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Colorado Department of Regulatory Agencies
Office of Policy, Research and Regulatory Reform

Funeral Service Practitioners



December 6, 2007

STATE OF COLORADO

DEPARTMENT OF REGULATORY AGENCIES

Office of Policy, Research and Regulatory Reform

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Bill Ritter, Jr.
Governor

D. Rico Munn
Executive Director

December 6, 2007

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The mission of the Department of Regulatory Agencies (DORA) is consumer protection. As a part of the Executive Director's Office within DORA, the Office of Policy, Research and Regulatory Reform seeks to fulfill its statutorily mandated responsibility to conduct sunrise reviews with a focus on protecting the health, safety and welfare of all Coloradans.

DORA has completed its evaluation of the sunrise application for regulation of funeral service practitioners and is pleased to submit this written report. The report is submitted pursuant to section 24-34-104.1, Colorado Revised Statutes, which provides that DORA shall conduct an analysis and evaluation of proposed regulation to determine whether the public needs, and would benefit from, the regulation.

The report discusses the question of whether there is a need for regulation in order to protect the public from potential harm, whether regulation would serve to mitigate the potential harm, and whether the public can be adequately protected by other means in a more cost-effective manner.

Sincerely,

D. Rico Munn
Executive Director

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The Sunrise Process

Background

Regulation, when appropriate, can serve as a bulwark of consumer protection. Regulatory programs can be designed to impact individual professionals, businesses or both.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

There are also several levels of regulation. Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection – only those individuals who are properly licensed may use a particular title(s) – and practice exclusivity – only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.

While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements – typically non-practice related items, such as insurance or the use of a disclosure form – and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency – depending upon the prescribed preconditions for use of the protected title(s) – and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.

As regulatory programs relate to businesses, they can enhance public protection, promote stability and preserve profitability. But they can also reduce competition and place administrative burdens on the regulated businesses.

Regulatory programs that address businesses can involve certain capital, bookkeeping and other recordkeeping requirements that are meant to ensure financial solvency and responsibility, as well as accountability. Initially, these requirements may serve as barriers to entry, thereby limiting competition. On an ongoing basis, the cost of complying with these requirements may lead to greater administrative costs for the regulated entity, which costs are ultimately passed on to consumers.

Many programs that regulate businesses involve examinations and audits of finances and other records, which are intended to ensure that the relevant businesses continue to comply with these initial requirements. Although intended to enhance public protection, these measures, too, involve costs of compliance.

Similarly, many regulated businesses may be subject to physical inspections to ensure compliance with health and safety standards.

Regulation, then, has many positive and potentially negative consequences. Colorado law, section 24-34-104.1, Colorado Revised Statutes (C.R.S.), requires that individuals or groups proposing legislation to regulate any occupation or profession first submit information to the Department of Regulatory Agencies (DORA) for the purposes of a sunrise review. The intent of the law is to impose regulation on occupations and professions only when it is necessary to protect the public health, safety or welfare. DORA must prepare a report evaluating the justification for regulation based upon the criteria contained in the sunrise statute:¹

- (I) Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety, or welfare of the public, and whether the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;
- (II) Whether the public needs, and can reasonably be expected to benefit from, an assurance of initial and continuing professional or occupational competence; and
- (III) Whether the public can be adequately protected by other means in a more cost-effective manner.

Any professional or occupational group or organization, any individual, or any other interested party may submit an application for the regulation of an unregulated occupation or profession. Applications must be accompanied by supporting signatures and must include a description of the proposed regulation and justification for such regulation.

¹ § 24-34-104.1(4)(b), C.R.S.

Methodology

DORA has completed its evaluation of the proposal for regulation of funeral service practitioners. During the sunrise review process, DORA performed a literature search, contacted and interviewed representatives of the Colorado Funeral Directors Association, reviewed licensure laws in other states, conducted interviews of administrators of those programs and interviewed other groups interested in funeral service practitioner issues. In order to determine the number and types of complaints filed against funeral service practitioners in Colorado, DORA contacted the Colorado Funeral Service Board and the Denver/Boulder Better Business Bureau. To better understand the funeral service industry, a representative of DORA visited several mortuaries and crematories.

Proposal for Regulation

The Colorado Funeral Directors Association (Applicant) has submitted a sunrise application to the Department of Regulatory Agencies (DORA) for review in accordance with the provisions of section 24-34-104.1, Colorado Revised Statutes (C.R.S.). The application identifies state licensure of funeral service practitioners as the appropriate level of regulation to protect the public.

In order to provide a central location to report concerns or file complaints, the Applicant requested licensure, the most restrictive form of regulation, for Funeral Directors, Embalmers and Cremationists. The sunrise application also states that licensure is requested for Mortuary Science Practitioners. Mortuary Science Practitioners, according to the Applicant, have satisfied minimum requirements, which would enable them to practice in any of the aforementioned areas related to the funeral industry. The Applicant outlines the parameters under which the aforementioned professions would be eligible for licensure:

- Funeral Directors who complete a period of supervised internship and direct a specific number of funerals or graveside services would be eligible for licensing.
- Embalmers who complete a period of supervised internship and embalmed a specific number of dead human bodies would be eligible for licensing.
- Cremationists who complete a period of supervised internship and cremated a specific number of dead human bodies would be eligible for licensing.
- Mortuary Science Practitioners have completed specialized training and education to perform and supervise all three areas of funeral service: Funeral Directing, Embalming and Cremation.

The sunrise application also proposes registration for interns who are supervised by a Mortuary Science Practitioner.

Additionally, the sunrise application proposes licensure for all funeral establishments that hold, care for, or prepare a human body prior to final disposition, or any business that provides funeral goods or services to the public. However, the sunrise application does not clearly delineate the requirements for licensure.

Also, the Applicant states, on page 7 of its sunrise application, that because Colorado remains the only state with no direct regulation of the funeral service industry, practitioners who have had difficulties in other states have relocated to Colorado. As a result, the Applicant believes that consumers are not adequately protected, thereby rendering them susceptible to harm by unregulated funeral service practitioners.

The Applicant expressed concerns about what it perceives as lax standards in the area of public health. In fact, the Applicant believes that remains that have not been properly disinfected may lead to the proliferation of communicable diseases such as the Human Immunodeficiency Virus, Acquired Immunodeficiency Syndrome, Creutzfeldt-Jakob disease and tuberculosis, in addition to influenza and viral infections.

Profile of the Profession

Funeral service practitioners, as outlined in the sunrise application, include four separate occupations: Funeral Directors, Embalmers, Cremationists and Mortuary Science Practitioners. The Applicant has requested licensure for each of the aforementioned occupations.

Funeral Directors are responsible for the overall logistics of funerals. For example, Funeral Directors interview family members in order to determine the nature of the funeral, the clergy or other person(s) who will facilitate the funeral and the final disposition of the deceased's remains.

Additionally, Funeral Directors are responsible for:²

preparing obituary notices and having them placed in newspapers, arranging for pallbearers and clergy, scheduling the opening and closing of a grave with a representative of the cemetery, decorating and preparing the sites of all services, and providing transportation for the remains, mourners, and flowers between sites.

According to the sunrise application submitted to DORA, Funeral Directors also prepare and file sensitive legal documents that contain personal information, such as medical records, Social Security numbers, Veterans Administration benefits and death certificates.

