

PART X. STATE BOARD OF MORTICIANS

<u>Chapter No.</u>	<u>Chapter Name</u>	<u>Section</u>
201.	LICENSING AND ENFORCEMENT—PRACTICE AND PROCEDURE	201.1
203.	LICENSING AND ENFORCEMENT—SPECIFIC SUBSTANTIVE RULES	203.1

Authority: The provisions of this Part X issued under Acts 1953, 53rd Leg., p. 661, ch. 251, effective August 26, 1953, as amended (Texas Civ. St. art. 4582b).



CHAPTER 201. LICENSING AND ENFORCEMENT—PRACTICE AND PROCEDURE

<u>Section No.</u>	<u>Section Name</u>
201.1.	Computation of Time.
201.2.	Agreement To Be in Writing.
201.3.	Appearances.
201.4.	Motions for Postponement, Continuance, Withdrawal, or Dismissal of Matters Before the Agency.
201.5.	Reporters and Transcripts.
201.6.	Place and Nature of Hearings.
201.7.	Filing of Charges.
201.8.	Procedures for the Petition for Adoption of Rules.
201.9.	Preparation and Dissemination of Consumer Information.

§201.1. Computation of Time.

In computing any period of time prescribed or allowed by this chapter, by order of the agency, or by any applicable statute, the period shall begin on the day after the act, event, or default in controversy and conclude on the last day of such computed period, unless it be a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

Source: The provisions of this §201.1 adopted to be effective April 5, 1976, 1 TexReg 694.

§201.2. Agreement To Be in Writing.

No stipulation or agreement between the parties, their attorneys, or representatives with regard to any matter involved in any proceeding before the agency shall be enforced unless it shall have been reduced to writing and signed by the parties or their authorized representatives, or unless it shall have been dictated into the record by them during the course of a hearing, or incorporated in an order bearing their written approval. This section does not limit a party's liability to waive, modify, or stipulate any right or privilege afforded by this chapter, unless precluded by law.

Source: The provisions of this §201.2 adopted to be effective April 5, 1976, 1 TexReg 694.

§201.3. Appearances.

Any party may appear before the agency and be represented by an attorney at law. Any person may appear on his own behalf, or be represented by a bona fide full-time employee. A corporation, partnership, or association may appear and be represented by any bona fide officer, partner, or full-time employee authorized to bind the corporation, partnership, or association to a legal contract.

Source: The provisions of this §201.3 adopted to be effective December 9, 1983, 8 TexReg 4922.

§201.4. Motions for Postponement, Continuance, Withdrawal, or Dismissal of Matters Before the Agency.

Motions for postponement, continuance, withdrawal, or dismissal of matters before the agency that have been instituted by persons other than board members or employees of the agency shall be in writing and filed with the executive secretary not less than five days prior to the designated date on which the matter is to be heard. Failure to comply with this provision will constitute prejudice to refiling of the matter before the agency.

Source: The provisions of this §201.4 adopted to be effective December 9, 1983, 8 TexReg 4922.

§201.5. Reporters and Transcripts.

When a party makes a written request that a proceeding before the agency be transcribed, the party shall furnish his own stenographic reporter and be obligated to pay the costs of the stenographic time and transcript.

Source: The provisions of this §201.5 adopted to be effective April 5, 1976, 1 TexReg 694; amended to be effective December 9, 1983, 8 TexReg 4922.

§201.6. Place and Nature of Hearings.

All hearings conducted in any proceeding shall be open to the public. All hearings shall be held at the agency's office in Austin, unless for good and sufficient cause the agency shall designate another place of hearings in the interest of the public.

Source: The provisions of this §201.6 adopted to be effective December 9, 1983, 8 TexReg 4922.

§201.7. Filing of Charges.

