

ADOPTED REGULATION OF THE NEVADA

STATE FUNERAL BOARD

LCB File No. R043-02

Effective November 26, 2003

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

AUTHORITY: §1, NRS 451.640 and 642.063; §§2, 5 and 10, NRS 642.060 and 642.063; §§3 and 4, NRS 451.640, 452.026, 452.310, 642.063, 642.069, 642.090, 642.100, 642.115, 642.120, 642.220, 642.310, 642.360, 642.365, 642.420, 642.430, 642.435, 642.455 and section 6.3 of Senate Bill No. 323 of the 72nd Session of the Nevada Legislature, chapter 240, Statutes of Nevada 2003, at page 1266; §6, NRS 642.063 and section 6.7 of Senate Bill No. 323 of the 72nd Session of the Nevada Legislature, chapter 240, Statutes of Nevada 2003, at page 1267; §7, NRS 642.063 and section 6.3 of Senate Bill No. 323 of the 72nd Session of the Nevada Legislature, chapter 240, Statutes of Nevada 2003, at page 1266; §8, NRS 451.640 and 642.063; §9, NRS 452.026 and 642.063.

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

1. Before an operator of a crematory allows:

(a) A person to witness a cremation, the operator shall obtain, on a form provided by the crematory, written authorization from a person authorized pursuant to NRS 451.650 to order the cremation of human remains.

(b) The remains of two or more persons to be simultaneously cremated in the same chamber, the operator shall obtain, on a form provided by the crematory, written authorization from the agent of each person whose remains are to be simultaneously cremated.

2. A form required pursuant to subsection 1 must:

(a) Be written in language that is easily understood;

(b) Include a clear explanation of the purpose of the form; and

(c) Be maintained by an operator of a crematory for 1 year after the cremation of the remains of a person.

3. Any failure by the operator of a crematory to maintain the written documentation required by paragraph (c) of subsection 2 is a violation of this chapter.

Sec. 2. Chapter 642 of NAC is hereby amended by adding thereto the provisions set forth as sections 3 to 7, inclusive, of this regulation.

Sec. 3. *As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 642.010 to 642.017, inclusive, have the meanings ascribed to them in those sections.*

Sec. 4. *The Board will charge and collect the following fees:*

1. For a permit to operate a funeral establishment:

<i>(a) Initial application</i>	<i>\$375</i>
<i>(b) Annual renewal</i>	<i>200</i>
<i>(c) Late renewal.....</i>	<i>275</i>

2. For a license to conduct direct cremations or immediate burials:

<i>(a) Initial application</i>	<i>\$375</i>
<i>(b) Annual renewal</i>	<i>200</i>
<i>(c) Late renewal.....</i>	<i>275</i>
<i>(d) Placement of license in inactive status</i>	<i>175</i>
<i>(e) Reactivation of license in inactive status</i>	<i>175</i>

3. For a funeral director's license:

<i>(a) Initial application</i>	<i>\$375</i>
<i>(b) Annual renewal</i>	<i>200</i>

(c) <i>Late renewal</i>	275
(d) <i>Examination fee</i>	375
(e) <i>Application to modify a license pursuant to subsection 2 of NRS 642.345</i>	100
(f) <i>Placement of license in inactive status</i>	175
(g) <i>Reactivation of license in inactive status</i>	175
(h) <i>Transfer of license to another funeral establishment</i>	225
 4. <i>For a certificate of registration as a registered apprentice in the profession of embalming:</i>	
(a) <i>Annual fee</i>	\$75
(b) <i>Late renewal</i>	275
 5. <i>For a license to practice the profession of embalming:</i>	
(a) <i>Initial application</i>	\$375
(b) <i>Examination fee</i>	375
(c) <i>Issuance of a license to a practitioner who is licensed in another state</i>	200
(d) <i>Annual renewal</i>	200
(e) <i>Late renewal</i>	275
(f) <i>Placement of license in inactive status</i>	175
(g) <i>Reactivation of license in inactive status</i>	175
 6. <i>For a certificate of authority to operate a cemetery:</i>	
(a) <i>Initial application</i>	\$1,000
(b) <i>Annual renewal</i>	250
(c) <i>Late renewal</i>	275
(d) <i>Application to change control of existing cemetery</i>	375

