

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File 571
Jerry

Permanent Rule X

Temporary Rule _____

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 1-8-80 DUE DATE 1-28-80

Resubmitted and Received 3/21/80 - due 3/31/80

a. Returned to Agency w/o Filing w/Secretary of State _____
b. Approved _____ Date Sent Back to Agency 1-28-80

- -

1. Rules as Adopted ✓
2. Rules as Proposed ✓ see No. 10 - SR and Addendum.
3. Certificate of Board's Authorizing Resolution, where applicable N/A
4. Order for Hearing ✓
5. Notice of Hearing ✓
   Sufficiency ✓
6. Secretary of State's List ✓ (one copy only)
7. Certificate of Acquisition of Secretary of State's List ✓
8. Secretary of State's Certification of Delivery of Secretary of State's List to Agency ✓
9. Affidavit of Mailing ✓
   At least 30 days prior to hearing ✓
10. Publication in State Register ✓
    At least 30 days prior to hearing ✓
11. Statement of Need and Evidence ✓
12. Hearing Examiner's Report ✓
13. Agency's Findings of Fact ✓
14. Certificate of Board's Resolution Adopting Rules, where applicable N/A
15. Order Adopting ✓
16. Report of Chief Hearing Examiner ✓
17. Order Approving Incorporation by Reference, where applicable N/A
18. Certificate of Compliance with Rulemaking Procedures ✓
19. Copy of Notice of Intent to Solicit Outside Opinion, where applicable N/A
20. Petition by Public, where applicable N/A

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : WILLIAM G. MILLER
Special Assistant
Attorney General

DATE: March 25, 1980

FROM : JERRY ANDERSON
Special Assistant
Attorney General

PHONE: 296-1288

SUBJECT: Rules as Approved In the Matter of the Proposed Amendment to Rules Relating to the Examination and Licensing of Morticians

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Note that they have NOT been filed with the State Register; this must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of the stamps of the Attorney General and Secretary of State to the last page of the rules;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages of the rules in the approved set.

Directly following the approved rules is a complete set of required documents and transcript which must be retained with the rules by you or your agency.

If you have any questions in this regard, please contact me.

JA/bw
Enclosure
CC: Duane Harves
Susan Robertson

Our File: #571

ATTORNEY GENERAL

GEORGE R. PETERSEN, M.D.
Commissioner of Health

January 28, 1980

Attn: WILLIAM G. MILLER

JERRY S. ANDERSON
Special Assistant
Attorney General

296-1288

In the Matter of the Proposed Amendments to Rules Relating to the Examination and Licensing of Morticians

The rules in the above-captioned matter have not been approved by this office for the following reasons.

1. 7 MCAR § 1.022 A. 3. As presently written, this section allows the Commissioner unbridled discretion in accepting or rejecting a passing score on the National Board examination even though the Commissioner determines that the National Board examination satisfies the standard set forth in the rule. Minn. Stat. § 15.0412, subd. 3 requires the agency to establish by rule "every agency statement of general applicability and future effect." Here, the Commissioner appears to be permitted to consider unstated criteria in determining whether to accept the results of that examination, yet such criteria certainly are agency statements of general applicability and future effect and must be established by rule. While this office understands the need for agency flexibility and discretion, such flexibility and discretion must be achieved by careful, complete selection of the criteria that are to be considered. In this instance, such flexibility and discretion could be achieved through the determination of the adequacy of the National Board examination. Therefore, the language 'may in his/her discretion" must be deleted and the second and third sentences rewritten to reflect that on a favorable determination regarding the adequacy of the National Board examination the Commissioner shall accept the results of that test, if this is what is intended.

2. 7 MCAR § 1.032 B. 1. a. This section, in part, duplicates language contained in Minn. Stat. § 149.09, subd. 3. Pursuant to Minn. Stat. § 15.0412, subd. 1, "[n]o agency shall adopt a rule which duplicates language contained in Minnesota Statutes unless the hearing examiner determines that the duplication of the language is crucial to the ability of a person affected by the rule to comprehend [the rule's] meaning and effect." In his report, although he found the section as a whole to be both needed and reasonable, the hearing examiner did not make a determination that the duplication was crucial to an understanding of the rule. Therefore, either an addendum to the hearing examiner's

report, stating that the duplication is crucial, should be obtained, the language should be stricken from the rule, or the rule should be rewritten to reference the statute.

In addition to the above-discussed reasons for disapproval, the following typographical mistakes, while not fatal to the rule, should be corrected.

1. In Section 1.032 A. 2., "and" should be changed to "an."

2. In Sections 1.032 A. 3. and A. 8., the word "counselling" is spelled two different ways. While both spellings are correct, one of the words should be changed so that the spelling is consistent.

3. To be consistent, the last sentence in Section 1.022 A. 2. should not appear on the copy of the rules as adopted.

Although the following does not require any action on the agency's part, two items should be noted for future consideration. First, thirty days elapsed between the obtaining of the Secretary of State's list and the mailing of the Notice of Hearing. While Minn. Stat. § 15.0412, subd. 4 does not prescribe a time limit for obtaining the list prior to mailing, the rules of the Attorney General require that the list be obtained within a reasonable period of time before the Notice of Hearing was mailed. See AttyGen 302(e)(2). While this office has not defined what constitutes a reasonable period of time, the agency should be cautioned to obtain the Secretary of State's list as close as possible to the mailing of the Notice of Hearing. Second, the statement of the subjects involved in the proposed rules in the Notice of Hearing title does not include any reference to the new material concerning embalming. Although this was not a fatal defect in view of the fact that a complete set of the proposed rules was attached to and made a part of the Notice, the title should include at least a brief statement of each subject covered in the proposed rules.

Following agency consideration of the reasons for disapproval and appropriate action, if any, the rules may be resubmitted. The Chief Hearing Examiner requests that any rules that are changed subsequent to his review be resubmitted to that office. Therefore, this office suggests that you contact the Chief Hearing Examiner regarding any changes made in the rules. At the time of resubmittal to this office, please insure that the original and two copies of the Order Adopting and the Rules as Adopted accompany the resubmittal documents as they are necessary for filing with the Secretary of State.

JSA/bw

cc: Duane Harves
Susan Robertson

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

COMMISSIONER OF HEALTH

RECEIVED
MAR 4 1980
OFFICE OF HEARING
EXAMINERS

In the Matter of the Proposed Amendments to Rules Relating to the Examination and Licensing of Morticians

FINDINGS AND CONCLUSIONS AND ORDER ADOPTING RULES AMENDMENTS

The above-entitled matter came on for hearing before the Minnesota Commissioner of Health on the 29th day of March, 1979, at 9:30 a.m. in Room 105, Minnesota Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota 55440, after proper notice required by Minn. Stat. § 15.0412 was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose and following publication of the rules.

After affording interested persons an opportunity to present written and oral data, statements and arguments, and having heard and considered all of the testimony and evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards or criteria, having confirmed the need for and reasonableness of the above-captioned rule amendments, and having taken cognizance of the comments of the Attorney General received by the Commissioner relevant to these rules:

NOW, THEREFORE, IT IS ORDERED that the Report of the Hearing Examiner herein, Peter C. Erickson, dated May 3, 1979, be and hereby is adopted and incorporated fully as the Findings and Conclusions of the Commissioner herein; and

NOW, THEREFORE, IT IS FURTHER ORDERED that these rule amendments identified as 7 MCAR §§ 1.022 and 1.032 relating to the examination and licensing of morticians attached hereto are adopted this 28 day of February, 1980, pursuant to authority vested in me by Minn. Stat. §§ 144.12, 144.122 and 149.01-149.09 (1978).

STATE OF MINNESOTA

COMMISSIONER OF HEALTH

George R. Pettersen M.D.

GEORGE R. PETTERSEN, M.D.
Commissioner

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF HEALTH

In the Matter of the Proposed Amendments to Rules Relating to the Examination and Licensing of Morticians.

REPORT OF HEARING EXAMINERS

The above-entitled matter came on for hearing before Hearing Examiner Peter C. Erickson of the State Office of Hearing Examiners at 9:30 a.m. on Thursday, March 29, 1979 in the Department of Health Building, Minneapolis, Minnesota.

William G. Miller, Special Assistant Attorney General, appeared as counsel for the Minnesota Department of Health. Eugene M. Larson, Supervisor, Mortuary Science Unit, Minnesota Department of Health, testified in support of the proposed amendments on behalf of the Department of Health. The hearing continued until all interested groups or persons had had an opportunity to be heard concerning the adoption of the proposed rules.

Pursuant to Minn. Stat. sec. 15.0412, subd. 4, this Report shall be available for review to all affected individuals upon request for at least five days.

Thereafter, the Department of Health shall, if it proposes to adopt the rules as originally proposed or amended, submit a copy of the Order Adopting Rules, a copy of any additional agency findings, a copy of the rules as originally proposed, and a copy of the rules as adopted to the Chief Hearing Examiner for review pursuant to Minn. Stat. sec. 15.052, subd. 4. The submission to the Chief Hearing Examiner shall precede review by the Attorney General. The Chief Hearing Examiner shall complete his review and submit his report to the Department on the issues of substantial changes in the rule and compliance with Minn. Stat. sec. 15.0412 within ten calendar days. The Department of Health will be responsible for filing the rules with the Attorney General and for notifying persons who have indicated that they wish to be notified of such filing.

Based upon all the records and proceedings herein, the Examiner makes the following:

FINDINGS OF FACT

1. In January, 1979, the Department filed the following documents with the Chief Hearing Examiner:

   (a) A copy of the proposed rules.
   (b) The Order for Hearing proposed to be issued.
   (c) The Notice of Hearing proposed to be issued.
   (d) A Statement of the number of persons expected to attend the hearing and estimated length of the Agency's presentation.

2. On February 26, 1979, a Notice of Hearing and a copy of the proposed rules were published at 3 State Register 1603.

3. On February 22, 1979, the Department mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice.

4. On March 2, 1979, the Department filed the following documents:

(a) The Order for Hearing and authorizing resolution.
(b) The Notice of Hearing as mailed.
(c) The Affidavit of Receipt of the Secretary of State's list.
(d) The Affidavit of Mailing the Notice to all persons on the Secretary of State's list.
(e) The Secretary of State's Certificate and list.
(f) The Statement of Need and Reasonableness.
(g) The names of personnel who will represent the Agency at the hearing together with the names of any other witnesses solicited by the Agency to appear on its behalf.

The documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of the hearing.

5. The record remained open through April 5, 1979, for the receipt of written comments and statements, the period having been extended by order of the Hearing Examiner to 20 calendar days following the hearing.

6. The Department of Health asserts that statutory authority to promulgate the proposed rules is contained in Minn. Stat. secs. 144.12 and 144.122, and 149.01-149.09 (1978).

7. At the time of hearing, the Department of Health submitted an addendum of additional amendments to proposed 7 MCAR sec. 1.022 A.2. and 3. The addendum was submitted in an attempt to ensure that the power delegated to the Commissioner would be exercised within a framework of procedural protections and established criteria.

8. Rule 7 MCAR sec. 1.022 sets forth general provisions relating to the examination and license requirements of morticians. The proposed amendments revise some of these existing provisions and make necessary additions.

9. 1.022 A. The Department of Health proposes to amend this section by deleting the words "as required by the laws of the State of Minnesota" as the language is unnecessary.

10. Sec. 1.022 A.1. This section specifies the type of information which each applicant must provide in the application form for a state license. The proposed amendments reword the language of that section for purposes of clarity and to bring the language into compliance with current statutory usage. Since the Minnesota Board of Health was abolished and its powers were transferred to the Commissioner of Health, the proposed amendments are both needed and reasonable.

The Examiner notes that Minn. Stat. sec. 149.03, subd. 1, requires that the application for an examination for a license in mortuary science must be accompanied by two affidavits. However, subdivision 1 of 7 MCAR sec. 1.022 A. deals with applications for a license in mortuary science. Therefore, it is reasonable that the proposed amendment delete from that section the requirement that the application be accompanied by affidavits from at least two reputable residents.

11. Sec. 1.022 A.2. In this section, the Department of Health proposes to change the age requirement for a license in mortuary science from ". . . at least 21 years of age" to ". . . at least 18 years of age" in compliance with the age requirement set forth in Minn. Stat. sec. 149.03, subd. 1.

In Rule sec. 1.022 A.2., the Department of Health also proposes certain curriculum and credit changes. Adjustments have been proposed to the course requirements, adding some course work to the speech, English, psychology and sociology requirements; six credit hours have been deleted from the natural science requirements.

The Department of Health contends that this balancing of the curriculum as delinated in this section closely parallels the curriculum requirements of the accrediting bodies (such as the American Board of Funeral Service Education) approved by the federal Department of Health, Education and Welfare.

a. Mr. David R. Erickson, a mortician and law student at William Mitchell College of Law, St. Paul, Minnesota, commented as follows:

> I would change the age requirement from ". . . at least 18 years of age . . ." to "the applicant shall have reached the age of majority. . . ."
>
> My impression is that the regulation requires the applicant to be at least the current age of majority - 18 years old. Since this age can be, and has been, changed by the Legislature, the regulation should be keyed to that age that the Legislature declares to be the age of majority. As the proposed amendment now stands, a minor could be licensed as a mortician should the age of majority be raised. The change I suggest would accommodate the age change.

b. The Examiner points out that Minn. Stat. sec. 149.03, subd. 1, also states that "No person shall be granted a license in mortuary science unless he shall be at least 18 years of age. . . .". Keeping this statutory requirement in mind, the proposed rule language is both needed and reasonable.

c. The original proposed amended form of paragraph 2. of sec. 1.022 A. contained the language that "The Commissioner may at his discretion vary the number of semester or quarter credits in specified areas." The Examiner concludes that by deleting this language as set forth in the addendum submitted by the Department of Health, the Commissioner will not be able to exercise unfettered discretion regarding curriculum requirements. Therefore, the Examiner concludes that the above-mentioned proposed amendment to Rule 7 MCAR sec. 1.022 A.2. is both needed and reasonable.

12. Sec. 1.022 A.3. This section sets forth the requirements, in addition to educational and age requirements, which the applicant for a license for mortuary science must satisfy. The proposed amendments would revise the section as follows:

(1) The proposed amendments initially reword certain parts of this section. By deleting outdated phrases, the Department of Health proposes to make the language of this section more clear and concise.

(2) In the first portion of paragraph 3., the rule contains language which mandates that the applicant serve an internship period for at least one year. It is also provided that the applicant must assist in embalming at least 25 bodies and in the direction of at least 25 funerals. For purposes of logical consistency, the proposed amendments delete this language at the beginning of the paragraph and add it at the end. Since the powers of the State Board of Health have been transferred to the Commissioner of

Health, references in the rules to the "Board" have been changed to the "Commissioner".

(3) Paragraph 3. provides that the applicant must acquire the educational qualifications in the order specified in this section and that the applicant for a license in mortuary science must obtain a satisfactory level of achievement in a comprehensive written examination.

a. Mr. Richard A. Grayson, an attorney in St. Paul, Minnesota, commented that the language "in the order specified" should be deleted. Mr. Grayson stated that the reason for this suggested change is the fact that in 1971, the Attorney General rendered an opinion which effectively deleted a specified order in obtaining education.

b. The Department of Health responded that this 1971 Opinion is no longer valid since the recent Minnesota laws provide the Commissioner with statutory authority to promulgate such a rule.

c. On May 14, 1971, the Attorney General issued an opinion in regard to the sequency of academic work required under Minn. Stat. sec. 149.03, subd. 1 (1969), and Minnesota State Board of Health Reg. 11013(a). Sec. 149.03, subd. 1, and the agency rule, prescribed a sequence of academic work for licensure as a mortician; completion of two years of college prior to the completion of studies in mortuary science was required. At this point, it should be noted that the applicable portion of Minn. Stat. sec. 149.03, subd. 1 (1978), is the same as the pertinent section of the 1969 Minnesota law.

The factual situation in the Opinion discloses that the applicant, originally a resident of Minnesota, moved to another state with the intent to practice mortuary science there. That state did not require preparatory college work prior to entry into mortuary science course work. Upon graduation, the applicant moved back to Minnesota and applied for his license in mortuary science. The Board denied the application based upon the fact that the applicant completed his mortuary science curriculum prior to completion of the prescribed preparatory college work.

It was the opinion of the Attorney General that in that particular case, the Minnesota statute and regulation did not preclude this applicant from examination and subsequent licensure in mortuary science because he met all of the state requirements except for the academic sequence requirements. The Attorney General stated that the sequence requirement is incidental to the chief purpose of requiring general college training as well as course work in mortuary science. Therefore, the requirement in Minn. Stat. sec. 140.03, subd. 1, and in the agency rule was held to be directory rather than mandatory.

The Attorney General did not state that the sequence provisions in the statute and rule are ineffective or that they should be deleted and amended. The Attorney General recognized that both state law governing morticians and Board regulations indicate that college work should precede mortuary science course work. He further indicated that the sequence of course work specified in the statute and rule may be the most efficient course of study. The Examiner concludes that the Attorney General merely held that in this case, the sequence requirements would not preclude the applicant from licen-

sure. The Examiner believes that the sequence requirement in Minn. Stat. sec. 140.03, subd. 1, and in the proposed amendment to Rule sec. 1.022 A.3., is conducive to a logical and efficient course of study. Therefore, the Examiner concludes that the proposed amendments to Rule sec. 1.022 A.3. are both needed and reasonable.

d. Mr. Grayson, of Sanborn & Grayson, attorneys at law, suggests that the word "written" in subdivision 3 should be deleted. Mr. Grayson believes that this change would benefit the handicapped persons who are physically not capable of taking a written examination.

e. The Department of Health supports this proposal to strike the written requirement from 7 MCAR sec. 1.022 A.3. The Department stated that it anticipates future petitions from handicapped persons for alternate forms of examination.

f. Paragraph 3. originally provided that the applicant must attain a satisfactory level of achievement in this comprehensive examination which is given by the State Board of Health in subjects such as anatomy, chemistry, etc. The proposed amendments delete the word "given" and in its place add the word "approved". The use of the term "approved" in the proposed amendment would give authority to the Commissioner to accept the results of a national standardized examination which is prepared and administered by the Conference of Funeral Service Examining Boards. The amendments would also give the Commissioner authority to accept passage of this national examination retroactively to January 1, 1976, and would allow the Commissioner to give a separate examination on the specifics of Minnesota laws and rules. The amendments contained in the addendum specify criteria which the Commissioner must consider when deciding to accept the results of a national examination.

g. The Examiner concludes that proposed sec. 1.022 A.3., as amended by the Department, is both needed and reasonable.

13. Sec. 1.022 A.4. relates to license application, renewal and reciprocity fees. Since, under the proposed amendments the Commissioner would be authorized to adopt the use of a national standardized examination, the applicant would therefore pay an examination fee directly to the Conference of Funeral Service Examining Boards. As a consequence, it is proposed in this paragraph that the current examination fee to the Commissioner be reduced from $50.00 to $25.00. The examination fee of $25.00 paid to the Commissioner for examination on Minnesota laws and rules is directly related to the cost of its administration.

