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February 20, 2025

Joint Committee on Administrative Rules
Boji Tower - 3rd floor
124 West Allegan St.
PO Box 30036
Lansing, MI 48909-7536

Attention: Rep. Douglas Wozniak, Chair

Re: Proposed new Mortuary Science rules

Dear Representative Wozniak,

We represent long-time mortuary science licensee Paul E. Buchanan (Buchanan) and his company, Generations Funeral and Cremations Services, Inc. (Generations). Generations has held a Prepaid Act^a registration for a number of years. Our clients are currently litigating with the Mortuary Science Board. Our current case numbers, before the Michigan Court of Appeals, are consolidated docket nos. 369989 and 369913. We are deeply concerned regarding new rules we understand have been referred to your committee for approval. A copy of those rules, and other pertinent materials, are attached.

We draw your attention, first, to the amicus brief filed by the Michigan Funeral Directors Association (MFDA) in January, 2025, which confirms that, as things currently stand, the Mortuary Science Act (MSA), MCL 339.1801 et. seq., does **not** regulate making "arrangements or sales" of funeral and cremation services and merchandise (FACSM). See MFDA Brief, pp. 7, 8 and 10. Our clients wholeheartedly agree, which caused us to seek appeal and reversal of a contrary ruling by the ALJ our case was assigned to in 2022, and the circuit court judge who heard our first appeal. As MFDA's Brief suggests, the MSA is "devoid of stipulations" concerning where funeral directors or their staff can (a) meet clients, (b) discuss funeral plans with same, or (c) enter contracts for funeral or cremation goods and services. In fact, words such as "office", "meet", "contract" and "discuss" are all conspicuous for their absence from the MSA.

^a The Prepaid Funeral and Cemetery Sales Act (Prepaid Act), MCLA 328.211 et. seq.

By the way, although we and the Board both agree that we conduct “arrangement and sales” activities at our Farmington Hills, duly-licensed funeral establishment and at three other Arrangement Offices, in various cities, the Board has also formally stipulated as follows:

However, no dead human bodies are transported to or from the [Arrangement Offices], nor are embalmings, cremations, viewings or religious ceremonies conducted at the [Arrangement Offices].

Attachment 11. Stipulated Facts

Hence, the activities we pursue at our Arrangement Offices do not, by stipulation, entail anything that touches or concerns the safe, scientific, or sanitary treatment of dead human bodies. We believe that a different, existing statute **does** regulate our Arrangement Offices activities, i.e. the Prepaid Act. For example, MCLA 328.225 (1) requires compliance with the well-known FTC Funeral Rule, 16 C.F.R., part 453, as to both pre-need and at-need FACSM sales. Copy enclosed. In addition, the Prepaid Act clearly allows registrants who are not MSA licensees to sell (but not perform or deliver) FACSM, nor does it require arranging and sales activity to occur in MSA licensed “funeral establishments”. This is in keeping with the consumer-protective policy of the FTC Funeral Rule, which **forbids** requiring that consumers purchase all their desired FACSM solely from MSA licensees, at MSA licensed funeral establishments. 16 CFR 453.4. The Rule also requires that states seeking to enact laws that deviate from these standards to seek an exemption from the FTC and prove that the state’s proposed deviation(s) provide(s) the **consumer** “as great or greater” protections than the Rule provides. 16 CFR 453.9.

As you probably know, the FTC Funeral Rule is decades old, and came about precisely to protect consumers of FACSM from predatory pricing practices that occurred when and where consumers were **not** allowed wider ranging shopping alternatives. Hence, **limiting** consumer shopping options to conversations in funeral establishments with funeral directors cannot readily be justified as “consumer protection”. Put another way, what evidence actually supports the notion that these licensed people and places are **now** singularly “exploitation free”?

Therefore, not only based on our own concerns, some of which are found in our attached response to MFDA’s amicus brief, but also out of respect for the decades’ long consumer protection policies announced in both the FTC Funeral Rule and Michigan’s Prepaid Act, and our concern that no administrative body co-opt your legislative prerogatives, we point out the following misgivings concerning the proposed new rules proposed by the Board.

1. R339.18901(1)(l) introduces a new category of regulated activity, "arranging for mortuary science services". As noted above, this activity is already statutorily regulated by the Prepaid Act and by the FTC Funeral Rule, and neither require the involvement of or supervision by any MSA licensee as to the arranging and selling functions.

2. R339.18931(1)(c) creates an entirely new requirement that each MSA licensed establishment contain "an office for making arrangements". Again, this seems calculated solely to **amend** the MSA's existing absence of prescriptions as to where funeral directors can meet clients to discuss and arrange for funerals, and to circumvent the FTC Rule's and Prepaid Act's respective permissions that this activity need not take place in an MSA licensed establishment, nor be conducted by an MSA licensee. No showing has been made as to how requiring arrangements to take place **in** funeral homes **by** morticians **enhances** consumers' access to a wide range of shopping alternatives. Instead, as noted below, the primary concern seems to be allocating to licensees what the Board deems an acceptable share of the industry's revenues.

3. R339.18942(1) directly contradicts the existing MSA, the Prepaid Act, and the FTC Funeral Rule by limiting all MSA licensees to arranging for FACSM solely within the confines of an MSA licensed establishment.

4. R339.18942 (3) directly contradicts the Prepaid Act by requiring that sales of FACSM must take place under the direct supervision of an MSA licensed mortician.

5. The word "arranging" appears several times in the proposed new rules, and is defined to include non-scientific activities that currently are legally conducted by Prepaid Act registrants **without** the involvement of a licensed mortician, such that it would require that a mortician supervise Prepaid Act registrants.

6. The Board's rationale for these new "arranging rules" is explicit, and finds no basis in the provisions or policies contained in the MSA itself, nor the FTC Funeral Rule. In its Regulatory Impact Statement, the Department announces its basis for these rules as follows:

The department also sees the current status of "Arrangement Centers" as sometimes engaging in behavior that could fall under the practice of mortuary science by unlicensed individuals and **would instead like to see these centers operate more narrowly**

and maintain a fair playing field for all licensees and funeral establishments in a given region.

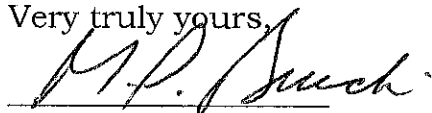
Attachment 40, pp. 4, 6 and 8. (emphasis added)

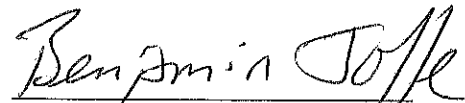
In contrast, **no** section of the existing MSA prescribes where licensed establishments may be located, how many may be located in what physical proximity to each other, whether morticians must maintain offices in which to consult with clients, nor how many they may have. Nothing akin to a Certificate of Need must be obtained before building a new licensed establishment or expanding an old one, nor does any other provision bespeak a legislative intent to “space out” funeral establishments, define a “territory” for each licensed mortician, assure any MSA licensee of any market share or revenue stream, **or restrain any licensee’s pursuit of a larger market share.** Thus, it appears undeniable that the new rules represent an essentially *sui generis* legislative initiative of the Board and Department, an improper infringement on the Legislature’s actual prerogatives, and even a conscious effort to circumvent the 40 year old **federal** policy announced by the FTC to enhance shopping alternatives for consumers. **Attachment 40, p. 2.**

We plainly question the desirability of these new rules, since none seem calculated to make shopping for FACSM easier, nor cheaper, for **consumers.** We certainly think that such policy decisions, if they are to be made at all, are the prerogative of the Legislature, which is accountable to the electorate (and the FTC), not a “peer populated” bureaucracy whose lines of accountability are far less clear. For more background on the hazards of “peer populated” boards, you might want to consult the 1977 Final Report of the Joint Committee to Investigate the Department of Licensing and Regulation, chaired by a predecessor of yours, Gary Owen, which is part of the MSA’s legislative history.

Havning spent over two years litigating with a Board whose self-interest has been far more apparent than their dedication to the public’s protection, we strongly urge JCAR to reject the new rules, at least in the respects outlined above, and, preferably, to conduct actual, full-scale legislative hearings on all topics touched by the proposed new rules. We are certainly at your disposal to discuss these matters in greater depth. Thank you for your kind attention.

Very truly yours,


MARK BUCCHI, ESQ.


BENJAMIN D. JOFFE, ESQ.

STATE OF MICHIGAN
IN THE COURT OF APPEALS

GENERATIONS FUNERAL AND
CREMATION SERVICES, INC.,

Respondent-Appellant,

v

DEPARTMENT OF LICENSING AND
REGULATORY AFFAIRS,
CORPORATIONS, SECURITIES &
COMMERCIAL LICENSING
BUREAU/BOARD OF EXAMINERS IN
MORTUARY SCIENCE,

Petitioner-Appellee.

Docket No. 369989

Oakland County Circuit Court
Case No. 2023-200076-AA

**MICHIGAN FUNERAL DIRECTORS ASSOCIATION'S
MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE**

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The Michigan Funeral Directors Association (“MFDA”) requests leave to file the accompanying brief amicus curiae in accordance with MCR 7.212(H). In support of its motion, MFDA states as follows:

1. MFDA was founded in 1880 and is the nation’s oldest organization of funeral professionals. Its membership includes approximately 1,131 funeral directors who operate roughly 483 funeral homes across the state—or approximately 60% of all mortuary sciences licensees in Michigan. It represents approximately 70% of all licensed funeral homes in the state. MFDA members are obliged to follow a strict code of ethics, and MFDA is committed to ensuring the safe administration of mortuary science services in accordance with all governing laws, rules, and regulations.

2. MFDA and its members may be uniquely impacted by this Court’s future decision in this case. Specifically, this appeal asks the Court to apply the definition of “the practice of funeral directing” under MCL 339.1801(e) to determine whether Appellant Generations Funeral and Cremation Services, Inc. (“Generations”) violated Article 18 of the Occupational Code (“Article 18”)—which governs the practice of mortuary science.

3. MFDA and its members have a direct interest in the proper application and enforcement of Article 18. That law provides uniform standards by which all mortuary science licensees must abide and ensures the safe administration of mortuary science services for grieving families throughout Michigan.

4. MFDA has an interest in this Court affirming the ruling of the circuit court to ensure the sound enforcement of Article 18, which prohibited Generations from holding itself out as a funeral director at an unlicensed location. However, as explained in the accompanying brief, MFDA disagrees with the circuit court’s reasoning—which incorrectly found that vaguely

identified conduct of Generations constituted the “practice of funeral directing” under MCL 399.1801(e). MFDA is uniquely situated to explain the core function of licensed funeral directors in Michigan—supervising the final disposition of human remains. As MFDA will explain to this Court, that responsibility includes many activities, not all of which are purely scientific, as Generations argues. However, neither does the “practice of funeral directing” encompass all other endeavors of funeral directors and their staff—such as the arrangement and sale of services and merchandise at issue in this case.

5. Given its extensive membership base and corresponding expertise, MFDA is uniquely positioned to share with the Court a perspective not currently offered by the Parties. Such a perspective will assist the Court’s review of the relevant issues, which are a matter of public significance—namely, the regulation of licensed mortuary science professionals who supervise the care and disposal of deceased human remains.

6. The Michigan Supreme Court has long stressed the importance of amicus briefs “[i]n cases involving questions of important public interest.” *Grand Rapids v Consumers Power Co*, 216 Mich 409, 415; 185 NW 852 (1921). This is one of those cases, and MFDA is uniquely situated to address the issues raised in this appeal.

WHEREFORE, MFDA requests leave to file the accompanying brief amicus curiae, which is attached as Exhibit 1.

Respectfully submitted,

Dated: January 10, 2025

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Exhibit 1

STATE OF MICHIGAN
IN THE COURT OF APPEALS

GENERATIONS FUNERAL AND
CREMATION SERVICES, INC.,

Respondent-Appellant,

v

DEPARTMENT OF LICENSING AND
REGULATORY AFFAIRS,
CORPORATIONS, SECURITIES &
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BUREAU/BOARD OF EXAMINERS IN
MORTUARY SCIENCE,

Petitioner-Appellee.

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Oakland County Circuit Court
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BRIEF AMICUS CURIAE OF MICHIGAN FUNERAL DIRECTORS ASSOCIATION

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STATEMENT OF JURISDICTION

MFDA adopts the statement of jurisdiction offered by Appellee.

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STATEMENT OF QUESTION PRESENTED

Did the Circuit Court clearly err in upholding the Final Order of the Board of Examiners in Mortuary Science (the “Board”) that Respondent-Appellant Generations Funeral and Cremation Services, Inc. violated the Occupational Code by engaging in the “practice of mortuary science” at three unlicensed locations?

The Board/Administrative Law Judge answered: No

The Circuit Court answered: No

Petitioner-Appellee answers : No

Respondent-Appellant answers: Yes

Amicus Michigan Funeral Directors Association answers: No.

I. INTRODUCTION AND STATEMENT OF INTEREST OF MFDA¹

The Michigan Funeral Directors Association (“MFDA”) was founded in 1880 and is the nation’s oldest organization of funeral professionals. Its membership includes approximately 1,131 funeral directors who operate roughly 483 funeral homes across the state—or approximately 60% of all mortuary sciences licensees in Michigan.² It represents approximately 70% of all licensed funeral homes in the state. MFDA members are obliged to follow a strict code of ethics, and MFDA is committed to ensuring the safe administration of mortuary science services in accordance with all governing laws, rules, and regulations. For that reason, MFDA has a unique interest in matters involving enforcement of Article 18 of the Occupational Code (“Article 18”). MCL 339.1801, et seq.

MFDA appears as amicus in support of Appellee (the “Department”) and agrees that the circuit court reached the right result. But its rationale was flawed. This case began, in part, with a complaint involving suspicious signs advertising funeral and cremation services. (Exhibit M to Generations’ Brief on Appeal, Formal Complaint, at ¶¶ 8-11). During the administrative proceeding, Appellant Generations Funeral and Cremation, Inc. (“Generations”) admitted that those signs were posted at three separate locations—which it calls “arrangement offices.” (Exhibit C to Generations’ Brief on Appeal, Stipulations of Fact, ¶¶ 4, 9). None of those locations were licensed as required by MCL 339.1806(3). Under Article 18, the “practice of funeral directing” includes not only supervising the final disposition of human remains, but also “representing

¹ This brief was not authored by counsel for a party to this case in whole or in part, nor did such counsel or a party make a monetary contribution intended to fund the preparation or submission of this brief. MCR 7.212(H)(3).

² MFDA’s membership does not include Appellant Generations Funeral Services, Inc. or its manager, Paul E. Buchanan.

oneself” as engaged in funeral directing. MCL 339.1801(e). For that reason alone, Generations engaged in “the practice of funeral directing” at unlicensed locations in violation of Article 18.

However, the circuit court instead primarily based its ruling on vaguely identified conduct that Generations stipulated to performing at its unlicensed locations—the “arrangement and sale of cremations, memorial services, burial services, funeral merchandise, and cemetery merchandise, via both prepaid contracts and at-need contracts for funeral and cemetery services and merchandise.” (Exhibit G to Generations’ Brief on Appeal, Circuit Court Opinion, at 16). According to the circuit court, those stipulated tasks meant the administrative law judge “properly conclude[d]” that Generations violated Article 18 by practicing funeral directing at the unlicensed locations. *Id.*

The Department now makes that same argument. MFDA respectfully disagrees. A licensed funeral director is responsible for supervising the final disposition of human remains. As detailed below, that responsibility includes many activities, not all of which are purely scientific, as Generations argues. However, making arrangements and selling funeral merchandise and services are not activities that fall within the definition of “the practice of funeral directing.” This Court should affirm the circuit court but only because Generations was holding itself out as practicing funeral directing at the three unlicensed locations.

II. STATEMENT OF FACTS

MFDA relies on the Department’s statement of the pertinent background facts and the proceedings below.

III. STANDARD OF REVIEW

MFDA adopts the Department’s statement of the applicable standard of review.

IV. ARGUMENT

A. Advertising Funeral Services At Unlicensed Locations Violates Article 18.

Based on the record, the signage at Generations' unlicensed locations present a violation of Article 18, which should end this matter. As Generations stipulated, its signs at the three unlicensed locations state some iteration of "Generations Funeral and Cremation" and one location also advertises "simple cremation" services for \$795. (Generations' Brief on Appeal, at 46) (Exhibit to Generations' Brief on Appeal, at 3, Stipulated Fact Nos 6-8).

Critically, Article 18 makes clear that holding oneself out as a funeral director *is* considered the practice of funeral directing—regardless of the activities actually performed. Such a law protects grieving families from misrepresentations and provides them with the comfort of knowing the location of their loved one's remains. For that reason, MCL 339.1801(e) defines "practice of funeral directing" to include, in part, "*representing oneself as engaging in the supervising of the burial and disposal of a dead human body, ... or using, in connection with the user's name or funeral establishment, the word 'funeral director', 'funeral service professional', 'undertaker', or 'mortician', or any other title embodying the words 'mortuary science' or otherwise implying that the individual is engaged as a funeral director.*" (emphasis added). Generations' signs at the unlicensed facilities clearly represent and imply that it is a funeral director engaged in the disposal of human remains. On that basis alone, Generations engaged in "the practice of funeral directing" at unlicensed locations, and this Court should affirm the circuit court.

B. There Are Additional Activities Involved In The "Practice Of Funeral Directing" As Defined By MCL 339.1801(e).

Funeral directing is not comprised solely of embalming human bodies. The main function of funeral director licensees is supervising the final disposition of human remains—whether by burial, cremation, or entombment. Michigan has a vital state interest in ensuring that function is

performed only by qualified, licensed individuals who are responsible to the public and who practice from a fixed licensed location. In relevant part, MCL 339.1801(e) also defines “the practice of funeral directing” as “engaging in or representing oneself as engaging in *the supervising of the burial and disposal of a dead human body*, [and] managing a funeral establishment for the *preparation, disposition, and care of a dead human body . . .*” (emphasis added). In other words, a funeral director is responsible for supervising the final disposition of a human body.