² U.S. Department of Labor, Bureau of Labor Statistics. *Funeral Directors*. Retrieved on November 1, 2007, from <http://www.bls.gov/oco/pdf/ocos011.pdf>

The next occupation for which regulation is sought is Embalmers. Embalmers are responsible for preparing the deceased for a funeral. Specifically, Embalmers inject embalming fluid into the deceased, while removing the blood, in order to preserve the body for a funeral. Embalmers may also be called upon to reshape and reconstruct disfigured or maimed bodies using materials such as clay, cotton, plaster of paris, and wax.³

The next occupation for which regulation is sought is Cremationists. According to the sunrise application, a Cremationist cremates or prepares a dead human body for cremation. The sunrise application further explains that a Cremationist operates a crematory that reduces a body to essential elements through direct exposure to intense heat.

As outlined in the sunrise application, there are a number of handling procedures in place, including:

- Verifying that the person requesting the cremation has legal authority to do so;
- Confirming specific instructions on the type of urn or container that will be used to hold the cremated remains; and
- Verifying who should receive the cremated remains.

The sunrise application also states that Cremationists are responsible for recovering, handling and disposing of pacemakers, defibrillators, prosthetic devices, clothing, jewelry, and other personal effects.

The final occupation for which regulation is sought is Mortuary Science Practitioners. According to information outlined in the sunrise application, a Mortuary Science Practitioner possesses the training and education to perform and supervise all three occupations within the funeral service industry: Funeral Directors, Embalmers and Cremationists.

Certification by the Colorado Funeral Service Board

Currently, there are opportunities to obtain voluntarily certification related to the funeral service industry from the Colorado Funeral Service Board (CFSB). The sunrise application states that the CFSB was created by the funeral service industry to promote professionalism under a voluntary system of certification, registration and the development and maintenance of standards.

³ U.S. Department of Labor, Bureau of Labor Statistics. *Funeral Directors*. Retrieved on November 1, 2007, from <http://www.bls.gov/oco/pdf/ocos011.pdf>

The CFSB offers a number of certifications, including:

- Mortuary Science Practitioner;
- Funeral Director;
- Embalmer; and
- Intern.

In order to obtain a Mortuary Science Practitioner (MSP) certification through the CFSB, a candidate must complete the following requirements:

- Submit a completed application to the CFSB;
- Pay the application fee (\$65);
- Verify high school completion or General Educational Development (GED);
- Verify completion of mortuary science training at an accredited mortuary science school;
- Achieve a score of 75 percent or higher on the National Board Examination;
- Complete a 12-month Colorado internship under supervision of a duly certified and registered MSP;
- Pay a \$65 annual renewal fee for certification; and
- Complete six continuing education units annually.

Additionally, there are two options available to obtain a Funeral Director certification from the CFSB; however, one option does not have additional merit over the other. There are simply two different paths a candidate may choose in order to fulfill the requirements to obtain a Funeral Director certification. The minimum requirements for the first option are:

- Submit a completed application to the CFSB;
- Pay the application fee (\$65);
- Verify high school completion or GED;
- Verify completion of at least 60 semester hours at a college or university;
- Complete a 24-month Colorado internship under the supervision of a duly certified and registered MSP;
- Complete 50 funeral directing cases;
- Pay a \$65 annual renewal fee for certification; and
- Complete six continuing education units annually.

The second option includes the following requirements for obtaining a Funeral Director certification:

- Submit a completed application to the CFSB;
- Pay the application fee (\$65);
- Verify high school completion or GED;
- Complete a 72-month Colorado internship under the supervision of a duly certified and registered MSP;
- Complete 150 funeral directing cases;
- Pay a \$65 annual renewal fee for certification; and
- Complete six continuing education units annually.

There are also two options for obtaining an Embalmer certification from the CFSB. Again, one option does not have additional merit over the other; there are simply two paths available for certification. The first option is as follows:

- Submit a completed application to the CFSB;
- Pay the application fee (\$65);
- Verify high school completion or GED;
- Verify completion of mortuary science training at an accredited mortuary science school;
- Achieve a score of 75 percent or higher score on the National Board Examination;
- Complete a 24-month Colorado internship under supervision of a duly certified and registered MSP;
- Complete 50 embalming cases;
- Pay a \$65 annual renewal fee for certification; and
- Complete six continuing education units annually.

The second option for obtaining an Embalmer certification is as follows:

- Submit a completed application to the CFSB;
- Pay the application fee (\$65);
- Verify high school completion or GED;
- Complete a 48-month Colorado internship under the supervision of a duly certified and registered MSP;
- Complete 100 embalming cases;
- Pay a \$65 annual renewal fee for certification; and
- Complete six continuing education units annually.

If a candidate seeks a dual certification (Funeral Director and Embalmer) the initial application and annual renewal fees are \$85.

The CFSB also offers an Intern certification to interested parties. Interns are not specific to one occupation within the funeral service industry. Instead, Interns gain experience in a variety of areas. In order to obtain an Intern certification, a candidate must complete the following requirements:

- Submit a completed application to the CFSB;
- Pay the application fee (\$65);
- Verify high school completion or GED;
- Pay a \$65 annual renewal fee for certification; and
- Complete six continuing education units annually.

Currently, there are approximately 208 certified funeral service practitioners in Colorado, which correlates to approximately 18 percent of funeral service practitioners obtaining certification by the CFSB in Colorado.

In addition to offering the aforementioned certifications, the CFSB, which is composed of nine members, also addresses citizen complaints against funeral service practitioners. The CFSB's composition is as follows:

- Seven funeral industry members; and
- Two citizen members not employed by the funeral service industry.

According to information obtained from the Applicant, the CFSB recently adopted (May 2006) a complaint process. The complaint process is as follows:

- Complaints filed must be in writing.
- Complaints should include a detailed account of the facts in the case.
- Upon receiving a complaint, the CFSB determines whether the complaint is directed against a member of the Colorado Funeral Directors Association or if the person is certified by the CFSB.
- The CFSB may intervene and attempt to mediate between the parties to reach a mutually agreeable resolution.

The Applicant did not provide information regarding the number of complaints that were successfully or unsuccessfully mediated. Without this information, it is impossible to provide any detailed information regarding the success of the CFSB related to mediating complaints from the public.

Summary of Current Regulation

In Colorado, the funeral service industry is governed by a variety of federal, state and local laws. The regulations are in place to provide protection to consumers. Outlined below are several key laws and regulations in place at the federal, state and local levels of government that cover a wide spectrum of issues.