The proposed amendments further add that when the applicant has completed all of the Commissioner's licensure requirements, the applicant must then pay a license certificate issuance fee of $25.00. This fee is closely related to the costs which are involved in the administration of the program. Pursuant to Minn. Stat. sec. 144.122, the Commissioner is authorized to prescribe the amount of license fees. The Examiner concludes that proposed sec. 1.022 A.4. is both needed and reasonable.

14. Proposed Rule 7 MCAR sec. 1.032 sets out the requirements for itemization of funeral costs and also delineates the disclosure requirements for embalming practices.

15. Sec. 1.032 A. provides definitions of 13 terms which are used in the rules.

a. Allen Stensland, Professor at St. Cloud University, made the following comments in regard to proposed sec. 1.032 A.1., the definition of "casket":

> "I would suggest a definition for 'casket' - a container, usually of metal, plastic, wood or cardboard used to enclose a dead body for the purpose of transportation, donation, funeral, burial, cremation, calcination or entombment."

Mr. Stensland also objected to the definition of "disposal unit" as proposed in sec. 1.032 A.12. Mr. Stensland contends that this proposed definition "is part of the merchandizing language used by morticians to discourage people from purchasing inexpensive cardboard or wood caskets". Therefore, he suggests that the definition of "disposal unit" be deleted. Mr. Stensland is of the opinion that his general definition of "casket", as stated above, would remedy the problem.

b. The Department of Health contends that its list of defined terms as delinated in proposed rule sec. 1.032 A., is necessary for purposes of clarity.

c. Minn. Stat. sec. 149.09, subd. 3, differentiates between the use of a casket and a disposal unit. The Examiner concludes that it is reasonable for the proposed rules to note this difference in the definitional section.

d. Mr. Stensland objected to the definition of "embalming" which is set out in proposed sec. 1.032 A.6. He recommends that the term "embalming" be defined as "Chemically treating the dead body to retard organic decomposition". Mr. Stensland contends that the phrase "to restore an acceptable physical appearance" is a metaphysical point of view rather than a scientific fact. Mr. Stensland also believes that the phrase in the proposed rule, "reduce the presence and growth of organisms" is too vague to have any practical meaning. The Examiner concludes, however, that proposed rule sec. 1.032 A.6. is both needed and reasonable.

e. In regard to paragraphs 5. and 8. of this section, Sherry Chenoweth, a member of the Board of Directors of the Minnesota Memorial Society, made the following comments:

(1) Mrs. Chenoweth pointed out that consumers are not required to buy the services described in proposed sec. 1.032 A.5. from the mortician. She said that these services may be purchased from other business establishments.

(2) In regard to proposed sec. 1.032 A.8., Mrs. Chenoweth commented that the professional services as described in that paragraph vary in cost and that these services may be purchased individually.

f. The Examiner concludes that proposed sec. 1.032 A. is both needed and reasonable.

16. Sec. 1.032 B. relates to the itemization of funeral costs and requires that certain information is made available to the customer.

17. Sec. 1.032 B.1. Minn. Stat. sec. 149.09, subd. 1, mandates that the rules adopted by the Commissioner of Health must require a separate

listing of certain funeral costs. In accordance with this statute, the proposed rule provides that before final agreement is reached between the client and funeral establishment, the mortician or funeral director must prepare a written disclosure of these funeral costs.

a. Ms. Elizabeth C. Clemmer, Executive Director, Continental Association of Funeral and Memorial Societies, Inc., commented that the requirement that price itemization information be given prior to the final agreement does not adequately aid consumers. Ms. Clemmer contends that consumers need this information before they select the casket.

18. Sec. 1.032 B.1.a. provides a list of the minimum items which the written disclosure must contain. The items listed in this proposed rule are the same as those required in Minn. Stat. sec. 149.09, subd. 1. That section also requires that the listing of the cost statement must include the following statement for which a charge is made: "Minnesota law does not require that remains be placed in a casket before or at the time of cremation". The proposed rule also requires that the written disclosure must contain, in conspicuous print, the statement that "Minnesota law does not require that remains be placed in a casket before or at the time of cremation". The Department of Health contends that this disclosure requirement is reasonable and necessary since many clients are of the understanding that caskets are always required.

a. Mr. Allen Stensland supports the provision in the proposed rule which requires that the written disclosure contain the mandated statement. Mr. Stensland stated that "the argument made by some morticians that this statement would injure the emotional well-being of those people arranging funerals is self-serving and without substance.

b. Elizabeth Oschwald, administrative secretary of the Minnesota Memorial Society; Sherry Chenoweth, member of the Board of Directors of the Minnesota Memorial Society; Mr. Richard Auld, Deputy Director of the Office of Consumer Services; and Tobey Lapakko, Consumer Affairs Coordinator for the Minnesota ALF/CIO, commented that they fully support the disclosure requirement contained in proposed Rule sec. 1.032 B.1.a.

c. Mr. Frederick W. Abrahamson, Funeral Facilitator of Abrahamson Funeral Chapel, Minneapolis, Minnesota, recommended that the proposed rule contain the following language: "Minnesota law does not require that remains be placed in a casket before or at the time of cremation. However, some type of disposal unit is required by the crematory."

d. Mr. Grayson commented that the last sentence of proposed Rule sec. 1.032 B.1.a. should be deleted. Mr. Grayson believes that this disclosure requirement is completely superfluous since it merely requotes the language in the Minnesota statute.

e. The Minnesota Funeral Directors Association commented that it objected to proposed Rule sec. 1.032 B.1.a. The Association recognized that the funeral industry does have an obligation under Minnesota law to make the disclosure when cremation is requested and charge is made for it. However, the Association stated that when cremation is not even being considered as a means of final disposition, the disclosure is not only superfluous but is also confusing to the consumer. The Association stated that

the proposed provision should also be abolished for humanitarian reasons. It stated, "A grieving family member making funeral arrangements should not be subjected to unwanted disclosures."

f. The Metropolitan Senior Federation commented that it endorses proposed Rule sec. 1.032 B.1.a. but recommends that after the statement, "Minnesota law does not require that remains be placed in a casket before or at the time of cremation", the following language be added: "However, in lieu of a casket some combustible disposal unit is required for containing, handling and transporting of the body for cremation."

g. Minn. Stat. sec. 149.09, subd. 3, mandates that this disclosure be made only when a charge is made for cremation. Under Minn. Stat. sec. 149.09, subd. 3, a person operating a crematory cannot require that human remains be placed in a casket before cremation. However, under that same statute, it is stated that a container or disposal unit may be required to protect the physical health or safety of any individual. The Examiner concludes that proposed Rule sec. 1.032 B.1.a. enables consumers to make an informed decision regarding alternate methods of disposition and is therefore both needed and reasonable.

19. Sec. 1.032 B.1.b. mandates that a copy of the itemized statement must be given to the client. The funeral establishment must then retain its own copy of the statement for three years. This provision is necessary since in many cases, copies of itemized statements may not be given by the funeral establishment to their customers.

a. Mr. Richard Auld, Deputy Director of the Office of Consumer Services, Mrs. Chenoweth, the Metropolitan Senior Federation, and Mr. L. Paul Burd, attorney from the law firm of Burd, Braddock & Bartz, Minneapolis, Minnesota, commented that they support proposed sec. 1.032 B.1.b.

b. The Examiner concludes that proposed Rule sec. 1.032 B.1.b. is both needed and reasonable.

20. Sec. 1.032 B.1.c. provides that any charges not known at the time of arrangements must be estimated and that the client be advised of the exact charge as soon as practicable. This provision will assure proper notice to the purchasers of funeral services while maintaining sufficient flexibility for the proper delivery of these services.

a. The Metropolitan Senior Federation and Mr. Auld testified in support of the proposed rule.

b. The Hearing Examiner concludes that sec. 1.032 B.1.c. is both needed and reasonable.

21. Sec. 1.032 B.1.d. requires that cash advanced items must be billed to the client at the net amount paid by the funeral establishment. Therefore, any item billed as cash advances by the funeral establishment would not, by discount or otherwise, cost the funeral establishment a different sum of money than that which is billed.

a. The Metropolitan Senior Federation commented that it endorsed proposed sec. 1.032 B.1.d.

b. Mr. Russell Peterson of Peterson Funerals, commented that he had problems with the phrase, "Net amount billed", which is contained in proposed sec. 1.032 B.1.d. Mr. Peterson stated that it is difficult to

bill the client for obituary notices at the net amount billled to the funeral establishment. Mr. Peterson stated that under the proposed provision, "After the funeral establishment received its billing, and the local paper continued to allow the establishment a 2% discount on the bill, the funeral establishment would have to provide for that also". Therefore, Mr. Peterson suggests that the funeral director should be able to write into his order that the net amount for obituaries does not preclude the funeral director from accepting a monthly discount on his bill.

c. Mr. Frederick Abrahamson, Funeral Facilitator, commented that with respect to "Net amount billed", he foresees some problems with newspaper notice charges. Mr. Abrahamson stated that "Most funeral homes receive a reduction in lineage charge due to contracting for a certain number of lines to be run each day, irrespective of whether they have any funeral notices".

d. Mr. Nilsen, President of Morris Nilsen Funeral Chapel, stated that proposed Rule sec. 1.032 B.1.d. may result in the elevation of cost rather than reducing it. Mr. Nilsen commented specifically on cash advances made for obituary notices. The substance of Mr. Nilsen's comments is as follows:

> As a part of the funeral services the funeral director places the obituary of the family in the newspaper. It is well known that newspaper companies enter into contracts with large advertizers that can give reduced rates for high volume usage. Funeral establishments often have these types of contracts with newspaper companies. The funeral establishments may in turn bill the families for this contract rate at the exact cost to the newspaper. This net amount is within what I consider the intent of the cash advance portion of the regulations.

Mr. Nilsen went on to state that funeral establishments often receive an added discount of 2% from the newspapers for paying the entire newspaper bill by the tenth of the month. Mr. Nilsen is of the opinion that the funeral establishment should not have to pass on to the client this added 2% discount since most clients do not pay their funeral bills on the tenth of the month. Therefore, Mr. Nilsen suggests that the following statement be added to proposed Rule sec. 1.032 B.1.d.: "The term net is not meant to include any discounts that may be allowed for prompt payment by the funeral establishment". Mr. Nilsen further suggested that a maximum figure of 5% might be utilized as a limit.

e. Mr. Stensland concurred that a 5% ceiling might be used.

f. The Examiner concludes that proposed Rule sec. 1.032 B.1.d. is both needed and reasonable. However, the Examiner recommends that the proposed rule be amended as set forth in paragraphs b., c., and d. above. Therefore, proposed sec. 1.032 B.1.d. might be supplemented as follows:

> "The term 'net' is not meant to include any newspaper obituary ad discounts up to and including 5% of the total charge to the customer which may be allowed for prompt payment by the funeral establishment or by contractual agreement with the newspaper for volume lineage charge."

22. Sec. 1.032 C.1. provides that written authorization for embalming must be obtained by the person lawfully entitled to custody of the body. A survey conducted by the Minnesota Office of Consumer Services indicated that in 33% of the cases, no authorization was obtained prior to embalming.

a. Mrs. Chenoweth recommended that this proposed rule should be amended so that written authorization would be required prior to the time of embalming, or prior to the time of final agreement.

b. Mr. Grayson commented that it is very difficult to determine the person or persons who have the legal right to give the authorization for embalming. Mr. Grayson stated that the only law on the subject is contained in common law. Therefore, Mr. Grayson recommends that this language in the proposed rule be deleted.

c. The Department of Health responded that the language in the proposed rule, "written authorization shall be obtained from the person lawfully entitled to custody. . . " is sufficiently broad to include common law authority on the subject of legal custody of the body. Therefore, the Department of Health contends that the language in the proposed rule adequately takes care of the problem.

d. The Metropolitan Senior Federation commented that it fully endorsed the proposed rule.

e. Mr. Frederick Abrahamson, Funeral Facilitator, stated that the authorization to embalm is only relevant when embalming is to be done prior to the mutual signing of the itemization of funeral costs. Mr. Abrahamson stated that "embalming being listed as one of the funeral costs should be sufficient authorization".

f. Mr. L. Paul Burd, Attorney, stated that he endorsed this proposed rule which requires written authorization to embalm. Mr. Burd commented that at least five other states have regulations requiring permission before embalming.

g. Mr. Stensland supported proposed Rule sec. 1.032 C.1., and commented that this proposed rule would not add to the occasional problem for the mortician in determining "who is lawfully entitled" to sign the authorization.

h. Elizabeth Oschwald, administrative secretary of the Minnesota Memorial Society, supported the adoption of proposed Rule sec. 1.032 C.1. Ms. Oschwald stated that this provision would allow the consumer to exercise his or her basic right of choice in funeral options.

i. Mr. D. W. Johnson, of the Halvorson-Johnson Funeral Home, Brainerd, Minnesota, commented that during his 45 years of funeral service, he has only had two requests to provide service without embalming. Mr. Johnson stated that in consideration of the minimal number of negative requests, "the burden should rest with the authorized person in charge if embalming is not desired and should be voiced at the time of notification".

j. In regard to proposed sec. 1.032 C.1., Mr. David Erickson made the following comments:

> I feel that the following sentence should be added: "When 2 or more persons are lawfully entitled to custody of the body, from the person so entitled who has assumed responsibility for the funeral bill."
>
> In my experience as a mortician I have seen situations where family discord has created problems. There are instances where one family member wants to dispose of the body as quickly as possible. At the same time another family member

wants a complete funeral with the body embalmed and viewable. To that end the person has assumed responsibility for the funeral expenses. The change I suggest would give that person authority to request embalming over less interested family members. Everything else being equal, that person should not be denied the complete funeral desired.

k. The Examiner concludes that proposed Rule sec. 1.032 C.1. is both needed and reasonable.

23. Sec. 1.0323 C.2. Since it is not always possible to have immediate personal contact with the individuals who have legal custody of the body, this proposed section provides that oral permission shall constitute approval to embalm but that written authorization shall be obtained as soon as practicable.

a. Mr. Auld, Deputy Director of the Office of Consumer Services, stated that if oral permission to embalm is sufficient authorization, it should be required that the consumer be orally informed of the fact that under many circumstances, embalming is not necessary. Mr. Auld believes that the consumer should specifically be told whether or not embalming would be required in the specific circumstance at hand. Mr. Auld stated that if embalming is required, the funeral director should then explain to the consumer the reason for that requirement.

b. The Metropolitan Senior Federation testified that it endorsed the initial oral permission for reasons of practicality and necessity. The Federation suggested that at the point of initial permission or denial for embalming, it should be required in the proposed rule that the client must either read or hear the full content of the written form. The Federation stated that this additional requirement is necessary for the following reasons:

> (a) Many clients aren't aware that Minnesota law doesn't require embalming in all circumstances; (b) oral approval given at this time may be very difficult to rescind at a later date; (c) many clients may believe that initial oral approval is morally final and binding.

The Federation commented that initial oral approval is supportable only when it includes a knowledge of law at the time of the determination.

c. Mr. D. W. Johnson, Funeral Facilitator, expressed concern over the difficulty in proving that oral permission had been obtained. Mr. Johnson believes that a serious problem may arise if the authorized person later refuses to sign the written authorization, even though oral permission had been given. Therefore, Mr. Johnson commented that this proposed rule is awkward and is detrimental to the professional function of embalming.

d. David Erickson, mortician, commented that in some situations, the person lawfully entitled to custody of the body is not able to appear in person at the funeral service. Under these circumstances, written authorization may not be feasible. Therefore, Mr. Erickson recommends that in proposed Rule sec. 1.032 C.2., written authorization must be obtained when possible, and not as soon as practicable. The Examiner does not read the proposed language as mandating a written authorization if it is not possible to get one. Certainly, it would not be "practicable" if it were not possible.

e. Ms. Clemmer, Executive Director of Continental Association of Funeral and Memorial Societies, Inc., recommended that proposed sec. 1.032 C.2. include the requirement that the oral permission procedure also contain the information in the written authorization. Ms. Clemmer stated that the consumer would therefore be able to give oral permission with adequate knowledge of whether or not embalming is necessary.

f. Brian Junker, mortician, stated that he supports adoption of the "oral permission procedure" contained in proposed sec. 1.032 C.2. Mr. Junker commented that in many situations, it is impossible to quickly obtain written permission from the next of kin who lives, for instance, out of state, or even at a great distance within the state. Mr. Junker believes that in these situations, the oral permission provision would solve this problem.

g. Mr. Stensland commented that he believes the language in the proposed rule, "as soon as practicable" should be defined in a specific time period.

h. The Hearing Examiner concludes that proposed Rule sec. 1.032 C.2. is both needed and reasonable.

24. Sec. 1.032 C.3. This proposed rule requires that upon request by the client, the funeral establishment must explain and make available to them a copy of the agency rules which mandate embalming in certain situations. The purpose of this proposed rule is to insure maximum notice of these embalming requirements to the purchaser.

a. Mr. David Erickson commented that 7 MCAR sec. 1.024 mandates that embalming is required in certain instances specified in that rule. Mr. Erickson then presented a hypothetical question in which he asked:

> "What would happen under the proposed rules if embalming is required under 7 MCAR sec. 1.024, but the client refuses to give permission for embalming?"

Mr. Erickson stated that under the proposed rules, it appears that the mortician would be in violation of provisions 1. and 2. of proposed rule sec. 1.032 C.3. Mr. Erickson suggests that this problem would be solved by adding to proposed Rule sec. 1.032 C.3. the following language:

> "When embalming is required as provided in 7 MCAR sec. 1.024, permission to embalm shall, as a matter of law, be implied."

b. The Metropolitan Senior Federation recommended that sec. C.3. 1.032 C.3. be amended so that it would be mandatory under the proposed rule that the mortician or funeral director provide the client with a printed copy of the Commissioner's rules pertaining to embalming. The Federation further recommended that it be made mandatory in the proposed rule that upon request by the client, the mortician or funeral director must explain these rules to the client.

c. Mr. Craig Peterson, Funeral Director, suggested that certain language be added to proposed Rule sec. 1.032 C.3. to disclose that, in addition to the reasons as set forth in 7 MCAR sec. 1.024, embalming might be required for religious and aesthetic purposes.

d. The Examiner concludes that proposed Rule sec. 1.032 C.3. is both needed and reasonable. However, the Examiner recommends that the pro-

posed rule be amended as set forth in paragraph a. above for the reasons set forth therein. The Examiner recognizes that confusion may arise over the language in proposed Rule sec. 1.032 C.1. and 2., which requires that authorization be obtained prior to embalming and the requirement under 7 MCAR sec. 1.024 which mandates that embalming must be performed in certain situations. In 7 MCAR sec. 1.024,1 this requirement is not conditioned upon prior authorization to embalm. Therefore, the Examiner concludes that the added provision as set forth in a. above would alleviate this problem.

