CHAPTER 43-10
FUNERAL SERVICE PRACTITIONERS

43-10-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Board" means the state board of funeral service.
2. "Crematorium" means a furnace or establishment for the cremation of corpses.
3. "Embalming" means preparing dead human bodies for final disposition or removal by the injection of antiseptic or preservative preparations into the skin, the blood vessels, or cavities of the body, the external application of antiseptic solution, taking charge of the remains of those dead of any communicable disease, preparing dead human bodies for shipment or holding oneself out to do any of the above acts by advertising or any other means.
4. "Final disposition" means the entombment, burial in a cemetery, cremation, removal from the state, or whole-body donation to a school of medicine of a dead human body.
5. "Funeral directing" means the care and disposal of the body of a deceased person; the preserving, disinfecting, and preparing, by embalming or otherwise, the body of a deceased person for funeral services, transportation to a point of final disposition, burial, or cremation; or arranging, directing, or supervising a funeral, memorial service, or gravesite service.
6. "Funeral establishment" means any place or premises devoted to or used in the holding, care, or preparation of a dead human body for final disposition or transportation or for mourning or funeral ceremony purposes.
7. "Funeral practitioner" means a person licensed by the board to practice funeral directing and embalming.
8. "Intern embalmer" means a person registered with the board to engage in learning the practice of embalming under the instruction and personal supervision of a duly licensed funeral practitioner.
9. "Practice of funeral service" means to engage in funeral directing or embalming.
10. "Preparation of the body" means embalming of the body or such items of care as washing, disinfecting, shaving, positioning of features, restorative procedures, care of hair, application of cosmetics, dressing, and casketing.

43-10-02. State board of funeral service - Members - Appointment - Qualifications - Term of office - Oath - Vacancies - Removal.

The board consists of the state health officer or designee and three persons appointed by the governor. Each member appointed by the governor shall serve for a term of four years and until a successor is appointed and qualified. The terms of office of the appointed members expire on the thirtieth day of June and must be so arranged that only one expires in any one year. The appointed members of the board must be persons practicing embalming in this state and must have practiced for a minimum of three years in North Dakota. Each member shall qualify by taking the oath of office required of civil officers. The secretary of state may administer the oath and it must be filed in the office of the secretary of state. A vacancy on the board must be filled by appointment by the governor for the unexpired term. The governor may remove any member of the board for good cause.

43-10-03. Officers of board - Compensation of members - Treasurer's bond.

The members of the board may elect from their number a president, a secretary, and a treasurer. The treasurer must be bonded for the faithful discharge of the treasurer's duties in the sum of two thousand dollars. The members shall receive their actual traveling expenses which may not exceed the amount specified in section 54-06-09 and other necessary expenses.

43-10-04. Meetings of the board - Quorum.

The board shall meet at least once a year, and may hold such special meetings as the proper and efficient discharge of its duties requires. Timely notice of all meetings must be given

to every member of the board. Three members constitute a quorum for the transaction of business.

43-10-05. Power of board to adopt rules for transaction of business - Seal - License fees.

The board may:

1. Adopt rules to administer and carry out this chapter.
2. Adopt rules regulating the practice, supervision, and instruction of intern embalmers.
3. Adopt rules relating to the professional conduct of funeral directors and intern embalmers.
4. Adopt such rules for the transaction of its business and the management of its affairs as it deems expedient and proper to administer this chapter.
5. Adopt and use a seal.
6. Adopt rules requiring each funeral home, at the time of selection of merchandise and services from that funeral home, to disclose in writing to the person or persons making the selection:
   a. The total price at retail of the merchandise and services selected and a listing of what merchandise and services are included within such total.
   b. The price at retail of each item of supplemental service or merchandise requested.
   c. The amount of cash advances to the extent that the advances are known or can be ascertained at the time of the selection.
   d. The terms of payment for merchandise and services.
7. Establish license and renewal fees for funeral service practitioners and funeral establishments within the limits imposed by this chapter.
8. Adopt rules regulating the operation of funeral establishments and crematoriums.
9. Appoint or employ persons to assist the board in carrying out its duties under this chapter.
10. Accept and investigate complaints relating to conduct governed by this chapter.
11. Issue subpoenas, examine witnesses, administer oaths, and investigate allegations of practices violating the provisions of this chapter.

