of money in the trust at time of death will be applied to the goods and services selected. If the amount of money in the trust at time of death is insufficient to pay for the goods and services selected, adjustments must be negotiated between the ~~consumer~~ payor and the funeral home. If the amount of money in the trust at time of death exceeds the cost of the goods and services selected, the ~~consumer~~ payor is entitled to a refund of the difference.

The payor and the funeral home, upon mutual agreement, may replace a credit for service mortuary trust agreement with a guaranteed price mortuary trust agreement at any time prior to the death of the beneficiary.

2. Maine Mortuary Trust Agreement – Guaranteed ~~Price~~Service

*What it is* – A guaranteed ~~price~~-service mortuary trust agreement obligates a funeral home to provide the funeral goods and services selected upon the death of the beneficiary, whenever that may be, ~~without need of any further payment for a fixed price set forth in the agreement (with the possible exception of cash advance items). (Treatment of cash advance items may differ.)~~ If the cost of goods and services at time of death exceeds the amount of money in the trust, the funeral home must make up the difference. If the cost of goods and services at time of death is less than the amount of money in the trust, the funeral home may retain the difference in recognition of the risk of ~~underfunding~~inflationary costs.

A guaranteed service mortuary trust agreement may be paid in full by the payor at time of execution, or may be paid in installments according to the terms and conditions set forth in the agreement. With the possible exception of cash advance items, and except as set forth in the last paragraph of this subsection, the funeral home must provide the goods and services selected upon the death of the beneficiary regardless of the amount of money in the mortuary trust at time of the beneficiary's death.

A funeral home that takes installment payments accepts the risk that the beneficiary may die prior to completion of the payment schedule. A funeral home is not obligated to offer a guaranteed service mortuary trust agreement on an installment basis.

If the fixed price has not been paid in full upon the death of the beneficiary, the funeral home, following provision of the guaranteed services, may seek and obtain payment of the outstanding balance, plus the price of any unpaid cash advance items, from: (a) the beneficiary's estate; (b) any person contractually obligated to provide payment pursuant to the mortuary trust agreement; or (c) any other payment source voluntarily provided by the family or representatives of the beneficiary.

If the payor fails to comply with the terms and conditions of the agreement relating to installment payments, after having been given notice and reasonable opportunity to cure the noncompliance, the parties may make any adjustment to the agreement that is mutually agreeable, or may replace the agreement with a credit for service mortuary trust agreement. In the event of an impasse, the funeral home may resign as trustee. In this event the funeral home shall refund the entire mortuary trust to the payor, less any fee permitted by the agreement and any taxes paid pursuant to the agreement. The refund must be made within thirty (30) days after resignation.

### 3. Maine Mortuary Trust Agreement – Life Insurance

What it is – A life insurance mortuary trust agreement funds the provision of funeral goods and services from the proceeds of an existing life insurance policy payable upon the death of the person insured. Life insurance mortuary trust agreements may only be credit for service. Guaranteed service life insurance mortuary trust agreements are not permitted.

#### 3. Substantial Conformance

A mortuary trust agreement or addendum substantially conforms to one of the forms attached to and made a part of this chapter if:

1. The mortuary trust agreement is identical in all respects to one of the forms attached to and made a part of this chapter; or
2. The mortuary trust agreement or addendum contains all the provisions contained in the applicable form attached to and made a part of this chapter plus additional provisions, provided that:
  - A. None of the additional provisions are inconsistent with any provisions of the form;
  - B. None of the additional provisions dilute any protection afforded to consumers by the form; and
  - C. None of the additional provisions are inconsistent with 32 MRSA §1401.

In the case of a guaranteed service mortuary trust agreement, additional provisions may include terms and conditions relating to installment payments. A mortuary trust agreement may be guaranteed by a third party.

A mortuary trust agreement that meets the requirements of this Section may be printed on funeral home letterhead.

#### 4. Minimum Type Size

No practitioner of funeral service, funeral director or funeral home shall use any form of mortuary trust agreement, including those printed on funeral home letterhead, in which the body copy is less than 12 points in size.

#### 5. Selection of Goods and Services Mandatory in Guaranteed ~~Price~~-Service Mortuary Trust

No funeral director, practitioner of funeral service or funeral home shall execute a guaranteed service mortuary trust agreement ~~substantially conforming to the Maine Mortuary Trust Agreement—Guaranteed Price~~ unless the payor or settlor has first selected all necessary funeral goods and services ~~and, with the possible exception of~~ cash advance items.

6. Fees

1. Life Insurance Mortuary Trust Agreements

No fee may be charged by a practitioner of funeral service, funeral director or funeral home in connection with a life insurance mortuary trust agreement.

2. Guaranteed Service Mortuary Trust Agreements; Credit for Service Mortuary Trust Agreements Other Than Life Insurance Mortuary Trust Agreements

Fees may be charged in connection with guaranteed service mortuary trust agreements, and credit for service mortuary trust agreements other than life insurance mortuary trust agreements, only to the extent set forth in this subsection. Any fees charged by practitioners of funeral service, funeral directors and funeral homes for the administrative services they render as payees must be specified in the agreement. No initiation fee, however denominated, may be charged in connection with the creation of a mortuary trust. No fees may be charged except for the following services, and may not exceed the amounts shown below:

- A. Transfer of account by appointment of successor trustee. 7% of trust funds, not to exceed ~~\$200~~250
- B. Revocation of a revocable agreement ..... 7% of trust funds, not to exceed ~~\$200~~250
- C. Resignation of trustee due to payor’s noncompliance with terms and conditions of a guaranteed service mortuary trust agreement relating to installment payments ..... 7% of trust funds, not to exceed \$250
- D. Actual annual financial and tax administration of the account performed by or on behalf of the funeral home ..... 25% of net interest earned per annum, not to exceed ~~\$400~~125

No fee for financial or tax administration may be charged for work not actually performed.

“Net interest earned per annum” is the net interest, investment income or appreciation earned by the mortuary trust account after deduction of any fees charged by the financial institution or credit union in which the account is held.

7. Inspection of Records

Mortuary trust agreements and all books, records and accounts related thereto, including the record of deposits, insurance policies and insurance records, and the accountings required by the agreements attached to and made a part of this chapter—

1. ~~Shall~~Must be made available by the funeral home for inspection by ~~the state funeral inspector or the designee of the Board~~a funeral inspector or authorized employee of the Office of Licensing and Registration upon request during reasonable business hours without prior notice; and
  2. ~~Shall~~Must be promptly delivered by the funeral home to ~~the state funeral inspector~~a state funeral inspector, authorized employee of the Office of Licensing and Registration or the ~~Board~~board upon request.
8. Sale or Transfer of Funeral Home~~Change of Ownership~~

Upon the sale or transfer of a funeral home, whether voluntary or involuntary, and except as otherwise ordered by a court of competent jurisdiction, the new owner—

1. Shall automatically be substituted as ~~payee~~trustee of all existing mortuary trusts of which the former owner is ~~payee~~trustee; and
2. Shall assume the former owner's obligation to perform all existing preneed contracts for funeral goods and services to which the former owner is a party.

D-9. Notice of Change of Trustee Upon Change of Ownership

Within thirty (30) days after a change of ownership ~~described as defined in subsection 4~~Chapter 1, Section 4-A of the board's rules, the new owner, or the funeral home, shall:

A-1. Notify the payor, settlor or alternate contact person identified in the mortuary trust agreement or preneed contract of the change in ownership and inform ~~the contact~~such person:

~~(1)~~A. In the case of a mortuary trust agreement,

(1) ~~that~~That the new owner has assumed the role of trustee under the agreement and will provide all funeral goods and services required by the agreement; ~~or~~and

(2) That the payor, settlor or other contact person is free at any time to request the resignation of the trustee and designate a different funeral home as successor trustee; or

~~(2)~~B. In the case of a preneed contract for funeral goods and services, that the new owner will perform the contract and will provide all funeral goods and services required by the contract; and

B-2. Notify the financial institution or credit union where the guaranteed service or credit for service mortuary trust is held that the new owner has been automatically substituted as payee pursuant to ~~this section~~Section 8 of this chapter and has assumed the role of trustee under the agreement.

9.10. Effective Date

Section 7 of this chapter applies to all mortuary trust agreements, whenever executed, upon the effective date of this chapter. Sections 8 and 9 of this chapter and any amendments thereto ~~shall~~ apply to all sales ~~or~~, transfers and changes of ownership of funeral homes occurring on or after the effective date of this chapter or amendment, as the case may be. The remaining provisions of this chapter and any amendments thereto shall apply to all mortuary trust agreements executed on or after the effective date of this chapter or amendment, as the case may be.

STATUTORY AUTHORITY: 32 MRSA §§1401(2), 1451 and 1501

EFFECTIVE DATE: 120<sup>th</sup> day after the date on which this chapter is filed with the Secretary of State

February 21, 2002 (120<sup>th</sup> day after the date on which this chapter is filed with the Secretary of State)

NON-SUBSTANTIVE CORRECTIONS:

March 29, 2004- Appendices, spelling and punctuation only

# MAINE MORTUARY TRUST AGREEMENT

*for the benefit of*

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## 1. Creation

*Mortuary trust.* The mortuary trust is the fund created by this agreement to assure the provision of funeral and burial services to the beneficiary. The mortuary trust consists of the initial payment made for that purpose upon the signing of this agreement, any installment payments or other money added to the fund at a later date, and all interest and investment income earned by the fund, less fees and taxes paid pursuant to the terms of this agreement.

## 2. Parties

*Beneficiary.* The beneficiary is the person who will receive the funeral and burial services described in this agreement. The beneficiary is:

\_\_\_\_\_  
(name)

*Payor.* The payor is the person who is funding this mortuary trust, ~~or the duly appointed legal representative of such person.~~ The payor is:

\_\_\_\_\_  
(name)

\_\_\_\_\_  
(relationship to beneficiary)

\_\_\_\_\_  
(address)

\_\_\_\_\_  
(city, state zip)

\_\_\_\_\_  
(telephone)

*Funeral home.* The funeral home is the trustee for all money paid into the mortuary trust. The funeral home may be an individual, a firm, an association, a partnership or a corporation. The payor hereby appoints the funeral home identified below as trustee. The funeral home need not post bond or enter security. By signing this agreement, the funeral home accepts this appointment as trustee of the mortuary trust.

---

(name)

---

(address)

---

(city, state, zip)

---

(telephone)

Representative of payor (check if applicable). This is the person for the funeral home to contact and report to in lieu of the payor for all purposes under this agreement. The representative of the payor may exercise all powers and authority conferred upon the payor by this agreement:

---

(name)

---

(relationship to beneficiary)

---

(address)

---

(city, state, zip)

---

(telephone)

Alternate contact ~~Contact~~ person (check if applicable). ~~The~~ This is the person for the funeral home to contact ~~on behalf of the payor with any questions concerning the mortuary trust is identified below. This may be the payor or another person chosen by the payor~~ and report to for all purposes under this agreement in the event that the payor or representative of the payor is deceased, incapacitated or otherwise unavailable:

---

(name)

---

(relationship to beneficiary)

---

(address)

---

(city, state, zip)

\_\_\_\_\_  
(telephone)

~~Beneficiary. The beneficiary is the person who will receive the funeral and burial services described in this agreement. The beneficiary is:~~

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(name)

**3. Fixed Price for Guaranteed Services; Initial Payment**

\$ \_\_\_\_\_

The funeral home agrees to provide the funeral goods and services described on the Statement of Funeral Goods and Services attached to this agreement at this fixed price, which will not change over time. This fixed price does not include any additional payment for cash advance items which may be required by paragraph 12.

\$ \_\_\_\_\_

The funeral home hereby acknowledges receipt in trust of an initial payment in the amount shown. Payment was made in the form of  cash  check  share draft  money order.  
(check one) If payment was made by check, share draft or money order, a photocopy must be attached to each copy of this agreement. If this initial payment is less than the full amount of the fixed price, the payor agrees to pay the balance in the form of installment payments as set forth in paragraph 5.

**4. Deposit of Initial Payment and Any Additional Payments**

The funeral home shall deposit the initial payment and any additional payments in a separate account in the financial institution or credit union identified below within ten (10) days after receipt of the initial payment or any additional payment from the payor:

\_\_\_\_\_  
(name of financial institution or credit union)

\_\_\_\_\_  
(address)

\_\_\_\_\_  
(city, state, zip)  
\_\_\_\_\_

(telephone)

**Important Instructions to Payor**

1. Make your check, share draft or money order payable solely to the financial institution or credit union identified above—not to the funeral home.
2. Write the names of the funeral home and beneficiary on the check, share draft or money order for identification purposes.
3. For your protection, mail a copy of this agreement to the financial institution or credit union with instructions to contact you if the initial payment is not received from the funeral home.

**5. Deposit of Additional Installment Payments; Default**

~~The funeral home shall deposit any money added to the mortuary trust at a later date within ten (10) days after receipt of the additional money from the payor. If the initial payment made by the payor is less than the amount of the fixed price set forth in paragraph 3, the payor agrees to pay the balance in installments according to the terms and conditions set forth in this agreement.~~

~~If the payor fails to comply with the terms and conditions of this agreement relating to installment payments, after having been given notice and reasonable opportunity to cure the noncompliance, the parties may make any adjustment to this agreement that is mutually agreeable, or may replace this agreement with a credit for service mortuary trust agreement. In the event of an impasse, the funeral home may resign as trustee in the manner set forth in paragraph 17. In this event the funeral home shall refund the entire mortuary trust to the payor, less any fee permitted by paragraph 20 and any taxes paid pursuant to paragraph 21. The refund must be made within thirty (30) days after resignation.~~

**6. Record of Account; Inspection of Record**

The funeral home shall maintain a complete record of the initial payment and any additional payments into the trust, including principal and interest earned on such payments, and of all fees and taxes paid from the trust. The record must contain the name and address of the financial institution or credit union and the dates and amounts of all deposits and withdrawals. ~~The trustee must make the record available for inspection by the payor.~~

~~The funeral home shall make the amount of the deposit, cumulative interest, cumulative expenses and current balance available for inspection by the payor without prior notice during regular office hours. The funeral home shall make the~~

complete record available for inspection within thirty (30) days following receipt of a request for complete inspection from the payor.

## 7. Permissible Investments

The initial ~~deposit~~ payment and any additional payments into the mortuary trust ~~shall~~ must be deposited in:

- a federally insured deposit or share account  a trust account. (*check one*)

A deposit in a trust account may be invested in or used to purchase only the following:

- Federally insured deposit or share accounts;
- Securities issued, insured or guaranteed by the United States or by any agency or corporate or other instrumentality of the United States;
- Municipal securities that are exempt from registration under 32 MRSA §10502(1)(A); and
- Permanent life insurance, other than variable life insurance and annuities, from an insurer authorized to transact insurance in this State, subject to the provisions of 24-A MRSA, chapter 27. A funeral home, its employees and agents may not receive any commission, fee or other consideration from an insurer in connection with the procurement or purchase of insurance permitted by this subparagraph.

If the funeral home subsequently transfers or deposits all or any part of the mortuary trust into the investment category not initially selected by the payor (i.e., federally insured account or trust account), the funeral home shall notify the payor within ten (10) days after making the deposit or transfer. No additional consent of the payor is necessary to authorize the change.

## 8. Revocability

This mortuary trust agreement is  revocable  irrevocable. (*check one*)

A *revocable* agreement may be terminated by the payor at any time, in which case the funeral home shall refund the entire mortuary trust to the payor, less any fee permitted by paragraph ~~20-22~~ and any taxes paid pursuant to paragraph ~~21-23~~. The refund ~~shall~~ must be made within thirty (30) days after receipt of written notice of revocation from the payor.

An *irrevocable* agreement may not be terminated by the payor. However, the payor retains the right to transfer the mortuary trust to a different funeral home at

any time by requesting the resignation of the trustee pursuant to paragraph 17 and appointing a successor trustee pursuant to paragraph 18. ~~See paragraphs 17 and 18.~~

## 9. **Guaranteed ~~Price-Service~~ Mortuary Trust**

The mortuary trust created by this agreement is a *guaranteed ~~price-service~~* mortuary trust. The funeral home may also offer a *credit for service* mortuary trust, but is not required to do so.

I have explained to the payor the difference between the guaranteed ~~price-service~~ mortuary trust created by this agreement and a credit for service mortuary trust.

\_\_\_\_\_  
(funeral home)

I understand the difference between the guaranteed ~~price-service~~ mortuary trust created by this agreement and a credit for service mortuary trust.

\_\_\_\_\_  
(payor)

## 10. **Funeral Goods and Services Selected**

Upon the death of the beneficiary, the funeral home shall provide the funeral goods and services selected by the payor on ~~the~~ a Statement of Funeral Goods and Services Selected that complies with the Federal Trade Commission Funeral Rule, 16 CFR Part 453. The Statement of Funeral Goods and Services Selected must include the manufacturer, model number and a detailed description of any funeral merchandise selected by the payor. *Funeral goods and services must be selected at this time.*

A copy of the Statement of Funeral Goods and Services Selected is attached to this agreement.