Current Federal Regulation

Federal Trade Commission. The Funeral Industry Practices Trade Regulation Rule, 16 C.F.R. Part 453, of the Federal Trade Commission (FTC), commonly referred to as the “Funeral Rule,” was adopted in 1982 and became fully effective in 1984. The FTC is an independent federal agency responsible for maintaining competition and safeguarding the interests of consumers. The Funeral Rule contains federal antitrust and consumer protection laws, which are enforced by the FTC. All funeral establishments in the United States are required to follow the Funeral Rule and to comply with its preventive requirements in order to avoid unfair or deceptive acts or practices. Key provisions of the Funeral Rule, as outlined in Part 453, include:

- **Definitions.** Key terms that are defined include: “Alternative container,” “cash advance item,” “casket,” “Commission,” “cremation,” “crematory,” “direct cremation,” “funeral goods,” “funeral provider,” and “funeral services.”
- **Price disclosures.** Preventive requirements include disclosing processes over the telephone, and providing printed price lists for all merchandise and services offered.
- **Misrepresentations.** To prevent deceptive acts or practices, Funeral Directors are required to provide full disclosure about the need for goods and services, along with written price lists for what they offer.
- **Required purchase of funeral goods or funeral services.** Unfair or deceptive acts or practices include requiring that caskets be purchased for direct cremation and that provision of certain funeral goods and services are conditional upon the purchase of other items.
- **Services provided without prior approval.** A funeral provider cannot charge a fee for embalming unless state or local regulation requires it in the particular circumstance or unless it has been authorized by a family member.
- **Retention of documents.** Funeral establishments must retain and make available for FTC inspectors true and accurate copies of their price lists for at least one year after the date of their last distribution to customers.

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- Comprehension of disclosures. All required disclosures must be provided in a clear and conspicuous manner.
 - Declaration of intent. The provisions of the Funeral Rule are separate and severable from one another. If any provision is ruled invalid, the FTC's intent is that the remaining provisions continue in effect. The Funeral Rule does not apply to the business of insurance.
 - State exemptions. If a state requirement provides greater consumer protection than the Funeral Rule, the state requirement will be in effect as long as the state administers and enforces it effectively.

Occupational Safety and Health Administration. The Occupational Safety and Health Administration (OSHA) in the U.S. Department of Labor was established in 1971 to ensure safe and healthful workplaces by prevention of on-the-job injuries and illnesses. Healthcare workers are required to observe precautions because of their exposure to blood-borne pathogens. Morticians and their employees are classified as healthcare workers and are considered to be at occupational risk because they are exposed to blood and certain body fluids.

Workplace safety guidelines must be followed by funeral service practitioners who have reasonably anticipated occupational exposure to blood or other potentially infectious materials. Blood-borne pathogens of greatest risk include Hepatitis B and Human Immunodeficiency Virus (HIV). In addition to blood-borne pathogens, OSHA has standards applying to personal protective equipment, formaldehyde and hazardous chemicals.

Environmental Protection Agency. The Environmental Protection Agency (EPA) was established by the National Environmental Policy Act of 1969. EPA works closely with other federal agencies and state and local governments to develop and enforce regulations under existing environmental laws. Under the Clean Water Act, hazardous materials such as embalming fluid, when discharged at levels that satisfy certain threshold requirements, must be disposed of in compliance with guidelines, while emissions from crematories must meet standards established by the Clean Air Act.

Under the Clean Water Act, the types of biohazards typically discharged by funeral homes, including bodily fluids, formaldehyde and other embalming fluids, are not discharged in levels high enough to warrant regulation.

The EPA has delegated most of its enforcement authority under the Clean Air Act to the Colorado Department of Public Health and Environment (CDPHE). A crematorium is considered an incinerator under the Clean Air Act and, as such, must have a permit to operate. Permits which address particulate mass, opacity or emissions and the appropriate internal temperatures, are obtained from CDPHE. CDPHE attempts to inspect crematoriums once every five years. According to CDPHE staff, there are 99 permitted crematoriums in Colorado. At the time of this writing, the Department of Regulatory Agencies (DORA) did not receive information from CDPHE staff regarding the number of violations, if any, of existing permits. As a result, it is impossible to know if any violations of permits have occurred.

If a complaint is filed against a crematorium, however, CDPHE follows an established process to assess the situation. Its disciplinary actions include inspecting facilities following complaints, issuing compliance advisories, issuing notices of violation, and, finally, taking the facility to court for its violations.

Americans with Disabilities Act. The Americans with Disabilities Act (ADA) was enacted in 1990 and is enforced by the U.S. Department of Justice. It prohibits discrimination against disabled individuals in employment, state and local government services, public accommodation, commercial facilities and transportation.

Since the ADA has been in effect, cases have been filed against funeral homes that were charging more to embalm bodies of persons whose deaths resulted from Acquired Immune Deficiency Syndrome (AIDS)-related complications than for those who did not have AIDS. Rulings in the cases were that extra charges could not be levied for embalming bodies of AIDS victims. Funeral homes were ordered to adopt and post written policies prohibiting discrimination on the basis of disabilities, including HIV and AIDS.

History of Colorado Regulation

The Colorado State Board of Embalming Examiners was formed in 1913, prompted by concerns about the potential danger to public health from improperly embalmed or preserved bodies. There was particular fear that infectious diseases such as smallpox could be transmitted because of improper embalming practices being performed by unqualified people. There was also concern about disease transmission from bodies being transported long distances.

The name of the Colorado State Board of Embalming Examiners was changed twice, once in 1939 to the Board of Funeral Directors and Embalmers and again in 1967 to the Board of Mortuary Science (Board). Under the Administrative Reorganization Act of 1968, the Board was placed in DORA as a Type 1 agency, an agency in which the power and rulemaking authority are vested in the regulatory board.

Board of Mortuary Science Performance Audit, 1977. In 1977, a performance audit of the Board was conducted by the Office of the State Auditor and presented to the Legislative Audit Committee. The report stated that the initial purpose of the Board, to prevent the spread of communicable diseases, had become a moot point since smallpox had been eradicated and newer antiseptic practices had become standard. Criticism of the Board was levied in several areas, including:

- The Board had done little to address consumer protection, particularly in the areas of pricing and sales practices.
- It was difficult to evaluate the Board's efforts at complaint resolution due to inadequate record keeping.
- License renewal seemed to be solely a revenue generating procedure without the justification of ensuring continued licensee competence.

Elimination of the Board was the primary recommendation of the 1977 audit. It suggested that some of the Board's functions should continue, but it recommended dispersing them among appropriate state agencies.

An alternative to eliminating the Board was changing it to a Type 2 agency, primarily an advisory body, with its power and authority vested in the Executive Director of DORA.

Board of Mortuary Science Sunset Review, 1977. Subsequent to the performance audit, DORA conducted a sunset review of the Board. It was among the first group of regulated entities to undergo a sunset review following passage of House Bill 76-1088, the legislation that inaugurated the sunset process. The review was presented to the General Assembly in 1978.

The sunset review supported the recommendations of the performance audit, suggesting either eliminating the Board altogether or redefining its purpose and structure through a Type 2 transfer procedure whereby it would become an advisory panel.

