

BEFORE THE BOARD OF FUNERAL SERVICE
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.147.402 mortician) PROPOSED AMENDMENT,
application, 24.147.403 inspections,) ADOPTION, AND REPEAL
24.147.405 examination, 24.147.406)
federal trade commission regulations,)
24.147.501, 24.147.502, 24.147.504,)
and 24.147.505 licensing, 24.147.901)
sanitary standards, 24.147.902)
disclosure statement on embalming,)
24.147.903 transfer or sale of)
mortuary license, 24.147.2101)
continuing education requirements,)
24.147.2102 sponsors, 24.147.2301)
unprofessional conduct, the adoption)
of NEW RULE I mortuary branch)
establishment, and the repeal of ARM)
24.147.301 continuing education)
definitions, 24.147.503 conditional)
permission to practice, 24.147.506)
renewal of cemetery license,)
24.147.1501 branch facility,)
24.147.2108 and 24.147.2109)
continuing education, 24.147.2302)
through 24.147.2305 unprofessional)
conduct, and 24.147.2401 complaint)
filing)

TO: All Concerned Persons

1. On April 18, 2013, at 2:00 p.m., a public hearing will be held in room 471, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Funeral Service (board) no later than 5:00 p.m., on April 12, 2013, to advise us of the nature of the accommodation that you need. Please contact Cheryl Brandt, Board of Funeral Service, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394, Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdfnr@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

24.147.402 ORIGINAL MORTICIAN LICENSE - APPLICATION ~~(1) Any person applying to the board for permission to take the examination shall present to the board evidence in the form of:~~

(1) An applicant for licensure as a mortician shall submit a completed application form provided by the department, the application fee, and the following documents in order to receive permission to take the jurisprudence examination:

(a) a certified copy of the transcript of completion of 60 semester credit hours or, if courses are offered on a quarter calendar, 90 quarter credit hours sent directly to the board office from a college or university accredited by a regional accrediting agency recognized by the U.S. Department of Education;

(b) a diploma and certified copy of the final transcript, sent directly to the board office from an accredited a college of mortuary science accredited by the American Board of Funeral Service Education (ABFSE) or its successor, demonstrating an associate degree and credit hours obtained in addition to those obtained under (1)(a);

(c) properly a completed application internship agreement on a form furnished provided by the department; and

(d) a certified copy of the certification form verifying successful completion of the International Conference of Funeral Service Examining Board's Board ("Conference") examination sent directly to the board office from the Conference.

~~(2) All applications for licensure by the board will be considered nonroutine in nature and will be reviewed and approved by the board prior to issuance of the license.~~

(2) No credits used to satisfy the credit hours in (1)(a) may be used to satisfy the credit hours in (1)(b).

(3) A diploma and certified transcript demonstrating a baccalaureate degree from an ABFSE or successor accredited college of mortuary science will serve to meet the requirements of (1)(a) and (b).

(4) Upon submission of all required information and successful completion of the jurisprudence examination, mortician applicants shall qualify to receive a mortician intern license. In order to receive an unrestricted mortician's license, interns must submit an additional application on a form provided by the department and provide evidence of successful completion of the internship requirements as set forth in ARM 24.147.504.

(5) Applicants having served their internship in another state shall complete the application form for a mortician license and submit documentation of completion of an internship substantially equivalent to Montana internship requirements.

(6) Board staff may issue licenses in cases of routine applications. The board will review all complete nonroutine applications received by the board office at least three working days prior to the board meeting.

AUTH: 37-1-131, 37-19-202, MCA

IMP: 37-1-101, 37-19-302, 37-19-303, MCA

REASON: In addition to grammar and style changes intended to improve clarity, other amendments to this rule will help address confusion and clarify the education requirement, the timing of the jurisprudence examination as it relates to the internship license, and the board's direction to staff to process routine license applications.

First, the legislative history of 37-19-302, MCA, demonstrates a shift between more and less strict requirements. For example, language in the 1981 statute allowed experience to stand in lieu of education. In 1985, this experience equivalency was removed and language was added to emphasize the need to obtain post-secondary general education credits beyond those obtained toward an associate degree in mortuary science. Even since that attempt, the board has continued to interpret the statute variably; most recently, by demanding only an associate's degree without any other secondary education. The board determined that amending this rule is reasonably necessary to clearly describe the intent of having the greater amount of education rather than the lesser amount, and to clarify to applicants the board's licensing requirements, which the board asserts are necessary to provide a well-rounded education and increase professionalism among its regulated licensees.

Other changes are necessary to clarify the overall application process and timing of the jurisprudence examination to occur prior to internship. The board is specifying that transcripts and certification documents must come to the board office directly from the school or responsible entity, to align with current internal processes. Finally, the amendments are necessary to direct staff to process routine applications, help control board costs, and allow those applicants who present routine applications to begin work more quickly. The board is adding (7) to provide a deadline by which nonroutine applicants must submit their completed applications in order to be placed on the board agenda. This amendment is reasonably necessary to further streamline the board's meetings and licensure processes.

24.147.403 MORTUARY TRANSFERS, INSPECTIONS, AND TEMPORARY PERMITS ~~(1) An annual inspection fee as stated in ARM 24.147.401 shall be charged to each licensed mortuary and shall be included in the mortuary annual renewal fee.~~

~~(2) A mortuary shall be inspected by the board or its designees in accordance with subchapter 9 of these rules.~~

~~(3) A mortuary shall be inspected if its location has changed.~~

~~(4) The board shall be notified within 30 days prior to moving or opening a new mortuary so arrangements can be made for inspection prior to opening.~~

~~(5) Reinspection shall be made of a mortuary that does not meet the requirements of the board in ARM 24.147.901.~~

(1) Upon receipt of a completed application for a new mortuary license and accompanying fee, the department shall inspect the mortuary for compliance with board laws and rules.

(a) Except as provided in (3), a "new" mortuary, for the purposes of this rule, includes newly constructed mortuaries and existing mortuaries acquired by new owners, whether by sale or devise.

(b) Except upon issuance of a temporary license, the new mortuary may not operate until the board deems the mortuary and its operations to be in substantial compliance with board laws and rules after review of the application and inspection report.

(c) The applicant may apply for and receive a temporary license from the department provided there is no reason to deny the license under 37-1-316, MCA, or board rules defining unprofessional conduct. The mortuary may operate under the temporary permit until the board grants a license or issues an interim summary suspension order if warranted, or final order to deny it.

(d) The department inspector shall provide a written inspection report to the licensee in charge of the mortuary and to the board office.

(e) The licensee in charge of the mortuary shall submit to the board office a written response to all items of noncompliance no later than ten business days after the inspection.

(f) The board shall review all new mortuary applications, all inspection reports indicating noncompliance, and any responses to the inspection at the next regularly scheduled board meeting after the inspection. For good cause, the board may request a reinspection; the costs of which shall be paid by the applicant prior to issuance of a permanent license.

(2) A mortuary under new ownership shall comply with the notification provisions at ARM 24.147.903 and provide a signed statement of relinquishment of license from the previous owner.

