

LCB File No. R043-02

**PROPOSED REGULATION OF THE STATE BOARD OF FUNERAL
DIRECTORS, EMBALMERS AND OPERATORS
OF CEMETERIES AND CREMATORIES**

Draft Regulations (Nov. 19, 2001)

These regulations are adopted pursuant to NRS 642.060, 642.063, 642.065, 451.640 and 452.026. Fees required by NRS are noted and included in the NAC fee schedule.

Section 1.

NAC chapter 642 is amended by adding thereto a new section to read as follows:

NAC 642.270 Temporary authorization to operate; duration.

1. The chairman of the board shall issue a temporary authorization to operate if:

a) the license, certificate or permit for which application is made is required for:

- 1) a funeral director under NRS 642.340 (1);*
- 2) management of a funeral establishment under NRS 642.345;*
- 3) direct cremations and immediate burials under NRS 642.355; or*
- 4) operation of a funeral establishment under NRS 642.365.*

b) the premises, if any, involved in the application has been inspected in the same manner as required for applications by NRS 642 and NAC 642, and has passed the inspection;

c) the application is complete and all fees are paid;

d) required examinations have been taken and passed; and

e) the application will be placed on the agenda of the next meeting of the board for approval or denial.

2. If a temporary authorization is warranted in accordance with the provisions of this section the chairman shall issue a written authorization pending the next meeting of the board. The temporary authorization automatically expires at the next meeting of the board at which the application will be acted upon.

Section 2.

Chapter 642 of the NAC is amended by adding thereto the following section to read as follows:

NAC 642.112. Schedule of Fees. (For LCB's reference, apparent fee authority is in parentheses). The board will charge and collect the following fees:

1. Initial application for a license, permit or certificate. Application fee and exam fee is separate.

- A) Funeral director (NRS 642.360)..... \$200*
- B) To conduct direct cremations or immediate burials (NRS 642.360, 451.365) \$200*
- C) Embalmer (NRS 642.060, .063, & .065)..... \$200*
- D) Apprentice embalmer (NRS 642.210; includes card per NRS 642.220)..... \$75*
- E) To operate funeral establishment (NRS 642.365) \$250*
- F) To operate a cemetery (NRS 642.069, 452.310).....\$1000*

2. Issuance of a temporary license, certificate or permit...No additional fees; fees are included in initial application fees. (Board could have a nominal cost-recovery fee)

3. Issuance of a permanent license, certificate or permit...No additional fees; fees are included in initial application fees. (Board could have a nominal cost-recovery fee)

4. Annual renewal of a license, certificate or permit

- A) Funeral director (NRS 642.420)..... \$100*
- B) To conduct direct cremations or immediate burials (NRS 642.420)..... \$100*
- C) Embalmer (NRS 642.120)..... \$100*
- D) Apprentice embalmer (NRS 642.220; one time only per NRS 642.300)..... \$75*
- E) Establishment (NRS 642.435) \$150*
- F) Cemetery (NRS 642.069; see existing NAC 642.110)..... \$250*
- G) Crematory (NRS 642.069; see existing NAC 642.100)..... \$250*

5. Penalty for late renewal of license, certificate or permit, in addition to renewal fees

- A) Funeral director (NRS 642.430)..... \$100*
- B) To conduct direct cremations or immediate burials (NRS 642.430)..... \$100*
- C) Embalmer (NRS 642.120)..... \$100*
- D) Apprentice embalmer (NRS 642.060, 642.063, 642.065) \$75*
- E) Establishment (NRS 642.435) \$100*
- F) Cemetery (see NAC 642.110 adopted 11-1-95) \$100*
- G) Crematory (see NAC 642.100 adopted 11-1-95) \$100*

6. Examination fees.....

- a) Funeral director exam (NRS 642.060, 642.063, 642.065) \$150*
- b) Embalmer exam (application by non-apprentice) (NRS 642.090)..... \$150*
- c) Embalmer exam (application by apprentice) (NRS 642.310)..... \$100*
- d) and the amount required by a testing company used by the board for testing applicants.*

7. Embalmer reciprocity fee (NRS 642.100) ...No additional fee; Only limited reciprocity is granted for some requirements that all new applicants must meet. Applicant must pay:

a) initial application fee of..... \$200

b) examination fee of..... \$150

c) and the amount required by a testing company used by the board for testing applicants.