## 11. **Guaranteed Service; Substitute Goods**

~~The~~ Except as set forth in paragraph 5, funeral goods and services described on the Statement of Funeral Goods and Services ~~shall~~ must be provided regardless of the amount of money in the mortuary trust at the time of the beneficiary's death. A funeral home that takes installment payments accepts the risk that the beneficiary may die prior to completion of the payment schedule. If any of the funeral goods specified in the Statement of Funeral Goods and Services Selected are no longer available at the time of the beneficiary's death, the trustee shall substitute goods of equal or better quality.

If the fixed price set forth in paragraph 3 has not been paid in full at the time of the beneficiary's death, the funeral home, following provision of the guaranteed services, may seek and obtain payment of the outstanding balance, plus the price of any unpaid cash advance items, from: (a) the beneficiary's estate; (b) any person obligated to provide payment pursuant to this agreement; or (c) any other payment source voluntarily provided by the family or representatives of the beneficiary.

## 12. Treatment of Cash Advance Items (check one)

(Cash advances are out-of-pocket payments made by the funeral home to third parties for newspaper notices, cemetery or crematory charges, clergy honoraria, pallbearers, flowers, death certificates, and the like. The specific cash advance items that the funeral home has agreed to provide are listed on the copy of the Statement of Funeral Goods and Services Selected that is attached to this agreement.)

The cash advance items described on the Statement of Funeral Goods and Services Selected shall must be provided regardless of the amount of money in the mortuary trust at the time of the beneficiary's death. Cash advance items must be selected at this time.

The payor agrees to reimburse the funeral home for cash advance items paid for by the funeral home in excess of the amounts shown for those items on the Statement of Funeral Goods and Services Selected. The payor understands that he or she will be separately billed for these excess amounts upon the conclusion of the funeral.

*~~Cash advance items must be selected at this time.~~*

## 13. Permissible Uses of Trust Funds

The funeral home shall apply the mortuary trust funds solely to—

- The price of the funeral goods and services and cash advance items provided by the funeral home pursuant to ~~paragraph 10~~paragraphs 10-12;
- Any amounts retained by the funeral home for the funeral home's own use pursuant to paragraph 14;
- Any complete refund to the payor required by paragraph 14 due to the funeral home's inability to perform its obligations under this agreement;
- Any complete refund to the payor required by paragraph 8 if this mortuary trust agreement is revocable and the payor has revoked the trust;
- Any complete refund to the payor pursuant to paragraph 5 due to the payor's failure to cure a noncompliance with any terms and conditions of this agreement relating to installment payments;
- Payment of any fees permitted by paragraph 20;
- Payment of taxes pursuant to paragraph 21 or otherwise.

#### **14. Amounts Retained by Funeral Home For Its Own Use;** **Inability of Funeral Home to Perform**

The funeral home may withdraw and retain for its own use any funds remaining in the trust following payment for the funeral goods and services and cash advance items selected (or their substitutes).

If the funeral home is unable for any reason to perform its obligations under this agreement, the funeral home shall return all trust funds to the payor.

#### **15. Transfer of Mortuary Trust**

This agreement constitutes the payor's written consent to the direct transfer of the mortuary trust funds by the funeral home from one financial institution or credit union to another financial institution or credit union, or, if the trust is revocable, to the payor. The funeral home may direct the transfer of the mortuary trust funds to another financial institution or credit union for any reason consistent with the purpose of this agreement and the governing law and rules. No additional written consent of the payor is necessary to authorize the transfer.

#### **16. Withdrawals of Mortuary Trust Funds**

The funeral home may withdraw money from the mortuary trust only upon presentation of a certified copy of the death certificate of the beneficiary and only for the purposes listed in paragraph 13, provided that presentation of the death certificate need not be made for withdrawals to pay fees as permitted by paragraph 20, to pay taxes as permitted by paragraph 21 or otherwise, or to pay the complete refund to the payor permitted by paragraph 8 (if this mortuary trust is revocable and the payor has revoked the trust).

#### **17. Resignation of Funeral Home as Trustee**

The funeral home shall resign as trustee if—

- The funeral home becomes unable or incapable of continuing to act as trustee;
- ~~The funeral home for any reason no longer desires to continue as trustee; or~~
- The payor for any reason requests the funeral home to resign as trustee; or
- The funeral home closes, and the owner of the home does not own any other funeral home in Maine.

The funeral home may resign as trustee as set forth in paragraph 5 if the payor fails to cure a noncompliance with any terms and conditions of this agreement relating to installment payments.

~~A voluntary resignation of the funeral home as trustee shall be ineffective unless the trustee has delivered written notice of the resignation to the payor, accompanied by an accounting of trust funds, at least fifteen (15) days before the effective date of the resignation. When the payor has requested the resignation, the trustee shall deliver a written resignation and an accounting of trust funds to the payor within fifteen (15) days after delivery of the written request.~~

A funeral home resigns as trustee by delivering to the payor, and to any successor trustee identified by the payor pursuant to paragraph 18:

- Written notice of resignation;
- This mortuary trust agreement, including the Statement of Funeral Goods and Services Selected that is attached to this agreement.
- Control of the trust funds to the payor or successor trustee, as the case may be; and
- An accounting of trust funds as of the date of resignation.

If the payor has requested the resignation, the funeral home shall complete the resignation as described above within thirty (30) days after receiving a written request to resign from the payor.

If the funeral home closes, but the owner of the home owns one or more other funeral homes in Maine, the funeral home may resign as trustee in the manner described above in this paragraph. Alternatively, the funeral home may notify the payor of its proposal to transfer the mortuary trust, and the obligations of successor trustee, to another funeral home in Maine under common ownership. The notice must be sent by first class mail. If the notice is returned as undeliverable, the returned envelope must be kept in the file. The payor may, within thirty (30) days of receipt of notice, either (a) accept the proposal, or (b) request the resignation of the trustee as described above in this paragraph. If the payor chooses resignation, the payor may either name a successor trustee or request a refund of the trust, as the case may be. In the event that the funeral home does not receive a response from the payor within this thirty (30) day period, the funeral home may either transfer the mortuary trust as proposed or resign as trustee.

## **18. Appointment of Successor Trustee**

~~In the event of the resignation or incapacity of the funeral home as trustee~~If the funeral home resigns as trustee pursuant to paragraph 17, the payor may appoint a different funeral home as successor trustee.

## 19. Change of Trustee Upon Change of Ownership

Within thirty (30) days after a change of ownership of the funeral home, the new owner, or the funeral home, shall notify the ~~contact person identified in paragraph 2~~ payor of the change and shall inform the ~~contact person~~ payor that the new owner has assumed the role of trustee under this agreement and will provide all funeral goods and services required by this agreement. The notice must also state that the payor is free at any time to request the resignation of the trustee and designate a different funeral home as successor trustee pursuant to paragraphs 17 and 18. For purposes of this paragraph, “change of ownership” means the sale or transfer of the entire ownership of a funeral home.

## 20. Fees

No fees may be charged against or deducted from the mortuary trust by the funeral home except for the following:

Description	Amount
Transfer of account by appointment of successor trustee .....	
Revocation of revocable agreement.....	
<u>Resignation of trustee due to payor’s noncompliance with terms and conditions relating to installment payments.....</u>	
Actual financial and tax administration of the account performed by or on behalf of the funeral home .....	

### **Notice to Payor**

The *maximum* fees the funeral home can charge for the ~~three~~ four services listed above are contained in Chapter 16 of the rules of the State Board of Funeral Service. As ~~initially~~ established by the Board, those maximum amounts are: 7% of trust funds, not to exceed ~~\$200~~ \$250, for a transfer; 7% of trust funds, not to exceed ~~\$200~~ \$250, for a revocation; 7% of trust funds, not to exceed \$250, for a resignation due to the payor’s noncompliance with installment obligations; and 25% of net interest earned per annum, not to exceed ~~\$100~~ \$125, for annual tax and financial administration. This agreement may not contain any other fees.

## 21. Taxes (check one)

Trust earnings shall be treated as personal income of the payor. The payor will be responsible for payment of any tax due on trust earnings.

If the trust is within the applicable contribution limit for treatment as a “qualified funeral trust” under federal tax law, the funeral home shall elect such treatment on behalf of the trust and shall pay any federal income tax due directly from trust funds. ~~[Note: For trusts created in 2001, the contribution limit for treatment as a qualified funeral trust is \$7500 per year.]~~

*The funeral home does not provide tax advice to the payor other than as required by the instructions to IRS Form 1041. The payor is encouraged to consult an independent tax advisor to determine which of these two options is more advantageous to the payor. The payor acknowledges that s/he is not relying upon the tax advice of the funeral home.*

## 22. Maine Law Controlling

The situs of this mortuary trust ~~shall be~~ Maine. The validity, construction and administration of the trust shall be governed by Maine law, including but not limited to The Maine Uniform Trust Code, 18-B MRSA §101 et seq., 32 MRSA §1401 and Chapter ~~18-16~~ of the rules of the Maine State Board of Funeral Service.

## 23. Binding on Legal Representatives

This agreement is binding upon and ~~inures runs~~ to the benefit of the heirs, devisees, personal representatives, successors and assigns of the parties.

(signature page follows)

Dated at \_\_\_\_\_, Maine this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_.

Payor: \_\_\_\_\_

Funeral Home: \_\_\_\_\_

\_\_\_\_\_  
(~~person signing on behalf of funeral home~~ funeral practitioner)

\_\_\_\_\_  
(license number)

\_\_\_\_\_  
(position)

\_\_\_\_\_  
(owners of funeral home)

\_\_\_\_\_  
(addresses of owners)

# MAINE MORTUARY TRUST AGREEMENT

*for the benefit of*

---

## 1. Creation

*Mortuary trust.* The mortuary trust is the fund created by this agreement to be applied to the provision of funeral and burial services to the beneficiary. The mortuary trust consists of the initial payment made for that purpose upon the signing of this agreement, any money added to the fund at a later date, and all interest and investment income earned by the fund, less fees and taxes paid pursuant to the terms of this agreement.

## 2. Parties

*Beneficiary.* The beneficiary is the person who will receive the funeral and burial services described in this agreement. The beneficiary is:

\_\_\_\_\_  
(name)

*Payor.* The payor is the person who is funding this mortuary trust, ~~or the duly appointed legal representative of such person.~~ The payor is:

\_\_\_\_\_  
(name)

\_\_\_\_\_  
(relationship to beneficiary)

\_\_\_\_\_  
(address)

\_\_\_\_\_  
(city, state, zip)

\_\_\_\_\_  
(telephone)

*Funeral home.* The funeral home is the trustee for all money paid into the mortuary trust. The funeral home may be an individual, a firm, an association, a partnership or a corporation. The payor hereby appoints the funeral home identified below as trustee. The funeral home need not post bond or enter security. By signing this agreement, the funeral home accepts this appointment as trustee of the mortuary trust.

---

(name)

---

(address)

---

(city, state, zip)

---

(telephone)

Representative of payor (check if applicable). This is the person for the funeral home to contact and report to in lieu of the payor for all purposes under this agreement. The representative of the payor may exercise all powers and authority conferred upon the payor by this agreement:

---

(name)

---

(relationship to beneficiary)

---

(address)

---

(city, state, zip)

---

(telephone)

~~Contact~~  Alternate contact person (check if applicable). ~~The~~ This is the person for the funeral home to contact on behalf of the payor with any questions concerning the mortuary trust is identified below. This may be the payor or another person chosen by the payor and report to in lieu of the payor for all purposes under this agreement in the event that the payor or representative of the payor is deceased, incapacitated or otherwise unavailable:

---

(name)

---

(relationship to beneficiary)

---

(address)

\_\_\_\_\_  
(city, state, zip)

\_\_\_\_\_  
(telephone)

~~*Beneficiary. The beneficiary is the person who will receive the funeral and burial services described in this agreement. The beneficiary is:*~~

\_\_\_\_\_  
\_\_\_\_\_  
~~(name)~~

### 3. Initial Payment

\$ \_\_\_\_\_

The funeral home hereby acknowledges receipt in trust of an initial payment in the amount shown. Payment was made in the form of  cash  check  share draft  money order.

*(check one)* If payment was made by check, share draft or money order, a photocopy must be attached to each copy of this agreement.

### 4. Deposit of Initial Payment

The funeral home shall deposit the initial payment in a separate account in the financial institution or credit union identified below within ten (10) days after receipt of the initial payment from the payor:

\_\_\_\_\_  
(name of financial institution or credit union)

\_\_\_\_\_  
(address)

\_\_\_\_\_  
(city, state, zip)

\_\_\_\_\_  
(telephone)

#### ***Important Instructions to Payor***

1. Make your check, share draft or money order payable solely to the financial institution or credit union identified above—*not* to the funeral home.
2. Write the names of the funeral home and beneficiary on the check, share draft or money order for identification purposes.
3. For your protection, mail a copy of this agreement to the financial institution or credit union with instructions to contact you if the initial payment is not received from the funeral home.

## 5. Deposit of Additional Payments

The funeral home shall deposit any money added to the mortuary trust at a later date within ten (10) days after receipt of the additional money from the payor.

## 6. Record of Account; Inspection of Record

The funeral home shall maintain a complete record of the initial payment and any additional payments into the trust, including principal and interest, and of all fees and taxes paid from the trust. The record must contain the name and address of the financial institution or credit union and the dates and amounts of all deposits and withdrawals. ~~The funeral home must make the record available for inspection by the payor.~~

The funeral home shall make the amount of initial deposit, cumulative interest/additional deposits, cumulative expenses and current balance available for inspection by the payor without prior notice during regular office hours. The funeral home shall make the complete record available for inspection within thirty (30) days following receipt of a request for complete inspection from the payor.

## 7. Permissible Investments

The initial deposit into the mortuary trust ~~shall~~must be deposited in:

- a federally insured deposit or share account  a trust account. *(check one)*

A deposit in a trust account may be invested in or used to purchase only the following:

- Federally insured deposit or share accounts;
- Securities issued, insured or guaranteed by the United States or by any agency or corporate or other instrumentality of the United States;
- Municipal securities that are exempt from registration under 32 MRSA §10502(1)(A); and
- Permanent life insurance, other than variable life insurance and annuities, from an insurer authorized to transact insurance in this State, subject to the provisions of 24-A MRSA, chapter 27. A funeral home, its employees and agents may not receive any commission, fee or other consideration from an insurer in connection with the procurement or purchase of insurance permitted by this subparagraph.

If the funeral home subsequently transfers or deposits all or any part of the mortuary trust into the investment category not initially selected by the payor (i.e., federally insured account or trust account), the funeral home shall notify the payor

within ten (10) days after making the deposit or transfer. No additional consent of the payor is necessary to authorize the change.

## 8. Revocability

This mortuary trust agreement is  revocable  irrevocable. (*check one*)

A *revocable* agreement may be terminated by the payor at any time, in which case the funeral home shall refund the entire mortuary trust to the payor, less any fee permitted by paragraph ~~21-22~~ and any taxes paid pursuant to paragraph ~~2223~~. The refund ~~shall~~must be made within thirty (30) days after receipt of written notice of revocation from the payor.

An *irrevocable* agreement may not be terminated by the payor. However, the payor retains the right to transfer the mortuary trust to a different funeral home at any time by requesting the resignation of the trustee ~~and appointing a successor trustee. See paragraphs 17 and 18~~pursuant to paragraph 17 and appointing a successor trustee pursuant to paragraph 18.

## 9. Credit for Service Mortuary Trust

The mortuary trust created by this agreement is a *credit for service* mortuary trust. The funeral home may also offer a *guaranteed* ~~price~~service mortuary trust, but is not required to do so.

I have explained to the payor the difference between the credit for service mortuary trust created by this agreement and a guaranteed ~~price~~service mortuary trust.

\_\_\_\_\_  
(funeral home)

I understand the difference between the credit for service mortuary trust created by this agreement and a guaranteed ~~price~~service mortuary trust.

\_\_\_\_\_  
(payor)

## 10. Funeral Goods and Services Selected (*check one*)

Funeral Goods and services may be selected at the present time or at any later time. Check one of the two options below.

- Upon the death of the beneficiary, the funeral home shall, to the extent that trust funds are available—
  - Provide the funeral goods and services selected by the payor on ~~the a~~ Statement of Funeral Goods and Services Selected that complies with the Federal Trade Commission Funeral Rule, 16 CFR Part 453. The Statement of Funeral Goods and Services Selected must include the manufacturer, model number and a detailed description of any funeral merchandise selected by the payor; and

- Pay the cash advance items identified on the Statement of Funeral Goods and Services Selected.

