
BOARD OF FUNERAL SERVICE RULES

AS OF JUNE 30, 2021

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DEPARTMENT OF LABOR AND INDUSTRY

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Subchapter 1

Organizational Rule

24.147.101 BOARD ORGANIZATION (1) The Board of Funeral Service hereby adopts and incorporates the organizational rules of the Department of Labor and Industry as listed in chapter 1 of this title. (History: 37-19-202, MCA; IMP, 2-4-201, MCA; Eff. 12/31/72; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1996 MAR p. 2425, Eff. 9/20/96; TRANS, from Commerce, 2002 MAR p. 790.)

Subchapter 2

Procedural Rules

24.147.201 PROCEDURAL RULES (1) The Board of Funeral Service hereby adopts and incorporates the procedural rules of the Department of Labor and Industry as listed in chapter 2 of this title. (History: 37-19-202, MCA; IMP, 2-4-201, MCA; Eff. 12/31/72; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1996 MAR p. 2425, Eff. 9/20/96; TRANS, from Commerce, 2002 MAR p. 790.)

24.147.202 CITIZEN PARTICIPATION RULES (1) The Board of Funeral Service hereby adopts and incorporates by this reference the public participation rules of the Department of Commerce as listed in chapter 2 of this title. (History: 37-19-202, MCA; IMP, 2-3-103, MCA; NEW, Eff. 4/4/77; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1996 MAR p. 2425, Eff. 9/20/96; TRANS, from Commerce, 2002 MAR p. 790.)

Subchapter 3

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24.147.301 CONTINUING EDUCATION DEFINITIONS (REPEALED)

(History: 37-1-319, 37-19-202, MCA; IMP, 37-1-306, MCA; NEW, 1983 MAR p. 273, Eff. 4/1/83; AMD, 1995 MAR p. 845, Eff. 5/12/95; AMD, 1996 MAR p. 2425, Eff. 9/20/96; TRANS, from Commerce, 2002 MAR p. 790; REP, 2013 MAR p. 1191, Eff. 7/12/13.)

24.147.302 DEFINITIONS As used in this chapter, the following definitions apply:

(1) "Authorization for Removal, Transportation and Final Disposition of a Dead Body (ART) form" means the form developed by the Department of Public Health and Human Services per 50-15-405, MCA, which provides:

(a) authorization for removal from place of death per 50-15-405, MCA; and
(b) authorization from the coroner to cremate per 46-4-122 and 50-15-405, MCA.

(2) "Change in ownership" means when more than 50 percent of the equitable ownership of a mortuary, branch establishment, crematory, or cemetery is transferred to one or more persons or any other legal entity, in a single transaction or in a related series of transactions.

(3) "Cremation authorization form" means an agreement executed between an authorizing agent and a crematory, mortuary, or branch establishment pertaining to receipt of the human remains. A cremation authorization form is not any of the following:

(a) a contract for payment of cremation services;
(b) a coroner's authorization to cremate under 46-4-122, MCA; or
(c) a prepaid funeral arrangement under 37-19-903, MCA, which can only be made by a licensed mortician at a licensed mortuary.

(4) "Crematory operator-in-charge" means the Montana licensed crematory operator, as described in 37-19-101 and 37-19-702, MCA, who accepts responsibility for the operation of a crematory in conformance with all laws and rules pertinent to operation of the crematory. The crematory operator-in-charge:

(a) is personally in full and actual charge of the crematory; and
(b) assures the crematory and all crematory personnel working in the crematory have current and appropriate licensure.

(5) "Hazardous implant" means any foreign object or substance that has been surgically or otherwise placed in the human body that may present a threat of injury to the public or the crematory operator, or to the crematory retort or related equipment, during the cremation process. Hazardous implants may only be removed by:

(a) appropriate medical personnel at a medical facility; or

(b) a mortician or intern at a mortuary or branch establishment with a preparation room. The mortuary or branch establishment must keep a record of the removal and disposition of the implant. Mortuaries and branch establishments must dispose of hazardous implants in accordance with federal, state, and local laws and regulations.

(6) "Intended funeral recipient" means the person named in a prepaid funeral agreement for whose bodily disposition and/or related funeral services and goods and prepaid funeral agreement is intended to provide. The intended funeral recipient may or may not be the purchaser. This term includes the agent, guardian, or other person legally acting on behalf of the person considered the "intended funeral recipient."

(7) "Mortician-in-charge" means a Montana-licensed mortician who accepts responsibility for the operation of a mortuary or branch establishment in conformance with all laws and rules pertinent to the practice of mortuary science. The mortician-in-charge:

(a) is personally in full and actual charge of the mortuary or branch establishment;

(b) assures the mortuary or branch establishment and all mortuary personnel working in the mortuary or branch establishment have current and appropriate licensure;

(c) is responsible for the supervision of nonlicensed personnel as defined in these rules; and

(d) is responsible for ensuring in-person supervision by a mortician for students working in the mortuary or branch establishment who are engaged in a clinical practicum as described in 37-19-308, MCA.