<i>(e) Investigation fee for application to change control of existing cemetery.....</i>	<i>250</i>
<i>7. For a license to operate a crematory:</i>	
<i>(a) Initial application</i>	<i>\$375</i>
<i>(b) Annual renewal</i>	<i>250</i>
<i>(c) Late renewal.....</i>	<i>275</i>
<i>(d) Application to change ownership of existing crematory.....</i>	<i>375</i>
<i>8. Deactivation and reactivation of a license, certificate or permit, other than a license to practice the profession of embalming, a funeral director's license or a license to conduct direct cremations or immediate burials.....</i>	
	<i>\$175</i>
<i>9. Duplicate license, certificate or permit.....</i>	<i>\$75</i>

Sec. 5. 1. Any person may file an informal complaint with the Board concerning the acts of a licensee or services provided by a licensee. Such an informal complaint filed with the Board must be on a form provided by the Board and include information that is sufficiently detailed to enable the respondent to prepare a response.

2. Upon receipt of an informal complaint, the staff shall examine the complaint to determine whether it:

- (a) Has been properly verified; and*
- (b) Alleges sufficient facts to warrant further proceedings.*

3. If the staff determines that the informal complaint against a licensee has been properly verified and alleges sufficient facts to warrant further proceedings, the staff shall notify the respondent by sending a copy or summary of the informal complaint to the licensee by certified mail. The notification must set forth the potential violations of a provision of this chapter or chapter 451 or 452 of NAC or chapter 451, 452 or 642 of NRS arising in the

informal complaint and request a response for the review by the Board before a hearing is set. The transmission of the copy or summary of the informal complaint will be deemed to be a notice of intended action pursuant to subsection 3 of NRS 233B.127.

4. Upon the receipt of a copy or summary of an informal complaint that has been filed against him, a licensee shall submit to the Board a written response to the informal complaint within 15 days after the date on which the informal complaint was served. A response to an informal complaint must respond to the allegations made in the informal complaint and be accompanied by all documentation that would be useful to the staff and legal counsel in their review of the allegations made in the informal complaint and the responses made by the licensee to those allegations. Failure by a licensee to cooperate with the Board during an investigation of an informal complaint, including, without limitation, failing to respond timely to the Board regarding a copy or summary of the informal complaint sent to the licensee by the staff pursuant to this subsection is a ground for disciplinary action by the Board against the licensee.

5. If a licensee fails to respond as required pursuant to subsection 4, he shall be deemed to have admitted the allegations in the informal complaint. Based on these admissions, the Board may impose appropriate discipline on the licensee at the hearing on the informal complaint.

6. In cases where a response is filed as required pursuant to subsection 4, the staff shall review the informal complaint and the responses made thereto, may enlist the aid of a member of the Board or other qualified persons in the review and may take any other reasonable action necessary to further the review. After their review of the informal complaint and the responses made thereto, the staff may:

(a) Investigate the allegations and employ such persons as they deem necessary to further the investigations;

(b) Consult with experts in the appropriate field, including, without limitation, employing such persons for the purposes of an investigation or a hearing;

(c) Investigate new leads and allegations that may come to their knowledge in the course of the investigation;

(d) Enlist the aid of a member of the Board or other qualified person in the conduct of the investigation; and

(e) Take any other reasonable action necessary to further the investigation.

7. During an investigation of an informal complaint, the staff, or investigator, if any, may demand that a licensee produce his records or other evidence for inspection or copying, with or without prior notice to the licensee, and with or without a subpoena. A licensee shall not deny any such request for records or other evidence if such records or other evidence is not protected by a claim of confidentiality authorized by law. If a licensee refuses or fails to cooperate with a request for records in violation of this subsection, the Board may immediately suspend his license or certificate until the licensee complies with the request for records or other evidence. If the licensee continues to refuse or fail to cooperate with a request for records or other evidence in violation of this section, the Board may take such further disciplinary action against the licensee as the Board determines necessary.

8. If the staff, or investigator, if any, determines that a specific record or other specific evidence is material to or necessary for an investigation, the staff or investigator may remove the record or evidence and provide a copy of the record or evidence to the respondent. If a record or other evidence can be readily copied at the location where the record or evidence is

located, the staff or investigator shall make a copy of the record and evidence at that location. If a record or other evidence cannot be readily copied at the location where the record or evidence is located, the staff or investigator may remove the record or evidence from that location to copy the record or evidence. If the staff or investigator removes a record or other evidence to be copied, the staff or investigator shall provide the person to whom the record or evidence being removed belongs with a receipt for the record or evidence and, not later than 5 business days after the record or evidence is removed, provide a copy of the record or evidence to that person.