1. Funeral Directing Is Not Limited To Scientific Tasks Involving The Final Disposition Of Human Remains.

Generations argues—incorrectly—that Article 18 only governs “the actual business of doing scientific tasks on dead human remains – sanitizing and embalming or conducting actual funerals.” (Generations Brief on Appeal, at 22). As the Department characterizes Generations’ argument, it would limit the “practice of funeral directing” to only mean embalming. (Department’s Brief on Appeal, at 28). In reality, a funeral director’s responsibility to supervise the final disposition of human remains is more extensive and goes beyond embalming and the purely “scientific” treatment of human bodies. The following is a non-exhaustive list of relevant, non-scientific responsibilities that are expressly stated in law (or strongly implied) as belonging to a funeral director:³

1. Preparing and filing the death certificate. A critical task of a funeral director in supervising the final disposition is preparing and reporting the death record. Specifically, the vital records provisions of the Public Health Code provide that “[a] funeral director who first assumes custody of a dead body, either personally or through his or her authorized agent, shall report the death” and “obtain medical certification.” MCL 333.2843(1). That law provides detailed

³ This Court has discretion to take judicial notice of state statutes and regulations. See MRE 2.202(a).

requirements for funeral directors to report the death and complete the death registration record. Those include receiving certain personal data from the decedent's next of kin, obtaining medical certifications as to the cause of death, and filing the death certificate with the local registrar of the district where the death occurred within 72 hours after the death. *Id.*

2. Identifying those who have the right to make final arrangements. MCL 700.3206(1) sets forth a detailed process to determine who (usually next of kin) has the “right and power to make decisions about funeral arrangements and the handling, disposition, or disinterment of a decedent's body, including, but not limited to, decisions about cremation, and the right to retrieve from the funeral establishment and possess cremated remains of the decedent immediately after cremation.” And in its next sentence, it also imposes on funeral directors the responsibility to make that determination and otherwise oversee the final disposition: “the handling, disposition, or disinterment of a body must be under the supervision of a person licensed to practice mortuary science in this state.” *Id.*

3. Obtaining medical examiner approval for a cremation. MCL 52.210 requires that funeral directors obtain medical examiner approval before moving a body for cremation. It expressly prohibits funeral directors (or any other person) from “remov[ing] the body of any deceased person to a crematory or remov[ing] for the purpose of cremation such dead body from the county in which death occurred *without the signed permit of the medical examiner for such county or his deputy.*” (emphasis added).

5. Transporting the body to the place of final disposition. Article 18 expressly imposes on funeral directors the responsibility to transport and store human bodies: “The holder of a license for the practice of mortuary science *shall supervise and be responsible* for the transportation and storage of a dead human body. The holder of a license for the practice of mortuary science may

designate an employee or other person to transport or store a dead human body.” MCL 339.1807(1). To do so, a funeral director is required to “register with the office of the registrar of each city or village in which the holder intends to practice.” MCL 339.1807(2). By administrative rule, the Michigan Department of Health and Human Services authorizes “registrars, mortuary science, and funeral director licensees to have full authority to make out and sign a new burial-transit permit where a dead human body is transferred beyond the destination point as given on the burial-transit permit which accompanies the body.” Mich Admin Code, R 325.3. A funeral director who issues a burial-transit permit must file the permit with the registrar within 72 hours. *Id.*

6. Mitigating health risks by timely embalming and other treatments. Aside from the actual process of embalming, Michigan regulations also impose responsibilities on funeral directors to protect the public health by ensuring that embalming occurs promptly, prior to transportation. Bodies of those who died of certain communicable illnesses cannot be transported “unless they have been prepared for shipment by being thoroughly embalmed and disinfected by arterial and cavity injection with an accepted embalming fluid. This preparation must be effected by an embalmer licensed with the state of Michigan.” Mich Admin Code, R 325.1. And other bodies generally cannot be transported more than 48 hours after death unless they are similarly treated. Mich Admin Code, R 325.2.

7. Responsibility for unclaimed cremated remains. Article 18 also requires funeral directors to “maintain[] and safeguard[] the unclaimed cremated remains until proper disposition of the remains ...” MCL 339.1809a(1). Funeral directors are prohibited from taking any actions regarding the disposal of such remains until 6 months after the date of cremation. MCL 339.1809a(1)(a). Further, funeral directors must “make reasonable efforts to provide written notice of intent to make proper disposition of the unclaimed cremated remains to the individuals who

have the right to make decisions relating to the disposition of a decedent's body under section 3206 of the estates and protected individuals code, ..." MCL 339.1809a(2).

8. Filing a Statement of Death by Funeral Director with the Social Security Administration.

Following a death, a funeral director also signs and files a Form SSA-721 – *Statement of Death by Funeral Director* with the U.S Social Security Administration (“SSA”) or completes an Electronic Death Registration report. That information stops payments to the decedent and also ensures that family members eligible to receive the benefit are promptly notified.

A funeral director’s responsibility to supervise the final disposition of human remains is far more extensive than embalming or other purely scientific tasks. Generations takes too narrow of a view in asserting otherwise.

2. Arrangements and sales are not regulated under Article 18.

While the “practice of funeral directing” includes more than scientific acts performed on a body, the term does *not* encompass *every* task that funeral directors or their unlicensed staff may perform. In that sense, the Department’s interpretation of that phrase is too broad—particularly when considering the lack of a clear record in this case. According to the Department, Generations admitted to the “practice of funeral directing” at the unlicensed locations by stipulating that these locations are used for the “*arrangement and sale* of cremations, memorial services, burial services, funeral merchandise, and cemetery merchandise, via both prepaid contracts and at-need contracts for funeral and cemetery services and merchandise.” (Department’s Brief on Appeal, at 21) (Exhibit C to Generations’ Brief on Appeal, at 3, Stipulated Fact No. 9) (emphasis added).

Making arrangements and selling services and merchandise are not regulated by Article 18 and do not require a license. Neither word is mentioned in any part of Article 18. No provision of Article 18 purports to limit the tasks of arrangements and sales exclusively to mortuary science licensees. Nor does Article 18, or any other provision of law, provide particular requirements for

how a licensee (or any other person) should properly sell funeral merchandise or make arrangements. In fact, in states where only licensed funeral directors are allowed to sell merchandise or make arrangements (which are the exception, not the rule) their laws have said so explicitly. Virginia, for instance, defines “funeral directing” as “directing or supervising funerals, preparing human dead for burial by means other than embalming, *or making arrangements for funeral services or the financing of funeral services and the selling or making of financial arrangements for the sale of funeral supplies to the public.*” Virginia Code § 54.1-2800 (emphasis added).

Despite Article 18’s silence regarding arrangements and sales, the Department claims that those services “are governed by [Article 18]” and there “cannot be any real dispute that the conduct Generations stipulated that it contracts to perform ... [is] the practice of mortuary science.” (Department’s Brief on Appeal, at 21). The only support the Department offers for that argument is a passing reference to *Ansell v Dep’t of Commerce, Bd of Examiners of Mortuary Science*, 222 Mich App 347; 564 NW2d 519 (1997). While the Department correctly acknowledges that the “*Ansell* court did not make any holding regarding the definition of ‘funeral directing’ under MCL 339.1801(e), it then relies entirely on *Ansell* to argue that the “arrangements” and “sales” activities in this case are regulated by Article 18. (Department’s Brief on Appeal, at 34). As the Department asserts, the Court in *Ansell* “distinguished embalming tasks from funeral directing tasks, offering a list of examples of funeral directing: ‘seating and ushering funeral guests, positioning and grooming bodies in a casket, selling funeral merchandise, or summarizing death certificates.’” (Department’s Brief on Appeal, at 21).

But the Court in *Ansell* made no such distinction, provided no examples of funeral directing, and there is little from that case applicable to the instant appeal.⁴ There, the petitioner—a resident trainee—was accused of failing to embalm or assist with embalming 25 bodies as required to gain licensure under MCL 339.1808(3). 222 Mich App at 349. The Court in *Ansell* merely noted that the activities of “seating and ushering funeral guests, positioning and grooming bodies in a casket, selling funeral merchandise, or summarizing death certificates” —which it described as “various other administrative details”—could not be used to satisfy the embalming requirement of MCL 339.1808(3). *Id.* at 350, 358. The Court did not identify those actions as the “practice of funeral directing” under MCL 339.1801(e) or suggest that such tasks can only be completed by a licensee. Instead, those activities did not satisfy the requirement, which obligated him to “personally embalm or assist in embalming twenty-five bodies as a condition of his licensure.” *Id.* at 359.

Finally, Generations’ reliance on the Prepaid Act—as authorizing its conduct at the unlicensed locations—is unnecessary and misplaced. The Prepaid Act regulates the sale of merchandise, funeral services, and cemetery services for which payment is made *in advance*. See

⁴ This is also true regarding Generations’ reliance on *Ansell*. Generations clings to the following quote from *Ansell* to support its narrow reading of Article 18 as dealing exclusively with the scientific elements of a mortuary science licensee’s work: “we conclude that the Legislature enacted the mortuary science act to regulate the science of treating human remains.” 122 Mich App at 357; (Generations’ Brief on Appeal, at 23). But in the very next sentence, the Court makes clear that such a finding merely supports the Court’s holding that resident trainees pursuing a license embalm or assist with embalming 25 bodies under MCL 339.1808(3). *Id.* And that “unscientific tasks involved in administering funeral services” cannot be used to satisfy that requirement. *Id.*

Further, *Ansell* in no way states that the sole and exclusive purpose of Article 18 is to regulate the science of treating human bodies. In fact, numerous provisions of Article 18 have no obvious scientific element at all, including those that oblige funeral directors to supervise the transportation of human bodies and to provide notice regarding unclaimed cremated remains. See MCL 339.1807(1) and MCL 339.1809a. *Ansell* offers little instruction in resolving this appeal.

MCL 328.215(d). Its main provisions detail rules for how those funds should be placed into escrow and safeguarded. See generally MCL 328.217; MCL 328.218, and MCL 328.222. More fundamentally, there is no reason to search for statutory support that affirmatively authorizes Generations' arrangements and sales activity at the unlicensed locations. Such tasks are simply not regulated under Article 18.

In summary, a funeral director's supervisory responsibility over the final disposition of human remains includes more than the scientific treatment of a body. But the "practice of funeral directing" does not envelope every task that funeral directors or their unlicensed staff may perform—including arrangements and sales.

V. CONCLUSION AND RELIEF REQUESTED

To determine whether Generations engaged in the "practice of funeral directing" at unlicensed locations, this Court should look no further than Generations' holding itself out as funeral directing at the unlicensed facilities. On that basis alone, MFDA respectfully requests that this Court affirm the ruling of the circuit court, and avoid a more sweeping ruling that could alter the regulatory and business environment for funeral directors and their customers.

Dated: January 10, 2025

Respectfully submitted,

/s/ Cole V. Lussier

Cole V. Lussier (P81686)

Peter J. Kulick (P61513)

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*Attorneys for Michigan Funeral Directors
Association*

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the word limitation of MCR 7.212(B)(1). The brief contains 2,990 words, excluding the parts of the brief exempted by MCR 7.212(B)(2).

Dated: January 10, 2025

/s/ Cole V. Lussier
Cole V. Lussier (P81686)

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Attachment 11

Stipulated Facts

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30758
LANSING, MICHIGAN 48909

DANA NESSEL
ATTORNEY GENERAL

November 9, 2022

VIA EMAIL ONLY – moahr-ga@michigan.gov

David B. Marmon, Administrative Law Judge
Department of Licensing and Regulatory Affairs
Michigan Office of Administrative Hearings and Rules
P.O. Box 30695
Lansing, MI 48909

Re: Generations Funeral & Cremation Services and Paul E. Buchanan
Complaint Nos. 343644 & 344547; Docket Nos. 22-037405 & 22-37404

Dear ALJ Marmon:

Enclosed for filing in the above matter is the parties' Stipulation of Facts and Proof of Service.

Sincerely,

/s/ Adam G. Masserang
Adam G. Masserang
Daniel P. Kelly
Assistant Attorneys General
Licensing & Regulation Division
Telephone: (517) 335-7569
Facsimile: (517) 241-1997

AGM/cz
Attachment
cc: Mark P. Bucchi, Esq.

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
CORPORATIONS, SECURITIES & COMMERCIAL LICENSING BUREAU
BOARD OF EXAMINERS IN MORTUARY SCIENCE

DEPARTMENT OF LICENSING AND
REGULATORY AFFAIRS,
CORPORATIONS, SECURITIES &
COMMERCIAL LICENSING BUREAU,

Complainant,

v

GENERATIONS FUNERAL & CREMATION SERVICES Complaint No. 343644
GENERATIONS FUNERAL AND
CREMATION SERVICES INC., OWNER
Mortuary Science Establishment
License No. 45-02-003765

and

PAUL E. BUCHANAN
Mortuary Science
License No. 45-01-006588

Complaint No. 344547

Respondents.

STIPULATION OF FACTS

The parties, Michigan Department of Licensing and Regulatory Affairs, Corporations, Securities & Commercial Licensing Bureau, by Assistant Attorneys General Adam G. Masserang and Daniel P. Kelly, and Generations Funeral & Cremation Services, Generations Funeral and Cremation Services, Inc., Owner, and Paul E. Buchanan (Respondents), by and through their attorney, Mark P. Bucchi, stipulate as follows:

1. Generations Funeral & Cremation Services, Generations Funeral and Cremation, Services, Inc. Owner (Generations) is a funeral establishment under Article 18 of the Occupational Code, MCL 339.1801 to 339.1812, and has, at all times relevant to the Formal Complaint at issue, maintained a license to operate a mortuary science establishment under Article 18 of the Occupational Code, from the location at 29550 Grand River, in Farmington MI.

2. At no times relevant to the Formal Complaint at issue has Generations maintained a license to operate a mortuary science establishment under Article 18 of the Occupational Code from any other location.

3. Paul E. Buchanan (Buchanan), at all times relevant to the Formal Complaint at issue, has been licensed as a mortuary science practitioner and is the designated manager of Generations under Article 18 of the Occupational Code. Buchanan has been licensed since 1988, and has no disciplinary history under the Occupational Code or associated regulations.

4. Generations' website, www.generationsfuneralservice.com, advertises that it has a funeral establishment at its licensed location of 29550 Grand River Ave. in Farmington Hills. Its website also advertises that it has three other facilities, referred to on the website as "Arrangement Offices", located at 2360 East Stadium Blvd., in Ann Arbor, 47741 Van Dyke Ave., in Shelby Township, and at 9301 Telegraph, in Taylor (collectively, "Other Facilities"). Subsequent to the time period at issue, the Telegraph Road location has ceased operation due to a roof collapse.

5. These Other Facilities are leased and operated by Generations.

6. The Generations facility located in Taylor is a commercial structure with a sign stating: "Generations Funeral and Cremation" and an advertisement offering "simple cremation" services for \$795. Complaint Exhibit 4, attached and incorporated, depicts this Other Facility, before it collapsed.

7. The Generations facility located in Shelby Township is a one-story office structure that contains a sign stating, "Generations Funeral & Cremation Services." Complaint Exhibit 5, attached and incorporated, depicts this Other Facility.

8. The Generations facility located in Ann Arbor is a one-story office structure that contains a sign stating: "Generations Funeral & Cremation Services." Complaint Exhibit 6, attached and incorporated, depicts this Other Facility.

9. Generations regularly staffs the Other Facilities with both funeral directors and unlicensed clerical staff. Generations conducts business at the Other Facilities during regular business hours, which includes the arrangement and sale of cremations, memorial services, burial services, funeral merchandise, and cemetery merchandise, via both prepaid contracts and at-need contracts for funeral and cemetery services and merchandise. However, no dead human bodies are transported to or from the Other Facilities, nor are embalmings, cremations, viewings or religious ceremonies conducted at the Other Facilities.

10. Generations employs five mortuary science practitioners licensed under the Occupational Code, including Buchanan. These individuals utilize the title "Funeral Director".

11. Of the five Funeral Directors employed by Respondent, two work at the Farmington Hills location and three work at the Other Facilities.

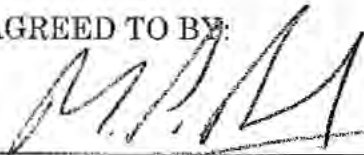
12. For the purposes of this Formal Complaint only, Petitioner is not alleging that the licensed Generations facility located in Farmington Hills has failed to comply with the establishment requirements in Mich Admin Code, R 339.18931.

The parties acknowledge acceptance of this stipulation of facts.

AGREED TO BY:

/s/ Adam G. Masserang
Adam G. Masserang (P75520)
Daniel P. Kelly (P79017)
Assistant Attorneys General
Attorney for Petitioner
Dated: November 9, 2022

AGREED TO BY:


Mark P. Bucchi (P32047)
Attorney for Respondents Generations
Funeral & Cremation Services and
Paul E. Buchanan
Dated: 11/9/2022





Generations
FUNERAL AND CREMATION

Simple
Cremation
\$795

9301 B
Generations
FUNERAL AND CREMATION
313-859-9800





9301 B

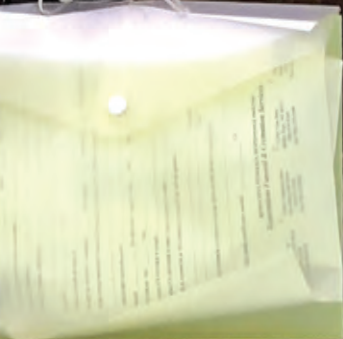


Generations

FUNERAL AND Cremation

313-859-9800

Due to the uptick in Covid-19 cases
and the possibility
of accidental exposure,
we will be conducting business
by phone and fax.
Please call 313-859-9800.
Thank you -



Van Dyke Parc

Marcia E. Kling, M.D.
Family Medicine

Beaumont Medical Staff Member

TheDigestionDoctor.com

Christine M. Kaczmar, D.C., D.H.S., I.H.S.

**The Next Chapter
COUNSELING LLC**

Generations
FUNERAL & CREMATION SERVICES

TOWNE
MORTGAGE COMPANY
586-323-1959





Office Hours
9:30-4:30 Monday-Friday only
By Appointment
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47741 VAN DYKE
SHELBY TWP., MI 48317





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P-6

NATALIE V CRAIG & CO
WEALTH ADVISORS

NATALIE C. W. NORMAN
President NVC
Financial Planner, RJFS

Due to the recent increase
in Covid cases, we are no
longer able to allow
families in our building.
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Generations

FUNERAL & CREMATION SERVICES

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
CORPORATIONS SECURITIES AND COMMERCIAL LICENSING BUREAU
BOARD OF EXAMINERS IN MORTUARY SCIENCE

In the Matter of

GENERATIONS FUNERAL & CREMATION SERVICES

License No. 45-02-003765

Docket No. 22-037405

Complaint No. 343644

and

PAUL E. BUCHANAN

License No. 45-01-006588

Docket No. 22-037404

Complaint No. 344547

_____ /

PROOF OF SERVICE

The undersigned certifies that on November 7, 2022, a copy of Stipulation of Facts was served on the attorneys of record or parties appearing *in pro per* in the above-captioned case by emailing the same to:

Mark P. Bucchi

mbucchi@novakbucchi.com

/s/Christine S. Zinn _____

Christine S. Zinn

Legal Secretary

THE FTC FUNERAL RULE

This content is from the eCFR and is authoritative but unofficial.