- (a) Any person or persons may file charges with the board of violation of any of the mortuary laws of this state against any licensee. Such charges must be in writing, preferably under oath, and set forth the following information:
- (1) the name and office address of the person or entity charged;
 - (2) the nature of the acts;
 - (3) the time and place where such acts are alleged to have occurred;
 - (4) a list of persons, if any, who witnessed such acts;
 - (5) the charges set out in sufficient detail as to enable the person or entity charged to properly identify the occurrence and prepare a defense;
 - (6) any photographs, letters, advertisements, or other documents used as a basis for the charges should be attached thereto.
- (b) The executive secretary shall supervise the investigation of all charges filed with the board. He shall have the power to issue subpoenas and *subpoenas duces tecum* to compel the attendance of witnesses and the production of books, records, and documents. Upon receipt of a complaint, the executive secretary shall give notice of said complaint to the

licensee. The licensee shall have an opportunity to show that he is in compliance with the Texas mortuary laws. This showing may be made in writing and may be supported by sworn affidavits, or the licensee may request an informal hearing before the executive secretary. If, upon review of the charges and the evidence with respect to such charges, the executive secretary determines that sufficient legal evidence does exist that a violation of the mortuary laws of the State of Texas may have occurred, he shall forward such determination in writing to the president of the board, whereupon the president of the board shall fix a time and place for a formal hearing and shall cause a copy of the charges, together with a notice of the time and place fixed for hearing, to be served on the person or entity charged or his counsel. If the executive secretary determines that there is insufficient evidence to warrant a formal hearing, he shall make such recommendation to the president of the board in writing. Thereafter, no formal hearing will be held unless, by a vote of the majority of the remaining members of the board, the executive secretary's recommendation is overruled. The executive secretary should not inform the complainant until a decision is made by the president of the board.

- (c) All parties must be afforded an opportunity for hearing after reasonable notice of not less than 10 days prior to the hearing.
- (d) The notice of hearing shall include:
 - (1) a statement of the time, place, and nature of the hearing;
 - (2) a statement of the legal authority and jurisdiction under which a hearing is to be held;
 - (3) a reference to the particular section of the statutes and rules involved;
 - (4) a short and plain statement of the matters asserted. (If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice shall be limited to a statement of the issues involved. Thereafter, upon written application, a more definite and detailed statement shall be furnished not less than three days prior to the date set for the hearing.)
 - (5) a statement that an opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved and to be represented by legal counsel;
 - (6) the notice of a hearing and a copy of the charges shall be served on the accused at least 10 days prior to the hearing.
- (e) The record in an individual proceeding shall include:
 - (1) all pleadings, motions, and intermediate rulings;
 - (2) evidence received or considered;
 - (3) a statement of matters officially noticed;
 - (4) questions and offers of proof, objections and rulings on them;
 - (5) proposed findings and exceptions;
 - (6) any decision, opinion, or report by the officer presiding at the hearing;
 - (7) all staff memoranda or data submitted to or considered by the hearing officers or members of the board in connection with its consideration of the case.
- (f) Oral proceedings or any part thereof shall be transcribed on request of any party; the cost of additional copies of the transcript will be borne by the party making the request.
- (g) Findings of fact shall be based exclusively on the evidence and on matters officially noted. Final decisions or orders adverse to a party in a contested case must be in writing or stated in the record. The final decision shall include:
 - (1) findings of fact and conclusions of law, separately stated;
 - (2) findings of fact shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings;
 - (3) a ruling of each proposed finding of fact, if submitted.
- (h) Parties shall be notified either personally or by mail of any order. Upon request, a copy of the order shall be delivered or mailed to each party and his attorney of record. A decision is final, in the absence of a timely motion for rehearing, on the expiration of the period for filing a motion for rehearing and is final and appealable on the date of rendition of the order overruling the motion for rehearing or on the date the motion is overruled by operation of law. If the board finds that an imminent peril to the public health, safety, or welfare requires immediate effect of a final decision or order in a contested case, it shall recite the finding in the decision or order as well as the fact that the decision or order is final and effective on the date rendered, in which event the decision or order is final and appealable on the date rendered and no motion for rehearing is required as prerequisite for appeal. The final decision or order must be rendered within 60 days after the date the hearing is finally closed.
- (i) Except as provided in this section, a motion for rehearing must be filed within 15 days after the date of rendition of a final decision or order. Replies to a motion for rehearing must be filed with the agency within 25 days after the date of rendition of the final decision or order, and agency action on the motion must be taken within 45 days after the date of rendition of the final decision or order. If action is not taken within the 45-day period, the motion for rehearing is overruled by operation of law 45 days after the date of rendition of the final decision or order. The agency may by written order extend the period of time for filing the motions or replies and taking agency action. If an extension is granted, the motion for rehearing is overruled by operation of law on the date fixed by the order or in the absence of a fixed date, 90 days after the date of the final decision or order, but in no event longer than 90 days after the final decision or order.

