

AN ACT

RELATING TO LICENSURE; AMENDING THE THANATOPRACTICE ACT;  
PROVIDING PENALTIES.

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

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

"61-32-1. SHORT TITLE.--Chapter 61, Article 32 NMSA 1978 may be cited as the "Thanatopractice Act"."

Section 2. Section 61-32-3 NMSA 1978 (being Laws 1993, Chapter 204, Section 3, as amended) is amended to read:

"61-32-3. DEFINITIONS.--As used in the Thanatopractice Act:

A. "assistant funeral service practitioner" means a person licensed to engage in practice at a funeral establishment or commercial establishment, licensed pursuant to the Thanatopractice Act, as an assistant funeral service practitioner as provided in that act;

B. "associate funeral service practitioner" means a person licensed to engage in practice at a funeral establishment or commercial establishment, licensed pursuant to the Thanatopractice Act, as an associate funeral service practitioner as provided in that act;

C. "board" means the board of thanatopractice;

D. "committal service" means a service at a place of interment or entombment that follows a funeral conducted at another location;

E. "cremains" means cremated remains;

F. "cremation" means the reduction of a dead human body by direct flame to a residue, which includes bone

fragments;

G. "crematory" means every place or premises that is devoted to or used for cremation and pulverization of the cremains;

H. "crematory authority" means the individual who is ultimately responsible for the operation of a crematory;

I. "department" means the regulation and licensing department;

J. "direct disposer" means a person licensed to engage solely in providing direct disposition at a direct disposition establishment, licensed pursuant to the Thanatopractice Act, as provided in that act;

K. "direct disposition" means only the disposition of a dead human body as quickly as possible, without a funeral, graveside service, committal service or memorial service, whether public or private, and without embalming of the body unless embalming is required by the place of disposition;

L. "direct supervision" means the supervising funeral service practitioner is physically present with and in direct control of the person being trained;

M. "disposition" means the final disposal of a dead human body, whether it be by earth interment, above-ground interment or entombment, cremation, burial at sea or delivery to a medical school, when the medical school assumes complete responsibility for the disposal of the body following medical study;

N. "embalming" means the disinfection, preservation and restoration, when possible, of a dead human body by a licensed funeral service practitioner, a licensed

associate funeral service practitioner or a licensed funeral service intern under the supervision of a licensed funeral service practitioner;

O. "ennichement" means interment of cremains in a niche in a columbarium, whether in an urn or not;

P. "entombment" means interment of a casketed body or cremains in a crypt in a mausoleum;

Q. "establishment" means every office, premises or place of business where the practice of funeral service or direct disposition is conducted or advertised as being conducted and includes commercial establishments that provide for the practice of funeral service or direct disposition services exclusively to licensed funeral or direct disposition establishments or a school of medicine;

R. "funeral" means a period following death in which there is an organized, purposeful, time-limited, group-centered ceremony or rite, whether religious or not, with the body of the deceased present;

S. "funeral merchandise" means that personal property offered for sale in connection with the transportation, funeralization or disposition of a dead human body, including the enclosure into which a dead human body is or cremains are directly placed, and excluding mausoleum crypts, interment enclosures preset in a cemetery and columbarium niches;

T. "funeral service intern" means a person licensed to be in training for the practice of funeral service under the supervision and instruction of a funeral service practitioner at a funeral establishment or commercial establishment, licensed pursuant to the

Thanatopractice Act;

U. "funeral service practitioner" means a person licensed to engage in the practice of funeral service at a funeral establishment or commercial establishment, licensed pursuant to the Thanatopractice Act, as provided in that act;

V. "general supervision" means the supervising funeral service practitioner is not necessarily physically present in the establishment with the person being trained, but is available for advice and assistance;

W. "graveside service" means a funeral held at the graveside only, excluding a committal service that follows a funeral conducted at another location;

X. "jurisprudence examination" means an examination prescribed by the board on the statutes, rules and regulations pertaining to the practice of funeral service or direct disposition, including the Thanatopractice Act, the rules of the board, state health regulations governing human remains and the Vital Statistics Act;

Y. "licensee in charge" means a funeral service practitioner who is ultimately responsible for the conduct of a funeral or commercial establishment and its employees or a direct disposer who is ultimately responsible for the conduct of a direct disposition establishment and its employees;

Z. "make arrangements" means advising or counseling about specific details for a funeral, graveside service, committal service, memorial service, disposition or direct disposition;

AA. "memorial service" means a gathering of

persons for recognition of a death without the presence of the body of the deceased;

BB. "practice of funeral service" means those activities allowed under the Thanatopractice Act by a funeral service practitioner, associate funeral service practitioner, assistant funeral service practitioner or funeral service intern;

CC. "pulverization" means the process that reduces cremains to a granular substance; and

DD. "thanatopractice" means those immediate post-death activities related to the dead human body, its care and disposition, whether with or without rites or ceremonies, but not including disposition of the body by a school of medicine following medical study."