Title 16 – Commercial Practices

Chapter I – Federal Trade Commission

Subchapter D – Trade Regulation Rules

Part 453 Funeral Industry Practices

- § 453.1 Definitions.
- § 453.2 Price disclosures.
- § 453.3 Misrepresentations.
- § 453.4 Required purchase of funeral goods or funeral services.
- § 453.5 Services provided without prior approval.
- § 453.6 Retention of documents.
- § 453.7 Comprehension of disclosures.
- § 453.8 Declaration of intent.
- § 453.9 State exemptions.

PART 453—FUNERAL INDUSTRY PRACTICES

Authority: 15 U.S.C. 57a(a); 15 U.S.C. 46(g); 5 U.S.C. 552.

Source: 59 FR 1611, Jan. 11, 1994, unless otherwise noted.

§ 453.1 Definitions.

- (a) **Alternative container.** An “alternative container” is an unfinished wood box or other non-metal receptacle or enclosure, without ornamentation or a fixed interior lining, which is designed for the encasement of human remains and which is made of fiberboard, pressed-wood, composition materials (with or without an outside covering) or like materials.
- (b) **Cash advance item.** A “cash advance item” is any item of service or merchandise described to a purchaser as a “cash advance,” “accommodation,” “cash disbursement,” or similar term. A cash advance item is also any item obtained from a third party and paid for by the funeral provider on the purchaser's behalf. Cash advance items may include, but are not limited to: cemetery or crematory services; pallbearers; public transportation; clergy honoraria; flowers; musicians or singers; nurses; obituary notices; gratuities and death certificates.
- (c) **Casket.** A “casket” is a rigid container which is designed for the encasement of human remains and which is usually constructed of wood, metal, fiberglass, plastic, or like material, and ornamented and lined with fabric.
- (d) **Commission.** “Commission” refers to the Federal Trade Commission.
- (e) **Cremation.** “Cremation” is a heating process which incinerates human remains.

- (f) **Crematory.** A “crematory” is any person, partnership or corporation that performs cremation and sells funeral goods.
- (g) **Direct cremation.** A “direct cremation” is a disposition of human remains by cremation, without formal viewing, visitation, or ceremony with the body present.
- (h) **Funeral goods.** “Funeral goods” are the goods which are sold or offered for sale directly to the public for use in connection with funeral services.
- (i) **Funeral provider.** A “funeral provider” is any person, partnership or corporation that sells or offers to sell funeral goods and funeral services to the public.
- (j) **Funeral services.** “Funeral services” are any services which may be used to:
 - (1) Care for and prepare deceased human bodies for burial, cremation or other final disposition; and
 - (2) arrange, supervise or conduct the funeral ceremony or the final disposition of deceased human bodies.
- (k) **Immediate burial.** An “immediate burial” is a disposition of human remains by burial, without formal viewing, visitation, or ceremony with the body present, except for a graveside service.
- (l) **Memorial service.** A “memorial service” is a ceremony commemorating the deceased without the body present.
- (m) **Funeral ceremony.** A “funeral ceremony” is a service commemorating the deceased with the body present.
- (n) **Outer burial container.** An “outer burial container” is any container which is designed for placement in the grave around the casket including, but not limited to, containers commonly known as burial vaults, grave boxes, and grave liners.
- (o) **Person.** A “person” is any individual, partnership, corporation, association, government or governmental subdivision or agency, or other entity.
- (p) **Services of funeral director and staff.** The “services of funeral director and staff” are the basic services, not to be included in prices of other categories in § 453.2(b)(4), that are furnished by a funeral provider in arranging any funeral, such as conducting the arrangements conference, planning the funeral, obtaining necessary permits, and placing obituary notices.

§ 453.2 Price disclosures.

- (a) **Unfair or deceptive acts or practices.** In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for a funeral provider to fail to furnish accurate price information disclosing the cost to the purchaser for each of the specific funeral goods and funeral services used in connection with the disposition of deceased human bodies, including at least the price of embalming, transportation of remains, use of facilities, caskets, outer burial containers, immediate burials, or direct cremations, to persons inquiring about the purchase of funerals. Any funeral provider who complies with the preventive requirements in paragraph (b) of this section is not engaged in the unfair or deceptive acts or practices defined here.
- (b) **Preventive requirements.** To prevent these unfair or deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in § 453.4(b)(1), funeral providers must:

- (1) **Telephone price disclosure.** Tell persons who ask by telephone about the funeral provider's offerings or prices any accurate information from the price lists described in paragraphs (b)(2) through (4) of this section and any other readily available information that reasonably answers the question.
- (2) **Casket price list.**
 - (i) Give a printed or typewritten price list to people who inquire in person about the offerings or prices of caskets or alternative containers. The funeral provider must offer the list upon beginning discussion of, but in any event before showing caskets. The list must contain at least the retail prices of all caskets and alternative containers offered which do not require special ordering, enough information to identify each, and the effective date for the price list. In lieu of a written list, other formats, such as notebooks, brochures, or charts may be used if they contain the same information as would the printed or typewritten list, and display it in a clear and conspicuous manner. Provided, however, that funeral providers do not have to make a casket price list available if the funeral providers place on the general price list, specified in paragraph (b)(4) of this section, the information required by this paragraph.
 - (ii) Place on the list, however produced, the name of the funeral provider's place of business and a caption describing the list as a "casket price list."
- (3) **Outer burial container price list.**
 - (i) Give a printed or typewritten price list to persons who inquire in person about outer burial container offerings or prices. The funeral provider must offer the list upon beginning discussion of, but in any event before showing the containers. The list must contain at least the retail prices of all outer burial containers offered which do not require special ordering, enough information to identify each container, and the effective date for the prices listed. In lieu of a written list, the funeral provider may use other formats, such as notebooks, brochures, or charts, if they contain the same information as the printed or typewritten list, and display it in a clear and conspicuous manner. Provided, however, that funeral providers do not have to make an outer burial container price list available if the funeral providers place on the general price list, specified in paragraph (b)(4) of this section, the information required by this paragraph.
 - (ii) Place on the list, however produced, the name of the funeral provider's place of business and a caption describing the list as an "outer burial container price list."
- (4) **General price list.**
 - (i)
 - (A) Give a printed or typewritten price list for retention to persons who inquire in person about the funeral goods, funeral services or prices of funeral goods or services offered by the funeral provider. The funeral provider must give the list upon beginning discussion of any of the following:
 - (1) The prices of funeral goods or funeral services;
 - (2) The overall type of funeral service or disposition; or
 - (3) Specific funeral goods or funeral services offered by the funeral provider.
 - (B) The requirement in paragraph (b)(4)(i)(A) of this section applies whether the discussion takes place in the funeral home or elsewhere. Provided, however, that when the deceased is removed for transportation to the funeral home, an in-person request at that time for

authorization to embalm, required by § 453.5(a)(2), does not, by itself, trigger the requirement to offer the general price list if the provider in seeking prior embalming approval discloses that embalming is not required by law except in certain special cases, if any. Any other discussion during that time about prices or the selection of funeral goods or services triggers the requirement under paragraph (b)(4)(i)(A) of this section to give consumers a general price list.

- (C) The list required in paragraph (b)(4)(i)(A) of this section must contain at least the following information:
 - (1) The name, address, and telephone number of the funeral provider's place of business;
 - (2) A caption describing the list as a "general price list"; and
 - (3) The effective date for the price list;
- (ii) Include on the price list, in any order, the retail prices (expressed either as the flat fee, or as the price per hour, mile or other unit of computation) and the other information specified below for at least each of the following items, if offered for sale:
 - (A) Forwarding of remains to another funeral home, together with a list of the services provided for any quoted price;
 - (B) Receiving remains from another funeral home, together with a list of the services provided for any quoted price;
 - (C) The price range for the direct cremations offered by the funeral provider, together with:
 - (1) A separate price for a direct cremation where the purchaser provides the container;
 - (2) Separate prices for each direct cremation offered including an alternative container; and
 - (3) A description of the services and container (where applicable), included in each price;
 - (D) The price range for the immediate burials offered by the funeral provider, together with:
 - (1) A separate price for an immediate burial where the purchaser provides the casket;
 - (2) Separate prices for each immediate burial offered including a casket or alternative container; and
 - (3) A description of the services and container (where applicable) included in that price;
 - (E) Transfer of remains to funeral home;
 - (F) Embalming;
 - (G) Other preparation of the body;
 - (H) Use of facilities and staff for viewing;
 - (I) Use of facilities and staff for funeral ceremony;
 - (J) Use of facilities and staff for memorial service;
 - (K) Use of equipment and staff for graveside service;
 - (L) Hearse; and

- (M) Limousine.
- (iii) Include on the price list, in any order, the following information:
 - (A) Either of the following:
 - (1) The price range for the caskets offered by the funeral provider, together with the statement: "A complete price list will be provided at the funeral home."; or
 - (2) The prices of individual caskets, disclosed in the manner specified by paragraph (b)(2)(i) of this section; and
 - (B) Either of the following:
 - (1) The price range for the outer burial containers offered by the funeral provider, together with the statement: "A complete price list will be provided at the funeral home."; or
 - (2) The prices of individual outer burial containers, disclosed in the manner specified by paragraph (b)(3)(i) of this section; and
 - (C) Either of the following:
 - (1) The price for the basic services of funeral director and staff, together with a list of the principal basic services provided for any quoted price and, if the charge cannot be declined by the purchaser, the statement: "This fee for our basic services will be added to the total cost of the funeral arrangements you select. (This fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving remains.)". If the charge cannot be declined by the purchaser, the quoted price shall include all charges for the recovery of unallocated funeral provider overhead, and funeral providers may include in the required disclosure the phrase "and overhead" after the word "services"; or
 - (2) The following statement: "Please note that a fee of (*specify dollar amount*) for the use of our basic services is included in the price of our caskets. This same fee shall be added to the total cost of your funeral arrangements if you provide the casket. Our services include (*specify*).". The fee shall include all charges for the recovery of unallocated funeral provider overhead, and funeral providers may include in the required disclosure the phrase "and overhead" after the word "services." The statement must be placed on the general price list together with the casket price range, required by paragraph (b)(4)(iii)(A)(1) of this section, or together with the prices of individual caskets, required by (b)(4)(iii)(A)(2) of this section.
- (iv) The services fee permitted by § 453.2(b)(4)(iii)(C)(1) or (C)(2) is the only funeral provider fee for services, facilities or unallocated overhead permitted by this part to be non-declinable, unless otherwise required by law.
- (5) **Statement of funeral goods and services selected.**
 - (i) Give an itemized written statement for retention to each person who arranges a funeral or other disposition of human remains, at the conclusion of the discussion of arrangements. The statement must list at least the following information:

- (A) The funeral goods and funeral services selected by that person and the prices to be paid for each of them;
 - (B) Specifically itemized cash advance items. (These prices must be given to the extent then known or reasonably ascertainable. If the prices are not known or reasonably ascertainable, a good faith estimate shall be given and a written statement of the actual charges shall be provided before the final bill is paid.); and
 - (C) The total cost of the goods and services selected.
- (ii) The information required by this paragraph (b)(5) may be included on any contract, statement, or other document which the funeral provider would otherwise provide at the conclusion of discussion of arrangements.
- (6) **Other pricing methods.** Funeral providers may give persons any other price information, in any other format, in addition to that required by § 453.2(b)(2), (3), and (4) so long as the statement required by § 453.2(b)(5) is given when required by the rule.

§ 453.3 Misrepresentations.

(a) **Embalming provisions** —

- (1) **Deceptive acts or practices.** In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:
- (i) Represent that state or local law requires that a deceased person be embalmed when such is not the case;
 - (ii) Fail to disclose that embalming is not required by law except in certain special cases, if any.
- (2) **Preventive requirements.** To prevent these deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in §§ 453.4(b)(1) and 453.5(2), funeral providers must:
- (i) Not represent that a deceased person is required to be embalmed for:
 - (A) Direct cremation;
 - (B) Immediate burial; or
 - (C) A closed casket funeral without viewing or visitation when refrigeration is available and when state or local law does not require embalming; and
 - (ii) Place the following disclosure on the general price list, required by § 453.2(b)(4), in immediate conjunction with the price shown for embalming: “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.” The phrase “except in certain special cases” need not be included in this disclosure if state or local law in the area(s) where the provider does business does not require embalming under any circumstances.

(b) **Casket for cremation provisions** —

- (1) **Deceptive acts or practices.** In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

- (i) Represent that state or local law requires a casket for direct cremations;
- (ii) Represent that a casket is required for direct cremations.

(2) **Preventive requirements.** To prevent these deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in § 453.4(a)(1), funeral providers must place the following disclosure in immediate conjunction with the price range shown for direct cremations: “If you want to arrange a direct cremation, you can use an alternative container. Alternative containers encase the body and can be made of materials like fiberboard or composition materials (with or without an outside covering). The containers we provide are (specify containers).” This disclosure only has to be placed on the general price list if the funeral provider arranges direct cremations.

(c) **Outer burial container provisions** –

(1) **Deceptive acts or practices.** In selling or offering to sell funeral goods and funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that state or local laws or regulations, or particular cemeteries, require outer burial containers when such is not the case;

(ii) Fail to disclose to persons arranging funerals that state law does not require the purchase of an outer burial container.

(2) **Preventive requirement.** To prevent these deceptive acts or practices, funeral providers must place the following disclosure on the outer burial container price list, required by § 453.2(b)(3)(i), or, if the prices of outer burial containers are listed on the general price list, required by § 453.2(b)(4), in immediate conjunction with those prices: “In most areas of the country, state or local law does not require that you buy a container to surround the casket in the grave. However, many cemeteries require that you have such a container so that the grave will not sink in. Either a grave liner or a burial vault will satisfy these requirements.” The phrase “in most areas of the country” need not be included in this disclosure if state or local law in the area(s) where the provider does business does not require a container to surround the casket in the grave.

(d) **General provisions on legal and cemetery requirements** –

(1) **Deceptive acts or practices.** In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for funeral providers to represent that federal, state, or local laws, or particular cemeteries or crematories, require the purchase of any funeral goods or funeral services when such is not the case.

(2) **Preventive requirements.** To prevent these deceptive acts or practices, as well as the deceptive acts or practices identified in §§ 453.3(a)(1), 453.3(b)(1), and 453.3(c)(1), funeral providers must identify and briefly describe in writing on the statement of funeral goods and services selected (required by § 453.2(b)(5)) any legal, cemetery, or crematory requirement which the funeral provider represents to persons as compelling the purchase of funeral goods or funeral services for the funeral which that person is arranging.

(e) **Provisions on preservative and protective value claims.** In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(1) Represent that funeral goods or funeral services will delay the natural decomposition of human remains for a long-term or indefinite time;

- (2) Represent that funeral goods have protective features or will protect the body from gravesite substances, when such is not the case.

(f) **Cash advance provisions** –

- (1) **Deceptive acts or practices.** In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:
 - (i) Represent that the price charged for a cash advance item is the same as the cost to the funeral provider for the item when such is not the case;
 - (ii) Fail to disclose to persons arranging funerals that the price being charged for a cash advance item is not the same as the cost to the funeral provider for the item when such is the case.
- (2) **Preventive requirements.** To prevent these deceptive acts or practices, funeral providers must place the following sentence in the itemized statement of funeral goods and services selected, in immediate conjunction with the list of itemized cash advance items required by § 453.2(b)(5)(i)(B): “We charge you for our services in obtaining: (specify cash advance items),” if the funeral provider makes a charge upon, or receives and retains a rebate, commission or trade or volume discount upon a cash advance item.

§ 453.4 Required purchase of funeral goods or funeral services.

(a) **Casket for cremation provisions** –

- (1) **Unfair or deceptive acts or practices.** In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for a funeral provider, or a crematory, to require that a casket be purchased for direct cremation.
- (2) **Preventive requirement.** To prevent this unfair or deceptive act or practice, funeral providers must make an alternative container available for direct cremations, if they arrange direct cremations.

(b) **Other required purchases of funeral goods or funeral services** –

- (1) **Unfair or deceptive acts or practices.** In selling or offering to sell funeral goods or funeral services, it is an unfair or deceptive act or practice for a funeral provider to:
 - (i) Condition the furnishing of any funeral good or funeral service to a person arranging a funeral upon the purchase of any other funeral good or funeral service, except as required by law or as otherwise permitted by this part;
 - (ii) Charge any fee as a condition to furnishing any funeral goods or funeral services to a person arranging a funeral, other than the fees for: (1) Services of funeral director and staff, permitted by § 453.2(b)(4)(iii)(C); (2) other funeral services and funeral goods selected by the purchaser; and (3) other funeral goods or services required to be purchased, as explained on the itemized statement in accordance with § 453.3(d)(2).
- (2) **Preventive requirements.**
 - (i) To prevent these unfair or deceptive acts or practices, funeral providers must:
 - (A) Place the following disclosure in the general price list, immediately above the prices required by § 453.2(b)(4) (ii) and (iii): “The goods and services shown below are those we can provide to our customers. You may choose only the items you desire. If legal or other requirements mean you must buy any items you did not specifically ask for, we will explain

the reason in writing on the statement we provide describing the funeral goods and services you selected.” Provided, however, that if the charge for “services of funeral director and staff” cannot be declined by the purchaser, the statement shall include the sentence: “However, any funeral arrangements you select will include a charge for our basic services” between the second and third sentences of the statement specified above herein. The statement may include the phrase “and overhead” after the word “services” if the fee includes a charge for the recovery of unallocated funeral provider overhead;

(B) Place the following disclosure in the statement of funeral goods and services selected, required by § 453.2(b)(5)(i): “Charges are only for those items that you selected or that are required. If we are required by law or by a cemetery or crematory to use any items, we will explain the reasons in writing below.”

(ii) A funeral provider shall not violate this section by failing to comply with a request for a combination of goods or services which would be impossible, impractical, or excessively burdensome to provide.

§ 453.5 Services provided without prior approval.

(a) **Unfair or deceptive acts or practices.** In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for any provider to embalm a deceased human body for a fee unless:

- (1) State or local law or regulation requires embalming in the particular circumstances regardless of any funeral choice which the family might make; or
- (2) Prior approval for embalming (expressly so described) has been obtained from a family member or other authorized person; or
- (3) The funeral provider is unable to contact a family member or other authorized person after exercising due diligence, has no reason to believe the family does not want embalming performed, and obtains subsequent approval for embalming already performed (expressly so described). In seeking approval, the funeral provider must disclose that a fee will be charged if the family selects a funeral which requires embalming, such as a funeral with viewing, and that no fee will be charged if the family selects a service which does not require embalming, such as direct cremation or immediate burial.

(b) **Preventive requirement.** To prevent these unfair or deceptive acts or practices, funeral providers must include on the itemized statement of funeral goods and services selected, required by § 453.2(b)(5), the statement: “If you selected a funeral that may require embalming, such as a funeral with viewing, you may have to pay for embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial. If we charged for embalming, we will explain why below.”

§ 453.6 Retention of documents.

