

1 HOUSE BILL 249

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

3 INTRODUCED BY

4 Al Park

5  
6  
7  
8  
9  
10 AN ACT

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

13  
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

17 "61-32-24. DISCIPLINARY PROCEEDINGS--JUDICIAL REVIEW.--

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

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

25 (1) conviction of an offense punishable by

.184574.1

underscored material = new  
[bracketed material] = delete

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

.184574.1

underscored material = new  
[bracketed material] = delete

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

.184574.1

underscoring material = new  
~~[bracketed material] = delete~~

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

.184574.1

underscoring material = new  
~~[bracketed material] = delete~~

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

.184574.1

underscored material = new  
[bracketed material] = delete

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

.184574.1

underscoring material = new  
~~[bracketed material] = delete~~

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."