

## RESPONSES FOR BOARD REVIEW UNDER HB 525 FOR BOARD OF FUNERAL SERVICE

### **1. What is the public health, safety or welfare rationale for licensing and regulating your profession/occupation?**

Licensing of funeral industry workers and inspection of establishments protects the public from deceptive funeral business practices and ensures that persons who handle and care for deceased persons have the proper training and education to protect members of the public and funeral business employees from risks posed by exposure to infectious disease, medical wastes and sharps, hazardous chemicals in the embalming process, and hazardous medical implants such as pacemakers or radioactive medications in the cremation process.

### **2. If your profession/occupation were not licensed, what public protection would be lost?**

Without licensing and inspection activities to ensure compliance with state law, the public could be subject to unprofessional, deceptive, or misleading business practices. Because funeral consumers often do not comparison shop for this costly and infrequent purchase, and because funeral service is a purchase typically made at a time of significant emotional distress, the consumer is more susceptible to these problems.

Examples of the business practices concerned include:

- full price disclosures upon request,
- restrictions on time and place of sales solicitation,
- proper handling and accounting of client trust funds for funeral goods and services paid for in advance of need and trust funds held for the perpetual care and maintenance of cemeteries,
- correct representation of the law regarding embalming and burial practices,
- ensuring respect and dignity for the deceased,
- compliance with final wishes of deceased person or authorized designee,
- ensuring compliance with regulations concerning communicable disease, medical waste, or other hazardous materials and substances for the health of the public and funeral service employees.

Additionally, the funeral practitioner has an important role, to act in conjunction with the county coroner to ensure the reporting of potential criminal or violent causes of death before removing or embalming. Further, it is the sole responsibility of the funeral practitioner to obtain authorization for cremation from the coroner and to gather timely and accurate information from the coroner and physician to file death certificates with county registrars and Vital Statistics Bureau, DPHHS. Regulation fosters the integrity of these systems.

**3. If a license is necessary (for health, safety or welfare) does the profession/occupation need a board for oversight? If yes, please explain why and describe the purpose of creating a board.**

The purpose of creating a board is to provide a body, independent from the agency (except for administrative purposes), to provide oversight of the profession and to serve as a check and balance on the agency (as the agency likewise serves as a check and balance on the board) to whom it is administratively attached.

In carrying out the duties of reviewing qualifications to enter the profession, disciplining, and assuring continued competence of licensees, board members provide expertise and informed perspective of the public interest. Board members have a better understanding of both licensee and public concerns and individually, have greater personal ownership of and responsibility for the decisions that are made. A “board” provides greater visibility to the public and acts as a deterrent to potential violators.

**4. Does your board deal with unlicensed practice issues? If yes, what types of issues?**

The board does not appear to deal with “pure” unlicensed practice issues where persons engage in the business without the intent of obtaining a personal license. Rather, the unlicensed practice issues tend to involve a licensee exceeding the scope of practice or practicing on an expired license. Of these types of issues, there appear to have been approximately five complaints within the past five years:

- improper advertising (the advertised service not within licensure),
- operation of a cemetery prior to issuance of the license, and
- making funeral arrangements and preparing bodies in a place other than a preparation room outside of a licensed mortuary.

**5. People who are not licensed but are qualified in an occupation or profession may feel that a licensing board is preventing them from earning a living - what is your response.**

The Board is aware of this criticism and yet stands by its position that regulation of funeral service providers truly serves the public’s best interest. Likewise, the Board views the evaluation process at issue in this sunset review as in the public interest and, when operative changes are supported by that evaluation, as a way to produce a more equitable and well-managed regulatory operation.

**6. How does your board monitor bias among board members toward a particular licensee, an applicant, or a respondent (to unlicensed practice)? How does your board monitor bias toward a particular profession, if more than one profession or occupation is licensed by the board?**

The full board is composed of three morticians, one crematory operator, one cemetery owner, and a public member who is not associated with the practice of the funeral business.

The distribution of the licensed members generally reflect the distribution of licensees, with morticians being the most in number, followed by crematory operator licenses and cemetery company licenses. All board decisions require a majority vote, which, under the composition of the Board prevent morticians from controlling the decision making. Likewise, a similar balance exists on the 3-member disciplinary screening panel, which presently includes a mortician, the public member, and the cemetery owner.

The Board monitors bias through board member and public comment at its meetings and rule adoption process and by adhering to the provisions of Title 37, which set forth the application and disciplinary processes as well as the defined scopes of practices and duties of each licensed categories. To prevent bias or any perception of bias, Board members recuse themselves from discussing and deciding matters in which they are personally involved. Board decisions are supported by reasonable cause and afford due process to the individual subject to board action.

Finally, the Department of Labor and Industry provides training to all board members and advice of legal staff to assist in the effort to avoid bias.

**7. Does the profession or occupation have one or more associations that could provide oversight without the need for a licensing board? Why not use the association as the oversight body.**

The only association related to the funeral industry in Montana is the Montana Funeral Directors' Association (MFDA) which only represents funeral homes (mortuaries). Since the Board of Funeral Service also licenses crematories, cemeteries, crematory operators, and crematory technicians there would be no entity with jurisdiction over these licensees. The mission of a professional association is to promote the profession whereas the board exists to protect the public. A conflict of interest could exist if the licensing entity was also the promoter of the industry.

**8. Is a licensing board needed in order for the practitioner to bill to receive insurance (for example, health insurance)? If so, is there an alternate method for billing that may be recognized rather than having a license or being regulated by a licensing board?**

There are no insurance billing requirements of this specific nature related to licensure of which the Board is aware, however, a funeral insurance policy may be made payable to a licensed mortuary or funeral director under the provisions and limitations of Title 33, chapters 18 and 20.

**9. What are the benefits of a board being part of the licensing and discipline process instead of the department handling one or both?**

As discussed in the answers to Questions 3 and 11, a board benefits the overall regulatory operation and particularly the licensing and disciplinary process.

**10. Is there an optimum ratio between licensees, board size or public representation?**

The present composition of the Board, with three morticians, one crematory operator licensee, one cemetery owner, and one public member appears to be sufficient to handle the workload.

- 11. If a board's purpose includes protecting public welfare, would that consumer protection be handled better by the Attorney General's office than by a board? If yes, why? If not, why not? Who should be responsible for monitoring fraud within the profession or occupation.**

The relationship between the official handling consumer complaints and the consumer, who is most times, a relative of a recently deceased person, is a delicate one requiring judgment, sympathy, understanding, and trustworthiness. The Board asserts that a Board and administrative staff provide a better way to handle funeral industry consumer complaints because of the emotional character of these complaints. Further, it takes time and assistance from board members for staff to develop expertise to appropriately respond to consumer complaints and provide competent assistance in carrying out other board-related duties.

- 12. If boards have overlapping scopes of practice, should there be a third party to determine whether there is intrusion into the other's practices. If so, who should be the judge? If not, why not? Should each be allowed to operate on the other's turf without repercussions?**

The scope of practice of the funeral industry does not overlap with any other licensing board.

- 13. Should any board have the ability to limit use of certain terminology to only a licensee?**

The Board asserts that the terms "mortician", "funeral director", "crematory technician", and "crematory operator" are terms that indicate to the public that the person is knowledgeable and competent in his or her profession.