25. Sec. 1.032 C.4. provides that copies of the written authorization to embalm be retained in the funeral establishment's files for three years and that a copy be made available to the client. This proposed rule would assure compliance with these rules and would provide the Commissioner of Health with the information needed in assessing compliance with the requirements of these rules.

a. Mrs. Chenoweth and Mr. Auld recommended that proposed sec. 1.032 C.4. be amended to read: ". . . a copy given to the person . . .", instead of ". . . made available to the persons . . . ".

b. The Metropolitan Senior Federation and Mr. L. Paul Burd specifically endorsed sec. 1.032 C.4. of the proposed rules.

c. The Examiner concludes that proposed sec. 1.032 C.4. is both needed and reasonable.

26. Sec. 1.032 C.5. requires that the written authorization contain precise language to assure uniformity and to further require a statement that the client understands that embalming is not required except when one of the four listed specific conditions of death and final disposition apply.

a. Elizabeth Oschwald recommended that proposed sec. 1.032 C.5., item 3, be amended to read:

> "That embalming be required when transportation is within the state, but across sanitary district lines, and the destination is not to be reached within 18 hours."

Mrs. Oschwald stated that item 3 of the proposed authorization form allows for a too liberal interpretation.

b. The Metropolitan Senior Federation stated that it most strongly endorsed proposed sec. 1.032 C.5.

c. Mr. Auld suggested that the present language in this proposed rule might be clarified by deleting the words "except as provided by 7 MCAR sec. 1.024 when:", and replacing them with the single word "Unless".

d. Mr. Russell G. Peterson, Funeral Director, recommended that proposed sec. 1.032 C.5., item 4, be amended from "72 hours" to "24 hours". In support of this amendment, Mr. Peterson stated the following:

> This idea of hoping that a Minnesota Funeral Director can keep a body in his place up to close to 3 days without embalming is asking too much. Very few, if any, funeral directors have refrigeration at their facilities. From the moment a body dies, pathogens move rapidly and the body should be cared for promptly and it would be if the 24 hour rule was put into effect.

e. Mr. Stensland commented that it is not medically proven that embalming is necessary to prevent health hazards to others from dead human bodies.

f. The Examiner concludes that proposed Rule sec. 1.032 C.5. is both needed and reasonable.

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

CONCLUSIONS

1. Due, timely and adequate legal notice of the hearing was properly served and filed by the Department of Health. All other substantive and procedural requirements of statute or rule have been complied with.

2. Pursuant to Minn. Stat. sec. 15.052, subd. 3, it is the duty of the Hearing Examiner to: ". . . (4) make a report on each proposed agency action , . . taking notice of the degree to which the agency has (i) documented its statutory authority to take the proposed action; (ii) fulfilled all relevant, substantive and procedural requirements of law or rule; and (iii) demonstrated the need for and reasonableness of its proposed action with an affirmative presentation of facts."

3. The Department of Health has documented its statutory authority to promulgate the proposed rules.

4. The Department of Health has demonstrated the need for and reasonableness of the proposed rules by an affirmative presentation of facts.

5. Although the Examiner has concluded that the proposed rules, as amended, are both needed and reasonable, the Department should further examine and evaluate the comments which were offered by the public both at the hearing and in written form to the Examiner. Several of the suggestions had merit and, if implemented, may result in a better, more comprehensive rule. The decision to adopt the "best" rule is solely within agency discretion.

Based upon the foregoing Conclusions, the Hearing Examiner makes the following:

RECOMMENDATION

That the Department of Health adopt the proposed rules as amended by the Department and as recommended to be amended in this Report and on the basis of the record made herein. (See Findings 11.c., 12.e., 12.f., 21.f., 24.d.)

Dated this 3 day of May, 1979.

Peter C. Erickson

PETER C. ERICKSON

7 MCAR 1.022 MORTICIANS - EXAMINATION AND LICENSE REQUIREMENTS:

A. Every person who wishes to qualify as competent to engage in the practice of mortuary science, shall comply with the following requirements:

1. An applicant shall apply to the Minnesota Commissioner of Health for a license. The application shall contain the full name of the applicant, age, mailing address and such other pertinent identifying information as the Commissioner may require.

2. The applicant shall be at least 18 years of age and shall have successfully completed a minimum of 60 semester or 90 quarter credits at an accredited college or university with credit evaluation in course areas as follows: communications 15 quarter credits to include speech and English, the social sciences, 18 quarter credits to include sociology and psychology; natural science 21 quarter credits to include general or inorganic chemistry and biology or zoology and elective areas, 36 quarter credits. Following this academic work, the applicant shall have completed and have secured a verification of completion of the prescribed course of study from any college of Mortuary Science accredited by the Conference of Funeral Service Examining Boards of U.S., Inc. or the American Board of Funeral Service Education.

3. After these education qualifications, in the order specified have been acquired, the applicant shall attain a satisfactory level of achievement in a comprehensive examination, approved by the Commissioner of Health in such subjects related to the practice of mortuary science as the Commissioner may prescribe. If an applicant for a license to practice mortuary science has satisfactorily passed the National Board examination given by the Conference of Funeral Service Examining Boards of the U.S., Inc., and is so certified to the Commissioner by the Conference, effective January 1, 1976, the Commissioner shall, subject to the criteria listed below, accept the results of the National Board and require the applicant to successfully pass an examination on laws of the State of Minnesota and the Rules of the Commissioner pertaining to registration of deaths, embalming, transportation, disposition of dead human bodies and funeral directing. In order to accept the results of such National examination, the Commissioner shall first determine that the knowledge and skills assessed by the examination adequately and accurately evaluates the knowledge and skills needed for actual job performance and ensures that the public is adequately served and protected. An applicant who fails to attain a satisfactory level of achievement on any examination given by or on behalf of the Commissioner may be re-examined on application at the next examination. After successful completion of required examinations the applicant shall serve at least one year as a trainee in mortuary science under a mortician licensed by the State of Minnesota. During such period of experience the applicant shall be registered as a trainee in Mortuary Science with the Commissioner and shall assist under the supervision of a mortician in embalming at least 25 bodies and in the direction of at least 25 funerals.

4. License Application, Renewal and Endorsement Fees.
An applicant for examination for a license in mortuary science, shall submit an application therefor on forms provided by the Commissioner of Health together with a fee of $25.00.

When the applicant has successfully completed the examination and requirements for original license, the applicant shall submit to the Commissioner a license application on a form prescribed by the Commissioner and a fee of $25.00 payable to, The Treasurer, State of Minnesota, after which the license shall be duly issued.

An applicant for a license in mortuary science by endorsement without examination as to technical qualification pursuant to Minn. Stat. 149.03, subd. 2, shall submit an application therefor on forms provided by the Commissioner of Health together with a fee of $75.00. The applicant shall prior to licensure pass an examination on the Minnesota laws and rules relating to mortuary science only.

An applicant for a mortuary science courtesy card, issued pursuant to Minn. Stat. 149.03, subd. 2, shall submit an application therefor on forms provided by the Commissioner of Health together with a fee.

Initial and renewal mortuary science licenses or courtesy cards shall be issued for the calendar year for which application is made and shall expire on December 31 of that year.

Renewals thereof shall be obtained on an annual basis. Application for license or courtesy card renewal, together with the renewal fee of $25.00, shall be submitted to the Commissioner of Health on forms provided no later than December 31 of the year preceding the year for which application is made. Failure to submit the renewal application and fee by the date specified above shall result in an increase in the fee to $35.00. If the renewal application and fee are not submitted within thirty-one (31) days after the expiration date, the license or courtesy card shall automatically lapse. Such persons shall be required to apply for a new license and meet all the requirements therefor.

7 MCAR § 1.032
ITEMIZATION AND AUTHORIZATION TO EMBALM

A. Definitions

For the purposes of: 7 MCAR §§ 1.021 - 1.032, the words, terms and phrases listed below in this subdivision shall have the meaning stated herein, unless the language and context clearly indicates that a different meaning is intended.

1. CASKET - a container commonly used to enclose a dead human body for the purposes of the funeral and final disposition.

2. BURIAL VAULT/INTERMENT RECEPTACLE - an outer container used to enclose the casket for earth burial.

3. USE OF FACILITIES

   a. Provision of chapel or room for the funeral or memorial service and/or provision of facilities for parking, counseling offices and other administrative purposes.
   b. Provision of chapel or room for visitation/reviewal.

4. TRANSPORTATION COSTS - includes the vehicle used for the initial transfer of the deceased, funeral coach, funeral sedans, flower car, service/utility car and the use of common carriers where needed.

5. FUNERAL SERVICE MERCHANDISE - includes such items as clothing, register books, cards and religious and fraternal items necessary to the conduct of the service.

6. EMBALMING - a process of chemically treating the dead human body to reduce the presence and growth of organisms, to retard organic decomposition and to restore an acceptable physical appearance.

7. PREPARATION OF THE BODY - includes such items of care as the setting of features; restorative procedures; washing; disinfecting; care of hair; shaving; dressing and casketing.

8. PROFESSIONAL SERVICES - includes the provision of staff for arrangements, visitations, funeral, memorial service when the body is not present, final disposition and administrative services such as counseling, securing and preparing necessary documents.

9. CASH ADVANCED ITEMS- items of merchandise and services provided by other than the mortician, funeral director or funeral establishment, the liability for which is incurred by the mortician, funeral director or funeral establishment on behalf of the funeral arranger and listed on the itemization form.

10. CREMATION/CALCINATION - the use of direct flames or intense heat to reduce the dead human body to ashes and inorganic bone fragments.

11. DESTINATION - the city or town of final disposition.

12. DISPOSAL UNIT - a container other than a casket used for burial, cremation, calcination or entombment of a dead human body.

13. FUNERAL - the rites or ceremonies connected with the final disposition of a dead human body with the body present.

B. Itemization of funeral costs

1. Before final agreement is reached between the client and funeral establishment the mortician or funeral director shall give or cause to be given to the person(s) making arrangements, a written disclosure with the items and costs listed separately as required by Minn. Stat. 149.09 subd. 1.

a. Minimum items - as a minimum the disclosure shall include a statement of charges for casket, burial vault, use of facilities for reviewal, use of facilities for funeral services, specifically itemized transportation costs, specifically itemized funeral service merchandise, embalming, preparation of the body, other professional services, and anticipated cash advances and expenditures. When cremation is to be the method of final disposition the disclosure shall have printed in conspicuous print: "Minnesota law does not require that remains be placed in a casket before or at time of cremation."

b. Copy given - a copy of the itemized statement (funeral expense contract) shall be given the person(s) making funeral arrangements. The contract shall be signed by both parties and the funeral establishment shall retain a copy for three years thereafter.

c. Charges not known - if the charge for any item is not known at the time the contract is entered into, the establishment representative shall give his/her best estimate of the charges and advise the purchaser(s) of the exact charge as soon as the information becomes available.

d. Net amount billed - no funeral establishment shall bill or cause to be billed any item that is referred to as a "cash advanced" item unless the net amount paid for such item or items by the funeral establishment is the same as is billed to the funeral establishment. The term net is not meant to include any discounts that may be allowed for prompt payment by the funeral establishment.

C. Authorization to embalm

1. Who grants permission - written authorization for embalming a dead human body shall be obtained from the person lawfully entitled to custody of the body or from the individual prior to his/her death.

2. Oral permission procedure - oral permission shall constitute approval to proceed with embalming, however, the establishment representative must specifically use the term "embalm" in securing oral permission. Written authorization shall be obtained as soon as practicable.

3. Embalming mandate - upon request the mortician or funeral director shall explain the requirements of 7 MCAR § 1.024 which in some instances mandate embalming and make available a copy of 7 MCAR § 1.024. When embalming is required as provided in 7 MCAR § 1.024, permission to embalm shall, as a matter of law, be implied.

4. Retention of copy - the written authorization shall be retained in the establishment record of the deceased for three years and a copy made available to the person(s) granting authority.

5. Form of authorization to embalm - the written authorization statement shall be as follows:

AUTHORIZATION TO EMBALM

I authorize_____and its staff, agents or representative to embalm the body of_____.

I am a relative of the deceased and/or am entitled to custody of the deceased.

I understand that embalming is not required by Minnesota law except as provided by 7 MCAR § 1.024 when:

1) The deceased is to be sent out of state by common carrier or aircraft,

2) Death is due to communicable disease,

3) More than 18 hours will elapse from time of death to arrival at the destination, or

4) Final disposition of the deceased is longer than 72 hours after death.

_____
name relationship

_____
name establishment representative

APPROVED AS TO FORM AND LEGALITY

MAR 2 4 1980 19____

WARREN SPANNAUS, ATTORNEY GENERAL

BY _____

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAR 2 4 1980
Joan Anderson Growe
Secretary of State
2:21 PM

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL - Health

Office Memorandum

TO : Jerry Anderson
Special Assistant
Attorney General

DATE: March 17, 1980

FROM : William G. Miller
Special Assistant
Attorney General

PHONE: 341-7272

SUBJECT: In the Matter of the Proposed Amendments to Rules Relating to the Examination and Licensing of Morticians

I am by this memo resubmitting for your review the above referenced set of rules. The changes you have suggested have been made, I hope to your satisfaction. In addition, you will note that the hearing examiner made an amendment to his report in which he found the duplication of statutory language found in 7 MCAR § 1.032B(1)(a) to be crucial to the comprehension of the rule.

Enclosed are:
- 5 copies of the rules as re-adopted;
- 3 copies of the amendment referenced above;
- 3 copies of the Supplemental Report of the Chief Hearing Examiner; and
- 3 copies of the new Findings and Conclusions and Order of Adoption.

Thank you for your cooperation.

WGM:sd

Attachments

cc: Gene Larson

RECEIVED
MAR 21 19
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : GEORGE R. PETERSEN, M.D.
Commissioner of Health

DATE: January 28, 1980

Attn: WILLIAM G. MILLER

FROM : JERRY S. ANDERSON
Special Assistant
Attorney General

PHONE: 296-1288

SUBJECT:
In the Matter of the Proposed Amendments to Rules Relating to the Examination and Licensing of Morticians

The rules in the above-captioned matter have not been approved by this office for the following reasons.

1. 7 MCAR § 1.022 A. 3. As presently written, this section allows the Commissioner unbridled discretion in accepting or rejecting a passing score on the National Board examination even though the Commissioner determines that the National Board examination satisfies the standard set forth in the rule. Minn. Stat. § 15.0412, subd. 3 requires the agency to establish by rule "every agency statement of general applicability and future effect." Here, the Commissioner appears to be permitted to consider unstated criteria in determining whether to accept the results of that examination, yet such criteria certainly are agency statements of general applicability and future effect and must be established by rule. While this office understands the need for agency flexibility and discretion, such flexibility and discretion must be achieved by careful, complete selection of the criteria that are to be considered. In this instance, such flexibility and discretion could be achieved through the determination of the adequacy of the National Board examination. Therefore, the language "may in his/her discretion" must be deleted and the second and third sentences rewritten to reflect that on a favorable determination regarding the adequacy of the National Board examination the Commissioner shall accept the results of that test, if this is what is intended.

2. 7 MCAR § 1.032 B. 1. a. This section, in part, duplicates language contained in Minn. Stat. § 149.09, subd. 3. Pursuant to Minn. Stat. § 15.0412, subd. 1, "[n]o agency shall adopt a rule which duplicates language contained in Minnesota Statutes unless the hearing examiner determines that the duplication of the language is crucial to the ability of a person affected by the rule to comprehend [the rule's] meaning and effect." In his report, although he found the section as a whole to be both needed and reasonable, the hearing examiner did not make a determination that the duplication was crucial to an understanding of the rule. Therefore, either an addendum to the hearing examiner's

report, stating that the duplication is crucial, should be obtained, the language should be stricken from the rule, or the rule should be rewritten to reference the statute.

In addition to the above-discussed reasons for disapproval, the following typographical mistakes, while not fatal to the rule, should be corrected.

1. In Section 1.032 A. 2., "and" should be changed to "an."

2. In Sections 1.032 A. 3. and A. 8., the word "counselling" is spelled two different ways. While both spellings are correct, one of the words should be changed so that the spelling is consistent.

3. To be consistent, the last sentence in Section 1.022 A. 2. should not appear on the copy of the rules as adopted.

Although the following does not require any action on the agency's part, two items should be noted for future consideration. First thirty days elapsed between the obtaining of the Secretary of State's list and the mailing of the Notice of Hearing. While Minn. Stat. § 15.0412, subd. 4 does not prescribe a time limit for obtaining the list prior to mailing, the rules of the Attorney General require that the list be obtained within a reasonable period of time before the Notice of Hearing was mailed. See AttyGen 302(e)(2). While this office has not defined what constitutes a reasonable period of time, the agency should be cautioned to obtain the Secretary of State's list as close as possible to the mailing of the Notice of Hearing. Second, the statement of the subjects involved in the proposed rules in the Notice of Hearing title does not include any reference to the new material concerning embalming. Although this was not a fatal defect in view of the fact that a complete set of the proposed rules was attached to and made a part of the Notice, the title should include at least a brief statement of each subject covered in the proposed rules.

Following agency consideration of the reasons for disapproval and appropriate action, if any, the rules may be resubmitted. The Chief Hearing Examiner requests that any rules that are changed subsequent to his review be resubmitted to that office. Therefore, this office suggests that you contact the Chief Hearing Examiner regarding any changes made in the rules. At the time of resubmittal to this office, please insure that the original and two copies of the Order Adopting and the Rules as Adopted accompany the resubmittal documents as they are necessary for filing with the Secretary of State.