A copy of the Statement of Funeral Goods and Services Selected is attached to this agreement.

- The payor has decided not to select any funeral goods and services at this time. The payor may make this selection at any time up to the death of the beneficiary. After the death of the beneficiary, selection of funeral goods and services may be made by the authorized person as determined pursuant to 22 MRSA §2843-A.

## 11. Price of Funeral Goods and Services Selected

The price of the funeral goods and services selected and the designated cash advance items will be the prices in effect at the time of the beneficiary's death, which may be higher or lower than the prices presently in effect.

## 12. Permissible Uses of Trust Funds

The funeral home shall apply the mortuary trust funds solely to—

- The price of the funeral goods and services and cash advance items provided by the funeral home pursuant to paragraph 10;
- Any partial refund to the payor required by paragraph 13;
- Any complete refund to the payor required by paragraph 13 due to the funeral home's inability to perform its obligations under this agreement;
- Any complete refund to the payor required by paragraph 8 if this mortuary trust agreement is revocable and the payor has revoked the trust.
- Payment of any fees permitted by paragraph 21;
- Payment of taxes pursuant to paragraph 22 or otherwise.

## 13. Partial Refund of Trust Funds to Payor; Inability of Funeral Home to Perform

~~If the price of the funeral goods and services and cash advance items selected is less than the amount of money in the trust at the time of the beneficiary's death, the funeral home shall either:~~

- ~~• Pay the difference to the payor; or~~

- ~~Make a separate agreement with the payor for the purchase of additional or upgraded funeral goods or services or cash advance items with trust funds.~~

If the price of the funeral goods and services and cash advance items selected is less than the amount of money in the trust at the time of the beneficiary's death, the funeral home shall promptly remit the difference to (check one):

- the estate of the beneficiary, if other than the payor
- the payor
- the following person or persons (insert details below)

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If the payor has been designated above to receive any excess trust funds, the funeral home, as an alternative to remittance of excess trust funds to the payor, may make a separate agreement with the payor for the purchase of additional or upgraded funeral goods or services or cash advance items from the excess trust funds. This agreement must be documented on a Statement of Funeral Goods and Services Selected.

If the funeral home is unable for any reason to perform its obligations under this agreement, the funeral home shall return all trust funds in accordance with the designation made in this paragraph.

#### **14. Additional Payment by Payor**

If the price of the funeral goods and services and cash advance items selected is greater than the amount of money in the trust at the time of the beneficiary's death, the payor and the funeral home shall do either or both of the following:

- Make an agreement for additional payment;
- Modify the goods or services or cash advance items selected.

However, in no event ~~shall is~~ the funeral home ~~be~~ obligated to provide funeral goods or services or make cash advances for which the funeral home will not be compensated.

#### **15. Transfer of Mortuary Trust**

This agreement constitutes the payor's written consent to the direct transfer of the mortuary trust funds by the funeral home from one financial institution or credit

union to another financial institution or credit union, or, if the trust is revocable, to the payor. The funeral home may direct the transfer of the mortuary trust funds to another financial institution or credit union for any reason consistent with the purpose of this agreement and the governing law and rules. No additional written consent of the payor is necessary to authorize the transfer.

## 16. Withdrawal of Mortuary Trust Funds

The funeral home may withdraw money from the mortuary trust only upon presentation of a certified copy of the death certificate of the beneficiary and only for the purposes listed in paragraph 12, provided that presentation of the death certificate need not be made for withdrawals to pay fees as permitted by paragraph 21, to pay taxes as permitted by paragraph 22 or otherwise, or to pay the complete refund to the payor permitted by paragraph 8 (if this mortuary trust agreement is revocable and the payor has revoked the trust).

## 17. Resignation of Funeral Home as Trustee

The funeral home shall resign as trustee if—

- The funeral home becomes unable or incapable of continuing to act as trustee;
- ~~The funeral home for any reason no longer desires to continue as trustee; or~~
- The payor for any reason requests the funeral home to resign as trustee; or
- The funeral home closes, and the owner of the home does not own any other funeral home in Maine.

~~A voluntary resignation of the funeral home as trustee shall be ineffective unless the funeral home has delivered written notice of the resignation to the payor, accompanied by an accounting of trust funds, at least fifteen (15) days before the effective date of the resignation. When the payor has requested the resignation, the funeral home shall deliver a written resignation and an accounting of trust funds to the payor within fifteen (15) days after delivery of the written request.~~

A funeral home resigns as trustee by delivering to the payor, and to any successor trustee identified by the payor pursuant to paragraph 18:

- Written notice of resignation;
- This mortuary trust agreement, including any Statement of Funeral Goods and Services Selected that is attached to this agreement;
- Control of the trust funds to the payor or successor trustee, as the case may be; and

- An accounting of trust funds as of the date of resignation that contains the information described in paragraph 20;

If the payor has requested the resignation, the funeral home shall complete the resignation as described above within thirty (30) days after receiving a written request to resign from the payor.

If the funeral home closes, but the owner of the home owns one or more other funeral homes in Maine, the funeral home may resign as trustee in the manner described above in this paragraph. Alternatively, the funeral home may notify the payor of its proposal to transfer the mortuary trust, and the obligations of successor trustee, to another funeral home in Maine under common ownership. The notice must be sent by first class mail. If the notice is returned as undeliverable, the returned envelope must be kept in the file. The payor may, within thirty (30) days of receipt of notice, either (a) accept the proposal, or (b) request the resignation of the trustee as described above in this paragraph. If the payor chooses resignation, the payor may either name a successor trustee or request a refund of the trust, as the case may be. In the event that the funeral home does not receive a response from the payor within this thirty (30) day period, the funeral home may either transfer the mortuary trust as proposed or resign as trustee.

## **18. Appointment of Successor Trustee**

~~In the event of the resignation or incapacity of the funeral home as trustee~~ If the funeral home resigns as trustee pursuant to paragraph 17, the payor may appoint a different funeral home as successor trustee.

## **19. Change of Trustee Upon Change of Ownership**

Within thirty (30) days after a change of ownership of the funeral home, the new owner, ~~or the funeral home,~~ shall notify the ~~contact person identified in paragraph 2~~ payor of the change and shall inform the ~~contact person~~ payor that the new owner has assumed the role of trustee under this agreement and will provide all funeral goods and services required by this agreement. The notice must also state that the payor is free at any time to request the resignation of the trustee and designate a different funeral home as successor trustee pursuant to paragraphs 17 and 18. For purposes of this paragraph, “change of ownership” means the sale or transfer of the entire ownership of a funeral home.

## **20. Final Accounting by Funeral Home; Termination of Trust**

The funeral home shall furnish the payor with a final accounting of trust funds within thirty (30) days after rendition of final services. The mortuary trust ~~shall terminate-terminates~~ upon delivery of the accounting and payment of any partial refund required by paragraph ~~8~~ or 13.

**22.21. Fees**

No fees may be charged against or deducted from the mortuary trust by the funeral home except for the following:

<b>Description</b>	<b>Amount</b>
Transfer of account by appointment of successor trustee.....	
Revocation of revocable agreement.....	
Actual financial and tax administration of the account performed by or on behalf of the funeral home .....	

***Notice to Payor***

The *maximum* fees the funeral home can charge for the three services listed above are contained in Chapter 16 of the rules of the State Board of Funeral Service. As ~~initially~~ established by the Board, those maximum amounts are: 7% of trust funds, not to exceed \$~~200~~250, for a transfer; 7% of trust funds, not to exceed \$~~200~~250, for a revocation; and 25% of net interest earned per annum, not to exceed \$~~100~~125, for annual tax and financial administration. This agreement may not contain any other fees.

**23.22. Taxes** (check one)

Trust earnings shall be treated as personal income of the payor. The payor will be responsible for payment of any federal income tax due on trust earnings.

If the trust is within the applicable contribution limit for treatment as a “qualified funeral trust” under federal tax law, the funeral home shall elect such treatment on behalf of the trust and shall pay any federal income tax due directly from trust funds. ~~[Note: For trusts created in 2001, the contribution limit for treatment as a qualified funeral trust is \$7500 per~~

*The funeral home does not provide tax advice to the payor other than as required by the instructions to IRS Form 1041. The payor is encouraged to consult an independent tax advisor to determine which of these two options is more advantageous to the payor. The payor acknowledges that s/he is not relying upon the tax advice of the funeral home.*

**24.23. Maine Law Controlling**

The situs of this mortuary trust ~~shall be~~ Maine. The validity, construction and administration of the trust shall be governed by Maine law, including but not limited to The Maine Uniform Trust Code, 18-B MRSA §101 et seq., 32 MRSA §1401 and Chapter ~~18-16~~ of the rules of the ~~Maine-State~~ Board of Funeral Service.

**25.24. Binding on Legal Representatives**

This agreement is binding upon and ~~inures runs~~ to the benefit of the heirs, devisees, personal representatives, successors and assigns of the parties.

(signature page follows)

Dated at \_\_\_\_\_, Maine this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_.

Payor: \_\_\_\_\_

Funeral Home: \_\_\_\_\_

\_\_\_\_\_  
(~~person signing on behalf of funeral home~~ funeral practitioner)

\_\_\_\_\_  
(license number)

\_\_\_\_\_  
(position)

\_\_\_\_\_  
(owners of funeral home)

\_\_\_\_\_  
(addresses of owners)

# MAINE MORTUARY TRUST AGREEMENT

*for the benefit of*

---

## 1. Creation

*Mortuary trust.* The mortuary trust is the fund created by this agreement to assure the provision of funeral and burial services to the person insured. The mortuary trust consists of one or more insurance policies on the life of the person insured, and all proceeds, dividends, premium rebates, disbursements and payments of every kind made from such policy, including all interest and investment income earned.

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(name of issuer and policy number)

---

(name of issuer and policy number)

---

(date of issuance)

---

(date of issuance)

---

(policy amount)

---

(policy amount)

(attach any additional policy information as a separate sheet)

This policy (or policies) (*check one*):

- has been assigned to the funeral home as owner and beneficiary and is payable to the funeral home upon the death of the person insured.
- designates the funeral home as a beneficiary and is payable to the funeral home upon the death of the person insured.

If the funeral home is owner and beneficiary, the policy is attached to this mortuary trust agreement. If the funeral home is beneficiary only, a copy of the policy is attached to this mortuary trust agreement.

## 2. Parties

*Person Insured.* The person insured is the person who will receive the funeral and burial services described in this agreement. The person insured is the sole beneficiary of this trust. The person insured is:

---

(name)

*Settlor.* The settlor is the person who assigned the insurance policy to the funeral home as owner and beneficiary, or designated the funeral home as a beneficiary of the policy. (The settlor may be the person insured, or a different person.) The settlor is:

---

(name)

---

(relationship to insured)

---

(address)

---

(city, state, zip)

---

(telephone)

*Funeral home.* The funeral home is the trustee for the mortuary trust. The funeral home may be an individual, a firm, an association, a partnership or a corporation. The settlor hereby appoints the funeral home identified below as trustee. The funeral home need not post bond or enter security. By signing this agreement, the funeral home accepts this appointment as trustee of the mortuary trust.

---

(name)

---

(address)

---

(city, state, zip)

---

(telephone)

*Representative of settlor (check if applicable).* This is the person for the funeral home to contact and report to in lieu of the settlor for all purposes under this agreement. The representative of the settlor may exercise all powers and authority conferred upon the settlor by this agreement.

---

(name)

---

(relationship to person insured)

---

(address)

---

(city, state, zip)

---

(telephone)

*Alternate contact person (check if applicable).* This is the person for the funeral home to contact and report to for all purposes under this agreement in the event that the settlor or representative of the settlor is deceased, incapacitated or otherwise unavailable:

---

(name)

---

(relationship to person insured)

---

(address)

---

(city, state, zip)

---

(telephone)

### **3. Receipt of Policy**

The funeral home hereby acknowledges receipt in trust of the insurance policy or copy of the policy identified in paragraph 1.

### **4. Record of Account; Inspection of Record**

The funeral home shall maintain a complete record of all: (a) policy statements, bills, notices, payments and correspondence received from the insurer, (b) correspondence and notices sent by the funeral home, and (c) premium payments charged against the mortuary trust. The funeral home shall make the complete record available for inspection by the settlor without prior notice during business hours.

### **5. Revocability**

This mortuary trust agreement is  revocable  irrevocable. *(check one)*

A *revocable* agreement may be terminated by the settlor at any time. Upon receipt of written notice of revocation from the settlor, the funeral home shall promptly execute all documents necessary to assign the insurance policy to the settlor or to effectuate the change of beneficiary, as the case may be.

An *irrevocable* agreement may not be terminated by the settlor. However, the settlor retains the right to transfer the mortuary trust to a different funeral home at any time by requesting the resignation of the trustee and appointing a successor trustee in accordance with paragraphs 13 and 14.

## 6. Credit for Service Mortuary Trust

The mortuary trust created by this agreement is a credit for service mortuary trust. This means that the insurance policy proceeds will be applied to the cost of the funeral goods and services selected. If the policy proceeds exceed the cost of the funeral goods and services selected, the funeral home has the fiduciary duty to promptly remit the difference to the settlor in accordance with paragraph 10. If the policy proceeds are insufficient to pay for the funeral goods and services selected, adjustments must be negotiated between the settlor and the funeral home in accordance with paragraph 11. The funeral home is not guaranteeing to provide the funeral goods and services selected from the policy proceeds.

## 7. Funeral Goods and Services Selected *(check one)*

Funeral Goods and services may be selected at the present time or at any later time. Check one of the two options below.

- Upon the death of the beneficiary, the funeral home shall, to the extent that trust funds are available—
  - Provide the funeral goods and services selected by the payor on a Statement of Funeral Goods and Services Selected that complies with the Federal Trade Commission Funeral Rule, 16 CFR Part 453. The Statement of Funeral Goods and Services Selected must include the manufacturer, model number and a detailed description of any funeral merchandise selected by the payor; and
  - Pay the cash advance items identified on the Statement of Funeral Goods and Services Selected.

A copy of the Statement of Funeral Goods and Services Selected is attached to this agreement.

- The payor has decided not to select any funeral goods and services at this time. The payor may make this selection at any time up to the death of the beneficiary. After the death of the beneficiary, selection of funeral goods and

services may be made by the authorized person as determined pursuant to 22 MRSA §2843-A.

**8. Price of Funeral Goods and Services Selected**

The price of the funeral goods and services selected and the designated cash advance items will be the prices in effect at the time of the death of the person insured, which may be higher or lower than the prices presently in effect.

**9. Permissible Uses of Trust Funds**

The funeral home shall apply the proceeds, dividends, payments and disbursements from the insurance policy solely to—

- The price of the funeral goods and services and cash advance items provided by the funeral home pursuant to paragraph 7; and
- Any remittance of policy proceeds required by paragraph 10.

**10. Partial Remittance of Policy Proceeds to Settlor; Inability of Funeral Home to Perform**

If the price of the funeral goods and services and cash advance items selected is less than the amount of the policy proceeds, the funeral home shall promptly remit the difference to (*check one*):

- other beneficiary(ies) named in the insurance policy(ies)
- the estate of the person insured, if other than the settlor
- the settlor
- the following person or persons (*insert details below*)

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If the settlor has been designated above to receive any excess policy proceeds, the funeral home, as an alternative to remittance of excess policy proceeds to the settlor, may make a separate agreement with the settlor for the purchase of additional or upgraded funeral goods or services or cash advance items from the policy proceeds. This agreement must be documented on a Statement of Funeral Goods and Services Selected.

If the funeral home is unable for any reason to perform its obligations under this agreement, the funeral home shall return all policy proceeds received in accordance with the designation made in this paragraph.

## 11. Additional Payment by Settlor

If the price of the funeral goods and services and cash advance items selected is greater than the policy proceeds, the settlor and the funeral home shall do either or both of the following:

- Make an agreement for additional payment;
- Modify the goods or services or cash advance items selected.

However, in no event is the funeral home obligated to provide funeral goods or services or make cash advances for which the funeral home will not be compensated.

## 12. Obligations With Respect to Insurance Policy

*Settlor*—If the settlor has retained ownership of the life insurance policy identified in paragraph 1 as of the date of this agreement, the settlor agrees that s/he will not assign the policy, surrender the policy for cash value, borrow from the policy, change the beneficiary status of the trustee, or take any other action with respect to the policy to the extent that such action may: (a) jeopardize, impede or prevent the accomplishment of the purpose for which this agreement was created in the event that the person insured were to die immediately after such action was taken, or (b) impair the value of the policy with respect to any funeral goods and services selected. If the policy proceeds are insufficient to pay the funeral home for the funeral goods and services and cash advance items provided pursuant to this agreement, and the insufficiency was caused in whole or in part by action of the settlor in violation of this paragraph, the settlor shall promptly pay the funeral home for the funeral goods and services and cash advance items provided. The funeral director may decline to provide funeral goods and services and cash advance items if the funeral home has a reasonable basis to believe that the policy proceeds may be insufficient to pay for the funeral goods and services and cash advance items selected due to action taken by the settlor in violation of this paragraph.