Section 3. Section 61-32-5 NMSA 1978 (being Laws 1993, Chapter 204, Section 5) is amended to read:

"61-32-5. BOARD CREATED.--

A. There is created the "board of thanatopractice".

B. The board is administratively attached to the department.

C. The board consists of six members. Three members shall be funeral service practitioners who have been licensed in this state for at least five years; two members shall represent the public and shall not have been licensed for the practice of funeral service or direct disposition in this state or any other jurisdiction and shall not ever have had any financial interest, direct or indirect, in any funeral, commercial or direct disposition establishment or crematory; and one member shall be a licensed direct

disposer or health care practitioner who has been licensed in this state for at least five years.

D. Members of the board shall be appointed by the governor for terms of four years. Each member shall hold office until his successor is duly qualified and appointed. Vacancies shall be filled for any unexpired term in the same manner as original appointments.

E. Members of the board shall be reimbursed as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

F. A simple majority of the board members currently serving constitutes a quorum.

G. The board shall hold at least two regular meetings each year and shall meet at such other times as it deems necessary.

H. No board member shall serve more than two full consecutive terms. The board shall recommend removal of any board member who has three unexcused absences from properly noticed meetings within a twelve-month period and may recommend removal of a board member for any other just cause.

I. The board shall elect a chairman and other officers as deemed necessary to administer its duties."

Section 4. Section 61-32-6 NMSA 1978 (being Laws 1993, Chapter 204, Section 6) is amended to read:

"61-32-6. BOARD POWERS.--

A. In addition to any other authority provided by law, the board has the power to:

(1) adopt, in accordance with the provisions of the Uniform Licensing Act, and file, in

accordance with the State Rules Act, rules and regulations necessary to carry out the provisions of the Thanatopractice Act;

(2) adopt rules implementing continuing education requirements;

(3) conduct hearings upon charges relating to the discipline of licensees and take administrative actions pursuant to Section 61-1-3 NMSA 1978;

(4) establish reasonable fees to carry out the provisions of the Thanatopractice Act;

(5) provide for investigations necessary to determine violations of the Thanatopractice Act;

(6) establish committees as the board deems necessary for carrying out the provisions of the Thanatopractice Act;

(7) apply for injunctive relief to enforce the provisions of the Thanatopractice Act or to restrain any violation of that act;

(8) impose a fine not to exceed five thousand dollars (\$5,000) for each violation, in addition to other administrative or disciplinary costs, and all fines shall be deposited in the thanatopractice fund; and

(9) conduct criminal background checks on applicants for licensure.

B. No action or other legal proceedings for damages shall be instituted against the board, any board member or employee of the board for any act performed in good faith and in the intended performance of any power or duty granted under the Thanatopractice Act or for any neglect or default in the good faith performance or exercise

of any such power or duty."

Section 5. Section 61-32-8 NMSA 1978 (being Laws 1993, Chapter 204, Section 8) is amended to read:

"61-32-8. INSPECTION--ACCESS--COUNSEL.--

A. Inspection of establishments and crematories, including all records, financial or otherwise, is authorized during regular business hours. Acceptance of a license shall include permission for the board or its designee to enter the premises without legal process.

B. Each applicant for licensure pursuant to the Thanatopractice Act shall provide a physical address at which he shall maintain business records required by law and at which inspections of those records may occur.

C. The board shall be represented by the attorney general. The board may employ special counsel, upon approval of the attorney general, to review and prosecute cases of consumer complaints against any person, establishment or crematory licensed pursuant to the Thanatopractice Act. Payment for the services shall be by the board."