JSA/bw

cc: Duane Harves
Susan Robertson

Proposed At Hearing

Addendum to proposed 7 MCAR 1.022

2. The applicant shall be at least ~~21~~ 18 years of age and shall have ~~satisfactorily~~ successfully completed ~~at least two scholastic years~~ a minimum of 60 semester or 90 quarter credits at an accredited college or university with ~~approximate~~ credit evaluation in course areas as follows: communications, 15 quarter credits to include speech and English, ~~15 quarter credits~~, the social sciences, ~~16~~ 18 quarter credits to include sociology and psychology; natural science, ~~27~~ 21 quarter credits to include general or inorganic chemistry and biology or zoology and elective areas, ~~32~~ 36 quarter credits. Following ~~such~~ this academic work, the applicant shall have completed ~~a course of study~~ and have secured a ~~certificate of graduation~~ verification of completion of the prescribed course of study from ~~the Department of Mortuary Science at the University of Minnesota or~~ any ~~school of embalming~~ college of Mortuary Science accredited by the Conference of Funeral Service Examining Board of U.S., Inc. or the American Board of Funeral Service Education. ~~The Commissioner may at his discretion vary the number of semester or quarter credits in specified areas.~~

3. After ~~the~~ these educational qualifications, in the order ~~herein~~ specified have been acquired, the applicant shall ~~have served at least one year as a resident trainee in mortuary science under a mortician licensed in Minnesota. During the period of practical experience or traineeship the applicant shall have been registered as a trainee with the State Board of Health and shall have assisted under the supervision in embalming at least twenty five bodies and in the direction of at least twenty five funerals. The applicant shall~~ attain a satisfactory level of achievement in a comprehensive written examination, approved ~~given~~ by the ~~State board~~ Commissioner of Health in such subjects related to the practice of mortuary science as ~~anatomy, bacteriology, business methods, chemistry, pathology, public health laws and regulations, and the practice of mortuary science~~ the Commissioner may prescribe. ~~At the discretion of the board, a practical examination in mortuary science may also be required.~~ If an applicant for a license to practice mortuary science has satisfactorily passed the National Board examination given by the Conference of Funeral Service Examining Boards of the U.S., Inc., and is so certified to the Commissioner by the Conference, effective January 1, 1976, the Commissioner ~~may in his/her discretion~~ accept the results of the National Board and require the applicant to successfully write an examination on laws of the state of Minnesota and the Rules of the Commissioner pertaining to registration of deaths, embalming, transportation, disposition of dead human bodies and funeral directing. ~~In making the decision whether to accept the results of such examinations, the Commissioner shall~~ determine that the knowledge and skills assessed by the examination adequately and accurately evaluates the knowledge and skills needed for actual job performance and to ensure that the public is adequately served. An applicant who fails to attain a satisfactory level of achievement on any examination given by or on behalf of the Commissioner may be re-examined on application at the next ~~annual~~ examination. After successful completion of required examinations the applicant shall serve at least one year as a trainee in mortuary science under a mortician licensed by the State of Minnesota. During such period of experience the applicant shall be registered as a trainee in Mortuary Science with the Commissioner and shall assist under the supervision of a mortician in embalming at least 25 bodies and in the direction of at least 25 funerals.

shall

if

discretion criteria

HLTH-79-027-PE

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF HEALTH

IN THE MATTER OF THE PROPOSED AMENDMENT TO RULES RELATING TO THE EXAMINATION AND LICENSING OF MORTICIANS.

SUPPLEMENTAL REPORT OF THE CHIEF HEARING EXAMINER

WHEREAS, on December 11, 1979, the Department of Health submitted the above-entitled rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, subd. 4, and 9 MCAR § 2.110; and

WHEREAS, on December 14, 1979, the Chief Hearing Examiner issued his report finding that the rules as proposed to be adopted were not substantially different from those proposed at the public hearing and that the Department of Health had met all requirements of Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Department of Health subsequently submitted the rules and the record of the proceedings to the Attorney General for his review as to form and legality pursuant to Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Attorney General recommended to the Department of Health that certain of the rules be amended; and

WHEREAS, the Department of Health has now resubmitted the rules to the Chief Hearing Examiner for his review; and

WHEREAS, the Chief Hearing Examiner finds that the changes made in the rules do not make the rules substantially different from those proposed at the public hearing.

NOW, THEREFORE, upon receipt of this report, the Department of Health has the responsibility of resubmitting the complete hearing record and the rules as adopted by the Department to the Attorney General, notifying all persons who requested to be informed that the hearing record has been resubmitted to the Attorney General, and publishing in the State Register, all pursuant to Minn. Stat. § 15.0412, subd. 4.

Dated this 7th day of March, 1980.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

AMENDMENT TO THE REPORT OF THE HEARING EXAMINER

The Report of the Hearing Examiner on the above-entitled matter is hereby amended by adding the following Finding:

27. The Examiner finds that the duplication of statutory language contained at 7 MCAR § 1.032B.(1)(a) is crucial to the ability of the persons affected by the rule to comprehend its meaning and effect.

Dated this 7 day
of March, 1980.

Peter C. Erickson

PETER C. ERICKSON
Hearing Examiner

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

COMMISSIONER OF HEALTH

In the Matter of the Proposed Amendments to Rules Relating to the Examination and Licensing of Morticians

FINDINGS AND CONCLUSIONS AND ORDER ADOPTING RULES AMENDMENTS

The above-entitled matter came on for hearing before the Minnesota Commissioner of Health on the 29th day of March, 1979, at 9:30 a.m. in Room 105, Minnesota Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota 55440, after proper notice required by Minn. Stat. § 15.0412 was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose and following publication of the rules.

After affording interested persons an opportunity to present written and oral data, statements and arguments, and having heard and considered all of the testimony and evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards or criteria, and having confirmed the need for and reasonableness of the above-captioned rule amendments,

NOW, THEREFORE, IT IS ORDERED that the Report of the Hearing Examiner herein, Peter C. Erickson, dated May 3, 1979, be and hereby is adopted and incorporated fully as the Findings and Conclusions of the Commissioner herein; and

NOW, THEREFORE, IT IS FURTHER ORDERED that these rule amendments identified as 7 MCAR §§ 1.022 and 1.032 relating to the examination and licensing of morticians are adopted this 20 day of November, 1979, pursuant to authority vested in me by Minn. Stat. §§ 144.12, 144.122 and 149.01-149.09 (1978).

STATE OF MINNESOTA

COMMISSIONER OF HEALTH

George R. Petersen M D

GEORGE R. PETTERSEN, M.D.
Commissioner

HLTH-79-027-PE

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF HEALTH

IN THE MATTER OF THE PROPOSED AMENDMENTS TO RULES RELATING TO THE EXAMINATION AND LICENSING OF MORTICIANS.

REPORT OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on March 29, 1979, before Peter C. Erickson, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 15.052, subd. 3, was issued to the Department of Health on May 3, 1979; and

WHEREAS, the Department of Health has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Department of Health has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, subd. 4, and 9 MCAR § 2.110; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the Department of Health has met all requirements of Minn. Stat. § 15.0412, subd. 4.

NOW, THEREFORE, upon receipt of this Report, the Department of Health has the responsibility of submitting the complete hearing record and the rules as adopted by the Department to the Attorney General, notifying all persons who requested to be informed that the hearing record has been submitted to the Attorney General, and publishing in the State Register, all pursuant to Minn. Stat. § 15.0412, subd. 4.

Dated this 14th day of December, 1979.

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF HEALTH

In the Matter of the Proposed Amendments to Rules Relating to the Examination and Licensing of Morticians.

REPORT OF HEARING EXAMINERS

The above-entitled matter came on for hearing before Hearing Examiner Peter C. Erickson of the State Office of Hearing Examiners at 9:30 a.m. on Thursday, March 29, 1979 in the Department of Health Building, Minneapolis, Minnesota.

William G. Miller, Special Assistant Attorney General, appeared as counsel for the Minnesota Department of Health. Eugene M. Larson, Supervisor, Mortuary Science Unit, Minnesota Department of Health, testified in support of the proposed amendments on behalf of the Department of Health. The hearing continued until all interested groups or persons had had an opportunity to be heard concerning the adoption of the proposed rules.

Pursuant to Minn. Stat. sec. 15.0412, subd. 4, this Report shall be available for review to all affected individuals upon request for at least five days.

Thereafter, the Department of Health shall, if it proposes to adopt the rules as originally proposed or amended, submit a copy of the Order Adopting Rules, a copy of any additional agency findings, a copy of the rules as originally proposed, and a copy of the rules as adopted to the Chief Hearing Examiner for review pursuant to Minn. Stat. sec. 15.052, subd. 4. The submission to the Chief Hearing Examiner shall precede review by the Attorney General. The Chief Hearing Examiner shall complete his review and submit his report to the Department on the issues of substantial changes in the rule and compliance with Minn. Stat. sec. 15.0412 within ten calendar days. The Department of Health will be responsible for filing the rules with the Attorney General and for notifying persons who have indicated that they wish to be notified of such filing.

Based upon all the records and proceedings herein, the Examiner makes the following:

FINDINGS OF FACT

1. In January, 1979, the Department filed the following documents with the Chief Hearing Examiner:

   (a) A copy of the proposed rules.
   (b) The Order for Hearing proposed to be issued.
   (c) The Notice of Hearing proposed to be issued.
   (d) A Statement of the number of persons expected to attend the hearing and estimated length of the Agency's presentation.

2. On February 26, 1979, a Notice of Hearing and a copy of the proposed rules were published at 3 State Register 1603.

3. On February 22, 1979, the Department mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice.

4. On March 2, 1979, the Department filed the following documents:

(a) The Order for Hearing and authorizing resolution.
(b) The Notice of Hearing as mailed.
(c) The Affidavit of Receipt of the Secretary of State's list.
(d) The Affidavit of Mailing the Notice to all persons on the Secretary of State's list.
(e) The Secretary of State's Certificate and list.
(f) The Statement of Need and Reasonableness.
(g) The names of personnel who will represent the Agency at the hearing together with the names of any other witnesses solicited by the Agency to appear on its behalf.

The documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of the hearing.

5. The record remained open through April 5, 1979, for the receipt of written comments and statements, the period having been extended by order of the Hearing Examiner to 20 calendar days following the hearing.

6. The Department of Health asserts that statutory authority to promulgate the proposed rules is contained in Minn. Stat. secs. 144.12 and 144.122, and 149.01-149.09 (1978).

7. At the time of hearing, the Department of Health submitted an addendum of additional amendments to proposed 7 MCAR sec. 1.022 A.2. and 3. The addendum was submitted in an attempt to ensure that the power delegated to the Commissioner would be exercised within a framework of procedural protections and established criteria.

8. Rule 7 MCAR sec. 1.022 sets forth general provisions relating to the examination and license requirements of morticians. The proposed amendments revise some of these existing provisions and make necessary additions.

9. 1.022 A. The Department of Health proposes to amend this section by deleting the words "as required by the laws of the State of Minnesota" as the language is unnecessary.

10. Sec. 1.022 A.1. This section specifies the type of information which each applicant must provide in the application form for a state license. The proposed amendments reword the language of that section for purposes of clarity and to bring the language into compliance with current statutory usage. Since the Minnesota Board of Health was abolished and its powers were transferred to the Commissioner of Health, the proposed amendments are both needed and reasonable.

The Examiner notes that Minn. Stat. sec. 149.03, subd. 1, requires that the application for an examination for a license in mortuary science must be accompanied by two affidavits. However, subdivision 1 of 7 MCAR sec. 1.022 A. deals with applications for a license in mortuary science. Therefore, it is reasonable that the proposed amendment delete from that section the requirement that the application be accompanied by affidavits from at least two reputable residents.

11. Sec. 1.022 A.2. In this section, the Department of Health proposes to change the age requirement for a license in mortuary science from ". . . at least 21 years of age" to ". . . at least 18 years of age" in compliance with the age requirement set forth in Minn. Stat. sec. 149.03, subd. 1.

In Rule sec. 1.022 A.2., the Department of Health also proposes certain curriculum and credit changes. Adjustments have been proposed to the course requirements, adding some course work to the speech, English, psychology and sociology requirements; six credit hours have been deleted from the natural science requirements.

The Department of Health contends that this balancing of the curriculum as delinated in this section closely parallels the curriculum requirements of the accrediting bodies (such as the American Board of Funeral Service Education) approved by the federal Department of Health, Education and Welfare.

a. Mr. David R. Erickson, a mortician and law student at William Mitchell College of Law, St. Paul, Minnesota, commented as follows:

> I would change the age requirement from ". . . at least 18 years of age . . ." to "the applicant shall have reached the age of majority. . . ."
>
> My impression is that the regulation requires the applicant to be at least the current age of majority - 18 years old. Since this age can be, and has been, changed by the Legislature, the regulation should be keyed to that age that the Legislature declares to be the age of majority. As the proposed amendment now stands, a minor could be licensed as a mortician should the age of majority be raised. The change I suggest would accommodate the age change.

b. The Examiner points out that Minn. Stat. sec. 149.03, subd. 1, also states that "No person shall be granted a license in mortuary science unless he shall be at least 18 years of age. . . .". Keeping this statutory requirement in mind, the proposed rule language is both needed and reasonable.

c. The original proposed amended form of paragraph 2. of sec. 1.022 A. contained the language that "The Commissioner may at his discretion vary the number of semester or quarter credits in specified areas." The Examiner concludes that by deleting this language as set forth in the addendum submitted by the Department of Health, the Commissioner will not be able to exercise unfettered discretion regarding curriculum requirements. Therefore, the Examiner concludes that the above-mentioned proposed amendment to Rule 7 MCAR sec. 1.022 A.2. is both needed and reasonable.

12. Sec. 1.022 A.3. This section sets forth the requirements, in addition to educational and age requirements, which the applicant for a license for mortuary science must satisfy. The proposed amendments would revise the section as follows:

(1) The proposed amendments initially reword certain parts of this section. By deleting outdated phrases, the Department of Health proposes to make the language of this section more clear and concise.

(2) In the first portion of paragraph 3., the rule contains language which mandates that the applicant serve an internship period for at least one year. It is also provided that the applicant must assist in embalming at least 25 bodies and in the direction of at least 25 funerals. For purposes of logical consistency, the proposed amendments delete this language at the beginning of the paragraph and add it at the end. Since the powers of the State Board of Health have been transferred to the Commissioner of

Health, references in the rules to the "Board" have been changed to the "Commissioner".

(3) Paragraph 3. provides that the applicant must acquire the educational qualifications in the order specified in this section and that the applicant for a license in mortuary science must obtain a satisfactory level of achievement in a comprehensive written examination.

a. Mr. Richard A. Grayson, an attorney in St. Paul, Minnesota, commented that the language "in the order specified" should be deleted. Mr. Grayson stated that the reason for this suggested change is the fact that in 1971, the Attorney General rendered an opinion which effectively deleted a specified order in obtaining education.

b. The Department of Health responded that this 1971 Opinion is no longer valid since the recent Minnesota laws provide the Commissioner with statutory authority to promulgate such a rule.

c. On May 14, 1971, the Attorney General issued an opinion in regard to the sequency of academic work required under Minn. Stat. sec. 149.03, subd. 1 (1969), and Minnesota State Board of Health Reg. 11013(a). Sec. 149.03, subd. 1, and the agency rule, prescribed a sequence of academic work for licensure as a mortician; completion of two years of college prior to the completion of studies in mortuary science was required. At this point, it should be noted that the applicable portion of Minn. Stat. sec. 149.03, subd. 1 (1978), is the same as the pertinent section of the 1969 Minnesota law.

The factual situation in the Opinion discloses that the applicant, originally a resident of Minnesota, moved to another state with the intent to practice mortuary science there. That state did not require preparatory college work prior to entry into mortuary science course work. Upon graduation, the applicant moved back to Minnesota and applied for his license in mortuary science. The Board denied the application based upon the fact that the applicant completed his mortuary science curriculum prior to completion of the prescribed preparatory college work.

It was the opinion of the Attorney General that in that particular case, the Minnesota statute and regulation did not preclude this applicant from examination and subsequent licensure in mortuary science because he met all of the state requirements except for the academic sequence requirements. The Attorney General stated that the sequence requirement is incidental to the chief purpose of requiring general college training as well as course work in mortuary science. Therefore, the requirement in Minn. Stat. sec. 140.03, subd. 1, and in the agency rule was held to be directory rather than mandatory.

The Attorney General did not state that the sequence provisions in the statute and rule are ineffective or that they should be deleted and amended. The Attorney General recognized that both state law governing morticians and Board regulations indicate that college work should precede mortuary science course work. He further indicated that the sequence of course work specified in the statute and rule may be the most efficient course of study. The Examiner concludes that the Attorney General merely held that in this case, the sequence requirements would not preclude the applicant from licen-

sure. The Examiner believes that the sequence requirement in Minn. Stat. sec. 140.03, subd. 1, and in the proposed amendment to Rule sec. 1.022 A.3., is conducive to a logical and efficient course of study. Therefore, the Examiner concludes that the proposed amendments to Rule sec. 1.022 A.3. are both needed and reasonable.

d. Mr. Grayson, of Sanborn & Grayson, attorneys at law, suggests that the word "written" in subdivision 3 should be deleted. Mr. Grayson believes that this change would benefit the handicapped persons who are physically not capable of taking a written examination.

e. The Department of Health supports this proposal to strike the written requirement from 7 MCAR sec. 1.022 A.3. The Department stated that it anticipates future petitions from handicapped persons for alternate forms of examination.

f. Paragraph 3. originally provided that the applicant must attain a satisfactory level of achievement in this comprehensive examination which is given by the State Board of Health in subjects such as anatomy, chemistry, etc. The proposed amendments delete the word "given" and in its place add the word "approved". The use of the term "approved" in the proposed amendment would give authority to the Commissioner to accept the results of a national standardized examination which is prepared and administered by the Conference of Funeral Service Examining Boards. The amendments would also give the Commissioner authority to accept passage of this national examination retroactively to January 1, 1976, and would allow the Commissioner to give a separate examination on the specifics of Minnesota laws and rules. The amendments contained in the addendum specify criteria which the Commissioner must consider when deciding to accept the results of a national examination.

g. The Examiner concludes that proposed sec. 1.022 A.3., as amended by the Department, is both needed and reasonable.

13. Sec. 1.022 A.4. relates to license application, renewal and reciprocity fees. Since, under the proposed amendments the Commissioner would be authorized to adopt the use of a national standardized examination, the applicant would therefore pay an examination fee directly to the Conference of Funeral Service Examining Boards. As a consequence, it is proposed in this paragraph that the current examination fee to the Commissioner be reduced from $50.00 to $25.00. The examination fee of $25.00 paid to the Commissioner for examination on Minnesota laws and rules is directly related to the cost of its administration.

The proposed amendments further add that when the applicant has completed all of the Commissioner's licensure requirements, the applicant must then pay a license certificate issuance fee of $25.00. This fee is closely related to the costs which are involved in the administration of the program. Pursuant to Minn. Stat. sec. 144.122, the Commissioner is authorized to prescribe the amount of license fees. The Examiner concludes that proposed sec. 1.022 A.4. is both needed and reasonable.

14. Proposed Rule 7 MCAR sec. 1.032 sets out the requirements for itemization of funeral costs and also delineates the disclosure requirements for embalming practices.

15. Sec. 1.032 A. provides definitions of 13 terms which are used in the rules.

a. Allen Stensland, Professor at St. Cloud University, made the following comments in regard to proposed sec. 1.032 A.1., the definition of "casket":

> "I would suggest a definition for 'casket' - a container, usually of metal, plastic, wood or cardboard used to enclose a dead body for the purpose of transportation, donation, funeral, burial, cremation, calcination or entombment."