*Funeral Home*—If the funeral home has accepted an assignment of ownership of the life insurance policy pursuant to paragraph 1, the funeral home agrees that:

- It will not assign the policy or change the beneficiary of the policy (except in connection with a change of ownership of the funeral home), surrender the policy for cash value, borrow from the policy, or take any other action with respect to the policy that is unrelated to the purpose for which this agreement was created or that is inconsistent with its obligations as trustee;

- It will promptly send to the settlor any bill for payment of premium, any notice of default in payment of premium or any notice regarding the nonrenewal, cancellation or lapse of the policy received by the funeral home. The funeral home is not obligated to pay premiums, and if the policy lapses for nonpayment of premium this agreement will be of no further force and effect notwithstanding any right to reinstatement of the policy. If the funeral home voluntarily elects to pay premiums, the funeral home may deduct the amount of such premium payments from the policy proceeds following the death of the person insured, but may not charge or deduct any interest or fee with respect to such premium payments;
- It will promptly pay all premium rebates, dividends, interest or similar distributions received from the insurer back into the policy, unless such payment is not permitted or is rendered impracticable by the terms of the policy.

I have discussed with the settlor: (a) the difference between assigning the policy to the funeral home vs. naming the funeral home as a beneficiary without an assignment, and (b) the obligations of the settlor and the funeral home with respect to the insurance policy as described in paragraph 12 of this agreement.

\_\_\_\_\_  
(funeral home)

I have discussed with the funeral home: (a) the difference between assigning the policy to the funeral home vs. naming the funeral home as a beneficiary without an assignment, and (b) the obligations of the settlor and the funeral home with respect to the insurance policy as described in paragraph 12 of this agreement.

\_\_\_\_\_  
(settlor)

### 13. Resignation of Funeral Home as Trustee

The funeral home shall resign as trustee if—

- The funeral home becomes unable or incapable of continuing to act as trustee;
- The settlor for any reason requests the funeral home to resign as trustee; or
- The funeral home closes, and the owner of the home does not own any other funeral home in Maine.

A funeral home resigns as trustee by delivering to the settlor, and to any successor trustee identified by the settlor pursuant to paragraph 14:

- Written notice of resignation;
- This mortuary trust agreement, including the insurance policy or copy attached to this agreement and any Statement of Funeral Goods and Services Selected that is attached to this agreement;

- An assignment of the policy to the successor trustee or change of beneficiary, as the case may be, duly accepted by the insurer; and
- A report of trust funds as of the date of resignation that contains the information described in paragraph 16.

If the settlor has requested the resignation, the funeral home shall use its best efforts to deliver the documents described above within thirty (30) days after receiving a written request to resign from the settlor.

The resignation is effective upon the insurer's acceptance of the assignment of policy or change of beneficiary as noted above, or any earlier date described in the insurance policy.

If the funeral home closes, but the owner of the home owns one or more other funeral homes in Maine, the funeral home may resign as trustee in the manner described above in this paragraph. Alternatively, the funeral home may notify the payor of its proposal to transfer the mortuary trust, and the obligations of successor trustee, to another funeral home in Maine under common ownership. The notice must be sent by first class mail. If the notice is returned as undeliverable, the returned envelope must be kept in the file. The payor may, within thirty (30) days of receipt of notice, either (a) accept the proposal, or (b) request the resignation of the trustee as described above in this paragraph. If the payor chooses resignation, the payor may either name a successor trustee, or may request assignment of the policy to the settlor or designation of the settlor as beneficiary, as the case may be. In the event that the funeral home does not receive a response from the payor within this thirty (30) day period, the funeral home may either transfer the mortuary trust as proposed or resign as trustee.

#### **14. Appointment of Successor Trustee**

If the funeral home resigns as trustee pursuant to paragraph 13, the settlor may appoint a different funeral home as successor trustee.

#### **15. Change of Trustee Upon Change of Ownership**

Within thirty (30) days after a change of ownership of the funeral home, the new owner, or the funeral home, shall notify the settlor of the change and shall inform the settlor that the new owner has assumed the role of trustee under this agreement and will provide all funeral goods and services required by this agreement. The notice must also state that the settlor is free at any time to request the resignation of the trustee and designate a different funeral home as successor trustee pursuant to paragraphs 13 and 14 of this agreement. For purposes of this paragraph, "change of ownership" means the sale or transfer of the entire ownership of a funeral home.

## **16. Annual Report**

The funeral home shall annually send to the settlor and the person insured a copy of the most recent policy statement received from the insurer, if any, plus a statement from the funeral home of any premium payments charged against the mortuary trust.

## **17. Final Report; Termination of Trust**

The funeral home shall furnish the settlor (or the estate of the settlor, as the case may be) with a final report within thirty (30) days after rendition of services. The final report must contain the information described in paragraph 16, and must in addition report the final disposition of all policy proceeds. The mortuary trust terminates upon delivery of this final accounting and payment of any remittance of policy proceeds required by paragraph 10.

## **18. Fees**

No fees may be charged against or deducted from the mortuary trust by the funeral home.

## **19. Taxes**

If the funeral home has accepted an assignment of ownership pursuant to paragraph 1, the funeral home shall promptly send to the settlor any Form 1099 received from the insurer. The settlor is responsible for payment of any taxes on dividend or interest distributions made from the policy.

## **20. Maine Law Controlling**

The situs of this mortuary trust is Maine. The validity, construction and administration of the trust shall be governed by Maine law, including but not limited to the Maine Uniform Trust Code, 18-B MRSA §101 et seq., 32 MRSA §1401, and Chapter 16 of the rules of the State Board of Funeral Service.

*(signature page follows)*

## 21. Binding on Legal Representatives

This agreement is binding upon and runs to the benefit of the heirs, devisees, personal representatives, successors and assigns of the parties.

Dated at \_\_\_\_\_, Maine this \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_.

Settlor: \_\_\_\_\_

Funeral Home: \_\_\_\_\_

\_\_\_\_\_  
(funeral practitioner)

\_\_\_\_\_  
(license number)

\_\_\_\_\_  
(position)

\_\_\_\_\_  
(owners of funeral home)

\_\_\_\_\_  
(addresses of owners)

**02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**

**331 STATE BOARD OF FUNERAL SERVICE**

**EXPLANATION OF CHANGES:  
RE-ADVERTISED PROPOSED RULES**  
(see responses to comments)

**CHAPTER 1  
DEFINITIONS  
ADOPTED XXXX XX, 2009**

***Basis for Adoption***

The board added the following new definitions to this chapter: "branch," "change of ownership," "credit for service," "guaranteed service," "payee," "payor," "practitioner trainee" and "settlor." The board substantially revised the definitions of "authorized person" and "funeral attendant."

The definition of branch implements authority in 32 MRSA §1451 for the board to license "funeral home establishments and branches."

A change of ownership of a funeral home triggers the funeral home's obligations to apply for relicensure under Chapter 7, Section 6 and send the notice to payors and settlors of mortuary trusts described in Chapter 16, Section 9. Chapter 1, Section 4-A defines change of ownership as "the sale or transfer of the entire ownership of a funeral home." The board considered defining change of ownership as sale or transfer of something less than the entire ownership, but ultimately rejected this approach.

The board's current rules, adopted in 2001, were the first to implement required forms of mortuary trust agreements and define the obligations of funeral homes as trustees. The rules adopted in this rulemaking proceeding continue to focus on mortuary trust agreements. See Chapter 16 and the included forms of mortuary trust agreements. The new definitions of credit for service, guaranteed service, payee, payor and settlor attempt to bring greater clarity to this area of the board's rules.

The definitions of practitioner trainee and funeral attendant reflect the new licensed status of these positions. Under the board's prior rules, practitioner trainees and funeral attendants were registered with the board.

See the discussion below in the Response to Comments relating to the definition of authorized person.

## **Response to Comments**

### **Maine Funeral Dealers Association**

- ◆ Consider adding the new definition of “domestic partner “ enacted by PL 2009, c. 159.
  - Board Response: Comment accepted. Chapter 1, Section 1(2) of the proposed rules defines “authorized person” as follows:

“Authorized person,” as defined in 22 MRSA §2846 and referenced in 22 MRSA §2843, means a member of the immediate family of the deceased, the domestic partner of the deceased, a person authorized in writing by a member of the immediate family of the deceased if no member of the immediate family of the deceased wishes to assume the responsibility or by the domestic partner of the deceased if the domestic partner does not wish to assume the responsibility or, in the absence of immediate family or a known domestic partner, a person authorized in writing by the deceased. For purposes of the board’s rules, “domestic partner” means one of two unmarried adults who are domiciled together under long-term arrangements that evidence a commitment to remain responsible indefinitely for each other’s welfare.

The text of this definition, including the definition of domestic partner, was taken verbatim from 22 MRSA §2846. Section 2846 deals with permits for final disposition.

PL 2009, c. 159, amended the definition of “domestic partner” in 22 MRSA §2843-A(1)D)(1-A) to read as follows:

For purposes of this section, “domestic partner” means the partner of the subject who:

- (a) Is a mentally competent adult;
- (b) Had been legally domiciled with the subject for at least 12 months immediately preceding the death of the subject;
- (c) Is not legally married to or legally separated from another individual;
- (d) Was the sole partner of the subject; and
- (e) Was jointly responsible with the subject for each other’s common welfare as evidenced by joint living arrangements, joint financial arrangements or joint ownership of real or personal property;

Title 22 MRSA §2843-A, the amended section, deals with custody of human remains. Prior to its amendment by PL 2009, c. 159, 22 MRSA §2843-A contained the same definition of domestic partner as 22 MRSA

§2846. However, PL 2009, c. 159 only updated the definition of domestic partner in 22 MRSA §2853-A – not in 22 MRSA §2846.

Which definition of domestic partner should the board's rules reference: the older less restrictive definition or the newer more specific definition? The choice is unlikely to have little practical effect. The defined term authorized person, of which domestic partner is a component part, only appears in three places in the board's rules: Chapter 8, Section 1 (who can be in the preparation room); Chapter 10, Section 1 (who can perform hairdressing and cosmetology on the deceased), and Chapter 12, Section 1 (ownership of vehicle used to transport the deceased).

The new definition will help resolve disputes relating to custody of human remains. This has been the subject of one very contentious complaint heard by the board, and is a timely issue that deserves recognition. For this reason the board opts to incorporate the new definition into its rules. Chapter 1, Section 1(2) has accordingly been amended to read:

"Authorized person," as defined in 22 MRSA §2846 and referenced in 22 MRSA §2843, means a member of the immediate family of the deceased, the domestic partner of the deceased, a person authorized in writing by a member of the immediate family of the deceased if no member of the immediate family of the deceased wishes to assume the responsibility or by the domestic partner of the deceased if the domestic partner does not wish to assume the responsibility or, in the absence of immediate family or a known domestic partner, a person authorized in writing by the deceased. For purposes of the board's rules, "domestic partner" ~~means one of two unmarried adults who are domiciled together under long-term arrangements that evidence a commitment to remain responsible indefinitely for each other's welfare~~ has the definition set forth in 22 MRSA §2843-A(1)(D)(1-A).

### **Maine Funeral Directors Association**

- ◆ Why was the definition of "board" in Chapter 1, Section 1(3) deleted? Is it because it appears in another title?
  - Board Response: The word "board" is defined in 32 MRSA §1400(1-A) and need not be repeated in rule.

### **Maine Funeral Directors Association**

- ◆ Consider including the term "preparation" in the definition of "branch" that appears in Chapter 1, Section 1(3-A)
  - Board Response: Comment accepted. Chapter 1, Section 1(3-A) has been amended to read:

“Branch” means a chapel, sales office or other facility utilized by a funeral establishment for any aspect of the practice of funeral service whether or not the embalming or preparation of human remains takes place on the premises.

### **Maine Funeral Directors Association**

- ◆ Consider including the term “wicker” in the definition of “casket” that appears in Chapter 1, Section 1(4). This would be in keeping with green funerals.
  - Board Response: Comment accepted for the reason given. Section 1(4) has been amended to read:

“Casket means a rigid container which is designed for the encasement of human remains and which is usually constructed of wood, wicker, metal, fiberglass, plastic, or like material, and ornamented and lined with fabric.

### **Maine Funeral Directors Association**

- ◆ Consider using “funeral practice” instead of funeral home” in the definition of “change of ownership” that appears in Chapter 1, Section 1(4-A) as the sale may not include the sale of the real estate.
  - Board Response: Comment not accepted. The term “funeral home” is broadly used throughout the board’s rules to refer to the practice of funeral service by a licensed practitioner at a licensed establishment.

### **Maine Funeral Directors Association**

- ◆ Consider including the term “at the time of need” in the definition of “credit for service” that appears in Chapter 1, Section 1(4-B) to make the definition read, “...cost of funeral goods and services selected *at the time of need*, but are not guaranteed by the funeral home to cover those costs in full.”
  - Board Response: Comment not accepted. The language suggested by the commenter incorrectly implies that funeral goods and services may only be selected at time of need and may not be selected at the time the agreement is executed.

### **Maine Funeral Directors Association**

- ◆ In the face of concerns regarding the use of formaldehyde, consider mentioning non-formaldehyde/formalin-based preservatives or gluteraldehyde in the definition of “embalming” that appears in Chapter 1, Section 1(5).

- Board Response: Comment not accepted. The definition broadly references “approved embalming fluid.” This is a flexible enough concept to encompass the preservatives discussed by the commenter.

### **Maine Funeral Directors Association**

- ◆ Chapter 1, Section 1(6) refers to “licensed” funeral attendants. Is this more properly considered a registration category?
  - Board Response: No. PL 2007, c. 402, sec. J-2 removed registration status from 32 MRSA §1451, the section of the funeral law that authorizes the board to license funeral personnel. The adopted rules replace registration of funeral attendants and practitioner trainees with licensure.

### **John P. Doyle, Jr., Esq., Preti Flaherty on behalf of ECI Services of Maine, Inc.**

- ◆ The definition of “guaranteed service” in Chapter 1, Section 1(7-A) should be amended to read:

“Guaranteed service” refers to a mortuary trust agreement in which the funeral home guarantees that the mortuary trust proceeds will be applied to the cost of funeral goods and services selected, which are guaranteed by the funeral home to be provided at a certain fixed price set forth in the agreement, to be referred to as the “Guaranteed Price”, with the possible exception of cash advance items.

- Board Response: Comment accepted in part. The definition of “guaranteed service” in the proposed rule was:

“Guaranteed service” refers to a mortuary trust agreement in which the funeral home guarantees that the mortuary trust proceeds will pay in full for the funeral goods and services selected, with the possible exception of cash advance items.

The term “fixed price” was not included in the proposed rule. The phrase is a useful proxy for the total price of the funeral goods and services selected in a guaranteed service mortuary trust agreement. Chapter 1, Section 1(7-A) has been adopted to read:

“Guaranteed service” refers to a mortuary trust agreement in which the funeral home guarantees to provide the funeral goods and services selected for a fixed price set forth in the agreement, with the possible exception of cash advance items.

### **Maine Funeral Directors Association**

- ◆ In Chapter 1, Section 1(10), “administered” is not the proper term as individuals can go to testing centers to take the National Board Examination. Also, what

“other organization” may possibly be approved by the board to “administer” and grade the National Board Examination?

- Board Response: Comment not accepted. Chapter 1, Section 1(10) is the definition of National Board Examination. The International Conference of Funeral Service Examining Boards, Inc. develops the National Board Examination, makes the examination available to state licensing authorities, has arranged for the examination to be taken at a network of testing centers, and provides score reporting services to the state licensing authorities. The term “administration” fairly describes these functions. The phrase “or a successor or other organization approved by the board” is a drafting convention commonly found in Maine laws and rules that allows for future change.

### **Maine Funeral Directors Association**

- ◆ In Chapter 1, Section 1(10-A), consider using “sole proprietorship” instead of “individual or firm” and “professional association” instead of “association, partnership or corporation.”
  - Board Response: Comment not accepted. The phrase “an individual, firm, association, partnership or corporation” in Chapter 16, Section 1(10-A) is taken directly from 32 MRSA §1401(1)(A).

### **Maine Funeral Directors Association**

- ◆ In Chapter 1, Section 1(11), the practical examination should only be taken in the presence of a board member who is a licensed practitioner.
  - Board Response: The public members of the board heartily agree. Chapter 1, Section 1(11) has been amended to read:

“Practical examination” means actual embalming of human remains by an applicant in the presence of a member of the board who is a practitioner of funeral service.