Mortuary Science Code, 1978. House Bill 78-1106 repealed and reenacted, with amendments, the Mortuary Science Code (Code). Practitioners were licensed under the Code until 1983. Portions of the Code, as it was reenacted in 1978, are summarized below:

- Membership and termination. The Board was placed under the Division of Registrations in DORA. The Board had five members: two were licensed practitioners and three were public members not connected to the death care industry, one of whom was a member of the clergy. One member was to be from the Western Slope.
- Powers and duties of the Board. These included licensing qualified persons, registering funeral establishments, inspecting the establishments at least every three years, issuing certificates to trainees, keeping complete records of all licensees and trainees and keeping records of all written and verbal complaints and corrective actions taken.
- Funeral establishment – registration. A registration was valid without expiration unless it was canceled, revoked or suspended. It had to be reissued whenever there was a change of manager. Documents and papers concerning the funeral and final disposition of all deceased persons were to be kept by the funeral establishment for a period of seven years.
- Licensed practitioner – qualifications and examination. A licensee had to be a Colorado resident at least 18 years of age and a graduate of a college of mortuary science (completed at least 60 semester hours) or its equivalent. A licensee must have served one year as a trainee and must have passed oral and written examinations.
- Licensee – authority and responsibility. Disinfection, preservation and final disposition of dead human bodies were to be performed by licensed practitioners. Unless cremated, interred or properly refrigerated, all dead human bodies were to be embalmed within 24 hours.
- Revocation or suspension. Grounds included fraud or misrepresentation, conviction of a felony, unprofessional conduct, discrimination and others.
- Unlawful acts. Such acts included disinfecting a dead human body when there was suspicion of a crime connected with the cause of death, conducting funeral arrangements without providing survivors with an itemized price list for services, fraudulently claiming to be a licensed practitioner and others.
- Violations and penalties. Any violation was a misdemeanor. Upon conviction, a fine of up to \$5,000 and imprisonment in the county jail up to 24 months, or both, could be levied.

Coroners, 1981. House Bill 81-1317 added a new section to the Code that pertained to county coroners. A coroner taking office after the 1982 general election could be considered to have a conflict of interest if he or she owned, operated or was affiliated with a funeral establishment. Business was not to be directed to his or her establishment unless it involved an emergency situation.

Licensure of funeral directors and Board of Mortuary Science terminated, 1983. House Bill 83-1107 ended the Board and licensure of funeral directors. Portions of the former practice act were continued as the Code, section 12-54-101, *et seq.*, Colorado Revised Statutes (C.R.S.).

Mortuary Science Practitioners Sunrise Review, 1990. In 1990, a sunrise review of mortuary science practitioners was conducted by DORA to evaluate a proposal for re-regulation submitted by the Colorado Funeral Directors and Embalmers Association. The sunrise review did not recommend licensing mortuary science practitioners nor did it recommend reinstating the Board.

The sunrise review found that the applicants had not provided sufficient support for their argument that additional regulation was necessary. In its Summary of Findings and Recommendations, the review mentioned the following points to substantiate its recommendation not to reinstate licensure or the Board:

- Since Colorado sunsetted the Board in 1983, there had been incidents of malpractice within the profession but no widespread pattern of abuse.
- State and federal laws continued to exist to regulate the practice of mortuary science in Colorado, including the Code, the Colorado Health Code, the Colorado Consumer Protection Act, the Insurance Code, and numerous rules and regulations administered by the Federal Trade Commission, the Occupational Health and Safety Administration and the Environmental Protection Agency.
- Allegations of significant threats to the public health, safety and welfare perpetrated by the death care industry in Colorado regarding the improper disposal of human or infectious wastes had not been supported by verifiable evidence.
- Claims that the public in Colorado had suffered or might suffer significant detriment due to a lack of trained mortuary science practitioners caused by the abolition of the Board were unsupported.
- Existing laws and means of redress of grievances appeared sufficient to regulate and address the problems occurring in the industry.

Funeral Service Practitioners Sunrise Review, 2002. In 2002, 11 members of the Colorado House of Representatives submitted a sunrise application to DORA. The application requested that Funeral Directors, Embalmers and Cremationists all be licensed. The sunrise review did not recommend licensing funeral service practitioners due to the fact that the proposal to license Funeral Directors, Embalmers and Cremationists failed to meet the statutory burden to establish new regulation.

Current Colorado Regulation

Mortuary Science Code. The Code exists to protect consumers from unscrupulous funeral service practitioners. The Code, section 12-54-101, *et seq.*, C.R.S., has remained in effect since mortuary science practitioner licensure ended in 1983. The following summary highlights the important elements of the Code:

- “Embalming,” “funeral director” and “cremation” are defined.
- Each establishment is required to have an office, a preparation room equipped for embalming and other procedures, and a room displaying a selection of caskets in a wide price range.
- Unless they are interred, cremated or properly refrigerated, all dead human bodies must be embalmed within 24 hours (known as the “24-hour rule”).
- The Code establishes the following as unlawful acts:
 - Disinfecting, preserving or making final disposition of a dead human body if there is a reasonable suspicion of a crime in connection with the cause of death.
 - Discriminating because of race, creed, color or national origin.
 - Sending remains of a deceased person to a funeral establishment without having first made inquiry as to the desires of the next of kin.
 - Depriving the next of kin of using death benefits or payments at any funeral establishment of his or her choice.
 - Interfering with the freedom of choice of the general public to choose a mortuary science practitioner or a funeral establishment.
 - Directing business to his or her own funeral establishment (pertains to county coroner if he or she is also a mortuary science practitioner).

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- Transporting any dead human body unless it has been prepared by a mortuary science practitioner, except if it is being transported or transferred to another practitioner within Colorado.
 - Admitting any unauthorized person to the embalming or preparation room when it is in use.
 - Refusing to release a body to the custody of the person with the legal right to request it, whether or not any costs have been paid.
 - Informing any person that a casket is required for immediate cremation.
 - Embalming a body without obtaining permission from a family member or other authorized person.
 - Prohibiting, hindering or restricting the offering or advertising of immediate cremation, advance funeral arrangements or low-cost funerals.
- Violation of the provisions of the Code is a misdemeanor. Upon conviction, a fine of up to \$5,000 or imprisonment in the county jail for up to 24 months, or both, may be imposed.
 - The provisions of the Code do not apply to the duties of officials carrying out or prescribing the conditions under which indigent dead human bodies are held subject for scientific or anatomical study. No provisions apply to or can interfere with any custom or rite of any religious sect in the burial of its dead followers. A person whose sole service is selling caskets is not subject to these provisions.
 - A written itemized list of services and prices included in the funeral and other disclosures must be made available by the practitioner to the deceased's survivors.

Disposition of Last Remains. Section 15-19-102(a), C.R.S. states:

A competent adult individual has the right and power to direct the disposition of his or her remains after death and should be protected from interested persons who may try to impose their wishes regarding such disposition contrary to the deceased's desires.

Preneed Funeral Contracts. The Division of Insurance (DOI) in DORA oversees the statutes pertaining to preneed funeral contracts, which can be found at section 10-15-101, *et seq.*, C.R.S. Under a preneed funeral contract, the seller agrees to provide future funeral, interment, entombment or cremation merchandise or services for a consumer who pays for the expenses in advance. In Colorado, all preneed sellers must be licensed as preneed contract sellers. The majority of the licenses are held by funeral homes, mortuaries and cemeteries. The DOI lists 68 active preneed contract sellers and 110 inactive sellers, many of whom are monitored because they still have contract obligations outstanding. The total cost of merchandise and services for a cremation preneed contract is generally in the range of \$1,000 to \$3,000. A full service preneed contract generally ranges from \$3,500 to \$7,000.

Two methods are currently allowed for funding preneed funeral contracts. The first is a trust-funded preneed contract under which a consumer pays the preneed contract seller a sum of money, either on an installment payment plan or in a single payment transaction. The seller is required to place a minimum of 75 percent of the funds in a trust account. (§ 10-15-107, C.R.S.) A written contract detailing the types of services and/or merchandise being purchased is required. The second funding method is insurance-funded, under which the consumer purchases a life insurance policy and designates the funeral home or mortuary as the beneficiary of the insurance policy. The funeral home is paid directly by the insurance company after performance of the preneed contract.