(3) The owner of a mortuary may transfer a mortuary license to a different mortuary and maintain the same license number only when terminating services at the former mortuary, upon submission of an application for transfer with the new information pertaining to the mortuary and applicable fees.

(a) The same process for obtaining a temporary permit, inspection, and approval set forth in (1)(b) through (f) applies to applications for a mortuary transfer.

(b) In the case of license transfers, staff shall link the license history of the former mortuary location to the new mortuary location.

(4) The department shall conduct annual mortuary inspections with or without advanced notice for compliance with board laws and rules, following the same steps outlined in (1)(d) through (f), except that the screening panel will review reports of significant noncompliance referred to it by the board, and determine whether further investigation or disciplinary action is warranted.

AUTH: 37-1-131, 37-19-202, 37-19-403, ~~75-10-1006~~, MCA

IMP: ~~37-19-402~~, 37-19-403, 37-19-703, 75-10-1001, 75-10-1002, 75-10-1003, 75-10-1004, 75-10-1005, 75-10-1006, MCA

REASON: The board determined it is reasonably necessary to amend this rule throughout and address confusion among staff and licensees between license transfers, which are very limited in their nature, and other types of transactions regarding the sale and purchase or other acquisitions of funeral businesses. The new language will also distinguish the different types of facility transfers and assignments, the points in time at which the department will inspect a facility, the different types of inspections, and to whom the inspections apply, and will clearly set

forth a procedure for processing adverse inspection findings. Authority and implementation cites are amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

24.147.405 EXAMINATION (1) ~~The licensing examination shall be required of morticians is the national board examination~~ National Board Examination of the Conference of Funeral Service Examining Boards.

(2) ~~In and in addition, an applicant for licensure as a mortician or a mortician intern shall take and pass, with a grade of 75 percent or higher, a jurisprudence examination covering the statutes and rules under Title 37, chapter 19, MCA, pertinent portions of Title 46, chapter 4, MCA, relating to county coroner's duties, Title 50, chapter 15, MCA, relating to vital statistics and the rules of the Montana state Department of Public Health and Human Services covering registration of deaths, embalming, transportation, disposition of dead human bodies, and funeral directing.~~

~~(2) A grade of 75 percent must be obtained to pass the statutes and rules examination.~~

AUTH: 37-19-202, MCA

IMP: 37-19-302, 37-19-303, MCA

REASON: The board is proposing only grammar and style amendments to this rule to clarify that the examinations required for licensure apply to only morticians and not to crematory operators, crematory technicians, or cemetery permit holders. The amendments also clarify the board requires two separate examinations: a national examination and the jurisprudence examination.

~~24.147.406 FEDERAL TRADE COMMISSION REGULATIONS (1) A licensed mortician in Montana shall comply with all Federal Trade Commission (FTC) regulations governing the pricing of funeral services and funeral goods and the method of paying for funeral services, as defined in a manner and a form in compliance with Federal Trade Commission Funeral Industry Practice Rules, 16 CFR 453 (1997) which are hereby incorporated by reference. A copy of the written statement of compliance shall be kept by the mortuary for a period of three years. The FTC rules are available at the board office, 301 South Park, P.O. Box 200513, Helena, MT 59620-0513.~~

(1) For the purpose of defining unprofessional conduct, the board adopts and incorporates by reference the Federal Trade Commission (FTC) Funeral Industry Practice Rules, 16 CFR 453 (1997), known as "the funeral rule," which, in general, requires those who meet the FTC definition of "funeral provider" to furnish price information and make other affirmative disclosures to consumers. The FTC rules are available from the FTC web site at www.ftc.gov or at the board office at 301 South Park Avenue, P.O. Box 200513, Helena, MT 59620-0513.

(2) The "funeral rule" applies to any licensed person or licensed entity providing both "funeral goods" and "funeral services," as those terms are defined by

the federal regulations and apply to both pre-need and at-need funeral arrangements.

(3) Licensees shall immediately report to the board any citations the licensee receives from the FTC.

(4) Price lists and completed Statements of Funeral Goods and Services Selected shall be maintained and available for inspection for three years from the date of the arrangement conference, rather than one year as contemplated by the FTC.

AUTH: 37-1-136, 37-19-202, 37-19-403, MCA

IMP: 37-1-136, 37-19-403, MCA

REASON: The board is amending this rule to clarify that the FTC "funeral rule" applies to more licensees than just morticians. This clarification is necessary because a "funeral provider," as that term is defined in the federal regulations, includes anyone who sells funeral goods and funeral services and therefore may include cemetery permit holders selling opening and closings, or other burial-related merchandise, and crematory operators selling urns.

Further, rather than referring to the FTC rules as governing "pricing" and "method of paying" for funeral services, the amendments propose to describe more specifically the overall purpose of the "funeral rule." Incorporation of the rules by reference will assist licensees and the public to refer to the rules themselves to determine their scope and applicability. The board determined it is reasonably necessary to add (3) and require that licensees report to the board any FTC violations as unprofessional conduct. The board concluded that learning of these kinds of violations late, sometimes years after their occurrence, contributes to a difficult and inefficient disciplinary process.

The board is removing the substantive provision in (1) referring to "a copy of the written statement of compliance," instead clarifying in new (4) that the State's record retention requirement, unchanged at three years, is greater than that set forth in the FTC rules. Authority and implementation cites are amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

24.147.501 LICENSURE OF OUT-OF-STATE APPLICANTS (1) Upon submission of a completed application containing the affirmations in (2) and (3) of this rule and payment of the proper license fee, the board staff may issue a license to a person ~~who if,~~ at the time of application;

(a) the applicant holds a current, active license in good standing, as a funeral director, mortician or crematory operator, issued by the proper authority of any state. When a person applies for licensure under this provision, the applicant shall provide information from the other state(s), and the board shall determine whether the requirements for obtaining such other license(s) are substantially equivalent to or stricter than the requirements of Montana law, as listed in ARM 24.147.402 and 24.147.1114 and 37-19-302 and 37-19-703, MCA. in another state to practice under a funeral services scope of practice recognized in Montana;

(b) the applicant has a license based on standards in another state substantially equivalent to Montana; and

(c) there is no reason to deny the license under 37-1-137 and 37-1-316, MCA, or board rules defining unprofessional conduct, or for staff to determine the application to be nonroutine.

(2) ~~Verification~~ As provided by 37-1-304, MCA, the applicant shall affirm whether the applicant has requested verification of the applicant's current license or licenses in good standing shall be requested by the applicant to be sent directly to the board office from the all other state states in which the licensee holds or has ever held any type of professional or occupational license.

(3) "License" shall mean only those granted by other states under statutory provisions.

(4) A completed application form shall be required from the applicant to initiate consideration for licensing.

(3) The applicant shall affirm whether the applicant has been actively engaged in the practice during the period of licensure in another state. If not so actively engaged, the board may require the applicant, as part of a notice of proposed board action, to take continuing education or undergo supervised practice for a period of time to ensure competency.