Section 6. Section 61-32-9 NMSA 1978 (being Laws 1993, Chapter 204, Section 9) is amended to read:

"61-32-9. REQUIREMENTS FOR LICENSURE--FUNERAL SERVICE PRACTITIONER--FUNERAL SERVICE INTERN--DIRECT DISPOSER--ASSOCIATE FUNERAL SERVICE PRACTITIONER--ASSISTANT FUNERAL SERVICE PRACTITIONER.--

A. A license to practice as a funeral service practitioner shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that



he:

(1) is at least eighteen years of age;

(2) has served as a licensed funeral service intern for not less than twelve months, under the supervision of a licensed funeral service practitioner. During the training period, the applicant shall have assisted in the embalming of at least fifty bodies and assisted in the directing of at least fifty funerals;

(3) has successfully completed any examination, including a jurisprudence examination, prescribed by board rules;

(4) has not been convicted of unprofessional conduct or incompetency;

(5) has graduated from an institution accredited by the American board of funeral service education or any other successor recognized by the United States office of education for funeral service education; and

(6) has successfully completed at least sixty semester hours of academic and professional instruction in an accredited college or university; provided, however, that an assistant funeral service practitioner need not satisfy the provisions of Paragraphs (5) and (6) of this subsection if the assistant funeral service practitioner has successfully completed examinations required by the board for practice as an associate funeral service practitioner and a funeral service practitioner.

B. A license to practice as a funeral service intern shall be issued to any person who files a completed application, accompanied by the required fees and

documentation, and who submits satisfactory evidence that he:

- (1) is at least eighteen years of age;
- (2) has graduated from high school or the equivalent;
- (3) has submitted proof of employment and supervision as required by board rules. Except as may be allowed by board rule, a license as a funeral service intern is not ambulatory and is issued for a specific funeral establishment only;
- (4) has successfully completed any examination, including a jurisprudence examination, prescribed by board rules; and
- (5) has not been convicted of unprofessional conduct or incompetency.

C. A license to practice as a direct disposer shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that he:

- (1) is at least eighteen years of age;
- (2) has graduated from high school or the equivalent;
- (3) has successfully completed any examination, including a jurisprudence examination, prescribed by board rules; and
- (4) has not been convicted of unprofessional conduct or incompetency.

D. A license to practice as an assistant funeral service practitioner shall be issued to any person who,

prior to June 18, 1993, held a valid license as an assistant funeral service practitioner and who was qualified to receive a renewal license on July 1, 1993.

E. A license to practice as an associate funeral service practitioner shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that he:

(1) has been licensed as an assistant funeral service practitioner;

(2) has successfully completed any examination, including a jurisprudence examination, prescribed by board rules; and

(3) has not been convicted of unprofessional conduct or incompetency."

Section 7. Section 61-32-10 NMSA 1978 (being Laws 1993, Chapter 204, Section 10) is amended to read:

"61-32-10. LICENSURE BY CREDENTIALS.--After successful completion of a jurisprudence examination, the board may license an applicant as a funeral service practitioner, provided the applicant possesses a valid license or its equivalent for the practice of funeral service issued by the appropriate examining board under the laws of any other state or territory of the United States, the District of Columbia or any foreign nation, and provided the applicant has met educational requirements equal to or exceeding those established pursuant to the Thanatopractice Act or has actively practiced five out of the last ten years in another state, territory or foreign nation as a licensed funeral service practitioner or its equivalent."

Section 8. Section 61-32-11 NMSA 1978 (being Laws 1993, Chapter 204, Section 11) is amended to read:

"61-32-11. LICENSURE OF ESTABLISHMENTS--FUNERAL ESTABLISHMENTS--COMMERCIAL ESTABLISHMENTS--DIRECT DISPOSITION ESTABLISHMENTS--CREMATORIES.--

A. Funeral establishment licenses shall only be granted under the following terms and conditions:

(1) applications for licensure shall be upon forms furnished by the board and shall be accompanied by the required fee;

(2) the establishment shall be maintained at a specific location primarily devoted to the practice of funeral service and shall comply with the following minimum requirements:

(a) a chapel shall be present in which funerals may be conducted;

(b) a display room shall be present for displaying caskets and other funeral merchandise; and

(c) a preparation room shall be present with the necessary instruments and supplies for the preparation and embalming of dead human bodies for burial or other disposition or transportation; and

(3) no license shall be issued or renewed by the board unless the establishment is in compliance with the Thanatopractice Act and board rules.