To prevent the unfair or deceptive acts or practices specified in §§ 453.2 and 453.3 of this rule, funeral providers must retain and make available for inspection by Commission officials true and accurate copies of the price lists specified in §§ 453.2(b) (2) through (4), as applicable, for at least one year after the date of their last distribution to customers, and a copy of each statement of funeral goods and services selected, as required by § 453.2(b)(5), for at least one year from the date of the arrangements conference.

§ 453.7 Comprehension of disclosures.

To prevent the unfair or deceptive acts or practices specified in §§ 453.2 through 453.5, funeral providers must make all disclosures required by those sections in a clear and conspicuous manner. Providers shall not include in the casket, outer burial container, and general price lists, required by §§ 453.2(b)(2)–(4), any statement or information that alters or contradicts the information required by this part to be included in those lists.

§ 453.8 Declaration of intent.

- (a) Except as otherwise provided in § 453.2(a), it is a violation of this rule to engage in any unfair or deceptive acts or practices specified in this rule, or to fail to comply with any of the preventive requirements specified in this rule;
- (b) The provisions of this rule are separate and severable from one another. If any provision is determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.
- (c) This rule shall not apply to the business of insurance or to acts in the conduct thereof.

§ 453.9 State exemptions.

If, upon application to the Commission by an appropriate state agency, the Commission determines that:

- (a) There is a state requirement in effect which applies to any transaction to which this rule applies; and
- (b) That state requirement affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by this rule; then the Commission's rule will not be in effect in that state to the extent specified by the Commission in its determination, for as long as the State administers and enforces effectively the state requirement.

**STATE OF MICHIGAN
IN THE MICHIGAN COURT OF APPEALS**

**PAUL E. BUCHANAN and GENERATIONS
FUNERAL & CREMATION SERVICES, INC.,**
Respondents- Appellants,

v.

**DEPARTMENT OF LICENSING AND
REGULATORY AFFAIRS, CORPORATIONS,
SECURITIES & COMMERCIAL LICENSING
BUREAU/BOARD OF EXAMINERS IN
MORTUARY SCIENCE**
Petitioner - Appellee.

**Consolidated cases
COA Docket nos.
369989 and 369913**

**Oakland County Circuit Court
Case Nos. 2023-200075-AA
Hon. Martha Anderson**

**MOAHR Docket nos.
22-037404/ 22-037405
Case Nos. 343644 and 344547
Hon. David B. Marmon**

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**APPELLANT GENERATIONS' BRIEF IN REPLY TO MFDA'S AMICUS BRIEF
ORAL ARGUMENT REQUESTED**

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I. INTRODUCTION

Appellant Generations (Generations) has already briefed that Amicus Michigan **Funeral Directors** Association (MFDA) (emphasis added; *See Infra*) lacks certain features of a truly independent amicus. (*See* Generations Answer to MFDA’s Motion to Submit Amicus Brief p. 1-4). With this filing, we will respond to the substance of MFDA’s Amicus Brief. Ironically, it is best to begin with a point of agreement.

II. GENERATIONS’ ACTUAL CONDUCT. MFDA Brief, pp. 7-10

MFDA states and concludes that the Appellants’ actual conduct, to which the parties stipulated in their Stipulation #9 and on which both the ALJ and circuit court relied in their opinions - arranging and selling funeral related goods and service - are not “regulated” or “enveloped” by the Mortuary Science Act, MCLA 339.1801, *et al.* (MSA). MFDA Brief, pp. 7 and 10; See also Generations Exhibit C, Stipulated Facts. With that conclusion, Generations wholeheartedly agrees. As such, MFDA unavoidably agrees that the ALJ and lower court wrongly found Generations guilty of conduct violative of MSA subpart MCL 339.1806(3) (engaging in the practice of mortuary science at an unlicensed facility) and R339.18941 (2) (“doing business” in an unlicensed establishment), as a matter of law. See Generations Exhibit G, ALJ Hearing Report.¹ Appellants agree.

III. THE SCOPE OF “THE PRACTICE OF FUNERAL DIRECTING”. MFDA Brief, pp. 3-7.

¹ “Generations conducts business at the Other Facilities during regular business hours, which includes the arrangement and sale of cremations, memorial services, burial services, funeral merchandise, and cemetery merchandise, via both prepaid contracts and at-need contracts for funeral and cemetery services and merchandise. (Stipulation of Fact #9). These arrangement and sales activities clearly fall under the definition of the practice of funeral directing, as the arrangement and sale of cremations, memorial services, burial services, funeral services, are engaging in the supervising of the burial and disposal of a dead human body. As these activities meet the definition of ‘practice of funeral directing,’” . ALJ Hearing Report p. 15-16.

Given the above, Generations' disagreement with MFDA on this front is more academic. Nonetheless, there are deficiencies that require comment.

First, MFDA errantly suggests that "the record" herein was, in some unspecified respect, "unclear". MFDA Brief, p. 7. We disagree. The parties' stipulation regarding what does and does not happen at Generations' Arrangement Offices is abundantly clear, especially the Stipulation that **no** dead human bodies are ever present, or handled in any way (scientific or not), at any Arrangement Office. Generations Exhibit F, Stipulated Facts, Stipulation 9.

Second, MFDA errs in attempting to minimize the relevance of this Court's *Ansell* opinion². MFDA's footnote 4 makes much of the fact that this Court, in *Ansell*, did not use the exact words "sole and exclusive purpose" in a paragraph all agree that this Court wrote. With due respect, this is deceptive wordsmithing. After discussing the contents of the entire MSA, this Court quoted and reaffirmed its prior holding that the MSA "focuses on 'what is to be done or not done with a dead human body'", as MFDA admits, when it wrote "we conclude that the Legislature enacted the mortuary science act to regulate the science of treating human remains." *Ansell v. DOC*, 222 Mich App 347, 357 quoting *Espinoza v. Bowerman-Halifax Funeral Home*, 121 Mich App. 432, 437 (1982); *Id.* at 357. What this Court also wrote, in the same paragraph, was language that excluded "... the unscientific tasks involved in administering funeral services." *Id.*

MFDA quibbles over this paragraph to make its exposition on the scope of "funeral directing" appear more relevant than it is. MFDA Brief, pp. 3-7. However, of all the provisions cited by MFDA in said passage, only two examples include actual provisions of the MSA, which either relate to handling actual dead human bodies or are immaterial, while the others do not

² *Ansell v DOC*, 222 Mich App 347 (1997)

appear in the MSA at all³. Furthermore, as to all seven⁴ of MFDA's examples, Appellants have never even been accused of violating any of them at its Arrangement Offices, or anywhere else.

MFDA's enumerated examples inadvertently reaffirm that the MSA is almost exclusively concerned with the care of dead human bodies. See MFDA numbered examples and their citations: (1) MCL 333.2843(1); (2) MCL 700.3206(1); (3) MCL 52.210; (5) MCLA 339.1807 Mich. Admin Code R 325.3; (6) Mich Admin Code, R. 325.1-2; (7) MCL 339.1809a; (8) Federal Social Security Administrative Form SSA-721. MFDA Brief, pp. 4-7. MFDA's two examples that are actually found in the MSA (Examples 5 and 7) both involve actual handling of dead human bodies: (5) transporting dead human bodies; and (7) maintaining the cremains of a dead human body. MFDA Brief, pp. 5, 6. This is consistent with the *Ansell* holding that the MSA is heavily focused on "what is to be done and or not done with a dead human body". *Ansell* at 357. The MFDA-cited non-MSA statutes and their attendant regulations regulate other "non-scientific" tasks, even some clerical chores, that are required of funeral directors (or an "authorized agent" in their service) but have nothing to do with how one should actually handle a dead human body.⁵ Thus, *Ansell* does, as Appellants have briefed, aptly hold that the focus of the MSA is on the proficient, sanitary, respectful handling of dead human bodies, not "selling and arranging" Funeral And Cremation Services and Merchandise (FACSM). MFDA's brief confirms that there may be other non-scientific non-MSA tasks associated with funeral directing, but none of these extend to selling and arranging for FACSM or are governed by the MSA.

³ In example 5, MFDA also references a local registration requirement on MCLA 339.1807 (2). Clearly, filing papers at a city hall does nothing to define the scope of the practice of funeral directing. It merely prescribes an additional administrative chore that the law imposes on people who otherwise do practice this profession. It may also count as "doing business".

⁴ MFDA did not actually provide an example 4.

⁵ It should be noted that a licensed funeral director's violation of some, but not all, of the items listed by MFDA falling outside the MSA may include penalties under Article 6 of the Occupational Code. MCL 339.1810. Furthermore, such items are not fully incorporated into the MSA.

Thus, these 4 pages of MFDA's Brief are fundamentally immaterial other than to indirectly support Appellants' ultimate arguments: (1) the sale of FACSM is not regulated under the MSA (2) and the MSA is concerned with the care of dead human bodies, not non-scientific tasks associated with such. A statute that never mentions the word "office" and, as MFDA notes, is silent as to arrangements and sales, is highly unlikely to concern itself with or prescribe where our Arrangement Offices can be. MFDA Brief, p. 8 ("Despite Article 18's silence...").

IV. THE PREPAID ACT. MFDA Brief, pp. 9-10.

Unfortunately, MFDA also mischaracterizes the import of The Prepaid Act, MCL 328.211, *et al.* The Prepaid Act explicitly covers all sales of FACSM. It defines itself as "[a]n act to regulate the sale and providing of [FACSM] and other related interests; . . ." MCLS Ch. 328, Act 255 *et al.* It contains multiple prohibitions regarding, and requirements for, *all* sales of FACSM. *See* MCL 328.225(1), (2) (5); MCL 328.228(1)a-g; Also see Generations Reply BOA pp. 4, 9; BOA pp. 17-20, 29-38, 46. Conversely, MFDA, exactly like Appellee, focuses only on the Prepaid Act's definition of "Prepaid Contract" to errantly conclude that the Prepaid Act does not also regulate the sale of at-need FACSM. MFDA Brief, pp. 9, 10.

This presents a logical pitfall for MFDA. MFDA neither cites nor offers this Court any other alternative statute or regulation that would regulate the sale of at-need FACSM. MFDA agrees that "selling services and merchandise [FACSM] are not regulated by Article 18 and do not require a[n MSA] license". MFDA Brief, p. 7. That leaves only two alternative conclusions, neither of which assists Appellee. Either no Michigan law regulates the at-need sale and arranging of FACSM, or the Prepaid Act, which expressly purports to regulate the sale of FACSM, does. *See* Generations Reply BOA pp. 4, 9; BOA pp. 17-20, 29-38, 46

Again, neither Appellant Generations nor Buchanan is accused of violating the Prepaid Act in any respect, and Appellants have, from their first briefing to the ALJ⁶, argued and shown that their actual activities are authorized by, and compliant with, the Prepaid Act.

V. ADVERTISING, HOLDING OUT, ETC. MFDA Brief, p. 3.

We are thus left with MFDA's core endorsement of what Appellee argues, and the two lower tribunals have held – that Appellants' signage and website unavoidably and illegally imply that, the stipulated truth notwithstanding, embalming, cremations, or any work on or with a dead human body actually happen at the Arrangement Offices. This is, candidly, the weakest reed on which MFDA could have chosen to lean. It relies on semantic pettifoggery instead of any semblance of commonsense reading, and is hobbled by the total absence of supportive proof.

In sum, MFDA's argument that Generations has violated the MSA, two paragraphs on their page 3, relies on two readily recognizable fictions. First is that identifying oneself as a mortuary science licensee constitutes the active practice of this profession, as MFDA puts it, "regardless of the activities actually performed". MFDA Brief, p. 3. To illustrate the absurdity of this assertion, it equates to arguing that if, while coaching a 7th grade soccer team, a licensed mortician mentions that he/she is also a funeral director, MCLA 339.1801 (e) instantly and magically transforms that soccer practice into an episode of practicing mortuary science. Second, Appellee and MFDA both conclude that the place(s) where these acts of truthful self-identification occur, which, to carry out the analogy, would include said soccer field or any number of other perfectly innocent locations Appellants have briefed⁷, instantly become improperly equipped and unlicensed "funeral establishments", courtesy of MCLA 339.1801(b). Obviously, these two leaps of fractured logic are only remotely feasible if the mortician in

⁶ See Buchanan BOA Attachment 28, Brief to ALJ, pp. 11-12; Attachment 29, Generations BOA (Circuit Ct.), pp. 21-26; Generations BOA(COA), pp. 17-20, 29-49; Generations Reply BOA (COA) pp. 4-6.

⁷ See Buchanan BOA (COA), pp. 29 (fn 17), p. 35 (fn 19), pp. 37-40;

question also actually states or implies that he/she is actively engaged in performing recognizable mortuary services (embalming being the *sine qua non*) at that moment, at that place. Affirming that one is a mortician who actively practices the science in a duly licensed facility somewhere else cannot violate any law.

This case involves only two instances of self-identification - Appellants' signage and their website. Generations' signage consists of its actual, legal name, and one Arrangement Office also has a window sticker stating "simple cremation \$795". Neither states that cremations, embalming, etc., actually occur at the Arrangement Offices.

The factual and legal shortcomings of MFDA's argument are manifold.

First, MCLA 339.1805 ends by expressly allowing duly licensed funeral directors to accurately use various titles when identifying themselves. That section does not continue to restrict where licensees can accurately self-identify. This is not unusual. A brief review of the Professional and Occupational Codes uncovers numerous examples of licensed occupations and professions whose actual conduct is restricted to a licensed facility (especially those involving concerns over sanitation and health), none of which also purport to also infringe on where and how duly licensed professionals or individuals can accurately self-identify⁸.

Thus, to entertain MFDA's argument, one must accept the fanciful notion that, after passing over all of this state's lawyers, barbers, cosmetologists, dentists, accountants, veterinarians, massage therapists, etc., Michigan's Legislature discerned that a peculiar,

⁸ See MCL 339.601 for blanket prohibition of falsely claiming to hold licensure; See MCL 339.604 for no general prohibition against accurate self-identification outside a licensed facility; See MCL 339.723 (1) as to Accountants; See MCL 339.1003, etc. re Employment agencies; See MCL 339.1101 re: Barbers; See MCL 339.1111-.1113 re: Barber shops; See MCL 339.1201-.1218 re: Cosmetologists and salons; See MCL 339.1301-.1309 re: Hearing aid dealers; See MCLA 339.2001-.2014 re: Architects, engineers and surveyors; See MCLA 339.2401-.2412 re: residential builders; See MCLA 339.2501-.2518 re: real estate brokers; See MCL 338.481 re: pharmacies; See MCL 338.1051, etc. re: private security and alarm businesses; See MCL 333.16601(c) re: Dentists; See MCL 333.17011 re: Physicians; See MCL 333.17953 re: massage therapists; See MCL 333.18811 re: veterinarians.

insufferable (and unstated) danger would arise if funeral directors, and funeral directors alone, were allowed to announce what they do for a living anywhere except the building where their embalming room is located. Still, MCLA 339.1805 clearly ends with language allowing⁹ duly licensed funeral directors to use their professional title, and does not state that they must only do so while in their licensed establishments. Thus, MFDA, Appellee, and both lower courts run afoul of a fundamental axiom of statutory construction which prohibits the reader from adding nonexistent language to a statute, particularly in the service of an absurd construction¹⁰.

Second is the matter of evidence. It is instructive that the sole concrete justification MFDA offers for the contorted reading of the MSA and regulations that it and Appellee propose is to protect the actual public from misinterpretations and uncomfortable uncertainty about where a deceased loved one's remains are. MFDA Brief, p. 3. This concern, MFDA argues, justifies restrictions on where funeral directors can self-identify. *Id.* However, MFDA, Appellee, and both lower courts merely speculate, without any actual evidence, about what readers of Generations' signage and website "must think" about deceased loved ones being handled at Arrangement Offices. Not one witness who concurs with this speculation has been found. See Buchanan BOA (COA), p. 43. Not even the original "complaining witness", Mr. Mydlarz, professed this discomfiture, or confusion. See Generations BOA (COA) Attachment M, Formal Complaint, Exhibit 2. Hence, this conclusory consensus among three lawyers, a trade association, an ALJ and a circuit court judge is all that sustains Appellee's case on the one justification either it or MFDA offers to condemn Appellants' signage/website. As previously

⁹ "... and may..."

¹⁰ *Bower v Whitehall Leather Co.*, 412 Mich 172, 191 (1981); *Thomas v Employment Security Comm.*, 356 Mich 665 (1959); *Great American Ins. Co. v. Queen*, 410 Mich. 73 (1980); *Wyandotte Sav. Bank v. State Banking Comm'r*, 347 Mich. 33 (1956); *Salt Co. v. East Saginaw*, 80 U.S. 373, 20 L. Ed. 611 (1872); *Horsey v. Stone & Webster Engineering Corp.*, 162 F. Supp. 649 (D. Mich. 1958); *Attorney Gen. ex rel. Detroit Common Council v. Marx*, 203 Mich. 331, 168 N.W. 1005 (1918).

briefed, “lawyers’ statements, commentaries, and arguments are not evidence.” See MI Ci Ji 2.04 and Generations BOA (COA), p. 43.

Third, there is the matter of what Appellants’ website actually does say. It identifies the one place where Appellants handle dead human bodies as Appellants’ “Funeral Home” and, in contrast, calls all three Arrangement Offices something else. *See* Generations BOA (COA) Attachment M, Formal Complaint, Exhibit 2, p. 3 of 6.

Fourth, MFDA’s fractured logic would implicate its own conduct. The sign in front of the MFDA headquarters, which is not a licensed funeral establishment, located at 2420 Science Parkway, Okemos, MI 48864, reads “Michigan **Funeral Directors** Association – Generations of Caring” and a website stating “All Sales Are Final”. (Exhibits II, JJ, KK) (emphasis added). If MFDA’s logic is correct, their own inclusion of the term “funeral director” in their signage also would, through the above-noted alleged interplay of MCLA 339.1801(b) and (e), transform their headquarters into an illegal, unlicensed, funeral establishment. By the same “logic”, every billboard for a cremation or funeral home would also violate the MSA, since, of course, neither embalming nor cremations can actually happen at the base of a billboard. MFDA Brief, p. 3.

Thus, as Appellants have repeatedly briefed, buildings having nothing to do with mortuary science cannot be transformed into an MCL 339.1801 (b) “funeral establishment”, simply by virtue of a licensed funeral director accurately self-identifying, or answering the following question, in one of them – “What do you do for a living?”. Neither can that funeral director be magically deemed to be engaged in mortuary science while actually trying to help a 7th grader learn how to launch a respectable corner kick, on some schoolyard. And, of course, neither does MFDA’s signage have this absurd effect.