43-10-06. Duty of board to adopt rules to prevent the spread of contagious diseases.

The board shall adopt such rules as it deems proper for the disinfection of a deceased person and of bedding, clothing, apartments, or anything likely to be infected in case of death from a contagious or infectious disease. The rules must be disclosed to every person engaged in embalming and funeral service in this state.

43-10-06.1. State board of funeral service to establish means of disposition.

The state board of funeral service shall provide by rule for the appropriate means of disposition for cremated remains held by a funeral home that have not been claimed as provided in section 43-10-26.

43-10-06.2. Continuing education requirements.

The board may adopt rules establishing requirements for the continuing education of persons licensed under this chapter. The board may refuse to renew, suspend, revoke, or place on probationary status any license issued under this chapter on proof that the licensee has failed to meet the applicable continuing education requirements. Applicants for accreditation of continuing education courses, classes, or activities may be charged a reasonable fee determined by the board.

43-10-06.3. Information seminars.

The board may conduct information seminars.

43-10-07. Records of board - Admissible evidence.

A transcript of any matter of record in the office of the board, with the certificate of the secretary thereof attached, under the seal of said board, is competent evidence of such matter of record in any court in this state.

43-10-08. Biennial report.

The board may submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04.

43-10-09. Use of fees - Funds kept by treasurer - How disbursed.

Repealed by S.L. 1971, ch. 510, § 15.

43-10-10. License required.

A person may not practice funeral service in this state unless that person is licensed by the board or registered with the board as an intern embalmer.

43-10-10.1. Funeral practice - Exceptions.

1. Nothing in this chapter may be construed to prevent a person from doing work within the standards and ethics of that person's profession and calling, provided that the person does not represent to the public that the person is engaging in the practice of funeral service.
2. Nothing in this chapter may be construed to prevent embalming by commissioned medical officers in the armed forces of the United States or under the United States public health service while on active duty in a respective service.
3. This chapter does not prevent the transportation of a dead human body in accordance with other applicable state and federal laws.
4. This chapter does not prohibit ambulance or other emergency transportation of a dead human body.
5. This chapter does not prohibit members of the clergy from performing funeral and gravesite or memorial services.
6. This chapter does not prohibit unlicensed individuals, employed by a funeral establishment, from performing gravesite or memorial services for cremated remains.
7. This chapter does not prohibit individuals licensed in other states, as embalmers or funeral directors, from assisting funeral practitioners.
8. This chapter does not prohibit individuals employed by a funeral establishment from performing nonprofessional tasks or activities that do not require independent, professional judgment under the supervision of an individual licensed to practice funeral service.

43-10-11. Examination required - Application - Qualification.

Any person who desires a license to practice funeral service shall apply to the board on a form provided by the board and submit to an examination. The applicant shall submit with the application proof that the applicant has the following qualifications:

1. Is of good moral character.
2. Has such preliminary preparation and education as the rules of the board require.
3. Has completed a twelve-month internship in accordance with rules adopted by the board.

43-10-11.1. Conviction not bar to licensure - Exceptions.

Conviction of an offense does not disqualify a person from licensure under this chapter unless the board determines that the offense has a direct bearing upon a person's ability to serve the public as a funeral service practitioner or determines under section 12.1-33-02.1 that the person, following conviction of any offense, is not sufficiently rehabilitated.

43-10-12. Examinations - Subjects covered - Written - Record.

The examination for a license to practice funeral service must be in writing and must cover the following subjects:

1. Anatomy.
2. Embalming.
3. Bacteriology.
4. Chemistry.
5. Pathology.
6. Mortuary management.
7. Restorative arts.
8. Rules of the department of health and human services and the board governing the practice of funeral service.
9. Other subjects that may be required by the board.

All examination papers must be kept on record by the board for a period of not less than three years.

43-10-13. License - When granted - Fee - Signed by majority of board - Nontransferable - Where displayed.

The board shall grant a license to practice funeral service if the applicant:

1. Has the required qualifications;
2. Has passed the required examination; and
3. Has paid to the treasurer of the board a sum of not more than two hundred dollars, as established by the board.

