

Model Practice Act For Funeral Service

Presented By:



Model Practice Act Committee 2013-2015
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Conference Model Practice Act for Funeral Service

Table of Contents

Introduction	4
Article I. Title and Definitions	7
Article II. Board of Funeral Service	13
Article III. Licensing Qualifications	19
Unlawful Practice	20
Qualifications for Licensure as a Funeral Director	20
Qualifications for Licensure as an Embalmer	21
Qualifications for Internship as a Funeral Director	22
Qualifications for Internship as an Embalmer	23
Approved Supervisor Requirements	24
Qualifications for Crematory Operator Certification	25
Qualifications for Transporter Certification	26
Continuing Education Requirements	27
Establishment Licensure Requirements	28
Article IV. Discipline	31

Conference Model Practice Act for Funeral Service

INTRODUCTION

The International Conference of Funeral Service Examining Boards (Conference or ICFSEB) is pleased to introduce its *Conference Model Practice Act for Funeral Service* ("Conference Model Act" or "Model Act"). The Conference Model Act serves as a guideline to the legislature, regulatory officials, and members of the profession seeking to adopt or amend the laws governing mortuary arts and funeral services. The purpose of the Conference Model Act is to facilitate the protection of the public by providing legal mechanisms that establish and provide for the enforcement of uniform standards. The provisions and language contained in this Model Act represent currently accepted standards, practices and terms and represents the collective wisdom of the funeral service regulatory community.

With the primary goal of consumer protection, the wide-spread uniform adoption of the Model Act will facilitate standardization of terminology and regulation, which promotes increased public trust and understanding. Standardization also promotes consistency in compliance, enforcement and legal decisions related to licensure, renewal, discipline and other state sponsored activities. While uniformity in laws may be desired or helpful, The Conference is respectful of states' rights and recognizes that each jurisdiction may have unique interests and processes and that some or all of the Model Act may be useful. Nevertheless, consistency in a regulatory system and adoption of generally accepted standards strengthens the profession and will assist in assuring greater compliance.

As part of an initiative brought forth by the Conference membership to develop and provide Model documents for Conference members, the construction of the Model Act first began in June 2013 with the formation of a committee appointed by The Conference Board of Directors. Following their appointment, the Committee worked for over a year and a half with two in-person meetings, several conference calls, and individual research to develop the language in this Model Act. Further review and input was gathered at The Conference's 109th and 110th Annual Meeting in the form of group exercises by funeral service regulators from across the country. Inclusion of feedback from relevant stakeholders was also vital during the construction process as The Conference solicited and considered input from funeral service regulatory boards, professional associations, accredited mortuary colleges, and counterparts from other regulatory professions. A final draft of the Model Act was approved by the Committee on January 7, 2015, the Board of Directors on January 20, 2015 and adopted by the delegate assembly at the 111th Annual Meeting on February 25, 2015. A review committee of seven individuals assembled in 2016 to review the current document and comments received from various stakeholders and approved a final draft of the updated Model Act on October 21, 2016. After Board of Directors review, the amended Model Act was adopted by the Delegate Assembly on March 1, 2017 at the 113th Annual Meeting in Hilton Head, South Carolina. A review committee of seven was charged with a second review in 2020. After comment solicitation and feedback, as well as committee review and updates, the updated document was distributed for stakeholder and legal review in November 2020.

Conference Model Practice Act for Funeral Service

INTRODUCTION cont.

With approval by the committee and board, the updated document was adopted by the delegate assembly during the 117th Annual Meeting on February 24, 2021.

The Conference Model Act includes sections on standards and the regulation of specific professions, provision of related services, and practices associated with funerals and the proper care of human remains. Some Model Act sections are followed by notes that provide additional information, such as comments, background or suggested alternatives. In reviewing the Model Act, readers are strongly encouraged to consider this additional information.

As with all model documents, The Conference Model Act should be recognized as an evolving document that will be reviewed as needed to stay relevant to industry standards while further developing other areas to be of use by Conference membership. If your state is considering licensure or another form of regulation affecting individuals or businesses engaged in funeral services or handling human remains, please contact The Conference for additional assistance.



Title and Definitions

Conference Model Practice Act for Funeral Service

Article I

Title and Definitions

Section 101. Title of Act.

This Act shall be known as the “The International Conference of Funeral Service Examining Boards (Conference) Model Practice Act for Funeral Service.”

Section 102. Legislative Declaration.

(a) The practice of funeral service in the _____ of _____ is declared a professional practice affecting the public health, safety, and welfare and is subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the practice of funeral service, as defined in this Act, merit and receive the confidence of the public and that only qualified persons be permitted to engage in the practice of funeral service in the _____ of _____. This Act shall be liberally construed to carry out these objectives and purposes.

(b) It is further declared that the intent of this legislation is to regulate the (Profession) profession and will result in displacing competition by restricting licensure to practice (Profession), as such practice is defined and interpreted by the Board, to Applicants determined by the Board to be qualified under this Act. It is declared that any such restriction on competition is outweighed by the broader interest in protection of the public health, safety, and welfare. It is understood that the regulatory structure calls for Licensees and public members to serve on the Board and this legislation recognizes the need for professional expertise provided by practitioners serving the public interest. This Act is intended to provide active state oversight and supervision through its legislative enactment, the promulgation of enabling regulations, the appointment and removal of Board members by the (Governor), legal representation of the Board by the office of the (State) Attorney General, legislative appropriation of monies to support the Board, periodic legislative sunset review, application to the Board of ethics laws, mandatory Board member training, and judicial review where applicable.

Notes on Legislative Declaration: *This section has been revised in light of the United States Supreme Court opinion in North Carolina State Board of Dental Examiners v. FTC, 574 U.S. ____ (2015), 135 S.Ct. 1101, 191 L.Ed.2d 35. Language has been added to specifically identify the components of government oversight that exist in the legislation and implementation of the regulatory framework.*

Section 103. Statement of Purpose.