### **Maine Funeral Directors Association**

- ◆ In Chapter 1, Section 1(12-A), consider using the term “practical” instead of “practice” to make the definition read, “...for the purpose of acquiring supervised practical experience within the Maine Apprenticeship Program.”
  - Board Response: Comment not accepted. “Practice” refers to the practice of funeral service and in the context of the board’s rules is a more focused term than “practical.”

**Gene Ellis on behalf of  
Maine Dept. of Labor, Bureau of Employment Services**

- ◆ Chapter 1, Section 1(13), the definition of “Registered Apprenticeship Division” should be corrected to “Maine Apprenticeship Program.” The corresponding correction should be made throughout Chapter 5 and anywhere else that “Registered Apprenticeship Division” appears in the board’s rules.
  - Board Response: Comment accepted for the reason given. A definition of Maine Apprenticeship Program was added as Chapter 1, Section 9-A of the adopted rules, the definition of “Registered Apprenticeship Division in Chapter 1, Section 13 of the current rules was deleted, and the body of the rules was corrected accordingly.

**Maine Funeral Directors Association**

- ◆ In Chapter 1, Section 1(13), substitute “burial agreement” for “mortuary trust” to make the definition read, “Settlor” means the person who creates a burial agreement funded by an existing life insurance policy...”
  - Board Response: Comment not accepted. A mortuary trust funded by an existing life insurance policy is indeed a trust. See the responses to comments in Chapter 16 of this document.

July 15, 2009

**02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**

**331 STATE BOARD OF FUNERAL SERVICE**

**EXPLANATION OF CHANGES:  
RE-ADVERTISED PROPOSED RULES**  
(see responses to comments)

**CHAPTER 2  
MEETINGS AND OFFICERS OF THE BOARD  
ADOPTED XXXX XX, 2009**

***Basis For Adoption***

This chapter is deleted because matters of board governance need not be included in a board's rules.

***Response to Comments***

**Maine Funeral Directors Association**

- ◆ Why is the summary being deleted? Is it because it appears in another chapter?
  - Board response: The entire chapter is being deleted because matters of board governance need not be included in a board's rules.

**02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**

**331 STATE BOARD OF FUNERAL SERVICE**

**EXPLANATION OF CHANGES:  
RE-ADVERTISED PROPOSED RULES**  
(see responses to comments)

**CHAPTER 2-A  
ADVISORY RULINGS  
ADOPTED XXXX XX, 2009**

***Basis For Adoption***

This chapter describes the manner in which the board will consider and act upon requests for advisory rulings.

***Response to Comments***

**Maine Funeral Directors Association**

- ◆ Cite an example why the board would decline to issue an advisory ruling. We understand why in the presence of insufficient information, but are unclear on hypothetical situations or other reasons that the board would deem improper.
  - Board Response: Title 5 MRSA §9001(1) provides, “Upon written request of any interested person, an agency may make an advisory ruling with respect to the applicability of any statute or rule administered by that agency to him or his property *or actual state of facts.*” (emphasis added) The board does not have the resources to explore application of the funeral law and rules to situations that do not exist. Nor is it appropriate for the board to issue an advisory ruling relating to a situation that is the subject of a pending complaint or denial appeal.

**Maine Funeral Directors Association**

- ◆ The 90-day period for the board to indicate whether or not it will issue an advisory ruling should be shortened to 30 days.

July 15, 2009

- Board Response: Comment not accepted. Due to the press of board business and the possibility of meeting cancellations, 90 days after receipt of the request is an appropriate length of time.

**02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**

**331 STATE BOARD OF FUNERAL SERVICE**

**EXPLANATION OF CHANGES:  
RE-ADVERTISED PROPOSED RULES**  
(see responses to comments)

**CHAPTER 3  
EDUCATION REQUIREMENTS FOR LICENSURE  
ADOPTED XXXX XX, 2009**

***Basis For Adoption***

Under the board's current rules, an associate degree in funeral service fulfills the educational qualification for licensure, but is not required. The amendments to this chapter require persons who apply for licensure on or after March 1, 2011 to have an Associate Degree or higher in funeral service, unless the applicant is a registered practitioner trainee as of the effective date of this amendment. In the board's estimation, the growing complexity of funeral practice justifies more extensive educational preparation.

The board eliminated the needlessly detailed course credit requirements for persons applying without an associate degree (that is, until expiration of that option).

***Response to Comments***

**Maine Funeral Directors Association**

- ◆ In Chapter 3, Subchapter 1, Section 2(2)(B), consider using "third year class" instead of "second year class" as one may not have completed sufficient credits upon the admission to a second year class.
  - Board Response: Comment not accepted. If an applicant hasn't completed sufficient credits to entitle the applicant to admission to a second year class, the applicant will not have completed sufficient credits to entitle him or her to admission to a third year class.

July 15, 2009

**02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**

**331 STATE BOARD OF FUNERAL SERVICE**

**EXPLANATION OF CHANGES:  
RE-ADVERTISED PROPOSED RULES**  
(see responses to comments)

**CHAPTER 4  
EXAMINATION AND APPLICATION FOR LICENSURE  
AS A PRACTITIONER OF FUNERAL SERVICE  
ADOPTED XXXX XX, 2009**

***Basis For Adoption***

This chapter is repealed. Licensure and examination are now dealt with in Chapter 6-A, Pathways to Licensure as a Practitioner of Funeral Service.

***Response to Comments***

No comments were received on the proposed repeal.

**02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**

**331 STATE BOARD OF FUNERAL SERVICE**

**EXPLANATION OF CHANGES:  
RE-ADVERTISED PROPOSED RULES**

(see responses to comments)

**CHAPTER 5  
PRACTITIONER TRAINEES  
ADOPTED XXXX XX, 2009**

***Basis For Adoption***

The amendments to this chapter recognize apprenticeship hours completed in another jurisdiction; eliminate the requirement of an interview before the board; require a replacement supervising practitioner to execute a supervision agreement with the Registered Apprenticeship Division; shorten the maximum duration of a traineeship from eight years to four years; prohibit a person from working as a practitioner trainee following successful completion of a traineeship; and provide for recognition of a traineeship completed in another jurisdiction.

***Response to Comments***

**Gene Ellis on behalf of  
Maine Dept. of Labor, Bureau of Employment Services**

**Maine Funeral Directors Association**

- ◆ In Chapter 5, substitute “apprenticeship” for “traineeship” for consistency with the board’s reliance on the Maine Apprenticeship Program.
  - Board Response: Comment not accepted. “Practitioner trainee” is a statutory term. See 32 MRSA §§1400(6), 1451, 1501 and 1503-A.

**Maine Funeral Directors Association**

- ◆ Why was the interview requirement deleted from Chapter 5, Section 2?
  - Board Response: Many boards within the Office of Licensing and Registration have done away with a personal interview as part of the license application process. The interview does not help the board assess the applicant’s knowledge of the profession or the governing law and

rules. The interview has evolved into a socialization function (i.e., “meet and greet”) that does not belong in the licensure process. Conducting applicant interviews is time-consuming for the board and delays licensure of applicants.

### **Maine Funeral Directors Association**

- ◆ In Chapter 5, Section 9, the sentence, “No person may work as a practitioner trainee following successful completion of a traineeship” should be re-written to read, “A person may not work as a practitioner trainee following successful completion of a traineeship.”
  - Board Response: Comment accepted. The grammatical form recommended by the commenter is also recommended by the Office of the Revisor of Statutes in the Maine Legislative Drafting Manual. Chapter 5, Section 9 has been rewritten to read:

[A person may not work as a practitioner trainee following successful completion of a traineeship.](#)

The commenter also identified three other instances of the “No xx may...” usage, which appeared in Chapter 7, Section 1 and Chapter 11, Section 1 of the proposed rules. These have been corrected in the adopted rules.

July 15, 2009

**02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**

**331 STATE BOARD OF FUNERAL SERVICE**

**EXPLANATION OF CHANGES:  
RE-ADVERTISED PROPOSED RULES**  
(see responses to comments)

**CHAPTER 6  
RECIPROCAL AGREEMENTS  
ADOPTED XXXX XX, 2009**

***Basis For Adoption***

This chapter is repealed. Reciprocity is now dealt with in Chapter 6-A, Pathways to Licensure as a Practitioner of Funeral Service.

***Response to Comments***

No comments were received on the proposed repeal.

**02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**

**331 STATE BOARD OF FUNERAL SERVICE**

**EXPLANATION OF CHANGES:  
RE-ADVERTISED PROPOSED RULES**

(see responses to comments)

**CHAPTER 6-A  
PATHWAYS TO LICENSURE AS A  
PRACTITIONER OF FUNERAL SERVICE  
ADOPTED XXXX XX, 2009**

***Basis For Adoption***

This chapter replaces former Chapters 4 and 6. This chapter describes two pathways to licensure as a practitioner of funeral service. Pathway 1 consists of completing the educational requirement, completing a practitioner traineeship, and achieving passing scores on the National Board Examination, State Law and Rule Examination, and Practical Examination. The board has eliminated the 2-year limitation on recognition of National Board Examination scores - NBE scores will be recognized indefinitely, as the exam content is relatively constant - but has retained the 2-year limitation on recognition of scores on the other two examinations. The personal interview has been eliminated for the reasons discussed in the Response to Comments to Chapter 5.

Under Pathway 2, licensure is based on the applicant's having been in continuous active practice as a licensed practitioner of funeral service of another state for the 3-year period immediately preceding submission of the application to the board, or upon the applicant's possession of a license from another state that was obtained on the basis of license requirements that are substantially similar to the requirements of Maine law and the rules of the board. Persons applying under Pathway 2 must also achieve a passing score on the State Law and Rule Examination.

***Response to Comments***

No comments were received on the proposed rule.

**02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**

**331 STATE BOARD OF FUNERAL SERVICE**

**EXPLANATION OF CHANGES:  
RE-ADVERTISED PROPOSED RULES**

(see responses to comments)

**CHAPTER 7  
FUNERAL ESTABLISHMENTS**

**ADOPTED XXXX XX, 2009**

***Basis For Adoption***

The amendments to this chapter permit an initial inspection to be conducted after initial issuance of an establishment license; provide for an orderly transition in licensed operation upon the death, incapacity, resignation or unavailability of a licensee in charge; provide for an orderly transition in licensure upon a change of ownership (see the definition of “change of ownership” in Chapter 1); and require an establishment to notify holders of mortuary trust agreements of a change in ownership and their option to request the resignation of the trustee and designate a different funeral home as trustee. The amendments also state that the licensee in charge is responsible for the establishment’s compliance with the funeral laws and rules, and emphasize that a funeral establishment or branch may not operate without a licensee in charge.

Under the board’s current rules, death or incapacity of the licensee in charge resulted in an automatic termination of the license in 45 days. The new rules continue to require that there be a licensee in charge at all times an establishment or branch is in operation, but no longer require the establishment to apply for a new license upon the death or incapacity of the licensee in charge.

The new emphasis on the licensee in charge is modeled on the role of the pharmacist in charge of a retail pharmacy.

Title 32 MRSA §1501 requires each establishment or branch to display its license. The requirement is echoed in Chapter 7, Section 3 of the board’s current rules, which requires that the license “be publicly displayed on the premises at all times.” The board finds that carrying this requirement forward into the new rules is unnecessary as the requirement already exists in statute. Chapter 7, Section 3 has accordingly been adopted without this requirement:

The board will issue a license to each licensed establishment and branch. The license must be ~~publicly displayed on the premises at all times~~ and must be renewed annually.

PL 2009, c. 112 stripped the requirement to publicly display a license from the licensing laws governing chiropractors, physical therapists, podiatrists, radiologic technologists and real estate appraisers, and also repealed the general rulemaking authorization relating to display of license information formerly found in 10 MRSA §8003(8). Funeral establishment licenses were not included in PL 2009, c. 112. OLR plans to submit corrective legislation during the next legislative session.

### ***Response to Comments***

#### **Maine Funeral Directors Association**

- ◆ In Chapter 7, Section 3, is this licensee interchangeable or would the verbiage “licensee of record” give more credibility?
  - Board Response: The board does not understand the comment.

#### **Maine Funeral Directors Association**

- ◆ In Chapter 7, Section 4, delete “or authorized employee of the Office of Licensing and Registered. Only a funeral inspector, who is ideally a practitioner of funeral service, has sufficient background and knowledge to critique the professional abilities of a practitioner.”
  - Board response. Comment not accepted. The position of funeral director was eliminated. Board inspections are performed by investigative staff within the Office of Licensing and Registration.

#### **Maine Funeral Directors Association**

- ◆ In Chapter 7, Section 5, consider using a more practical time limit for the term “immediately.”
  - Board Response: Comment not accepted. A funeral establishment may not operate without a licensee in charge. It is of the utmost importance that the board immediately receives notice that a replacement licensee in charge has been hired in the event of the death, incapacity, resignation or unavailability of the predecessor licensee in charge.

#### **Maine Funeral Directors Association**

- ◆ Is new Chapter 7, Section 6 supposed to replace the deleted text within Chapter 7, Section 4?
  - Board Response: Yes.

**02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**

**331 STATE BOARD OF FUNERAL SERVICE**

**EXPLANATION OF CHANGES:  
RE-ADVERTISED PROPOSED RULES**

(see responses to comments)

**CHAPTER 8  
SAFETY AND HEALTH STANDARDS**

**ADOPTED XXXX XX, 2009**

***Basis For Adoption***

The amendments to this chapter add section headers and make minor changes in terminology.

***Response to Comments***

**Maine Funeral Directors Association**

- ◆ Chapter 8, Section 1, should reference OSHA requirements applicable to preparation rooms. The board should not substitute the word “may” for “shall,” as in the sentence, “No other room may be used for embalming.”
  - Board Response: Comment not accepted. Maine has not established its own job safety and health program approved by OSHA. Therefore, OSHA has exclusive authority to enforce OSHA standards in private sector workplaces. (See [www.safetyworksmaine.com/regulations/index.html](http://www.safetyworksmaine.com/regulations/index.html))

The Maine Office of the Revisor of Statutes, in the Maine Legislative Drafting Manual, favors the prohibitory term “may not” and the variation of it used in the proposed rule. The board has left this usage in place in Chapter 8, Section 1 and several other places noted by the commenter.

**Maine Funeral Directors Association**

- ◆ In Chapter 8, Section 5, substitute “Appropriate protective equipment as required by OSHA or MOSHA” for “attired in a clean and sanitary smock or gown.”
  - Board Response: Comment accepted in part. The first sentence of Chapter 8, Section 5 has been rewritten to read:

July 15, 2009

Each person engaged in the preparation of human remains shall be attired in appropriate protective equipment and a clean and sanitary smock or gown.

As noted above, OSHA has exclusive jurisdiction to enforce OSHA workplace safety standards in private sector workplaces in Maine. In addition, OSHA standards preempt any conflicting workplace safety standard established by a state. The board's authority to enforce the health and safety provisions of its rules is subject to these limitations.

### **Maine Funeral Directors Association**

- ◆ In Chapter 8, Section 6, substitute “disinfected” for “sterilized.” It is highly doubtful that prep tables are sterile.
  - Board Response: Comment accepted for the reason given. Chapter 8, Section 6 has been rewritten to read:
    - 6. Cleaning and ~~Sterilization~~Disinfecting

Sheets, linens, materials, supplies and all instruments and appliances which have come in contact with human remains must be thoroughly cleansed and ~~sterilized~~ disinfected at the conclusion of each preparation.

### **Maine Funeral Directors Association**

- ◆ Re Chapter 8, Section 7: The intent is understood here, but this comment should adhere to OSHA requirements.
  - Board Response: Comment not accepted for the OSHA-related reasons already discussed.

July 15, 2009

**02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**

**331 STATE BOARD OF FUNERAL SERVICE**

**EXPLANATION OF CHANGES:  
RE-ADVERTISED PROPOSED RULES**  
(see responses to comments)

**CHAPTER 9  
COMPLAINTS AND INSPECTIONS  
ADOPTED XXXX XX, 2009**

***Basis For Adoption***

It is unnecessary to refer to the OLR Administrative Complaint Procedures in the board's rules. The inspection authority set forth in 32 MRSA §1451 is sufficient, and the additional inspection provisions contained in this chapter are unnecessary. This chapter is repealed.

***Response to Comments***

No comments were received on the repealed rule.

**02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**

**331 STATE BOARD OF FUNERAL SERVICE**

**EXPLANATION OF CHANGES:  
RE-ADVERTISED PROPOSED RULES**

(see responses to comments)

**CHAPTER 10  
GENERAL RULES / SCOPE OF PRACTICE**

**ADOPTED XXXX XX, 2009**

***Basis for Adoption***

The funeral law makes only oblique reference to the licensure of funeral attendants. (See 32 MRSA §1451, 2<sup>nd</sup> paragraph) The proper role of the funeral attendant has been a continuing area of uncertainty. The amendments to this chapter describe with specificity the tasks that may and may not be performed by funeral attendants. The amendments also clarify that both the funeral attendant and supervising practitioner must notify the board of any termination of employment, change of supervisor or change of employment of a funeral attendant.

