TITLE 6
LEGISLATIVE RULE
BOARD OF FUNERAL SERVICE EXAMINERS

SERIES 2
CREMATORY REQUIREMENTS

§6-2-1. General.

1.1 Scope. - This rule relates to the minimum requirements of crematories and crematory operators.

1.2. Authority. -- W. Va. Code §§30-6-1 et. seq.

1.3. Filing Date. -- ~~April 1, 2021~~

1.4. Effective Date. ~~–April 1, 2021~~

1.5. Sunset Provision. - This rule shall terminate and have no further force or effect upon the expiration from ~~April~~ August 1, 2031.

§6-2-2. Definitions.

For the purposes of this rule, the following terms have the following meaning unless the context in which they are used requires a different meaning.

2.1. "Advertise" and "advertising" means the use of radio, television, internet, including social media and web pages, billboards, stationery, contracts, price lists, calendars, fans and novelty advertising, or any other advertising method or medium.

2.2. "Agent" means a person who acts as a representative of the crematory.

2.3. "Alkaline Hydrolysis" means the reduction of a dead human body to essential elements through a water-based dissolution process using alkaline chemicals, heat, agitation and pressure to accelerate natural decomposition; the process of hydrolyzed remains after removal from the alkaline hydrolysis vessel; placement of the processed remains in a hydrolyzed remains container; and release the hydrolyzed remains to an appropriate party. Alkaline Hydrolysis is a form of cremation.

2.4. "Alkaline Hydrolysis Operator" means an individual certified by the Board to operate crematory equipment.

~~2.3.~~ 2.5. "Arrangement conference" means the time spent with the next-of-kin, or other duly or legally authorized person or representative, planning and making financial arrangements for the cremation of a dead human body.

~~2.4.~~ 2.6. "Authorized representative" means a person legally authorized or entitled to order the cremation of the deceased.

~~2.5.~~ 2.7. "Board" means the West Virginia Board of Funeral Service Examiners.

~~2.6.~~ 2.8. "Cash advance item" means an item of service or merchandise described to a purchaser as a "cash advance item," "accommodation," "cash disbursement," or similar term. It also means an item obtained from a third party and paid for by the crematory on the purchaser's behalf, including but not limited to cemetery services, obituary notices, and death certificates.

~~2.7.~~ 2.9. "Casket" means a rigid container which is designed for the encasement of human remains and which is usually constructed of wood, metal, fiberglass, plastic or other material, and ornamented and lined with fabric.

~~2.8.~~ 2.10. "Cremated remains" means all human remains recovered after the completion of the cremation process and may include residue from the cremation container itself and other incinerated materials, as well as human remains recovered after the completion of the hydrolysis process.

~~2.9.~~ 2.11. "Cremation" means any mechanical hydrolyzation or thermal process whereby a dead human body is reduced to ~~ashes~~ cremated remains and bone fragments. Cremation also includes any other mechanical, hydrolyzed or thermal process whereby human remains are pulverized, burned, recremated, or otherwise further reduced in size or quantity.

~~2.10.~~ 2.12. "Thermal Cremation chamber" or ~~"retort"~~ "Hydrolyzation Chamber" means the enclosed space of a cremation unit in which the initial reduction of a dead human body ~~by intense heat and flame~~ takes place.

~~2.11.~~ 2.13. "Thermal Cremation container" or "alternative container"means an unfinished wood box or other non-metal receptacle or enclosure which is designed for the encasement of a dead human body for purposes of cremation and which is made of fiberboard, pressed wood, composition material with or without an outside covering, or like materials and which is combustible and resistant to leakage of bodily fluids. If the authorized representative desires, a traditional wood-base casket may serve as a cremation container.

~~2.12.~~ 2.14. "Thermal Cremation unit" means professionally manufactured equipment designed specifically for the initial reduction of a dead human body to ~~ashes~~ cremated remains and bone fragments by intense heat and flame, containing one or more cremation chambers, and which meets all state and federal safety requirements.

~~2.13.~~ 2.15. "Crematory" means a place of business maintained and operated for the sole purpose of reducing dead human bodies to ~~ashes~~ cremated remains and bone fragments by cremation.

~~2.14.~~ 2.16. "Crematory operator" means a person certified by the board to operate a crematory.

~~2.15.~~ 2.17. "Dead human body" means the lifeless body of a human being for which a death certificate must be issued or individual body parts for which a medical institution or the medical examiner has given permission to cremate.

~~2.16.~~ 2.18. "Direct supervision" means the physical presence of a certified crematory operator in charge for specific activities requiring more than general supervision.

~~2.18.~~ 2.19. "Fees" means any monies owed to the Board for services provided as prescribed in the Board's 6 CSR 7 Rule

~~2.19.~~ 2.20. "Funeral goods" means the goods or merchandise which are sold or offered for sale directly

to the public for use in connection with funeral services or final disposition, including but not limited to caskets, outer burial containers, alternative containers, cremation containers, and cremated remains containers. It shall not include cemetery lots, markers, memorials, permanently constructed vaults, concrete lawn crypts, or monuments.

~~2.17.~~ 2.21.“General supervision” means the general oversight or overall responsibility for an activity by a certified crematory operator in charge.

2.22. “Hydrolysis Chamber”, hydrolysis unit” or “hydrolysis vessel” means the enclosed space within which the hydrolysis process occurs. Hydrolysis chambers shall be used exclusively for the cremation of human remains.

~~2.20. “Licensee” means a person who holds a crematory license, pursuant to W. Va. Code §30-6-20 and this rule.~~

~~2.21.~~ 2.23. “Mechanical processor” means professionally manufactured equipment designed specifically for the secondary reduction of a dead human body’s ~~ashes~~ cremated remains and bone fragments into smaller fragments by crushing, pulverizing or grinding, and which meets all state and federal safety requirements.

~~2.22.~~ 2.24. Non-combustible materials” means metals or other materials which do not incinerate in a cremation chamber or can not be processed in a mechanical processor, such as casket handles, screws, nails, wires, medical devices, artificial limbs and joints, or other medical implants.

2.25. “Operator-in-Charge” means an individual certified by the Board who is in charge of the day to day operations of a crematory or alkaline hydrolysis facility.

~~2.23.~~ 2.26. “Person” means an individual, partnership, association, corporation or other organization.

~~2.24.~~ 2.27. “Registrant” means a person who holds a crematory operator certificate or an alkaline hydrolysis operator certificate, pursuant to W. Va. Code §30-6-11 and this rule.

2.28. “ Cremated Remains” refers to the human body after being cremated.

§6-2-3. Prohibited Acts.

3.1. A crematory, or its agents, assistants or employees shall not:

3.1.1. offer funeral arrangements, funeral services or memorial services; or,

3.1.2. offer embalming services.

§6-2-4. Crematory Facilities

4.1. No person, funeral establishment, corporation, partnership, joint venture, voluntary organization, or other entity shall cremate without first obtaining a certificate from the Board.

4.2. Except as otherwise provided by this Article, a certificate for thermal or hydrolysis cremation of human remains shall have the same requirements and fees as for the licensing of crematories under this article. The cremation of human remains shall be conducted in compliance with all requirements for

cremation.

4.3. The Board shall have the power to regulate, enforce, discipline, and inspect cremation certificate holders that have been granted under this article.

~~§6-2-4.~~ §6-2-5. Crematory Operator Requirements.

~~4.1.~~ 5.1. New applicants.

~~4.1.1.~~ 5.1.1. An applicant for a crematory or alkaline hydrohysis operator registration shall attend a Board-approved course ~~of at least eight (8) contact hours~~ on crematory or alkaline hydrohysis operation, prior to registering, which includes training on:

~~4.1.1.1.~~ 5.1.1.a. terminology used by the ~~crematory~~ industry;

~~4.1.1.2.~~ 5.1.1.b. principles of ~~combustion~~ operation;

~~4.1.1.3.~~ 5.1.1.c. environmental ~~and air~~ quality issues;

~~4.1.1.4.~~ 5.1.1.d. basic procedures for operating ~~cremation~~ equipment;

~~4.1.1.5.~~ 4.1.1.e. handling bodies and packaging ~~cremated~~ remains; and

~~4.1.1.6.~~ 5.1.1.f. exposure control.

~~4.1.2.~~ 5.1.2. An applicant for a crematory or alkaline hydrohysis operator registration shall submit a copy of a government issued identification establishing that the applicant is a minimum of eighteen (18) years of age.