B. Commercial establishment licenses shall only be granted under the following terms and conditions:

(1) applications for licensure shall be upon forms furnished by the board and shall be accompanied by the required fee;

(2) the establishment shall be maintained at a specific location primarily devoted to the practice allowed for a commercial establishment and shall have a preparation room with the necessary instruments and supplies for the preparation and embalming of dead human bodies for burial or other disposition and transportation; and

(3) no license shall be issued or renewed by the board unless the establishment is in compliance with the Thanatopractice Act and board rules.

C. Direct disposition establishment licenses shall only be granted under the following terms and conditions:

(1) applications for licensure shall be upon forms furnished by the board and shall be accompanied by the required fee;

(2) the establishment shall be maintained at a specific location primarily devoted to the practice of direct disposition and shall maintain:

(a) a room equipped with a tile, cement or composition floor;

(b) necessary drainage and ventilation;

(c) a refrigeration unit, thermodynamically controlled with a minimum storage area of twelve and one-half cubic feet per body, for sheltering prior to disposition; and

(d) necessary supplies for safely handling unembalmed dead human bodies; and

(3) no license shall be issued or renewed by the board unless the establishment is in compliance with

the Thanatopractice Act and board rules.

D. Crematory licenses shall only be granted under the following terms and conditions:

(1) applications for licensure shall be upon forms furnished by the board and shall be accompanied by the required fee;

(2) the crematory shall be maintained at a specific location, including a funeral, commercial or direct disposition establishment, and shall have appropriate facilities and equipment devoted to cremation and pulverization; and

(3) no license shall be issued or renewed by the board unless the crematory is in compliance with the Thanatopractice Act and board rules."

Section 9. Section 61-32-13 NMSA 1978 (being Laws 1993, Chapter 204, Section 13) is amended to read:

"61-32-13. ESTABLISHMENTS--REQUIREMENTS--TEMPORARY LICENSES.--

A. Each establishment shall have a full-time licensee in charge; provided the establishment license is a privilege granted to the person to whom it is issued and is not transferable to other owners or operators or to another location than that designated on the license.

B. The board may adopt by rule special requirements for multi-unit establishments that are located within fifty miles of each other and that wish to share a licensee in charge.

C. The board may adopt by rule the requirements for reapplication or reinspection.

D. The board may adopt by rule requirements for

issuing a temporary establishment or crematory license that will be valid until the next scheduled board meeting."

Section 10. Section 61-32-14 NMSA 1978 (being Laws 1993, Chapter 204, Section 14) is amended to read:

"61-32-14. FUNERAL SERVICE INTERN--SCOPE OF PRACTICE--LIMITATIONS.--

A. A funeral service intern does not have the rights and duties of a funeral service practitioner and is only subordinate to the funeral service practitioner. The scope of what a funeral service intern is permitted to do depends on the activity and the experience of the funeral service intern, provided that a funeral service intern:

(1) may make arrangements only under the direct supervision of a licensed funeral service practitioner. After the completion of fifty arrangements under direct supervision, the funeral service intern may request approval from the board to make arrangements under the general supervision of a licensed funeral service practitioner;

(2) may embalm or otherwise prepare dead human bodies for disposition only under the direct supervision of a licensed funeral service practitioner. After the funeral service intern has assisted with the embalming of at least fifty bodies under direct supervision, the funeral service intern may request approval from the board to embalm under the general supervision of a licensed funeral service practitioner;

(3) may direct a funeral, committal service, graveside service or memorial service only under the direct supervision of a licensed funeral service

practitioner. After the funeral service intern has directed at least fifty services under direct supervision, the funeral service intern may request approval from the board to direct such services under the general supervision of a licensed funeral service practitioner; and

(4) shall at no time act under the general supervision of a funeral service practitioner until he is notified in writing of board approval to so act.

B. A funeral service intern shall be employed by and receive training at only one establishment. The board may adopt rules that will allow training at more than one establishment under special circumstances.

C. Any funeral service intern's change of employment shall be reported to the board in writing within thirty days of the change. A change of employment that is not reported shall cause the period worked at the new establishment not to count as time served toward completion of the internship. It is the responsibility of the funeral service intern and the licensee in charge to report changes of employment.

D. A funeral service intern may be under the supervision of more than one funeral service practitioner at the establishment at which he is employed, provided that the board has received notice in writing prior to any changes in supervision. The board may adopt rules specifying the maximum number of persons that may be supervised by a funeral service practitioner.

