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HOUSE BILL 168

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

INTRODUCED BY

Al Park

AN ACT

RELATING TO THANATOPRACTICE; PROHIBITING FUNERAL HOMES FROM
HOLDING A BODY PENDING PAYMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 61-32-24 NMSA 1978 (being Laws 1993,
Chapter 204, Section 24, as amended) is amended to read:

"61-32-24. DISCIPLINARY PROCEEDINGS--JUDICIAL REVIEW.--

A. The board, in accordance with the procedures set
forth in the Uniform Licensing Act, may take disciplinary
action against any licensee, temporary licensee or applicant.

B. The board has the authority to take any action
set forth in Section 61-1-3 NMSA 1978 upon a finding by the
board that the applicant or licensee is guilty of any of the
following acts of commission or omission:

- (1) conviction of an offense punishable by

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1 incarceration in a state penitentiary or federal prison,
2 provided the board receives a copy of the record of conviction,
3 certified to by the clerk of the court entering the conviction,
4 which shall be conclusive evidence of the conviction;

5 (2) fraud or deceit in procuring or attempting
6 to procure a license;

7 (3) gross negligence or incompetence;

8 (4) unprofessional or dishonorable conduct,
9 which includes:

10 (a) misrepresentation or fraud;

11 (b) false or misleading advertising;

12 (c) solicitation of dead human bodies by
13 the licensee, [~~his~~] or the licensee's agents, assistants or
14 employees, whether the solicitation occurs after death or while
15 death is impending, provided that this shall not be deemed to
16 prohibit general advertising;

17 (d) solicitation or acceptance by a
18 licensee of [~~any~~] a commission, bonus or rebate in
19 consideration of recommending or causing a dead human body to
20 be disposed of in [~~any~~] a cemetery, mausoleum or crematory;

21 (e) using any funeral merchandise
22 previously purchased, in whole or in part, except for
23 transportation purposes, without prior written permission of
24 the person selecting or paying for the use of the merchandise;
25 and

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1 (f) failing to make disposition of a
2 dead human body in the enclosure or container that was
3 purchased for that purpose by the arrangers;

4 (5) violation of [~~any of~~] the provisions of
5 the Thanatopractice Act or [~~any~~] a rule of the board;

6 (6) violation of any local, state or federal
7 ordinance, law or regulation affecting the practice of funeral
8 service, direct disposition or cremation, including the
9 Prearranged Funeral Plan Regulatory Law or any regulations
10 ordered by the superintendent of insurance;

11 (7) willful or negligent practice beyond the
12 scope of the license issued by the board;

13 (8) refusing to release properly a dead human
14 body to the custody of the person or entity who has the legal
15 right to effect the release, [~~when~~] whether or not the
16 authorized cost has been paid;

17 (9) failure to secure a necessary permit
18 required by law for removal from this state or cremation of a
19 dead human body;

20 (10) knowingly making a false statement on a
21 certificate of death;

22 (11) failure to give full cooperation to the
23 board or one of its committees, staff, inspectors, agents or an
24 attorney for the board in the performance of official duties;

25 (12) has had a license, certificate or

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1 registration to practice revoked, suspended or denied in any
2 jurisdiction, territory or possession of the United States or
3 another country for actions of the licensee or applicant
4 similar to acts described in this subsection. A certified copy
5 of the record of the jurisdiction taking the disciplinary
6 action is conclusive evidence of the violation;

7 (13) failure to supervise adequately
8 subordinate personnel;

9 (14) conduct unbecoming a licensee or
10 detrimental to the safety or welfare of the public;

11 (15) employing fraudulent billing practices;
12 or

13 (16) practicing funeral service, direct
14 disposition or cremation without a current license.

15 C. In addition to the offenses listed in Subsection
16 B of this section, the board has the authority to take any
17 action set forth in Section 61-1-3 NMSA 1978 upon a finding by
18 the board that a person who is licensed as or is an applicant
19 for a license as a funeral service practitioner, associate
20 funeral service practitioner, assistant funeral service
21 practitioner or funeral service intern is guilty of any of the
22 following acts of commission or omission:

23 (1) practicing funeral service without a
24 license or aiding or abetting an unlicensed person to practice
25 funeral service; or

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1 (2) permitting an associate funeral service
2 practitioner, assistant funeral service practitioner or a
3 funeral service intern to exceed the limitations set forth in
4 the provisions of the Thanatopractice Act or the rules of the
5 board.

6 D. In addition to the offenses listed in Subsection
7 B of this section, the board has the authority to take any
8 action set forth in Section 61-1-3 NMSA 1978 upon a finding by
9 the board that a direct disposer licensee or applicant or a
10 direct disposition establishment licensee or applicant is
11 guilty of any of the following acts of commission or omission:

12 (1) embalming, restoring, acting as a
13 cosmetician or in any way altering the condition of a dead
14 human body, except for washing and dressing;

15 (2) causing a body to be embalmed when
16 embalming is not required by a place of disposition;

17 (3) prior to interment, entombment or other
18 final disposition of a dead human body, participating in any
19 rites or ceremonies in connection with such final disposition
20 of the body or providing facilities for any such rites or
21 ceremonies;

22 (4) reclaiming, transporting or causing to be
23 transported a dead human body after written release for
24 disposition; or

25 (5) practicing direct disposition without a

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1 license or aiding or abetting an unlicensed person to practice
2 direct disposition.

3 E. In addition to the offenses listed in Subsection
4 B of this section, the board has the authority to take any
5 action set forth in Section 61-1-3 NMSA 1978 upon a finding by
6 the board that a crematory licensee or applicant or a crematory
7 authority is guilty of any of the following acts of commission
8 or omission:

9 (1) engaging or [~~holding oneself out~~] making
10 any representation as engaging in the practice of funeral
11 service or direct disposition, unless the applicant or
12 crematory authority has a license to practice funeral service
13 or direct disposition;

14 (2) operating a crematory without a license or
15 aiding and abetting a crematory to operate without a license;
16 or

17 (3) engaging in conduct or activities for
18 which a license to engage in the practice of funeral service or
19 direct disposition is required or aiding and abetting an
20 unlicensed person to engage in conduct or activities for which
21 a license to practice funeral service or direct disposition is
22 required.

23 F. Unless exonerated by the board, persons who have
24 been subjected to formal disciplinary sanctions by the board
25 shall be responsible for the payment of costs of the

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1 disciplinary proceedings, which include costs for:

- 2 (1) court reporters;
- 3 (2) transcripts;
- 4 (3) certification or notarization;
- 5 (4) photocopies;
- 6 (5) witness attendance and mileage fees;
- 7 (6) postage for mailings required by law;
- 8 (7) expert witnesses; and
- 9 (8) depositions.

10 G. All fees, fines and costs imposed on an
11 applicant, licensee, establishment or crematory shall be paid
12 in full to the board before an initial or renewal license may
13 be issued."