~~4.1.3.~~ 5.1.3. An applicant must attend a crematory or alkaline hydrohysis operator certification program approved by the Board prior to submitting an application. The completion certificate must be submitted with the registration application.

~~4.2.~~ 5.2. Crematory operators prior to July 1, 2003.

~~4.2.1.~~ 5.2.1. A person acting as a crematory operator prior to July 1, 2003 shall apply for registration as a crematory operator on or before July 30, 2003.

~~4.2.2.~~ 5.2.2. An applicant shall be subject to the provisions of subsection ~~4.1.2.~~ 5.1.2. of this section, but shall be exempt from the provisions of subsection ~~4.1.1.~~ 5.1.1. of this section.

~~4.2.3.~~ 5.2.3. An applicant shall submit verification of employment as a crematory operator within twenty one (21) days of the date of application, such verification to be on a form created and supplied by the Board.

~~4.2.4.~~ 5.2.4. If an applicant fails to comply with any provision of this subsection, the Board shall deny the application. If the applicant applies at a later date, he or she shall be considered a new applicant and shall comply with the provisions of subsection ~~4.1.~~ 5.1. of this section.

~~4.2.5.~~ 5.2.5. An applicant who applies after July 30, 2003 shall be considered a new applicant, pursuant to the provisions of subsection ~~4.1.~~ 5.1. of this section.

~~4.3.~~ 5.3. Registered crematory operators.

~~4.3.1.~~ 5.3.1. Registered crematory operators shall be required to obtain continuing education under the following conditions:

~~4.3.1.1~~. 5.3.1.a. when the crematory operator will be operating new cremation equipment, such training to take place prior to use of new equipment and to be conducted by a person who has a comprehensive knowledge on the operation of the equipment; or

~~4.3.1.2.~~ 5.3.1.b. when the Board determines that industry regulation has changed significantly enough to merit additional training. The Board shall give notice to crematory operators that additional training is necessary and that the training must be completed within nine (9) months of the date of notification, such training to be conducted by ~~the Board or another entity or~~ a person who has comprehensive knowledge on industry regulation and approved by the Board. ~~Participants shall be charged no more than twenty five dollars ($25) for this training.~~

~~4.3.2.~~ 5.3.2. Registered crematory operators shall maintain records of continuing education obtained under 5.3.1.b. and submit such records at the time he or she renews his or her registration.

~~4.4.~~ 5.4. Course Providers.

~~4.4.1.~~ 5.4.1. A person or entity who wishes to become a Board-approved provider of crematory operator training shall submit an application for each type of training course at least 45 days before the training is scheduled, such training course to include subject matter outlined in subsection 4.1.1 of this section.

~~4.4.2.~~ 5.4.2. The Board shall thoroughly screen an applicant to ensure that the applicant conducts quality programs based on the presenter's educational qualifications and experience, adequate resources, past performances, and general program content. The Board shall approve a training course biennially. The Board shall not charge a fee for this application, except under the provisions of subsection 4.4.3 of this section.

~~4.4.3.~~ 5.4.3. The Board may revoke the approval for a training course immediately if the Board determines that the provider can not deliver a quality course. The Board may consider reinstatement of certification if the applicant can show cause for reinstatement, by providing proof of qualifications and documentation of improvement. The applicant shall pay a reinstatement fee ~~of two hundred dollars ($200)~~ as prescribed in the Board's 6 CSR7 Rule before the Board reinstates certification.

~~§6-2-5.~~ §6-2-6. Control of Dead Bodies.

~~5.1.~~ 6.1. Gaining permission to assume control.

A registrant or licensee, or his or her agents, assistants or employees shall not assume control of any dead body without first gaining permission from the authorized representative, or a medical examiner, health officer or other public official legally authorized to give the permission to release the body.

~~5.2.~~ 6.2. Honoring instructions from authorized persons.

~~5.2.1.~~ 6.2.1. A licensee or licensee's agents, assistants or employees who have assumed control of a dead body shall honor all instructions, from authorized persons, as to matters relating to cremation and the handling of the body~~;~~. Only funeral service licensees or licensed funeral directors ~~including~~ shall perform

or arrange all steps in preparation; autopsy; viewing; photographing; clothing; casket; box or vault; cremation; time, location and type of ceremonies; and burial or other customary disposal, insofar as considerations of public health, legal requirements and customary respectful handling of the dead may permit.

~~5.2.2. A licensee may establish a general policy which requires embalming by a licensed embalmer for public viewings of dead human bodies as a matter of public health. A licensee may conduct a public viewing of an unembalmed body, provided that he or she shall provide a disclosure of the risks to every person viewing the body, pursuant to subsection 6.3 of this rule.~~

~~5.3. Embalming and public viewings~~.

~~5.3.1. A crematory may establish a general policy which requires embalming for public viewings of dead human bodies as a matter of public health, provided that the embalming is conducted by a licensed embalmer in a licensed funeral establishment. A licensee may permit a public viewing of an unembalmed body, provided that he or she or a registrant shall provide a disclosure of the risks to every person viewing the body, pursuant to subsection 6.3 of this rule.~~

~~5.3.2. If a question exists to whether the condition of a body may pose a hazard to public health which would be eliminated by embalming, the crematory shall get a written certification of the condition along with a request that the body be embalmed from a public health officer prior to allowing~~ the licensed embalmer to embalm the body.

~~5.3.3.~~ 6.3. If the crematory is unable to contact the next of kin or other authorized representative of the decedent, the facility shall follow procedures outlined in subsection ~~17.1~~. 19.1. of this rule relating to storage and disposal of unclaimed human remains.

~~5.4.~~ 6.4. Unauthorized embalmings.

A person or persons authorized to give permission to embalm a body shall not be responsible for the payment of any fee in connection with an unauthorized embalming.

~~5.5.~~ 6.5. Obtaining signatures.

A crematory, crematory operator and his or her agents shall get signatures of the appropriate persons on all documents required by §§30-6-1 et. seq., this rule, or any other article or rule pertaining to the disposition of a dead human body.

~~§6-2-6.~~ §6-2-7. Health Requirements.

~~6.1.~~ 7.1. Statutes and rules.

A registrant or licensee and his or her agents shall comply with all federal and state laws and rules related to health. State laws include, but are not limited to §§16-1-1 et. seq. related to state public health, §§16-2-1 et. seq. related to local public health, §§16-5-1 et. seq. related to vital statistics, 64CSR18 related to general sanitation, 64CSR32 related to vital statistics, 64CSR56 related to infectious medical waste, and 64CSR64 related to aids-related medical testing and confidentiality.

~~6.2.~~ 7.2. Bodies of individuals affected with infections or contagious diseases.

A crematory operator who knows that a body is affected with infections or contagious diseases shall

closely and directly supervise the body. The body shall be encased in an heavy pouch, transfer case or sealed casket until cremation occurs.

~~6.3. Viewing, public or otherwise, of unembalmed bodies.~~

~~A licensee or registrant shall provide a written disclosure to individuals who wish to view identify an unembalmed body. This disclosure shall contain relevant information pertaining to the potential spread of infectious or contagious disease or other possible hazzards. The licensee or registrant shall thoroughly discuss these risks with the individual wishing to view the body and may require the legally authorized representative or other individuals who will view an unembalmed body to sign a statement which releases the licensee or registrant and his employer from any liability, only after discussing the potential hazzards~~.

~~§6-2-7.~~ §6-2-8. Evidence of Crime.

~~7.1.~~ 8.1. Removal, cremation.

The licensee or registrant, or a licensee's or registrant's agents, assistants or employees shall get permission from a medical examiner or other qualified law enforcement official before removing or cremating a body when they have information of or suspect a crime or intentional violence in connection with the cause of death.

~~7.2.~~ 8.2. Information of crime.

A licensee or registrant or his or her agents who have information of a possible crime shall immediately file a formal report of that information to a proper law enforcement officer, if the possible crime has not yet been reported. If the body is to be embalmed, the license or registrant or his or her agents shall also notify the embalmer prior to embalming the body.

~~7.3.~~ 8.3. Concealment of crime.

A licensee or registrant or his or her agents shall not knowingly do any act that would conceal evidence of a crime.

~~§6-2-8.~~ §6-2-9. Price Lists.

A crematory shall maintain type-written price lists and statements of goods and services prescribed in this section for all products and services offered for sale; provided that if the crematory also operates as a licensed funeral establishment pursuant to W. Va. Code §§30-6-1, et. seq., the crematory may include price information on the funeral establishment's required price lists, pursuant to 6 CSR 1, section ~~8~~ 9 instead of maintaining a separate price list for available cremation services, as described below, so long as the information required by this section is included on the funeral establishment's price lists.