The current rules require the funeral home to disclose the cost and availability of rental caskets. This amendment addresses the more basic question: The establishment must disclose to customers whether or not rental caskets are offered. See 32 MRSA §1407(2).

***Response to Comments***

**Maine Funeral Directors Association**

- ◆ In Chapter 10, Section 1, the meaning of “authorized person” is unclear.
  - Board Response: Comment not accepted. “Authorized person” is defined in Chapter 1, Section 1(2) of the board’s rules.

**Maine Funeral Directors Association**

- ◆ In Chapter 10, Section 2, “direct supervision” should be substituted for “supervision.”
  - Board Response: Comment not accepted. Chapter 10, Section 2 reads as follows:

Embalming may only be performed by a practitioner of funeral service or a practitioner trainee who is under the supervision of a practitioner of funeral service.

The amount of supervision required is for the supervising practitioner to determine in light of the experience, competence and professional development of the practitioner trainee.

### **Maine Funeral Directors Association**

- ◆ Chapter 10, Section 3, which sets forth the scope of practice of funeral directors, is unnecessary. The only license category which authorizes a person to direct funerals is practitioner of funeral service.
  - Board Response: Currently there are not any licensed funeral directors, but a former funeral director may apply for reinstatement of a license. The scope of practice for a funeral director should remain in the board's rules in case a complaint is filed against a funeral director.

### **Maine Funeral Directors Association**

- ◆ Why is Chapter 10, Section 4 deleted?
  - Board Response: In the proposed rule, the text of Chapter 10, Section 4 with strikethroughs has been replaced with the text of Chapter 10, Section 4 with underscores.

### **Maine Funeral Directors Association**

- ◆ A question has been raised regarding attendants conducting memorial services when a body is not present. This is based on the assumption that cremation represents the final mode of disposition.
  - Board Response: Chapter 10, Section 4(2)(A) states that funeral attendants may not "conduct a funeral service, graveside service or memorial service." Even where a body is not present, the conduct of a memorial service is a core function of the practice of funeral service, specifically, "the practice of helping to meet the emotions and disposition of the bereaved." 32 MRSA §1400(5). In the board's view, this is too important a duty to delegate to a funeral attendant.

### **Maine Funeral Directors Association**

- ◆ Chapter 10, Section 4(3) states that "[a] funeral attendant may only work under the personal supervision and legal responsibility of a licensed practitioner..." The board's web site states that a funeral attendant works under the direct

July 15, 2009

supervision of a licensed practitioner. The proposed rule needs to be consistent with what appears on line.

- Board Response: Comment not accepted. The board's web site needs to be consistent with the rules. The web site is updated periodically to reflect new laws and new rules.

### **Maine Funeral Directors Association**

- ◆ In Chapter 10, Section 8, why does the address of each person holding an ownership interest in the funeral establishment need to be listed on each funeral contract, as well as the other documents listed? Perhaps the address of a "licensee of record" would suffice?
  - Board Response: Title 32 MRSA §1407(1) states, "A funeral establishment shall disclose the name and address of each person holding an ownership interest in the funeral establishment on each contract or agreement for provision of funeral services or supplies and on any document required by federal law."

**02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**

**331 STATE BOARD OF FUNERAL SERVICE**

**EXPLANATION OF CHANGES:  
RE-ADVERTISED PROPOSED RULES**

(see responses to comments)

**CHAPTER 11  
ANNUAL RENEWAL; CONTINUING  
EDUCATION; INACTIVE STATUS**

**ADOPTED XXXX XX, 2009**

***Basis For Adoption***

The amendments to this chapter modernize the continuing education process and include provisions for inactive status licensure as required by 32 MRSA §1507 and as authorized by 10 MRSA §8003(5-A)(D)(5).

Licensees are no longer required to submit proof of completion of continuing education at time of license renewal. Instead, they certify to completion of the required continuing education on the license renewal application, and are subject to audit afterwards.

The amendments eliminate the Continuing Education Committee and require that funeral attendants certify to completion of the annual bloodborne pathogen training required by Chapter 10 as continuing education. The amendments replace the phrase "home study courses, videos, caregiver manuals, and the like" with the phrase "(a) on line, internet or distance education courses, or (b) self-study activities, whether in written, audio, audiovisual or electronic form." The amendments replace the phrase "funeral home-based (i.e., in-house) training" with the phrase "in-service training offered by a funeral establishment only for practitioners and funeral attendants employed by the establishment." The amendments also re-define the subject areas of eligible continuing education activities for renewals occurring on or after March 1, 2011.

***Response to Comments***

**Connie Hagan on behalf of  
FAPCO Administrative Services**

- ◆ FAPCO is a third-party trust administrator for many independent funeral homes in Maine.

Chapter 11, Section 3 states, in part:

A licensee may request a deferment of continuing education from the board due to health reasons, military service or other unforeseeable circumstances of genuine hardship. Any licensee who receives a deferment shall make up the deferred continuing education according to a schedule determined by the board in consultation with the licensee.

There may be an executive order of the Governor that excuses active duty military personnel from any continuing education requirement. This is broader than the deferment for service personnel authorized by the proposed rule.

- Board response: Board staff has been unable to find an executive order relating to a waiver of continuing education for active duty military personnel. However, R. 2003, c. 140 (a legislative resolve) waived continuing education for members of the National Guard or Reserves of the United States Armed Forces who are called to active duty for a period of more than 30 days. This resolve was succeeded by permanent legislation, 37-B MRSA §390-A, which is in effect today. Title 37-B MRSA §390-A waives continuing education for the period of active duty and the six months following the person's release from active duty. This statutory waiver is explicitly referenced by 10 MRSA §8003(5-A)(D)(3), the statute that authorizes the OLR licensing programs to adopt rules for continuing education.

No board action is necessary.

### **Maine Funeral Directors Association**

- ◆ “Are we missing something here? See materials in black and those in red.”
  - Board Response: The effect of the changes noted by the commenter is that for renewals taking place on or after March 1, 2011, the continuing education activities described in Chapter 11, Section 6(C) and (D) of the board's current rules will no longer be recognized. Those activities are:
    - C. Programs relating to business management, personnel management, or programs helping to improve services to the consumer.
    - D. Courses, seminars, lectures, home study courses, videos or other instructional programs which meet the above qualifications and which the committee determines are of benefit in improving the knowledge or service capability of licensees.

### **Maine Funeral Directors Association**

- ◆ In Chapter 11, Section 7(5), is 8 hours correct or is it a typo?

July 15, 2009

- Board Response: Eight hours is erroneous. Only six contact hours of continuing education during the one-year period prior to application, i.e., the same as the annual continuing education requirement for active licensees, should be required for reinstatement to active status. Chapter 11, Section 7(5) has been rewritten to read:

The holder of an inactive status license may return to active status upon application to the board, payment of the required license or reinstatement fee, and certification of completion of ~~eight (8)~~six (6) contact hours of continuing education during the one-year period prior to application.

**02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**

**331 STATE BOARD OF FUNERAL SERVICE**

**EXPLANATION OF CHANGES:  
RE-ADVERTISED PROPOSED RULES**  
(see responses to comments)

**CHAPTER 12  
TRANSPORTATION OF HUMAN REMAINS  
ADOPTED XXXX XX, 2009**

***Basis For Adoption***

The amendments to this chapter add section headers and make minor changes in terminology.

***Response to Comments***

**Maine Funeral Directors Association**

- ◆ In Chapter 12, Section 2, proper terminology is “on a mortuary cot,” not “in a mortuary cot;” some mention should be made of pouches and airtrays; and “mortuary stretcher or aircraft stretcher” should be substituted for “ambulance cot.”
  - Board Response: Comment accepted in part. After discussing how to re-write this section in response to the comment, the board concluded that circumstances of removal can differ so greatly that the board cannot specify an equipment list that will offer meaningful guidance to licensees in exigent situations. Rather, the overarching standard is found in section 2(1) of the prior rule: “Promote respect for, and preserve the dignity of, the dead human body.” Chapter 12, Section 2 has accordingly been rewritten to read:

2. Vehicles Owned or Leased by Funeral Establishment or Practitioner

Human remains transported in vehicles owned by or leased to the funeral establishment or practitioner must be enclosed and concealed from public view ~~in a mortuary cot, casket or outer burial vault to prevent exposure and to prevent leakage of fluids and/or offensive odors~~. Such vehicles must:

1. Promote respect for, and preserve the dignity of, the dead human body;
2. Provide ample enclosed area to accommodate ~~an ambulance cot or aircraft ambulance~~ a mortuary cot or stretcher in a horizontal position;
3. Permit loading and unloading of the body without excessive tilting of the cot or stretcher; and
4. Protect the body or container from excessive movement within the conveyance.

### **Maine Funeral Directors Association**

- ◆ In Chapter 12, Section 2, outer burial vaults would need to be transported by truck as they weigh about a ton.
  - Board Response: No response necessary. The reference to outer burial vaults was removed in the revision to Section 2 discussed immediately above.

### **Maine Funeral Directors Association**

- ◆ Delete the commas in Chapter 12, Section 2(1).
  - Board Response: Comment accepted. Chapter 12, Section 2(1) has been rewritten to read:
    1. Promote respect for, and preserve the dignity of, the dead human body.

### **Maine Funeral Directors Association**

- ◆ The first sentence of Chapter 12, Section 3 should read, “Embalmed human remains transported by common carrier must be placed in a combination unit, Ziegler case, transfer case or casket designed to prevent leakage.”
  - Board Response: Comment not accepted. After discussing how to re-write this section in response to the comment, the board concluded that Section 3 is unnecessary. Different carriers have different requirements, and the funeral home ships a body in a container that is acceptable to the carrier. The board accordingly deleted Chapter 12, Section 3.

Discussion turned to former Chapter 12, Section 4, “Transportation of Unembalmed or Decomposing Remains by Common Carrier.” Here, a uniform standard is important. The board did not alter the substance of the rule, but did include a generic description of a Ziegler case. (Ziegler is a brand name.) This section was renumbered and rewritten to read:

July 15, 2009

3. Transportation of Unembalmed or Decomposing Remains by Common Carrier

Human remains which ~~cannot be~~ not embalmed or are in a state of decomposition, ~~if~~ when transported by common carrier, ~~shall~~ must be enclosed in a galvanized metal, sealed ~~Ziegler~~ case (Ziegler or equivalent) or casket designed to prevent leakage of fluids and ~~or~~ offensive odors.

July 15, 2009

**02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**

**331 STATE BOARD OF FUNERAL SERVICE**

**EXPLANATION OF CHANGES:  
RE-ADVERTISED PROPOSED RULES**  
(see responses to comments)

**CHAPTER 13  
DISINTERMENT  
ADOPTED XXXX XX, 2009**

***Basis For Adoption***

The amendments to this chapter add section headers and make minor changes in terminology.

***Response to Comments***

No comments were received on the proposed rule.

**02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**

**331 STATE BOARD OF FUNERAL SERVICE**

**EXPLANATION OF CHANGES:  
RE-ADVERTISED PROPOSED RULES**

(see responses to comments)

**CHAPTER 14  
TEMPORARY STORAGE  
ADOPTED XXXX XX, 2009**

***Basis For Adoption***

The amendments to this chapter add section headers; make minor changes to terminology; correct a typographical error in Section 2 (removal of the word "not") and add a note about the permitting requirements of the Department of Health and Human Services applicable to the temporary storage of human bodies.

***Response to Comments***

**Maine Funeral Dealers Association**

- ◆ Insert the word “the” in the first sentence of Chapter 14, Section 1 to make the sentence read, “Temporary storage of human remains for less than eight months, in tombs or other structures constructed for the temporary storage of human remains...”

- Board Response: Comment accepted. Chapter 14, Section 1, first sentence is amended to read:

Temporary storage of human remains for less than eight months, in tombs or other structures constructed for the temporary storage of human remains, is not regarded as final disposition.

**02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**

**331 STATE BOARD OF FUNERAL SERVICE**

**EXPLANATION OF CHANGES:  
RE-ADVERTISED PROPOSED RULES**  
(see responses to comments)

**CHAPTER 15  
CODE OF ETHICS  
ADOPTED XXXX XX, 2009**

***Basis For Adoption***

The amendments to this chapter add section headers and clarify that licensees shall treat all persons with respect, dignity and courtesy regardless of race, religion, national origin, gender orientation, education, financial status or cause of death.

***Response to Comments***

**Maine Funeral Directors Association**

- ◆ The scope of Chapter 15, Section 2 should be limited to practitioners of funeral service. Funeral attendants should not be giving out this information.
  - Board Response: Comment not accepted. All licensees, including funeral attendants and practitioner trainees, have an obligation to provide the public with accurate and precise information regarding funerals within the scope of their license and responsibilities.

**Maine Funeral Directors Association**

- ◆ In Chapter 15, Sections 2 and 3, consider using “practitioners, apprentices and attendants” instead of “licensee.”
  - Board Response: Comment not accepted. The term “licensees” encompasses all license categories.

**Connie Hagan on behalf of  
FAPCO Administrative Services  
Maine Funeral Directors Association**

◆ Chapter 15, Section 6 reads as follows:

6. Wishes and Requests of Persons Responsible for the Deceased  
Licensees shall respect and carry out the wishes and requests of persons responsible for the deceased, as contracted for.

This section should require the funeral practitioner to honor the wishes of the deceased.

- Board Response: Comments accepted in part. Although “honor” may be an appropriate term, Maine law requires the family to “abide by” the wishes of the deceased.

Title 22 MRSA 2843-A is entitled “Custody of Remains of Deceased Persons. Section 2843-A(1)(B) defines “custody and control” to mean:

...the right to make all decisions, consistent with applicable laws, regarding the handling of a dead body, including, but not limited to, possession, at-need funeral arrangements, final disposition and disinterment.

Section 2843-A(5) requires the person having custody and control to “abide by” the wishes of the deceased:

**5. Wishes of subject.** If the subject has left written and signed instructions regarding funeral arrangements and disposal of the subject’s remains, the person having custody and control shall abide by those wishes to the extent that the subject paid for those arrangements in advance or left resources for the purpose of carrying out those wishes.

It is desirable that funeral practitioners follow the same standard. Chapter 15, Section 6 has accordingly been rewritten to read:

6. Wishes and Respects of Persons Responsible for the Deceased  
~~Licensees~~ Consistent with 22 MRSA §2843-A(5), licensees shall respect and ~~carry out~~ abide by the wishes and requests of persons responsible for the deceased, ~~as contracted for~~.

The phrase “as contracted for” was eliminated as this obligation is already included in 22 MRSA §2843-A(5).

**02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**

**331 STATE BOARD OF FUNERAL SERVICE**

**EXPLANATION OF CHANGES:  
RE-ADVERTISED PROPOSED RULES**

(see responses to comments)

**CHAPTER 16  
PRE-ARRANGED FUNERALS –  
MORTUARY TRUST AGREEMENTS  
ADOPTED XXXX XX, 2009**

***Basis For Adoption***

The amendments to this chapter define a life insurance mortuary trust agreement; reflect a change in name from "guaranteed price mortuary trust agreement" to "guaranteed service mortuary trust agreement;" emphasize that a funeral director has the obligations of a trustee with respect to mortuary trust funds or the insurance policy and policy proceeds; state that no fee may be charged by a licensee in connection with a life insurance mortuary trust agreement; require a funeral home to notify holders of mortuary trust agreements upon a change of ownership that they are free at any time to request the resignation of the trustee and designate a different funeral home as successor trustee; and make various changes that reflect the availability of the new life insurance mortuary trust.

The proposed rule emphasized that a guaranteed service mortuary trust agreement ("GS MTA"), unlike a credit for service mortuary trust agreement ("CS MTA"), must be paid in full by the payor at time of execution (with the possible exception of cash advance items). To provide a mechanism for payment of a GS MTA over time, the proposed rule permitted the payor and the funeral home, upon mutual agreement, to replace a CS MTA with a GS MTA at any time prior to the death of the beneficiary.

Authorization to replace a CS MTA with a GS MTA has been retained in the adopted rule. However, for the reasons discussed in the Response to Comments, the board is convinced that allowing the purchase of a GS MTA directly on an installment basis is in the public interest. This is now reflected in both Chapter 16 and the GS MTA itself.

The board also amended the GS MTA and CS MTA attached to this chapter and promulgated a new Life Insurance Mortuary Trust Agreement ("LI MTA").

The new LI MTA is only for use when an existing life insurance policy is assigned to the funeral home as owner and beneficiary, or as beneficiary alone, and is only available on a credit for service basis. For life insurance policies newly purchased with trust funds,

the mortuary trust may be credit for service or guaranteed service, and the standard CS MTA or GS MTA may be used. The reasons for these distinctions are set forth below in the Response to Comments.