It is the purpose of this Act to promote, preserve, and protect the public health, safety, and welfare by and through the effective control and regulation of persons, in or out of the state that practice funeral service within this state.

Section 104. Definitions.

(a) **Alkaline Hydrolysis** means technical process that reduces Human Remains to bone fragments using heat, water and chemical agents.

(b) **Approved Provider of Continuing Education** means any professional association, university, or college, corporation or other entity that has met the requirements of the Board to provide educational courses that are designed to maintain, improve, or enhance funeral or embalming practice.

Conference Model Practice Act for Funeral Service

Section 104. Definitions.

(c) **Approved Supervisor** means a Funeral Director or Embalmer who has been approved by the board through the application process to provide instruction and Direct Supervision to Interns.

(d) **Board of Funeral Service (Board)** means the entity created and empowered under this Act.

(e) **Board Members** means members duly appointed to the Board.

(f) **Certificate or Certificate Holder** means a credential issued by the Board authorizing a person to engage in the practice defined under this Act.

(g) **Consumer Board Member** means a representative of the public in general who does not hold any license or certification issued by the board and meets the qualifications as stated under section 203 (b) of this Act.

(h) **Continuing Education** means education and training designed to maintain, improve, or enhance funeral or embalming practice.

(i) **Conviction** means a conviction of a crime by a court of competent jurisdiction and shall include a finding or verdict of guilt whether or not the adjudication of guilt is withheld or not entered on an admission of guilt, a no contest plea, a plea of nolo contendere, or a guilty plea.

(j) **Cremated remains** means the remains of a decedent after the cremation process is complete.

(k) **Cremation** means the technical process that reduces Human Remains to bone fragments through combustion and pulverization.

(l) **Crematory** means a building or area that houses one or more cremation chambers where Cremation takes place and includes an area to properly hold a body in preparation for Cremation.

(m) **Crematory Operator** means any certified person who operates a Crematory.

(n) **Direct Supervision** means the Approved Supervisor (also known as mentor, preceptor, trainee supervisor) is immediately available and physically present.

(o) **Embalmer** means any person licensed to engage in the business, practice, science or profession of Embalming.

(p) **Embalming** means the process of chemically treating the dead human body (human remains) by arterial injection, cavity treatment and/or, when necessary, hypodermic tissue injection to reduce the presence and growth of microorganisms to temporarily slow organic decomposition, and restore acceptable physical appearance.

Notes on Embalming. See "Human Remains" definition for dead human body. The "Embalming" definition coincides with the definition referenced in the Mayer Embalming book taught in mortuary science schools. Mayer, Robert G. *Embalming: History, Theory, and Practice*. New York: McGraw-Hill, 2012. Print.

Conference Model Practice Act for Funeral Service

Section 104. Definitions.

(q) **Examination** means a standardized test assessing entry-level competence of applicants seeking licensure under this Act and approved by the Board.

(r) **Felony** means a criminal act defined by this state or any other state or by definition under federal law.

(s) **Final Adverse Action** means any action taken or order entered by the Board, whether through a consent agreement, as a result of a contested hearing, issued through a letter of reprimand/admonition/warning, or other action against any person or entity that is public information under applicable law. Final adverse actions also include, without limitation denial of application for licensure or renewal and surrender of licensure.

(t) **Full-time Employment** means at least _____ hours per week, totaling _____ hours per month.

Notes on Full-time Employment. The Model Act defers to the relevant federal, state, and local laws regarding the number of hours deemed to be recognized as indicating a full-time employee. In the absence of applicable law, the Board can promulgate regulations to address the issue.

(u) **Funeral Director** means any person licensed to engage in the business, practice, or profession of Funeral Directing.

(v) **Funeral Directing** means arranging, directing, or providing for the care, preparation, or disposition of a decedent, for a fee or other compensation.

Notes on Funeral Directing. Broad definition provided so jurisdictions can further list out any other funeral directing duties.

(w) **Funeral Establishment** means any place of business licensed by the Board to be used for storing and embalming Human Remains; preparing Human Remains for disposition; viewing Human Remains; and may include conducting funeral or memorial services and making funeral arrangements.

(x) **Funeral Home Manager** means a Funeral Director designated to serve as the individual responsible for the overall operations of the Funeral Establishment.

(y) **Human Remains** means the body of a decedent, regardless of its stage of decomposition, or cremated remains.

(z) **Intern** means any person registered to engage in the business, practice or profession of interning under the instruction and Direct Supervision of a Funeral Director or Embalmer.

(aa) **Internship** means a period of training during which the Intern gains practical and documented experience in Funeral Directing or Embalming under the direction of an Approved Supervisor licensed by the Board.

(bb) **License** means a credential issued by the Board authorizing a person or entity to engage in the practice defined under this Act.

Conference Model Practice Act for Funeral Service

Section 104. Definitions.

(cc) **Licensee** means a person or entity duly licensed under this Act.

(dd) **Misdemeanor** means a criminal act defined by this state or any other state or by definition under federal law.

(ee) **Mortuary Science Program** means a curriculum in an accredited mortuary science program approved by the Board.

(ff) **Person** means any individual, firm, partnership, association, joint venture, cooperative, corporation, or any other group or combination acting in concert; and whether or not acting as an individual, principal, trustee, fiduciary, receiver, or as any kind of legal or personal representative, or as the successor in interest, assignee, agent, factor, servant, employee, director, officer, or any other representative of such person.

(gg) **Practice of Funeral Service** means the professional practice of arranging for and providing funeral merchandise and services to consumers in a Funeral Establishment or other location in order to effect disposition of Human Remains.

Notes on Practice of Funeral Service. The intent of the MPA committee in drafting a definition for the practice of funeral service was to describe the overall practice of what funeral service may encompass. The definition was not intended to include independent third-party sellers of funeral merchandise. In addition, "or other location" was included to allow licensees to meet with families in locations other than a funeral establishment when necessary in order to serve families.