E. Each funeral service intern shall report to the board quarterly, upon forms provided by the board, showing the work that has been completed during the



preceding three months. All quarterly reports are due in the board office within thirty days of the close of the quarter. If a report is not received by the date due, the work completed during the reporting period shall not be counted when the board tabulates requirements for general supervision or for licensure as a funeral service practitioner.

F. Once a funeral service intern is under the general supervision of a funeral service practitioner, the funeral service intern need not submit to the board the quarterly reports required in this section."

Section 11. Section 61-32-17 NMSA 1978 (being Laws 1993, Chapter 204, Section 17, as amended) is amended to read:

"61-32-17. DIRECT DISPOSER--SCOPE OF PRACTICE--LIMITATIONS.--

A. Except as otherwise provided in the Thanatopractice Act, a direct disposer may transport and dispose of a dead human body and participate in any rites or ceremonies after final disposition of the body.

B. Prior to interment, entombment or other final disposition of the body, a direct disposer shall not:

(1) participate in any rites or ceremonies in connection with the final disposition of the body;

(2) provide facilities for any such rites or ceremonies; and

(3) have the body embalmed unless embalming is required by the place of disposition."

Section 12. Section 61-32-19 NMSA 1978 (being Laws 1993, Chapter 204, Section 19, as amended) is amended to

read:

"61-32-19. CREMATION--REQUIREMENTS--RIGHT TO AUTHORIZE  
CREMATION--DISPOSITION OF CREMAINS.--

A. No cremation shall be performed until all necessary documentation is obtained authorizing the cremation.

B. Any adult may authorize his own cremation and the lawful disposition of his cremated remains by:

(1) stating his desire to be cremated in a written statement that is signed by the individual and notarized or witnessed by two persons; or

(2) including an express statement in his will indicating that the testator desired that his remains be cremated upon his death.

C. A personal representative acting pursuant to the Probate Code or an establishment or crematory shall comply with a statement made in accordance with the provisions of this section. A statement that conforms to the provisions of this section authorizes a personal representative, establishment or crematory to cremate a decedent's remains and the permission of next of kin or any other person shall not be required for such authorization. Statements dated prior to June 18, 1993 shall be given effect if they meet this section's requirements.

D. A personal representative, establishment or crematory acting in reliance upon a document executed pursuant to the provisions of this section, who has no actual notice of revocation or contrary indication, is presumed to be acting in good faith.

E. No establishment, crematory or employee of an

establishment or crematory or other person that relies in good faith on a statement written pursuant to this section shall be subject to liability for cremating the remains in accordance with the provisions of this section. The written authorization is a complete defense to a cause of action by any person against any other person acting in accordance with that authorization.

F. If a decedent has left no written instructions regarding the disposition of his remains, the following persons in the order listed shall determine the means of disposition, not to be limited to cremation, of the remains of the decedent:

- (1) the surviving spouse;
- (2) a majority of the surviving adult children of the decedent;
- (3) the surviving parents of the decedent;
- (4) a majority of the surviving siblings of the decedent;
- (5) an adult who has exhibited special care and concern for the decedent, who is aware of the decedent's views and desires regarding the disposition of his body and who is willing and able to make a decision about the disposition of the decedent's body; or
- (6) the adult person of the next degree of kinship in the order named by New Mexico law to inherit the estate of the decedent.

G. A licensed establishment or crematory shall keep an accurate record of all cremations performed and the place of disposition of the cremains for a period of not less than seven years.

H. Cremains may be disposed of by any licensed establishment, crematory authority, cemetery or person having the right to control the disposition of the cremains, or that person's agent, in a lawful manner.

I. Legal forms for cremation authorization shall provide that persons giving the authorization will hold harmless an establishment from any liability for disposing of unclaimed cremains in a lawful manner after a period of one year following the return of the cremains to the establishment."

Section 13. A new section of the Thanatopractice Act, Section 61-32-19.1 NMSA 1978, is enacted to read:

"61-32-19.1. CREMATORY--SCOPE OF PRACTICE--LIMITATIONS.--

A. The scope of practice of a crematory and its crematory authority is limited to cremation of dead human bodies and pulverization of cremains. A crematory and its crematory authority may:

(1) engage in transportation of dead human bodies to the crematory; and

(2) cremate dead human bodies and pulverize cremains.