~~8.1.~~ 9.1. General Price List.

~~8.1.1.~~ 9.1.1. A General Price List, otherwise known as a "GPL," shall contain:

~~8.1.1.1.~~ 9.1.1.a. The caption: "General Price List;"

~~8.1.1.2.~~ 9.1.1.b. The effective date of the GPL;

~~8.1.1.3.~~ 9.1.1.c. Itemized list of all cremation services offered for sale, including exact prices

or price ranges, from least expensive to most expensive;

~~8.1.1.4.~~ 9.1.1.d. Name of the crematory, the crematory operator in charge, full location and mailing address, and telephone number; and

~~8.1.1.5.~~ 9.1.1.e. Four disclosures, which include:

~~8.1.1.5.1.~~ 9.1.1.e.1. The consumer's right to select only the services desired;

~~8.1.1.5.2.~~ 9.1.1.e.2. The consumer's right to use alternative containers;

~~8.1.1.5.3.~~ 9.1.1.e.3. Basic non-declinable service fees for such things as delivery of goods express shipping, etc. or other service charges. The crematory shall disclose this as a separate charge or disclose this as a charge included in the price of the goods; and,

~~8.1.1.5.4.~~ 9.1.1.e.4. The availability of a separate Cremation Container Price List, if the crematory sells cremation containers.

~~8.1.2.~~ 9.1.2. The crematory shall give the GPL to anyone for retention that asks for it, or inquires about the services or goods offered for sale, in a face-to-face meeting with a representative of the crematory. Telephone inquiries are not considered face-to-face meetings.

~~8.1.3.~~ 9.1.3. During a telephone inquiry about the services or goods offered for sale, the crematory or its representative shall inform the caller that the GPL exists and that it is available at the crematory The crematory is not required to mail the GPL to the caller.

~~8.1.4.~~ 9.1.4. The crematory shall not charge a fee for the GPL.

~~8.2.~~ 9.2. Cremation Container Price List.

~~8.2.1.~~ 9.2.1. A Cremation Container Price List, otherwise known as a "CCPL" shall contain:

~~8.2.1.1.~~ 9.2.1.a. The caption: "Cremation Container Price List;"

~~8.2.1.2.~~ 9.2.1.b. The effective date of the Cremation Container Price List;

~~8.2.1.3.~~ 9.2.1.c. Name of the cremator; and

~~8.2.1.4.~~ 9.2.1.d. The retail price of each cremation container or other container or caskets offered for sale for use in cremations, that does not require special ordering, with enough information to identify it, such as the gauge of metal or type of wood, the exterior trim, and interior fabric, manufacturer name, or model number. A photograph or model number alone is not sufficient. Special ordering means purchasing of a casket or container that is not part of the regular offerings to customers.

~~8.2.2.~~ 9.2.2. The CCPL shall contain the following disclosure, with a listing of cremation containers sold by the crematory at the end of the last sentence of the disclosure:

"West Virginia law requires the use of a cremation container for thermal cremation as a matter of public health. You may choose a traditional wood casket or choose a less expensive alternative container which encases the body and is made of materials like fiberboard or composition material (with or without an outside covering). The containers we provide are_____."

~~8.2.3.~~ 9.2.3. The CCPL shall be made available for review to anyone who, in a face-to-face meeting, asks about caskets~~,~~ or cremation containers offered for sale or inquires about prices. The CCPL must be given to the consumer prior to showing these items to the consumer. ~~Individual price cards placed on the caskets or cremation containers may be utilized, but only in addition to the CCPL.~~

~~8.2.4.~~ 9.2.4. If the crematory also offers for sale caskets which are used for burial, a separate Cremation Container Price List shall not be required, provided that the crematory maintains a Casket Price List, pursuant to Federal Trade Commission's Trade Regulation Rule for Funeral Industry Practices, 16 CFR Part 453, and which Casket Price List contains the content also required by subsections 8.2.1.d and 8.2.2 of this section.

~~8.3.~~ 9.3. Statement of Goods and Services.

8.3.1. 9.3.1. A Statement of Goods and Services, otherwise known as the "SGS," shall contain:

~~8.3.1.1.~~ 9.3.1.a. Itemized list of good(s) and service(s) to be purchased;

~~8.3.1.2.~~ 9.3.1.b. The cost(s) of each good or service to be purchased;

~~8.3.1.3.~~ 9.3.1.c. Any cash advances for cash advance goods or deposits to be made toward purchase(s);

~~8.3.1.4.~~ 9.3.1.d. Total cost of purchase(s);

~~8.3.1.5.~~ 9.3.1.e. Final total cost after deduction of cash advances or deposits; and

~~8.3.1.6.~~ 9.3.1.f. Two disclosures, which include:

~~8.3.1.6.1.~~ 9.3.1.f.1. For legal requirements, "Charges are only for those items that you selected or that are required. If we are required by law or by a cemetery or funeral establishment to use any items, we will explain the reasons in writing below." The crematory shall write these reasons somewhere on the SGS.

~~8.3.1.6.2.~~ 9.3.1.f.2. For cash advance items, "We charge you for our services or goods in obtaining the following cash advance items below:" The crematory shall list these items somewhere on the SGS, if any exist.

~~8.3.2.~~ 9.3.2. The crematory shall give the SGS to the consumer at the end of discussion of the proposed purchase(s) prior to signing a contract to provide the goods and services contained on the SGS:

~~8.4.~~ 9.4. Telephone Price Disclosures.

~~8.4.1.~~ 9.4.1. The crematory shall give accurate information regarding goods and services offered for sale to the consumer who telephones the inquiring about the goods and services and the associated prices. The crematory shall provide the information based on the current GPL and CCPL.

~~8.4.2.~~ 9.4.2. A crematory, or any of its agents, shall not require a caller to disclose his or her name, address, or telephone number and shall not require the caller to come to the crematory to get price information.

~~8.4.3. The board shall not require a crematory to respond to telephone inquiries after normal~~

~~business hours. However, if the crematory practice is to sell goods and services during non-business hours for at-need situations, then the Board may require telephone inquiries be answered during non-business hours.~~

~~8.4.4. A crematory's agent may take a message if working on another sale. However, the agent shall return the phone call immediately thereafter.~~

~~8.5.~~ 9.5. Other Misrepresentations.

~~8.5.1.~~ 9.5.1. Protective Features.

A crematory or its agent, shall not tell consumers that goods, including but not limited to caskets, have protective features that will protect the body if not true.

~~8.5.2.~~ 9.5.2. Product Warranties.

A crematory or its agents shall provide warranty information to consumers inquiring of or purchasing goods or services for any good or service which has a warranty. The crematory shall inform the consumer about the warranties and who is providing the warranties, the manufacturer or the crematory.

~~8.5.3.~~ 9.5.3. Cash Advance Items.

A crematory or its agents shall inform the consumer that the price of the cash advance item is not the same as the crematory's cost, if the crematory or its agents receives and keeps a rebate, commission, or trade or volume discount. The crematory shall disclose this verbally and in writing on the SGS.

~~§6-2-9.~~ §6-2-10. Advertising.

~~9.1.~~ 10.1. All advertising shall comply with the requirements set forth in W. Va. Code §§30-6-1 et.seq.

~~9.2.~~ 10.2. A licensee, registrant or any other person, persons or business organization associated or in any way connected with ~~a~~ crematory shall not use or sponsor the use of any false, misleading, untrue or deceptive advertising in any manner.

~~9.2.1.~~ 10.2.1. If the words "Free," "Without Charge" or other words with similar connotations have the effect of misleading the public, the Board may consider the advertisement to be false and misleading.

~~9.2.2.~~ 10.2.2. Solicitation.

~~9.2.2.1.~~ 10.2.2.a. A licensee, registrant or any other person, persons or business organization associated or in any way connected with a crematory shall not offer any inducement, pecuniary or otherwise for employing solicitors, agents, canvassers or other persons for the purpose of securing or attempting to secure business, pursuant to W. Va. Code §§30-6-23(a)(9), 30-6-23(a)(12) and 30-6-23(a)(13). These persons shall not call upon, telephone, write or cause, directly or indirectly, advertising literature to be sent to a sick or dying person as would tend to be considered non-general, selective or soliciting advertisements. A licensee, registrant or any other person, persons or business organization associated or in any way connected with a crematory shall not offer or accept bribes or kickbacks, direct or indirect.