(5) (4) All applicants for licensure under this rule shall be required to must pass a the Montana jurisprudence examination, ~~on Montana laws and rules, administered by the board.~~

AUTH: 37-1-131, 37-19-202, MCA

IMP: 37-1-137, 37-1-304, 37-1-316, 37-19-302, 37-19-703, MCA

REASON: The proposed changes will clarify the process set forth in 37-1-304, MCA, regarding licensing out-of-state applicants. Given the accessibility of other states' rules and laws, it is no longer necessary to require an applicant under these circumstances to provide copies. It is preferable that staff obtain accurate and current statutory or regulatory language setting forth the qualifications directly from the web site of the state in question. The board determined that adding the requirement of an active practice component for out-of-state applicants is necessary to ensure the applicant's current competency and further the public's protection. Implementation cites are amended to accurately reflect all statutes implemented through the rule.

24.147.502 INACTIVE STATUS AND ACTIVATION CONVERSION TO ACTIVE STATUS (1) A licensee person holding an individual license may ~~place the license on request~~ inactive status by either indicating on the renewal form that ~~inactive status is desired~~, or by informing the board office, in writing, that ~~an inactive status is desired~~, and paying the appropriate fee. ~~It is the sole responsibility of the~~ The inactive licensee to must keep the board informed as to of any change of address during the period of time the license remains on inactive status. Inactive licensees must pay the inactive renewal fee annually to maintain license status avoid expiration or termination of the license.

~~(a) A mortician, funeral director, crematory operator, or crematory technician who has maintained valid licensure in the state of Montana for a period greater than 49 years may request that their license be placed on inactive "emeritus" status. An inactive emeritus licensee will be exempt from payment of any fee for annual renewal of their inactive license; but all other provisions and procedures relating to inactive status and reinstatement to active status will apply. The board, at its discretion, may provide other recognition or distinction for emeritus licensees.~~

~~(2) A licensee may not practice any as a mortician, funeral director, intern, crematory operator, or crematory technician work in the state of Montana while the license is in an inactive status.~~

~~(3) Upon application written request and payment of the appropriate fee, the board staff may activate approve a request to convert an inactive license to an active status if the applicant does each of the following:~~

~~(a) signifies to the board, in writing, that upon issuance of the active license, the applicant intends to be an active practitioner in the state of Montana;~~

~~(b) (a) presents satisfactory evidence that the applicant has attended six hours of approved continuing education which comply with the continuing education rules of the board for each year or portion of a year that licensee has been inactive, not to exceed 12 hours;~~

~~(c) remains the same, but is renumbered (b).~~

~~(d) (c) successfully completes a Montana state rule jurisprudence examination, if the applicant has been on inactive status for more than five years.~~

~~(4) The board may issue a notice of proposed board action to grant conditional permission, not to exceed one year, allowing the applicant to practice while obtaining the required continuing education hours set forth above. No extension of the one year conditional practice permission shall be granted a probationary license to a practitioner who has been inactive for more than five years, and require up to one year of supervised practice by a licensed mortician, including the embalming and preparation of at least five bodies.~~

AUTH: 37-1-131, 37-1-319, 37-19-202, MCA

IMP: 37-1-319, MCA

REASON: The board is amending the title and text of this rule to prevent confusion between converting inactive licenses to active status and what "reactivate" means in 37-1-141, MCA, regarding lapsed and expired licenses. The board determined it is reasonably necessary to distinguish between individual and mortuary licenses by use of the term "person" in (1), because licensed facilities are not subject to continuing education requirements.

The board is clarifying in (1) that inactive licensees must annually submit an inactive status renewal fee to avoid license expiration or termination, since inactive status does not permit actual practice. The board is eliminating (1)(a) regarding "emeritus" status, because the status is not statutorily recognized or authorized.

The board proposes to delete (3)(a), because the board cannot require that licensees actual practice in their licensed fields. In (3)(b), it is unnecessary to internally define "continuing education" as the term is substantively defined elsewhere.

The board is deleting the conditional permission language from (4) to align with the repeal of ARM 24.147.503 in this notice. The board determined it is reasonably necessary to clarify in (4) that licensees converting to active status after five years inactive may be issued a probationary license to include supervised practice. The board has a duty to ensure active licensees are qualified to safely perform their professions and has concluded that a period of inactivity greater than five years may equate to a loss of competency that this amendment will help address. The remaining changes will improve grammar and clarity throughout the rule.

24.147.504 MORTICIAN INTERNSHIP ~~(1) The registered intern must complete all of his internship in the state of Montana and must report any change of sponsoring mortician within ten days to receive credit towards the 12 months internship.~~

(1) An applicant for a mortician internship shall make application as provided at ARM 24.147.402. To qualify for a regular mortician's license, the intern shall complete the requirements set forth in this rule. The board shall recognize internships served in other jurisdictions that are substantially equivalent to the internship requirements in this rule.

~~(2) To qualify, an~~ An intern must be a full-time an employee at a licensed mortuary under the supervision of a licensed mortician and assist in the complete funeral (embalming, dressing, arrangement of funeral) of at least 25 bodies over a period of at least one year, but no more than three years after passing the jurisprudence examination.

~~(a) (3) At least In order to receive credit, an intern must serve for a continuous six months -month period of the internship period must be served under the supervision of the same licensed mortician.~~

~~(3) An intern may apply to the board for special consideration~~ The board may waive this requirement in cases involving closure of firm, hardship due to illness or death of supervising mortician, illness of intern, or such other emergency ~~that may occur.~~

~~(4) Internship must be completed within three years of passing the examination.~~

(4) The intern and supervisor each shall report to the board any change of sponsoring mortician within ten days.

~~(a) (5) If after a three-year period~~ three years from passing the jurisprudence exam, the internship has not been completed, the intern may apply for reexamination of state law and rules, and upon passing, begin ~~his~~ the internship anew.

~~(b)~~ No credit will be given for prior time served in an internship.

~~(5) (6) An intern mortician may perform all the duties and functions of a licensed mortician, as allowed and directed by the supervising mortician, who remains responsible.~~ Despite the supervising mortician having responsibility for the professional actions of the intern, as prescribed in Title 37, chapter 1, MCA, the board may take action to revoke, suspend, or discipline an intern license.

~~(a) "Supervision" has the meaning set forth in 37-19-101, MCA, and means the extent of oversight required in the judgement of the supervisor, considering the~~

circumstances of that a mortician believes an intern requires, based upon the intern's training, experience, judgment judgment, and professional development of the intern. At a minimum, the term requires the supervisor, or in limited absences of the supervisor, a delegated licensed mortician to be available for consultation on all client-related activity performed by the intern, and requires direction, observation, and evaluation on a regular basis.

(b) Failure to appropriately supervise an intern may result in disciplinary action against the supervising mortician.

AUTH: 37-1-131, 37-19-202, MCA

IMP: 37-1-131, 37-19-101, 37-19-302, 37-19-304, MCA

REASON: The title is clarified to demonstrate that the only authorized internship is that of a mortician's internship. The board is amending this rule throughout for clarification of internship requirements and improved grammar and style, including replacing gender-specific terms with gender-neutral language.

