

**PROPOSED REGULATION OF THE
NEVADA FUNERAL AND CEMETERY SERVICES BOARD**

LCB File No. R086-18

June 18, 2018

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §1, NRS 452.026; §2, NRS 451.640 and 452.026; §§3, 4 and 6, NRS 642.063; §5, NRS 642.063, 642.120 and 642.416.

A REGULATION relating to decedents; establishing the priority of certain persons authorized to order the disinterment or removal of human remains; providing standards for the refrigeration of human remains; correcting a typographical error; revising provisions relating to the issuance of a notice of violation following an inspection of a funeral establishment, direct cremation facility, crematory or cemetery; providing that excess continuing education hours do not carry over to subsequent license renewal periods; revising provisions relating to the placement or storage of a minimal container, body bag or casket containing human remains; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law establishes the order of priority of persons authorized to order the burial or cremation of human remains of a deceased person. (NRS 451.024) **Section 1** of this regulation establishes the same order of priority for certain persons who request the disinterment or removal of human remains of a decedent. **Section 1** also authorizes a cemetery authority to refuse to disinter or remove human remains absent a court order if: (1) the cemetery authority has reason to believe there is a dispute regarding the disinterment or removal among persons with the same level of priority; or (2) the person requesting the disinterment or removal is not the person who ordered the initial burial or cremation.

Existing regulations require the operator of a crematory, funeral establishment or direct cremation facility to ensure that each dead body of a human being is embalmed or refrigerated at a temperature of not more than 48 degrees Fahrenheit within 24 hours after the operator receives the human remains. (Section 13 of LCB File No. R067-15) **Section 2** of this regulation requires human remains to be refrigerated in a self-contained, mechanical refrigeration unit at a temperature of not more than 42 degrees Fahrenheit, except that fluctuations in temperature caused by the opening of the refrigeration unit are permitted if the temperature in the refrigeration unit does not exceed 48 degrees Fahrenheit.

Section 3 of this regulation corrects an incorrect reference to existing laws relating to ethical standards for public officers and employees.

Existing regulations require the Nevada Funeral and Cemetery Services Board to issue a notice of violation if an inspection of a funeral establishment, direct cremation facility, crematory or cemetery reveals a violation of law. (Section 25 of LCB File No. R067-15) **Section 4** of this regulation removes this requirement to issue a notice of violation and, instead, authorizes the Board to issue such a notice of violation. **Section 4** also clarifies that notice of the initiation of certain disciplinary proceedings is required to be provided in accordance with the applicable provisions of existing law.

Existing law requires a person licensed as a funeral director or embalmer to complete 12 hours of continuing education before renewal of his or her license. (NRS 642.120, 642.416) **Section 5** of this regulation provides that hours of continuing education completed during a renewal period in excess of the number of hours required during that renewal period do not carry over to a subsequent renewal period.

Existing regulations prohibit human remains from being: (1) stored directly on the floor of any room used to store human remains; or (2) placed on other human remains for the purpose of storage or transportation. (Section 33 of LCB File No. R067-15) **Section 6** of this regulation provides that human remains which have been placed in a minimal container, body bag or casket are also prohibited from being placed or stored on the floor of any room used to store human remains or placed on other human remains for the purpose of storage or transportation.

Section 1. Chapter 451 of NAC is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in this section, in determining whether a relative of a decedent is authorized to request the disinterment or removal of the human remains of the decedent, the cemetery authority must follow the order of priority set forth in paragraphs (c) to (g), inclusive, of subsection 1 of NRS 451.024.

2. Absent a court order, a cemetery authority may refuse to disinter or remove the human remains of a decedent as requested by a person listed in paragraphs (c) to (g), inclusive, of subsection 1 of NRS 451.024 if:

(a) The cemetery authority has reason to believe there is a dispute regarding the disinterment or removal of the remains of the decedent between persons within a particular priority class set forth in subsection 1; or

(b) The person requesting the disinterment or removal is not the person who ordered the initial burial or cremation of the human remains of the decedent.

3. “Cemetery authority” has the meaning ascribed to it in NRS 451.069.