9. When an investigation of an informal complaint is complete, the staff, and investigator, if any, shall determine whether substantial evidence exists to sustain the alleged violation of a statute or regulation set forth in the informal complaint. If the staff and investigator determine that no allegation of a violation of a statute or regulation set forth in the informal complaint can be sustained, the staff shall notify, in writing, the complainant and the respondent of this determination. If the staff and investigator determine that a violation of a statute or regulation as alleged in the informal complaint can be sustained, the staff and investigator shall inform the legal counsel of such a determination. The legal counsel shall:

(a) Offer mediation to the respondent, a settlement agreement, stipulation of facts and liability or an informal hearing; or

(b) Prepare a notice of hearing and a formal complaint.

10. A notice of hearing and a formal complaint must:

(a) Be a plain statement of the facts and applicable provisions of statutes and regulations regarding the alleged acts of the respondent alleged to be in violation of the statutes and regulations governing the profession of the licensee;

(b) Include the date, time and place that the Board will hear the matter, if this information is known at the time when the notice of hearing and a formal complaint is sent to the respondent; and

(c) Be signed by the legal counsel and, if a member of the Board was active in the investigation, by that member of the Board.

11. The staff shall send, by certified mail, a notice of hearing and a formal complaint prepared pursuant to subsection 10 to the respondent named in the notice of hearing and the formal complaint.

12. A respondent who receives a notice of hearing and a formal complaint shall file his answer to the notice of hearing and the formal complaint not later than 15 days after the date on which he received the notice of hearing and the formal complaint. An answer to a notice of hearing and a formal complaint filed by a respondent must include a response to each allegation and statement made in the notice of hearing and the formal complaint by either admitting to or denying the allegation or statement. If the licensee fails to file an answer as required pursuant to this subsection, he shall be deemed to have admitted each allegation and statement contained in the notice of hearing and the formal complaint. Based on these admissions, the Board may enter a finding and impose appropriate discipline on the licensee in the same manner as if the allegations had been proven by substantial evidence at a hearing of the Board held on the formal complaint.

13. Not later than 10 days after the filing of the response by the respondent, the legal counsel and the respondent shall exchange a list of the evidence and witnesses that will be used at the hearing. A party may not present evidence it obtains after the date the exchange was required pursuant to this subsection unless it demonstrates to the Board that the evidence

or witness was not available upon diligent investigation before the date the exchange was required and that the evidence or witness was given or communicated to the other party immediately after it was obtained.

14. The Board may join two or more formal complaints into one formal complaint if:

(a) The causes of action of each formal complaint are against the same person and deal with substantially the same or similar violations of statutes and regulations; and

(b) The joining of the formal complaints will serve the best interest of the Board, complainant and respondent.

15. A petition filed pursuant to NRS 642.500 will be processed pursuant to the provisions of this section.

16. As used in this section:

(a) "Legal counsel" means the legal counsel of the Board.

(b) "Licensee" means a person licensed by the Board or holding a permit issued pursuant to the provisions of chapter 451, 452 or 642 of NRS.

(c) "Staff" means the staff of the Board.

Sec. 6. 1. *The Chairman of the Board will issue a temporary authorization pursuant to section 6.7 of Senate Bill No. 323 of the 72nd Session of the Nevada Legislature, chapter 240, Statutes of Nevada 2003, at page 1267 (NRS 642.515), on behalf of the Board, if the applicant meets the requirements of that section and is applying for:*

(a) A license as a funeral director pursuant to NRS 642.340;

(b) Approval to manage a funeral establishment pursuant to NRS 642.345;

(c) A license to direct cremations or immediate burials pursuant to NRS 642.355; or

(d) A permit to operate a funeral establishment pursuant to NRS 642.365.

2. The application of an applicant who is issued a temporary authorization pursuant to this section must be placed on the agenda of the meeting of the Board next following the approval of the temporary authorization for action by the Board.

Sec. 7. 1. *A person who is licensed as a funeral director may apply to the Board for approval to transfer his license from the funeral establishment which he has been approved to manage to a different funeral establishment.*

2. An application submitted pursuant to this section must be on a form provided by the Board and must be accompanied by:

(a) Payment or proof of payment of the renewal fee or the transfer fee set forth in subsection 3 of section 4 of this regulation; and

(b) Proof satisfactory to the Board that the funeral establishment to which the applicant wishes to transfer has a valid permit to operate a funeral establishment.