There are other insurance policies, called final expense policies, that are specifically designed to provide extra money to the decedent's family to cover final medical expenses, burial costs, estate fees or other costs incurred. The policies differ from the preneed contracts in two ways. Final expense policies cannot be assigned to a particular funeral home or mortuary, and they must state that the policy's death benefit proceeds are not guaranteed to be adequate to pay for all funeral needs.

Death Registration, Vital Statistics and Organ Donation Laws. Registration of each death occurring in the state is mandated by section 25-2-110(1), C.R.S., which states:

A certificate of death for each death, including a stillborn death, which occurs in Colorado must be filed with the state registrar or as otherwise directed by the state registrar; within five days after such death occurs and prior to final disposition, and must be registered if it has been completed in accordance with this section.

Death certificates are used for legal, medical and statistical purposes. The CDPHE uses data contained within death certificates to identify and monitor public health problems as well as identify trends. The CDPHE maintains an up-to-date registry of every funeral home in the state. A funeral home must be on the registry in order to file a death certificate.

Local health departments act as the CDPHE's agents by accepting completed death certificates and sending them on to the CDPHE.

Local Government Ordinances

The City of Lakewood is the only local government entity that requires crematories to obtain a license to operate. In fact, the Lakewood ordinance states:

It shall be unlawful to operate a crematory without the owner first having obtained from the City's Department of Public Works an annual license to do so. No license shall be issued without the written concurrence of the City's Environmental Manager.

Regulation in Other States

The sunrise application included published information from the International Conference of Funeral Service Examining Boards (The Conference) regarding the regulation of the funeral service industry throughout the country. Specifically, the information contained in the sunrise application outlines the licensing requirements in the 50 states in 2007. The Conference information is located in Appendix A on page 33.

Type of license. According to The Conference information, most of the states (44) license Funeral Directors and Embalmers, either with a separate license or with one license covering both professional titles. The Conference information illustrates that four of the remaining states (Delaware, Maryland, Minnesota and Montana) license only Funeral Directors/Morticians, not Embalmers. Alaska did not provide licensing information to The Conference; therefore, it was not included in the total number of states that license Funeral Directors or Embalmers.

Education requirements. A detailed review of The Conference information related to education requirements of Funeral Directors in other states indicates that nearly all of the states require a minimum of a high school diploma or General Educational Development (GED). However, 22 states do not have a minimum education requirement to work as an Embalmer.

Continuing Education. The Conference information shows that a majority of states require continuing education, ranging from three to 12 hours per year.

In addition, DORA conducted a survey in order to determine the number of complaints filed against Funeral Directors, Embalmers and Cremationists in other states. These three occupations of the funeral service industry are the occupations that the Colorado Funeral Directors Association requested to be regulated (licensed) in the sunrise application.

Funeral Directors

DORA received 15 responses (30 percent) to its survey. All 15 states that responded to the survey indicated that Funeral Directors are licensed. It is important to note that three of the responding states indicated that Funeral Directors and Embalmers are issued a combined license. Ten of the responding states indicated that examinations and continuing education are required for Funeral Directors, and two of the 15 respondents require background checks.

DORA's survey identified a total of 251 complaints filed in these 15 states for the most recent fiscal year available. The complaints identified in the survey are as follows:

- 22 practicing without a license;
- 141 standard of practice;
- 41 fee dispute;
- 9 scope of practice;
- 5 sexual misconduct;
- 2 substance abuse;
- 17 theft;
- 13 felony conviction; and
- 1 other.

Additionally, there were 342 disciplinary actions against Funeral Directors for the most recent fiscal year available. The types of disciplinary actions are as follows:

- 10 revocations;
- 4 surrenders;
- 7 suspensions with probation;
- 14 probation/practice limitations;
- 17 letters of admonition;
- 15 licenses denied after hearing;
- 230 fines;
- 32 stipulated agreements;
- 7 suspensions without probation; and
- 6 other.

Embalmers

Twelve states responded to the survey indicating that Embalmers are licensed. Ten of the states require an examination and eight require continuing education. Three of the states also require background checks of Embalmers.

The survey identified 47 complaints filed against Embalmers. The complaints are as follows:

- 4 practicing without a license;
- 26 standard of practice;
- 5 fee dispute;
- 1 substance abuse;
- 2 theft;
- 3 felony conviction; and
- 1 other.

The survey also identified 37 disciplinary actions against Embalmers. The disciplinary actions are as follows:

- 3 revocations;
- 2 surrenders;
- 1 suspensions with probation;
- 8 letters of admonition;
- 14 licenses denied after hearing;
- 3 fines;
- 2 stipulated agreements;
- 2 suspensions without probation; and
- 2 other.

Cremationists

Five of the 15 states that responded to DORA's survey indicated that Cremationists are regulated either through certification or licensure. Two of the states require an examination and continuing education; while no states that responded to the survey require a background check.

The survey indicated that no complaints or disciplinary actions occurred against Cremationists.

Analysis and Recommendations

Public Harm

The first sunrise criterion asks:

Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety or welfare of the public, and whether the potential for harm is easily recognizable and not remote or dependent on tenuous argument.

The absence of government-sponsored licensure and subsequent record-keeping that accompanies state regulation, makes tracking consumer complaints regarding funeral service practitioners difficult. However, the Colorado Funeral Directors Association (Applicant) provided a number of examples of harm from a variety of sources. The Applicant provided various newspaper articles outlining differing degrees of consumer harm. However, accuracy of the newspaper articles was difficult to substantiate.

The Applicant also included a list of complaints that had been reported to the Colorado Funeral Service Board (CFSB) during the past several years. The application did not specify how old the complaints were or whether all or some of the complaints were effectively mediated by the CFSB. Appendix B on page 35 includes all of the complaints to the CFSB that were submitted in the sunrise application. The aforementioned examples did not contain enough information to effectively conduct a thorough review. There was no way for the Department of Regulatory Agencies (DORA) to verify the examples due to the fact that the complaints did not include a comprehensive overview but instead only a brief synopsis of the complaint.

The Applicant did, however, submit several additional examples of harm to DORA. It is important to note, however, that not all of the subsequent examples included sufficient information to conduct a thorough analysis. In fact, six of the submissions were issues related to gravesites or headstones. Such complaints are beyond the scope of this sunrise review; the application requested licensing Funeral Directors, Embalmers, Cremationists and Mortuary Science Practitioners. Thus, these six complaints do not represent evidence of harm to the public supportive of the Applicant's proposal to create new regulation.

Additionally, there were five examples of harm submitted where DORA could not identify the harm. Three of the five complaints detailed bad experiences from consumers; however, no harm was identified. The examples merely indicated that the consumers had difficult experiences with funeral homes.

Four other examples of harm involved fee disputes, including one financial settlement. Fee disputes are not generally regulatory issues. That is, incompetency is not alleged in the complaints, instead two parties are arguing over fees.

One of the complaints submitted to DORA included a funeral home that was sold to another owner. The complaint detailed a customer's displeasure with both owners (the former and the latter) regarding the family's funeral and subsequent payment. In analyzing the complaint, it does not appear that any violations occurred, instead the family was unsatisfied with the slow service that resulted from the turnover of the business.