(hh) **Preparation Room** means a room in a funeral establishment where human remains are prepared for final disposition.

(ii) **Professional Board Member** means a person holding a current license issued by the Board, who is currently engaged in the practice of embalming or funeral service in this state and meets the qualifications as stated under section 203 (a) of this Act.

(jj) **Registrant** means a credential issued by the Board authorizing a person to engage in the practice defined under this Act.

(kk) **Storage** means a place to properly hold a body for preparation of final disposition. (Should only occur in a Funeral Establishment or Crematory.)

Notes on Storage. MPA review committee recommends if the parenthetical statement (should only occur in a Funeral Establishment or Crematory) remains in the definition, jurisdictions should consider the potential effect on transporters. For jurisdictions that regulate transporters, the committee recommends reviewing definition language to consider the other services that provide transportation.

(ll) **The Conference** means the International Conference of Funeral Service Examining Boards.

(mm) **Transporter** means a certified person who engages in the transportation of Human Remains.



Board of Funeral Service

Conference Model Practice Act for Funeral Service

Article II

Board of Funeral Service

Section 201. Designation.

The responsibility for enforcement of the provisions of this Act is hereby delegated to the Board of (Profession), hereinafter “the Board”. Under active oversight and supervision by the State, the Board shall have all of the duties, powers, and authority specifically granted by, or necessary for, the enforcement of this Act, as well as such other duties, powers, and authority as it may be granted from time to time by law.

Notes on Section 201. *This section has been revised in light of the United States Supreme Court opinion in North Carolina State Board of Dental Examiners v. FTC, 574 U.S. ____ (2015), 135 S.Ct. 1101, 191 L.Ed.2d 35.*

Section 202. Membership.

The Board shall consist of ____ members of which at least ____ shall be Consumer Members with the remainder of the Professional Board Members being Licensees whom also possess the qualifications specified in Section 203. Professional and Consumer Members may be collectively referred to as Board members.

Notes on Section 202. *Based upon a review of the composition of Boards, the Model Act recommends the number of Board Members should be an odd number, due to voting purposes, of at least nine members with one-third being Consumer Members. Board composition should be considered in light of the NCSBDE v. FTC case, cited above.*

Section 203. Qualifications.

(a) Professional Board Members shall at all times during service to the Board:

- (1) Be a resident of this state for not less than five years prior to appointment to the Board;
- (2) Be currently licensed and in good standing as a Funeral Director or Embalmer in this state; and
- (3) Have had at least five (5) years of licensed experience in the Practice of Funeral Service in this state.

(b) Consumer Members of the Board shall:

- (1) Be a resident of this state;
- (2) Be at least twenty-one (21) years of age;
- (3) Shall not be, and never have been, a Licensee;
- (4) Shall not employ or be employed by, or professionally or financially associated with a Licensee.

Notes on Section 203. *A certificate holder could serve as a professional board member if allowable by jurisdiction, however, MPA Review Committee determined professional board member should be licensed. The Model Act identifies five years as an appropriate amount of time for a professional board member to gain a working knowledge of jurisdiction's laws.*

Conference Model Practice Act for Funeral Service

Section 204. Appointment, Terms of Office, and Officers.

- (a) Board Members shall be appointed by the Governor in accordance with this Act and the state constitution.
- (b) Board Members shall serve for a term of ____ years and such terms shall be staggered to provide for continuity of service. Board Members may serve until a successor is duly appointed.
- (c) Board Members shall serve no more than two (2) full consecutive terms.
- (d) Board Members who are appointed to fill vacancies which occur prior to the expiration of a former member's full term shall serve the remaining portion of the term to which the former member was appointed.
- (e) The Board shall annually elect from its members a Chairperson and such other officers as it deems appropriate and necessary for the conduct of its business.

Notes on Section 204. *The Model Act recommends Board Members be appointed for a term of four years. The term of years was based on the experience needed to become an effective member coupled with the demands placed on governor's offices to appoint more frequently. Ideally, the member should serve two terms, with an eight year maximum. Terms should be staggered so the experience levels are maintained, while no more than one-fourth shall expire in any year.*

Section 205. Removal.

In accordance with applicable law, a Board Member may be removed on one or more of the following grounds:

- (a) The refusal or inability to perform Board duties in an efficient, responsible, and professional manner;
- (b) The misuse of the Board Member position in order to obtain financial gain or seek personal advantage for self or others;
- (c) A final adjudication or determination by any lawful authority wherein the Board Member has been found guilty or otherwise sanctioned for a violation of any laws substantially related to any practice governed by this Act;
- (d) For other just and reasonable causes.

Section 206. Compensation and Reimbursement of Board Members.

Board Members shall receive a stipend of \$____ per day in which the member is engaged in the performance of official duties of the Board and shall be reimbursed for all reasonable and necessary expenses incurred in connection with the discharge of such official duties.

Section 207. Meetings.

- (a) The Board shall meet at least twice a year.
- (b) The Board shall meet at such time, manner, and place as it may determine. The place for each meeting shall be determined prior to giving notice of such meeting and shall not be changed after such notice is given without adequate prior notice.
- (c) Notice of all meetings of the Board shall be given in the manner and pursuant to requirements prescribed by law.
- (d) A majority of the members of the Board shall constitute a quorum for the conduct of a Board meeting and all actions of the Board shall be by a majority of a quorum.
- (e) All meetings of the Board shall be subject to the state's open meeting laws.

Conference Model Practice Act for Funeral Service

Section 208. Employees.

The Board may, in its discretion, employ an Executive Director and other persons as deemed necessary for the proper conduct of Board business and the fulfillment of the Board's responsibilities as set forth by the Act.

Section 209. Rules/Regulations.