Mr. Stensland also objected to the definition of "disposal unit" as proposed in sec. 1.032 A.12. Mr. Stensland contends that this proposed definition "is part of the merchandizing language used by morticians to discourage people from purchasing inexpensive cardboard or wood caskets". Therefore, he suggests that the definition of "disposal unit" be deleted. Mr. Stensland is of the opinion that his general definition of "casket", as stated above, would remedy the problem.

b. The Department of Health contends that its list of defined terms as delinated in proposed rule sec. 1.032 A., is necessary for purposes of clarity.

c. Minn. Stat. sec. 149.09, subd. 3, differentiates between the use of a casket and a disposal unit. The Examiner concludes that it is reasonable for the proposed rules to note this difference in the definitional section.

d. Mr. Stensland objected to the definition of "embalming" which is set out in proposed sec. 1.032 A.6. He recommends that the term "embalming" be defined as "Chemically treating the dead body to retard organic decomposition". Mr. Stensland contends that the phrase "to restore an acceptable physical appearance" is a metaphysical point of view rather than a scientific fact. Mr. Stensland also believes that the phrase in the proposed rule, "reduce the presence and growth of organisms" is too vague to have any practical meaning. The Examiner concludes, however, that proposed rule sec. 1.032 A.6. is both needed and reasonable.

e. In regard to paragraphs 5. and 8. of this section, Sherry Chenoweth, a member of the Board of Directors of the Minnesota Memorial Society, made the following comments:

(1) Mrs. Chenoweth pointed out that consumers are not required to buy the services described in proposed sec. 1.032 A.5. from the mortician. She said that these services may be purchased from other business establishments.

(2) In regard to proposed sec. 1.032 A.8., Mrs. Chenoweth commented that the professional services as described in that paragraph vary in cost and that these services may be purchased individually.

f. The Examiner concludes that proposed sec. 1.032 A. is both needed and reasonable.

16. Sec. 1.032 B. relates to the itemization of funeral costs and requires that certain information is made available to the customer.

17. Sec. 1.032 B.1. Minn. Stat. sec. 149.09, subd. 1, mandates that the rules adopted by the Commissioner of Health must require a separate

listing of certain funeral costs. In accordance with this statute, the proposed rule provides that before final agreement is reached between the client and funeral establishment, the mortician or funeral director must prepare a written disclosure of these funeral costs.

a. Ms. Elizabeth C. Clemmer, Executive Director, Continental Association of Funeral and Memorial Societies, Inc., commented that the requirement that price itemization information be given prior to the final agreement does not adequately aid consumers. Ms. Clemmer contends that consumers need this information before they select the casket.

18. Sec. 1.032 B.1.a. provides a list of the minimum items which the written disclosure must contain. The items listed in this proposed rule are the same as those required in Minn. Stat. sec. 149.09, subd. 1. That section also requires that the listing of the cost statement must include the following statement for which a charge is made: "Minnesota law does not require that remains be placed in a casket before or at the time of cremation". The proposed rule also requires that the written disclosure must contain, in conspicuous print, the statement that "Minnesota law does not require that remains be placed in a casket before or at the time of cremation". The Department of Health contends that this disclosure requirement is reasonable and necessary since many clients are of the understanding that caskets are always required.

a. Mr. Allen Stensland supports the provision in the proposed rule which requires that the written disclosure contain the mandated statement. Mr. Stensland stated that "the argument made by some morticians that this statement would injure the emotional well-being of those people arranging funerals is self-serving and without substance.

b. Elizabeth Oschwald, administrative secretary of the Minnesota Memorial Society; Sherry Chenoweth, member of the Board of Directors of the Minnesota Memorial Society; Mr. Richard Auld, Deputy Director of the Office of Consumer Services; and Tobey Lapakko, Consumer Affairs Coordinator for the Minnesota ALF/CIO, commented that they fully support the disclosure requirement contained in proposed Rule sec. 1.032 B.1.a.

c. Mr. Frederick W. Abrahamson, Funeral Facilitator of Abrahamson Funeral Chapel, Minneapolis, Minnesota, recommended that the proposed rule contain the following language: "Minnesota law does not require that remains be placed in a casket before or at the time of cremation. However, some type of disposal unit is required by the crematory."

d. Mr. Grayson commented that the last sentence of proposed Rule sec. 1.032 B.1.a. should be deleted. Mr. Grayson believes that this disclosure requirement is completely superfluous since it merely requotes the language in the Minnesota statute.

e. The Minnesota Funeral Directors Association commented that it objected to proposed Rule sec. 1.032 B.1.a. The Association recognized that the funeral industry does have an obligation under Minnesota law to make the disclosure when cremation is requested and charge is made for it. However, the Association stated that when cremation is not even being considered as a means of final disposition, the disclosure is not only superfluous but is also confusing to the consumer. The Association stated that

the proposed provision should also be abolished for humanitarian reasons. It stated, "A grieving family member making funeral arrangements should not be subjected to unwanted disclosures."

f. The Metropolitan Senior Federation commented that it endorses proposed Rule sec. 1.032 B.1.a. but recommends that after the statement, "Minnesota law does not require that remains be placed in a casket before or at the time of cremation", the following language be added: "However, in lieu of a casket some combustible disposal unit is required for containing, handling and transporting of the body for cremation."

g. Minn. Stat. sec. 149.09, subd. 3, mandates that this disclosure be made only when a charge is made for cremation. Under Minn. Stat. sec. 149.09, subd. 3, a person operating a crematory cannot require that human remains be placed in a casket before cremation. However, under that same statute, it is stated that a container or disposal unit may be required to protect the physical health or safety of any individual. The Examiner concludes that proposed Rule sec. 1.032 B.1.a. enables consumers to make an informed decision regarding alternate methods of disposition and is therefore both needed and reasonable.

19. Sec. 1.032 B.1.b. mandates that a copy of the itemized statement must be given to the client. The funeral establishment must then retain its own copy of the statement for three years. This provision is necessary since in many cases, copies of itemized statements may not be given by the funeral establishment to their customers.

a. Mr. Richard Auld, Deputy Director of the Office of Consumer Services, Mrs. Chenoweth, the Metropolitan Senior Federation, and Mr. L. Paul Burd, attorney from the law firm of Burd, Braddock & Bartz, Minneapolis, Minnesota, commented that they support proposed sec. 1.032 B.1.b.

b. The Examiner concludes that proposed Rule sec. 1.032 B.1.b. is both needed and reasonable.

20. Sec. 1.032 B.1.c. provides that any charges not known at the time of arrangements must be estimated and that the client be advised of the exact charge as soon as practicable. This provision will assure proper notice to the purchasers of funeral services while maintaining sufficient flexibility for the proper delivery of these services.

a. The Metropolitan Senior Federation and Mr. Auld testified in support of the proposed rule.

b. The Hearing Examiner concludes that sec. 1.032 B.1.c. is both needed and reasonable.

21. Sec. 1.032 B.1.d. requires that cash advanced items must be billed to the client at the net amount paid by the funeral establishment. Therefore, any item billed as cash advances by the funeral establishment would not, by discount or otherwise, cost the funeral establishment a different sum of money than that which is billed.

a. The Metropolitan Senior Federation commented that it endorsed proposed sec. 1.032 B.1.d.

b. Mr. Russell Peterson of Peterson Funerals, commented that he had problems with the phrase, "Net amount billed", which is contained in proposed sec. 1.032 B.1.d. Mr. Peterson stated that it is difficult to

bill the client for obituary notices at the net amount billled to the funeral establishment. Mr. Peterson stated that under the proposed provision, "After the funeral establishment received its billing, and the local paper continued to allow the establishment a 2% discount on the bill, the funeral establishment would have to provide for that also". Therefore, Mr. Peterson suggests that the funeral director should be able to write into his order that the net amount for obituaries does not preclude the funeral director from accepting a monthly discount on his bill.

c. Mr. Frederick Abrahamson, Funeral Facilitator, commented that with respect to "Net amount billed", he foresees some problems with newspaper notice charges. Mr. Abrahamson stated that "Most funeral homes receive a reduction in lineage charge due to contracting for a certain number of lines to be run each day, irrespective of whether they have any funeral notices".

d. Mr. Nilsen, President of Morris Nilsen Funeral Chapel, stated that proposed Rule sec. 1.032 B.1.d. may result in the elevation of cost rather than reducing it. Mr. Nilsen commented specifically on cash advances made for obituary notices. The substance of Mr. Nilsen's comments is as follows:

> As a part of the funeral services the funeral director places the obituary of the family in the newspaper. It is well known that newspaper companies enter into contracts with large advertizers that can give reduced rates for high volume usage. Funeral establishments often have these types of contracts with newspaper companies. The funeral establishments may in turn bill the families for this contract rate at the exact cost to the newspaper. This net amount is within what I consider the intent of the cash advance portion of the regulations.

Mr. Nilsen went on to state that funeral establishments often receive an added discount of 2% from the newspapers for paying the entire newspaper bill by the tenth of the month. Mr. Nilsen is of the opinion that the funeral establishment should not have to pass on to the client this added 2% discount since most clients do not pay their funeral bills on the tenth of the month. Therefore, Mr. Nilsen suggests that the following statement be added to proposed Rule sec. 1.032 B.1.d.: "The term net is not meant to include any discounts that may be allowed for prompt payment by the funeral establishment". Mr. Nilsen further suggested that a maximum figure of 5% might be utilized as a limit.

e. Mr. Stensland concurred that a 5% ceiling might be used.

f. The Examiner concludes that proposed Rule sec. 1.032 B.1.d. is both needed and reasonable. However, the Examiner recommends that the proposed rule be amended as set forth in paragraphs b., c., and d. above. Therefore, proposed sec. 1.032 B.1.d. might be supplemented as follows:

> "The term 'net' is not meant to include any newspaper obituary ad discounts up to and including 5% of the total charge to the customer which may be allowed for prompt payment by the funeral establishment or by contractual agreement with the newspaper for volume lineage charge."

22. Sec. 1.032 C.1. provides that written authorization for embalming must be obtained by the person lawfully entitled to custody of the body. A survey conducted by the Minnesota Office of Consumer Services indicated that in 33% of the cases, no authorization was obtained prior to embalming.

a. Mrs. Chenoweth recommended that this proposed rule should be amended so that written authorization would be required prior to the time of embalming, or prior to the time of final agreement.

b. Mr. Grayson commented that it is very difficult to determine the person or persons who have the legal right to give the authorization for embalming. Mr. Grayson stated that the only law on the subject is contained in common law. Therefore, Mr. Grayson recommends that this language in the proposed rule be deleted.

c. The Department of Health responded that the language in the proposed rule, "written authorization shall be obtained from the person lawfully entitled to custody. . . " is sufficiently broad to include common law authority on the subject of legal custody of the body. Therefore, the Department of Health contends that the language in the proposed rule adequately takes care of the problem.

d. The Metropolitan Senior Federation commented that it fully endorsed the proposed rule.

e. Mr. Frederick Abrahamson, Funeral Facilitator, stated that the authorization to embalm is only relevant when embalming is to be done prior to the mutual signing of the itemization of funeral costs. Mr. Abrahamson stated that "embalming being listed as one of the funeral costs should be sufficient authorization".

f. Mr. L. Paul Burd, Attorney, stated that he endorsed this proposed rule which requires written authorization to embalm. Mr. Burd commented that at least five other states have regulations requiring permission before embalming.

g. Mr. Stensland supported proposed Rule sec. 1.032 C.1., and commented that this proposed rule would not add to the occasional problem for the mortician in determining "who is lawfully entitled" to sign the authorization.

h. Elizabeth Oschwald, administrative secretary of the Minnesota Memorial Society, supported the adoption of proposed Rule sec. 1.032 C.1. Ms. Oschwald stated that this provision would allow the consumer to exercise his or her basic right of choice in funeral options.

i. Mr. D. W. Johnson, of the Halvorson-Johnson Funeral Home, Brainerd, Minnesota, commented that during his 45 years of funeral service, he has only had two requests to provide service without embalming. Mr. Johnson stated that in consideration of the minimal number of negative requests, "the burden should rest with the authorized person in charge if embalming is not desired and should be voiced at the time of notification".

j. In regard to proposed sec. 1.032 C.1., Mr. David Erickson made the following comments:

> I feel that the following sentence should be added: "When 2 or more persons are lawfully entitled to custody of the body, from the person so entitled who has assumed responsibility for the funeral bill."
>
> In my experience as a mortician I have seen situations where family discord has created problems. There are instances where one family member wants to dispose of the body as quickly as possible. At the same time another family member

wants a complete funeral with the body embalmed and viewable. To that end the person has assumed responsibility for the funeral expenses. The change I suggest would give that person authority to request embalming over less interested family members. Everything else being equal, that person should not be denied the complete funeral desired.

k. The Examiner concludes that proposed Rule sec. 1.032 C.1. is both needed and reasonable.

23. Sec. 1.0323 C.2. Since it is not always possible to have immediate personal contact with the individuals who have legal custody of the body, this proposed section provides that oral permission shall constitute approval to embalm but that written authorization shall be obtained as soon as practicable.

a. Mr. Auld, Deputy Director of the Office of Consumer Services, stated that if oral permission to embalm is sufficient authorization, it should be required that the consumer be orally informed of the fact that under many circumstances, embalming is not necessary. Mr. Auld believes that the consumer should specifically be told whether or not embalming would be required in the specific circumstance at hand. Mr. Auld stated that if embalming is required, the funeral director should then explain to the consumer the reason for that requirement.

b. The Metropolitan Senior Federation testified that it endorsed the initial oral permission for reasons of practicality and necessity. The Federation suggested that at the point of initial permission or denial for embalming, it should be required in the proposed rule that the client must either read or hear the full content of the written form. The Federation stated that this additional requirement is necessary for the following reasons:

(a) Many clients aren't aware that Minnesota law doesn't require embalming in all circumstances; (b) oral approval given at this time may be very difficult to rescind at a later date; (c) many clients may believe that initial oral approval is morally final and binding.

The Federation commented that initial oral approval is supportable only when it includes a knowledge of law at the time of the determination.

c. Mr. D. W. Johnson, Funeral Facilitator, expressed concern over the difficulty in proving that oral permission had been obtained. Mr. Johnson believes that a serious problem may arise if the authorized person later refuses to sign the written authorization, even though oral permission had been given. Therefore, Mr. Johnson commented that this proposed rule is awkward and is detrimental to the professional function of embalming.

d. David Erickson, mortician, commented that in some situations, the person lawfully entitled to custody of the body is not able to appear in person at the funeral service. Under these circumstances, written authorization may not be feasible. Therefore, Mr. Erickson recommends that in proposed Rule sec. 1.032 C.2., written authorization must be obtained when possible, and not as soon as practicable. The Examiner does not read the proposed language as mandating a written authorization if it is not possible to get one. Certainly, it would not be "practicable" if it were not possible.

e. Ms. Clemmer, Executive Director of Continental Association of Funeral and Memorial Societies, Inc., recommended that proposed sec. 1.032 C.2. include the requirement that the oral permission procedure also contain the information in the written authorization. Ms. Clemmer stated that the consumer would therefore be able to give oral permission with adequate knowledge of whether or not embalming is necessary.

f. Brian Junker, mortician, stated that he supports adoption of the "oral permission procedure" contained in proposed sec. 1.032 C.2. Mr. Junker commented that in many situations, it is impossible to quickly obtain written permission from the next of kin who lives, for instance, out of state, or even at a great distance within the state. Mr. Junker believes that in these situations, the oral permission provision would solve this problem.

g. Mr. Stensland commented that he believes the language in the proposed rule, "as soon as practicable" should be defined in a specific time period.

h. The Hearing Examiner concludes that proposed Rule sec. 1.032 C.2. is both needed and reasonable.

24. Sec. 1.032 C.3. This proposed rule requires that upon request by the client, the funeral establishment must explain and make available to them a copy of the agency rules which mandate embalming in certain situations. The purpose of this proposed rule is to insure maximum notice of these embalming requirements to the purchaser.

a. Mr. David Erickson commented that 7 MCAR sec. 1.024 mandates that embalming is required in certain instances specified in that rule. Mr. Erickson then presented a hypothetical question in which he asked:

> "What would happen under the proposed rules if embalming is required under 7 MCAR sec. 1.024, but the client refuses to give permission for embalming?"

Mr. Erickson stated that under the proposed rules, it appears that the mortician would be in violation of provisions 1. and 2. of proposed rule sec. 1.032 C.3. Mr. Erickson suggests that this problem would be solved by adding to proposed Rule sec. 1.032 C.3. the following language:

> "When embalming is required as provided in 7 MCAR sec. 1.024, permission to embalm shall, as a matter of law, be implied."

b. The Metropolitan Senior Federation recommended that sec. C.3. 1.032 C.3. be amended so that it would be mandatory under the proposed rule that the mortician or funeral director provide the client with a printed copy of the Commissioner's rules pertaining to embalming. The Federation further recommended that it be made mandatory in the proposed rule that upon request by the client, the mortician or funeral director must explain these rules to the client.

c. Mr. Craig Peterson, Funeral Director, suggested that certain language be added to proposed Rule sec. 1.032 C.3. to disclose that, in addition to the reasons as set forth in 7 MCAR sec. 1.024, embalming might be required for religious and aesthetic purposes.

d. The Examiner concludes that proposed Rule sec. 1.032 C.3. is both needed and reasonable. However, the Examiner recommends that the pro-

posed rule be amended as set forth in paragraph a. above for the reasons set forth therein. The Examiner recognizes that confusion may arise over the language in proposed Rule sec. 1.032 C.1. and 2., which requires that authorization be obtained prior to embalming and the requirement under 7 MCAR sec. 1.024 which mandates that embalming must be performed in certain situations. In 7 MCAR sec. 1.024,1 this requirement is not conditioned upon prior authorization to embalm. Therefore, the Examiner concludes that the added provision as set forth in a. above would alleviate this problem.

25. Sec. 1.032 C.4. provides that copies of the written authorization to embalm be retained in the funeral establishment's files for three years and that a copy be made available to the client. This proposed rule would assure compliance with these rules and would provide the Commissioner of Health with the information needed in assessing compliance with the requirements of these rules.

a. Mrs. Chenoweth and Mr. Auld recommended that proposed sec. 1.032 C.4. be amended to read: ". . . a copy given to the person . . .", instead of ". . . made available to the persons . . . ".

b. The Metropolitan Senior Federation and Mr. L. Paul Burd specifically endorsed sec. 1.032 C.4. of the proposed rules.

c. The Examiner concludes that proposed sec. 1.032 C.4. is both needed and reasonable.

26. Sec. 1.032 C.5. requires that the written authorization contain precise language to assure uniformity and to further require a statement that the client understands that embalming is not required except when one of the four listed specific conditions of death and final disposition apply.

a. Elizabeth Oschwald recommended that proposed sec. 1.032 C.5., item 3, be amended to read:

> "That embalming be required when transportation is within the state, but across sanitary district lines, and the destination is not to be reached within 18 hours."