Another example of harm identified a funeral home that did not return the ashes of a family member upon payment of an outstanding balance. DORA contacted the person who filed the complaint, and the family assured DORA that the ashes were received. As a result, it is unclear what harm, if any, occurred.

DORA received a complaint regarding the middle name of the father of the deceased not being included on the death certificate. The funeral home explained that there was not enough room on the death certificate to include the middle name of the father, and that this would not prevent the family from using the copy for any business purposes. Again, DORA did not identify any harm to the public in this example.

In all, there were five cases submitted to DORA that clearly illustrated harm to the consumer in Colorado. Those cases and their outcomes are presented below.

Case 1

Incident: A Funeral Director allegedly told a family who recently lost a 12-year old child that he was referred to the family by the Coroner's Office and offered discount services to the family. The Coroners' Office stated that it is not its policy to recommend funeral homes.

Outcome: The CFSB contacted the accused Funeral Director, and he denied telling the family that he was referred to them by the Coroner's Office. The family could have pursued action against the Funeral Director through section 12-54-104(e), Colorado Revised Statutes (C.R.S.), which states:

It is unlawful for a funeral director, mortician, embalmer, or funeral establishment or such person's agent to engage in a business practice that interferes with the freedom of choice of the general public to choose a funeral director, mortician, embalmer, or funeral establishment.

There is no evidence from the information provided in the complaint that indicates that the family chose to pursue action under the aforementioned statute. There also is no information in the complaint that states the accused Funeral Director told the family that the family had to use him.

Case 2

Incident: A woman who had recently lost her husband alleged that the family had not definitively decided to use Mortuary A to prepare the body for the funeral. During the initial family meeting to discuss the plans for the funeral, the family decided to use Mortuary B. The complaint alleges that Mortuary A embalmed the body prior to the family giving its permission.

Outcome: The complaint did not include any information regarding the resolution or whether the CFSB has spoken with the mortuary in question. This case, if true, clearly illustrates harm to the public from funeral service practitioners. However, under the current regulatory process, the family could have pursued discipline through section 12-54-104(l), C.R.S., which states:

It is unlawful to embalm or cremate a dead human body without obtaining permission from the person with the right of final disposition.

The complaint does not indicate whether the family chose to pursue action under the aforementioned statute.

Case 3

Incident: There are two complaints alleged in this case. The first complaint asserts that a funeral home did not properly refrigerate or embalm a body within the appropriate time frame required under Colorado law. Also, the complaint alleges that the funeral home did not properly hermetically seal a body prior to transportation.

Outcome: Assuming the information in the complaint letter to the CFSB is accurate, the funeral home could have violated two Colorado laws. The first, section 12-54-105, C.R.S., states:

All dead human bodies kept more than 24 hours after death before final disposition must be embalmed or be properly refrigerated.

The funeral home also appears to have violated section 12-54-104(g)(1), C.R.S., which states:

It is unlawful to transport or otherwise transfer by common carrier a dead human body unless a Funeral Director or Embalmer has embalmed or hermetically sealed the body for transportation and complies with applicable common carrier law.

It is unclear if the family that submitted this case to the CFSB for review ultimately pursued action under the aforementioned laws.

Case 4

Incident: This case alleges that a funeral home failed to properly disclose the cost of services offered by the funeral home. The complaint stated that the family was told by the funeral home that in order to prepare the body for viewing, it would only cost “a little” bit more. The family was presented a bill that was substantially more than they had thought. The complaint also expresses concerns with the manner in which the donor center had removed parts of the body. According to the complaint, the donor center “butchered my Dad.”

Outcome: The first complaint in the case, if true, is a violation of Federal Trade Commission (FTC) rules and Colorado law. FTC rules require funeral homes to provide an up-to-date price list for customers. The complaint also violates section 12-54-106(2), C.R.S., which states:

Before a person selects the funeral, the funeral establishment must provide a written itemized list of the prices of all available merchandise and individual services at that funeral establishment.

It is unclear whether the family that submitted the complaint chose to pursue action under the Mortuary Science Code.

The second part of the complaint, regarding the donor center, is not related to the actions of Funeral Directors, Embalmers or Cremationists. Therefore, this portion of the complaint falls outside of the scope of this sunrise review.

Case 5

Incident: This case alleges that a Funeral Director fraudulently took preneed money from the consumer. The Funeral Director currently has more than 90 criminal counts filed against her, including stealing money from clients and failing to deliver cremated remains to families.

Outcome: The Director recently accepted a plea deal from the El Paso County District Attorney's Office and pleaded guilty to two charges. The Funeral Director pleaded guilty to a felony theft charge, as well as a misdemeanor charge of abuse of a corpse. As a result of her plea, she was sentenced to six years in prison. This case highlights the fact that the Funeral Director violated existing laws in Colorado.

DORA also contacted the Denver/Boulder Better Business Bureau (BBB) in an attempt to identify additional harm to consumers related to funeral service practitioners. The BBB identified 19 complaints in the last five calendar years and 12 were resolved. There are six categories that the 19 complaints fall within, including:

- Billing/Collection
 - Billing errors, unauthorized charges and questionable collection practices.
- Contract issues
 - Failure to honor a contract or invalid contract, work performed without authorization.
- Sales Practice
 - Misrepresentations of products or services, high pressure sales practices, failure to disclose key conditions and verbal representations not consistent with contract.
- Service
 - Delay in completing or failure to provide promised service, inferior quality of service, damaged merchandise as a result of delivery.
- Delivery
 - Delayed delivery or ordered merchandise.
- Refund/Exchange
 - Failure to honor company policy, verbal commitment to provide refunds, exchanges or credit for products or services.

DORA was not provided all of the information related to many of these complaints. However, from the information provided, it does appear that Colorado law may have been violated in some of the cases.

Based on the examples of harm provided by the Applicant and the information provided by the BBB, it appears that some harm has occurred against the public. It is important to note that the harm identified consisted of alleged violations of existing statute. However, it is not clear if the person(s) filing the complaints with the CFSB or the BBB chose to pursue legal action against the funeral service practitioners.

Finally, DORA attempted to obtain information from the Administrator of the Courts within the Colorado Judicial Department in order to identify the number of adjudicated cases that were related to violation of the laws that govern the funeral industry. At the time of this writing, staff within the Administrator of the Courts had not responded to DORA's request for information. Therefore, it is impossible to accurately articulate the number of cases that the state's district attorneys have addressed.

Need for Regulation

The second sunrise criterion asks:

Whether the public needs and can reasonably be expected to benefit from an assurance of initial and continuing professional or occupational competence.

This criterion addresses the proposition of whether the state should require a certain level of education and/or impose a requirement that funeral service practitioners pass an examination before being licensed to practice in Colorado. As indicated earlier in this report, most states impose such requirements. In fact, according to the information provided in the sunrise application related to licensing, almost all states require completion of a two-year mortuary science curriculum, and some require completion of an examination in order to be licensed.

From the information provided to DORA for this sunrise review, no evidence has been presented that funeral service practitioners do not possess adequate skills, education or competence necessary to practice safely. This review uncovered no significant evidence of harm to the public resulting from lack of education of practitioners.