The board determined it is reasonably necessary to amend (1) to allow recognition of internships served in other jurisdictions. The 2003 Legislature enacted Senate Bill 109 which deleted the requirement that a mortician's internship be completed entirely in Montana.

The board is amending (2) and (5) to address confusion by clarifying that the examination referred in the internship process is the jurisprudence examination. The board is deleting from (2) the "full-time" employment requirement to allow part-time employees to qualify for internships. The board recognizes that in a rural state where business may fluctuate greatly, employers may wish to hire employees at less than full-time over the three-year maximum internship period.

The board is amending (3) to clarify that the board intends for the six-month period under a single mortician supervisor to be a continuous period with no break in service. In conjunction with allowing part-time interns, the board concluded that requiring interns to serve an uninterrupted six months will enhance continuity in the internship and help ensure the sponsor is able to adequately ascertain the true skill level of the intern.

The board is amending (4) to require both the intern and the supervisor to notify the board of a change in sponsor. The board believes both are responsible for internship record accuracy and to ensure that internship requirements are met. The board notes that interns tend to be mobile, and as such may leave the state and the internship abruptly, and may fail to inform the board of the change.

The board determined it is reasonably necessary to amend new (6) by clarifying that failure to supervise an intern constitutes unprofessional conduct and that the board reserves the right to take action against the intern's license. The board concluded that the current rule language seems to disavow this authority of the board to regulate licensees in the interest of protecting the public. The board is amending (6)(a) to specify the board's expectations regarding what constitutes adequate supervision to provide an intern proper experience and ensure that a qualified licensee is available to assist the public at all times.

Implementation cites are amended to accurately reflect all statutes implemented through the rule.

24.147.505 RENEWALS (1) ~~Renewal notices will be sent~~ The department will renew licenses as specified in 37-1-141, MCA, ARM 24.101.408, 24.101.413, and 24.101.414.

~~(2) All licenses, whether individual or establishment, with the exception of cemeteries, must be renewed pursuant to 37-1-141, MCA. The renewal date is set by ARM 24.101.413.~~

~~(3) Renewals that are in any manner incomplete on receipt by the department will be returned to the licensee for completion and resubmission. To be considered complete, the renewal must:~~

~~(a) be accompanied by the appropriate renewal fee. Checks returned to the department for any reason will be returned to the licensee for payment. The license will be considered not renewed until proper payment is received;~~

~~(b) include an affidavit of continuing education if required for the license being renewed as specified in ARM 24.147.2101; and~~

~~(c) be accompanied by any other material or documentation the board may require for renewal as identified on the renewal notice.~~

~~(4) Completed renewals submitted to the board after the date specified in ARM 24.101.413 shall be considered late and subject to a late penalty fee as specified in ARM 24.101.403.~~

~~(5) The provisions of ARM 24.101.408 apply.~~

(2) The renewal date for cemeteries is a five-year period set by 37-19-814, MCA. A "five-year period" means every five years beginning on July 1, 2000. The department will not prorate the application or license fee of newly issued licenses obtained prior to the expiration of a five-year period.

AUTH: 37-1-141, 37-19-202, 37-19-301, MCA

IMP: 37-1-141, 37-19-301, 37-19-814, MCA

REASON: The board is amending this rule to avoid unnecessarily repeating or inadvertently misquoting any of the requirements found elsewhere in statute and rule pertaining to renewals. It is necessary to define "five-year period" regarding cemetery renewal licenses to clarify that the five-year period is not a "rolling" five-year period that begins for each new license, but rather a static five-year period. The amendment further specifies that the department does not prorate fees paid, even if paid just prior to the beginning of a new five-year period. Licensure fees must be commensurate with the costs of processing the particular license, and it is irrelevant at what point in time they are received during a renewal period. Authority and implementation cites are amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

24.147.901 MORTUARY OPERATION SANITARY STANDARDS - PREPARATION ROOM (1) The A preparation room shall be maintained in a clean and sanitary condition at all times- and meet the following minimum requirements:

~~(2) The floors and walls of such room shall have tile, concrete or other nonporous materials covering the floor from wall to wall so that the preparation room may be kept in a sanitary condition at all times.~~

~~(3) Preparation rooms shall contain only the articles, facilities and instruments necessary for the preparation of dead human bodies.~~

~~(4) Such preparation room shall be equipped with proper sewerage, waste disposal and drainage facilities and systems.~~

~~(5) The doors and windows of the preparation room shall be constructed so as to obstruct any view from the outside, properly screened and must provide proper ventilation for the room.~~

~~(6) All tables, hoppers, sinks, receptacles, instruments and other appliances in such rooms shall be thoroughly cleansed and disinfected immediately at the conclusion of each operation.~~

~~(7) The preparation room shall be strictly private and clearly so labeled on each door by a sign reading "private," or "authorized personnel only" or "no admittance." No one shall be allowed in the room while a dead human body is being prepared except persons authorized by a licensed mortician.~~

~~(8) Waste and refuse shall be disposed of in a sanitary manner. Infectious wastes and sharps must be stored for disposal and disposed of in accordance with Title 75, chapter 10, part 10, MCA.~~

(a) tile, concrete, or other nonporous, washable material covering the walls and floor, from wall-to-wall, in a manner to allow cleaning and disinfection of these surfaces;

(b) no articles other than those necessary for the preparation of dead human bodies;

(c) privacy coverings on doorways and windows that prevent viewing of the room or its contents;

(d) restricted access to persons authorized by a licensed mortician and a clearly labeled entrance as "private," "authorized persons only," or "no admittance";

(e) proper ventilation in accordance with Occupational Safety and Health Administration's (OSHA) Formaldehyde Standard 29 CFR 1910.1048;

(f) tables, hoppers, sinks, receptacles, instruments, or other appliances thoroughly cleansed and disinfected immediately at the conclusion of each preparation;

(g) infectious wastes properly labeled and disposed of through a commercial disposal entity, in accordance with Title 75, chapter 10, part 10, MCA;

(h) preparation room effluents discharged via a sewage connection to publicly owned treatment works (POTW), or, if not connected to a POTW, a groundwater discharge permit, or evidence from an applicable county regulator or state Department of Environmental Quality that a groundwater discharge permit is not required; and

(i) hand washing facilities and signs requiring all personnel to wash hands during and after handling any nondisinfected object or material.

(2) The preparation of human remains for final disposition, such as washing, disinfecting, embalming, removing hazardous implants, dressing, and casketing must only be performed in a preparation room of a licensed mortuary or mortuary branch with a preparation room.

(3) Unless requested by a consumer making the initial contact to make funeral arrangements at a place other than the mortuary or mortuary branch, funeral arrangements, both pre- and at-need, may only be performed in a licensed mortuary or mortuary branch.

(4) The mortuary shall designate a mortician-in-charge of the mortuary and within ten days provide written notice to the board of any change in the designation.

(5) The mortuary shall display the facility and personal licenses of licensed staff in plain view for members of the public to view. Personal addresses on licenses may be covered.