~~9.2.2.2.~~ 10.2.2.b. The board shall not prohibit generalized advertising in newspapers, flyers, bulletins, pamphlets, leaflets, brochures, circulars, on television or radio, or on billboards; provided, that such generalized advertising shall not target sick or dying persons or a specific population or group.

~~9.2.3.~~ 10.2.3. The contents of the advertising shall include the name of the crematory, its address and telephone number and the name of the certified crematory operator in charge. The advertisement may also include a description of the types of services available and their prices and the service facilities of the advertiser as well as general information pertaining to his or her business.

~~9.2.4.~~ 10.2.4. A crematory which advertises any merchandise used in connection with his or her business shall carry in his stock a sample of the merchandise for a period of not less than thirty (30) days after advertisement publication and shall be able to meet any and all demands for such items, with no increase in price, for the stated period of not less than thirty (30) days.

~~9.3.~~ 10.3. Exceptions to subsection ~~9.2.3~~ 10.2.3. of this section.

~~9.3.1.~~ 10.3.1. Advertising medium which is notably small in size is exempt from subsection ~~9.2.3~~ 10.2.3. of this rule, including but not limited to pens, pencils, or other items smaller than 1.5 inches in diameter.

~~9.3.2.~~ 10.3.2. A business card is exempt from subsection ~~9.2.3.~~ 10.2.3. of this rule.

~~9.3.3.~~ 10.3.3. A licensee may request additional exemptions based on the size of the advertising medium by filing a written request in the Board office, before ordering the items. The Board shall approve or deny the request within thirty (30) days of receipt of the request.

~~§6-2-10.~~ §6-2-11 Confidentiality.

~~10.1.~~ 11.1. Preserving confidentiality.

A licensee or registrant or his or her agents shall not divulge any confidential or private information relating to the domestic life in any home wherein they may be called upon to serve. This prohibition, however, shall not prevent divulging information to any person legally authorized to receive the information.

~~10.2.~~ 11.2. Exception.

Should any form of child abuse, child neglect, or elder abuse be suspected or divulged, the licensee or registrant shall notify proper authorities, including but not limited to local office of the West Virginia Department of Health and Human Resources and local law enforcement. Failure to do so shall result in disciplinary action, pursuant to W .Va. Code §§30-6-1 et seq.

~~§6-1-11.~~ §6-2-12 Supervision.

~~11.1.~~ 12.1. Certified crematory operator in charge.

A crematory shall employee a certified crematory operator in charge of and responsible for the day-to-day operation of the crematory. The crematory operator in charge shall be a full time employee of the crematory.

~~11.2.~~ 12.2. Absence in excess of thirty (30) days.

A crematory shall not go without the supervision of a crematory operator in charge for a continuous period in excess of thirty (30) days. The crematory shall notify the Board in writing within five (5) days of a change in the status of the crematory operator in charge.

~~11.3.~~ 12.3. Arrangement conference.

~~11.3.1.~~ 12.3.1. A certified crematory operator shall be responsible for and generally supervise an arrangement conference.

~~11.3.2.~~ 12.3.2. A crematory shall not be responsible for arrangement conferences conducted by a licensed funeral establishment.

~~§6-2-12.~~ §6-2-13 Necessary Equipment.

~~12.1.~~ 13.1. A crematory shall have the equipment for the conduct of cremating includes but is not limited to:

~~12.1.1.~~ 13.1.1. at least one commercially manufactured cremation unit, ~~equipped with an interlock,~~ maintained in good working condition, and in accordance with the division of environmental protection legislative rules 45 CSR 13;

~~12.1.2.~~ 13.1.2. at least one commercially manufactured mechanical device or processor for grinding, crushing, or pulverizing cremated remains maintained in good working condition; and

~~12.1.3.~~ 13.1.3. an appropriate holding facility for dead human bodies awaiting cremation.

~~12.2.~~ 13.2. A crematory shall also maintain the following:

~~12.2.1.~~ 13.2.1. sanitary flooring in the room which houses the cremation unit and in any room where a dead human body may be stored or prepared for cremation;

~~12.2.2. sanitary instruments and appliance used in preparing a dead human body for cremation~~

~~12.2.3.~~ 13.2.2 running hot and cold water with a lavatory sink for personal hygiene;

~~12.2.4.~~ 13.2.3 sanitary plumbing connected with a sewer, cesspool, septic tank or other Department of Health and Human Resources approved system;

~~12.2.5.~~ 13.2.4 adequately screened or covered doors and windows in all rooms where a dead human body may be stored, prepared for cremation to prevent viewing from outside this room;

~~12.2.6.~~ 13.2.5 covered and sealed containers for refuse, trash and soiled linens;

~~12.2.7.~~ 13.2.6 first aid kit;

~~12.2.8.~~ 13.2.7 a "private sign" posted on any door entering all rooms where a dead human body may be stored~~,~~ or being prepared for cremation or cremated;

~~12.2.9.~~ 13.2.8 documentation which shows that all waste materials, refuse, used bandages, and cotton are destroyed by reducing to ashes by incineration, or are removed by a licensed medical waste dispenser, or are removed and transported by the owner in accordance with the provisions of 64 CSR 56;

~~12.2.10.~~ 13.2.9. personal protective equipment in which every person, while engaged in actually preparing a dead human body for cremation, is attired with impervious rubber gloves and a clean smock or

gown covering the person from the neck to below the knees;

~~12.2.11.~~ 13.2.10 sanitary blankets or other coverings to be used to shield a dead human body to show proper care and dignity at all times;

~~12.2.12.~~ 13.2.11 if the crematory serves the public directly, restroom facilities in compliance with all federal, state, and local health requirements;

~~12.2.13.~~ 13.2.12 if the crematory serves the public directly, office space for making arrangements; and

~~12.3.~~ 13.3. Failure to comply with this section shall result in disciplinary action as outlined in W. Va. Code §§30-6-1 et. seq.

~~§6-2-13.~~ §6-2-14 Permission to Cremate, Disclosure for Unclaimed Cremated Remains, Removing Objects from Body.

~~13.1.~~ 14.1. Written permission to cremate.

~~13.1.1.~~ 14.1.1 A crematory shall get a permit for cremation from the authorized representative who has the legal right to authorize the cremation, pursuant to W. Va. Code §30-6-21(a). If contracted by a funeral establishment to provide a cremation, the crematory may get a copy of the permit to cremate from the funeral establishment contracted with the authorized representative, as the funeral establishment is responsible for performing this duty, pursuant to Title 6, Series 1 of these rules.

~~13.1.2.~~ 14.1.2. A crematory shall get a permit for cremation from the county medical examiner, assistant county medical examiner, or the county coroner in whose county jurisdiction death takes place as stated on the death certificate. If contracted by a funeral establishment to provide a cremation, the crematory may get a copy of the permit from the funeral establishment as the funeral establishment is responsible for performing this duty, pursuant to Title 6, Series 1 of these rules. The crematory may obtain authorization directly from the office of the chief medical examiner if:

~~13.1.2.1.~~ 14.1.2.a. the crematory has concerns following authorization by county personnel regarding the identity or cause of death of the decedent;

~~13.1.2.2.~~ 14.1.2.b. in cases where the crematory is unable to contact the county medical examiner, assistant county medical examiner, or county coroner of the county in which death takes place as stated on the death certificate, pursuant to the provisions of W. Va. Code §§61-12-1 et. seq. and 30-6-1 et. seq.

~~13.1.3.~~ 14.1.3. The crematory operator shall not cremate a dead human body prior to receiving permissions prescribed in this section.

~~13.1.4.~~ 14.1.4. The crematory shall retain documents prescribed in this section, pursuant to the provisions of section ~~18~~ 19 of this rule.

~~13.2.~~ 14.2. If contracted directly by the authorized representative, a crematory shall, in writing, disclose to the authorized representative during the arrangements conference that unclaimed cremated remains may be buried in a common grave and may not be recoverable in their entirety or at all, if exhumed at a later date.

~~§6-2-14.~~ §6-2-15. Identification of a Dead Human Body.

~~14.1.~~ 15.1. A crematory shall develop, implement, and maintain a written procedure for identification and tracking of a dead human body and cremated remains whereby the dead human body or cremated remains can be identified from the time the crematory accepts delivery of the body until the cremated remains are released to an authorized representative. This procedure shall include:

~~14.1.1.~~ 15.1.1. the assignment of a reference number to the decedent, which number shall be written on all paperwork and shall be designed to reasonably ensure that the proper body is cremated and that the cremated remains are returned to the appropriate authorized representative.