Mrs. Oschwald stated that item 3 of the proposed authorization form allows for a too liberal interpretation.

b. The Metropolitan Senior Federation stated that it most strongly endorsed proposed sec. 1.032 C.5.

c. Mr. Auld suggested that the present language in this proposed rule might be clarified by deleting the words "except as provided by 7 MCAR sec. 1.024 when:", and replacing them with the single word "Unless".

d. Mr. Russell G. Peterson, Funeral Director, recommended that proposed sec. 1.032 C.5., item 4, be amended from "72 hours" to "24 hours". In support of this amendment, Mr. Peterson stated the following:

> This idea of hoping that a Minnesota Funeral Director can keep a body in his place up to close to 3 days without embalming is asking too much. Very few, if any, funeral directors have refrigeration at their facilities. From the moment a body dies, pathogens move rapidly and the body should be cared for promptly and it would be if the 24 hour rule was put into effect.

e. Mr. Stensland commented that it is not medically proven that embalming is necessary to prevent health hazards to others from dead human bodies.

f. The Examiner concludes that proposed Rule sec. 1.032 C.5. is both needed and reasonable.

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

CONCLUSIONS

1. Due, timely and adequate legal notice of the hearing was properly served and filed by the Department of Health. All other substantive and procedural requirements of statute or rule have been complied with.

2. Pursuant to Minn. Stat. sec. 15.052, subd. 3, it is the duty of the Hearing Examiner to: ". . . (4) make a report on each proposed agency action . . . taking notice of the degree to which the agency has (i) documented its statutory authority to take the proposed action; (ii) fulfilled all relevant, substantive and procedural requirements of law or rule; and (iii) demonstrated the need for and reasonableness of its proposed action with an affirmative presentation of facts."

3. The Department of Health has documented its statutory authority to promulgate the proposed rules.

4. The Department of Health has demonstrated the need for and reasonableness of the proposed rules by an affirmative presentation of facts.

5. Although the Examiner has concluded that the proposed rules, as amended, are both needed and reasonable, the Department should further examine and evaluate the comments which were offered by the public both at the hearing and in written form to the Examiner. Several of the suggestions had merit and, if implemented, may result in a better, more comprehensive rule. The decision to adopt the "best" rule is solely within agency discretion.

Based upon the foregoing Conclusions, the Hearing Examiner makes the following:

RECOMMENDATION

That the Department of Health adopt the proposed rules as amended by the Department and as recommended to be amended in this Report and on the basis of the record made herein. (See Findings 11.c., 12.e., 12.f., 21.f., 24.d.)

Dated this 3 day of May, 1979.

Peter C. Erickson

PETER C. ERICKSON

STATE OF MINNESOTA)
(ss.
COUNTY OF RAMSEY)

AFFIDAVIT OF SERVICE

Eileen A. Gaiovnik, being first duly sworn, deposes and says that on the 3rd day of April, 1979, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Report of Hearing Examiner, HLTH-79-027-PE

unstamped, by placing in the designated tray to be collected by messenger for delivery to the central mailing station as required by Minn. Stat. § 16.54 (1974), a true and correct copy thereof on the individual named below.

Eileen A. Gaiovnik

Subscribed and sworn to before me this 3rd day of April, 1979.

Mr. William G. Miller
Special Assistant Attorney General

Sandra Haven

SANDRA A. HAVEN
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires July 29, 1983

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

COMMISSIONER OF HEALTH

In the Matter of Proposed Amendments to Rules Relating to the Examination and Licensing of Morticians

STATEMENT OF NEED AND REASONABLENESS

The above-captioned rules are proposed amendments to existing rules of the Commissioner of Health (hereinafter "Commissioner") relating to Mortuary Science, 7 MCAR § 1.021-1.035 including a proposed new rule, 7 MCAR § 1.032. The statutory authority of the Commissioner for promulgation of these rules is contained in Minn. Stat. §§ 149.02 and 149.05, Minn Laws of 1973, ch. 638, and Minn. Stat. §§ 144.12 and 144.122 (1978). The adoption of these rules and amendments is proposed to meet the need to clarify current language regarding procedure and educational standards for licensing, to implement the examination approval mandated by Minn. Law 1973, ch. 638, to bring the rules terminology in accord with current usage, to implement the mandate of section 149.05 as it relates to itemizations of funeral costs, and to repeal sections no longer thought to be necessary.

Minn. Stat. § 149.02 (1978) provides: "The state commissioner of health is hereby authorized and empowered to examine, upon submission of an application therfor and fee as prescribed by the commissioner pursuant to section 144.122, all applicants for license to practice mortuary science or funeral directing and to determine whether or not the applicants possess the necessary qualifications to practice . . . ."

Minn. Stat. § 149.05, subd. 4 (1978) provides: "The commissioner shall make and enforce reasonable [rules] not inconsistent with the provisions of this chapter for the examination and licensing of morticians and funeral directors . . . ."

Minn. Laws 1973, ch. 638 mandates all licensing and examining agencies to use the national standardized tests as soon as possible and to the extent possible.

The need to initiate the administrative process necessary to implement these amendments is not limited solely to the above-noted legislative directive. It is through proposing these amendments and the holding of a public hearing thereon that the public and all interested persons and affected persons are provided the opportunity to comment upon and thus help to shape the procedures and requirements to be used by the Commissioner in carrying out legislative policy. Additionally, the rule-making process serves as a means of providing full notice to all interested persons what the procedures and requirements will be.

The Minnesota Commissioner of Health, pursuant to Minn. Stat. § 15.0412, subd. 4 (1978) hereby affirmatively presents facts establishing the reasonableness and justifying the adoption of the above-captioned proposed rules. The need and statutory authority for the proposed amendments has been set forth above.

7 MCAR § 1.022A MORTICIANS - EXAMINATION AND LICENSE REQUIREMENTS.

Section 1.

It is proposed that this section be reworded for clarity and to conform with current usage.

Pursuant to Minn. Laws 1977, ch. 305, § 7, the Minnesota Board of Health was abolished and all of its powers and duties were transferred to the Commissioner of Health. These proposed amendments make wording changes where appropriate to come into conformity with this statute.

Section 2.

Pursuant to Minn. Laws 1973, ch. 725, which changed the age of majority, the age requirements contained in these rules are proposed to be changed from 21 to 18.

The curriculum and credit hour changes proposed in the amendments have been recommended by an education consultant from the University of Minnesota. The adoption of these proposals would bring the rules into conformity with current educational and accreditational practice. Specifically, a stated credit hour requirement is proposed to replace the current requirement of "at least two scholastic years." Additionally, some adjustments have been made to the course

requirements, adding some coursework to the requirements in speech, English, sociology and psychology and deleting six credit hours from the natural science requirements. This balancing of the curriculum will better suit proposed applicants for the current practice of mortuary science, and closely parallels the curriculum requirements of the accrediting bodies currently approved by the federal Department of Health Education and Welfare. (See: Exhibit 1, attached hereto.)

Mr. Earl Burger

For many years the National Conference of Funeral Service Examining Boards of the United States, Inc., of which Minnesota is a member of long-standing, was the sole accrediting agency for colleges of mortuary science. Recent changes directed by the Federal Department of Health, Education and Welfare have placed accreditation in the American Board of Funeral Service Education and this accreditation process is now recognized by the Department of Health, Education and Welfare. In the interest of national uniformity mandated by the legislature in, inter alia, Minn. Laws 1973, ch. 638, it is proposed that this national development be recognized by Minnesota in rule form.

Section 3.

The use of the term "approved" in these proposed rules would grant to the Commissioner authority to accept the results of a national standardized examination prepared and administered by the Conference of Funeral Service Examining Boards as mandated by Minn. Laws 1973, ch. 638. The amendments would make it possible for the Commissioner to accept passage of the national board examination retroactively to January 1, 1976, and further authorizes a separate examination on the specifics of Minnesota law and rules of the Commissioner relative to the handling and disposition of human dead.

The amendments would also place in proper chronological sequence the currently stated requirements for licensure: completion of educational requirements, followed by passage of the national board examination and passage of the Commissioner's examination on Minnesota laws and rules prior to the one year period of traineeship.

Section 4.

Under the proposed amendments, the Commissioner may adopt the use of a national standardized examination and in practice the applicant will pay an examination fee directly to the Conference of Funeral Service Examining Boards, which will certify the results for the reviewal of the Commissioner. Therefore, it is proposed that the current examination fee be reduced from $50.00 to $25.00. The examination fee of $25.00 for the Commissioner's examination on Minnesota Law and rules is directly related to the cost of its administration. (See: Exhibit 2 attached hereto.)

At such time as all of the Commissioner's requirements for licensure are completed, the Commissioner, pursuant to Minn. Laws 1975, ch. 310, is authorized to charge a license certificate issuance fee of $25.00. This fee closely approximates the costs involved in administering the program (See: Exhibit 2).

7 MCAR § 1.032 MORTICIANS AND FUNERAL DIRECTORS - ITEMIZATION OF FUNERAL COSTS AND AUTHORIZATION TO EMBALM.

Section A. Definitions - A statewide definition of terms used in the rule including the ten items of cost listed in Minn. Stat. § 149.09, subd. 1 is necessary for clarity. A survey made by the Minnesota Office of Consumer Services within the Department of Commerce (hereinafter "Survey") (copy attached as Exhibit 3) listed 10% (question #16) of cases where no item-by-item breakdown was provided.

Section B. Itemization of funeral costs.

1a. It is proposed to require disclosure of items and costs together with the statement on each disclosure, "Minnesota law does not require that remains be placed in a casket before or at the time of cremation." The Survey listed 32% (question #22) of cases where clients were of the understanding that caskets were always required.

b. It is proposed to rquire a copy of the itemization statement to be given the client with the establishment retaining its copy for three years. The Survey listed 24% (question #14) of the cases where no copy was given to the client after making arrangements.

c. It is proposed to require that any charges not known at the time of arrangements be estimated and the client advised of the exact charge as soon as practicable. This is believed to be the best and fairest way of assuring proper notice to the purchases of services while maintaining sufficient flexibility for the proper delivery of such services.

d. It is proposed to require "cash advanced" items to be billed to the client at the net amount paid by the establishment. The Federal Trade Commission Staff Report on Funeral Service includes a policy statement by the Conference of Funeral Service Examining Boards of the U.S., Inc. that "any items billed as cash advances must not by discount or otherwise cost the funeral firm a different sum of money than is billed." (See Exhibit 4 attached hereto.)

Section C. Authorization to embalm.

1. It is proposed to require written permission signed by the person lawfully entitled to custody of the body. The Survey listed 33% (question #20) of the cases where no authorization was obtained before embalming.

2. It is proposed to require that oral permission shall constitute approval to embalm, but that written authorization shall be obtained as soon as practicable.

3. It is proposed to require that the establishment, when requested to by the client, to explain and make available a copy of 7 MCAR § 1.024 which mandates embalming in certain instances, in order to insure maximum notice of the requirements to the purchaser.

4. It is proposed to require that copies of the authorization be retained in the establishment files for three years and that a copy be made available to the client to assure compliance with these rules and to provide the Commissioner with the information needed to assess compliance with the requirements of these rules.

5. It is proposed to require that the written authorization contain precise and given language to assure uniformity and to further require a statement that the client understands that embalming is not required except when one of the four listed specific conditions of death and final disposition apply.

All of the above proposed requirements of Section C are reasonable in light of the results of the Survey, which demonstrated that a substantial number of persons who made arrangements for funeral, burial or cremation did so without the benefit of knowledge of the facts and circumstances necessary or reasonably helpful in the making of reasoned decisions. The proposed amendments directly relate to the most significant problems demonstrated by the Survey.

Dated: March 2, 1979

STATE OF MINNESOTA

COMMISSIONER OF HEALTH

for Allen E. Fiper M.D. Deputy Commissioner

GEORGE R. PETTERSEN, M.D.
Commissioner of Health

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

COMMISSIONER OF HEALTH

In the Matter of Proposed Amendments to Rules Relating to the Examination and Licensing of Morticians

STATEMENT OF AGENCY WITNESSES

The following persons will represent the Commissioner of Health at the hearing in the above referenced matter:

Eugene Larson

Corrine Larson

Brian D. Junker

Arthur E. Johnson

Earl L. Burger

Maynard Heitner

Dated: March 2, 1979

WILLIAM G. MILLER
Special Assistant
Attorney General

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

COMMISSIONER OF HEALTH

In the Matter of Proposed Amendments to Rules Relating to the Examination and Licensing of Morticians

NOTICE OF HEARING

Notice is hereby given that a public hearing in the above-entitled matter will be held pursuant to Minn. Stat. § 15.0412, subd. 4 (1978), in Room 105, Minnesota Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota, March 29, 1979, commencing at 9:30 a.m.

All interested or affected persons will have an opportunity to participate concerning the adoption of the proposed amendments to these rules captioned above. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted by mail to Peter Erickson, Hearing Examiner, at Room 300, 1745 University Avenue, Saint Paul, Minnesota 55104, telephone (612) 296-8118, either before the hearing or within five (5) days after the close of the hearing or for a longer period not to exceed 20 calendar days if so ordered by the hearing examiner. All such statements will be entered into and become part of the record. Testimony or other evidence to be submitted for consideration should be pertinent to the matter at hand. For those wishing to submit written statements or exhibits, it is requested that at least three (3) copies be furnished. In addition, it is suggested, to save time and avoid duplication, that those persons, organizations, or associations having a common viewpoint or interest in these proceedings join together where possible and present a single statement in behalf of such interests. The conduct of the hearing shall be governed by the rules of the Office of Hearing Examiners.

A copy of the proposed rules is attached hereto and made a part hereof.

Copies of the proposed amendments are now available and at least one free copy may be obtained by writing to Eugene Larson, Supervisor, Mortuary Science Unit, Minnesota Department of Health, 717 Delaware Street Southeast, Minneapolis, Minnesota 55440. Additional copies will be available at the door on the date of the hearing.

NOTICE: The proposed Amendments are subject to change as a result of the rule hearing process. The Agency therefore strongly urges those who are potentially affected in any manner by the substance of the proposed amendments to participate in the rule hearing process.

The statutory authority of the Commissioner to promulgate and adopt these amendments is contained in Minn. Stat. §§ 149.01-149.09 (1978) as well as Minn. Stat. §§ 144.12 and 144.122 (1978).

Notice is hereby given that 25 days prior to the hearing, a statement of need and reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This statement of need and reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed amendments. Copies of the statement of need and reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

In addition, please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he commences lobbying. A lobbyist is defined in Minn. Laws 1978, ch. 463, § 11 as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155, telephone (612) 296-5615.

Notice: Any person may request notification of the date on which the hearing examiner's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner (in the case of the hearing examiner's report), or to the agency (in the case of the agency's submission or resubmission to the Attorney General).

Dated: February 12, 1979

STATE OF MINNESOTA

COMMISSIONER OF HEALTH

George R. Petterson MD

GEORGE R. PETTERSEN, M.D.
Commissioner

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

In the Matter of Proposed Amendments
to Rules Relating to the Examination
and Licensing of Morticians

AFFIDAVIT
OF MAILING

Verna M. Nelson, being first duly sworn, deposes and says:

That on the 22nd day of February, 1979, at the City of Minneapolis, County of Hennepin, State of Minnesota, she served the attached Notice of Hearing by depositing in the United States mail at said City of Minneapolis, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the Certificate of the Secretary of State attached and made a part hereof as Exhibit A, to all persons and associations at the addresses listed on Exhibit B, attached and made a part hereof, ~~as well as to all members of the Minnesota Legislature~~ as of the date of mailing.

Verna M. Nelson

Subscribed and sworn to before
me this 22nd day of February, 1979.

Marie B. Tromiczak

MARIE B. TROMICZAK
NOTARY PUBLIC - MINNESOTA
HENNEPIN COUNTY
My Commission Expires Oct. 9, 1980

Rules As Adopted

7 MCAR 1.022 MORTICIANS - EXAMINATION AND LICENSE REQUIREMENTS:

A. Every person who wishes to qualify as competent to engage in the practice of mortuary science, shall comply with the following requirements:

1. An applicant shall apply to the Minnesota Commissioner of Health for a license. The application shall contain the full name of the applicant, age, mailing address and such other pertinent identifying information as the Commissioner may require.

2. The applicant shall be at least 18 years of age and shall have successfully completed a minimum of 60 semester or 90 quarter credits at an accredited college or university with credit evaluation in course areas as follows: communications 15 quarter credits to include speech and English, the social sciences, 18 quarter credits to include sociology and psychology; natural science 21 quarter credits to include general or inorganic chemistry and biology or zoology and elective areas, 36 quarter credits. Following this academic work, the applicant shall have completed and have secured a verification of completion of the prescribed course of study from any college of Mortuary Science accredited by the Conference of Funeral Service Examining Boards of U. S., Inc. or the American Board of Funeral Service Education. ~~The Commissioner may at his discretion vary the number of semester or quarter credits in specified areas.~~

3. After these educational qualifications, in the order specified have been acquired, the applicant shall attain a satisfactory level of achievement in a comprehensive examination, approved by the Commissioner of Health in such subjects related to the practice of mortuary science as the Commissioner may prescribe. If an applicant for a license to practice mortuary science has satisfactorily passed the National Board examination given by the Conference of Funeral Service Examining Boards of the U.S., Inc., and is so certified to the Commissioner by the Conference, effective January 1, 1976, the Commissioner may in his/her discretion accept the results of the National Board and require the applicant to successfully pass an examination on laws of the State of Minnesota and the Rules of the Commissioner pertaining to registration of deaths, embalming, transportation, disposition of dead human bodies and funeral directing. In making the decision whether to accept the results of such examination, the Commissioner shall determine that the knowledge and skills assessed by the examination adequately and accurately evaluates the knowledge and skills needed for actual job performance and to ensure that the public is adequately served. An applicant who fails to attain a satisfactory level of achievement on any examination given by or on behalf of the Commissioner may be re-examined on application at the next examination. After successful completion of required examinationsthe applicant shall serve at least one year as a trainee in mortuary science under a mortician licensed by the State of Minnesota. During such period of experience the applicant shall be registered as a trainee in Mortuary Science with the Commissioner and shall assist under the supervision of a mortician in embalming at least 25 bodies and in the direction of at least 25 funerals.

4. License Application, Renewal and Endorsement Fees.
An applicant for examination for a license in mortuary science, shall submit an application therefor on forms provided by the Commissioner of Health together with a fee of $25.00.

When the applicant has successfully completed the examination and requirements for original license, the applicant shall submit to the Commissioner a license application on a form prescribed by the Commissioner and a fee of $25.00 payable to, The Treasurer, State of Minnesota, after which the license shall be duly issued.

An applicant for a license in mortuary science by endorsement without examination as to technical qualification pursuant to Minn. Stat. 149.03, subd. 2, shall submit an application therefor on forms provided by the Commissioner of Health together with a fee of $75.00. The applicant shall prior to licensure pass an examination on the Minnesota laws and rules relating to mortuary science only.

An applicant for a mortuary science courtesy card, issued pursuant to Minn. Stat. 149.03, subd. 2, shall submit an application therefor on forms provided by the Commissioner of Health together with a fee.

Initial and renewal mortuary science licenses or courtesy cards shall be issued for the calendar year for which application is made and shall expire on December 31 of that year.