(6) The mortuary shall obtain and maintain for inspection all applicable local, state, and federal permits or licenses, including, but not limited to, those relating to business, zoning, building codes (including plumbing, electrical, and mechanical), air quality, and water quality.

(7) The mortuary shall conduct staff training in and require the handling and disposal of all medical, hazardous, or infectious waste in accordance with federal, state, and local laws and regulations, including, but not limited to, the OSHA Bloodborne Pathogen Standard, 29 CFR 1910.1030; Hazard Communication Standard, 29 CFR 1910.1200; Personal Protective Equipment Standard, 29 CFR 1910.132; U.S. Department of Transportation Hazardous Material Regulations, 49 CFR Part 171; and Hazardous Waste Management and Infectious Waste Management Acts, Title 75, chapter 10, parts 4 and 10, MCA.

AUTH: 37-19-202, 37-19-403, 75-10-1006, MCA

IMP: 37-19-101, 37-19-402, 37-19-403, 75-10-421, 75-10-1001, 75-10-1002, 75-10-1003, 75-10-1004, 75-10-1005, 75-10-1006, MCA

REASON: The board is amending the title of this rule to reflect the broader content of the rule following the proposed amendments. The board determined it is reasonably necessary to reorganize the bulk of this rule, while generally maintaining the content in (1). Following amendment, the rule may serve as a checklist for a preparation room and will reflect specific requirements of and citations to applicable federal and state regulations to facilitate practitioners and board staff in more intelligently and purposefully complying with such provisions. Recognizing that public health authorities agree that hand washing is a significant method of controlling the spread of infectious disease, the board is adding a new provision on hand washing at (1)(i).

The board is adding (2) to specify what the board has reasonably inferred from the statutes on licensure and regulation of mortuaries: that preparation of human remains for final disposition must take place in a licensed preparation room of a licensed facility. The board is extending this so-called "bricks and mortar" requirement to the sale of at-need and pre-need funeral arrangements in new (3). The amendment provides an exception for physical limitations of certain consumers, while maintaining the prohibition against in-person or door-to-door solicitation of funeral sales.

It is reasonably necessary to add (4) and delineate a current application requirement to declare a mortician-in-charge, and further specify the need to notify the board of change in that position. This addition is necessary to further implement

37-19-402, MCA, ensuring that mortuaries are operated by only licensed morticians or funeral directors, and establish a contact person who is knowledgeable of the operations.

The board is adding (5) to set forth in rule the requirement to post facility and personal licenses. This requirement is a current inspection requirement for all cemeteries and crematories and following amendment, the mortuary rules will parallel the crematory and cemetery rules in this area.

The board is amending this rule to enhance public protection regarding facility safety and hazardous waste. New (6) is added to specify the board's intent that licensed mortuaries obtain and maintain for inspection all applicable local, state, and federal licenses and permits. The board is adding (7) to require mortuary staff training on the handling and disposal of medical, hazardous, and infectious waste in accordance with applicable laws and regulations.

Authority and implementation cites are amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

24.147.902 DISCLOSURE STATEMENT ON EMBALMING (1) ~~A licensed mortician shall include a statement on written contract materials intended for the public as to the conditions under which embalming is required, which statement shall be in accordance with Department of Public Health and Human Services rules on embalming. As required by the FTC Funeral Rule, all funeral providers shall add the following statement next to the price for embalming on the funeral provider's General Price List (GPL):~~

~~(2) The following language shall be included with the requirement of (1): "Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement that does not require you to pay for it, such as direct cremation or immediate burial."~~

(2) Except as authorized by a state or local health officer, health regulations set forth at ARM Title 37, chapter 116, part 1, require either refrigeration or embalming after certain periods of time during which the body will be en route during transportation. A funeral provider that has refrigeration must give the consumer the option of either refrigeration or embalming.

AUTH: 37-19-202, MCA

IMP: 37-19-315, MCA

REASON: The FTC requires this verbatim statement on embalming, which presently omitted the term "certain." The board is amending (1) to follow the FTC suggestion that the statement be placed on the General Price List, rather than on "written contract materials," which is vague. The amendment alerts practitioners and board staff of the FTC requirements. The board is amending (2) to address the requirement at 37-19-315, MCA, for the board to provide by rule, "complete information regarding the need for embalming."

24.147.903 TRANSFER NAME CHANGE, CLOSURE, OR SALE OF MORTUARY LICENSE FACILITY (1) Upon the transfer or sale of a mortuary, the original license number may be retained by the mortuary facility upon written request to the board.

(1) In addition to the provisions of ARM 24.147.403 applicable to mortuaries, a licensee or manager in charge of a mortuary, crematory, or cemetery shall notify the board office within ten days of any change of a business name, closure, relocation, sale, or other change in ownership. When there is a change of ownership, the existing license is void and a new license must be obtained from the board.

~~(2) Whenever ownership is transferred outside existing ownership of any mortuary, cemetery or crematory, the mortuary, cemetery or crematory shall notify the board. A change in ownership, for purposes of this rule, shall be deemed to occur whenever more than 50 percent of the equitable ownership of a mortuary facility is transferred in a single transaction, or in a related series transaction, or in a related series of transactions to one or more persons, associations, or corporations. The notice shall specify the address of the principal offices of the mortuary, and whether it will be changed or unchanged, and shall specify the name and address of each new owner and the stockholders.~~

~~(3) Notice of such a~~ A new owner of a facility shall publish, for a one-week period, a notice of the change of ownership shall be published in a newspaper of general circulation in the county in which the mortuary facility is located, within 30 days of the change of ownership. The notice shall specify contain only the following information under the title "Notice of Change of Ownership":

(a) the name and physical address of the principal offices of the mortuary facility, whether particularly noting if the name and physical address have changed;

(b) or unchanged, and shall specify the name and address of each new owner and each stockholder owning more than 5 percent of the stock of each new owner. if sole proprietor or partnership;

(c) if the new owner is a corporation, the name of the corporation, its registered agent, and registered agent's address, if different than the physical address; and

(d) the name of the licensee in charge.

AUTH: 37-19-202, 37-19-403, MCA

IMP: 37-19-402, 37-19-403, MCA

REASON: The board is amending (1) to clearly delineate the requirements for all licensed facilities to notify the board office within ten days of facility name change, closure, or sale. The board determined that receiving timely information on these changes will assist the board in maintaining accurate data used in the inspection and regulation of the licensed facilities. The board is amending (1) to no longer allow the same license number to be transferred between facilities. This amendment will implement 37-19-402(6), MCA, providing that mortuary licenses can only be transferred if the proprietor of the facility terminates services at one facility, and then commences services at a different facility.

The board determined it is reasonably necessary to amend this rule and clarify that the notice of new facility ownership must be published for seven days. The board concluded that a week-long publication would provide the public with adequate, timely notice of such a change. The board is deleting the requirement that the notice contain information about the names and addresses of stockholders as it is overly burdensome and lacks substantial relation to public health, safety, or welfare. Instead, the rule is amended to require information that consumers may find useful and that allows the opportunity to make further inquiry.

Implementation cites are amended to accurately reflect all statutes implemented through the rule.