The amendments to the GS MTA and CS MTA permit the parties to now specify both a representative of the payor and an alternate contact person, if desired; set forth a funeral home's obligation to make select mortuary trust records available for inspection by the payor without prior notice, and make complete records available for inspection within thirty days; state a funeral home's obligation to return all mortuary trust funds to the payor in the event that the home is unable to perform its obligations under the trust; change the circumstances under which a funeral home can resign as trustee; require a funeral home, upon a change of ownership, to notify holders of mortuary trusts that they are free at any time to request the resignation of the funeral home as trustee and designate a different funeral home as successor trustee; and explicitly state that the validity, construction and administration of the trust created by a mortuary trust agreement will be governed by The Maine Uniform Trust Code, 18-B MRSA §101, et seq.

The amendments to the GS MTA clarify options for treatment of cash advance items. The amendments to the CS MTA include more specific instructions for disposition of any excess trust funds following rendition of services.

### ***Response to Comments***

**John P. Doyle, Jr., Esq., Preti Flaherty  
on behalf of ECI Services of Maine, Inc.**

- ◆ The proposed amendments to Chapter 16 and the GS MTA would require that a GS MTA be fully paid for at the outset and would prohibit the purchase of a GS MTA through installment payments. This rule change would force ECI-affiliated funeral homes to discontinue ECI's current practice of offering the GS MTA on an installment basis. Under ECI's current practice, the funeral home offers the consumer a GS MTA payable in installments over a period not to exceed five years. No interest is charged on the outstanding balance. If the payor defaults under the installment agreement, the funeral home is nonetheless obligated under the agreement to provide the funeral goods and services selected upon the death of the beneficiary. The funeral home may attempt to recoup the unpaid balance and any unpaid cash advance items from the beneficiary's estate or other available payment source.

Many people are unable to pay the entire cost of a funeral up front. Such people do have the option of purchasing a CS MTA. However, a CS MTA provides no protection against future price increases. Allowing consumers to purchase a GS MTA on an installment basis does provide price protection to the consumer and should not be prohibited by the board.

The provision in proposed Chapter 16, Section 1 for converting a CS MTA to a GS MTA similarly fails to address this problem. “It doesn’t make sense for the rules to expressly preclude installment plans for Guaranteed Service Agreements, but then to allow funeral homes and consumers to transition their Credit for Service Agreements (which may be paid in installments) to a Guaranteed Service Agreement after full payments of the then current price for such services have been made. Further, this anomaly runs the risk of leaving the consumer out cold in the event they pass away prior to making enough payments to transition to a Guaranteed Service Agreement. This risk exists because a Credit for Service Agreement does not require funeral homes to provide services absent sufficient funds to cover the contracted-for services at the current market rate. The amendments we offer would address this concern and give consumers both protection of a fixed price at the front end, and flexibility to make payments over time.”

The proposed prohibition against offering the GS MTA on an installment basis violates the Commerce Clause of the U.S. Constitution, exceeds the board’s rulemaking authority, and may unconstitutionally impair the validity of GS MTAs already entered into.

[The commenter included mark-ups of Chapters 1 and 16 of the proposed rules and the proposed GS MTA as part of his comment.]

**Michael Martel on behalf of  
ECI Services of Maine, Inc.**

- ◆ In any given year, the cost of funeral services typically increases by at least 5%.

The installment payment model of the GS MTA described by commenter Doyle is deemed legal in the 49 other states in which ECI operates. This model is also consistent with the widespread practice of purchasing consumer goods on an installment basis (even though ECI does not charge interest on the installment purchase of a GS MTA).

Offering the GS MTA on an installment basis fills a legitimate need. “In the first quarter of 2009, ECI entered into 130 of these contracts with Maine consumers. ECI enters into more than 400 of these contracts annually in Maine. These guaranteed price, interest free installment plan agreements represents more than 70% of ECI’s business in Maine.”

If the installment payment model of the GS MTA is not permitted in Maine, consumers who are unable to fully fund a GS MTA at time of purchase will wind up paying a significantly higher price for a funeral, or may opt instead for the lower-cost option of cremation “despite their personal wishes – and the wishes of their families.”

**David Robert on behalf of  
ECI Services of Maine, Inc.**

- ◆ The average consumers who purchase an installment payment GS MTA from ECI are 65-70 years old and frequently on a fixed income. To fund a funeral, they may have purchased a \$1000-\$2000 life insurance policy years ago which won't ever cover half the cost of an average funeral service. The financial benefit of this arrangement, even more so than the emotional security it provides, has been the primary motivation for its purchase.

No consumers have ever expressed a concern to the commenter about the potential liability of their estate in the event that the consumer passed away before completing the installment payments.

The commenter estimates that 70% of the consumers who purchase the installment payment GS MTA would be unable to pay the entire cost up front. "And...with respect to Credit for Service Agreements, neither could consumers afford the time spent monitoring – and fretting – over whether the interest on their monthly payments is accumulating at a rate that keeps up with the rising costs of funeral services."

The commenter presented a cost example showing that at an assumed annual increase of 5%, a consumer who purchases a typical \$6000 funeral today saves \$1,200 over the expected \$7200 cost of the funeral in 2014. The savings for the consumer is even greater in that ECI does not charge interest on the unpaid balance during the payment period.

**Bertha Kozloski**

- ◆ The commenter is a widow who lives in Greene and is retired on a fixed income. She experienced the cost of funeral expenses in 1995 upon the death of her brother. She was his executrix, and until his will was probated she had no idea if he had the funds to cover the cost of his funeral. In the mean time, she had to put up her own cash until the will was probated. Her husband died in 2003. She was surprised at how much the cost of a simple funeral had risen. That is when she realized the importance of prearranging her funeral in so she could lock in the price before the cost went even higher. ECI's installment payment GS MTA allows her to make monthly payments within her budget. When a loved one dies, it is hard to make rational decisions under pressure. Under a GS MTA, all the right decisions and choices have already been made. Example: her four daughters trying to agree on which coffin to choose. She discussed her plans with them, and they are glad to be relieved of this burden.

## Louise McClure

- ◆ The commenter is a 58-year-old Lewiston resident employed in a Lewiston flower shop. She signed a GS MTA with the Fortin Group funeral home in Lewiston (an ECI affiliate) about four years ago.

A pre-arranged funeral makes it easier for the family to endure the grieving process “because you don’t have the responsibility of quickly planning and expensive and complex service.”

A GS MTA is a better option than purchasing a funeral-related insurance policy. Example: the commenter’s mother-in-law, whose \$4500 life insurance policy did not fully pay for her \$8000 funeral.

These experiences motivated the commenter to purchase her installment payment GS MTA from the Fortin Group. “Today, I have about one year of payments remaining on my installment plan. I can handle the monthly payments and I look at my decision as both a prudent investment and as a gift to my children. It gives me great peace of mind to know that my family will get the service they deserve. It doesn’t bother me that my estate will have to cover the difference between the guaranteed price and the payments I have made so far in the unfortunate event I pass away prior to the expiration of my payment term. I know the estate will only have to pay the guaranteed price.”

Patrons at the flower shop also seem to be happy having made MTAs because of the money this saves their families.

The board should not require that the entire price of a GS MTA be paid up front. She would not have been able to do this, “and it upsets me that [the] proposed rule would impose this requirement. The installment payment GS MTA is an option that she and other people are grateful for.

- Board Response to comments of John P. Doyle, Jr., Esq., Michael Martel, David Robert, Bertha Kozloski and Louise McClure: Comments accepted for the reasons given. The board has revised Chapter 16 and the GS MTA to expressly authorize purchase of a GS MTA on an installment basis.

The commenters convincingly demonstrated that the availability of the GS MTA on an installment basis benefits consumers. The ECI commenters also made clear that the funeral will be provided regardless of the amount of money in the trust at time of death, even if the beneficiary dies prior to completion of the payment schedule. In this event the funeral home retains the right to seek and obtain payment of the outstanding balance from: (a) the beneficiary’s estate; (b) any person contractually obligated to provide payment pursuant to the mortuary trust agreement; or (c) any other payment source voluntarily provided by the family or representatives of the beneficiary. “Any person obligated to provide payment,” etc. could

be a payor who is not the beneficiary (e.g., a child who enters into a mortuary trust agreement to purchase a funeral for a parent) or a person who signs a mortuary trust agreement as guarantor. To expressly authorize this latter contingency, the last paragraph of Chapter 16, Section 3(2) has been rewritten to read:

In the case of a guaranteed service mortuary trust agreement, additional provisions may include terms and conditions relating to installment payments. A mortuary trust agreement may be guaranteed by a third party.

The guarantee of service and the funeral home's reservation of rights appear in paragraph 11 of the GS MTA, and also in Chapter 16, Section 2(2) of the adopted rules.<sup>1</sup>

The ECI commenters proposed that the board authorize installment payments for not more than a five-year term, with no interest charged. In the board's view, the length of the payment term and the charging of interest are transactional issues that should be left to the payor and the funeral home. Paragraph 5 of the GS MTA accordingly provides:

If the initial payment made by the payor is less than the amount of the fixed price set forth in paragraph 3, the payor agrees to pay the balance in installments according to the terms and conditions set forth in this agreement.

A similar provision also appears in Chapter 16, Section 2(2) of the adopted rules.

As noted above, a funeral home is obligated under an installment payment GS MTA to provide the funeral contracted for even if the beneficiary dies before all scheduled payments have been made. By agreeing to accept payment in installments, the funeral home accepts the risk that the beneficiary may die prior to completion of the payment schedule.

At the June 9, 2009 board meeting, one board member asked a more pointed question: What is the obligation of the funeral home if the payor has defaulted on the installment payment provisions of a GS MTA?

In the board's view, it is inequitable to require the funeral home to accept the risk of nonpayment due to the payor's default. Paragraph 5 of the GS MTA thus allows the parties to restructure their relationship in the event of default. If agreement cannot be reached, the funeral home may resign as trustee pursuant to paragraph 17 of the agreement. In this event the funeral home must return the trust funds to the payor, but may deduct

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<sup>1</sup> A minority of the board opposed the funeral home's ability to seek payment following the provision of services as described in the text if an installment payment GS MTA had not been paid in full at the time of the beneficiary's death. Under this view, the funeral home's guarantee is absolute and without recourse to any possible source of payment of the outstanding balance.

from the account the same fee that the board's rules permit a trustee to deduct for resignation in other circumstances, or upon transfer of the account to a successor trustee. This is set forth in Chapter 16, Section 2(2) and in Paragraph 5 of the GS MTA. The MTA text provides:

If the payor fails to comply with the terms and conditions of this agreement relating to installment payments, after having been given notice and reasonable opportunity to cure the noncompliance, the parties may make any adjustment to this agreement that is mutually agreeable, or may replace this agreement with a credit for service mortuary trust agreement. In the event of an impasse, the funeral home may resign as trustee in the manner set forth in paragraph 17. In this event the funeral home shall refund the entire mortuary trust to the payor, less any fee permitted by paragraph 20 and any taxes paid pursuant to paragraph 21. The refund must be made within thirty (30) days after resignation.

The resignation fee has been added to the fee schedule appearing in Chapter 16, Section 6(2) and Paragraph 20 of the GS MTA.

**Jim Ferland on behalf of  
Maine Funeral Directors Association**

- ◆ The two mortuary trust agreements adopted by the board in 2001 marked a huge change for the industry. Adding a third mortuary trust agreement for trusts funded by life insurance policies is unnecessary. "The board should consider adopting rules and agreements that are easier to understand rather than those that may be more difficult or cumbersome to comprehend and to forget about adding any new or additional agreement formats." The plan and the funding of the plan are two different things. "Whether we use a mortuary trust agreement, life insurance, or some other way of financing to fund the pre-need vehicle is not an issue. We want to use the funding mechanism that the consumer is most comfortable with and wants to use."
  - Board Response: Comment not accepted. Title 32 MRSA §1401(1-A), enacted in 2003, sets forth legal requirements for a mortuary trust agreement funded with proceeds of a life insurance policy. Because the mortuary trust agreement is not funded by a cash payment, the duties and obligations of the funeral home are much different than the duties and obligations imposed by the typical, non-insurance, mortuary trust agreement. Trying to fold these obligations into the CS MTA as a life insurance option would not make that agreement easier to understand, but would instead have the opposite effect.

**Jim Ferland on behalf of  
Maine Funeral Directors Association**

- ◆ Unlike the GS MTA and CS MTA, the LI MTA is not a trust administered by a funeral director with fiduciary responsibilities to a client. Because the money to pay for the funeral is held and administered by the insurance company, the insurance company, not the funeral director, is the trustee. Under the GS MTA and the CS MTA, the client is the beneficiary. Under the LI MTA, the funeral director is beneficiary.

The 2003 guidance from the board concerning use of a credit for service agreement to purchase a pre-arranged funeral with life insurance proceeds was sufficient for this purpose. The CS MTA can be easily used for insurance trusts. The LI MTA should not be adopted. If the LI MTA is nonetheless adopted, it should be re-named “Funeral Agreement Funded With Insurance.”

- Board Response: Comment not accepted. The board's predecessor rules, adopted in 2001, included a GS MTA and CS MTA. The LI MTA did not at that time exist.

On April 11, 2002, the board issued a memorandum entitled “Funding of Mortuary Trusts With Existing Life Insurance Policies.” This memo was a response to questions from practitioners of funeral service who were asked by clients to accept an existing life insurance policy as a funding vehicle for a mortuary trust agreement. The difficulty was that the funeral law at that time did not expressly authorize acceptance of an existing life insurance policy in trust for this purpose. Although 32 MRSA §1401(1)(B)(4) permitted the funeral home to use a cash payment to purchase a life insurance policy to fund a mortuary trust, the statute did not address the real-world situation of a customer who proposed to fund a mortuary trust with an existing life insurance policy that the customer typically purchased long before the visit to the funeral home.

In the memo, the board gave guidance to practitioners for altering the form MTAs then in effect to accommodate the unique characteristics of life insurance policies tendered in trust to a funeral home. The board noted, however, that its recommendations were imperfect:

None of the abovementioned provisions are a good fit when a mortuary trust is initially funded by an existing life insurance policy. In the board's view, modification of these provisions to the minimum degree necessary to accommodate use of an existing life insurance policy as the funding vehicle will still result in an agreement that substantially conforms to the credit for service or guaranteed price form agreement.

Subsequently, the Legislature directly addressed the issue. PL 2003, c. 109 enacted 32 MRSA §1401(1-A), entitled “Plan funded with proceeds of life insurance policy.” This statute codified the substance of the board's

memo in laying out the two options for allocating the rights and responsibilities of the policyholder and the funeral home:<sup>2</sup>

(1) Assigning the mortuary trustee as owner and beneficiary of a life insurance policy payable to the mortuary trustee upon that person's death; or

(2) Designating the mortuary trustee as a beneficiary of a life insurance policy payable to the mortuary trustee upon that person's death.

32 MRSA §1401(1-A)(A)(1) and (2)

The LI MTA was created to implement 32 MRSA §1401(1-A). Chapter 16, Section 2(3) of the adopted rules requires that the LI MTA be used for mortuary trusts created by the proceeds of an existing life insurance policy.

Paragraph 12 of the LI MTA describes at considerable length the responsibilities of the policy owner under either scenario. Other provisions of the LI MTA, specifically, Paragraphs 1, 3, 4, 10, 16, 18 and 19, are significantly different than their counterpart provisions in the CS MTA.

For these reasons, the LI MTA is a distinct instrument that serves a distinct purpose. However, the relationship it memorializes between the client and funeral home is clearly one of trust. Section 1401(1-A) refers throughout to "mortuary trustee." Where the funeral home is owner and beneficiary of the policy, the funeral home controls the funds both prior to and after the death of the beneficiary. Where the funeral home is beneficiary but not owner, the funeral home controls the funds after the death of the beneficiary.

For these reasons, the board has included the LI MTA in the adopted rules and is unwilling to remove the word "Trust" from the name of the document.

**Jim Ferland on behalf of  
Maine Funeral Directors Association**

- ◆ Proposed Chapter 16, Section 2(2) states that the GS MTA must be paid in full at time of execution. For this reason, the name of the GS MTA should be changed to "Fully-funded Funeral Agreement." This name is more descriptive of how the GS MTA actually works. It is unclear what meaning consumers ascribe to the word "guaranteed." "It does make sense to us that people can make deposits into a trust as a Credit For Service Agreement until it has reached a "fully funded" level, at which point it may be transferred to a 'fully funded' agreement.

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<sup>2</sup> See the testimony of OLR Director Anne Head on LD 676 (121<sup>st</sup> Legis., First Reg. Sess.). There is no other relevant legislative history.