The Board shall make, adopt, amend, and repeal such rules/regulations as may be deemed necessary by the board from time to time for the proper administration and enforcement of this Act. Such rules/regulations shall be promulgated in accordance with state law.

Notes on Section 209. *The Model Practice Act committee was mindful jurisdictions will have a preference when using the term "rules" vs. "regulations." The committee suggests the use of one term only.*

Section 210. Powers and Duties.

(a) The Board shall establish fees in amounts reasonable and necessary to cover the costs of administering this statute.

(b) The Board shall be responsible for the control and regulation of the Practice of Funeral Service in this state including but not limited to the authority to:

- (1) Grant licenses by examination, endorsement, temporary or provisional recognition, reinstate, and renew licenses of Persons who the Board determines are qualified to engage in the Practice of Funeral Service under the regulations of this Act;
- (2) License and renew Funeral Establishments under this Act;
- (3) Establish and enforce standards for Continuing Education to maintain, improve, or enhance funeral or embalming practice;
- (4) Establish and enforce compliance with professional standards and rules of conduct for Licensees, Certificate Holders, or Registrants engaged in the Practice of Funeral Service or practice of Embalming within this state;
- (5) Determine and establish educational standards for licensure in this state;
- (6) Take Final Adverse Action against Persons or Funeral Establishments identified under this Act to suspend, revoke, restrict, or place on probation Licenses to engage in the Practice of Funeral Service;
- (7) Seek to enjoin, prevent, discipline or otherwise sanction the unauthorized Practice of Funeral Service by any Person or entity;
- (8) Take all available action necessary to collect and maintain data concerning professional demographics;
- (9) Investigate any Person or facility for the purpose of determining compliance with the provisions of the laws governing the Practice of Funeral Service;
- (10) Conduct compliance inspections of Funeral Establishments and Transporters;
- (11) Subpoena Persons and documents in the same manner as prescribed and for the same purposes allowed under (insert citation to applicable law related to civil procedures). Any member of the Board, hearing officer, or administrative law judge conducting a hearing under this Act shall have power to administer oaths;
- (12) Assess costs, inclusive of attorney's fees;
- (13) Issue fines.

Conference Model Practice Act for Funeral Service

Section 210. Powers and Duties continued

(c) The Board shall have such other duties, powers, and authority as may be necessary to the enforcement of this Act and to the enforcement of Board rules/regulations made pursuant thereto, which shall include, but are not limited to the following:

- (1) The Board may be a member of a national regulatory organization that promotes the public's health, safety, and welfare through development of national licensing requirements, licensing examinations, and other regulatory activities;
- (2) The Board may establish committees;
- (3) The Board, its staff, officers, inspectors, and representatives shall cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states relating to the Practice of Funeral Service;
- (4) The Board may promulgate regulations to establish, charge, and collect fees in compliance with applicable state statutes.

(d) The Board shall have continuing jurisdiction to initiate or continue a disciplinary proceeding against any Person, licensee, registrant, or certificate holder, regardless of any change in licensure, registration, or certification status.

Notes on Section 210. *When adopting or referencing this section, the Model Practice Act committee highly recommends adding language regarding setting legislature approved fees not to exceed a certain amount.*



Licensing Qualifications

Conference Model Practice Act for Funeral Service

Article III. Unlawful Practice & Qualifications

Introductory Comment to Article III.

The Model Act requires each applicant (whether applying for a license, certification, or internship) to submit to a criminal background check.

Section 301. Unlawful Practice

It is unlawful for any Person or entity to engage in the practice of Funeral Directing; practice of Embalming; practice as an Intern; operate a Crematory; or transport Human Remains or hold themselves out as qualified to engage in the practice of Funeral Directing; practice of Embalming; practice of interning; operating a Crematory; or transportation of Human Remains without a valid license, certification or registration issued by the Board.

Section 302. Qualifications for Licensure by Examination as a Funeral Director

To obtain a License as a Funeral Director, an applicant for licensure bears the burden of substantiating to the satisfaction of the Board the following:

- (a) Submission of a completed application and application fee not to exceed \$____ as required by the Board;
- (b) Be a minimum of eighteen (18) years of age;
- (c) Graduated and received an associate degree in _____, or the equivalent, approved by the Board;
- (d) Within the last five years, passage of an entry level Examination administered by The International Conference of Funeral Service Examining Boards or examinations determined by the Board;
- (e) Payment of all applicable fees;
- (f) Within the last five years, completion of an Internship as defined under this Act;
- (g) Be of good moral character. As one component of good moral character, the Board shall require each applicant for licensure to submit a full set of fingerprints for the purpose of obtaining state and federal criminal records checks, pursuant to (*insert reference to authorizing state statute*) and applicable federal law. The (*state agency responsible for managing fingerprint data e.g. the department of public safety*) may submit fingerprints to and exchange data with the Federal Bureau of Investigation. All character information, including the information obtained through the criminal records checks, shall be considered in licensure decisions to the extent permissible by all applicable laws.

Notes on Section 302. *The associate degree requirement provides the applicant with the basic core curriculum needed to gain fundamental knowledge of the requirements to succeed (communication, writing, mathematical) in a business setting. The Model Act also concludes that the education requirement serves as a measurement for the standard of practice and the professional background necessary to safely and effectively practice in this industry. Candidates for licensure shall have attained the age of majority (18) in the state in which they intend to practice, allowing them to enter into or be the signatory in contractual agreements on behalf of the firm. Continuing education is not required for initial licensing. The requirements in states that require CE vary greatly as to the number of hours, content, subject matter, etc.*

Conference Model Practice Act for Funeral Service

Section 303. Qualifications for Licensure by Examination as an Embalmer

To obtain a license as an Embalmer, an applicant for licensure bears the burden of substantiating to the satisfaction of the Board the following:

- (a) Submission of a completed application and application fee not to exceed \$____ as required by the Board;
- (b) Be a minimum of eighteen (18) years of age;
- (c) Graduation from a Mortuary Science Program approved by the Board and accredited by the American Board of Funeral Service Education or its equivalent;
- (d) Within the last five years, completion of an Internship as defined under this Act;
- (e) Within the last five years, passage of the National Board Examination administered by The International Conference of Funeral Service Examining Boards or examinations determined by the board;
- (f) Payment of all applicable fees;
- (g) Be of good moral character. As one component of good moral character, the Board shall require each applicant for licensure to submit a full set of fingerprints for the purpose of obtaining state and federal criminal records checks, pursuant to *(insert reference to authorizing state statute)* and applicable federal law. The *(state agency responsible for managing fingerprint data e.g. the department of public safety)* may submit fingerprints to and exchange data with the Federal Bureau of Investigation. All character information, including the information obtained through the criminal records checks, shall be considered in licensure decisions to the extent permissible by all applicable laws.

Notes on Section 303. *Candidates for licensure shall have attained the age of majority (18) in the state in which they intend to practice, allowing them to enter into or be the signatory in contractual agreements on behalf of the firm.*

Conference Model Practice Act for Funeral Service

Introductory Comment to Section 304.

The Model Act recognizes the terms Intern, registrant, and trainee may be used interchangeably and that "Intern" is a universal, professional term. The following qualifications should be used in conjunction with the Model Internship Program (MIP) produced by The Conference. Reference the MIP for intern tasks, training reports, supervisor training requirements, etc.

Section 304. Qualifications for Internship as a Funeral Director

(a) To qualify for an Internship as a Funeral Director; an applicant must meet the following criteria:

- (1) Submission of a completed application and application fee not to exceed \$____ as required by the Board, identifying the Approved Supervisor under whom the applicant will Intern;
- (2) Be a minimum of eighteen (18) years of age;
- (3) Be a graduate of high school or the equivalent;
- (4) Payment of all applicable fees;
- (5) Be of good moral character. As one component of good moral character, the Board shall require each applicant for licensure to submit a full set of fingerprints for the purpose of obtaining state and federal criminal records checks, pursuant to *(insert reference to authorizing state statute)* and applicable federal law. The *(state agency responsible for managing fingerprint data e.g. the department of public safety)* may submit fingerprints to and exchange data with the Federal Bureau of Investigation. All character information, including the information obtained through the criminal records checks, shall be considered in licensure decisions to the extent permissible by all applicable laws.

(b) Interns must:

- (1) Under the Direct Supervision of an Approved Supervisor, complete at least 2,000 hours during a two-year period of formal training, and complete the minimum number of cases;
- (2) Under the Direct Supervision of an Approved Supervisor, assist in the arranging/directing of (insert #) funerals; and
- (3) Under the Direct Supervision of an Approved Supervisor, submit Internship report(s) as required by the Board.

(c) If the Internship as a Funeral Director is terminated or interrupted prior to completion or if there is a change to Approved Supervisor or site, the Intern and Approved Supervisor shall submit a written report indicating the number of hours completed and the cause of the termination, interruption, or change.

Notes on Section 304. *The time restriction for the Internship is based on the need for the Intern to complete a minimum case volume. It is critically important for the Intern to be exposed to the many non-quantifiable experiences only attainable by participating in the day-to-day funeral environment over a period of time. Allowing an individual who has graduated high school to serve an internship permits this person to determine if the industry is right for them without committing to the time and costs of an education. The Model Act does not prescribe the details of relevant employment, so long as the Intern receives training in all aspects of the license sought. The MPA Committee recommends assisting in the arranging/directing of 50 funerals for Internship duties for a Funeral Director. The committee was mindful that industry changes, geographic locations, and dual licensure may affect these numbers and time frames.*

Conference Model Practice Act for Funeral Service

Introductory Comment to Section 305.

The Model Act recognizes the terms Intern, registrant, and trainee may be used interchangeably and that "Intern" is a universal, professional term. The following qualifications should be used in conjunction with the Model Internship Program (MIP) produced by The Conference. Reference the MIP for intern tasks, training reports, supervisor training requirements, etc.

Section 305. Qualifications for Internship as an Embalmer

(a) To qualify for an Internship as an Embalmer; an applicant must meet the following criteria:

- (1) Submission of a completed application and application fee not to exceed \$____ as required by the Board, identifying the Approved Supervisor under whom the applicant will Intern;
- (2) Be a minimum of eighteen (18) years of age;
- (3) Be a graduate of high school or the equivalent;
- (4) Payment of all applicable fees;
- (5) Be of good moral character. As one component of good moral character, the Board shall require each applicant for licensure to submit a full set of fingerprints for the purpose of obtaining state and federal criminal records checks, pursuant to *(insert reference to authorizing state statute)* and applicable federal law. The *(state agency responsible for managing fingerprint data e.g. the department of public safety)* may submit fingerprints to and exchange data with the Federal Bureau of Investigation. All character information, including the information obtained through the criminal records checks, shall be considered in licensure decisions to the extent permissible by all applicable laws.

(b) Interns must:

- (1) Under the Direct Supervision of an Approved Supervisor, work at least 2,000 hours during a two-year period of training, and complete the minimum number of cases;
- (2) Under the Direct Supervision of an Approved Supervisor, embalm at least (insert #) bodies; and
- (3) Under the Direct Supervision of an Approved Supervisor, submit Internship report(s) as required by the Board.

Notes on Section 305. *The time restriction for the Internship is based on the need for the Intern to complete a minimum case volume. It is critically important for the Intern to be exposed to the many non-quantifiable experiences only attainable by participating in the day-to-day funeral environment over a period of time. Serving internships before, during, or after funeral service education had diverse discussions. Allowing an individual who has graduated high school to serve an internship allows this person to determine if the industry is right for them without committing to the time and expense of an education. The Model Act does not prescribe the details of a relevant employment so long as the Intern receives training in all aspects of the license sought. The MPA Committee recommends Embalming at least 50 bodies for Internship duties for an Embalmer. The committee was mindful that industry changes, geographic locations, and dual licensure may affect these numbers and time frames. States may want to determine the inclusion of a number of cases required to embalm after an autopsy. The MPA Committee did not include because it could be very limiting.*

Conference Model Practice Act for Funeral Service

Introductory Comment to Section 306.