- (j) Informal disposition may be made of any individual proceeding by stipulation, agreed settlement, consent order, or default.
- (1) *Informal proceedings.* Informal proceedings may be conducted after the filing of a sworn complaint and information so presented may be considered by a designated board member or any representative designated therefor, with the party or parties affected by correspondence or otherwise, in an effort to bring about an adjustment and solution of the problem without a formal hearing. Such proceedings shall be held without prejudice to the right of the board thereafter to institute formal proceedings and conduct hearings covering the same subject matters.
 - (2) *Informal conferences.* If deemed advisable to speed the consideration and determination of complaints and controversies which may not justify or require more formal proceedings, the board may hold an informal conference with the party or parties affected. Thereafter, the board as a body or any designated member or representative thereof shall attempt to resolve the controversy in an equitable manner. Such proceedings shall be without prejudice to the right of the board thereafter to institute formal proceedings covering the same or related subject matter or the right of the person involved, if the controversy is not resolved, to request a formal hearing.
- (k) Subject to the procedures set for in this rule, the provisions of the Administrative Procedure and Texas Register Act shall apply in all contested cases with such additional rules as may be hereinafter adopted by the board, which shall be in addition to and not inconsistent with such Act.

Source: The provisions of this §201.7 adopted to be effective December 9, 1983, 8 TexReg 4922.

§201.8. Procedures for the Petition for Adoption of Rules.

- (a) The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:
- (1) *Board*—State Board of Morticians.
 - (2) *Person*—Any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.
 - (3) *Rule*—Any board statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the board. The term includes the amendment or repeal of a prior rule. It does not include statements concerning only the internal management or organization of the board not affecting private rights or procedures.
- (b) Any interested person may submit a petition to the board requesting the adoption, amendment, or repeal of a rule. Petitions will be deemed submitted only when actually received in printed or typewritten form by the executive secretary.
- (c) Each petition will clearly state:
- (1) the proposed rule(s), including the specific language recommended.
 - (2) a brief explanation of the proposed rule.
 - (3) the statutory or other authority under which the rule is proposed to be promulgated, including a concise explanation of the particular statutory or other provisions under which the rule is proposed.
 - (4) the rationale or justification for the adoption, amendment, or repeal of the rule, including the public benefit to be expected.
- (d) The executive secretary will advise the board of all requests submitted by interested persons for the adoption, amendment, or repeal of a rule when submitted in accord with this procedure.
- (e) The board will consider within 60 days after the submission of a petition and may either deny the petition or instruct the executive secretary to initiate rulemaking proceedings in accordance with the Administrative Procedure and Texas Register Act, §5. In the event a petition is denied, the executive secretary will advise the interested person in writing of the denial and will state the reason for the denial of the board.

Source: The provisions of this §201.8 adopted to be effective December 9, 1983, 8 TexReg 4922.

§201.9. Preparation and Dissemination of Consumer Information.

- (a) The board shall prepare and disseminate to the general public information of consumer interest explaining matters relating to funerals, describing the regulatory functions of the board, and describing the board's procedure by which consumer complaints are filed and resolved by the board.
- (b) The board shall review and revise the information of consumer interest prepared and disseminated by the board on a biennial basis.
- (1) Any person or groups of persons may submit in writing any proposal concerning the content and/or method of dissemination of information of consumer interest prepared and disseminated by the board. Once submitted such proposal shall become the property of the board and will not be returned.
 - (2) The board shall annually review any proposals submitted to the board in writing concerning the content and/or method of dissemination of information of consumer interest.

- (c) Information of consumer interest prepared and disseminated by the board shall be available to the general public through funeral establishments. It shall be the responsibility of the funeral director in charge to have prominently displayed within the funeral establishment multiple copies of the board's consumer brochure. Information of consumer interest prepared and disseminated by the board shall also be available, upon request to individuals and to the following types of groups, organizations, and institutions, *i.e.* Better Business Bureaus, hospice groups, consumer groups, libraries, and legislators.

Source: The provisions of this §201.9 adopted to be effective December 9, 1983, 8 TexReg 4922; amended to be effective April 19, 1985, 10 TexReg 1127.