3. Upon receipt and approval of the items described in subsection 2, the Board will approve a transfer pursuant to this section.

4. Upon approval by the Board of a transfer pursuant to this section, the applicant may not manage the funeral establishment from which his license was transferred unless he has otherwise been approved by the Board to manage more than one funeral establishment pursuant to subsection 2 of NRS 642.345.

Sec. 8. NAC 642.100 is hereby amended to read as follows:

642.100 Before February 1 of each year, a person who is licensed to operate a crematory pursuant to chapter 451 of NRS shall pay ~~the fee of \$250~~ *the fee set forth in subsection 7 of section 4 of this regulation* to renew his license. If he does not pay the required fee before

February 1, the licensee shall pay ~~[a late penalty fee of \$100]~~ *the late fee set forth in subsection 7 of section 4 of this regulation* in addition to the renewal fee.

Sec. 9. NAC 642.110 is hereby amended to read as follows:

642.110 Before February 1 of each year, a person who holds a certificate of authority to operate a cemetery issued pursuant to chapter 452 of NRS shall pay ~~[a fee of \$250]~~ *the fee set forth in subsection 6 of section 4 of this regulation* to renew his certificate. If he does not pay the required fee before February 1, the holder of the certificate shall pay ~~[a late penalty fee of \$100]~~ *the late fee set forth in subsection 6 of section 4 of this regulation* in addition to the renewal fee.

Sec. 10. NAC 642.240 is hereby amended to read as follows:

642.240 ~~[The board may consolidate two or more proceedings into one hearing if it appears that the issues involved in each proceeding are substantially the same and the interests of the parties will not be prejudiced.]~~ The member of the Board presiding over a consolidated hearing will determine the order of evidence for the hearing.

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R043-02**

The Nevada State Funeral Board adopted regulations assigned LCB File No. R043-02 which pertain to chapters 451 and 642 of the Nevada Administrative Code on October 2, 2002.

Notice date: 6/1/2002 & 9/1/2002
Hearing date: 10/2/2002

Date of adoption by agency: 10/2/2002
Filing date: 11/26/2003

INFORMATIONAL STATEMENT

- 1. A description of how public comment was solicited, a summary of public response, and explanation how other interested persons may obtain a copy of the summary.**

The hearing for adoption was noticed on June 1, 2002 and September 1, 2002 at the following locations: Churchill County Library, Clark County Library, Elko County Library, Eureka Branch Library, Humboldt County Library, Lincoln County Library, Lyon County Library, Mineral County Library, Goldfield Public Library, Tonopah Public Library, Pershing County Library, Storey County Library, Washoe County Library, White Pine County Library, Battle Mountain Library, Carson City Library and Douglas County Library. All funeral homes in Nevada were also noticed on the above dates..

- 2. The number of persons who:**
(a) Attended Hearing: 20
(b) Testified at each hearing: 4
(c) Submitted to the agency written comments: 0

- 3. A description of how comment was solicited from affected businesses, a summary of their response and an explanation how other interested persons may obtain a copy of the summary.**

Comments were solicited from affected businesses as outlined in #1 above.

There were objections to simultaneous cremations.

There was a desire for licensees to receive a certificate the first time they were licensed along with their actual license.

A copy of the written comments may be obtained by calling the State Board of Funeral Directors, Embalmers and Operators of Cemeteries and Crematories at (702) 290-5366 or by writing to the Board at PMB 186 4894 Lone Mountain Road, Las Vegas, Nevada 89130.

- 4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

The regulation was adopted with changes from the proposed regulation.

5. The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public.

A. There will be additional fees in the amount stated in the regulation. These fees will provide additional services to the licensees and will defray the costs of board operations.

B. Other than the possibility that some of the fees may be passed on to consumers, there is no estimated economic effect on the public, either adverse or beneficial, immediate or long term.

6. The estimated cost to the agency for enforcement of the adopted regulation.

There is no additional cost to the agency for the enforcement of this regulation.

7. A description of any regulations of other state or governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

There are no other state or government agency regulations that the proposed amendments duplicate.

8. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

There are no known federal regulations that regulate the same activity. There are no provisions that make these regulations more stringent than any known federal regulations.

9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

This regulation provides for new fees that will be used to defray the operating costs of the agency and provide increased services to the licensees. The amount the board expects to collect is approximately \$27,400 and will vary depending on the amount of new applications for licenses.