The following qualifications should be used in conjunction with the Model Internship Program (MIP) produced by The Conference. Reference the MIP for Approved Supervisor Training Guidelines.

Section 306. Approved Supervisor Requirements

(a) To be an Approved Supervisor, an applicant bears the burden of substantiating to the satisfaction of the Board the following:

- (1) Be a Licensee in good standing;
- (2) Submission of a completed application and application fee not to exceed \$____ as required by the Board;
- (3) Practiced as a Funeral Director or practiced as an Embalmer Full-Time for a minimum of five years before the date of the application;
- (4) Current employment by a Funeral Establishment;
- (5) Completion of Approved Supervisor Training Program approved by the Board.

(b) An Approved Supervisor may supervise up to three interns at a time.

Notes on Section 306. *Interns may be supervised by more than one Approved Supervisor.*

Conference Model Practice Act for Funeral Service

Introductory Comment to Section 307.

The Model Act recommends the term "certification" instead of "license" for a Crematory Operator and Transporter. Both positions engage in specific, limited activity which has a lower risk to the public than the activities that require full licensure (e.g. Funeral Directors; Embalmers).

Section 307. Qualifications for Crematory Operator Certification

(a) To obtain a certificate as a Crematory Operator, an applicant bears the burden of substantiating to the satisfaction of the Board the following:

- (1) Submission of a completed application and application fee not to exceed \$____ as required by the Board;
- (2) Be a minimum of 18 years of age;
- (3) Be a graduate of high school or equivalent;
- (4) Payment of all applicable fees;
- (5) Completion of a (six hour minimum) approved course in crematory operator training approved by the Board;
- (6) Documented training in Occupational Safety and Health Administration standards for universal precautions and blood-borne pathogens approved by the Board;
- (7) Be of good moral character. As one component of good moral character, the Board shall require each applicant for licensure to submit a full set of fingerprints for the purpose of obtaining state and federal criminal records checks, pursuant to *(insert reference to authorizing state statute)* and applicable federal law. The *(state agency responsible for managing fingerprint data e.g. the department of public safety)* may submit fingerprints to and exchange data with the Federal Bureau of Investigation. All character information, including the information obtained through the criminal records checks, shall be considered in licensure decisions to the extent permissible by all applicable laws.

Notes on Section 307. *The Model Act recommends the operator successfully complete manufacturer-developed training specific to the crematory equipment, regardless of the length of the course, in addition to on-the-job training specific to company policies and procedures.*

The addition of OSHA training was included as well due to the contact between the operator and Human Remains.

The Model Act recommends certificate holders submit proof of completion of the crematory operator training course and OSHA training course every five years in order to maintain their certificate .

Conference Model Practice Act for Funeral Service

Introductory Comment to Section 308.

The MPA Committee concluded the term “certification” should be used opposed to “license” for a Crematory Operator and Transporter. Both positions engage in specific, limited activity which has a lower risk to the public than the activities that require full licensure (e.g. Funeral Directors; Embalmers).

Section 308. Qualifications for Transporter Certification

(a) All Transporter certificate holders must submit to inspections by the Board of any business records and any vehicles used to remove or transport Human Remains. A holder of a Transporter Certification shall not engage in the practice of Funeral Directing, Embalming or arranging for the final disposition of Human Remains or to hold itself out as a business used in the care or preparation for final disposition of Human Remains. A Transporter certificate holder shall not store Human Remains.

(b) To obtain a certificate as a Transporter, an applicant bears the burden of substantiating to the satisfaction of the Board the following:

- (1) Submission of a completed application and application fee not to exceed \$____ as required by the Board;
- (2) Be a minimum of 21 age years old;
- (3) Be a graduate of high school or equivalent;
- (4) Possess and maintain a valid driver’s license issued by this state and provide proof of the minimum liability insurance required for the registration of any vehicle in which the person intends to engage in the business of the removal or transportation of a dead human body;
- (5) Affirmatively state under oath that the person has read and understands the statutes and regulations relating to the removal and transportation of dead Human Remains and any regulations as may be adopted by the *Board*;
- (6) Documented training in Occupational Safety and Health Administration standards for universal precautions and blood-borne pathogens approved by the Board;
- (7) Be of good moral character. As one component of good moral character, the Board shall require each applicant for licensure to submit a full set of fingerprints for the purpose of obtaining state and federal criminal records checks, pursuant to *(insert reference to authorizing state statute)* and applicable federal law. The *(state agency responsible for managing fingerprint data e.g. the department of public safety)* may submit fingerprints to and exchange data with the Federal Bureau of Investigation. All character information, including the information obtained through the criminal records checks, shall be considered in licensure decisions to the extent permissible by all applicable laws.

Notes on Section 308. *The increased age requirement of 21 for the Transporter is due to the primary responsibility of transporting Human Remains, which requires less professional education, but greater driving experience and higher insurance coverage. The MPA Committee surveyed membership on the amount of liability insurance and a consistent standard does not exist. Therefore, the amount or level of liability is left up to state. The addition of OSHA training was included as well due to the contact between the Transporter and Human Remains. Such training will protect certificate holder.*

Licensed persons and employees of funeral establishments are excluded from the requirements necessary for a Transporter Certification. This language was not intended to include ambulance services and/or families who may be transporting human remains.

Conference Model Practice Act for Funeral Service

Introductory Comment to Section 309.

Continuing Education activities, approved by the Board, shall be required as a condition of renewal of Funeral Director and Embalmer licenses, in order to maintain and improve the quality of their services to the public.