B. After completion of the cremation process, if a crematory and its crematory authority have not been instructed to arrange for the interment, entombment or ennicement of the cremains, the crematory authority shall return, or cause to be returned, the cremains to the establishment or person that initiated the cremation services contract no later than thirty days after the date of cremation.

C. A crematory and its crematory authority shall maintain a system or process that ensures that any dead human body in the crematory's possession can be specifically identified throughout all phases of the cremation process.

D. A crematory shall keep an accurate record of all cremations performed for a period of not less than seven years.

E. The crematory and its crematory authority shall certify to the board that the crematory will not exceed the scope of practice allowed by law.

F. A licensed crematory shall not engage in any activity not specifically permitted in this section."

Section 14. Section 61-32-20 NMSA 1978 (being Laws 1993, Chapter 204, Section 20) is amended to read:

"61-32-20. EMBALMING.--

A. All dead human bodies not disposed of within twenty-four hours after death shall be embalmed in accordance with the Thanatopractice Act or stored under refrigeration as determined by board rule or regulation, unless otherwise required by regulation of the office of the medical investigator or the secretary of health or by orders of an authorized official of the office of the medical investigator, a court of competent jurisdiction or other authorized official.

B. No dead human body shall be embalmed except by a funeral service practitioner, an associate funeral service practitioner or a funeral service intern under the supervision of a funeral service practitioner.

C. When embalming is not required under the provisions of this section, no dead human body shall be

embalmed without express authorization by the:

- (1) surviving spouse or next of kin;
- (2) legal agent or personal representative of the deceased; or
- (3) person assuming responsibility for final disposition.

D. When embalming is not required and prior to obtaining authorization for the embalming, a dead human body may be washed and other health procedures, including closing of the orifices, may be performed without authorization.

E. When a dead human body is embalmed, the funeral service practitioner or associate funeral service practitioner who embalms the body or the funeral service intern who embalms the body and the funeral service practitioner who supervises the embalming shall, within twenty-four hours after the embalming procedure, complete and sign an embalming case report describing the elapsed time since death, the condition of the remains before and after embalming and the embalming procedures used. The embalming case report shall be kept on file at the establishment for a period of not less than seven years following the embalming.

F. Except as provided in Subsection A of this section, embalming is not required."

Section 15. Section 61-32-21 NMSA 1978 (being Laws 1993, Chapter 204, Section 21) is amended to read:

"61-32-21. LICENSE RENEWAL.--

A. All licenses expire annually and shall be renewed by submitting a completed renewal application, accompanied by the required fees, on a form provided by the

board.

B. The board may require proof of continuing education or other proof of competency as a requirement for renewal.

C. A thirty-day grace period shall be allowed each licensee after the end of the licensing period, during which time licenses may be renewed upon payment of the renewal fee and a late fee as prescribed by the board and compliance with any other renewal requirements adopted by the board.

D. Any license not renewed at the end of the grace period shall be expired and invalid. A holder of an expired license shall be required to apply as a new applicant."

Section 16. Section 61-32-22 NMSA 1978 (being Laws 1993, Chapter 204, Section 22) is amended to read:

"61-32-22. INACTIVE STATUS.--

A. A funeral service practitioner, associate funeral service practitioner or direct disposer who has a current license may request that his license be placed on inactive status. Except as provided in Subsection E of this section, the board shall approve each request for inactive status.

B. A license placed on inactive status may be renewed within a period not to exceed five years following the date the board granted the inactive status.

C. Renewal of an inactive license requires payment of renewal and reinstatement fees as set forth by board rule or regulation and compliance with the following requirements:

(1) certification by the practitioner that he has not engaged in the practice of funeral service in this state during the inactive status;

(2) compliance with continuing education requirements established by board rule; and

(3) successful completion of an examination, which shall be administered at the discretion of the board, to certify continuing competency.

D. Disciplinary proceedings may be initiated or continued against a licensee who has been granted inactive status.

E. No license shall be placed on inactive status if the licensee is under investigation or if disciplinary proceedings have been initiated."

Section 17. Section 61-32-23 NMSA 1978 (being Laws 1993, Chapter 204, Section 23) is amended to read:

"61-32-23. FEES.--The board shall establish by regulation a schedule of reasonable fees for applications, examinations, licenses, inspections, renewals, penalties, reinstatements and necessary administrative fees. All fees collected shall be deposited in accordance with Section 61-32-26 NMSA 1978."