~~14.1.2.~~ 15.1.2. tagging the body at the time of delivery with the name and social security number of the decedent and the reference number prescribed in subsection ~~14.1.1~~ 15.1.1. of this section. The temporary tag shall remain on the body until the body is placed in the cremation chamber, at which time the crematory operator shall remove this tag and place it on or adjacent to the cremation unit. The crematory operator shall place this tag with the cremated remains upon removing the cremated remains from the cremation chamber. The crematory operator may replace this tag with the identification disk, tag, or label prescribed in subsection ~~14.2~~ 15.2. of this section after processing the cremated remains in the mechanical processor.

~~14.2.~~ 15.2. After cremation, the crematory shall place within the cremated remains container an identifying disk, tab or other permanent label before the cremated remains are released from the crematory.

~~14.2.1.~~ 15.2.1. The identification disk, tag, or label shall:

~~14.2.1.1.~~ 15.2.1.a be made of durable, noncorroding materials;

~~14.2.1.2.~~ 15.2.1.b. contain the name of decedent; and

~~14.2.1.3.~~ 15.2.1.c. contain a reference number that the crematory shall record on all paperwork regarding the decedent.

~~14.3.~~ 15.3. A crematory operator shall closely supervise a dead human body to ensure that the body is not misplaced, tagged incorrectly, or mishandled in any other manner.

~~14.4.~~ 15.4. Upon delivery of a deceased human body to the crematory, the crematory shall inspect the remains for identification. If the crematory finds that no documentation exists, the crematory operator shall contact the person who released the body to the crematory to inform him or her of the error. The crematory shall not be responsible for correcting the error, except that the authorized representative should confirm the identity of the deceased person, if possible or feasible.

~~14.5.~~ 15.5. If the crematory retrieves a deceased human body from a family residence or similar living quarters in which it would be inappropriate to tag the body out of respect of the family members or other residents, the crematory may place the identification documents on the body upon arrival at the crematory.

~~14.6.~~ 15.6. The crematory shall report their own identification errors to the Board within five (5) business days. The crematory which received the body from another institution which made the error shall not be responsible for reporting the error.

~~§6-2-15.~~ §6-2-16. Cremation services.

~~15.1.~~ 16.1. Cremation chamber for human remains.

The thermal crematory operator shall knowingly cremate only dead human bodies in a cremation chamber, along with the cremation container and a sheet or pouch utilized for disease control. The crematory shall, at minimum, use a cremation container as a means of protecting the crematory operator and providing dignity to the decedent. The crematory may charge for the use of the cremation container.

~~15.2.~~ 16.2. Privacy.

~~15.2.1.~~ 16.2.1. Only authorized crematory personnel shall be permitted in the room which houses the cremation unit while a dead human body is in the cremation area awaiting cremation, in the cremation chamber, being removed from the cremation chamber, or being processed and placed in a cremated remains container.

~~15.2.2.~~ 16.2.2. If the family of the decedent wishes to view the body, the crematory shall designate an area for such use and which shall not be a part of the room which houses the cremation unit. The designated area shall be maintained in a clean and sanitary condition.

~~15.2.3.~~ 16.2.3. A crematory operator shall not interfere with traditional religious rituals or ceremonies. If a ritual or ceremony requires a family member to witness a cremation or start the cremation unit, the crematory operator shall, with utmost care and caution, directly supervise this ritual or ceremony, provide clear instructions to the family member about proper procedures, and inform the family member about what happens to a body as it is being cremated.

~~15.3.~~ 16.3. Operation of the crematory unit and mechanical processor.

Only a certified crematory operator may operate a crematory unit and remove cremated remains from the crematory unit and operate a mechanical processor. However, other staff may be present and assist in the room where the crematory unit is housed.

~~15.4.~~ 16.4. Removal of objects from the dead human body.

~~15.4.1.~~ 16.4.1. A crematory shall not be required to remove any objects from a deceased human body prior to cremation if the crematory was contracted by a licensed funeral establishment to provide the cremation, as this duty is the responsibility of the funeral establishment, pursuant to Title 6, Series 1 of these rules. Only a funeral service licensee shall remove these objects. ~~However, if the funeral establishment contracts for the removal of such objects, the crematory operator may remove these objects, provided that the funeral establishment has made arrangements to get authorization for such removal from the authorized representative. A crematory shall be responsible for removing objects from a deceased human body if the authorized representative contracts directly with the crematory facility to provide the cremation, pursuant to subsection 15.4.2 of this section.~~

~~15.4.2.~~ 16.4.2. A crematory operator shall not remove any dental gold, body parts, organs, or other items of value from a dead human body prior to the cremation except with the express written permission from the authorized representative. The crematory shall disclose to the authorized representative or the contracting funeral establishment that objects will not be recoverable after cremation and mechanical processing. The crematory shall also give the authorized representative the opportunity to have jewelry or other items of value removed prior to cremation. The crematory shall maintain this information as part of the records.

~~15.4.3.~~ 16.4.3. A crematory shall ask the authorized representative or the contracting funeral establishment if the deceased human body contains objects or medications which may be hazardous or dangerous. If the crematory ascertains that such objects or medications are present, the crematory may

refuse to cremate the body and suggest a traditional burial. However, the crematory shall not be prohibited from cremating a body containing such objects or medications, provided that the crematory takes all necessary precautions in protecting its employees and equipment and follows any state or federal regulations regarding the incineration of such objects or medications.

~~15.5.~~ 16.5. Commingling of human remains prohibited in the cremation chamber.

Except with the express written permission of the authorized representative, no crematory shall cremate more than one dead human body at the same time and in the same cremation chamber, or introduce a second dead human body into a cremation chamber until reasonable efforts have been employed to remove all fragments of the preceding cremated remains, or cremate a dead human body and other human remains at the same time in the same cremation chamber. The fact that there is incidental and unavoidable residue in the cremation chamber used in a prior cremation is not a violation of this provision.

~~15.6.~~ 16.6. Removal from the cremation chamber.

Upon completion of the ~~heat and flame~~ reduction process, the crematory operator shall make reasonable efforts to remove, from the cremation chamber, all of the recoverable cremated human remains and non-combustible materials or items. Insofar as is possible, the crematory operator shall properly separate the non-combustible materials or items from the cremated human remains and dispose of the non-combustible materials as regular refuse. The crematory operator shall place the cremated remains in an appropriate container to be transported to the processing area.

~~15.7.~~ 16.7. Commingling of human remains prohibited in the mechanical processor.

Except with the express written permission of the authorized representative, no crematory shall mechanically process more than one dead human body at the same time and in the same mechanical processor, or introduce a second dead human body into a mechanical processor until reasonable efforts have been employed to remove all fragments of the preceding cremated remains, or mechanically process a dead human body and other human remains at the same time in the same mechanical processor. The fact that there is incidental and unavoidable residue in the mechanical processor used in a prior cremation is not a violation of this provision.

~~15.8.~~ 16.8. Processing the cremated remains.

The crematory operator shall reduce the cremated remains in a mechanical processor to a granulated appearance appropriate for final disposition and place the cremated remains in a cremated remains container along with the appropriate identifying disk, tab, or label.

~~15.9.~~ 16.9. Container of sufficient capacity and durability.

~~15.9.1.~~ 16.9.1. If a cremated remains container is of insufficient capacity to accommodate all cremated remains of a given dead human body, subject to directives provided in the written authorization to cremate, the crematory operator shall place the excess cremated remains in a secondary cremated remains container and attach the second container, in a manner so as not to be easily detached through incidental contact, to the primary container. The secondary container shall contain a duplicate of the identification disk, tab, or label that was placed in the primary container and all paperwork regarding the given body shall include a notation that the cremated remains were placed in two or more containers. All containers shall be closed, rigid, and leak resistant.

~~15.9.2.~~ 16.9.2. If the authorized representative requests that the cremated remains are to be divided

into two or more containers, the crematory operator shall ensure that all containers contain the identification disk, tab, or label and that all paperwork include a notation of this information, as prescribed in subsection ~~15.9.1~~ 16.9.1. of this section. The crematory shall require each recipient of a container to sign a form authorizing the release, or if the authorized representative is also serving as a representative of the recipients, the authorized representative shall sign a separate form for each container which authorizes the release of the container.

~~15.10.~~ 16.10. Disposition of accumulated residue.