CHAPTER 203. LICENSING AND ENFORCEMENT—SPECIFIC SUBSTANTIVE RULES

<u>Section No.</u>	<u>Section Name</u>
203.1.	Definitions.
203.2.	Clarification of First Call Definition.
203.6.	Apprenticeships.
203.7.	Applicants for Licensure.
203.8.	Telephone Price Disclosures.
203.9.	Price Disclosure.
203.11.	Clarification of Fraudulent or Deceptive Conduct in Providing Funeral Services or Merchandise.
203.12.	Requirements for Reciprocal Licenses.
203.13.	Minimum Standards for Embalming.
203.115.	Comprehension of Disclosures.

§203.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

Courses of instruction—As specified in Texas Civil Statutes article 4582b, §1-J, shall include a course in practical funeral directing and embalming.

Licensed funeral establishment—In Texas Civil Statutes article 4582b, §1-F, in addition to its ordinary meaning, also means commercial embalming establishment where apprentice is an applicant for only an embalming license.

Cash advance item—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, the following items: cemetery or crematory services; pallbearers; public transportation; clergy honoraria; flowers; musicians or singers; nurses; obituary notices; gratuities; and death certificates.

Casket—A rigid container which is designed for the encasement of human remains and which is usually constructed of wood, metal, or like material and ornamented and lined with fabric.

Cremation—A heating process which incinerates human remains.

Crematory—Any person, partnership, or corporation that performs cremation.

Direct cremation—A disposition of human remains by cremation, without formal viewing, visitation, or ceremony with the body present.

Immediate burial—A disposition of human remains by burial, without formal viewing, visitation, or ceremony with the body present, except for graveside services.

Funeral provider—Any person, partnership, or corporation that sells or offers to sell funeral goods and funeral services to the public.

Source: The provisions of this §203.1 adopted to be effective April 5, 1976, 1 TexReg 694; amended to be effective July 18, 1983, 8 TexReg 4981; amended to be effective February 7, 1985, 10 TexReg 292.

Notes of Decisions: The State Board of Morticians has the right to prescribe rules and regulations governing the operation of funeral establishments, but it has no right to require a funeral establishment to obtain a license before it can operate. *State By and Through State Board of Morticians v. Cortez* (1960) 160 T. 532, 333 S.W. 2d 839.

§203.2. Clarification of First Call Definition.

- (a) For the purpose of these rules and Texas Civil Statutes article 4582b, a morgue shall be defined as a place where bodies of unidentified persons or those who have died of violence or unknown causes are kept until release for burial or other lawful disposition.
- (b) After the funeral director has acquired permission to perform services and has assumed the duty to take charge of a dead human body for preparation, burial, or other lawful disposition, subsequent removals of the body may be made by unlicensed personnel.
- (c) The transfer of a dead human body from a funeral home to and from a morgue is not a first call if the duty, described in subsection (b) of this section, of the funeral director to the dead human body has already been established.
- (d) When making a first call, the licensed funeral director or embalmer must personally sign the release form with his usual signature, current funeral director or embalmer number, and/or must present said license upon request from the releasing institution.
- (e) *Commercial embalming establishment licensees are prohibited from authorizing first calls or dealing directly with the public for services or merchandise, such first calls must be authorized by a licensed funeral establishment as defined by Texas Civil Statutes article 4582b, prior to such removal. Any such removal(s) must bear the name of the funeral establishment authorizing the removal on the release form.*
- (f) When oral or written permission to embalm cannot be obtained from person(s) authorized to make funeral arrangements, methods taken to document reasonable effort over a period of at least two hours to obtain permission must become part of the file on the deceased and retained for a period of two years with price list, written notices, and memorandum of agreement, subject to inspection by the board.
- (g) Only a licensed funeral director or registered funeral director apprentice, under the direct supervision of a licensed funeral director, shall present funeral services and merchandise to a customer or prospective customer, and only a licensed funeral director shall sign all contractual agreements for funeral services and merchandise unless such services and merchandise are arranged and contracted for under a permit issued under the provisions of the Prepaid Funeral Benefits Act article 548b.

Source: The provisions of this §203.2 adopted to be effective December 9, 1983, 8 TexReg 4926.

§203.6. Apprenticeships.

- (a) Any case report called for in Texas Civil Statutes, Article 4582b, is the responsibility of the apprentice. Penalties for failure to file these case reports will lie against the apprentice.