24.147.2101 CONTINUING EDUCATION REQUIREMENTS (1) ~~The basic requirement for continuing education shall be completion of~~ Morticians with active licenses, beginning with their first full year of licensure, shall complete a minimum of 12 clock hours of approved continuing education in a two-year period, beginning July 1, with a maximum carry-over from one year to the next of six hours minimum of three hours addressing the FTC funeral rule, federal or state regulations governing safety and sanitation of funeral services practice, board rules governing funeral trusts, or funeral services ethics.

~~(2) Each licensee in this state shall sign an affidavit stating that he/she has completed a minimum of six clock hours of continuing education courses, which affidavit shall be submitted as a part of his or her renewal application.~~

~~(a) (2) Compliance with the requirements of continuing education is a prerequisite for license renewal as evidenced by the renewal applicant's affirmation on his or her renewal form, subject to random audit.~~

~~(3) Hours of continuing education credit may be obtained by attending and participating in continuing education courses, workshops, seminars or other activities meeting the requirements herein.~~

~~(4) (3) The Except as provided in ARM 24.147.2102, the board/staff will not preapprove continuing education programs courses or sponsors. Qualifying criteria for continuing education are specified in these rules. It is the responsibility of the licensees to select quality programs that contribute to their knowledge and competence which also courses which meet these qualifications the criteria set forth in this rule.~~

~~(a) (4) The To be approved, continuing education program courses must meet the following criteria:~~

~~(i) (a) The activity must have significant intellectual or practical content. The activity must as its primary objective the protection of the health, safety, and welfare of the public, and deal primarily with substantive funeral service issues. In addition, the board may accept continuing education activities from other professional groups or academic disciplines if the licensee demonstrates that the activity is substantially related to his or her role as a mortician. A continuing education program is defined as a class, institute, lecture, conference, or workshop. The following types of continuing education courses must require passage of a test following completion of the course: home study, cassette, videotape or activity delivered by other means the scope of practice, professional conduct, or ethical obligations of the license held. The board shall not allow credit for courses where the principal purpose of the~~

course is to promote, sell, or offer goods, products, or services to funeral providers, or to promote the personal interests of the licensees;

~~(ii) (b) The activity itself must be conducted or written by an individual or group qualified by practical or academic experience; and~~

~~(iii) (c) All acceptable continuing education courses must provide the licensee with documentation of successful program completion and attendance, containing at least the following information including:~~

~~(i) full name and qualifications of the presenter presenter;~~

~~(ii) title of the presentation attended;~~

~~(iii) number of hours and date of each presentation attended;~~

~~(iv) name of sponsor; and~~

~~(v) description of the presentation format.~~

~~(b) Implementation for continuing education shall be as follows:~~

~~(i) One continuing education credit shall be granted for each hour of participation in the continuing education activity. A maximum of three credits per year by cassette, videotape or tested home study will be allowed.~~

~~(ii) No continuing education is required for morticians renewing their license for the first time.~~

~~(5) The board may accept hours from other organizations not listed in ARM 24.147.2102 if the course meets the criteria in (4).~~

~~(6) Funeral service board members may receive continuing education credit by attending a regularly scheduled board meeting.~~

~~(7) Licensees may receive continuing education credit by attending a regularly scheduled board meeting.~~

~~(8) Licensees may earn up to three hours per year by self-study, audio, video, internet-based, or other activity as long as the licensee passes a test on the materials as evidenced by a certificate of completion.~~

~~(iii) (9) The board will may randomly audit ~~40~~ ten percent of the licensed morticians licenses held by persons subject to the continuing education requirement each year and require. Audited the selected licensees must to provide copies of completion certificates to the board as verification of compliance ~~by the renewal deadline date.~~~~

~~(A) The board will review these audit reports within six months of their receipt.~~

~~(B) Those not receiving notice from the board regarding their continuing education should assume satisfactory compliance.~~

~~(C) (10) Licensees found to be in noncompliance with the requirement will be asked to submit to the board for approval a plan to complete the continuing education requirements for licensure are subject to disciplinary action against their licenses.~~

~~(D) Prior to the next consecutive year's license renewal deadline, those licensees who were found to be in noncompliance will be formally reviewed to determine their eligibility for license renewal. Licensees, who at this time have not complied with continuing education requirements, will not be granted license renewal until they have fulfilled the board-approved plan to complete the requirements.~~

~~(E) Notices will be considered properly mailed when addressed to the last known address on file in the board office.~~

~~(F) No Licensees may not apply continuing education hours used to complete delinquent continuing education plan requirements for licensure may be used to meet the continuing education requirements for the next continuing education reporting period.~~

~~(iv) if a licensee is unable to acquire sufficient continuing education credits to meet the requirements, he or she may request a waiver. All requests for waiver will be considered by the Board of Funeral Service and evaluated on an individual basis.~~

(11) Upon request of a licensee, the board may grant a waiver for extenuating circumstances of certified illness or undue hardship.

~~(v) (12) It is the responsibility of the licensee to establish and shall maintain detailed records documentation of completion of continuing education compliance (in the form of programs and documentation of attendance) for a period of two years following submission of a continuing education report the renewal cycle in which the hours were reported.~~

~~(5) It is the responsibility of each licensee to finance his or her costs of continuing education.~~

(13) Continuing education credits required by disciplinary order shall not be used to satisfy the biannual requirement.

AUTH: 37-1-319, 37-19-202, MCA

IMP: 37-1-131, 37-1-306, 37-1-319, MCA

REASON: The board is amending this rule throughout to eliminate wordiness and redundancy, eliminate passive voice, and to better organize and simplify the board's continuing education (CE) requirements for morticians. Further amendments add a specific date for the beginning of the audit cycle and eliminate CE carryover to enhance simplicity and effectiveness of the board's random CE audit procedures.

The board is replacing the term "credit" throughout for "hour" as the definition of "credit" as an hour is being deleted from (4)(b)(i). The board is maintaining the new licensee CE waiver from former (4)(b)(ii). A required minimum amount of hours in specific topics, having the greatest impact on consumer safety and welfare, is added to increase the knowledge of these areas by the licensees. The board is deleting (4)(b)(iii)(D) and clarifying renewal provisions in (2), following a department determination that unless the screening panel determines reasonable cause exists to infringe upon a license and the department provides a licensee appropriate notice and opportunity for a hearing, license renewals must be processed.

Former (3) is deleted because its content is superfluous compared to the specific description of course content in new (4). New (3) and (4) are amended to acknowledge that the board does preapprove certain providers of CE courses as long as the coursework meets the content specified by the board. The board intends to narrow the scope of acceptable course content in the amendments to (4) and tie it to the scope of practice as it impacts the public. The board is relocating portions of (4)(a) and (b) regarding method of delivery to new (8), and provisions allowing other organizations to sponsor CE to new (5).

The board is proposing new (6) and (7) to recognize that material covered at a board meeting may meet the content criteria for acceptable CE, but allowing board discretion in approval of such hours. New (8) adds a verification component for claiming self-study hours.