Sec. 2. Section 13 of LCB File No. R067-15 is hereby amended to read as follows:

Section 13. 1. Except as otherwise provided in this section and NAC 451.010, the operator of a crematory, funeral establishment or direct cremation facility shall ensure that each dead body of a human being is embalmed or refrigerated *in a self-contained, mechanical refrigeration unit which has been inspected by the Board* at a temperature of not more than ~~48~~ 42 degrees Fahrenheit within 24 hours after the operator receives the human remains. *A temporary rise in temperature above 42 degrees Fahrenheit within the mechanical refrigeration unit caused by the opening of the mechanical refrigeration unit does not constitute a violation of this section, but in no event may the temperature inside the mechanical refrigeration unit exceed 48 degrees Fahrenheit.*

2. Except as otherwise provided in subsection 3, a funeral director, embalmer or another person assisting in the preparation of human remains for final disposition may delay the refrigeration of or remove the human remains from refrigeration for identification viewing and for the following activities:

- (a) Embalming the human remains;
- (b) Transporting the human remains;
- (c) Cremating or burying the human remains;
- (d) Washing, anointing, clothing, praying over, viewing or otherwise accompanying the unembalmed human remains, for a period of time not to exceed 8 consecutive hours, by a

person acting according to the directions of the decedent or a person having the right to control the disposition of the human remains of the deceased person; or

(e) Any other activity approved by the local health officer after evaluating the specific circumstances, the need to protect the public health and the recognition of religious beliefs.

3. A funeral director, embalmer or another person assisting in the preparation of human remains for final disposition shall not delay the refrigeration of or remove the human remains from refrigeration for identification viewing or an activity set forth in paragraph (d) of subsection 2 if he or she is informed by a local health officer or medical examiner that doing so would pose a direct threat to human health.

4. Nothing in this section restricts the authority of a coroner or medical examiner concerning human remains that are under the jurisdiction of the coroner or medical examiner.

5. As used in this section, “identification viewing” means the viewing of human remains for identification purposes, for a period of time not to exceed 1 hour, by a person who is potentially capable of identifying the human remains.

Sec. 3. Section 24 of LCB File No. R067-15 is hereby amended to read as follows:

Section 24. 1. In addition to any requirements for recusal set forth in chapter ~~281~~ **281A** of NRS, a member of the Board must recuse himself or herself from proceedings of the Board involving a matter in which the member of the Board:

- (a) Has a conflict of interest;
- (b) Is unable to participate in a fair and impartial manner; or
- (c) Was active in any part of an investigation of the matter.

2. A member of the Board must disclose the reason for the recusal before the Board's discussion of the matter. Upon recusal, the member of the Board may not participate in the Board's discussion of the matter or vote on the matter.

Sec. 4. Section 25 of LCB File No. R067-15 is hereby amended to read as follows:

Section 25. 1. If an inspection of a funeral establishment, direct cremation facility, crematory or cemetery conducted pursuant to NRS 642.067, ~~as amended by section 19 of Senate Bill No. 286, chapter 348, Statutes of Nevada 2015, at page 1954, NRS~~ **642.368** or 642.435 ~~as amended by section 39 of Senate Bill No. 286, chapter 348, Statutes of Nevada 2015, at page 1960, or section 5 of Senate Bill No. 286, chapter 348, Statutes of Nevada 2015, at page 1950 (NRS 642.368),~~ reveals that the funeral establishment, direct cremation facility, crematory or cemetery is in violation of any provision of this chapter or chapter 451, 452 or 642 of NRS, the Board ~~will~~ **may** issue a notice of violation to the licensee, permittee or holder of the certificate, as applicable. The notice of violation must:

(a) Be in writing and describe with particularity the nature of the violation; and

(b) Indicate that the licensee, permittee or holder of the certificate is given a 30-day period after receipt of the notice to correct the violation.

2. ~~An~~ **If a notice of violation is issued pursuant to subsection 1, an** inspector of the Board will verify compliance by the licensee, permittee or holder of the certificate, as applicable, with the applicable provisions of this chapter or chapter 451, 452 or 642 of NRS in a subsequent inspection.

3. The Board may initiate disciplinary proceedings against the licensee, permittee or holder of the certificate, as applicable, pursuant to NRS 642.130 ~~as amended by section 24 of Senate Bill No. 286, chapter 348, Statutes of Nevada 2015, at page 1956, NRS~~ **or**

642.5175 or NAC 642.180 based on any acts or violations found during ~~such~~ an inspection or , *if a notice of violation is issued pursuant to subsection 1*, any violations that the licensee, permittee or holder of the certificate failed to correct within the period set forth in the notice of violation. *The disciplinary proceedings must be initiated in accordance with:*

(a) The provisions of chapters 233B and 622A of NRS and NRS 241.034; or

(b) If disciplinary proceedings are initiated pursuant to NRS 642.518, the provisions of that section.