A crematory shall provide for the removal and disposition in accordance with local, state, and federal laws of any accumulated residue from the cremation chamber and mechanical processor, or other equipment used in cremation.

~~15.11.~~ 16.11. Storing bodies awaiting cremation.

A crematory shall install a refrigeration unit or have access to a refrigeration unit for the purpose of storing unembalmed bodies. The crematory shall refrigerate an unembalmed body awaiting cremation when the crematory operator considers refrigeration necessary, based on the condition and deterioration of the body; provided that bodies in later stages of deterioration shall be given priority. If the body has been embalmed, the crematory shall not be required to refrigerate the body.

~~15.12.~~ 16.12. Dust on and around the cremation chamber.

A crematory shall vacuum all dust on the outside of and around the cremation unit and treat is as cremated remains. A crematory may dispose of these cremated remains by burial in a common grave or other space dedicated to such cremated remains, in a respectful manner.

~~§6-2-16.~~ §6-2-17. Release of cremated remains.

~~16.1.~~ 17.1. Following completion of a cremation, the cremated remains shall be released according to the instructions given on the written authorization to cremate. If the cremated remains are to be shipped, they must be securely packaged and transported via a method which has an internal tracking system available and which provides for a receipt signed by the person accepting delivery.

~~16.2.~~ 17.2. Where there is a dispute over release or disposition of the cremated remains, a crematory facility may deposit the cremated remains with a court of competent jurisdiction pending resolution of the dispute or retain the cremated remains until the authorized representative with the right to control disposition presents satisfactory indication that the dispute is resolved.

~~§6-2-17.~~ §6-2-18. Storage and Disposal of Unclaimed Cremated Remains.

~~17.1.~~ 18.1. Unclaimed dead human bodies.

A crematory may contract with an embalmer to embalm an unclaimed dead human body under the following circumstances.

~~17.1.1.~~ 18.1.1. If the crematory has made legitimate attempts to contact the next of kin or authorized representative without success within twelve (12) hours after the body was placed in its care, the crematory may contract with an embalmer to have the body embalmed after this twelve (12) hour period; provided that the crematory makes a record of such legitimate attempts to contact the next of kin or authorized representative; or,

~~17.1.2.~~ 18.1.2. If the crematory has made legitimate attempts to contact the next of kin or authorized representative without success and has reasonable belief that a body could be infected with a contagious or communicable disease, the crematory may contract with an embalmer to have the body embalmed immediately upon receipt of certification by a public health officer that the body is infected with a contagious or communicable disease. The crematory may contract with an embalmer to have the body embalmed prior to the end of twelve (12) hour period set forth in subsection ~~17.1.1~~ 18.1.1. of this section if the body is certified as contagious by the public health officer.

~~17.2.~~ 18.2. Unclaimed cremated remains.

~~17.2.1.~~ 18.2.1. A crematory shall store in a secure location unclaimed cremated remains while trying to locate an authorized representative or person to whom the crematory was instructed to release the cremated remains.

~~17.2.2.~~ 18.2.2. If, after sixty (60) calender days following the cremation, the cremated remains are not claimed, the crematory shall send notification, by certified mail, to the authorized representative or person to whom the cremated remains were to be released. This notification shall state that the cremated remains are unclaimed and that the crematory requires additional instructions regarding their release.

~~17.2.3.~~ 18.2.3. If, after thirty (30) calender days since the first notification, the cremated remains are still unclaimed, the crematory shall send a second notification, by certified mail, to the same person or persons prescribed in subsection ~~17.2.2~~ 18.2.2. of this section. This notification shall state that the cremated remains are still unclaimed and that the crematory requires additional instructions regarding their release. The notice shall also inform the recipient that the crematory may dispose of the remains in ninety (90) days if unclaimed.

~~17.2.4.~~ 18.2.4. If, after ninety (90) calender days since the second notification, the cremated remains are still unclaimed, the crematory may dispose of the cremated remains by burial or entombment. The crematory may bury such cremated remains in a common grave, pursuant to section ~~13~~ 14 of this rule.

~~17.3.~~ 18.3. The crematory shall be entitled to payment for these services from the deceased person's estate, pre-need contract, applicable insurance policies or trust funds, or indigent burial programs.

~~§6-2-18.~~ §6-2-19. Record-Keeping Practices.

~~18.1.~~ 19.1. Required records.

Every crematory shall create and maintain on its premises an accurate record of every cremation performed. The record shall include all of the following information:

~~18.1.1.~~ 19.1.1. The name of the person or other funeral establishment delivering the body for cremation;

~~18.1.2.~~ 19.1.2. The name of the deceased and the identification number assigned to the body;

~~18.1.3.~~ 19.1.3. The date and time of acceptance of delivery;

~~18.1.4.~~ 19.1.4. The name of the crematory operator(s) who operated the cremation chamber and mechanical processor operator;

~~18.1.5.~~ 19.1.5. The date, time and condition of the body before cremation;

~~18.1.6.~~ 19.1.6. The date and time that the body was placed in and removed from the cremation chamber;

~~18.1.7.~~ 19.1.7. The time and date that processing and ~~inurnment~~ internment of the cremated remains were completed;

~~18.1.8.~~ 19.1.8. The time, date, and manner of release of the cremated remains;

~~18.1.9.~~ 19.1.9. Documents supporting delivery or attempt to deliver cremated remains, including method of delivery and to whom the cremated remains were released;

~~18.1.10.~~ 19.1.10. A listing of objects removed from the deceased by the crematory operator prior to cremation;

~~18.1.11.~~ 19.1.11. Written authorization and the name and address of the authorized person;

~~18.1.12.~~ 19.1.12. The permit for cremation from the medical examiner and the date this form was presented to the operator of the crematory;

~~18.1.13.~~ 19.1.13. Transit or disposition permits; and

~~18.1.14.~~ 19.1.14. Documentation of embalming, if the crematory contracted with a licensed embalmer to embalm the body.

~~18.2.~~ 19.2. Retention of records.

A crematory shall maintain records prescribed in this section at the crematory or its offices for a period of five (5) calender years after the release of the cremated remains. Following this period and subject to any other laws requiring retention of such records, the crematory may then place the records in storage.

~~§6-2-19.~~ §6-2-20. Inspections.

~~19.1.~~ 20.1. Inspection forms.

The Board shall produce an inspection report to use as a guide while inspecting a crematory, a copy of which may be left with the crematory at the conclusion of the inspection and a copy which shall be filed in the office of the Board.

~~19.2.~~ 20.2. Right of inspection.

The Board, any of its members or any inspector duly authorized, has the right to enter, without prior notice, a crematory during normal business hours, for the purpose of inspecting the crematory.

~~19.3.~~ 20.3. Compliance.

The holder of a crematory license shall correct any violations found during an inspection. The severity of the violation shall dictate the time allotted for correction and is at the discretion of the person conducting the inspection.

~~19.4.~~ 20.4. Areas of inspection.

The Board shall inspect at minimum the following:

~~19.4.1.~~ 20.4.1. Public areas, including restrooms, lounges, ~~casket display rooms~~ and individual ~~caskets~~ offices;

~~19.4.2.~~ 20.4.2. Non-public areas, including refrigeration facilities, holding areas, cremation unit facilities and dressing rooms;

~~19.4.3.~~ 20.4.3. Documents, equipment, and materials prescribed in sections ~~5, 6, 8, 9, 12, 13, 14, 16, 17, 18~~ 6,7,8,9,10,14,15,16,18,19, and this section of this rule; and,

~~19.4.4.~~ 20.4.4. Medical waste disposal procedure and documents.

~~19.5.~~ 20.5. A crematory shall maintain all necessary equipment, prescribed in this rule, in a clean, safe, and sanitary condition. Equipment and materials shall be in good repair and are subject to inspection. The building in which the crematory is located shall also be in good repair and maintained in a clean, safe, and sanitary condition and is subject to inspection.

~~19.6.~~ 20.6. The Board shall charge an inspection fee prescribed in the Board's 6 CSR 7 Rule.

~~19.7.~~ 20.7. The inspector or the investigator may visit any facility while cremation of a body is being conducted, when it may be considered necessary to secure evidence, provided that the visit shall be done in a respectful and decorous manner.

~~19.8.~~ 20.8. The Board shall initiate disciplinary proceedings for violations that are not corrected or for continuous disregard for cleanliness and other standards prescribed in this rule.

~~19.9.~~ 20.9. The inspector shall in no way be connected with the work or business of a crematory he or she inspects. The Board shall make other arrangements to conduct inspections of any these facilities.