Therefore, the language to 'fully funded' from guaranteed makes especially good sense in this case."

- Board Response: Comment not accepted. "Guaranteed Service" and "Credit for Service" are easily-understood terms that are defined in Chapter 1 of the board's rules and further explained in Chapter 16.

The provision in Chapter 16, Section 2(1) of the proposed rule permitting the parties to replace a CS MTA with a GS MTA has not been included in the adopted rule. The provision is unnecessary now that the board has included authorization for installment payment GS MTAs in the rules.

**Jim Ferland on behalf of  
Maine Funeral Directors Association**

- ◆ The board should not require funeral homes to send annual reports and final reports to the payor and beneficiary as set forth in the proposed modifications to the GS MTA and CS MTA. With respect to annual reports, the funeral home already sends 1041 forms to payors. The 1041 forms disclose interest gained and any fees accrued. This mailing generates a huge amount of calls from consumers who ask, "Why are you sending me this? Isn't my funeral guaranteed?" The additional mailing required by the proposed MTAs will create even more confusion. The commenter's third-party administrator estimated that it would cost the commenter's funeral home an additional \$2000 - \$3000 each year to prepare and mail the annual reports.

The annual report called for by the modified MTAs requires the funeral home to disclose the value of the account at the closing date of the reporting period. The final report requires the funeral home to disclose the value of the account at the close of the trust. The board should not require funeral homes to disclose the account values of GS MTAs. Under the GS MTA, the funeral home takes the risk that interest earned by the trust will beat inflation. For this reason, there is no need to send payors the annual report noted above or the final report. "It has been our experience that when one discloses to a family that there is overage in a guaranteed trust, they often believe they are entitled to a refund although it was explained at the time the trust was established, that the funeral home is entitled to keep any excess funds based on the financial risk it takes." (Many funeral homes voluntarily reimburse any excess funds as a matter of good public relations for the sake of good will.) "Then there are the Guaranteed Service Agreements where not enough interest has accrued to cover the contracted goods and services based on the current costs. In such instances, families would certainly not want to pay the difference when disclosed."

If the board desires to leave the annual reporting provision in the GS MTA, the board should eliminate the GS MTA.

- Board Response: Comment accepted for the reasons given. The board agrees that preparation of an annual report in addition to 1041 forms would be an unwarranted expense to funeral homes. Paragraph 6 of the existing GS and CS MTAs permits the payor to inspect the financial records of the trust. In this rulemaking proceeding, the board added a disclosure timetable to paragraph 6 which further emphasizes the payor's access to all financial records of a mortuary trust.

The board also agrees, for the reasons given by the commenter, that a final report for GS MTAs is unnecessary.

The board accordingly struck paragraphs 20 and 21 of the proposed GS MTA and paragraph 21 of the proposed CS MTA from the final versions of those documents included in the adopted rules.

**Jim Ferland on behalf of  
Maine Funeral Directors Association**

- ◆ Fees in the mortuary trust agreements have not changed since their original adoption in 2001 and should be increased to reflect 2009 amounts. The LI MTA should also permit administration fees. "In most cases it actually is more labor intensive to administrate insurance-funded trusts as obtaining cash values and policy values for reporting is difficult at best. As an example, we have several such agreements where the owners and/or beneficiaries must report trust values for housing authorities as required by the state. Often it takes days to obtain these values and to accomplish the reporting requirements. Stop and think about it. After years of completing such administrative responsibilities, if a consumer decides to transfer the trust to another funeral home for whatever reason, the original trustee should be able to recoup a fee for services rendered."

- Board Response: Comment accepted with respect to the GS MTA and CS MTA. At its July 14, 2009 meeting the board reviewed consumer price index information provided by staff. The fees set forth in Chapter 16, Section 6(2) were established as part of the adoption of Chapter 16 in October 2001. From October 2001 to May 2009 the consumer price index increased by 20.35%. The board believes that a roughly similar increase in maximum permissible fees for the GS MTA and CS MTA is warranted. The new fees are:

- A. Transfer of account by appointment of successor trustee. 7% of trust funds, not to exceed ~~\$200~~\$250
- B. Revocation of a revocable agreement ..... 7% of trust funds, not to exceed ~~\$200~~\$250

C. Resignation of trustee due to payor's noncompliance with terms and conditions of a guaranteed service mortuary

trust agreement relating to installment payments ..... 7% of trust funds,  
not to exceed \$250

- D. Actual annual financial and tax administration of the account performed by or on behalf of the funeral home..... 25% of net interest earned per annum, not to exceed ~~\$100~~125

The revised maximum fee schedule also appears the GS MTA and CS MTA.

**Jim Ferland on behalf of  
Maine Funeral Directors Association**

- ◆ The board should not delete the provision from paragraph 17 of the GS MTA and CS MTA which permits a funeral home to resign as trustee if “the funeral home for any reason no longer desires to continue as trustee.” There are some families whom a funeral home just cannot please. In some cases, personality issues may develop. In these unusual circumstances, the funeral home should be allowed to remove itself as trustee.
  - Board Response: Comment not accepted. In the event of severe disagreement, the family is always free to request the resignation of the trustee and appoint a different funeral home as successor trustee. The current banking climate has depressed the earnings of many mortuary trusts (i.e., interest rates of 0%). Allowing the funeral home to unilaterally revoke a trust may tempt funeral some homes to drop uneconomical trusts.

**Connie Hagan on behalf of  
FAPCO Administrative Services**

- ◆ Paragraph 6 of the GS MTA and CS MTA requires the funeral home to make the complete record of a mortuary trust account available for inspection within three business days of a request. This is insufficient time for a funeral home (or the funeral home’s third-party administrator) to assemble all the pertinent documents, especially if the trust has goes back 15-20 years. Another complication is that banks are only required to keep information about certificates of deposit for six years. The three-day response time should be changed to a minimum of 15 days. Other time requirements in the mortuary trust agreements have been lengthened to 30 days. Ideally, a funeral home should have 30 days to produce a complete mortuary trust record, also.
  - Board Response: Comment accepted for the reason given. The time to provide the complete record has been lengthened to 30 days.

**Connie Hagan on behalf of  
FAPCO Administrative Services**

- ◆ The GS MTA and CS MTA permit the payor to designate a “representative of payor” who may exercise all powers and authority conferred upon the payor by the agreement. This brings to mind problems that are likely to arise from the new requirement of annual reports. FAPCO’s computer program used to include the trust account balance with the tax information they send out each year. This caused confusion on the part of the recipients, such as those in nursing homes, who knew that their funeral was paid for and didn’t know what to make of the account balance information. Some mortuary trust agreements state that an annual report will be provided upon request. Consumers can always call for an account balance, and some do.

The requirement that an annual report be provided to a representative of the payor may lead to an increase in situations where family members (nieces, in particular) of the beneficiary ask the funeral practitioner to downgrade the services to be provided under a mortuary trust agreement or to dispense with a full service. Even though the mortuary trust agreement may be irrevocable, refusing such requests puts the practitioner in a bad position. “And they want those dollars back. They see those dollars sitting there in that trust and they don’t fee that that needs to happen any more.” This unjustifiably interferes with the wishes of a client-beneficiary who may have met with a funeral practitioner two or three times before signing a mortuary trust agreement. Mortuary trust agreements are not entered into lightly, and even though all the friends of the beneficiary may have already died, or even if no one is expected to show up at the funeral, the wishes of the client-beneficiary should be honored.

To prevent this from happening more frequently, the GS MTA and CS MTA should not recognize a “representative of payor.” Only the payor’s attorney-in-fact appointed pursuant to a power of attorney should have this authority.

- Board Response: Comment not accepted. Paragraph 2 of the GS and CS MTAs permits but does not require the payor to designate a “Representative of Payor:”

This is the person for the funeral home to contact and report to in lieu of the payor for all purposes under this agreement. The representative of the payor may exercise all powers and authority conferred upon the payor by this agreement.

(Paragraph 2 of the LI MTA likewise permits but does not require the settlor to designate a “Representative of Settlor.”)

This option permits the payor to delegate decisionmaking responsibilities under the MTA to another person as agent of the payor. This is consistent with statute: see the phrases “the payor or the payor’s representative” and “the payor or the payor’s legal representative” in 32 MRSA §1401(1). An

attorney-in-fact is one type of legal representative, but a power of attorney will be of little use in the situation described by the commenter, as a durable financial power of attorney terminates upon the death of the principal. See 18-A MRSA §508(d).

The other issues raised by the commenter are addressed in the response to comments on Chapter 15, Section 6 (Code of Ethics) and Chapter 16 – Mortuary Trust Agreements (requirement of annual report).

**Connie Hagan on behalf of  
FAPCO Administrative Services**

- ◆ The CS MTA should not require the payor to select goods and services at the outset of the agreement or at any particular time prior to the death of the beneficiary. Frequently, the Department of Health and Human Services will send a funeral home client monies to establish a mortuary trust for a client as an exempt asset. Funeral goods and services are frequently not selected until the time of the client's death.
  - Board Response: The commenter is mistaken. Neither the CS MTA currently in effect or the proposed amendments to the CS MTA require the payor to select funeral goods and services at the outset or at any other time prior to death.]

**Connie Hagan on behalf of  
FAPCO Administrative Services**

- ◆ Having a customer complete a statement of goods and services at the outset of a CS MTA can also create confusion. For example, a person may have been paying \$100 over a five-year period for a \$4500 funeral. At the time of the beneficiary's death, the funeral goods and services selected might cost \$6500, but the customer expects the funeral to be provided for the \$4500 paid into the trust. This is not beneficial to the consumer.
  - Board Response: Comment not accepted. That is the nature of the CS MTA. Paragraph 9 of the CSA requires the funeral home to sign off on the statement, "I have explained to the payor the difference between the credit for service mortuary trust created by this agreement and a guaranteed service mortuary trust." The same paragraph requires the payor to sign off on the statement, "I understand the difference between the credit for service mortuary trust created by this agreement and a guaranteed service mortuary trust." Hopefully, a funeral home will effectively communicate to a payor prior to execution of a MTA that a price guarantee is only obtainable with a GS MTA. Prohibiting a payor from selecting funeral goods and services at the time the payor executes a CS MTA is unduly restrictive.

**Connie Hagan on behalf of  
FAPCO Administrative Services**

- ◆ The CS MTA should not allow an authorized person to provide funeral goods and services. Only a licensed practitioner should be permitted to do so.
  - Board Response: Paragraph 11 of the CS MTA states, in part, “After the death of the beneficiary, selection of funeral goods and services may be made by the authorized person as determined pursuant to 22 MRSA §2843-A.” The board is not sure it understands the comment.

**Connie Hagan on behalf of  
FAPCO Administrative Services**

- ◆ With respect to the LI MTA, the commenter notes that if the person is the owner of the insurance policy, that person receives the Form 1099s and dividend statements. The commenter agrees that the LI MTA should be credit for service only.
  - Board Response: Comment accepted. No response necessary.

**Barbara Hollonquest  
on behalf of Assurant Solutions**

- ◆ Assurant Solutions – Preneed Division is a major preneed life insurance and annuity underwriter in the United States and Canada.

Must a LI MTA be made any time a life insurance policy is assigned to a funeral home? Does this apply to a newly-made life insurance policy? Does this apply to an existing life insurance policy assigned to a funeral home to fund a newly-made mortuary trust agreement?

- Board Response: The funeral law describes two situations in which life insurance may be used as the funding vehicle for a mortuary trust. The first, found in 32 MRSA §1401(1)(B)(4), arises when the funeral home makes a deposit into a trust account in a financial institution or credit union on behalf of the payor and the funeral home uses the trust funds to purchase permanent life insurance, other than variable life insurance and annuities. Life insurance is one of four investment vehicles for trust funds.<sup>3</sup> In this situation, the funeral home acknowledges receipt of funds from the payor and notifies the payor, as required by 32 MRSA §1401(1)(B), that the monies have been deposited in a trust account (as opposed to a

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<sup>3</sup> The three other permissible investment vehicles for trust funds listed in §1401(1)(B) are: (1) federally insured deposit or share accounts, (2) Securities issued, insured or guaranteed by the United States or by any agency or corporate or other instrumentality of the United States, and (3) Municipal securities that are exempt from registration under Title 32, section 16201, subsection 1.

federally insured deposit or share account). These provisions are contained in the GS MTA and CS MTA, but not the LI MTA. Either the GS MTA or CS MTA, but not the LI MTA, is the appropriate agreement to use when a mortuary trust is created in this fashion.

The second situation in which life insurance may be used as the funding vehicle of a mortuary trust, found in 32 MRSA §1401(1-A), arises when a life insurance policy is assigned to a funeral home as owner or beneficiary, or a funeral home is designated beneficiary. Unlike the creation of a mortuary trust described in the preceding paragraph, this scenario does not involve the purchase of a life insurance policy by the funeral home from trust funds. Section 1401(1-A) instead describes a mortuary trust funded by an existing life insurance policy, and is the successor to the 2002 memorandum from the board described above. In this situation only the LI MTA, and not the GS or CS MTA, may be used.

- ◆ Must funeral goods and services be selected at the time a LI MTA is made?
  - Board Response: No. Paragraph 7 of the LI MTA permits the settlor to select funeral goods and services at time of execution or at any later time.
  
- ◆ If the funeral home is the beneficiary but not the owner of the policy, what are the funeral home's responsibilities with respect to the policy? "What does the funeral home do if it neither receives the funds during the trust's duration nor owns the policy?"
  - Board Response: The responsibilities of a funeral home under the LI MTA are described in the document.
  
- ◆ "Is an insurance funded mortuary trust created when trust funds are used to purchase life insurance to fund a prearranged funeral contract? Is a mortuary trust created when life insurance is an option for investment of trust funds?"
  - Board Response: The board declines to answer, as the questions do not relate to the proposed rules or forms of MTA.
  
- ◆ "Is Chapter 16, section 2, subsection 3 of Proposed Rule 9117 intended to state that life insurance may only be used to fund *credit for service* contracts? If so, we find this to be both highly unusual in the industry and mystifying. Life insurance that is underwritten can fund the entire amount of the funeral with just one premium payment being made. Trust funds have to be accumulated over a period of time. If the costs of the funeral services exceed the accumulated trust funds, the family has to pay the difference. Life insurance is and has been a reliable source of funding prearranged contracts where the price of goods and

services is guaranteed. There is certainly no evidence that purchasing a life insurance policy to fund a prearranged funeral service contract is more risky than depositing and retaining money in a trust account. Life insurance companies are highly regulated entities whose financial stability and claims paying capacity is regularly reviewed and tested by the regulatory authority of departments of insurances.

- Board Response: Chapter 16, Section 2(3) of the adopted rules requires the LI MTA to be used for mortuary trusts funded by the proceeds of a life insurance policy. As discussed above, this is distinguished from mortuary trusts funded by a trust account deposit used by the funeral home to purchase a life insurance policy.<sup>4</sup> Whereas a life insurance policy purchased from trust funds may fund a guaranteed service or credit for service mortuary trust agreement, a mortuary trust funded by proceeds of an existing policy must be credit for service only.

There is a reason for the difference. A payor and funeral home would likely discuss the face amount of an insurance policy to be newly purchased from trust funds, and the amount deposited by the payor into a trust account would likely reflect the amount of coverage and type of funeral desired.<sup>5</sup>

When a customer presents an existing life insurance policy to a funeral home, the amount of insurance proceeds has already been determined without reference to the potential cost of a funeral. If the face amount of the policy significantly exceeds the reasonable cost of the funeral, an unscrupulous funeral home may attempt to sell an unknowing consumer a guaranteed price mortuary trust agreement that would unjustly enrich the funeral home. Example: An elderly consumer funds a guaranteed service mortuary trust agreement for a \$10,000 funeral with a \$30,000 policy. To avoid this scenario, Chapter 16, Section (2)(3) requires that mortuary trust agreements funded by an existing life insurance policy be credit for service only.

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<sup>4</sup> To better distinguish between the two categories, the board has added the word “existing” to Chapter 16, Section 1(2) and the first sentence of Chapter 16, Section 2(3) as adopted. The latter now reads, “A life insurance mortuary trust agreement funds the provision of funeral goods and services from the proceeds of *an existing* life insurance policy payable upon the death of the person insured. (emphasis added) This is consistent with the definition of “settlor” in Chapter 1, Section 13-A of the proposed rules: “Settlor” means the person who creates a mortuary trust funded by an existing life insurance policy as described in Chapter 16, §2(3) of the Board’s rules.”

<sup>5</sup> Title 32 MRSA §1401 requires the funeral home to disclose to the payor whether a mortuary trust payment will be deposited in a federally deposit or share account or a trust fund. If the latter, §1401 does not require the funeral home to disclose which of the four permissible options the trust funds will be invested in. The board presumes, however, that such a conversation would likely take place.