In Colorado, approximately 18 percent of funeral service practitioners voluntarily achieve the required education and other requirements for certification by the CFSB. This reflects a commitment to provide quality service to the public, and to continue to improve quality standards.

Alternatives to Regulation

The third sunrise criterion asks:

Whether the public can be adequately protected by other means in a more cost-effective manner.

The Applicant has requested licensure for Funeral Directors, Embalmers, Cremationists and Mortuary Science Practitioners. The evidence presented in this sunrise review did not identify issues of incompetent professionals working in the funeral service industry. Instead, the evidence, specifically the examples of harm provided, exposed several instances where funeral service practitioners violated existing laws. As a result, it is reasonable to conclude that creating a licensure program in Colorado would not mitigate these violations.

As outlined earlier in this sunrise report, the CFSB does have a voluntary certification process available to all funeral service practitioners in Colorado. Funeral service practitioners may obtain the following certifications:

- Mortuary Science Practitioner;
- Director;
- Embalmer; and
- Intern.

One of the goals of the CFSB, and the certification program, is to promote professionalism and high standards for funeral service practitioners in Colorado. In fact, the sunset review completed by DORA in 2002 reveals that national attention has focused on the CFSB's commitment to professionalism. The 2002 sunrise review further stated that a member of CFSB's governing board has served on the International Conference of Funeral Service Examining Boards (ICFSEB) as Colorado's representative. The ICFSEB is responsible for developing and administering the national mortuary science board examination, which must be passed by applicants in many states as a requirement for licensure.

It is clear that an alternative to a governmental licensure program is already available to funeral service practitioners. However, not all funeral service practitioners have chosen to participate in the certification offered by the CFSB. In fact, as outlined in the sunrise application, approximately 18 percent of funeral service practitioners obtain voluntary certification through the CFSB.

Requiring a registration program for the funeral service industry would not cause the industry to sustain an unnecessary barrier to entry. Since the harm identified in this sunrise review illustrates violations of existing laws, a registration program would offer public protection in the least restrictive manner without imposing unnecessary regulation.

Conclusion

According to the information provided by the Applicant in its sunrise application, Colorado is the only state that does not license funeral service practitioners. This is due to the fact that in 1983, licensure and the Board of Mortuary Science sunsetted. It is important to note that the absence of licensure and a formal board in Colorado does not translate into non-regulation of the funeral service industry. As this sunrise report illustrates, there are several federal, state and local regulations in place that offer protection to the public.

For example, the Mortuary Science Code, section 12-54-101, *et seq.*, C.R.S., is a comprehensive law, as outlined in this sunrise report, that serves to insulate consumers from unscrupulous actions of funeral service practitioners. However, as identified from the examples of harm submitted to DORA for this review, it is clear that consumers are not utilizing the existing laws to seek redress from funeral service practitioners who have violated the law. It is unclear whether the consumers failed to realize that existing laws are available to serve as protection to the public, or the alleged violations are too emotionally painful to pursue via the court system.

In sum, existing laws are in place to protect the public; however, those laws are not always being utilized. In order to provide added consumer protection, the State of Colorado does not need an additional regulatory barrier (licensure). Although harm to the consumer (including emotional harm) was identified in Colorado as well as other states, no evidence was presented that demonstrated that Colorado practitioners lacked competency, skills or education to warrant an increase in regulatory oversight through a licensure program.

Instead, the State of Colorado should utilize the current regulatory mechanisms already in place to adequately protect the public from harm. In order to effectively use existing laws, the Division of Registrations (Division) should be directed to implement a registration requirement. Specifically, a designated Funeral Director at each establishment should be required to register with the Division. The registered Funeral Director would be ultimately responsible for the establishment and its employees adhering to the existing funeral service laws. If a complaint of a violation of existing statutes is received, the Division should have the authority to investigate the alleged violation and, if necessary, initiate formal disciplinary action, including the imposition of fines, against the registered Funeral Director.

Funeral service establishments should also be required to provide disclosure to consumers that highlights the process in contacting the Division in the event of a complaint. Requiring funeral service establishments to provide a disclosure statement to consumers serves two purposes. First, the disclosure statement educates consumers regarding current Colorado laws. Second, the disclosure statement highlights the process and with whom to file a formal complaint.

Requiring a Funeral Director within each funeral establishment to register with the Division, as well as requiring a disclosure statement would enable Coloradans to better utilize the protection offered under current law.

Recommendation – Implement a registration program that requires a Funeral Director at each funeral establishment to register with the Division of Registrations. Require funeral service establishments to provide a disclosure statement informing consumers who to contact in the event they desire to file a formal complaint.

Appendix A – Other State’s Licensing Requirements

GENERAL QUESTIONS

Who monitors licensing for individuals?

	Funeral Board	Government Office/Dept.	Other
Alabama	✓		
Alaska		Division of Corporations, Business and Professional Licensing	
Arizona	✓		
Arkansas	✓		
California		✓	
Colorado ²			None
Connecticut ³		✓	
Delaware	✓		
Dist. of Columbia	✓	✓	
Florida	✓		
Georgia	✓		
Hawaii		Sanitation Branch - Dept. of Health	
Idaho	✓	Bureau of Occupational Licenses	
Illinois		✓	
Indiana	✓	✓	
Iowa	✓	Bureau of Prof. Licenses - Dept. of Health	
Kansas	✓		
Kentucky	✓		
Louisiana	✓	Office of Student Financial Aid, Family Services	
Maine	✓		
Maryland	✓		
Massachusetts	✓		
Michigan	✓		
Minnesota		Dept. of Health	

What types of individual licensure are available?

	Funeral Director	Embalmer	Funeral Director/Embalmer	Mortician	Other
Alabama			✓		
Alaska	No information provided				
Arizona	✓	✓	✓		Embalmer's Assistant, Cremationist, Pre-Need Sales
Arkansas	✓	✓			
California	✓	✓			Apprentice Embalmer, Cemetery Broker/Salesperson, Cemetery Manager, Crematory Manager, Cremated Remains Disposer
Colorado ²	No licensing is required by the state. Voluntary certification is available through the CO Funeral Directors Assn.				
Connecticut ³	✓ (Includes Embalming)	✓			
Delaware	✓			✓	
Dist. of Columbia			✓		Direct Disposer ^{(A), 18}
Florida	✓	✓	✓		
Georgia	✓	✓			
Hawaii		✓			
Idaho	✓			✓	
Illinois			✓		Funeral Director and Embalmer Intern
Indiana	✓ (Includes Embalming)				Funeral Director Intern
Iowa			✓		
Kansas	✓	✓			Assistant Funeral Director
Kentucky	✓	✓			
Louisiana	✓		✓		Crematory Retort Operator ⁵
Maine			✓ Called "Practitioner"		Attendants, Trainees
Maryland ⁶				✓	See footnote 6
Massachusetts	✓ (Includes Embalming)				
Michigan			✓		
Minnesota				✓	