8. Inactivation of embalming license (NRS 642.115)\$150

9. Reactivation of inactivated embalming license (NRS 642.115).....\$100

10. Application to modify existing funeral director license to remove existing management approval and transfer approval to another establishment pursuant to NRS 642.345 (2) in lieu of filing new application.(NRS 642.060, 642.063, 642.065).....\$100

Section 3.

NAC chapter 451 is amended by adding thereto a new section to read as follows:

NAC 451.150. Allowance of persons near remains awaiting cremation; authorization for simultaneous cremation; written record of express acceptance or rejection of right to view cremation or to authorize simultaneous cremation. (NRS 451.640; 451.685)

1. In all cases in which a body is cremated the licensed operator of a crematory or funeral establishment must maintain a written document that contains the information required by this section. The document must be signed by the person who contracts for cremation services and must contain express provisions and a simplified method of acceptance or rejection of each provision for the following subjects:

a) request to view the cremation;

b) refusal to view the cremation;

c) authorization to simultaneously cremate the remains of more than one person in the same chamber; and

d) refusal to grant authorization to simultaneously cremate the remains of more than one person in the same chamber.

2. The written document required by this section must be retained by the licensee for one year after the cremation of the body. Failure to maintain the document as required by this section constitutes unprofessional conduct by persons and establishments licensed under chapters 451 and 642 of the NRS and will subject such persons and establishments to disciplinary action under those chapters.

Section 4

NAC 642 is hereby amended by adding a new section to read as follows:

NAC 642.270. Complaints: informal complaints and formal complaints; filing; default; response; review; investigation; notice of hearing; consolidation.

1. Any person may file an accusation with the board concerning the acts or services provided by the holder of a license, certificate or permit issued under NRS 451, 452 and 642. Such persons against whom accusations are made are hereafter referred to collectively as "licensee". A petition under NRS 642.500 will be processed as the formal complaint described in this section and must be preceded by an informal complaint processed as described in this section. The hearing provided in NRS 642.140 must be preceded by the informal complaint process as described in this section.

The board will initially consider any accusation regarding a licensee as an informal complaint. An informal complaint filed with the board must be on a form provided by the board. A complainant shall include in his informal complaint information that is sufficiently detailed so as to enable the respondent to prepare a response.

2. Upon receipt of an informal complaint, the staff shall examine the complaint to determine whether it:

- a) has been properly verified; and*
- b) alleges sufficient facts to warrant further proceedings.*

3. If the board's staff determines that the informal complaint has been properly verified and alleges sufficient facts the staff shall notify the respondent by sending a copy or summary of the informal complaint to the licensee by certified mail. The notification must set forth the potential violations of a provision of this chapter or chapter 451 or 642 of NRS arising in the informal complaint.

The notification must request a response for the review by the board before a hearing is set. The transmission of the copy or summary of the informal complaint will be deemed to be a notice of intended action pursuant to subsection 3 of NRS 233B.127. Upon the receipt of a copy or summary of an informal complaint that has been filed against him, a licensee shall submit to the board a written response to the informal complaint within 15 days after the date on which the informal complaint was served. A response to a complaint must respond to the allegations made in the informal complaint and be accompanied with all documentation that would be useful to the staff in its review of the allegations made in the informal complaint and the responses made by the licensee to those allegations.

Failure by a licensee to cooperate with the board during an investigation of an informal complaint, including, without limitation, failing to timely respond to the board regarding a copy or summary of the informal complaint sent to the licensee by the staff pursuant to this subsection, is a ground for disciplinary action against the licensee.

4. If a licensee fails to respond as required pursuant to subsection 3, he shall be deemed to have admitted the allegations in the informal complaint. Based in these admissions the board may impose appropriate discipline on the licensee at the hearing on the informal complaint.

5. In cases where a response is filed as required pursuant to subsection 3, the staff shall review the informal complaint and the responses made thereto, may enlist the aid of a member of the board or other qualified persons in such review and may take any other reasonable action necessary to further the review. After its review of the informal complaint and the responses made thereto, the staff may:

(a) Investigate the allegations and employ such people as they deem necessary to further the investigations;

(b) Consult with experts in the appropriate field, including, without limitation, employing such persons for the purposes of an investigation or a hearing;

(c) Investigate new leads and allegations that may come to their knowledge in the course of the investigation;

(d) Enlist the aid of a member of the board or other qualified person in the conduct of the investigation; and

(e) Take any other reasonable action necessary to further the investigation.