There is a vastly more plausible explanation to be had for why MCL 339.1801(b) contains its “where an individual represents” language; why MCL 339.1801(e) includes its “or

otherwise implying” language; and why Mich Admin R. 339.18941(2) contains its “do business” proscription, and so forth. That explanation can be found in *Ansell* and MSA sections MCLA 339.1803, .1806 and .1809. *Ansell* confirms that Michigan’s Legislature focused the MSA on assuring that only properly trained professionals engage in the sanitary, proficient and skilled preparation of dead human bodies for final disposition, not untrained charlatans. Hence, MCL 339.1803 (1) and (3) prohibit uncertified people from dabbling in the science of embalming, or claiming to. Likewise, the MSA itself, at MCL 339.1806 and .1809(6) and (7), coupled with attendant regulations Mich Admin R. 339.18931 and .18933 serve the obvious, linked concern that the place where these sensitive ministrations actually occur be properly constructed and equipped to assure both proficient and sanitary handling of dead human bodies. Working together, these statutory and regulatory provisions are designed to assure the public of two readily discernible public concerns: the competence of the people who actually handle dead bodies, or claim to be able to, and the sanitary nature of the places where this handling occurs. These concerns explain all the above provisions.

In contrast, the relevant statutory provisions and rules owe nothing to some flowery, imaginary concern about morticians identifying themselves, offering advice, or consulting clients, in a building not equipped with an embalming room, nor to the apocryphal fear that someone, somehow might believe that their relatives’ corpses are being embalmed in offices in strip malls, perhaps on the desk where their funeral contract was signed. This is why, we surmise, neither Appellee nor MFDA can cite any concrete authority, or even legislative history, to validate their conjecture as to what evil their reading of the laws would avoid, or what good they would do. Reading the statute reasonably and consistently points to the above two purposes, neither of which indict any of Appellants’ actions or advertising.

VI. AN UNCONTESTED POINT

Finally, Generations would also be remiss for failing to note an issue MFDA never addresses, the ordered, but errant, full closure of all of Generations' Arrangement Offices, even for purposes of selling Prepaid Contracts. See Generations BOA (COA) Exhibit D. Final Order. Since MFDA's Brief clearly agrees that selling Prepaid Contracts is not an activity regulated by the MSA, and since the parties' Stipulation 9 confirms that this pre-need selling activity did take place at all three Arrangement Offices, it is plain that MFDA's Brief does nothing to justify or defend the compulsory full closure of all three Offices, ordered by Appellee and affirmed by the circuit court, preventing Appellants from pursuing what no one denies was legal behavior in all three.

VII. CONCLUSION

The MFDA, an amicus intertwined with the Board of Mortuary Science, confirms that Appellants' selling and arranging conduct is not regulated by the MSA; offers a reading of the MSA that would inadvertently implicate its own conduct; and does nothing to justify why Generations' Arrangement Offices remain closed, unable to conduct even business that no one claims is illegal - preneed sales. It provides no reason to accept the fractured logic that has been used to indict Appellants' signage or website. It has, if anything, advanced Appellants' cause. And it begs one nagging question: If MFDA's and Appellee's actual concern was confined to the wording of Appellants' signage and website, why did they pursue \$20,000 in fines, Buchanan's suspension, and the total closure of all three Arrangement Offices, rather than respond to counsel's 8/26/2022 letter inviting Appellee's editorial input? See Buchanan BOA (COA) Attachment 15. Answer to Formal Complaint.

February 19, 2025

Respectfully submitted,

/s/ Benjamin D. Joffe
Benjamin D. Joffe p77134
Attorney for Appellant Generations

AFFIDAVIT OF SERVICE

The undersigned confirms that he has, this day,
served the forgoing and all attachments on all counsel
of record via the Court's e-filing system.

February 19, 2025

/s/ Benjamin D. Joffe
Benjamin D. Joffe p77134

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
CORPORATIONS, SECURITIES, AND COMMERCIAL LICENSING BUREAU
~~DIRECTOR'S OFFICE~~

MORTUARY SCIENCE

Filed with the secretary of state on

These rules become effective immediately after filing with the secretary of state unless adopted under section 33, 44, or 45a(9) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.233, 24.244, or 24.245a. Rules adopted under these sections become effective 7 days after filing with the secretary of state.

(By authority conferred on the department of licensing and regulatory affairs by sections 205 and 308 of the occupational code, 1980 PA 299, MCL 339.205 and 339.308, and Executive Reorganization Order Nos. 1996-2, 2003-1, 2008-4, and 2011-4, MCL 445.2001, 445.2011, 445.2025, and 445.2030)

R 339.18901, R 339.18921, R 339.18923, R 339.18925, R 339.18931, R 339.18937, R 339.18941, R 339.18943, and R 339.18945 of the Michigan Administrative Code are amended, R 339.18922, R 339.18928, R 339.18928a, R 339.18929, R 339.18929a, R 339.18929b, R 339.18929d, R 339.18932, R 339.18935, and R 339.18942 are added, and R 339.18927, R 339.18930, and R 339.18933 are rescinded, as follows:

PART 1. GENERAL PROVISIONS

R 339.18901 Definitions.

Rule 1. (1) As used in these rules:

(a) ~~"Establishment working hours" means 8 a.m. to 10 p.m.~~ **"Authorizing agent" means the individual or individuals with priority under section 3206 of the estates and protected individuals code, 1998 PA 386, MCL 700.3206.**

(b) ~~"Full time" means not less than 40 hours per week.~~ **"Board" means board of examiners in mortuary science as created in section 1802 of the code, MCL 339.1802.**

(c) ~~"Sponsor" means a mortuary science licensee who has held a mortuary science license for not less than 5 years, who has agreed to supervise and instruct a resident trainee as required by R 339.18925, and who has not had any disciplinary action taken against him or her within the last 5 years.~~ **"Code" means the occupational code, 1980 PA 299, MCL 339.101 to 339.2677.**

(d) **"Continuing education" means an instructional course or activity that is designed to bring licensees up to date on a particular area of knowledge or skills relevant to the licensee's area of professional practice and covers a topic under section 1806b(2)(a) of the code, MCL 339.1806b.**

(e) **"Continuing education audit" means the process by which a percentage of all licensees or approved course sponsors are randomly selected by the department for audit.**

(f) **"Continuous instruction" means the time spent completing an activity, not including any breaks in the program.**

(g) "Course" means any qualifying activity or approved program with a clear purpose and objective that maintains, improves, or expands the skills and knowledge related to the topics under section 1806b(2)(a) of the code, MCL 339.1806b. Regular duties for compensation are not considered activities, except for employer compensated continuing education activities.

(h) "Full-time" means not less than 40 hours per week.

(i) "In-house" means a course or seminar that takes place within the mortuary science establishment.

(j) "Manager" means an individual holder of a license for the practice of mortuary science that a funeral establishment appoints to manage the daily operations of the funeral establishment consistent with section 1809 of the code, MCL 339.1809, including ensuring its adherence to all applicable laws.

(k) "Provider" means a person that has been approved by the department to provide continuing education courses for credit. (a) "~~Establishment working hours~~" means 8 a.m. to 10 p.m.

(l) "Supervision" means the physical presence at the establishment of the holder of a license for the practice of mortuary science, while an individual on behalf of the funeral establishment engages in the practice of funeral directing, including arranging for mortuary science services.

~~(c) "Sponsor" means a mortuary science licensee who has held a mortuary science license for not less than 5 years, who has agreed to supervise and instruct a resident trainee as required by R 339.18925, and who has not had any disciplinary action taken against him or her within the last 5 years.~~

(2) The terms defined in articles 1 and 18 of the act code have the same meanings when used in these rules.

PART 2. LICENSING MORTUARY SCIENCE LICENSE

R 339.18921 ~~Licensure education~~ Mortuary science license requirements.

Rule 21. (1) ~~As required by section 1806 of the act, for education completed after January 1, 2002, the 3-year course in mortuary science shall consist of both of the following:~~

~~(a) Completion, with not less than a 2.00 average, of not less than 60 semester or 90 quarter hours of non-remedial college level courses at an accredited college or university, which shall include all of the following:~~

~~Subject _____ Minimum Hours~~

~~(i) Public speaking/communications..... 3 semester or 3 quarter hours.~~

~~(ii) Psychology/death and dying/gerontology. 6 semester or 8 quarter hours.~~

~~(iii) Comparative religion or ethnic/multi-cultural studies.....3 semester or 4 quarter hours.~~

~~(b) Completion, with not less than a 2.00 average, of 1 academic year of instruction in an accredited mortuary science program or a program deemed by the department to be equivalent to an accredited program. The department adopts by reference the accreditation standards contained in the American Board of Funeral Service Education manual on accreditation, revised October, 2000, for mortuary science instruction completed after January 1, 2002. Copies of the manual are available from the American Board of Funeral Service Education, 38 Florida Avenue,~~

Portland Maine 04103, or from the Department of Consumer and Industry Services, P.O. Box 30018, Lansing, Michigan 48909-7518, at a cost as of the time of the adoption of these rules of \$50.00. The department shall distribute, without cost, a list of the programs accredited in accordance with the manual.

(2) The department may waive not more than 6 months of an applicant's resident training upon the receipt of proof that an applicant possesses a baccalaureate degree from an accredited college or university. A resident trainee who has received a waiver under this subrule is not exempt from fulfilling the requirements of R 339.18923, R 339.18925, and R 339.18927.

(3) For education completed before January 1, 2002, the 3-year course in mortuary science education shall consist of both of the following:

(a) Completion, with not less than a 2.00 average, of not less than 60 semester or 90 quarter hours of nonremedial college level courses at an accredited college or university, which shall include the following subjects:

Subject	Credit Hours
---------	--------------

- | | |
|---|---------------------------------|
| (i) Public speaking/communications..... | 3 semester or 3 quarter hours. |
| (ii) Accounting..... | 6 semester or 8 quarter hours. |
| (iii) Psychology/gerontology/death and dying..... | 6 semester or 8 quarter hours. |
| (iv) Chemistry lecture and lab..... | 8 semester or 10 quarter hours. |
| (v) Biological science (biology/zoology/anatomy)..... | 6 semester or 8 quarter hours. |
| (vi) English composition/business writing..... | 6 semester or 8 quarter hours. |
| (vii) Computer science..... | 3 semester or 4 quarter hours. |

(b) Completion, with not less than a 2.00 average, of 1 academic year of instruction in an accredited mortuary science program or a program deemed by the department to be equivalent to an accredited program. The department adopts by reference the accreditation standards contained in the American Board of Funeral Service Education manual on accreditation revised September, 1990 for mortuary science instruction completed after January 1, 1993. Copies of the manual are available from the American Board of Funeral Service Education, 38 Florida Avenue, Portland Maine 04103, or from the Department of Consumer and Industry Services, P. O. Box 30018, Lansing Michigan 48909-7518, at a cost as of the time of the adoption of these rules of \$50.00.

(4) An applicant who possesses a baccalaureate or higher degree from an accredited college or university is deemed to have satisfied the requirements of subrule (1)(a) and (3)(a) of this rule.

An applicant for a mortuary science license shall satisfy the requirements of the code. In addition to the requirements of the code, an applicant shall satisfy all of the following:

(a) Completion of not less than **60 semester or 90** quarter hours of nonremedial college level courses at an accredited college or university with not less than a **2.00 grade point** average. **The hours in this subdivision may not count toward the requirements outlined in subdivision (b) of this rule.**

(b) Graduation from an accredited mortuary science program pursuant to R 339.18922(1) with not less than **30 semester or 45** quarter hours and not less than a **2.00 grade point** average. **The hours in this subdivision may not count toward the requirements outlined in subdivision (a) of this rule.**

(c) Completion of resident training that satisfies the requirements of R 339.18923.

(d) Passing all required parts of the national board examination developed by the international conference of funeral service examining boards. The passing score for each part of the examination is the passing score as determined by the conference.

(e) Passing a state jurisprudence examination developed and administered by the department or the department's designee. The passing score is 75%.

R 339.18922 Educational program standards; adoption by reference.

Rule 22. (1) The department adopts by reference the standards for accrediting mortuary science programs as adopted by the American Board of Funeral Service Education (ABFSE) Committee on Accreditation, which is available from ABFSE, 992 Mantua Pike, Suite 108, Woodbury Heights, New Jersey 08097, or may be downloaded for no cost from ABFSE's website, at <https://abfse.org/>.

(2) The department adopts by reference the procedures and criteria for recognizing accrediting organizations of the Council of Higher Education Accreditation (CHEA), effective September 24, 2018, and the procedures and criteria for recognizing accrediting agencies of the United States Department of Education, effective July 1, 2020, as contained in 34 CFR part 602. The CHEA recognition standards may be obtained from CHEA, One Dupont Circle Northwest, Suite 510, Washington, DC 20036, or from the council's website at <https://www.chea.org/>, at no cost. The federal recognition criteria may be obtained at no cost from the United States Department of Education's website at <https://www.ed.gov/>.

(3) Copies of the standards and criteria adopted by reference in this rule are available for inspection and distribution from the Department of Licensing and Regulatory Affairs, Corporations, Securities, and Commercial Licensing Bureau, 2407 N Grand River Avenue, Lansing, Michigan 48906, or at no cost from the bureau's website at <https://www.michigan.gov/lara/bureau-list/cscl>.

~~R 339.18923 Resident training; resident training time credit; notice of change of sponsor or location; supervision; license renewal; sponsor limitation; attending college or university during training. Resident training requirements.~~

~~Rule 23. (1) To receive credit for resident training time, a resident trainee shall be employed on a full-time basis during establishment working hours and shall be under the supervision of his or her sponsor.~~

~~(2) A resident trainee shall notify the department, in writing, of a change of sponsor before beginning training under the new sponsor. A resident trainee shall also notify the department of any change in training location.~~

~~(3) A resident trainee who has completed 1 year of resident training, but who continues to perform duties requiring a license, shall continue to work under the supervision of a mortuary science licensee and shall maintain an active resident trainee license.~~

~~(4) A resident trainee license shall not be renewed more than 2 times.~~

~~(5) Except as authorized by the department, a mortuary science licensee shall sponsor only 1 resident trainee at a time.~~

~~(6) A resident trainee may attend a college or university while serving his or her resident training, if both of the following conditions are met:~~

~~-(a) The college or university is within reasonable commuting time from the trainee's home or training establishment.~~

~~-(b) The sponsor notifies the department, in writing, that the resident trainee is attending a college or university and that the course schedule will not interfere with the resident training program established by the sponsor.~~

(1) Before commencing resident training, an applicant shall obtain a resident trainee license as provided in section 1808 of the code, MCL 339.1808. An individual shall not be issued more than 1 resident trainee license. The resident trainee license may not be renewed more than once.

(2) If the resident trainee is seeking additional renewal beyond what is allowed in subrule (1) of this rule, or if an individual is seeking relicensure as a resident trainee, the resident trainee must file a petition consistent with article 5 of the code, MCL 339.501 to 339.559, with the board at the scheduled meetings. A petition must be completed on a form provided by the department and received by the department 30 days before the scheduled meeting date.

(3) The training program must be not less than 12 months in duration. However, an applicant holding a baccalaureate degree from an accredited school, college, or university may request the department to waive a 6-month portion of the time, pursuant to section 1806(2) of the code, MCL 339.1806.

(4) Credit for the training program must be granted while the individual is employed for a minimum of 40 hours per week.

(5) The training program must be under the instruction and supervision of a sponsor who has all of the following qualifications:

(a) Has held an active license for not less than 5 years.

(b) Has no disciplinary actions taken against the sponsor's license within the past 5 years.

(c) Has fulfilled all terms of any prior disciplinary action taken against the sponsor's license.

(6) A resident trainee shall report to the department as provided in section 1808(2) of the code, MCL 339.1808.

(7) The training program must satisfy the minimum practice experience requirements set forth in R 339.18925.

(8) A resident trainee performing embalming shall be personally supervised by a mortuary science licensee. The mortuary science licensee shall remain physically present in the embalming or preparation room during the entire embalming process and be able to visually observe the resident trainee.

R 339.18925 Minimum practical experience requirements.

Rule 25. **(1)** A resident trainee shall perform, under the supervision of ~~his or her sponsor~~ **the resident trainee's sponsor, who is a mortuary science licensee**, all of the following ~~minimum services~~ during resident training:

(a) Not less than 25 embalmings or assisting a licensee in supervising the preparation of 25 dead human bodies. Assisting in the preparation of 25 dead human bodies means all of the following:

(i) Setting features of the decedent.

(ii) Surface disinfection of the decedent.

(iii) Placing the decedent in a casket or container.

(b) All of the following services not less than 20 times each:

(i) ~~Removing~~ **Transferring** remains from the place of death **or other location.**

(ii) **Securing information for a death certificate, death notice, or obituary.**

(iii) ~~Completing and filing~~ a death certificate and obtaining the burial transit permit.

(iv) **Publishing or posting of a death notice or obituary.**

(v) Arranging for clergy **or celebrant.**

~~(vi) Checking in and placing flowers.~~

~~(vii)~~ Receiving visitors.

~~(viii)~~ Assisting in **selection of** funeral merchandise.

~~(ix)~~ Assisting in making funeral arrangements.

~~(x)~~ Arranging ~~emetry~~ for final disposition or shipment by common carrier ~~details.~~

~~(xi)~~ Assisting at the funeral.

~~(xii)~~ Dressing, casketing, and applying cosmetics to, ~~and arranging the hair of,~~ a deceased **individual person.**

~~All of the following services not less than 3 times each:~~

~~(i)~~ **(xii) Arranging for or providing music, livestreaming, or other media as part of a funeral or memorial service.**

~~(ii)~~ **(xiii) Completing and filing social security forms. Completing a task on the electronic death registration system.**

~~(iii)~~ **(xiv) Completing and filing veterans' forms.**

~~(iv)~~ **(xv) Performing restorative work.**

~~(v) Arranging the receiving or transferring of human remains by common carrier.~~

~~(vi) Contacting the deceased's lodge, club, or place of employment concerning the death.~~

~~(vii)~~ **(xvi) Completing cremation forms.**

~~(viii)~~ **(xvii) Confirming identification of the deceased.**

~~(ix)~~ **(xviii) Releasing cremated remains or arranging for shipping or the disposition of cremated remains.**

~~(x)~~ **(xix) Documenting and safeguarding personal effects, jewelry, or other items.**

~~(xi)~~ **(xx) Preparing an itemized statement of funeral goods and services.**

~~(xii)~~ **(xxi) Presenting a general price list, casket price list, and outer burial container price list to the consumer, as applicable.**

~~(xiii)~~ **(xxii) Assist in making prearrangements.**

(c) The experience requirements under subdivision (a) of this subrule must be overseen in the physical presence of a mortuary science licensee.

(2) The sponsor or other mortuary science licensee who is supervising the resident trainee is responsible for ensuring the trainee remains compliant with all statutes and rules affecting the practice of mortuary science.