In (9), the board is changing "will" to "may" to allow the board the discretion to suspend an audit if necessary. The time limit for the board to review the audits is deleted because the board reviews such materials at the next regularly scheduled meeting and may table to review materials, which depending on the cooperation of the licensee and the board meeting schedule, may exceed six months. The board is amending the rule further by repealing provisions that allowed an extension to comply with CE, and instead defining the failure to comply with CE as a professional obligation and measure of continuing competency.

The board is proposing new (13) to prohibit "doubling" up on CE hours that are ordered. All references to making renewal contingent on submission of CE certificates are deleted under the prohibition of such practice at 37-1-131(4)(d), MCA. The board is amending former (4)(b)(iv), now new (11), to maintain the board's ability to grant a waiver, but specifying criteria the board will apply in granting waivers to fairly defend discretionary decision-making. Former (5) is deleted as ambiguous and not necessary to clarify that the board does not pay for a licensee's continuing education.

Implementation cites are amended to accurately reflect all statutes implemented through the rule.

24.147.2102 SPONSORS (1) The board will recognize courses, programs or other continuing education activities sponsored by Unless disqualified by action of the board, courses offered by the following providers are approved for continuing education credit:

- (a) Montana Funeral Directors Association (MFDA);
 - (b) Selected Independent Funeral Homes (SIFH);
 - (c) National Funeral Directors Association (NFDA) and state chapters;
Independent Funeral Directors Association (IFDA);
 - (d) Federated Funeral Directors of America, (FFDA);
National Foundation of Funeral Service;
 - (e) Montana Coroner's Association;
 - (f) Order of Golden Rule;
 - (g) Montana Department of Justice coroner's training programs;
Montana Funeral Services, Inc. (MFSI) and funeral industry supplier
programs.
 - (h) American Board of Funeral Service Education (ABFSE) accredited
mortuary science college courses;
 - (i) International Conference of Funeral Service Examining Boards (the
Conference);
 - (j) International Cemetery, Cremation, and Funeral Association (ICCFA); and
 - (k) Cremation Association of North America (CANA).
- (2) All other programs must meet the criteria established in ARM
24.147.2101 as determined by the action of the board.

AUTH: 37-1-319, 37-19-202, MCA
IMP: 37-1-306, MCA

REASON: The board determined it is reasonably necessary to add ABFSE and ICFSEB as sources of providing acceptable continuing education to provide a diversity of continuing education resources among organizations that are not formed by professional business associations. ICCFA and CANA represent the crematory industry and should also be included. The board is further amending the rule as the National Foundation of Funeral Service merged with NFDA in 1997 and now operates as the Funeral Service Foundation, which does not offer continuing education courses. Additionally, MFSI and IFDA are no longer in existence.

24.147.2301 UNPROFESSIONAL CONDUCT (1) remains the same.

(a) solicitation of dead human bodies by the licensee, ~~his~~ the licensee's agents, assistants, or employees, whether such solicitation occurs after death or while death is impending; ~~providing,~~ that this shall not be deemed to prohibit general advertising;

(b) remains the same.

(c) employment directly or indirectly of any apprentice, agent, assistant, employee, or other person; ~~on part~~ part- or ~~full-time~~ full-time, or on commission; for the purpose of calling upon individuals or institutions for solicitation of dead human bodies for a particular mortuary, mortician, or crematory;

(d) the direct or indirect payment or offer of payment of a commission by the licensee, ~~his~~ the licensee's agent, assistants, or employees for the purpose of securing business for that particular mortuary, mortician, or crematory; provided however, that compliance with a state pre-need law shall not constitute a violation thereof;

(e) remains the same.

(f) allowing the licensee's license number to be placed on a death certificate or any other official form of any dead human body, as the mortician or funeral director, if the licensee did not prepare the body or supervise the final disposition of that body;

(g) using any funeral merchandise previously used, without informing a new consumer or person selecting and/or paying for the use of the merchandise, that the merchandise has been used;

(h) and (i) remain the same.

(j) violation of any state law or municipal or county ordinance or regulation affecting the handling, custody, care, transportation, or final disposition of dead human bodies;

(k) and (l) remain the same.

(m) violation of applicable statutes or regulations of the state of Montana or any other state involved with the ~~pre-arrangement~~ prearrangement and/or ~~pre-financing~~ prefinancing of a funeral;

(n) discriminating in services because of race, creed, color, national origin, or medical condition;

(o) remains the same.

- (p) permitting ~~non-licensed~~ nonlicensed personnel to make arrangements for a funeral;
- (q) personnel of a mortuary, crematory, or cemetery whose services are desired shall not recommend auxiliary services or funeral goods, or deprive the consumer the freedom of choice for such services or funeral goods;
- (r) removing or possessing dental gold, dental silver, or any other personal effects, from deceased persons without specific written permission of the authorizing agent;
- (s) attaching, detaining, claiming to detain, or failing to release any human remains or human cremated remains for any debt or demand; or upon any pretended lien or charges upon delivery of authorization for release of remains;
- (t) remains the same.
- (u) failure to comply with statutory or board requirements for pre-need or prepaid arrangements, agreements, or trusts; or failure to disclose any material facts regarding pre-need or prepaid arrangements, agreements, or trusts; or
- (v) in circumstances where there is conflict in direction provided by authorizing agents of equal rank, it shall be considered unprofessional conduct for a licensee to proceed without requiring the parties to either come to agreement, or submit the matter for judicial resolution of the conflict; or
- (w) removal of, embalming, or cremating a dead human body prior to proper authorization from a county coroner or state medical examiner, when the licensee has information connecting crime or violence to the cause of death.

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-19-202, MCA
IMP: 37-1-136, 37-1-316, 37-1-319, MCA

REASON: The board determined it is reasonably necessary to relocate the substance of ARM 24.147.2302 to (1)(w) in this rule to set forth a complete list of unprofessional conduct at a single location. The board is repealing ARM 24.147.2302 as two of the statutes previously implemented, 37-19-311, MCA, and 37-19-404, MCA, were repealed in 1995, and the remaining implemented statute is 37-1-136, MCA, authorizing the board to adopt rules specifying grounds for disciplinary action, which is better set forth in this rule.

Implementation cites are amended to accurately reflect all statutes implemented through the rule.

4. The proposed new rule provides as follows:

NEW RULE I MORTUARY BRANCH ESTABLISHMENT (1) A licensed mortuary may operate a branch establishment that meets all of the criteria of a "mortuary" as defined in 37-19-101, MCA, except that the branch mortuary is not required to have a visitation room or preparation room.

(2) If a branch mortuary has no preparation room, no preparation of dead human bodies may occur there and the only authorized activities that may occur include the making of at-need and pre-need funeral arrangements, viewing, and funeral services.

(3) Except as stated in this rule, a branch mortuary is otherwise subject to the same requirements as that of a mortuary.

AUTH: 37-1-131, 37-19-202, MCA
IMP: 37-19-101, MCA

REASON: The board is adopting this new rule to more appropriately locate the substantive provisions of ARM 24.147.1501, which is proposed for repeal in this notice. The new rule will clarify the relationship between a mortuary and its branch, and the purpose of and authorized activities allowable in a branch mortuary. The new rule will also specify that this branch facility, like a mortuary, is subject to the same types of licensure requirements.