Section 309. Continuing Education Requirements

(a) Persons seeking to be an Approved Provider of Continuing Education bear the burden of substantiating to the satisfaction of the Board the following:

- (1) Submission of a completed application as required by the Board;
- (2) Submission of written evidence that demonstrates the applicant meets the standards and requirements established by the Board;
- (3) Payment of all applicable fees.

(b) Entities and persons seeking approval of a Continuing Education course bear the burden of substantiating to the satisfaction of the Board the following:

- (1) Submission of a completed application as required by the Board;
- (2) Submission of evidence that the offering, course or program met the Continuing Education standards established by the regulations of the Board; and
- (3) Payment of all applicable fees.

(c) The Approved Provider shall retain records of all persons attending or satisfactorily completing such Continuing Education courses for a period of time determined by the Board. The Board may require Approved Providers or Licensees to submit copies of such records, as it deems necessary, to ensure compliance with Continuing Education requirements. The Approved Provider shall furnish written certification to Licensees of the Board attending and completing Continuing Education course(s), indicating the satisfactory completion of an approved Continuing Education course.

(d) Any Licensee required to complete Continuing Education requirements shall retain the certification issued by the Approved Provider for a period of time determined by the Board.

Notes on Section 309. The Model Act recognizes the importance of CEUs as part of continued competence. Based upon differing numeric requirements from state to state, the Model Act defers to the Board to determine the number of CEUs necessary for licensure renewal.

The MPA Committee recommends a year beyond state's annual renewal cycle for record retention for Approved Providers and Licensees.

Conference Model Practice Act for Funeral Service

Introductory Comment to Section 310.

Each state regulates Funeral Establishments and branches differently. The Model Act recommends the following Funeral Establishment standards which provide a guideline for states to use.

Section 310. Establishment Licensure

(a) All Funeral Establishments must have a physical address for each location and are subject to inspection as determined by the Board. A Funeral Establishment having more than one location at which it performs funeral services shall not be required to maintain more than one preparation room.

(b) To obtain a license as a Funeral Establishment, an applicant bears the burden of substantiating that it has met the following criteria to the satisfaction of the Board:

- (1) Submission of a completed application as required by the Board;
- (2) Payment of all applicable fee(s);
- (3) Designation of a Funeral Director who will serve as the manager of record;
- (4) Maintenance of a preparation and storage room; and
- (5) Satisfactory completion of an inspection by the Board prior to the issuance of the license.

(c) All Funeral Establishments must:

- (1) Comply with all provisions of this Act;
- (2) Employ a Funeral Director who shall serve as manager of record. Such manager shall:
 - (i) be and remain employed Full-Time by such Funeral Establishment at the designated location;
 - (ii) be responsible and accountable for the Funeral Establishment;
 - (iii) be responsible for any and all activities performed on the premises;
 - (iv) be responsible for reports and documents prescribed by the Board;
 - (v) be responsible to report any changes of information to the Board; and
 - (vi) have a license in good standing as a Funeral Director;
- (3) Disclose the location and method of storage of Human Remains to the person who has right to control those remains;
- (4) Be available for inspections as determined by the Board;
- (5) Conspicuously display all current and valid licenses; and
- (6) Ensure all licenses are renewed timely.

(d) A Funeral Establishment license shall not be transferable. If the Funeral Establishment changes ownership or there is more than a 50% change in equity ownership, the person or entity acquiring such ownership or control bears the burden of substantiating that it has met the following criteria to the satisfaction of the Board:

- (1) Submission of a completed application at least 30 days prior to change of ownership as required by the Board;
- (2) Payment of all applicable fees;
- (3) Meeting all the requirements outlined as qualifications for licensure Section 310 (b);

Conference Model Practice Act for Funeral Service

Section 310. Establishment Licensure cont.

- (4) Notification in writing within 30 days after the approved change of ownership all existing prearrangement funeral service contracts holders; and
- (5) Satisfactory completion of an inspection by the Board prior to the issuance of the license.

(e) The person or entity acquiring a change of location bears the burden of substantiating that it has met the following criteria to the satisfaction of the Board:

- (1) Submission of a completed application at least 30 days prior to change of location as required by the Board;
- (2) Payment of all applicable fees;
- (3) Meeting all the requirements outlined as qualifications for licensure Section 310 (b);
- (4) Notification in writing within 30 days after the approved change of location all existing prearrangement funeral service contracts holders; and
- (5) Satisfactory completion of an inspection by the Board prior to the issuance of the license.



Discipline

Conference Model Practice Act for Funeral Service

Article IV. Discipline

Introductory Comment to Section 401.

General powers are phrased in such a way as to allow the Board a wide range of sanction options, including the refusal to issue or renew a License, and the use of License restrictions or limitations. The options outlined in this section provide the Board with the authority to render sanction(s) appropriate to the substantiated wrongdoing(s). References to time intervals can be determined by the Board.

Section 401. Grounds

(a) The Board may refuse to issue or renew, or may suspend, revoke, censure, reprimand, restrict or limit the License of, or fine any person pursuant to the Administrative Procedures Act (APA) upon one or more of the following grounds as determined by the Board:

- (1) Unprofessional conduct in the practice of any Persons or Funeral Establishments regulated under this Act and/or conviction of any felony or misdemeanor;
- (2) Violation of any of the provisions of this Act or any rules/regulations adopted by the Board or other federal, state, or local laws relating to conduct under this Act;
- (3) Commission of any act involving moral turpitude relating to the practice of the person's profession or operation of the person's business, whether the act constitutes a crime or not;
- (4) Misrepresentation or concealment of a material fact related to obtaining or renewing a License;
- (5) Fraud or misrepresentation in any aspect of the business or profession conducted pursuant to this Act;
- (6) Advertising that is false, deceptive, or misleading;
- (7) Incompetence, negligence, or malpractice that creates an unreasonable risk of harm or damage to another;
- (8) Failure to practice in accordance with the provisions identified in Section 210 (a) (4);
- (9) Conduct which violates the security of any licensure examination materials;
- (10) Failure to treat Human Remains with respect at all times;
- (11) Refusal to promptly surrender the custody of Human Remains upon the expressed order of the person lawfully entitled to such custody;