- (b) The board may hear testimony or receive evidence as to why standards or requirements of apprenticeship cannot be met by an apprentice. Where, because of hardship or act of God, the applicant has been unable to meet such standards in spite of diligent effort, the Board can make a finding of substantial compliance by such apprentice.
- (c) An apprentice, throughout his apprenticeship period, must satisfy the definition of apprenticeship in Texas Civil Statutes, Article 4582b, §1 F.
- (d) An embalmer apprentice shall be required to assist in the embalming of six autopsied remains during the course of the embalming apprenticeship, with the provision that a certificate from mortuary college stating a number of autopsied cases had been completed during the course of the college program, would count towards the six required cases. However, any autopsied cases completed during the course of mortuary college, would not count towards the 60 cases required to complete the embalmer apprenticeship.

Source: The provisions of this §203.6 adopted to be effective December 9, 1983, 8 TexReg 4928; amended to be effective June 23, 1986, 11 TexReg 2643.

§203.7. Applicants for Licensure.

Applicants for licensure must pass the various practical and oral examinations as given by the board. A minimum grade of 70 must be made on each of the various examinations. Re-examination will be allowed and should be taken, where possible, at the next regular board examination.

Source: The provisions of this §203.7 adopted to be effective December 9, 1983, 8 TexReg 4928.

§203.8. Telephone Price Disclosures.

To prevent unfair or deceptive acts or practices, funeral directors must:

- (1) tell persons who call the funeral establishment and ask about the terms, conditions, or prices at which funeral goods or funeral services are offered, that price information is available over the telephone; and
- (2) tell persons who ask by telephone about the funeral establishment's offerings or prices any accurate information from the price lists which reasonably answers the question, and any other information which is readily available.

Source: The provisions of this §203.8 adopted to be effective October 5, 1984, 9 TexReg 4975.

§203.9. Price Disclosure.

The retail price list as defined in Texas Civil Statutes article 4582b, §1(S), must contain the retail prices, expressed either as a flat fee or as the price per hour, mile, or other information, of the following terms:

- (1) forwarding of remains to another funeral establishment, together with a list of the services provided for any quoted price;
- (2) receiving remains from another funeral establishment, together with a list of the services provided for any quoted price;
- (3) the price range for the direct cremations offered by the funeral establishment, together with:
 - (A) a separate price for a direct cremation where the purchaser provides the container;
 - (B) separate prices for each direct cremation offered, including an unfinished wood box or alternative container; and
 - (C) a description of the services and container (where applicable) included in each price;
- (4) the price range for the immediate burials offered by the funeral establishment, together with:
 - (A) a separate price for an immediate burial where the purchaser provides the casket;
 - (B) separate prices for each immediate burial offered, including a casket or alternative container; and
 - (C) a description of the services and container (where applicable) included in that price.
- (5) acknowledgement cards;
- (6) 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 written statement of the actual charges shall be provided before the final bill is paid.)

Source: The provisions of this §203.9 adopted to be effective October 5, 1984, 9 TexReg 4975.

§203.11. Clarification of Fraudulent or Deceptive Conduct in Providing Funeral Services or Merchandise.

- (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:
 - (A) represent that state or local law requires that a deceased person be embalmed;
 - (B) fail to disclose that embalming is not required by law except in certain special cases.
 - (2) *Preventive requirements.* To prevent these deceptive acts or practices, funeral directors must:

- (A) not represent that a deceased person is required to be embalmed for direct cremation, immediate burial, a funeral using a closed casket, or if refrigeration is available and the funeral is without viewing or visitation and with a closed casket when state or local law does not require embalming; and

This page was intentionally left blank.

- (B) place the following disclosure on the retail price list, in immediate conjunction with the price shown for embalming: Except in special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as funerals with viewing. If you do not want embalming, you usually have the right to choose an arrangement which does not require you to pay for it, such as direct cremation or immediate burial.

(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:
- (A) represent that state or local laws requires a casket for direct cremation;
- (B) represent that a casket (other than an unfinished wood box) is required for direct cremation.
- (2) *Preventive requirements.* To prevent these unfair or deceptive acts or practices, funeral directors must place the following disclosure in immediate conjunction with the price range shown for direct cremation: If you want to arrange a direct cremation, you can use an unfinished wood box or alternative container. Alternative containers can be made of materials like heavy cardboard or composition materials (with or without an outside covering), or purchases of canvas. This disclosure only has to be placed on the retail 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 or funeral services to the public, it is a deceptive act or practice for a funeral provider to:
- (A) represent that state or local laws or regulations or particular cemeteries require outer burial containers when such is not the case;
- (B) fail to disclose to persons arranging funerals that state law does not require the purchase of an outer burial container.
- (2) *Preventive requirements.* To prevent these deceptive acts or practices, funeral providers must place the following disclosure on the outer burial container price list. The prices of outer burial containers are listed on the retail price list, in immediate conjunction with those prices:

"In most areas of the country, no state or local law makes you buy a container to surround the casket in the grave. However, many cemeteries ask that you have such a container so that the graves will not sink in. Either a burial vault or a grave liner will satisfy these requirements."