Section 18. 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 incarceration in a state penitentiary or federal prison, provided the board receives a copy of the record of conviction, certified to by the clerk of the court entering the conviction, which shall be conclusive evidence of the conviction;

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

(3) gross negligence or incompetence;

(4) unprofessional or dishonorable conduct, which includes:

(a) misrepresentation or fraud;

(b) false or misleading advertising;

(c) solicitation of dead human bodies by the licensee, his agents, assistants or employees, whether the solicitation occurs after death or while death is impending, provided that this shall not be deemed to prohibit general advertising;

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

(e) using any funeral merchandise previously purchased, in whole or in part, except for transportation purposes, without prior written permission of

the person selecting or paying for the use of the merchandise; and

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

(5) violation of any of the provisions of the Thanatopractice Act or any rule or regulation of the board;

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

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

(8) refusing to release properly a dead human body to the custody of the person or entity who has the legal right to effect the release, when the authorized cost has been paid;

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

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

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

(12) has had a license, certificate or registration to practice revoked, suspended or denied in any

jurisdiction, territory or possession of the United States or another country for actions of the licensee or applicant similar to acts described in this subsection. A certified copy of the record of the jurisdiction taking the disciplinary action is conclusive evidence of the violation;

(13) failure to supervise adequately subordinate personnel;

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

(15) employing fraudulent billing practices; or

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

C. In addition to the offenses listed in Subsection B of this section, 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 a person who is licensed as or is an applicant for a license as a funeral service practitioner, associate funeral service practitioner, assistant funeral service practitioner or funeral service intern is guilty of any of the following acts of commission or omission:

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

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

D. In addition to the offenses listed in Subsection B of this section, 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 a direct disposer licensee or applicant or a direct disposition establishment licensee or applicant is guilty of any of the following acts of commission or omission:

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

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

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

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

(5) practicing direct disposition without a license or aiding or abetting an unlicensed person to practice direct disposition.

E. In addition to the offenses listed in Subsection B of this section, 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 a crematory licensee or applicant or a crematory authority is guilty of any of the following acts of commission or omission:

(1) engaging or holding oneself out as

engaging in the practice of funeral service or direct disposition, unless the applicant or crematory authority has a license to practice funeral service or direct disposition;

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

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

F. Unless exonerated by the board, persons who have been subjected to formal disciplinary sanctions by the board shall be responsible for the payment of costs of the disciplinary proceedings, which include costs for:

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

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

Section 19. Section 61-32-26 NMSA 1978 (being Laws 1993, Chapter 204, Section 26) is amended to read:

"61-32-26. FUND ESTABLISHED.--

A. There is created in the state treasury the "thanatopractice fund".

B. All money received or collected by the board or the department pursuant to provisions of the Thanatopractice Act shall be deposited with the state treasurer for credit to the thanatopractice fund. The state treasurer shall invest the fund as other state funds are invested. All balances in the fund at the end of any fiscal year shall remain in the fund and shall not revert to the general fund.

C. Money in the thanatopractice fund is appropriated to the board and shall be used only for the purpose of carrying out the provisions of the Thanatopractice Act."

Section 20. Section 61-32-28 NMSA 1978 (being Laws 1993, Chapter 204, Section 28) is amended to read:

"61-32-28. COMMUNICATIONS--CONFIDENTIALITY.--All written and oral communications made to the board relating to potential disciplinary action shall be subject to the Inspection of Public Records Act."

Section 21. Section 61-32-30 NMSA 1978 (being Laws 1993, Chapter 204, Section 30) is amended to read:

"61-32-30. CRIMINAL PENALTIES.--Any person who commits any of the following acts is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000) or by imprisonment of less than one year or both:

A. violation of any provision of the Thanatopractice Act;

B. rendering or offering to render funeral services, direct disposition services or cremation services without a current valid license issued pursuant to the Thanatopractice Act; or

C. advertising or using any designation, diploma or certificate tending to imply that the person is a practitioner of funeral services, direct disposition services or cremation services without a current valid license issued pursuant to the Thanatopractice Act."

Section 22. Section 61-32-31 NMSA 1978 (being Laws 1993, Chapter 204, Section 31) is amended to read:

"61-32-31. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The board of thanatopractice is terminated on July 1, 2005, pursuant to the provisions of the Sunset Act. The board shall continue to operate according to the provisions of Section 12-9-18 NMSA 1978 until July 1, 2006. Effective July 1, 2006, the Thanatopractice Act is repealed." =====

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