~~§6-2-20.~~ §6-2-21. Fees.

~~20.1.~~ 21.1. Fees paid to the Board are not refundable. All fees are payable to the West Virginia Board of Funeral Service Examiners (WVBFSE). All fees for licensure and renewals are prescribed is the Board's 6 CSR 7 Rule.

~~20.2.~~ 21.2. Lost or stolen licenses or certificates.

The Board shall print and promptly mail a new license or certificate of registration, upon payment of a fee as prescribed in the Board's 6 CSR 7 Rule for each re-issuance.

~~20.3.~~ 21.3. Inspections.

The Board shall inspect a crematory and charge an inspection fee for the following reasons:

~~20.3.1.~~ 21.3.1. When it is necessary for the inspector to conduct an additional inspection of a crematory found to be out of compliance with the provisions of W. Va. Code §§30-6-1 et. seq. and this rule during ~~the initial yearly~~ an inspection, the crematory shall pay a fee as prescribed in the Board's 6 CSR 7 Rule for each additional inspection.

~~20.3.2.~~ 21.3.2. When the inspector schedules an appointment for inspection and no one is present

at the crematory for the inspection to be conducted and the inspector must return to the crematory on a subsequent date, the crematory shall pay a fee as prescribed in the Board's 6 CSR 7 Rule for each occurrence. This fee shall only be charged if it is determined by the Board that the inspector was not at fault for the missed appointment. No fee will be charged if a crematory owner or operator or the registrant-in-charge contacts the inspector or the Board office before the scheduled appointment with a justifiable reason for his or her inability to be present for the appointment and can provide written documentation supporting his or her reason.

~~20.3.3.~~ 21.3.3. When a crematory has undergone renovations which are something other than routine maintenance or upgrades of equipment and which affects the cremation unit, the crematory shall pay a fee as prescribed in the Board's 6 CSR 7 Rule for an inspection before the Board issues the license.

~~20.3.4.~~ 21.3.4. When a crematory is newly constructed or has been purchased by new owners, the crematory shall pay a fee as prescribed in the Board's 6 CSR 7 Rule for an inspection before the Board issues the license.

~~20.3.5.~~ 21.3.5. When the holder of a crematory license fails to renew the license pursuant to section ~~22~~ 23 of this rule, the crematory shall pay a fee as prescribed in the Board's 6 CSR 7 Rule for an inspection before the Board reinstates the license.

~~20.4.~~ 21.4. Continuing Education Approvals.

Providers of continuing education programs for certified crematory operators shall apply for approval, as prescribed in sections ~~16~~ 17 and ~~18~~ 19 of 6 CSR 1 related to funeral directors and embalmers. All crematory operators shall be required to obtain a total of five hours every two years. One of the hours shall be in ethics and four hours shall be in occupational safety or health-related training. This does not apply to funeral service licensees due to the required continuing education hours they must already obtain every two years.

~~20.5.~~ 21.5. W. Va. Code §§30-6-1 et. seq.

A fee as prescribed in the Board's 6 CSR 7 Rule for each copy of the W. Va Code, plus shipping and handling. All copies of other state or federal laws shall carry a charge as prescribed in the Board's 6 CSR 7 Rule per page plus shipping and handling. For materials that are pre-printed by another organization, only shipping and handling charges shall apply. A copy of this rule is available on-line at http://apps.sos.wv.gov/adlaw/csr and at the Secretary of State's office.

~~20.6.~~ 21.6. Miscellaneous.

All other materials that must be re-printed and are not included in this rule shall carry a cost as prescribed in the Board's 6 CSR 7 Rule per page plus shipping and handling.

~~20.7.~~ 21.7. Late fees.

~~20.7.1.~~ 21.7.1. The fee for the late payment of any required fee is as prescribed in the Board's 6 CSR 7 Rule, in addition to the amount of the required fee when a payment is received on or after July 1 of the renewal year, based on the date of receipt of an application, expiration date of a license or permit, or other recognizable date of transaction or deadline.

~~20.7.2.~~ 21.7.2. The fee for a payment made by a check returned due to insufficient funds or similar failure to negotiate payment is prescribed in the Board's 6 CSR 7 Rule. The Board shall also charge a late

fee prescribed in the Board's 6 CSR 7 Rule if the payment is not made within the specified time frames after the Board has notified the payee of the returned check.

~~20.8.~~ 21.8. License and registration fees.

~~20.8.1.~~ 21.8.1. All initial and renewal fees are prescribed in the Board's 6 CSR 7 Rule.

~~§6-2-21.~~ §6-2-22. Correspondence with Board.

To avoid inconsistency, all inquiries relating to any facet of licensing requirements shall be directed, in writing, to the full Board through its Executive Director. If any employee or member of the Board is asked to provide information or interpretations, he or she shall refrain from responding, but shall reduce the inquiry to written form and direct it to the full Board through its Executive Director.

~~§6-2-22.~~ §6-2-23. Biennial Licenses and Registrations.

~~22.1.~~ 23.1. The Board shall renew all licenses and certificates of registration biennially on a staggered schedule as prescribed in W. Va. Code §30-6-14. Beginning July 1, 2003, one half of all licenses and certificates of registration shall be renewed for one year and one half of all licenses and certificates of registration shall be renewed for two years. Thereafter, all licenses and certificates of registration shall be issued or renewed biennially.

~~22.2.~~ 23.2. A licensee or registrant, who desires to continue in his or her practice, shall biennially on or before the first day of July of the renewal period apply to the Board for a renewal of his or her license, and shall transmit with the application the fee prescribed in the Board's 6 CSR 7 Rule. If the Board finds that the applicant has been legally licensed and is entitled to a renewal, it shall issue a renewal certificate.

~~22.3.~~ 23.3. The Board shall give notification of the need to renew licensure or registration at least thirty (30) days before the first of July.

~~22.4.~~ 23.4. All renewals are due on July 1 of the renewal year. A late fee will be assessed on any license or certificate that is not received or postmarked on or before June 30th of the renewal year. On-line renewals will be determined by the computer clock.

~~22.5.~~ 23.5. Reinstatement.

~~22.5.1.~~ 23.5.1. In order for a licensee or registrant whose name has been erased from the register of the Board due to being over ninety (90) days past due on renewing their license or permit, pursuant to subsection ~~22.4.~~ 23.4. of this section to again become licensed or registered, the licensee or registrant shall personally appear before the Board, or an authorized committee of the Board, to show cause for permitting the license or registration to lapse.

~~22.5.2.~~ 23.5.2. If the holder of a crematory license submits to the Board satisfactory reasons for failing to renew his or her license and passes an inspection, the Board shall reinstate the license upon payment of a fee as prescribed in the Board's 6 CSR 7 Rule, of the appropriate renewal fee, reinstatement fee, late fee and inspection fee.

23.5.3. If a crematory operator's certificate has been erased from the register of the Board for beng over ninety days past due on renewing their license and have been approved for reinstatement by the Board, they will be reinstatement upon payment of the reinstatement fee, late fee and renewal fee as prescribed in the Board's 6 CSR 7 Rule.

~~22.5.3.~~ 23.5.4. If ~~a~~ an apprentice registrant submits to the Board satisfactory reasons for failing to renew his or her certificate and pays a reinstatement fee and the renewal fee as prescribed in the Board's 6 CSR 7 Rule and demonstrates competency to work as an apprentice, the Board shall reinstate the certificate.

~~22.5.4.~~ 23.5.5. If the licensee or registrant whose name has been erased for failure to renew his or her license or registration is under investigation for alleged violations of W. Va. Code §§30-6-1 et. seq. or this rule, the Board may deny reinstatement until the investigation is resolved.

~~22.6.~~ 23.6. Crematories.

The executive director shall immediately issue a ninety-day (90) probationary license to a crematory which has met all requirements prescribed in §§30-6-1 et. seq. and this rule and place the application on the agenda for consideration during the next scheduled meeting. If, at the meeting, the Board determines that the crematory has complied with all requirements, the Board shall issue a license as prescribed in subsection ~~22.1~~ 23.1. of this section. The Board shall not charge a fee for the probationary license.

~~§6-2-23.~~ §6-2-24. Authorized Representative.

~~23.1.~~ 24.1. Advance directives, medical power of attorney and will of decedent.