Sec. 5. Section 31 of LCB File No. R067-15 is hereby amended to read as follows:

Section 31. 1. The hours of continuing education completed to fulfill the ~~requirement~~ *requirements* set forth in ~~section 9 of Senate Bill No. 286, chapter 348, Statutes of Nevada 2015, at page 1951 (NRS 642.416),~~ *NRS 642.120 and 642.416* do not need to be submitted to the Board for approval and are automatically approved if the continuing education is:

(a) Approved by the Academy of Professional Funeral Service Practice;

(b) Sponsored by a national or state organization or association that administers training relating to the funeral industry; or

(c) Offered by a provider of continuing education who is approved by the Board.

2. Any continuing education that does not satisfy the requirements set forth in subsection 1 must be approved by the Board. Such approval may be obtained by applying to the Board on a form prescribed by the Board which includes, without limitation:

(a) An outline of the course;

(b) The qualifications of each presenter; and

(c) An agenda detailing the dates and times of each segment of the continuing education.

3. A licensee may obtain credit toward the required hours of continuing education by completing a crematory certification program approved by the Board pursuant to section 30 of ~~{this regulation.}~~ *LCB File No. R067-15.*

4. A licensee may complete not more than 4 hours of continuing education per each period of renewal by attending, in person, a meeting of the Board if the Executive Director or a member of the Board provides the licensee at the conclusion of the meeting signed documentation of the licensee's attendance at that meeting.

5. Pursuant to ~~{section 9 of Senate Bill No. 286, chapter 348, Statutes of Nevada 2015, at page 1951 (NRS 642.416).}~~ *NRS 642.120 and 642.416* proof of completion of continuing education must be maintained by the licensee for 5 years.

6. The Board will audit a percentage of licensees during each period of renewal by requiring those licensees to submit proof of completion of the required hours of continuing education before the Board issues a renewal of the licenses of those licensees.

7. Any licensee whose license is placed on inactive status is exempt from the requirements of continuing education while the license is placed on inactive status. If such a licensee subsequently wishes to reactivate his or her license pursuant to NRS 642.115 or 642.455, ~~{as amended by section 41 of Senate Bill No. 286, chapter 348, Statutes of Nevada 2015, at page 1961.}~~ the licensee must provide proof to the Board of completion of 12 hours of continuing education within the 2 years immediately preceding the date of application for reactivation of the license.

8. *Any hours of continuing education completed during a renewal period which are in excess of the number of hours required to comply with the requirements of NRS 642.120 or 642.416 do not carry over to any subsequent renewal period.*

9. The Board may initiate disciplinary proceedings against a licensee pursuant to NRS 642.130 ~~[, as amended by section 24 of Senate Bill No. 286, chapter 348, Statutes of Nevada 2015, at page 1956,]~~ or ~~[NRS]~~ 642.5175, based on the failure of the licensee to provide, upon request, proof of completion of continuing education as required by ~~[section 9 of Senate Bill No. 286, chapter 348, Statutes of Nevada 2015, at page 1951 (NRS 642.416).]~~ *NRS 642.120 and 642.416.*

Sec. 6. Section 33 of LCB File No. R067-15 is hereby amended to read as follows:

Section 33. 1. Each holder of a license, permit or certificate issued by the Board pursuant to chapter 451, 452 or 642 of NRS shall ensure that human remains are treated with dignity and respect at all times.

2. Human remains must be clothed or completely covered while the human remains are being refrigerated and after the human remains have been embalmed.

3. Human remains *, or human remains which have been placed in a minimal container, body bag or casket,* must not be *placed or* stored directly on the floor of any room used to store human remains. For the purposes of this subsection, “floor of any room” includes the floor of a room which is part of a refrigeration unit.

4. Human remains must be stored and transported face up at all times.

5. Human remains *, or human remains which have been placed in a minimal container, body bag or casket,* must not be placed on other human remains *, or human*

remains which have been placed in a minimal container, body bag or casket, for the purpose of storage or transportation.

6. The premises of any location where human remains are stored must be maintained in a sanitary and professional manner.