The license must be signed by a majority of the board, be attested by the board's seal, and specify by name the person to whom it is issued. A license is nonassignable, nontransferable, and must be displayed where it can be observed by the public.

43-10-13.1. Limitations or qualifications placed on licensee.

The board, if the facts support such action, may place reasonable limitations or qualifications on the right to practice funeral service or to operate a funeral establishment or crematory.

43-10-14. License by reciprocity.

A licenseholder in good standing in another jurisdiction that imposes requirements for licensure which are at least as stringent as the requirements of this state may be issued a license after passing a written examination on questions concerning laws and rules of this state, upon payment of a fee established by the board, and proof of good moral character.

43-10-15. License - Term - Renewal - Fee for renewal.

A license to practice funeral service is valid until the end of the year issued and may be renewed by the board upon the payment to the treasurer of the annual renewal fee before December thirty-first of each year. The amount of the fee may not exceed one hundred dollars. The board may refuse to renew a license for cause.

43-10-15.1. Late renewal.

A license that has been expired may be renewed at any time within two years after its expiration on filing an application for renewal on a form prescribed by the board and payment of the renewal fee in effect on the last regular renewal date. If the license is not renewed within thirty days after its expiration, the licensee shall pay a late fee determined by the board not to exceed one hundred fifty dollars. Renewal under this section is effected on the date on which the application is filed, on the date which the renewal fee is paid, or on the date on which the late fee, if any, is paid, whichever last occurs. A license that is not renewed within two years after its expiration may be renewed by filing an application for renewal on a form prescribed by the board, payment of the late fee, and passing the law and rules examination.

43-10-15.2. Issuance of duplicate licenses.

Upon receipt of satisfactory evidence that a license or certificate has been lost, mutilated, or destroyed, the board may issue a duplicate license or certificate upon such terms and conditions as the board prescribes, and upon payment of a fee of ten dollars.

43-10-15.3. Change of name.

Any licensee desiring to change the name appearing on the licensee's license may do so by applying to the board and paying a fee of ten dollars.

43-10-15.4. Intern embalmer - Application - Qualifications.

1. The board shall issue a certificate of registration as an intern embalmer to each applicant who files an application upon a form and in a manner the board prescribes, accompanied by a fee not to exceed fifty dollars, and who furnishes sufficient evidence to the board that the applicant:
   a. Is at least eighteen years of age;
   b. Is of good moral character;
   c. Has completed an accredited four-year high school course of study;
   d. Has completed one year of accredited college or university studies; and
   e. Has been accepted to attend or is enrolled in an accredited college of mortuary science, or has graduated from an accredited college of mortuary science.
2. An intern embalmer may not practice for more than six months before attending an accredited college of mortuary science.

43-10-15.5. Certificate of registration - Term - Renewal - Fee for renewal.

A certificate of registration as an intern embalmer is valid for one year and may be renewed by the board upon payment to the treasurer of the annual renewal fee before December thirty-first of each year. Registration may not be renewed more than three times. The board may refuse to renew registration for cause.

43-10-16. Grounds for disciplinary action - Reimbursement of costs.

The board may revoke, suspend, place on probation, or refuse to issue a license to practice funeral service or certificate of registration as an intern embalmer upon proof at a hearing that the applicant, licensee, or certificate holder:

1. Is unfit to practice funeral service.
2. Has violated this chapter or the rules of the board.

The board may impose a fee on any person or other legal entity subject to regulation under this chapter to reimburse the board for all or part of the costs of administrative actions resulting in disciplinary action, including the amount paid by the board for services from the office of administrative hearings, attorney's fees, court costs, witness fees, staff time, and other expenses.

43-10-16.1. Expiration of suspended license - Renewal.

A suspended license is subject to expiration and must be renewed as provided in this chapter, but the renewal does not entitle the holder of the license, while it remains suspended and until it is reinstated, to engage in the activity to which the license relates.

43-10-16.2. Restoration of license after revocation.

One year from the date of revocation, the former licensee may make application for initial licensure. In order to receive a new license, the applicant must satisfy the current requirements for licensure.

43-10-17. Revocation of license - When proceedings commenced - Hearing - Time.

Repealed by S.L. 1997, ch. 367, § 29.

43-10-18. Notice of hearing - Contents.