Mississippi	✓				✓		Resident Trainee
Missouri	✓				✓		
Montana	✓					✓	
Nebraska	✓				✓		
Nevada	✓				✓		
New Hampshire	✓				✓		
New Jersey	✓			✓ (Includes Embalming)			
New Mexico	✓				✓ Called "Practitioner"		Funeral Service Intern
New York	✓			✓ (Includes Embalming)			
North Carolina	✓			✓			
North Dakota	✓			✓			Funeral Practitioner
Ohio	✓			✓			
Oklahoma	✓			✓			
Oregon See footnote ¹²	✓			✓			Embalmer Apprentice, FSP Apprentice, Pre-Need Seller, Intern Permit
Pennsylvania	✓					✓	
Rhode Island	✓					✓	
South Carolina	✓			✓		✓	
South Dakota	✓			✓		✓	
Tennessee	✓			✓			
Texas	✓			✓		✓	Funeral Director and Embalmer Provisional License
Utah	✓			✓ (Includes Embalming)			
Vermont	✓			✓			
Virginia	✓					✓	Funeral Service Intern, Courtesy Card Holder
Washington	✓			✓		✓	
West Virginia	✓					✓	
Wisconsin	✓			✓ (Includes Embalming)			
Wyoming	✓			✓			
Ontario	✓			✓		✓	

Mississippi	✓			Executive Director
Missouri	✓			
Montana	✓			
Nebraska	✓		✓	
Nevada	✓			
New Hampshire	✓			
New Jersey	✓			
New Mexico	✓			
New York	✓		Dept. of Health	
North Carolina	✓			
North Dakota	✓			
Ohio	✓		Autonomous State Board	
Oklahoma	✓			
Oregon	✓		✓	Insurance Commission regulates insurance agents
Pennsylvania	✓			
Rhode Island	✓		✓	
South Carolina	✓			
South Dakota	✓			
Tennessee	✓			
Texas	✓		Texas Funeral Service Commission	
Utah			Div. of Occupational and Professional Licensing, Bureau 3	
Vermont			Office of Professional Regulation, Sec. of State's Office	
Virginia	✓			
Washington ¹⁵	✓		Department of Licensing	
West Virginia	✓			
Wisconsin	✓			
Wyoming	✓			
Ontario	✓		Board of Funeral Services	

Appendix B – Concerns and Complaints Reported to the Colorado Funeral Directors Association and the Colorado Funeral Service Board

Funeral Service Concerns & Complaints Reported to the CFDA and CFSB

The following is a summary of various concerns and complaints that have been reported to the Colorado Funeral Directors Association and/or the Colorado Funeral Service Board during the past few years by consumers and other funeral service professionals.

Because there is no recognized agency or protocol for reporting or handling complaints related to funeral service, we believe there are countless more issues that have not been reported.

Some families have elected not to pursue formal complaints because of the emotional distress that may result.

Many funeral service professionals have expressed concerns about the practices of their colleagues but refuse to issue an official complaint because there is insufficient regulation, protocol or resources to investigate or pursue infractions.

§No.	Brief Description
1.	Funeral establishment presented cremains to a son that contained a watch that did not belong to the mother.
2.	Family was undecided about which funeral home was selected to handle services; caused confusion and communication problems between the hospital and two funeral establishments about where to take the body. Eventually the body sat unrefrigerated for a few days until agreement was reached.
3.	Funeral establishment is handling cremations without a container for the body.
4.	Human and pet cremations are being done in the same area without clear system for determining one from another.
5.	Funeral establishment was called to retrieve the body of a 250+ lb. man from the hospital. The establishment sent one employee to handle and, because of the heavy weight, the body was dropped and fluid spilled on the ground.
6.	After a Marine's death, the funeral establishment was paid by the military to handle the services. The establishment also received money from the Marine's savings account and refused to return these funds to his family.
7.	Funeral establishment owner sold preneed plans without insurance license and did not invest preneed funds in trust or insurance policy and eventually "disappeared". Regulatory agency(ies) did not adequately enforce the establishment to stop selling preneed plans and other families continued to be defrauded. The case is being investigated and charges have been filed against the business owner, however the establishment is still operating and plans to open new establishment and crematories in a different county.
8.	Funeral director filed his own death certificate in attempt to avoid payment of financial debts.
9.	Fluids from embalmed body leaked out of casket at funeral service and spilled onto floor of church during a service.
10.	Funeral establishment stored body in refrigeration unit and forgot it was there until six days later.
11.	Funeral establishment allows family to view and touch dead body prior to embalming or cremation.
12.	Funeral director contacted the family of a deceased child and said that he had been referred by the coroner's office. County coroner reported the complaint and stated that it was not the policy of the coroner's office to recommend any funeral home.
13.	Funeral director "abandoned" a family who he had agreed to serve after learning that it was a Social Services case.
14.	Funeral establishment charged a man's credit card for services that were already paid by his mother's prearranged funeral plan.

Funeral Service Concerns & Complaints Reported to the CFDA and CFSB

15.	Family ordered and prepaid for headstone to be provided by funeral/cemetery establishment in July 2005. No headstone was in place as of September 2006; funeral establishment would not respond to phone calls or messages from the family to resolve or refund payment.
16.	Funeral establishment sued the daughter of a deceased man for payment of funeral/cremation services. The daughter's wages were garnished until the debt was satisfied. The funeral establishment withheld the cremains after the county clerk reported that the judgement was satisfied and would not respond to phone calls or messages from the daughter to retrieve her father's ashes.
17.	Funeral establishment held a man's body for five days before transport to crematory and the establishment did not have proper refrigeration during the period of storage. The crematory reported that the man was delivered in a half container. The establishment also filed death certificate with registrar six days following the man's death (the law states that death certificates should be filed within five days).
18.	Funeral establishment took direction for funeral services from someone other than next-of-kin and arrangements were not handled according to the next-of-kin's wishes.
19.	A man and his wife paid for prearrangement plans with a Colorado funeral establishment, then moved to New Mexico a few years later. When his wife died in NM, the Colorado establishment was to pay the NM establishment for their services from the prepaid plan. Neither the man nor the NM establishment still had received payment from the Colorado establishment more than 10 months after the woman's death; an attorney was engaged to help resolve the situation.
20.	A funeral establishment "lost" the personal belongings of a man despite reassurances to the family that his things were being kept in a safe and would be returned to them after services.
21.	Funeral establishment made arrangements with a family that included preparation and viewing the man's body prior to cremation. The funeral director refused to allow family to view the body because the organ donation organization had "butchered" his body. The establishment originally quoted the family a price of approx. \$1,000 for services, but presented a final bill to the family for \$3,800.
22.	A mortuary retrieved a man's body from the hospital where he died and embalmed the body without required permission from the family. The family had selected another establishment to handle services prior to the retrieval of the body.
23.	A family requested cancellation of a prepaid funeral plan. The funeral establishment did not issue refund within 45 day period and did not respond to phone calls from the family about the matter.
24.	A funeral establishment did not follow mandated occupational safety guidelines thereby exposing its employees to carcinogenic chemicals and potentially harmful diseases. The establishment did not provide protective clothing, eyewear or respirators for its employees. The establishment did not provide adequate training for its employees and the owner/trainer was not qualified to instruct or supervise employees based on recommended standards of practice.
25.	A crematory did not use an identification system for tracking bodies as they were cremated and stored cremains in "buckets" without labels or paperwork to verify identity for the families.
26.	A funeral director whose license was revoked in another state is now practicing in Colorado; he also continues to promote that he is licensed by the other state.
27.	An individual who is a registered sex offender is not prohibited from practicing as a funeral director in Colorado.
28.	An individual who has committed a felony is not prohibited from practicing as a funeral director in Colorado.