A person may direct the preparation for, type, or place of his or her own final disposition, either by oral or written instructions. The authorized representative otherwise entitled to control the final disposition pursuant to W. Va. Code §30-6-3 and this rule shall faithfully carry out the reasonable and otherwise lawful directions of the decedent to the extent that the decedent has provided resources for the purpose of carrying out the directions. If the instructions are contained in a will, they shall be immediately carried out, regardless of the validity of the will in other respects or of the fact that the will may not be offered for or admitted to probate until a later date, subject to other provisions of this chapter or any other law of this state. If the instructions are contained in a valid medical power of attorney document, they shall be immediately carried out, pursuant to W. Va. Code §§16-30-1 et. seq. This subsection shall be administered and construed so that the reasonable and lawful instructions of the decedent or the person entitled to control the final disposition shall be faithfully and promptly performed.

23.2. 24.2. Determination of right to control and duty of disposition.

The right to control the disposition of the remains of a deceased person, including the location and conditions of final disposition, unless other directions have been given by the decedent pursuant to subsection ~~23.1~~ 24.1. of this section, vests in, and the duty of final disposition of the body devolves upon, the following authorized representative in the order named:

~~23.2.1.~~ 24.2.1. the person appointed in a dated written instrument signed by the decedent. Written instrument includes, but is not limited to, a health care directive or medical power of attorney executed pursuant to W. Va. Code §§16-30-1 et. seq. of the West Virginia Health Care Decisions Act. Written instrument does not include a durable or nondurable power of attorney which terminates on the death of the principal pursuant to W. Va. Code §§39-4-1 et. seq. of the Uniform Durable Power of Attorney Act;

~~23.2.2.~~ 24.2.2. the surviving, legally recognized spouse;

~~23.2.3.~~ 24.2.3. the surviving biological or adopted child or children of the decedent over the age of majority, provided that, in the absence of actual knowledge to the contrary, a funeral director may rely on instructions given by the child or children who represent that they are the sole surviving child, or that they constitute a majority of the surviving children;

~~23.2.4.~~ 24.2.4. the surviving parent or parents of the decedent or other permanent legal guardian of the decedent;

~~23.2.5.~~ 24.2.5. the surviving biological or adopted sibling or siblings of the decedent over the age of majority, provided that, in the absence of actual knowledge to the contrary, a funeral director may rely on instructions given by the sibling or siblings who represent that they are the sole surviving sibling, or that they constitute a majority of the surviving siblings;

~~23.2.6.~~ 24.2.6. the person or persons respectively in the next degree of kinship in the order named by law to inherit the estate of the decedent; and

~~23.2.7.~~ 24.2.7. the appropriate public or court authority, as required by law.

For purposes of this subsection, the appropriate public or court authority includes the county Department of Health and Human Resources of the county in which the death occurred if the person dies without apparent financial means to provide for final disposition or the circuit court in the county in which the death occurred.

~~23.3.~~ 24.3. Estranged persons.

Where there is only one person in a degree of relationship to the decedent described in subsections ~~23.2.1~~ 24.2.2 through ~~23.2.7~~ 24.2.6. of this section and a circuit court, pursuant to subsection ~~23.5~~ 24.5. of this section, determines that the person and the decedent were estranged at the time of death, the right to control and the duty of disposition shall devolve to the authorized representative or representatives in the next degree of relationship pursuant to subsection ~~23.2~~ 24.1. For purposes of this subsection, "estranged" means having a relationship characterized by mutual enmity, hostility, or indifference.

~~23.4.~~ 24.4. Refusal of right to control and duty of disposition.

If a person or persons to whom the right to control and duty of disposition devolve, pursuant to subsection ~~23.2~~ 24.2 of this section, refuses to accept or declines to act upon the right or duty, that right and duty shall pass as follows:

~~23.4.1.~~ 24.4.1. to another person or persons with the same degree of relationship to the decedent as the person or persons refusing to accept or declining to act; or

~~23.4.2.~~ 24.4.2. to the person or persons in the next degree of relationship to the decedent, pursuant to subsection ~~23.2.~~ 24.2.

~~23.5.~~ 24.5. Disputes.

~~23.5.1.~~ 24.5.1. When a dispute exists regarding the right to control or duty of disposition, the parties in dispute or the crematory operator-in-charge may file a petition in a county circuit court, requesting that the court make a determination in the matter. The petition may be filed as follows:

~~23.5.1.1.~~ 24.5.1.a. in the circuit court in the county of residence of the decedent or

~~23.5.1.2.~~ 24.5.1.b. if the decedent resided in another state, in the county where the ~~crematory~~ facility is located.

~~23.5.2.~~ 24.5.2. Should the right to control and duty of disposition devolve to more than one person

with the same degree of relationship to the decedent and those persons cannot, by majority vote, make a decision regarding arrangements and final disposition and a circuit court has been petitioned to make a determination, the court shall consider the following factors in making its determination:

~~23.5.2.1.~~ 24.5.2.a. the reasonableness, practicality, and resources available for payment of the proposed arrangements and final disposition;

~~23.5.2.2.~~ 24.5.2.b. the degree of the personal relationship between the decedent and each of the persons in the same degree of relationship to the decedent;

~~23.5.2.3.~~ 24.5.2.c. the expressed wishes and directions of the decedent and the extent to which the decedent has provided resources for the purpose of carrying out the wishes or directions; and

~~23.5.2.4.~~ 24.5.2.d. the degree to which the arrangements and final disposition will allow for participation by all who wish to pay respect to the decedent.

~~23.6.~~ 24.6. Control by ~~crematory~~ operator-in-charge.

A crematory operator-in-charge shall have complete authority to control the final disposition and to proceed under this chapter to recover reasonable charges for the final disposition when both of the following apply:

~~23.6.1.~~ 24.6.1. the crematory operator-in-charge has actual knowledge that none of the persons described in subsection ~~23.2~~ 24.2. of this section exist or that none of the persons so described can be found after reasonable inquiry or contacted by reasonable means; and

~~23.6.2.~~ 24.6.2. the appropriate public or court authority fails to assume responsibility for disposition of the remains within thirty six (36) hours after having been given written notice of the facts. Written notice may be delivered by hand, United States mail, facsimile transmission, or telegraph.

~~23.7.~~ 24.7. Immunity.

A crematory operator or the crematory shall not be subject to criminal prosecution or civil liability for carrying out the otherwise lawful instructions of the decedent or the person or persons whom the crematory operator believes is entitled to control the final disposition as the authorized representative or representatives.

~~23.8.~~ 24.8. Liability for cost of final disposition.

In addition to separate contractual obligations, the liability for the reasonable cost of final disposition devolves upon the estate of the decedent, regardless of whether testate or intestate, and the distributees of the estate, pursuant to Chapter 41 of W. Va. Code relating to wills. In the case of persons who die without apparent financial means to provide for final disposition, control of final disposition and liability devolves to the county Department of Health and Human Resources in which the death occurred, pursuant to W. Va. Code §9-5-18 relating to funeral expenses for indigent persons and pursuant to W. Va. Code §§9-6-1 et. seq. relating to social services for adults. In the case of bodies delivered as anatomical gifts, pursuant to W. Va. Code §§16-9-1 et. seq. of the Anatomical Gift Act, the institution receiving the body shall bear the responsibility for transportation and final disposition.

~~23.9.~~ 24.9. Interference with body or final disposition.

Any person that arrests, attaches, detains, or claims to detain any human remains for any debt or demand,

or upon any pretended lien or charge, or who, without authority of law, obstructs or detains a person charged with the duty or engaged in the final disposition of a dead human body, or fails to release any dead human body upon the receipt of authorization for the release signed by a person or persons entitled to custody of the body is guilty of a misdemeanor. Criminal prosecution shall not preclude the Board from taking any other lawful disciplinary action.

~~§6-2-24.~~ §6-2-25. Penalties.

Any violation of this rule constitutes grounds for the refusal to renew, suspension or revocation of a license or certificate, or other disciplinary action pursuant to W. Va. Code §§30-6-1 et. seq. or fines or both

§6-2-26. Certification for alkaline hydrolysis of human remains.

26.1. Any solid remains or residue remaining after alkaline hydrolysis shall be treated and disposed of as cremated remains under this article. Disposal of liquid waste shall be subject to all applicable health and environmental laws and regulations.

26.2. Human remains shall be hydrolyzed in an alkaline hydrolysis container and shall not be required to be hydrolyzed in a casket.

26.3. Unless specified otherwise by the manufacturer of the equipment used for alkaline hydrolysis, human remains may be hydrolyzed without first removing a pacemaker or defibrillator. Any other potentially hazardous implanted device or material shall be handled in accordance with applicable state laws and regulations.