(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 present 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, funeral directors must identify and briefly describe in writing on the statement of funeral goods and services selected any legal, cemetery, or crematory requirement which the funeral director represents 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 and funeral services to the public, it is a deceptive act or practice for a funeral director 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 director to:
- (A) represent that the price charged for a cash advance item is the same as the cost to the funeral director for the item when such is not the case;
- (B) 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 directors must place the following sentence in the general price list, at the end of the cash advance disclosure: "We charge you for our services in buying these 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.

(g) *Casket for cremation provision.*

- (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 establishment or a crematory to require that a casket other than an unfinished wood box be purchased for direct cremation.

- (2) *Preventive requirements.* To prevent this unfair or deceptive act or practice, funeral directors must make an unfinished wood box or alternative container available for direct cremations, if they arrange direct cremations.
- (h) *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 condition the furnishing of any funeral goods or funeral services to a person arranging a funeral upon the purchase of any other funeral good or service, except as required by law or as otherwise permitted by this part.
- (2) *Preventive requirements.*
- (A) To prevent this unfair or deceptive act or practice, funeral providers must:
- (i) Place the following disclosure in the retail price list, immediately above the prices required. "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, 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 services." between the second and third sentences of the statement specified herein; and
- (ii) Place the following disclosure on the statement of funeral services selected. "Charges are only for those items that are used. If we are required by law to use any items, we will explain the reasons in writing below."
- (B) A funeral provider shall not violate this section by failing to comply with a request for combination of goods or services which would be impossible, impractical, or excessively burdensome to provide.

Source: The provisions of this §203.11 adopted to be effective September 17, 1984, 9 TexReg 5002.

Notes of Decisions: Where a licensee, seeking renewal of his licenses as an embalmer and as a funeral director, made tender of the fees but the Board refused the tender, the licenses did not lapse. State By and Through State Board of Morticians v. Cortez (1960) 160 T. 532, 333S.W. 2d 839.

§203.12. Requirements for Reciprocal Licenses.

Any applicant for a reciprocal license, in Texas Civil Statutes article 4582b, §3(F)(1), must prove to the board that the license from the state of licensure is not lapsed. If the license has lapsed, the applicant must pass the examinations required by the board for all applicants for that license.

Source: The provisions of this §203.12 adopted to be effective December 9, 1983, 8 TexReg 4928.

§203.13. Minimum Standards for Embalming.

- (a) In order to ensure the maximum inhibition of pathogenic organisms in the dead human body, the following minimum standards of performance shall be required of such licensed embalmer in the State of Texas in each instance in which he or she is authorized or required to embalm a dead human body.
- (1) The embalming procedure shall be performed by personnel licensed by the state board to perform such procedure. Embalming shall be performed only in properly equipped and licensed establishments, or in such facilities as may be designated by the medical examiner, coroner, or by the state health officials in the event of a disaster of major proportions. The embalmer may be assisted by a registered embalmer apprentice or qualified embalming student, or he may supervise a registered embalmer apprentice or qualified embalming student as they perform the embalming procedure. This subsection does not prevent authorized establishment personnel from entering the preparation room and performing duties other than the embalming procedure.
- (2) In order to prevent those involved in the embalming procedure from becoming unwitting carriers of pathogenic organisms into the community, they shall be required to utilize such protective devices as sterilizable gloves, aprons, or operating gowns during the embalming procedure. Disposable garments and/or gloves shall be permitted.
- (3) Clothing directly exposed to contamination by pathogenic organisms shall either be burned or thoroughly cleaned and disinfected with a solution having a Phenol coefficient of not less than one before delivery to any person or before any further utilization.
- (4) The technique utilized to effect eye, mouth, and lip closure shall be any technique accepted as standard in the profession. Regardless of the technique chosen, the embalmer shall be required to achieve the best results possible under prevailing conditions.
- (5) The entire body shall be washed with an antiseptic soap or detergent. Fingernails, hair (including mustache and beard) shall be thoroughly cleaned, either before or after arterial injection.
- (6) Body orifices (open lesions and surgical incisions, nostrils, mouth, anus, and vagina) shall be treated with appropriate topical disinfectants either before or immediately after arterial injection. After cavity treatment has been completed, body orifices shall be packed in cotton saturated with a suitable disinfectant of a Phenol coefficient not less than one.