The board notes that the statutory definition of "branch establishment" neither prohibits nor requires the facility to have either "visitation" or "preparation" rooms, which are terms used in the statute, and therefore the rule will not prohibit embalming in a branch mortuary.

5. The rules proposed to be repealed are as follows:

24.147.301 CONTINUING EDUCATION DEFINITIONS found at ARM page 24-13519.

AUTH: 37-1-319, 37-19-202, MCA
IMP: 37-1-306, MCA

REASON: The board is repealing this rule and relocating the substance of (1)(a) through (c) in the continuing education rule, ARM 24.147.2101. These terms are not repeatedly used throughout the board rules, and are more appropriately defined within the context of the single rule in which they are used. The term "inactive practitioner" is self-explanatory and is further defined in ARM 24.147.502. Subsection (1)(e) is being stricken for the reasons set forth for the repeal of ARM 24.147.503.

24.147.503 CONDITIONAL PERMISSION TO PRACTICE WHILE ON INACTIVE STATUS found at ARM page 24-13565.

AUTH: 37-19-202, MCA
IMP: 37-19-316, MCA

REASON: The board is repealing this rule because the implemented statute, 37-19-316, MCA, was repealed in 1995. Since a license is either "active" or "inactive," the emergency circumstances anticipated in this rule may only be addressed by a licensed practitioner or one who qualifies to convert from inactive to active status licensure.

24.147.506 RENEWAL OF CEMETERY LICENSE found at ARM page 24-13566.

AUTH: 37-19-814, MCA
IMP: 37-19-814, MCA

REASON: The board is repealing this rule to avoid unnecessarily repeating or inadvertently misquoting any requirements for renewals found elsewhere in statute and rule. The substantive portion of the rule regarding cemetery renewal, which deviates from the general renewal requirements for other licensees is further explained at ARM 24.147.505.

24.147.1501 BRANCH FACILITY found at ARM page 24-13721.

AUTH: 37-1-131, 37-19-202, MCA
IMP: 37-19-827, 37-19-828, 37-19-829, MCA

REASON: The board is repealing this rule and incorporating its substance into proposed New Rule I, Mortuary Branch Establishment. The board is updating language to align with definition of "branch establishment" at 37-19-101(5), MCA, and amending the title as there is no reference to a branch facility in subchapter nine.

24.147.2108 EXCEPTIONS - NOT ENGAGING IN THE PRACTICE OF FUNERAL SERVICE found at ARM page 24-13904.

AUTH: 37-1-131, 37-1-319, 37-19-202, MCA
IMP: 37-1-306, MCA

REASON: The board is repealing this rule that provides that inactive status licensees are exempt from continuing education requirements. The board determined that this rule contains an inaccurate definition of the "practice of funeral service," which is set forth in statute and unnecessary to be repeated in rule. The obligation to obtain continuing education is clarified to be that of "active" licenses in proposed amendments to ARM 24.147.2101. The board is clarifying the continuing education exemption by setting forth specific conditions licensees must meet to convert to active status in the proposed amendments to ARM 24.147.502.

24.147.2109 PENALTY FOR NONCOMPLIANCE found at ARM page 24-13904.

AUTH: 37-19-202, 37-19-316, MCA
IMP: 37-19-316, MCA

REASON: It is reasonably necessary to repeal this rule, because ARM 24.147.2301 already provides that failure to comply with continuing education requirements may subject the licensee to disciplinary action.

24.147.2302 LICENSEE RESPONSIBILITY IN CASE OF CRIME OR VIOLENCE IN CONNECTION WITH CAUSE OF DEATH found at ARM page 24-13929.

AUTH: 37-1-136, 37-19-202, MCA
IMP: 37-1-136, 37-19-311, 37-19-404, MCA

REASON: See the reasonable necessity statement for the amendment of ARM 24.147.2301.

24.147.2303 FREEDOM OF CHOICE RIGHTS OF NEXT OF KIN AND FAMILY found at ARM page 24-13929.

AUTH: 37-1-136, 37-19-202, MCA
IMP: 37-1-136, 37-19-311, 37-19-404, MCA

REASON: The board is repealing this rule as two of the statutes implemented through this rule, 37-19-311, MCA, and 37-19-404, MCA, were repealed in 1995. The remaining implemented statute, 37-1-136, MCA, authorizing the board to adopt rules specifying grounds for disciplinary action, is implemented elsewhere in board rule. The delineation of the rights of next of kin to direct final disposition, is now contained in the Montana Right of Disposition Act of 2009 codified at 37-19-901, MCA, et seq.

24.147.2304 UNLAWFUL PRACTICE found at ARM page 24-13930.

AUTH: 37-1-136, 37-19-202, MCA
IMP: 37-1-136, 37-19-311, 37-19-404, MCA

REASON: The board is repealing this rule as it unnecessarily repeats the law regarding the requirement to have a license to practice legally and contains an incorrect statement of the law as it extends "title" protections to all licensees. "Funeral director" is the only title protected in Title 37, chapter 19, MCA.

24.147.2305 SCREENING PANEL found at ARM page 24-13930.

AUTH: 37-19-202, MCA
IMP: 37-1-307, MCA

REASON: It is reasonably necessary to repeal this rule because the provision for the chairperson to appoint the screening panel for each individual complaint contradicts 37-1-307, MCA, which requires the board to appoint the screening panel. Further, requiring that the board chair serve on the screening panel limits flexibility needed in cases of conflict, when the chair or other members are unavailable, or in other unforeseen circumstances.

24.147.2401 COMPLAINT FILING found at ARM page 24-13941.

AUTH: 37-1-131, 37-19-202, MCA
IMP: 37-1-307, 37-1-308, 37-1-309, MCA

REASON: The board is repealing this rule because (1) repeats 37-1-308(1), MCA, but only in part and is therefore misleading. Section (4) repeats 37-1-136(2), MCA, for disciplinary actions and 37-1-137, MCA, for applications. Sections (2), (3), and (5) are procedural guidelines governed by statute and division policy. Except in cases where the uniqueness of a particular profession demands different treatment, it is preferable that the complaint procedure is standard among all boards in the division. These procedures were unnecessarily placed in the specific board rules, thus creating the potential for confusion among staff who follow division guidelines and licensees who consult this rule.

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Funeral Service, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdfnr@mt.gov, and must be received no later than 5:00 p.m., April 25, 2013.

7. An electronic copy of this Notice of Public Hearing is available through the department and board's site on the World Wide Web at www.funeral.mt.gov. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

8. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Funeral Service, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdfnr@mt.gov; or made by completing a request form at any rules hearing held by the agency.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. Colleen White, attorney, has been designated to preside over and conduct this hearing.

BOARD OF FUNERAL SERVICE
RICHARD (DICK) J. BROWN, MORTICIAN 396
CHAIR

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ PAM BUCY
Pam Bucy, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State March 18, 2013