R 339.18927 ~~Resident training reports.~~ **Rescinded.**

~~Rule 27. (1) To receive credit for resident training, each resident trainee shall file with the department an embalming report which verifies that a minimum of 5 embalmings were performed by the trainee during the previous 6-month reporting period.~~

~~(2) The department may reject an embalming report that is filed by a resident trainee if the report is inaccurate, incomplete, or is filed after the due dates of January 15 and July 15. The rejection of an embalming report may also result in the loss of training time for the period~~

~~covered by the rejected reports. Failure to notify the department of a change in sponsor as required by R 339.18923 may result in the loss of training time and the rejection of embalmings performed under the new sponsor.~~

R 339.18928 Continuing education; license renewal; requirements.

Rule 28. (1) An applicant for license renewal who is licensed during the 2-year period immediately preceding the expiration date of the license shall obtain not less than 4 hours of eligible continuing education courses each year preceding the expiration date of the license and satisfy both the following:

(a) Obtain the hours in the topics detailed in section 1806b(2)(a) of the code, MCL 339.1806b.

(b) Obtain all 4 hours of continuing education credit in activities that satisfy the requirements under R 339.18928a.

(2) Submission of an application for renewal constitutes the applicant's certification of compliance with this rule and R 339.18928a.

(3) A licensee shall retain documentation of satisfying the requirements of this rule and section 1806b of the code, MCL 339.1806b for a period of 4 years after the date of filing the application for license renewal.

(4) A licensee is subject to audit under this part and may be required to submit documentation as described by R 339.18928a upon request of the department.

(5) A request for a continuing education waiver pursuant to section 204(2) of the code, MCL 339.204, must be received by the department before the expiration date of the license.

R 339.18928a Continuing education requirements for licensees; eligible activities, programs, or courses.

Rule 28a. (1) The department shall grant credit for continuing education hours that satisfy the requirements in the following chart:

Activity Code	Activity and Proof Required	Number of Continuing Education Credits for the Activity
(a)	<p>Completing an approved continuing education program, seminar, in-house course, workshop, professional or technical presentation, or activity related to the topics under section 1806b(2)(a) of the code, MCL 339.1806b.</p> <p>For proof of completion and if the continuing education requirements of the licensee are audited by the department, it is the responsibility of the licensee to</p>	<p>One continuing education credit is granted for every 50 minutes of continuous instruction.</p>

	<p>obtain a certificate of completion from the provider.</p>	
(b)	<p>Attending a board meeting. To receive credit, the licensee shall obtain a form provided by the department from a department employee present at the meeting and have that employee complete, sign, and date the form. The licensee shall present a valid government-issued photo identification to the department employee for verification.</p> <p>The licensee shall not receive credit if the licensee is petitioning the board and department or has current disciplinary actions against them.</p> <p>For proof of completion and if the continuing education requirements of the licensee are audited by the department, the licensee must provide the form completed, signed, and dated by the department employee who was present at the meeting.</p>	<p>One continuing education credit is granted, with a limit of 1 continuing education credit per year.</p>

(2) A licensee shall attest to completion of continuing education requirements in submitting their application for license renewal. The department may audit a licensee as outlined in R 339.18929a.

(3) Continuing education credits must not be granted to the licensee for a program or activity that contains the same content of a program or activity for which the licensee has already earned continuing education credits during the renewal period.

(4) Unless otherwise specified in the rules, the department shall grant continuing education credit based on the length of a qualifying program, with 50 minutes of continuous instruction constituting 1 qualifying hour.

R 339. 18929 Approved providers of continuing education; approval process for providers.

Rule 29. (1) A continuing education program, seminar, course, workshop, professional or technical presentation, or activity that is an Academy of Professional Funeral Service Practice approved course, provided by an ABFSE accredited program, or is sponsored by a hospital or other licensed healthcare institution or government agency, is an approved continuing education course consistent with section 1806b(2)(b) of the code, MCL 339.1806b, unless otherwise determined by the department.

(2) An in-person continuing education course that is not preapproved under subrule (1) of this rule must be approved by the department before offering continuing education credit to mortuary science licensees. An applicant shall complete and submit an application on a form provided by the department that includes all the following:

- (a) The subject offered consistent with section 1806b(2)(a) of the code, MCL 339.1806b.**
- (b) The total hours of instruction consistent with R 339.18928a(3).**
- (c) The names, qualifications, or other pertinent information of speakers or individuals providing continuing education instruction.**
- (d) A sample of the certificate of completion of each course.**
- (e) A means of reasonably ensuring licensee participation in the course.**
- (f) Affirmation that the course is available to all licensees and applicants until capacity of the course is reached.**
- (g) The capacity for the course.**
- (h) An agreement to maintain course records for 4 years.**
- (i) Other documentation as required by the department.**

(3) The department, in consultation with the board, shall approve or deny a completed application within 60 days after receipt. An application is considered complete after receipt of all required documentation described in subrule (2) of this rule.

(4) Courses approved by the department are valid for 2 years. The department shall maintain a list of approved continuing education courses on the department's website.

(5) Certificates of completion must be awarded to licensees upon the successful completion of all approved continuing education courses and include all the following information:

- (a) Name of provider and presenter, if applicable.**
- (b) Licensee's name and license number.**
- (c) Approved course title.**
- (d) Approved course topic.**
- (e) Approved course number.**
- (f) Date of course completion.**
- (g) Course location.**
- (h) Number of approved continuing education credits awarded.**
- (i) A signature, whether electronic or in ink, of the provider or a representative for the provider.**

(6) Providers approved to offer continuing education shall comply with all local, state, and federal laws prohibiting discrimination based on race, color, national origin, sex, sexual orientation, religion, gender, disability, and age.

(7) The department, in consultation with the board, may revoke approval status at any time if a course approved under subrule (2) of this rule has failed to comply with these rules.

R 339.18929a Continuing education audit of licensees.

Rule 29a. (1) The department may initiate an audit of the continuing education records of licensees. Selected licensees shall be notified and required to submit proof of completion of continuing education hours on or before October 31 of each odd numbered year in accordance with the year in which a license renews, beginning November 1 and ending October 31.

(2) Selected licensees shall submit the records of continuing education to the department within 30 days after being notified of an audit. Failure to respond to or comply with an audit request is determined as non-compliance and the licensee is subject to the penalties under section 1806(7) of the code, MCL 339.1806.

(3) A licensee shall comply with continuing education requirements and retain all certificates of completion for 4 years or until the licensee submits them as proof during a continuing education audit. The licensee shall make certificates of completion available when the department requests them during an audit.

(4) Nothing in this rule limits the department's authority to investigate and act under section 1806 of the code, MCL 339.1806.

R 339.18929b Audit of continuing education providers.

Rule 29b (1) The department may conduct by random selection an audit of approved continuing education course providers to determine compliance with continuing education requirements in part 2 of these rules. To facilitate the audit, the provider shall comply with the following:

(a) Allow a department representative into any department-approved continuing education course, at no cost to the department.

(b) Provide free entry and passwords to an online course site for the department representative.

(c) Make available upon request the records and documents from the previous 4 years relating to the continuing education courses subject to the audit.

(2) Failure to respond to or comply with an audit request by a provider automatically rescinds the prior approval from the department and terminates the ability of the provider to offer the course subject to the audit and may rescind approval of any additional courses.

(3) Nothing in this rule limits the department's authority to investigate and act under section 1806 of the code, MCL 339.1806.

R 339.18929d Mortuary science license; relicensure.

Rule 29d. (1) An individual whose mortuary science license has been lapsed for more than 3 years shall pass a state jurisprudence examination developed and administered by the department or the department's designee. The passing score is 75%.

(2) An individual whose mortuary science license has been lapsed between 91 days and less than 3 years must prove completion of 4 hours of continuing education before relicensure.

R 339.18930 Relicensure Rescinded.

~~Rule 30. (1) A person who has a lapsed or expired license and who seeks relicensure at a time that is more than 3 years from the date of lapse or expiration shall meet current educational requirements for relicensure and pass the current written examination on the law and rules of Michigan.~~

~~(2) A person who is seeking relicensure and who has previously passed a national examination equivalent to the examination required in Rule 339.18929(1)(a) does not have to repeat the national examination.~~

R 339.18931 Funeral Establishment requirements.

~~Rule 31. (1) Each licensed establishment shall have a room which is suitable for conducting funerals and which meets the requirements of the applicable local building code for holding 50 or more persons, an area for the display of a casket and flowers, and a lectern area.~~

~~(2) Each licensed establishment shall have an embalming room. The embalming room shall not have a direct connection to any living quarters located on the same floor or to the chapel or any other area accessible by the public. For the purposes of this rule, a direct connection has not been made if an area that is not less than 9 square feet in floor area has been provided between the entrance to the embalming room and the entrance to an area accessible by the public.~~

~~(3) The embalming room shall be kept in a clean and sanitary condition at all times. Instruments shall be cleaned and sterilized after each use.~~

~~(4) An embalming room shall have all of the following:~~

~~(a) A linoleum or tile floor.~~

~~(b) Walls and ceilings made of or covered by washable and waterproof material.~~

~~(c) Hot and cold running water.~~

~~(d) A plumbing system as required by the provisions of R 325.11401 through R 325.11407.~~

~~(e) A fan that is capable of moving 250 cubic feet of air per minute.~~

~~(5) An embalming room shall be equipped with a porcelain or stainless steel embalming table, the instruments necessary to embalm a body, and a means of sterilizing equipment, such as an autoclave, a gas sterilizer, or an instrument solution sterilizer that is large enough to accommodate a normal, adult-sized trocar.~~

~~(6) An embalming room shall not be used as a storage area.~~

(1) A licensed funeral establishment shall satisfy all of the following requirements:

(a) Have a preparation and embalming room that satisfies subrule (2) of this rule.

(b) Have a room suitable for conducting a funeral that can hold 50 or more individuals with a lectern area and an area for the display of a casket and flowers.

(c) Have an office space for making arrangements.

(d) Ensure that dead human bodies are inaccessible to the public except when placed for a service or viewing.

(e) Have in its direct employment a mortuary science licensee who is appointed as the establishment's manager. A manager shall comply with the following requirements:

(i) Be employed on a full-time basis and be available for funeral-related purposes.

(ii) One establishment manager shall not manage more than 2 funeral establishments.

(iii) The licensee shall not reside more than 75 miles from a funeral establishment that the licensee manages, in accordance with section 1809(1)(c) of the code, MCL 339.1809.

(2) In accordance with section 1809(6) of the code, MCL 339.1809, a preparation and embalming room must satisfy all of the following requirements:

- (a) Be maintained in a clean and sanitary condition at all times.
 - (b) Have walls, floors, and ceilings that are made of, or covered by, waterproof and washable materials.
 - (c) Have running hot and cold water with a sink for personal hygiene.
 - (d) Have sanitary plumbing as required by R 325.11401 to R 325.11407.
 - (e) Have an exhaust fan and intake vent permanently installed and operable with the capacity to change the air in the room not less than 12 times each hour.
 - (f) Be inaccessible to the public, with no direct connection to any living quarters or to the chapel or other area accessible by the public. For the purposes of this rule, a direct connection has not been made if an area that is not less than 9 square feet in floor area has been provided between the entrance to the embalming room and the entrance to an area accessible by the public. A door or doors entering the preparation room must be lockable, in accordance with subrule (1) of this rule, and remain locked at all times.
 - (g) Only contain the articles and instruments necessary for the embalming or other preparation of dead human bodies for viewing, burial, or final disposition and may only be used for the care and preparation of dead human bodies.
- (3) The articles and instruments necessary for the embalming or other preparation of dead human bodies for viewing, burial, or final disposition must include all of the following:
- (a) Porcelain, stainless steel, metal-lined, fiberglass, or other nonporous material operating table.
 - (b) A set of essential embalming instruments that are sterilized after each use.
 - (c) A supply of disinfectants.
 - (d) An autoclave, gas sterilizer, or instrument solution sterilizer that is large enough to accommodate a normal, adult-sized trocar.
 - (e) Chemicals and supplies necessary to embalm and prepare human bodies.
 - (f) An embalming machine.
 - (g) A hydro aspirator or electric aspirator.

PART 4. CARE AND STORAGE OF REMAINS

R 339.18932 Proper care and storage of dead human bodies and cremated remains.

Rule 32. (1) In accordance with section 1805 of the code, MCL 339.1805, proper care and storage of dead human bodies as it pertains to the authorized activities of a licensee includes, but is not limited to, all of the following:

- (a) Dead human bodies must be clothed or completely covered except during embalming or preparation.
- (b) Dead human bodies or cremated remains must not be placed or stored directly on the floor of any room. For the purposes of this subdivision, the floor of any room includes the floor of a room that is part of a refrigeration unit.
- (c) Not more than 1 dead human body may be stored per container, unless otherwise authorized by the decedent's authorizing agent.
- (d) Dead human bodies must be stored and transported face up at all times.
- (e) Dead human bodies must not be placed on other dead human bodies for the purpose of preparation, storage, or transportation.

(f) The premises of any location where dead human bodies are stored be maintained in a sanitary and professional manner.

(g) When dead human bodies enter the care of a funeral establishment, the bodies must be affixed with a band or tag with the name of the deceased.

(h) A case report must be completed for all dead human bodies that enter the care of a funeral establishment and retained electronically or in other formats for no less than 7 years. The case report must include all of the following:

(i) Name of the decedent.

(ii) Date of death.

(iii) Name, license number, and signature of licensee that supervised the handling of the decedent.

(iv) Condition of decedent.

(v) Listing of personal effects that accompany the decedent when the decedent enters the care of the funeral establishment.

(i) If the decedent is embalmed, the case report described under subdivision (h) of this subrule must also include all of the following:

(i) Date of embalming.

(ii) Procedures and chemicals used in the embalming process.

(iii) Name, license number, and signature of licensee who performed the embalming.

(2) In accordance with section 1805 of the code, MCL 339.1805, proper care and storage of cremated remains being stored in a funeral establishment before release or disposition as it pertains to the authorized activities of a licensee includes, but is not limited to, all of the following:

(a) Cremated remains must be stored in an area inaccessible to the public.

(b) Cremated remains must be contained in a rigid container or permanent container selected by the consumer with the name of the deceased, date of the cremation, and name of the crematory that performed the cremation affixed to the receptacle holding the cremated remains.

(c) The licensee shall maintain a record for not less than 7 years that identifies the release, disposition, or location of cremated remains.

(3) In accordance with section 13813 of the public health code, 1978 PA 368, MCL 333.13813, a licensed funeral establishment shall develop a medical waste management plan, which must be available upon inspection by the department.

(4) In accordance with R 325.1547, a funeral establishment shall provide instruction in the proper handling of medical waste according to the funeral establishment's medical waste management plan to its employees who generate, dispose of, or do both, for medical waste. The plan must comply with the requirements prescribed in section 13817 of the public health code, 1978 PA 386, MCL 333.13817.

R 339.18933 Establishment inspections. **Rescinded.**

~~Rule 33. (1) A representative of the department shall be permitted to inspect a funeral establishment to ascertain that the establishment is in compliance with the law and these rules.~~

~~(2) A funeral establishment shall be inspected during establishment working hours as follows:~~

~~(a) On a routine basis.~~

~~(b) Any time the establishment undergoes structural changes.~~

- ~~-(c) When there is a change in ownership. (Cancelled under 1806(7))~~
- ~~-(d) When an establishment is first opened.~~
- ~~-(3) A funeral establishment may be inspected at any time when the inspection is part of the investigation of a complaint.~~

R 339.18935 Transportation of remains to crematory.

Rule 35. Transportation of a dead human body to a crematory for cremation must only occur if all of the following requirements pertaining to the dead human body are met:

- (a) The body is encased in a rigid container for cremation.**
- (b) The body is accompanied by authorization from individuals who have the right of disposition authority in accordance with section 3206 of the estates and protected individuals code, 1998 PA 386, MCL 700.3206, to cremate the decedent.**
- (c) The body is accompanied by a cremation permit endorsed by the county medical examiner.**

R 339.18937 ~~Licensed manager required.~~ Identification before final disposition.

~~Rule 37. (1) Each funeral establishment shall have in its direct employment a mortuary science licensee who is designated as the establishment's manager.~~

~~-(2) A manager shall be employed on a full-time basis and shall be available at all times for funeral-related purposes.~~

~~-(3) A manager shall reside within 1 hour's normal commuting time from the funeral establishment.~~

(1) In accordance with section 3206(1) of the estates and protected individuals code, 1998 PA 386, MCL 700.3206, the licensee arranging the final disposition shall require the authorizing agent or the agent's appointed representative to visually identify the decedent's remains or effect positive identification through a photograph or other visual image of the remains. If visual identification is not feasible, other positive identification of the decedent may be used including, but not limited to, reliance upon an identification made through a medical examiner or identification of photographs or other visual images of scars, tattoos, or physical deformities taken from the decedent's remains.

(2) In accordance with section 3206(10) of the estates and protected individuals code, 1998 PA 386, MCL 700.3206, and if identification by the authorizing agent or the agent's appointed representative is otherwise not possible, positive identification may be provided by staff members of a health facility or veteran's facility that provided medical treatment to the decedent during the final illness or immediately before the decedent's death.

(3) The documentation of positive identification must be retained for not less than 7 years.

PART 5. STANDARDS OF CONDUCT

R 339.18941 Advertising.

Rule 41. (1) A mortuary science licensee or funeral establishment shall not use false, misleading, or deceptive advertising, including, but not limited to, on signs and billboards, or using digital, radio, television, online, or print media. As used in this rule, subrule, "false, misleading, or

deceptive advertising" includes using any name other than the name under which the funeral establishment is licensed. **This subrule does not preclude the identification of an association, network, trademark, or other affiliation that is not part of the licensed name.**

(2) A ~~funeral establishment~~ **person** shall not engage in the practice of mortuary science or do business in a location ~~which~~ **that** is not licensed as a funeral establishment, except as provided for in **section 1806(3) of the code**, MCL 339.1806,~~(3)~~ and shall not advertise a service as available from an unlicensed location.

R 339.18942 Unlicensed funeral arrangement centers and unsupervised arrangement staff prohibited; supervision defined.

Rule 42. (1) No person may own or manage a funeral establishment or other place of business for the express purposes of arranging for mortuary science services from any physical location, except from a licensed funeral establishment at a fixed location, consistent with sections 1806(3) and 1809 of the code, MCL 339.1806 and 339.1809.

(2) Each physical location owned or managed for the express purposes of engaging in the practice of embalming or in the practice of funeral directing, including arranging for mortuary science services, is a funeral establishment, regardless of common ownership or management with another funeral establishment at a different, fixed location.

(3) No individual on behalf of a funeral establishment may engage in the practice of arranging for mortuary science services, except under the supervision of a holder of a license for the practice of mortuary science.