6. During an investigation of an informal complaint, the staff or investigator may demand that the licensee produce his records or other evidence for inspection or copying, with or without prior notice to the licensee, and with or without a subpoena. A licensee shall not deny any such request for records or other evidence if the record or other evidence is not subject to confidentiality provisions as provided by law.

If a licensee refuses or fails to cooperate with a request for records in violation of this section, the board may immediately suspend his license, certificate or permit until the licensee complies with the request for records or other evidence. If the licensee continues to refuse or fail to cooperate with a request for records or other evidence in violation of this section, the board may take such further disciplinary action against the licensee as the board determines necessary.

7. If the staff or investigator determine that a specific record or other specific evidence is material to or necessary for an investigation, the staff or investigator may remove the record or evidence and provide a copy of the record or evidence to the respondent. If a record or other evidence can be readily copied at the location where the record or evidence is located, the staff or investigator shall make a copy of the record and evidence at that location.

If a record or other evidence cannot be readily copied at the location where the record or evidence is located, the staff or investigator may remove the record or evidence from that location to copy the record or evidence. If the staff or investigator removes a record or other evidence to be copied, the staff or investigator shall provide the person to whom the record or evidence being removed belongs with a receipt for the record or evidence and, not later than 5

business days after the record or evidence is removed, provide a copy of the record or evidence to that person.

8. When an investigation of an informal complaint is complete, the staff and investigator shall determine whether substantial evidence exists to sustain the alleged violation of a statute or regulation set forth in the informal complaint. If the staff and investigator determine that no allegation of a violation of a statute or regulation set forth in the informal complaint can be sustained, the staff shall notify, in writing, the complainant and the respondent of this determination.

If the staff and investigator determine that a violation of a statute or regulation as alleged in the complaint can be sustained, the legal counsel shall:

a) offer mediation, settlement agreements, stipulations of facts and liability or informal hearings; or

b) prepare a notice of hearing and a formal complaint.

9. A notice of hearing and formal complaint must:

(a) Be a plain statement of the facts and applicable provisions of statutes and regulations regarding the alleged acts of the respondent alleged to be in violation of the statutes and regulations governing the licensee;

(b) Include the date, time and place that the board will hear the matter, if this information is known at the time when the notice of hearing and formal complaint is sent to the respondent; and

(c) Be signed by the legal counsel and, if a member of the board was active in the investigation, by that member of the board.

10. The staff shall send a notice of hearing and formal complaint prepared pursuant to subsection 9 to the respondent named in the notice of hearing and the formal complaint by certified mail.

11. A respondent who receives a notice of hearing and formal complaint must file his answer to the notice of hearing and the formal complaint not later than 15 days after the date on which the notice of hearing and formal complaint were served. An answer to a notice of hearing and formal complaint filed by a respondent must include a response to each allegation and statement made in the notice of hearing and the formal complaint by either admitting to or denying the allegation or statement.

If the licensee fails to file an answer as required pursuant to this subsection, he shall be deemed to have admitted each allegation and statement contained in the notice of hearing and the formal complaint. Based on these admissions the board may enter a finding and impose appropriate discipline on the licensee in the same manner as if the allegations had been proven by substantial evidence at a board hearing held on the formal complaint.

12. Not later than 10 days after the filing of the responses by the respondent, the legal counsel and the respondent shall exchange a list of evidence and witnesses that will be used at the hearing. A party may not present evidence it obtains after the date the exchange was required pursuant to this subsection unless it demonstrates to the board that the evidence or witness was not available upon diligent investigation before the date the exchange was required and that the evidence or witness was given or communicated to the other party immediately after it was obtained.

13. The board may join two or more formal complaints into one formal complaint if:

(a) The causes of action of each formal complaint are against the same person and deal with substantially the same or similar violations of statutes and regulations; and

(b) The joining of the formal complaints will serve the best interest of the board, complainants and respondent.

Section 5.

NAC 642.242 is amended to read as follows: (Bracketed language is to be deleted; paragraph 13, above, deals with joining complaints.)

NAC 642.242 Order of presentation in consolidated proceedings.

~~[The board may consolidate two or more proceedings into one hearing if it appears that the issues involved in each proceeding are substantially the same and the interests of the parties will not be prejudiced.]~~ The member of the board presiding over a consolidated hearing will determine the order of evidence for the hearing.