Renewals thereof shall be obtained on an annual basis. Application for license or courtesy card renewal, together with the renewal fee of $25.00, shall be submitted to the Commissioner of Health on forms provided no later than December 31 of the year preceding the year for which application is made. Failure to submit the renewal application and fee by the date specified above shall result in an increase in the fee to $35.00. If the renewal application and fee are not submitted within thirty-one (31) days after the expiration date, the license or courtesy card shall automatically lapse. Such persons shall be required to apply for a new license and meet all the requirements therefor.

7 MCAR § 1.032
ITEMIZATION AND AUTHORIZATION TO EMBALM

A. Definitions

For the purposes of: 7 MCAR §§ 1.021 - 1.032, the words, terms and phrases listed below in this subdivision shall have the meaning stated herein, unless the language and context clearly indicates that a different meaning is intended.

1. CASKET - a container commonly used to enclose a dead human body for the purposes of the funeral and final disposition.

2. BURIAL VAULT/INTERMENT RECEPTACLE - and outer container used to enclose the casket for earth burial.

3. USE OF FACILITIES

   a. Provision of chapel or room for the funeral or memorial service and/or provision of facilities for parking, counselling offices and other administrative purposes.
   b. Provision of chapel or room for visitation/reviewal.

4. TRANSPORTATION COSTS - includes the vehicle used for the initial transfer of the deceased, funeral coach, funeral sedans, flower car, service/utility car and the use of common carriers where needed.

5. FUNERAL SERVICE MERCHANDISE - includes such items as clothing, register books, cards and religious and fraternal items necessary to the conduct of the service.

6. EMBALMING - a process of chemically treating the dead human body to reduce the presence and growth of organisms, to retard organic decomposition and to restore an acceptable physical appearance.

7. PREPARATION OF THE BODY - includes such items of care as the setting of features; restorative procedures; washing; disinfecting; care of hair; shaving; dressing and casketing.

8. PROFESSIONAL SERVICES - includes the provision of staff for arrangements, visitations, funeral, memorial service when the body is not present, final disposition and administrative services such as counseling, securing and preparing necessary documents.

9. CASH ADVANCED ITEMS- items of merchandise and services provided by other than the mortician, funeral director or funeral establishment, the liability for which is incurred by the mortician, funeral director or funeral establishment on behalf of the funeral arranger and listed on the itemization form.

10. CREMATION/CALCINATION - the use of direct flames or intense heat to reduce the dead human body to ashes and inorganic bone fragments.

11. DESTINATION - the city or town of final disposition.

12. DISPOSAL UNIT - a container other than a casket used for burial, cremation, calcination or entombment of a dead human body.

13. FUNERAL - the rites or ceremonies connected with the final disposition of a dead human body with the body present.

B. Itemization of funeral costs

1. Before final agreement is reached between the client and funeral establishment the mortician or funeral director shall give or cause to be given to the person(s) making arrangements, a written disclosure with the items and costs listed separately as required by Minn. Stat. 149.09 subd. 1.

a. Minimum items - as a minimum the disclosure shall include a statement of charges for casket, burial vault, use of facilities for reviewal, use of facilities for funeral services, specifically itemized transportation costs, specifically itemized funeral service merchandise, embalming, preparation of the body, other professional services, and anticipated cash advances and expenditures. When cremation is to be the method of final disposition the disclosure shall have printed in conspicuous print: "Minnesota law does not require that remains be placed in a casket before or at time of cremation."

b. Copy given - a copy of the itemized statement (funeral expense contract) shall be given the person(s) making funeral arrangements. The contract shall be signed by both parties and the funeral establishment shall retain a copy for three years thereafter.

c. Charges not known - if the charge for any item is not known at the time the contract is entered into, the establishment representative shall give his/her best estimate of the charges and advise the purchaser(s) of the exact charge as soon as the information becomes available.

d. Net amount billed - no funeral establishment shall bill or cause to be billed any item that is referred to as a "cash advanced" item unless the net amount paid for such item or items by the funeral establishment is the same as is billed to the funeral establishment. The term net is not meant to include any discounts that may be allowed for prompt payment by the funeral establishment.

C. Authorization to embalm

1. Who grants permission - written authorization for embalming a dead human body shall be obtained from the person lawfully entitled to custody of the body or from the individual prior to his/her death.

2. Oral permission procedure - oral permission shall constitute approval to proceed with embalming, however, the establishment representative must specifically use the term "embalm" in securing oral permission. Written authorization shall be obtained as soon as practicable.

3. Embalming mandate - upon request the mortician or funeral director shall explain the requirements of 7 MCAR § 1.024 which in some instances mandate embalming and make available a copy of 7 MCAR § 1.024. When embalming is required as provided in 7 MCAR § 1.024, permission to embalm shall, as a matter of law, be implied.

4. Retention of copy - the written authorization shall be retained in the establishment record of the deceased for three years and a copy made available to the person(s) granting authority.

5. Form of authorization to embalm - the written authorization statement shall be as follows:

AUTHORIZATION TO EMBALM

I authorize_____and its staff, agents or representative to embalm the body of_____.

I am a relative of the deceased and/or am entitled to custody of the deceased.

I understand that embalming is not required by Minnesota law except as provided by 7 MCAR § 1.024 when:

1) The deceased is to be sent out of state by common carrier or aircraft,

2) Death is due to communicable disease,

3) More than 18 hours will elapse from time of death to arrival at the destination, or

4) Final disposition of the deceased is longer than 72 hours after death.

_____
name relationship

_____
name establishment representative

7 MCAR 1.022 MORTICIANS EXAMINATION AND LICENSE REQUIREMENTS: Rules As Adopted

A. Every person who wishes to qualify as competent to engage in the practice of mortuary science, shall comply with the following requirements:

1. An applicant shall apply to the Minnesota Commissioner of Health for a license. The application shall contain the full name of the applicant, age, mailing address and such other pertinent identifying information as the Commissioner may require.

2. The applicant shall be at least 18 years of age and shall have successfully completed a minimum of 60 semester or 90 quarter credits at an accredited college or university with credit evaluation in course areas as follows: communications 15 quarter credits to include speech and English, the social sciences, 18 quarter credits to include sociology and psychology; natural science 21 quarter credits to include general or inorganic chemistry and biology or zoology and elective areas, 36 quarter credits. Following this academic work, the applicant shall have completed and have secured a verification of completion of the prescribed course of study from any college of Mortuary Science accredited by the Conference of Funeral Service Examining Boards of U. S., Inc. or the American Board of Funeral Service Education. ~~The Commissioner may at his discretion vary the number of semester or quarter credits in specified areas.~~

3. After these educational qualifications, in the order specified have been acquired, the applicant shall attain a satisfactory level of achievement in a comprehensive examination, approved by the Commissioner of Health in such subjects related to the practice of mortuary science as the Commissioner may prescribe. If an applicant for a license to practice mortuary science has satisfactorily passed the National Board examination given by the Conference of Funeral Service Examining Boards of the U.S., Inc., and is so certified to the Commissioner by the Conference, effective January 1, 1976, the Commissioner may in his/her discretion accept the results of the National Board and require the applicant to successfully pass an examination on laws of the State of Minnesota and the Rules of the Commissioner pertaining to registration of deaths, embalming, transportation, disposition of dead human bodies and funeral directing. In making the decision whether to accept the results of such examination, the Commissioner shall determine that the knowledge and skills assessed by the examination adequately and accurately evaluates the knowledge and skills needed for actual job performance and to ensure that the public is adequately served. An applicant who fails to attain a satisfactory level of achievement on any examination given by or on behalf of the Commissioner may be re-examined on application at the next examination. After successful completion of required examinationsthe applicant shall serve at least one year as a trainee in mortuary science under a mortician licensed by the State of Minnesota. During such period of experience the applicant shall be registered as a trainee in Mortuary Science with the Commissioner and shall assist under the supervision of a mortician in embalming at least 25 bodies and in the direction of at least 25 funerals.

4. License Application, Renewal and Endorsement Fees.
An applicant for examination for a license in mortuary science, shall submit an application therefor on forms provided by the Commissioner of Health together with a fee of $25.00.

When the applicant has successfully completed the examination and requirements for original license, the applicant shall submit to the Commissioner a license application on a form prescribed by the Commissioner and a fee of $25.00 payable to, The Treasurer, State of Minnesota, after which the license shall be duly issued.

An applicant for a license in mortuary science by endorsement without examination as to technical qualification pursuant to Minn. Stat. 149.03, subd. 2, shall submit an application therefor on forms provided by the Commissioner of Health together with a fee of $75.00. The applicant shall prior to licensure pass an examination on the Minnesota laws and rules relating to mortuary science only.

An applicant for a mortuary science courtesy card, issued pursuant to Minn. Stat. 149.03, subd. 2, shall submit an application therefor on forms provided by the Commissioner of Health together with a fee.

Initial and renewal mortuary science licenses or courtesy cards shall be issued for the calendar year for which application is made and shall expire on December 31 of that year.

Renewals thereof shall be obtained on an annual basis. Application for license or courtesy card renewal, together with the renewal fee of $25.00, shall be submitted to the Commissioner of Health on forms provided no later than December 31 of the year preceding the year for which application is made. Failure to submit the renewal application and fee by the date specified above shall result in an increase in the fee to $35.00. If the renewal application and fee are not submitted within thirty-one (31) days after the expiration date, the license or courtesy card shall automatically lapse. Such persons shall be required to apply for a new license and meet all the requirements therefor.

7 MCAR § 1.032
ITEMIZATION AND AUTHORIZATION TO EMBALM

A. Definitions

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1. CASKET - a container commonly used to enclose a dead human body for the purposes of the funeral and final disposition.

2. BURIAL VAULT/INTERMENT RECEPTACLE - and outer container used to enclose the casket for earth burial.

3. USE OF FACILITIES

   a. Provision of chapel or room for the funeral or memorial service and/or provision of facilities for parking, counselling offices and other administrative purposes.
   b. Provision of chapel or room for visitation/reviewal.

4. TRANSPORTATION COSTS - includes the vehicle used for the initial transfer of the deceased, funeral coach, funeral sedans, flower car, service/utility car and the use of common carriers where needed.

5. FUNERAL SERVICE MERCHANDISE - includes such items as clothing, register books, cards and religious and fraternal items necessary to the conduct of the service.

6. EMBALMING - a process of chemically treating the dead human body to reduce the presence and growth of organisms, to retard organic decomposition and to restore an acceptable physical appearance.

7. PREPARATION OF THE BODY - includes such items of care as the setting of features; restorative procedures; washing; disinfecting; care of hair; shaving; dressing and casketing.

8. PROFESSIONAL SERVICES - includes the provision of staff for arrangements, visitations, funeral, memorial service when the body is not present, final disposition and administrative services such as counseling, securing and preparing necessary documents.

9. CASH ADVANCED ITEMS- items of merchandise and services provided by other than the mortician, funeral director or funeral establishment, the liability for which is incurred by the mortician, funeral director or funeral establishment on behalf of the funeral arranger and listed on the itemization form.

10. CREMATION/CALCINATION - the use of direct flames or intense heat to reduce the dead human body to ashes and inorganic bone fragments.

11. DESTINATION - the city or town of final disposition.

12. DISPOSAL UNIT - a container other than a casket used for burial, cremation, calcination or entombment of a dead human body.

13. FUNERAL - the [redacted]tes or ceremonies connected w[redacted] the final disposition of a dead human body with the body present.

B. Itemization of funeral costs

1. Before final agreement is reached between the client and funeral establishment the mortician or funeral director shall give or cause to be given to the person(s) making arrangements, a written disclosure with the items and costs listed separately as required by Minn. Stat. 149.09 subd. 1.

a. Minimum items - as a minimum the disclosure shall include a statement of charges for casket, burial vault, use of facilities for reviewal, use of facilities for funeral services, specifically itemized transportation costs, specifically itemized funeral service merchandise, embalming, preparation of the body, other professional services, and anticipated cash advances and expenditures. When cremation is to be the method of final disposition the disclosure shall have printed in conspicuous print: "Minnesota law does not require that remains be placed in a casket before or at time of cremation."

b. Copy given - a copy of the itemized statement (funeral expense contract) shall be given the person(s) making funeral arrangements. The contract shall be signed by both parties and the funeral establishment shall retain a copy for three years thereafter.

c. Charges not known - if the charge for any item is not known at the time the contract is entered into, the establishment representative shall give his/her best estimate of the charges and advise the purchaser(s) of the exact charge as soon as the information becomes available.

d. Net amount billed - no funeral establishment shall bill or cause to be billed any item that is referred to as a "cash advanced" item unless the net amount paid for such item or items by the funeral establishment is the same as is billed to the funeral establishment. The term net is not meant to include any discounts that may be allowed for prompt payment by the funeral establishment.

C. Authorization to embalm

1. Who grants permission - written authorization for embalming a dead human body shall be obtained from the person lawfully entitled to custody of the body or from the individual prior to his/her death.

2. Oral permission procedure - oral permission shall constitute approval to proceed with embalming, however, the establishment representative must specifically use the term "embalm" in securing oral permission. Written authorization shall be obtained as soon as practicable.

3. Embalming mandate - upon request the mortician or funeral director shall explain the requirements of 7 MCAR § 1.024 which in some instances mandate embalming and make available a copy of 7 MCAR § 1.024. When embalming is required as provided in 7 MCAR § 1.024, permission to embalm shall, as a matter of law, be implied.

4. Retention of copy -- the written authorization shall be retained in the establishment record of the deceased for three years and a copy made available to the person(s) granting authority.

5. Form of authorization to embalm - the written authorization statement shall be as follows:

AUTHORIZATION TO EMBALM

I authorize_____and its staff, agents or representative to embalm the body of_____.

I am a relative of the deceased and/or am entitled to custody of the deceased.

I understand that embalming is not required by Minnesota law except as provided by 7 MCAR § 1.024 when:

1) The deceased is to be sent out of state by common carrier or aircraft,

2) Death is due to communicable disease,

3) More than 18 hours will elapse from time of death to arrival at the destination, or

4) Final disposition of the deceased is longer than 72 hours after death.

_____
name relationship

_____
name establishment representative

8/30/79

STATE REGISTER

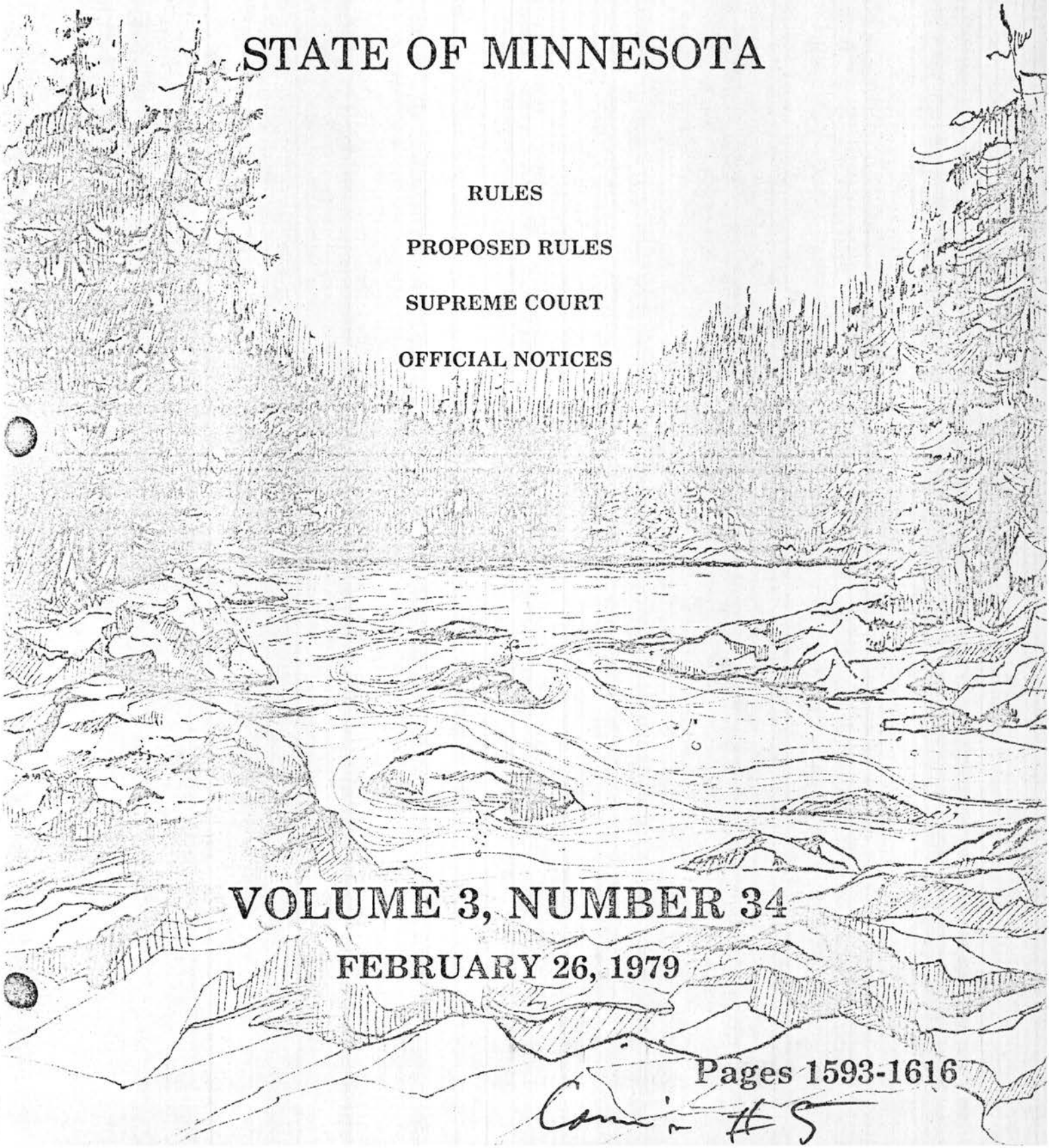
STATE OF MINNESOTA

RULES

PROPOSED RULES

SUPREME COURT

OFFICIAL NOTICES



VOLUME 3, NUMBER 34

FEBRUARY 26, 1979

Pages 1593-1616

Comm #5

CONTENTS

MCAR AMENDMENTS AND ADDITIONS 1596

CALENDAR

Public Hearings on Proposed Agency Rules 1596

RULES

Department of Health Health Systems Division

Adopted Rules for Changes in Rules for Hospital Rate Review 1596

Adopted Rule for Changes in Rules for Health Maintenance Organizations 1597

Department of Public Welfare Social Services Bureau

Adopted Rule Governing the Administration of Minnesota Public Social Services 1597

PROPOSED RULES

Department of Health Mortuary Science Division

Proposed Rules Relating to the Examination and Licensing of Morticians 1603

SUPREME COURT

Decisions Filed Friday, February 16, 1979 1607

OFFICIAL NOTICES

Board of Accountancy

Notice of Certified Public Accountant Examination . 1609

Cable Communications Board

Notice of Intent to Solicit Outside Opinion Regarding Creation of Classes of Cable Systems for Small Communities Revision of Transfer of Ownership Rules, Franchising Rules and Variance Rules 1609

Energy Agency

Northern Tier Pipeline Company Application for a Certificate of Need for a 40-Inch Crude Oil Pipeline Facility 1609

Ethical Practices Board

Regular Meeting 1612

The Metropolitan Council and Metropolitan Health Board

Public Hearing for the Joint Consideration of A Proposed Health Systems Plan for the Metropolitan Area and Amendments to the Health Guide Chapter of the Metropolitan Development Guide 1612

Department of Transportation

Notice of Intent to Solicit Outside Opinion Concerning Proposed Rules Governing the Program Development Process of the Mn/DOT Plan 1613

agency, these same policies and procedures may be utilized for purchased services not subject to ~~FFP~~ federal financial participation.