(4) Arranging for mortuary science services includes, but is not limited to, offering to do 1 or more of the following:

- (a) Schedule at-need funerals, memorial services, or viewings of dead human bodies.**
- (b) Sell at-need mortuary science services.**
- (c) Complete or sign an at-need mortuary science service contract.**
- (d) Obtain authorization to possess or embalm a dead human body from next of kin or designated funeral representative.**
- (e) Obtain information necessary to accurately complete and file a death certificate.**

(5) A mortuary science licensee shall review and sign the statement of funeral goods and services selected before final disposition. The statement must be retained for not less than 7 years.

R 339.18943 Posting and possession of licenses.

Rule 43. (1) The current funeral establishment license, the mortuary science ~~or resident trainee~~ license of the appointed establishment manager, the prepaid provider license, and the medical waste producing facility certificate of registration issued by the department of environment, Great Lakes, and energy in accordance with section 13813 of the public health code, 1978 PA 368, MCL 333.13813, ~~each individual affiliated with that establishment~~ shall **must be conspicuously displayed in the funeral establishment in a place accessible to the public.**

(2) A mortuary science licensee shall have their individual license either on their person or in the licensed funeral establishment if the licensee is engaged in the practice of mortuary science. For the purposes of this rule, a digital copy of a license is acceptable to present.

R 339.18945 Change of address.

Rule 45. A **mortuary science or resident trainee** licensee shall report a change of address to the department within 30 days **after** ~~of~~ the change.

Michigan Office of Administrative Hearings and Rules

Administrative Rules Division (ARD)

MOAHR-Rules@michigan.gov

**REGULATORY IMPACT STATEMENT
and COST-BENEFIT ANALYSIS (RIS)**

Agency Information:

Department name:

Licensing and Regulatory Affairs

Bureau name:

Corporations, Securities, & Commercial Licensing

Name of person filling out RIS:

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Phone number of person filling out RIS:

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Rule Set Information:

ARD assigned rule set number:

2023-17 LR

Title of proposed rule set:

Mortuary Science

Comparison of Rule(s) to Federal/State/Association Standard

1. Compare the proposed rules to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist.

These proposed rules were drafted with consideration of national and state accreditation associations, the Academy of Professional Funeral Service Practice (APFSP), the American Board of Funeral Service Education (ABFSE), the Council for Higher Education Accreditation (CHEA), and the International Conference of Funeral Service Examining Boards. The proposed rules adopt some of these association accreditation standards by reference and adopt the APFSP as one option for acceptable continuing education course certification. The rules are neither more nor less stringent than these accreditation standards, as the rules do not engage in the accreditation of higher education. Instead, they adopt some of the accreditation standards by reference. As to the APFSP, the rules accept that organization as one option for continuing education course certification. If a continuing education course provider chooses to seek direct department approval for a course, rather than going through the APFSP, then the rules are more stringent in that the department will only approve in-person courses, while the APFSP offers a vast range of options for course settings. There are no parallel federal rules.

A. Are these rules required by state law or federal mandate?

Yes. Changes to the Occupational Code in 2020 saw the addition of Section 1806b, MCL 339.1806b, as amended by 2020 PA 265, that sets a new requirement of four hours of continuing education courses that a license holder must complete each year of a two-year license renewal cycle, beginning October 31, 2025. Under MCL 339.1806b(2)(b), the department must determine the eligibility of a proposed continuing education course.

MCL 339.1810(2) requires the promulgation of rules that prescribe training standards for licensees and nonlicensees that handle medical waste in a funeral establishment. A licensee who owns or operates a funeral establishment must train employees in these standards, consistent with MCL 339.1810(3).

MCL 339.205 requires that the department shall promulgate rules to implement articles 1 to 6 of the Occupational Code, MCL 339.101 through 339.2919.

MCL 339.308 requires that a board shall promulgate rules to fulfill its role, and that it may promulgate rules to set minimal standards of acceptable practice for an occupation. The department has crafted these rules in order to clarify the statutory requirements, and is given the authority to do so under the following:

Section 205 of the Occupational Code (“Code”), MCL 339.205, requires the department to promulgate rules that enable it to fulfill its role under Article 18 of the code and implement articles 1 to 6 of the code.

Section 307(2) of the Code, MCL 339.307(2), states that the Board of Examiners in Mortuary Science may assist the department in the implementation of the Code.

Section 308(1) of the Code, MCL 339.308(1), requires the Board to promulgate rules that are necessary and appropriate to fulfill its role, as outlined in article 3 of the Code.

Section 308(2) of the Code, MCL 339.308(2), states that the Board may promulgate rules to set the minimal standards of practice for the occupation of mortuary science.

Section 1810(2) of the Code, MCL 339.1810(2), requires the department, in consultation with director of public health, to promulgate rules to prescribe training standards for licensees and nonlicensees that handle medical waste in a funeral establishment.

B. If these rules exceed a federal standard, please identify the federal standard or citation, describe why it is necessary that the proposed rules exceed the federal standard or law, and specify the costs and benefits arising out of the deviation.

These rules do not exceed a federal standard. The Federal Trade Commission’s (FTC’s) Funeral Rule, 16 CFR 453, does require funeral providers to give consumers accurate price information on a “General Price List”, as well as to create a “Statement of Funeral Goods and Services Selected” document for the consumer. The rule details some disclosures that must be made to the consumer by the funeral provider and prohibits certain misrepresentations during the process of selling goods to the consumer, such as false embalming requirements.

The proposed rules do not interfere with the standards laid out in the FTC’s Funeral Rule since the Funeral Rule lays out requirements for funeral providers to adhere to in the process of selling goods to the consumer and does not govern the process of state licensing. The proposed rules clarify facility standards, licensee and trainee licensure requirements, introduce continuing education parameters, and detail standards of care and storage, all of which lie outside the bounds of federal authority under the Funeral Rule.

2. Compare the proposed rules to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities.

The proposed rules would bring Michigan more in line with the rules and standards of mortuary science licensees in Minnesota, Ohio, and Wisconsin - fellow Great Lakes states with similar geography and economies to Michigan - that have previously established continuing education requirements for the mortuary science industry, and would emulate some of their standards. For example, the methods by which Minnesota and Wisconsin approve continuing education courses were studied in crafting the proposed rules, and Ohio’s rules for what may count towards continuing education credits was looked to as a model for the department to follow.

A. If the rules exceed standards in those states, please explain why and specify the costs and benefits arising out of the deviation.

The proposed rules aim to adopt similar standards as those in other Great Lakes states, and states of similar size to Michigan, namely Minnesota, Ohio, and Wisconsin. Where the rules exceed the standards in other states is due to there being a lesser level of regulation in those jurisdictions. For instance, a state of similar geographic size and population, Georgia, does not have standards for funeral establishments laid out as explicitly as is done in Michigan's statute or these proposed rules. Or, in the case of Colorado, a state of similar geographic size to Michigan but less population, there has been deregulation of the deathcare industry in recent years, leading to Michigan's rules exceeding the standards of Colorado's.

While Michigan exceeding the standards of those in Colorado and Georgia leads to a comparatively increased burden for the department to enforce, and for licensees to comply, the benefits greatly outweigh them; The price of deregulation can range from dirty work environments to obscene mishandling of dead human bodies, such as what Colorado witnessed in recent years that lead to their consideration of new regulation (See: <https://www.msn.com/en-us/news/us/colorado-lawmakers-debate-bill-that-would-license-funeral-home-directors-after-several-grisly-discoveries/ar-BB1kB1QE>).

3. Identify any laws, rules, and other legal requirements that may duplicate, overlap, or conflict with the proposed rules.

There are no known laws, rules, or other legal requirements that may duplicate, overlap, or conflict with these proposed rules.

A. Explain how the rules have been coordinated, to the extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter. This section should include a discussion of the efforts undertaken by the agency to avoid or minimize duplication.

In an effort to avoid or minimize duplication or other conflicts, the department crafted the proposed rules with the assistance and professional guidance of members of the Board of Examiners in Mortuary Science. The Board's subject matter expertise helped determine which matters were already covered by statutes or guidelines and which required additional rule promulgation. For example, Michigan's regulatory scheme for mortuary science relies heavily on state statutes to lead the way of regulation, with cooperation from certain local actors, such as medical examiners. This means that the department is equipped with a depth of knowledge of which laws apply to the industry in different situations. The department is aware of the Federal Trade Commission's (FTC's) guidelines for funeral establishments, known as "The Funeral Rule", and this was integrated into the development of these rules, as well as consideration of existing rules.

Purpose and Objectives of the Rule(s)

4. Identify the behavior and frequency of behavior that the proposed rules are designed to alter.

The purpose of the proposed rules is derived from concerns from both the industry and the public. A primary concern is that mortuary science licensees are not subject to continuing education requirements that other licensed professions in Michigan and mortuary science licensees in other states are, which could lead to a falling of standards over the length of a license's life.

There have also been numerous disciplinary cases over the years that resulted in serious violations of mortuary science laws and rules, involving licensees with years of experience.

As it pertains to the behavior of establishments, the proposed rules intend to alter practices that could lead to deceptive advertising of services, murky understanding by the public about which individuals are tasked with overseeing the care and custody of a dead human body, and distasteful care and storage practices.

A. Estimate the change in the frequency of the targeted behavior expected from the proposed rules.

The proposed rules are expected to help curb the number of mistakes, corner-cutting, or other improper choices made by licensees who may just need a refreshing of knowledge to fix.

B. Describe the difference between current behavior/practice and desired behavior/practice.

As it pertains to continuing education, current practice allows a licensee to obtain a license and operate in perpetuity without ever refreshing their knowledge of current laws and standards of practice or engaging in educational activities with their peers. The desired practice would be to require continued educational engagement for all licensees, no matter how long they have been practicing.

As it pertains to requirements for resident trainees, currently, there is no limit on the number of times a trainee may apply for and receive an additional trainee license, which, in effect, allows a trainee to continuously practice mortuary science without attaining the official license. The desired practice is that trainees obtain a trainee license with the intended purpose to obtain a mortuary science license, and the desired behavior is that trainees use a trainee license to obtain the necessary educational and practical experience in the desired field.

As it pertains to standards of conduct, the department would like to see more specific rules for the chain of custody of a dead human body than what is currently permitted.

The department also sees the current status of “Arrangement Centers” as sometimes engaging in behavior that could fall under the practice of mortuary science by unlicensed individuals and would instead like to see these centers operate more narrowly and maintain a fair playing field for all licensees and funeral establishments in a given region.

C. What is the desired outcome?

The desired outcome of the proposed rules is for a robust Mortuary Science industry in Michigan that ensures the dignity of decedents, protects the public from licensees’ wrongdoing or sloppy behavior, and maintains its professional status and rigor to continue attracting individuals of good character.

5. Identify the harm resulting from the behavior that the proposed rules are designed to alter and the likelihood that the harm will occur in the absence of the rule.

The harm that could result from the behavior that the proposed rules are designed to alter is massive. When a mortuary science licensee neglects to maintain standards regarding the care and custody of a dead human body, there could range from physical degradation of the body, incorrect final disposition, financial losses for all involved, emotional and mental pain and suffering to loved ones, to serious health hazards to employees of an establishment and the public.

The likelihood that these harms will occur in the absence of the proposed rules is almost certain. While the department can’t necessarily predict from who or where it could occur, there have been numerous examples in the recent past exposing the need for additional safeguards, and without them, the harms will continue to occur unabated.

A. What is the rationale for changing the rules instead of leaving them as currently written?

Not only does the new statute require clarifying rules as it pertains to the implementation of continuing education, but over the course of many years, the department and Board have seen disciplinary actions that have exposed certain shortcomings in the existing statutes that merit clarification via rule. Without implementation of the proposed rules, licensees and establishments will continue to be subject to lesser requirements than peers in neighboring and similar states.

6. Describe how the proposed rules protect the health, safety, and welfare of Michigan citizens while promoting a regulatory environment in Michigan that is the least burdensome alternative for those required to comply.

The proposed rules protect the health, safety, and welfare of Michigan citizens through the addition of continuing education requirements for mortuary science licensees, which aims to affirm the competency of the professionals in the industry and refresh any skills of those who may need it. The health and safety of employees and licensees will be protected through the addition of more precise requirements for handling dead human bodies and maintaining a clean and sanitary working environment for embalming, storage, or in public-facing interactions.

This is the least burdensome alternative for those required to comply because the costs can be severe if there is a mishandling of final disposition of a decedent, or if there is physical harm inflicted on employees and/or the public. Not only can there be monetary burdens that arise from errors or misconduct, but also irreversible emotional and mental harm to those already experiencing grief and loss. Not to mention that it only takes a small number of bad actors to tarnish the standing of all professionals, even though the vast majority conduct their work with pride and high standards.

7. Describe any rules in the affected rule set that are obsolete or unnecessary and can be rescinded.

Current R 339.18923 was completely reworked and updated to reflect the modern industry as it pertains to resident trainees. R 339.18927 likewise is unnecessary and will be rescinded under this ruleset as section 1808 of the code, MCL 339.1808 already covers it.

R 339.18930 will be rescinded under this ruleset as the requirements for relicensure are inherently changed by the introduction of continuing education requirements, and the new proposed R 339.18929d covers this.

R 339.18933 is unnecessary and will be rescinded under this ruleset as the powers afforded to the department under the occupational code already permit the inspection of funeral establishments.

Fiscal Impact on the Agency

Fiscal impact is an increase or decrease in expenditures from the current level of expenditures, i.e. hiring additional staff, higher contract costs, programming costs, changes in reimbursements rates, etc. over and above what is currently expended for that function. It does not include more intangible costs for benefits, such as opportunity costs, the value of time saved or lost, etc., unless those issues result in a measurable impact on expenditures.

8. Please provide the fiscal impact on the agency (an estimate of the cost of rule imposition or potential savings for the agency promulgating the rule).

The net fiscal impact on the department to implement the proposed rules is unknown. The department has seen an increase in revenue through the collection of mortuary science fees as a result of 2020 PA 334, which amended section 43, MCL 338.2243, to increase the licensing fees for mortuary science on a graduated scale beginning in 2021 through 2025. This increased revenue contributes to being able to administer the licensing program, including work that must be done to implement new continuing education requirements.

The department may see an increase in costs to implement the proposed rules in the form of more work for licensing staff to process the new licensing requirements, and for regulatory compliance staff to handle new disciplinary actions that may then arise. This may contribute to an increased workload that over time, in addition to other licensing programs, and may merit the hiring of new staff. However, the department does not foresee the need to hire new full-time staff as a direct result of these proposed rules. And these new costs were also considered by the legislature when the new statutory requirements were signed into law in 2020.

The department already conducts routine inspections of facilities and of licensee records, and existing staff is aware of the proposed rules that may alter the specifics of how inspections are conducted and what is being reviewed but would not change the fundamental nature of licensing and inspections for mortuary science licensees or funeral establishments.

9. Describe whether or not an agency appropriation has been made or a funding source provided for any expenditures associated with the proposed rules.

As a result of 2020 PA 334, section 43 of the State License Fee Act, MCL 338.2243, was amended to increase the fees collected by the department for the mortuary science licensing program. This began October 1, 2021, and there have been increased fees effective October 1, 2023, and will be again effective October 1, 2025. The higher fees allow the department to increase the revenue it has available to administer new statutory requirements and in-part implement these rules.

10. Describe how the proposed rules are necessary and suitable to accomplish their purpose, in relationship to the burden(s) the rules place on individuals. Burdens may include fiscal or administrative burdens, or duplicative acts.

The proposed rules are necessary to address shortcomings in Michigan's regulatory scheme for mortuary science. While the vast majority of licensed professionals conduct their work with integrity and high standards, the way that the rules are currently written may allow for dead human bodies or cremated remains to be handled in a manner that doesn't meet those high standards. They may allow for corner-cutting when it comes to managing an establishment or in completing a resident trainee ramp-up to a full mortuary science license.

So, while it is true that licensees will begin to see new requirements from the rules that could add to their workload in their professional capacity, the net impact on the industry and on the public is positive. Not to mention that many licensees already go above and beyond the rules as they are currently written. By bulking up certain requirements, the possibility of improper conduct is lessened, and the state will begin to match its neighbors and peers in the regulatory realm for the first time, particularly as it pertains to continuing education.

The purpose of the proposed rules is best accomplished via rule as opposed to statute, which is limited in depth, and as opposed to a guideline which is not a strong enough compliance tool in this context. There are no duplicative acts or regulations that arise from the proposed rules, showcasing the need for them to be promulgated.

A. Despite the identified burden(s), identify how the requirements in the rules are still needed and reasonable compared to the burdens.

The proposed rules, despite the burdens mentioned, are reasonable because they may lead to the following: 1.) An increase in public trust in the deathcare industry, 2.) A fairer playing field for licensees, 3.) Added value to the profession and licenses, and 4.) A reinforcement of the integrity of the profession and industry within Michigan.

The proposed rules are necessary to bring Michigan in line with its neighboring states and states of similar size across the country. They will help ensure that Michigan's mortuary science professionals continue to be some of the best in the country. Without continuing education and the specific care and facility requirements laid out in the new rules, mistakes may occur more frequently.

In an industry of such finality, even minor errors can have significant negative impacts on consumers and the public's perception of the industry. These proposed rules will help lead to less errors, more accountability, and a higher caliber industry across the board.

Impact on Other State or Local Governmental Units

11. Estimate any increase or decrease in revenues to other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Estimate the cost increases or reductions for other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Include the cost of equipment, supplies, labor, and increased administrative costs in both the initial imposition of the rule and any ongoing monitoring.

There will be no known increase or decrease in revenues to other state or local governmental units as a result of the proposed rules. There will also be no known increase or decrease in costs.

12. Discuss any program, service, duty, or responsibility imposed upon any city, county, town, village, or school district by the rules.

The proposed rules do not change the responsibility of any city, town, village, or school district. Proposed rules R 339.18935 and R 339.18937 do, however, clarify how a mortuary science licensee interacts with a county medical examiner, something already established by section 1807 of the occupational code, 1980 PA 299, MCL 339.1807, and section 3206(1) of the estates and protected individuals code, 1998 PA 386, MCL 700.3206. R 339.18935 clarifies that a cremation permit endorsed by a county medical examiner must accompany cremated remains that are being transported, and R 339.18937 clarifies that if visual identification of a decedent is not feasible, positive identification by a county medical examiner may be used under certain circumstances.

A. Describe any actions that governmental units must take to be in compliance with the rules. This section should include items such as record keeping and reporting requirements or changing operational practices.

County medical examiners must continue to take actions that are already current practice – signing burial transit permits and assisting in identification prior to final disposition under specific circumstances. It is the mortuary science licensee, however, that is tasked with overseeing the final disposition of a dead human body, meaning they are responsible for maintaining these records and making them available upon inspection.

13. Describe whether or not an appropriation to state or local governmental units has been made or a funding source provided for any additional expenditures associated with the proposed rules.