Notes on Section 401 (a) (9). Such content may include, but is not limited to: removing from the examination room any examination materials without authorization; the unauthorized reproduction by any means of any portion of the actual licensing examination; aiding by any means the unauthorized reproduction of any portion of the actual licensing examination; paying or using professional or paid examination-takers for the purpose of reconstructing any portion of the licensing examination; obtaining examination questions or other examination material, except by specific authorization either before, during or after an examination; or using or purporting to use any examination questions or materials which were improperly removed or taken from any examination; or selling, distributing, buying, receiving, or having unauthorized possession of any portion of a future, current, or previously administered licensing examination; Communicating with any other examinee during the administration of a licensing examination; copying answers from another examinee or permitting one's answers to be copied by another examinee; having in one's possession during the administration of the licensing examination any books, equipment, notes, written or printed materials, or data of any kind, other than the examination materials distributed, or otherwise authorized to be in one's possession during the examination; or impersonating any examinee or having an impersonator take the licensing examination on one's behalf.

Conference Model Practice Act for Funeral Service

Section 401. Grounds cont.

- (12) Solicitation of Human Remains by the Licensee, certificate holder, registrant, or agent of the Licensee, whether the solicitation occurs after death or while death is impending. Solicitation may include employment of solicitors, payment of commission, bonus, rebate, or any form of gratuity or payment of a finder's fee, referral fee or other consideration given for the purpose of obtaining or providing the services for Human Remains or where death is impending;
- (13) Acceptance by any employee or agent of a Funeral Establishment of a commission, bonus, rebate, or gratuity in consideration of directing business to a cemetery, Crematory, mausoleum, columbarium, florist, or other person providing goods and services to the disposition of Human Remains, without the required disclosure to the next of kin or authorizing agent;
- (14) Any Final Adverse Action issued by this or another Board in or out of this state;
- (15) Failure to cooperate or interfering with the Board in the course of an investigation, audit, or inspection authorized by law;
- (16) Failure to comply with an order issued by the Board;
- (17) Aiding or abetting unlicensed activity or operating a Funeral Establishment without the License(s) required by this Act;
- (18) Practice or operation of a business or profession beyond the scope of practice permitted under this Act;
- (19) Failure to adequately supervise or oversee auxiliary licensed or unlicensed staff, employees, agents, or contractors as required by this Act or the rules/regulations of the Board;
- (20) Disclosure by a licensee, certificate holder or registrant of confidences, privacies, confidential facts, confidential opinions or secrets of the life of any person, persons or family members, the knowledge of which was acquired through professional relationship with said person, persons or family members;
- (21) Allowing the Licensee's signature and/or License number to be placed on a death certificate or any other official form of Human Remains, as the Funeral Director, if the Licensee did not prepare the body or supervise the final disposition of that body; knowingly making any false statement on a certificate of death;
- (22) Using any funeral merchandise previously used, with the exception of a casket or merchandise that is explicitly designated for reuse, without informing the person selecting and/or paying for the use of the merchandise, that the merchandise has been used;
- (23) Failure to provide funeral goods that the consumer selected, or substitution of funeral goods or services without the consumer's knowledge or consent; or
- (24) Failure to follow the lawful directions of the person or persons with the right to control disposition.

Section 402. Sanctions

- (a) Any of the actions under this section may be stayed by the Board. In determining what action is appropriate, the Board must first consider what sanctions are necessary to ensure public protection. After protection of the public has been addressed, the Board may consider and impose by order requirements designed to rehabilitate the License holder. All costs associated with compliance with orders issued under this section are the obligation of the Licensee, Intern or Certificate holder.
- (b) Upon the substantiation of wrongdoing under Section 401, the Board has the authority to issue an order providing for one or any combination of the following:
 - (1) Revocation of the License, Certificate, or Registration;
 - (2) Suspension of the License, Certificate, or Registration for a fixed or indefinite term;
 - (3) Restriction or limitation on the License, Certificate, or Registration or use thereof;

Conference Model Practice Act for Funeral Service

Section 402. Sanctions cont.

- (4) Satisfactory completion of a specific program of remedial education or treatment;
- (5) Monitoring of the practice in a manner directed by the board;
- (6) Censure, reprimand, or a letter of warning;
- (7) Probation and required compliance with conditions of probation for a designated period of time;
- (8) Imposition of a fine (or monetary penalty) for each violation found by the board, not to exceed \$ _____ per violation;
- (9) Denial of an initial or renewal application;
- (10) Assessment of costs related to the investigation, prosecution and adjudication of the administrative matter, including attorney's fees; or
- (11) Issuance of an order to cease and desist.

Notes on Section 402. Boards who want to collect cost recovery for administrative disciplinary actions or sanctions should refer to their applicable Government Codes for their respective state to determine if an Administrative Procedure Act governs their administrative discipline process. Boards who want to impose a monetary administrative fine as part of an order should promulgate regulations to identify minimum and maximum fine amounts associated with specific violations. When determining reinstatement petitions of a license, the Board is encouraged to promulgate regulations for rehabilitative criteria to include factors such as length of time since the act occurred, evidence of rehabilitation, restitution to consumers, mitigating circumstances, and any other specific requirements for license issuance by the licensing state.

Section 403. Unlicensed Practice

- (a) In addition to any other sanction authorized under this Act, any Person or entity who after a hearing has been found to have engaged in the unlicensed practice of _____ shall be subject to a fine (or monetary penalty) not to exceed \$__ for each offense as well as any other sanctions authorized under this Act.