- (7) The arterial fluid to be injected shall be one commercially prepared and marketed with its percent of formaldehyde by volume (index) clearly marked on the label or in printed material supplied by the manufacturer.
- (8) The fluids selected shall be injected into all bodies in such dilutions and at such pressures as the professional experience of the embalmer shall indicate, except that in no instance shall dilute solution contain less than 1.0% formaldehyde, and in no instance shall less than one gallon of dilute solution be used for each 50 pounds of body weight. Computation of solution strength is as follows:

$$C \times V = C' \times V'$$

C (strength of concentrated fluid) × V (volume in ounces of concentrated fluid)

=

C (strength of diluted solution) × V (volume in ounces of diluted fluid)

For example, how much of a 20 index fluid will it take to make two gallons (256 oz.) of a one index (1.0%) injection solution? Solving for V.

$$C \times V = C' \times V'$$

$$20 \times V = 1 \times 256$$

$$20 V = 256$$

$$V = \frac{256}{20} = 12.8 \text{ oz.}$$

- (9) Abdominal and thoracic cavities shall be treated in the following manner:
- (A) Liquid, semi-solid, and gaseous contents which can be withdrawn through a trocar shall be aspirated by the use of at least 18 inches (mercury) vacuum.
 - (B) Concentrated, commercially prepared cavity fluid which is acidic in nature (6.5pH or lower) and contains at least two preservative chemicals shall be injected and evenly distributed throughout the aspirated cavities. A minimum of 16 ounces of concentrated cavity fluid shall be used for each adult body.
 - (C) Should distension and/or purge occur after treatment, aspiration and injection as required shall be repeated as necessary.
- (10) The embalmer shall be required to check each body thoroughly after treatment has been completed. Any area not adequately disinfected by arterial and/or cavity treatment shall be hypodermically injected with disinfectant fluid for maximum disinfection results.
- (11) On bodies in which the arterial circulation is incomplete or impaired by advance decomposition, burns, trauma, autopsy or any other cause the embalmer shall be required to hypodermically inject all areas which cannot be properly treated through whatever arterial circulation remains intact (if any).
- (12) In the event that the procedures in paragraphs (1)-(11) of this subsection leave a dead human body in condition to constitute a high risk of infection to anyone handling the body, the embalmer shall be required to apply to the exterior of the body a standard embalming powder and to enclose the body in a zippered plastic or rubber pouch prior to burial or other disposal.
- (13) Dead human bodies donated to the State Anatomical Board shall be embalmed as required by the State Anatomical Board and where conflicting requirements exist, those requirements of the State Anatomical Board shall prevail.
- (14) Nothing in this section shall be interpreted to require embalming if the next-of-kin does not authorize embalming.
- (15) All bodies should be treated in such manner and maintained in such an atmosphere as to avoid infestation by vermin, maggots, ants, and other insects; however, should these conditions occur, the body should be treated with an effective vermicide and/or insecticide to eliminate these conditions.
- (16) No licensed establishment or licensed embalmer shall take into its care any dead human body for embalming without exerting every professional effort, and employing every possible technique or chemical, to achieve the highest level of disinfection.
- (17) Nothing in this section shall be interpreted to prohibit the use of supplemental or additional procedures or chemicals which are known to and accepted in the funeral service profession and which are not specifically mentioned in this subsection.
- (b) Minor variations in these procedures shall be permitted as long as they do not compromise the purpose of this rule as stated in subsection (a) of this section.

- (c) A report form, approved by the State Board of Morticians, shall be completed on each case of embalming. The completed form shall be retained for a two-year period and be made available to the State Board of Morticians, upon request, for inspection.

Source: The provisions of this §203.13 adopted to be effective December 9, 1983. 8 TexReg 4926

§203.115. Comprehension of Disclosures.

To prevent unfair or deceptive acts or practices, funeral directors must make all disclosures required by those sections in a clear and conspicuous manner.

Source: The provisions of this §203.115 adopted to be effective October 5, 1984. 9 TexReg 4975.