Repealed by S.L. 1997, ch. 367, § 29.

43-10-19. Hearing - Appeals.

Hearings regarding disciplinary action or denial of a license must be held under chapter 28-32. An appeal from the board's final decision may be taken in accordance with the provisions of section 28-32-42.

43-10-20. Penalty.

A person practicing or representing that the person is practicing funeral service, or preparing the dead for burial or shipment in violation of this chapter, is guilty of a class B misdemeanor. In addition to the criminal penalty provided, the civil remedy of injunction is available to restrain and enjoin violations of any provision of this chapter without proof of actual damages sustained by any person and without the board being required to file an undertaking.

43-10-21. Definition.

As used in sections 43-10-21 through 43-10-24, the term "funeral establishment" means a place of business situated at a specific street address or location, and used in the care and preparation for burial, transportation, or other disposition of dead human bodies, or used for the purpose of conducting funeral services.

43-10-22. Licensure of funeral establishments.

A person may not operate or manage a funeral establishment without a funeral establishment license issued by the board for each place of business. Except for on tribal land, a funeral establishment may not be located on tax-exempt property. A person desiring to operate a funeral establishment shall submit an application for an annual license for each funeral establishment to the secretary or executive secretary of the board accompanied by a license fee for each establishment of not more than one hundred dollars, as established by the board. A person operating or managing a funeral establishment shall annually, on or before December first, submit an application for renewal of a license with a renewal fee of not more than one hundred twenty-five dollars, as established by the board. A license is valid until the following January first, unless sooner revoked. An application must show that the funeral establishment has complied with all rules adopted by the board in regard to safety and sanitation and will be under the supervision of an individual licensed to practice funeral service. An applicant who has met these standards must be issued a license. In case of the death of an owner of a funeral establishment who leaves an established business as part or all of an estate, the board may issue a special renewable temporary license to the personal representative of the deceased person for the duration of the administration of the estate, but which may not exceed two years. The fee for the temporary license is the same as required for regular licenses.

43-10-22.1. Display of license.

The funeral establishment license issued by the board to a funeral establishment must be conspicuously displayed at the funeral establishment for which the license was issued.

43-10-23. Inspections - Hearings - Revocations - Appeal.

The funeral establishment, or that part of a funeral establishment in which is conducted or intended to be conducted any funeral service business, must be open at all times for inspection by the board or the department of health and human services. The board or agents employed by it and the department of health and human services may make such inspections as are necessary of facilities and equipment of funeral establishments to ensure compliance with safety and sanitary rules adopted by the board or any other rules or federal regulations pertaining to funeral service whenever either deems the inspection advisable. The board may subpoena witnesses, administer oaths, and take testimony. All proceedings under this section must be conducted in accordance with chapter 28-32. The board may, after a hearing, revoke,

suspend, or refuse to issue or renew a license upon good cause. A person aggrieved by the action of the board may appeal to the district court of the county in which the person resides or the district court of Burleigh County in accordance with chapter 28-32.

43-10-24. Penalty.

Any person operating or managing a funeral establishment without a funeral establishment license in violation of section 43-10-22 is guilty of a class B misdemeanor.

43-10-25. Licensure of crematoriums.

A person may not operate a crematorium without a license issued by the board. A person desiring to operate a crematorium shall submit an application for an annual license to the board. The license fee may not exceed one hundred dollars and must be the same as a funeral establishment license.

43-10-25.1. Grounds for disciplinary action.

The board may revoke, suspend, place on probation, or refuse to issue a license to operate a crematorium upon proof at a hearing that the applicant or licensee:

1. Is unfit to operate a crematorium.
2. Has violated this chapter or rules adopted by the board.

43-10-26. Disposition of stored cremated remains.

Any cremated remains in the possession of a funeral home in this state that have not been claimed within twelve months after the time of cremation may be disposed of in accordance with this section and section 43-10-06.1. At least thirty days prior to such disposition, any funeral home wishing to dispose of such remains shall send a written notice to the last-known address of the responsible person who directed and provided for the method of final disposition of the human remains to the effect that such remains will be disposed of unless claimed by the person within thirty days from the date of mailing such notice. The notice must be sent by registered mail, return receipt requested.