H.11.b.(1)(a) Claim ~~FFP~~ federal financial participation only for services purchased through a written contract. Every purchase of service contract ~~whether major or limited contract,~~ shall be completed, signed and approved by the county welfare or human services board prior to the provision of services.

PROPOSED RULES

Pursuant to Minn. Stat. § 15.0412, subd. 4, agencies must hold public hearings on proposed new rules and/or proposed amendment of existing rules. Notice of intent to hold a hearing must be published in the *State Register* at least 30 days prior to the date set for the hearing, along with the full text of the proposed new or amended rule. The agency shall make at least one free copy of a proposed rule available to any person requesting it.

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Health Mortuary Science Division

Proposed Rules Relating to the Examination and Licensing of Morticians

Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held pursuant to Minn. Stat. § 15.0412, subd. 4 (1978), in Room 105, Minnesota Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota, March 29, 1979, commencing at 9:30 a.m.

All interested or affected persons will have an opportunity to participate concerning the adoption of the proposed amendments to these rules captioned above. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted by mail to Peter Erickson, Hearing Examiner, at Room 300, 1745 University Avenue, Saint Paul, Minnesota 55104, telephone (612) 296-8118, either before the hearing or within five (5) days after the close of the hearing or for a longer period not to exceed 20 calendar days if so ordered by the hearing examiner. All such statements will be entered into and become part of the record. Testimony or other evidence to be submitted for consideration should be pertinent to the matter at hand. For those wishing to submit written statements or exhibits, it is requested that at least three (3) copies be furnished. In addition, it is suggested, to save time and avoid duplication, that those persons, organizations, or associations having a common viewpoint or interest in these proceedings join together where possible and present a single statement in behalf of such interests. The conduct of the hearing shall be governed by the rules of the Office of Hearing Examiners.

A copy of the proposed rules is attached hereto and made a part hereof.

Copies of the proposed amendments are now available and at least one free copy may be obtained by writing to Eugene Larson, Supervisor, Mortuary Science Unit, Minnesota Department of Health, 717 Delaware Street Southeast, Minneapolis, Minnesota 55440. Additional copies will be available at the door on the date of the hearing.

Notice: The proposed Amendments are subject to change as a result of the rule hearing process. The Agency therefore strongly urges those who are potentially affected in any manner by the substance of the proposed amendments to participate in the rule hearing process.

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

The statutory authority of the Commissioner to promulgate and adopt these amendments is contained in Minn. Stat. §§ 149.01-149.09 (1978) as well as Minn. Stat. §§ 144.12 and 144.122 (1978).

Notice is hereby given that 25 days prior to the hearing, a statement of need and reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This statement of need and reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed amendments. Copies of the statement of need and reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

In addition, please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he commences lobbying. A lobbyist is defined in Minn. Laws of 1978, ch. 463, § 11 as any individual:

(a) Engaged for pay or other consideration, or authoriz ed by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155, telephone (612) 296-5615.

Notice: Any person may request notification of the date on which the hearing examiner's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner (in the case of the hearing examiner's report), or to the agency (in the case of the agency's submission or resubmission to the Attorney General).

February 12, 1979

George R. Pettersen, M.D.
Commissioner of Health

Amendments as Proposed

7 MCAR § 1.022 Morticians — examination and license requirements.

A. Every person who wishes to qualify as competent to engage in the practice of mortuary science~~, as required by the laws of the State of Minnesota,~~ shall comply with the following requirements:

1. An applicant shall apply ~~He shall make application,~~ to the Minnesota ~~State Board board~~ Commissioner of Health for a license. ~~Such~~ The application shall contain the full name of the applicant ~~in full~~, age, ~~and the place of residence~~ mailing address and such other pertinent identifying information as the Commissioner may require. ~~It shall be accompanied by affidavits from at least two reputable residents of the county in which the applicant resides or proposes to carry on the practice of mortuary science, certifying that the applicant is of good moral character.~~

2. The applicant shall be at least ~~21~~ 18 years of age and shall have ~~satisfactorily~~ successfully completed ~~at least two scholastic years~~ a minimum of 60 semester or 90 quarter credits at an accredited college or university with ~~approximate~~ credit evaluation in course areas as follows: communications, 15 quarter credits to include speech and English, ~~15 quarter credits,~~ the social sciences, ~~16~~ 18 quarter credits to include sociology and psychology; natural science, ~~27~~ 21 quarter credits to include general or inorganic chemistry and biology or zoology; and elective areas, ~~32~~ 36 quarter credits. Following ~~such~~ this academic work, the applicant shall have completed ~~a course of study~~ and have secured a ~~certificate of graduation~~ verification of completion of the prescribed course of study from ~~the Department of Mortuary Science at the University of Minnesota or~~ any ~~school of embalming~~ college of Mortuary Science accredited by the Conference of Funeral Service Examining Boards of U.S., Inc. or the American Board of Funeral Service Education. ~~The Commissioner may at his discretion vary the number of semester or quarter credits in specified areas.~~

3. After ~~the~~ these educational qualifications, in the order ~~herein~~ specified have been acquired, the applicant shall ~~have served at least one year as a resident trainee in mortuary science under a mortician licensed in Minnesota. During the period of practical experience or traineeship the applicant shall have been registered as a trainee with the State Board of Health and shall have assisted under the supervision in embalming at least twenty-five bodies and in the direction of at least twenty-five funerals. The applicant shall~~ attain a satisfactory level of achievement in a comprehensive written examination, approved ~~given~~ by the ~~State board~~ Commissioner of Health in such subjects related to the practice of mortuary science as ~~anatomy, bacteriology, business methods, chemistry, pathology, public health laws and regulations, and the practice of mortuary~~

~~science~~ the Commissioner may prescribe. ~~At the discretion of the board, a practical examination in mortuary science may also be required.~~ If an applicant for a license to practice mortuary science has satisfactorily passed the National Board examination given by the Conference of Funeral Service Examining Boards of the U.S., Inc., and is so certified to the Commissioner by the Conference, effective January 1, 1976, the Commissioner may in his/her discretion accept the results of the National Board and require the applicant to successfully write an examination on laws of the state of Minnesota and the Rules of the Commissioner pertaining to registration of deaths, embalming, transportation, disposition of dead human bodies and funeral directing. An applicant who fails to attain a satisfactory level of achievement on any examination given by or on behalf of the Commissioner may be re-examined on application at the next ~~annual~~ examination. After successful completion of required examinations the applicant shall serve at least one year as a trainee in mortuary science under a mortician licensed by the State of Minnesota. During such period of experience the applicant shall be registered as a trainee in Mortuary Science with the Commissioner and shall assist under the supervision of a mortician in embalming at least 25 bodies and in the direction of at least 25 funerals.

4. License Application, Renewal and ~~Reciprocity~~ Endorsement Fees. An applicant for examination for a license in mortuary science, ~~by examination,~~ shall submit an application therefor on forms provided by the ~~State Board board~~ Commissioner of Health together with a fee of ~~$50.00~~ $25.00.

When the applicant has successfully completed the examination and requirements for original license, the applicant shall submit to the Commissioner a license application on a form prescribed by the Commissioner and a fee of $25.00 payable to, The Treasurer, State of Minnesota, after which the license shall be duly issued.

An applicant for a license in mortuary science by ~~reciprocity~~ endorsement without examination as to technical qualification pursuant to Minn. Stat. § 149.03, subd. 2, shall submit an application therefor on forms provided by the ~~State Board board~~ Commissioner of Health together with a fee of $75.00. ~~A reciprocal~~ The applicant shall prior to licensure ~~take and~~ pass an examination on the Minnesota laws and ~~regulations~~ rules relating to mortuary science only.

An applicant for a mortuary science courtesy card, issued pursuant to Minn. Stat. § 149.03, subd. 2, shall submit an application therefor on forms provided by the ~~State Board board~~ Commissioner of Health together with a fee.

Initial and renewal mortuary science licenses or courtesy cards shall be issued for the calendar year for which application is made and shall expire on December 31 of that year.

Renewals thereof shall be obtained on an annual basis. Application for license or courtesy card renewal, together with the renewal fee of $25.00, shall be submitted to the ~~State Board board~~ Commissioner of Health on forms provided ~~by it~~ no later than December 31 of the year preceding the year for which application is made. Failure to submit the renewal application and fee by the date specified above shall result in an increase in the fee to $35.00. If the renewal application and fee are not submitted within thirty-one (31) days after the expiration date, the license or courtesy card shall automatically lapse. Such persons shall be required to apply for a new license and meet all the requirements therefor.

Rule as Proposed (All new material)

7 MCAR § 1.032 Itemization and authorization to embalm.

A. Definitions. For the purposes of 7 MCAR §§ 1.021-1.032, the words, terms and phrases listed below in this subdivision shall have the meaning stated herein, unless the language and context clearly indicates that a different meaning is intended.

1. Casket: a container commonly used to enclose a dead human body for purposes of the funeral and final disposition.

2. Burial vault/interment receptacle: an outer container used to enclose the casket for earth burial.

3. Use of facilities:

a. Provision of chapel or room for the funeral or memorial service and/or provision of facilities for parking, counselling offices and other administrative purposes.

b. Provision of chapel or room for visitation/reviewal.

4. Transportation costs: includes the vehicle used for the initial transfer of the deceased, funeral coach, funeral sedans, flower car, service/utility car and the use of common carriers where needed.

5. Funeral service merchandise: includes such items as

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clothing, register books, cards and religious and fraternal items necessary to the conduct of the service.

6. Embalming: a process of chemically treating the dead human body to reduce the presence and growth of organisms, to retard organic decomposition and to restore an acceptable physical appearance.

7. Preparation of the body: includes such items of care as the setting of features; restorative procedures; washing; disinfecting; care of hair; shaving; dressing and casketing.

8. Professional services: includes the provision of staff for arrangements, visitations, funeral, memorial service when the body is not present, final disposition and administrative services such as counseling, securing and preparing necessary documents.

9. Cash advance items: items of merchandise and services provided by other than the mortician, funeral director or funeral establishment, the liability for which is incurred by the mortician, funeral director or funeral establishment on behalf of the funeral arranger and listed on the itemization form.

10. Cremation/calcination: the use of direct flames or intense heat to reduce the dead human body to ashes and inorganic bone fragments.

11. Destination: the city or town of final disposition.

12. Disposal unit: a container other than a casket used for burial, cremation, calcination or entombment of a dead human body.

13. Funeral: the rites or ceremonies connected with the final disposition of a dead human body with the body present.

B. Itemization of funeral costs.

1. Before final agreement is reached between the client and funeral establishment the mortician or funeral director shall give or cause to be given to the person(s) making arrangement, a written disclosure with the items and costs listed separately as required by Minn. Stat. § 149.09, subd. 1.

a. Minimum items. As a minimum the disclosure shall include a statement of charges for casket, burial vault, use of facilities for reviewal, use of facilities for funeral services, specifically itemized transportation costs, specifically itemized funeral service merchandise, embalming, preparation of the body, other professional services, and anticipated cash advances and expenditures. The disclosure shall have printed in conspicuous print: "Minnesota law does not require that remains be placed in a casket before or at time of cremation."

b. Copy given. A copy of the itemized statement (funeral expense contract) shall be given the person(s) making funeral arrangement. The contract shall be signed by both parties and the funeral establishment shall retain a copy for three years thereafter.

c. Charges not known. If the charge for any item is not known at the time the contract is entered into, the establishment representative shall give his/her best estimate of the charges and advise the purchaser(s) of the exact charge as soon as the information becomes available.

d. Net amount billed. No funeral establishment shall bill or cause to be billed any item that is referred to as a "cash advanced" item unless the net amount paid for such item or items by the funeral establishment is the same as is billed to the funeral establishment.

C. Authorization to embalm.

1. Who grants permission. Written authorization for embalming a dead human body shall be obtained from the person lawfully entitled to custody of the body or from the individual prior to his/her death.

2. Oral permission procedure. Oral permission shall constitute approval to proceed with embalming, however, the establishment representative must specifically use the term "embalm" in securing oral permission. Written authorization shall be obtained as soon as practicable.

3. Embalming mandate. Upon request the mortician or funeral director shall explain the requirements of 7 MCAR § 1.024 which in some instances mandate embalming and make available a copy of 7 MCAR § 1.024.

4. Retention of copy. The written authorization shall be retained in the establishment record of the deceased for three years and a copy made available to the person(s) granting authority.

5. Form of authorization to embalm. The written authorization statement shall be as follows:

AUTHORIZATION TO EMBALM

I authorize _____ and its staff, agents or representative to embalm the body of _____ _____. am a relative of the deceased and/or am entitled to custody of the deceased. I understand that embalming is not required by Minnesota law except as provided by 7 MCAR § 1.024 when:

1) The deceased is to be sent out of state by common carrier,

2) Death is due to communicable disease,
3) More than 18 hours will elapse from time of death to arrival at the destination, or
4) Final disposition of the deceased is longer than 72 hours after death.

name relationship

name establishment representative



The Minnesota gopher, famous symbol of the University of Minnesota, is actually the 13-lined ground squirrel. It weighs from five to nine ounces, and is buff colored with light and dark stripes down its back. (Drawing by Dan Metz, courtesy of the Minnesota Historical Society)

SUPREME COURT

Decisions Filed Friday, February 16, 1979

Compiled by John McCarthy, Clerk

48874/52 Roger W. Jensen, petitioner, Appellant, vs. Lorraine O. Jensen. Hennepin County.

Inclusion of present value of noncontributory vested pension plan in marital assets subject to division upon dissolution.

Affirmed. Sheran, C. J. Took no part, Otis, J.

49671/61-1/2 Ordner T. Bundlie, Jr., Appellant, vs. David E. Christensen, contestee. Pipestone County.

Campaign charges of profligate judicial administration not the responsibility of incumbent did not violate prohibition of false information in campaigns.

The Code of Judicial Conduct and Code of Professional Responsibility must be read into provisions of election law.

Affirmed. Sheran, C. J.

47687/264 State of Minnesota vs. William George Ford, Appellant. Hennepin County.

The defense of entrapment is a predisposition-based defense which the jury must decide unless the defendant elects otherwise, in which case — as we held in State v. Grilli, 304 Minn. 80, 230 N. W. 2d 445 (1975) — the trial court, acting as trier of fact, decides the issue. No matter how involved the government is in inducing the commission of a crime, the defense of entrapment will not bar conviction if the government can prove beyond a reasonable doubt that the defendant was predisposed to commit the crime. Here the defendant elected to have the trial court decide entrapment, and the trial court did not clearly err in finding that there was no entrapment.

Unlike the entrapment defense, the due process defense bars conviction of even a predisposed defendant if the conduct of the government in participating in or inducing the commission of the crime is sufficiently outrageous. This is a legal defense which must be left to the court to apply. Here the court concluded that defendant failed to establish a due-process violation and we affirm this decision.

Affirmed. Rogosheske, J. Dissenting, Otis and Wahl, JJ.

47975/308 State of Minnesota vs. John Wayne Michaud, Jr., Appellant. St. Louis County.

The imposition of an extended term pursuant to Minn. St. §§ 609.155 and 609.16 is authorized, based upon the trial

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STATE OF MINNESOTA
COUNTY OF RAMSEY

CERTIFICATE

In the matter of the Proposed ~~Adoption~~ Amendments of Rules ~~of~~ Relating to the ~~Division~~ Examination ~~Governing~~ and Licensing of Morticians

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I hereby certify that the attached 585 labels 9 sheets constitute the complete list of persons, associations, and other interested groups who as of 1:00 o'clock P.M, this 22nd day of January, 1979, have requested pursuant to M.S. 1974, 15.0412, that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

Secretary of State
Joan Anderson Growe

By Dennis Gaalt

STATE OF MINNESOTA)
)ss.
COUNTY OF HENNEPIN)

BEFORE THE MINNESOTA
COMMISSIONER OF HEALTH

In the Matter of Proposed Amendments
to Rules Relating to the Examination
and Licensing of Morticians

AFFIDAVIT OF RECEIPT
OF THE SECRETARY
OF STATE'S LIST

Eugene M. Larson, being first duly sworn upon oath, deposes and says:

1. That he is an employee of the Minnesota Commissioner of Health.

2. That on the 22nd day of January, 1979, he called the Minnesota Secretary of State's office and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules or amendments thereto pursuant to Minn. Stat. § 15.0412, subd.4 (1978).

3. That on the 22nd day of January, 1979, in response to the above request, the Secretary of State provided him with such a list, a photocopy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

Eugene M. Larson

Subscribed and sworn to before me
this 2nd day of March, 1979.

Donald P. Gutzman

DONALD P. GUTZMAN
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires Sept. 21, 1984

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

COMMISSIONER OF HEALTH

In the Matter of Proposed Amendments to Rules Relating to the Examination and Licensing of Morticians

ORDER FOR HEARING

To effectively implement Minn. Stat. §§ 149.02 and 149.03 (1978), the Minnesota Commissioner of Health deems it necessary to consider adoption of the proposed amendments captioned above pursuant to the authority vested in him by these statutes.

NOW, THEREFORE, IT IS ORDERED this 12 day of February, 1979, that a public hearing on the proposed rules captioned above be held in Room 105, Minnesota Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota, on March 29, 1979, commencing at 9:30 a.m., and continuing until all persons or representatives of associations or other interested groups have had an opportunity to be heard.

IT IS FURTHER ORDERED that notice of said hearing be published in the State Register and be given to all persons or representatives of associations or other interested groups who have registered their names with the Secretary of State for that purpose and to all persons who are presently members of the Minnesota Legislature.

STATE OF MINNESOTA

COMMISSIONER OF HEALTH

George R. Pettersen MD

GEORGE R. PETTERSEN, M.D.
Commissioner of Health

STATEMENT OF COMPLIANCE WITH

MANUAL OF RULE MAKING PROCEDURES

I, Special Assistant Attorney General William G. Miller, do hereby declare that I have examined the proposed Amendments to Rules relating to The Examination and Licensing of Morticians and all related documents and that, based on such examinations and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed.

Dated: January 8, 1980

WILLIAM G. MILLER
Special Assistant
Attorney General