

AN ACT

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RELATING TO THANATOPRACTICE; CLARIFYING SECTIONS OF THE
THANATOPRACTICE ACT; PROVIDING FOR CIVIL PENALTIES FOR UNLICENSED
PRACTICE OF THANATOPRACTICE; AMENDING AND ENACTING SECTIONS OF THE
NMSA 1978.

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

Section 1. Section 61-32-4 NMSA 1978 (being Laws 1993, Chapter 204,
Section 4) is amended to read:

"61-32-4. LICENSE REQUIRED.--

A. Unless licensed to practice under the Thanatopractice Act, a person
shall not:

(1) practice as a funeral service practitioner, associate funeral
service practitioner, assistant funeral service practitioner, funeral service intern or
direct disposer;

(2) use the title or represent himself as a funeral service
practitioner, associate funeral service practitioner, assistant funeral service
practitioner, funeral service intern or direct disposer or use any other title,
abbreviation, letters, figures, signs or devices that indicate the person is licensed to
practice as a funeral service practitioner, associate funeral service practitioner,
assistant funeral service practitioner, funeral service intern or direct disposer; or

(3) maintain, manage or operate a funeral establishment, a
commercial establishment, a direct disposition establishment or a crematory.

B. A person who engages in the practice or acts in the capacity of a

funeral service practitioner, associate funeral service practitioner, assistant funeral service practitioner, funeral service intern or direct disposer in this state, with or without a New Mexico license, is subject to the jurisdiction of the state and to the administrative jurisdiction of the board and is subject to all penalties and remedies available for a violation of a provision of the Thanatopractice Act.

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C. A person who maintains, manages or operates a funeral establishment, commercial establishment, direct disposition establishment or a crematory in this state, with or without a New Mexico establishment or crematory license, is subject to the jurisdiction of the state and to the administrative jurisdiction of the board and is subject to all penalties and remedies available for a violation of a provision of the Thanatopractice Act."

Section 2. Section 61-32-8 NMSA 1978 (being Laws 1993, Chapter 204, Section 8, as amended) 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. An establishment or crematory shall maintain business records required by law or rule at the establishment or crematory.

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 3. Section 61-32-9 NMSA 1978 (being Laws 1993, Chapter 204, Section 9, as amended) 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--TEMPORARY LICENSES.--

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, making of at least fifty funeral arrangements and 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.

F. The board may adopt by rule requirements for issuing a temporary license that will be valid until the next scheduled board meeting."

Section 4. Section 61-32-10 NMSA 1978 (being Laws 1993, Chapter 204, Section 10, as amended) 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 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 5. Section 61-32-11 NMSA 1978 (being Laws 1993, Chapter 204, Section 11, as amended) 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 necessary drainage and ventilation and necessary instruments and supplies for the preparation and embalming of dead human bodies for burial or other disposition or transportation; and

(3) a license shall not 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 comply with the following minimum requirements:

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

(b) an office shall be present for conducting business; and

(3) a license shall not 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 allowed for a direct disposer and shall comply with the following minimum requirements:

(a) a room shall be present with necessary drainage and ventilation for housing a refrigeration unit;

(b) a refrigeration unit, thermodynamically controlled with a minimum storage area of twelve and one-half cubic feet per body, shall be present for sheltering of dead human bodies prior to burial or other disposition or transportation;

(c) an office shall be present for conducting business;

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

(e) if funeral merchandise is made available, a display room shall be present for displaying caskets and other funeral merchandise; 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, primarily devoted to the practice allowed for a crematory and shall comply with the following minimum requirements:

(a) a room shall be present with necessary ventilation

for housing a cremation retort;

(b) a cremation retort shall be present for cremating
dead human bodies; and

(c) a unit to pulverize cremated dead human bodies
shall be present; 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.

E. The board may adopt by rule additional requirements in the interest
of public health, safety and welfare."

Section 6. Section 61-32-18 NMSA 1978 (being Laws 1993, Chapter 204,
Section 18) is amended to read:

"61-32-18. COMMERCIAL ESTABLISHMENTS--SCOPE OF PRACTICE--
LIMITATIONS.--

A. The scope of practice of a commercial establishment depends on
the entity for whom the commercial establishment is acting as an agent and is subject
to the following terms and conditions:

(1) when acting under the direction of a licensed funeral
establishment, the commercial establishment may:

(a) engage in transportation of dead human bodies, file
a certificate of death, obtain certified copies thereof and obtain necessary permits for
transportation or cremation;

(b) embalm;

(c) provide forwarding services;

(d) provide direct disposition; and

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(e) arrange for identification of a dead human body by family members only, prior to disposition or transportation;

(2) when acting under the direction of a licensed direct disposition establishment, the commercial establishment may:

(a) engage in transportation of dead human bodies, file a certificate of death, obtain certified copies thereof and obtain necessary permits for transportation or cremation;

(b) embalm only when embalming is required by the place of disposition; and

(c) provide direct disposition; and

(3) when acting under the direction of a school of medicine, the commercial establishment may:

(a) engage in transportation of dead human bodies, file a certificate of death, obtain certified copies thereof and obtain necessary permits for transportation or cremation; and

(b) embalm.

B. A licensed commercial establishment shall not engage in any activity, or act for any entity, not specifically permitted in this section.

C. The licensee in charge shall certify to the board that the establishment will not exceed the scope of practice allowed by law."

Section 7. Section 61-32-19.1 NMSA 1978 (being Laws 1999, Chapter 284, Section 13) is amended 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 shall act as an agent of licensed funeral, commercial or direct disposition establishments and schools of medicine. 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 by its agent to return the cremains to the person that initiated the cremation services contract or to arrange for the interment, entombment or enichement of the cremains, the crematory authority shall return, or cause to be returned, the cremains to the establishment 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 8. Section 61-32-20 NMSA 1978 (being Laws 1993, Chapter 204, Section 20, as amended) is amended to read:

"61-32-20. EMBALMING.--

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

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B. A dead human body shall not 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, a dead human body shall not 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 9. Section 61-32-22 NMSA 1978 (being Laws 1993, Chapter 204, Section 22, as amended) 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 the 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 and compliance with the following requirements:

(1) certification by the licensee that he has not engaged in the practice of funeral service or direct disposition 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. A license shall not be placed on inactive status if the licensee is under investigation or if disciplinary proceedings have been initiated."

Section 10. 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 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 a 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 rules of the board.

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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 11. A new section of the Thanatopractice Act is enacted to read:

"UNLICENSED ACTIVITY--CIVIL PENALTY.--The board may impose a fine as

set forth in the Thanatopractice Act on a person who is found to have acted without a license in violation of the Thanatopractice Act by a court or an administrative proceeding as provided for in the Thanatopractice Act."

Section 12. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.