An appropriation to state or local governmental units has not been made for any additional expenditures associated with the proposed rules. The primary funding source for the mortuary science licensing program, fees, did see increases via an amendment to the State License Fee Act in 2020 PA 334.

Rural Impact

14. In general, what impact will the rules have on rural areas?

The proposed rules will overall have the same effect on rural areas as they do on urban or suburban areas, though it is possible that rural areas may encounter unique challenges that arise from being situated further from population centers. For example, licensees based in rural areas may have to travel longer distances to attend in-person continuing education opportunities. Or a funeral establishment may rely on a county medical examiner with less resources than a county with a larger population.

The rules will also have a positive impact on rural areas through the clarification of the 75-mile rule for designated managers of a funeral establishment. By affirming that a manager may not reside more than 75 miles from the establishment that they manage on a full-time basis, rural funeral establishments will not be run by absentee managers based too far away to responsibly handle day-to-day operations. Rural areas will also be positively impacted by the proposed rules by clarifying the safeguards for handling and transporting a dead human body or cremated remains (R 339.18932 and 339.18935), ensuring that decedents and their loved ones in rural areas will be treated with dignity and care at the same level as other parts of the state.

A. Describe the types of public or private interests in rural areas that will be affected by the rules.

The public rural interests that will be affected by the proposed rules are decedents and their loved ones who will be directly interacting with the funeral industry because of a death or anticipated death. There are also the members of communities that are neighbors to a funeral establishment who rely on the state’s rules and regulations to ensure their health and well-being are protected.

The private rural interests that will be affected by the proposed rules are funeral establishments, licensees and employees that work there, crematory facilities, cemeteries, and other businesses that service the deathcare needs of rural areas.

Environmental Impact

15. Do the proposed rules have any impact on the environment? If yes, please explain.

There are no known direct impacts on the environment as a result of the proposed rules.

Small Business Impact Statement

16. Describe whether and how the agency considered exempting small businesses from the proposed rules.

The department and board did not consider exempting small businesses from the proposed rules, however, there was careful consideration during the drafting process to ensure the new requirements were not overly burdensome for small funeral establishments, or for those in rural areas with less volume of business.

17. If small businesses are not exempt, describe (a) the manner in which the agency reduced the economic impact of the proposed rules on small businesses, including a detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rules upon small businesses as described below (in accordance with MCL 24.240(1)(a-d)), or (b) the reasons such a reduction was not lawful or feasible.

The department established a rule drafting process alongside members of the Board of Examiners in Mortuary Science in a rules subcommittee, in order to ensure that the proposed rules did not venture into overly burdensome territory. In particular, the department paid special attention to the Upper Peninsula and other rural areas where the volume of decedents for funeral establishments is much lower than in Michigan's population centers. This is especially apparent in the requirements for resident trainees, so that R 339.18925 was amended in an attempt to offer more options for trainees to complete experience requirements than what is currently permitted.

Additionally, R 339.18942 prohibiting the practice of mortuary science at unlicensed arrangement centers was crafted to even the playing field for small businesses. Currently, arrangement centers run by larger businesses may toe the line of unlicensed activity and can deceptively compete for customers in a new geographic region of the state. The new rule would ensure that anything constituting the practice of mortuary science must be conducted at a licensed facility and be overseen by a licensee. This will help smaller businesses compete for those customers on a fairer playing field.

A. Identify and estimate the number of small businesses affected by the proposed rules and the probable effect on small businesses.

The probable effect on small businesses will by-and-large be the same as the effect on all businesses no matter the size. It is possible that smaller funeral establishments may have less resources to make changes to their facilities, but the proposed rules do not impose new major facility requirements beyond officially requiring in R 339.18931 that there be locks on publicly accessible doors to embalming and preparation rooms, a feature that many establishments already have.

The department is not able to determine an exact number of "small businesses" that will be affected by this rule, as it currently does not collect data on funeral establishment revenues, or compare the volume of decedents entering their care, two metrics that could help determine what constitutes a "small business" in this context. However, the rules drafting process included representatives of rural regions and of smaller establishments to ensure those unique needs were not being overlooked. There are currently 690 active funeral establishment licenses as of April 2024.

B. Describe how the agency established differing compliance or reporting requirements or timetables for small businesses under the rules after projecting the required reporting, record-keeping, and other administrative costs.

The department does not treat licensees differently based upon how small or large their business may be. While the department worked diligently to draft rules that remain reasonable for small businesses, when it comes to compliance or reporting requirements, the standards remain the same as any other business. This helps ensure that the safety and welfare of the public and employees in the industry is upheld no matter the establishment.

C. Describe how the agency consolidated or simplified the compliance and reporting requirements for small businesses and identify the skills necessary to comply with the reporting requirements.

The department made compliance and reporting requirements simpler for all businesses, including small businesses, by requiring that licensees maintain appropriate records (such as proof of continuing education) in a manner they see fit, in anticipation of a department audit. The department was conscious to avoid micromanaging the manner in which a business maintains records by not introducing a system of submitting voluminous records with each license renewal. This will allow for licensees, including those that would be classified as small business, to continue having a streamlined license renewal process.

D. Describe how the agency established performance standards to replace design or operation standards required by the proposed rules.

R 339.18922 adopts by reference the standards for accrediting mortuary science programs as adopted by the American Board of Funeral Service Education (ABFSE) and the criteria for recognizing accrediting organization of the Council of Higher Education Accreditation (CHEA), which are both nationally recognized guidelines. For that reason, the department need not establish performance standards to replace standards required by the proposed rules.

18. Identify any disproportionate impact the proposed rules may have on small businesses because of their size or geographic location.

The proposed rules impact individual licensees and funeral establishments. There is no expected disproportionate effect on small businesses because of their size or geographic location.

19. Identify the nature of any report and the estimated cost of its preparation by small businesses required to comply with the proposed rules.

There is no separate cost for report preparation specific to small businesses. The rules require licensees maintain records of completed continuing education for 4 years and clarify that statutorily required case reports for all dead human bodies that enter the care of a funeral establishment, records of release, disposition, or location of cremated remains, documentation of positive identification of a dead human body, and signed statements of funeral goods and services must be retained for 7 years. Record keeping requirements apply to all licensees and establishments.

20. Analyze the costs of compliance for all small businesses affected by the proposed rules, including costs of equipment, supplies, labor, and increased administrative costs.

There are approximately 690 funeral establishments in the state. The department does not determine which licensed establishments qualify as a small business. In addition, the department does not determine the annual gross sales or number of full-time employees associated with each establishment license to allow for determining the number of small businesses. However, the impact on establishments who may qualify as a small business is minimized in the proposed rules because they were written to provide the least amount of regulation necessary to protect the public.

There are no separate costs specific to small businesses.

21. Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rules.

There are no expected increased costs for small businesses concerning legal, consulting, or accounting services.

22. Estimate the ability of small businesses to absorb the costs without suffering economic harm and without adversely affecting competition in the marketplace.

All licensed funeral establishments in Michigan are subject to the same requirements and costs resulting from the administrative rules. There are no expected costs that should adversely affect competition in the marketplace.

The costs to an establishment are outweighed by the benefits of ensuring the public is protected and the dignity of the decedents is maintained. While there are minor burdens resulting from the proposed rules, the rules are necessary to provide a framework of standards for the licensure of mortuary science licensees and funeral establishments. There are no anticipated costs to small businesses that will cause them or the marketplace economic harm as a result of the proposed rules.

23. Estimate the cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses.

Exempting or setting lesser standards of compliance for funeral establishments that may constitute a small business is not in the best interest of the public and would increase costs of protecting the public. It would likely cost the agency more to devote staff time to determining which licensees work for small businesses and then enforce different requirements for those individuals.

24. Identify the impact on the public interest of exempting or setting lesser standards of compliance for small businesses.

The costs to an establishment are outweighed by the benefits of ensuring the public is protected and the dignity of the decedents is maintained. Exempting or setting lesser standards of compliance for funeral establishments that may constitute a small business is not in the best interest of the public. Doing so would increase harm for all involved by creating disparity in how establishments are regulated.

25. Describe whether and how the agency has involved small businesses in the development of the proposed rules.

The department worked with multiple stakeholders at the Mortuary Science Rules Subcommittee meetings, that included members of the Board of Examiners of Mortuary Science. The board is composed of members of the profession and public members who work in businesses in Michigan.

A. If small businesses were involved in the development of the rules, please identify the business(es).

Representatives of funeral establishments were involved in the development of the rules through the Mortuary Science Rules Subcommittee, but the department is not aware who meets the definition of a “small business”.

Cost-Benefit Analysis of Rules (independent of statutory impact)

26. Estimate the actual statewide compliance costs of the rule amendments on businesses or groups.

The department does not foresee any statewide compliance costs of the proposed rules on businesses or groups in addition to the impact on licensees and establishments. There may be costs for businesses that are licensed funeral establishments to lock a public-facing door. The amount of this cost is not known as some establishments already engage in this practice, and the costs associated with installing a lock can vary. For instance, a business could decide to comply with this by hiring a locksmith and pay them anywhere from \$50-320. But it cannot be determined how many businesses need to do so, and the cost could be less depending on how a business decides to comply.

A business may also incur a cost if they choose to cover the cost for an employee to take a continuing education course. This could cost around \$100 per course per employee. However, that cost can vary, as the opportunities to complete continuing education credits varies, and the associated costs can change. It also cannot be determined whether a business chooses to do so on their employee's behalf, so it is unknown how many businesses would incur such a cost.

A. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rules.

There are approximately 690 funeral establishments, 95 resident trainees, and 1,987 mortuary science licensees in Michigan. The proposed rules will impact all of these stakeholders.

A licensee may bear costs from fulfilling continuing education requirements or from adding features to an establishment to meet facility requirements such as locks on doors. They and the public will also benefit from the health and safety improvements as a result of the proposed rules.

B. What additional costs will be imposed on businesses and other groups as a result of these proposed rules (i.e. new equipment, supplies, labor, accounting, or recordkeeping)? Please identify the types and number of businesses and groups. Be sure to quantify how each entity will be affected.

The proposed rules may impose minor costs on businesses and licensees, such as costs to enroll in a continuing education course should a business decide to cover the cost for a licensee that they employ, or the cost to install a lock on a public-facing door of an embalming room. However, the benefits of the proposed rules imposing those requirements greatly outweighs them and may already be standard practice for many licensees or establishments. Businesses that may be affected are those that don't already have locks on public-facing doors. It is unknown the exact number of businesses that fall into this category out of the 690 funeral establishments licensed in Michigan. It is also unknown how many funeral establishments may choose to cover costs for an individual licensee that they employ to take a continuing education course. The estimated cost of this requirement is also unknown as the method of compliance for locking the doors may vary.

27. Estimate the actual statewide compliance costs of the proposed rules on individuals (regulated individuals or the public). Include the costs of education, training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or recordkeeping.

The department does not expect the proposed rules to result in additional costs for application fees, licenses fees, new equipment, supplies, labor, accounting, or record keeping on regulated individuals or the public. The proposed rules will not result impose costs on individuals to be educated on the proposed rules. Therefore, the estimated cost is \$0. However, as a result of the statutorily established continuing education requirements that the proposed rules clarify, there may be costs associated with education and training for regulated individuals. All 1,987 mortuary science licensees will be affected by continuing education requirements and possible associated costs. Because there are a number of ways to complete the requirements, including a large variety of courses and course providers, it is not possible to determine an exact estimate for what the cost may be, and how it will vary year-to-year.

A. How many and what category of individuals will be affected by the rules?

Mortuary science licensees and resident trainees will be affected by the proposed rules. There are approximately 1,987 mortuary science licensees and 95 resident trainees in the state as of April 2024.

B. What qualitative and quantitative impact do the proposed changes in rules have on these individuals?

The proposed rules do not create an expected increase or decreased cost for application fees, examination fees, or licensure fees. There may be qualitative impact on licensees in that they now must engage in continuing education throughout the life of their license, which may be a departure from routine for some. There may also be qualitative impact in that licensees may find facility and standards of care requirements to be listed by the department clearer than before as they comply with laws and rules. There will be quantitative impacts on licensees seeking to comply with continuing education requirements, likely through fees imposed by course providers or travel costs, if applicable.

28. Quantify any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the proposed rules.

There may be reductions in costs associated with reductions in negligent behavior by licensees or establishments, however, these costs cannot be estimated prior to implementation of the proposed rules.

29. Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rules. Please provide both quantitative and qualitative information, as well as your assumptions.

The proposed rules clearly establish a system of continuing education that was mandated by 2020 PA 265. Through the implementation of continuing education for mortuary science licensees, the industry may grow safer as it helps ensure licensees maintain their expertise and continue performing at a high standard of service to the public.

The proposed rules also establish clearer standards for funeral establishment facilities and for the handling of decedents. The clearer standards will help ensure that lapses by any one establishment or licensee will be either remedied expeditiously or avoided altogether.

30. Explain how the proposed rules will impact business growth and job creation (or elimination) in Michigan.

The proposed rules are not anticipated to have negative impacts on business growth or job creation. The proposed rules may help increase the value of a mortuary science license, and therefore increase over time the number of professionals on track to attain one. The proposed rules will not result in the elimination of jobs.

31. Identify any individuals or businesses who will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.

There is not expected to be a disproportionate effect due to industrial sector, segment of the public, business size, or geographic location as a result of the proposed rules.

32. Identify the sources the agency relied upon in compiling the regulatory impact statement, including the methodology utilized in determining the existence and extent of the impact of the proposed rules and a cost-benefit analysis of the proposed rules.

The department crafted the rules through a collaborative effort with a rules subcommittee of the Board of Examiners in Mortuary Science, representing licensees and different parts of the state. Through routine debate and discussion, as well as consultation with outside organizations and jurisdictions, the department, along with the board, revised the rules and gauged hypothetical and potential impacts on businesses and individuals from different backgrounds, statuses, or regions. The department consulted with peer regulators in other states to learn more about their methods of regulation, and how best to protect the public.

Specific sources of information were also found from the following:

Academy of Professional Funeral Service Practice - <https://www.apfsp.org/>

American Board of Funeral Service Education - <https://abfse.org/>

State of Georgia Funeral Service Board

<https://sos.ga.gov/page/funeral-service-board-rules-and-regulations>

State of Illinois Department of Financial and Professional Regulation

<https://idfpr.illinois.gov/profs/fundiremb.html>

<https://ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1301&ChapAct=225%C2%A0ILCS%C2%A041/&ChapterID=24&ChapterName=PROFESSIONS+AND+OCCUPATIONS&ActName=Funeral+Directors+and+Embalmers+Licensing+Code>

<https://www.ilga.gov/commission/jcar/admincode/068/06801250sections.html>

LARA – Bureau of Professional Licensing, Occupational Licensing (For professions with continuing education requirements already enacted)

Accountants – MCL 339.729, R 339.5101 – 339.5503

Architects – MCL 339.2009, R 339.15101 – 339.15507

Pharmacists – MCL 333.17731, R 338.3041 – 338.3045

Real Estate Brokers – MCL 339.2504a, R 339.22101 – R 339.22667

State of Ohio Board of Embalmers and Funeral Directors

<https://funeral.ohio.gov/home>

<https://funeral.ohio.gov/continuing-education>

<https://codes.ohio.gov/ohio-revised-code/chapter-4717>

State of Minnesota Department of Health

<https://www.health.state.mn.us/facilities/providers/mortsci/index.html>

<https://www.revisor.mn.gov/rules/4601/>

<https://www.revisor.mn.gov/statutes/cite/390>

<https://www.revisor.mn.gov/statutes/cite/149A>

National Funeral Directors Association - <https://nfda.org/education/ce-information>

State of New York Department of Health

https://www.health.ny.gov/professionals/funeral_director/continuing_ed_unit_prov.htm

State of Wisconsin Department of Safety and Professional Services

<https://dsps.wi.gov/Pages/RulesStatutes/FD.aspx>

<https://dsps.wi.gov/Pages/Professions/FuneralDirector/CE.aspx>

<https://dsps.wi.gov/Pages/Professions/FuneralEstablishment/Default.aspx>

A. How were estimates made, and what were your assumptions? Include internal and external sources, published reports, information provided by associations or organizations, etc., that demonstrate a need for the proposed rules.

No estimates or assumptions were made.

Alternative to Regulation

33. Identify any reasonable alternatives to the proposed rules that would achieve the same or similar goals.

There are no reasonable alternatives to the proposed rules that would achieve the same or similar goals.

A. Please include any statutory amendments that may be necessary to achieve such alternatives.

There are no reasonable alternatives to the proposed rules that would achieve the same or similar goals.

34. Discuss the feasibility of establishing a regulatory program similar to that proposed in the rules that would operate through private market-based mechanisms. Please include a discussion of private market-based systems utilized by other states.

Section 205 of the Occupational Code (“Code”), MCL 339.205, requires the department to promulgate rules that enable it to fulfill its role under Article 18 of the code and implement articles 1 to 6 of the code. MCL 339.307(2), indicates that the Board of Examiners in Mortuary Science may assist the department in the implementation of the Code. MCL 339.308(1), requires the Board to promulgate rules that are necessary and appropriate to fulfill its role, as outlined in article 3 of the Code. MCL 339.308(2), indicates that the Board may promulgate rules to set the minimal standards of practice for the occupation of mortuary science. MCL 339.1810(2), requires the department, in consultation with director of public health, to promulgate rules to prescribe training standards for licensees and nonlicensees that handle medical waste in a funeral establishment. Since the rules are permitted and mandated by statute, private market-based systems cannot serve as an alternative. Each state is responsible for oversight and regulation of their funeral and deathcare industries. Private market-based systems are not used for oversight or regulation.

35. Discuss all significant alternatives the agency considered during rule development and why they were not incorporated into the rules. This section should include ideas considered both during internal discussions and discussions with stakeholders, affected parties, or advisory groups.

No alternatives were considered during rule development.

Additional Information

36. As required by MCL 24.245b(1)(c), please describe any instructions regarding the method of complying with the rules, if applicable.

In order to locate continuing education opportunities as the rules go into effect and courses become available, licensees may go to the department’s website for Mortuary Science, www.michigan.gov/mortuaryscience, where a list of acceptable courses will be featured. The rules will also be featured as a Spotlight detailing the updates upon the time that the proposed rules become effective.

Compliance with the new rules is the responsibility of licensees, who should maintain records and proof of continuing education in anticipation of a possible audit by the department. In renewing their license, the licensee is attesting to the fact that they have completed the required continuing education for that license cycle. The department will conduct random audits to ensure compliance with this new requirement, and licensees may face disciplinary actions.

Records regarding the chain of custody of a dead human body should also be maintained for the length of time specified in the proposed rules in the case of an audit from the department. Routine inspections by the department will continue as is current practice, and licensees should continue to be prepared for those.