(8) "Nonlicensed personnel" means any person employed by a licensed mortuary or mortuary branch establishment who is not licensed as a mortician or intern.

(9) "Permit" as referenced in 37-19-814, MCA, is synonymous with "license" in the context of cemetery permits issued by the board under these rules.

(10) "Prepaid funeral agreement" as further clarified in these rules means a written agreement for preneed funeral arrangements which is made between a purchaser and provider prior to the death of the intended funeral recipient.

(11) "Prepaid funeral goods" means funeral goods purchased in advance of need and which will not be delivered until the death of the intended funeral recipient named in a prepaid funeral agreement. Prepaid funeral goods do not mean interment spaces offered or sold by a cemetery company.

(12) "Prepaid funeral services" means funeral services which are purchased in advance of need and which will not be provided or delivered until the death of the intended funeral recipient named in a prepaid funeral agreement. Prepaid funeral services does not mean the sale of services incidental to the provision of interment spaces offered or sold by a cemetery company.

(13) "Price agreement" means a prepaid funeral agreement funded with a funeral trust or funeral insurance policy. The two types of price agreements are as follows:

(a) "guaranteed price agreement" means that the provider will provide the selected funeral goods and services in exchange for the proceeds of a funeral trust or funeral insurance policy. The agreement binds the provider to provide the selected funeral goods and services regardless of whether or not the current retail value of those services and funeral goods exceeds the funds available from the funeral trust or funeral insurance policy at the time of death of the intended funeral recipient; and

(b) "nonguaranteed price agreement" means the provider will apply the proceeds of the funeral trust or funeral insurance policy to the current retail value of the selected funeral goods and services at the time of death of the intended funeral recipient. The agreement does not bind the provider to provide the services and funeral goods if the current value of those funeral goods and services exceeds the funds available at the time of death of the intended funeral recipient.

(14) "Provider" means a licensed mortician or the licensed mortuary where the licensed mortician is employed that is providing or offering to provide at-need, preneed, or prepaid funeral arrangements, and/or funeral goods or services.

(15) "Purchaser" means the person named in a prepaid funeral agreement who purchases the prepaid funeral goods and services to be provided per the agreement. The purchaser may or may not be the intended funeral recipient. If the purchaser is different than the intended funeral recipient, it is understood the relationship of the purchaser to the intended funeral recipient includes a means to provide administrative control over the agreement on behalf of the intended funeral recipient.

(16) "Supervision of nonlicensed personnel" means:

(a) regular and direct oversight and guidance of duties directed by the mortician-in-charge; and

(b) the mortician-in-charge's acceptance of responsibility for the work.

(History: 37-1-131, 37-19-202, 37-19-308, MCA; IMP, 37-1-131, 37-19-101, 37-19-308, 37-19-702, 37-19-703, 37-19-705, 37-19-706, 37-19-707, 37-19-708, 37-19-814, 37-19-827, 37-19-828, 37-19-829, MCA; NEW, 2000 MAR p. 1630, Eff. 6/30/00; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2004 MAR p. 1622, Eff. 7/23/04; AMD, 2006 MAR p. 1169, Eff. 5/5/06; AMD, 2018 MAR p. 440, Eff. 2/24/18; AMD, 2020 MAR p. 670, Eff. 4/18/20.)

Subchapter 4

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(c) Crematory	290
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(6) Individual renewal fees	
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(b) Mortician - inactive	218
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(7) Jurisprudence reexamination fee	100
(8) All fees are nonrefundable.	
(9) Additional standardized fees are specified in ARM 24.101.403.	

(History: 37-1-131, 37-1-134, 37-19-202, 37-19-303, 37-19-304, 37-19-403, 37-19-702, 37-19-703, 37-19-808, 37-19-814, 37-19-815, 37-19-816, MCA; IMP, 37-1-134, 37-1-141, 37-19-303, 37-19-304, 37-19-402, 37-19-403, 37-19-702, 37-19-703, 37-19-808, 37-19-814, 37-19-815, 37-19-816, MCA; Eff. 12/31/72; AMD, 1979 MAR p. 328, Eff. 3/30/79; AMD, 1981 MAR p. 315, Eff. 3/27/81; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1982 MAR p. 2137, Eff. 12/17/82; AMD, 1984 MAR p. 815, Eff. 5/18/84; AMD, 1987 MAR p. 477, Eff. 5/1/87; AMD, 1987 MAR p. 2088, Eff. 11/13/87; AMD, 1989 MAR p. 2193, Eff. 12/22/89; AMD, 1993 MAR p. 2670, Eff. 11/11/93; AMD, 1995 MAR p. 845, Eff. 5/12/95; AMD, 1996 MAR p. 2425, Eff. 9/20/96; AMD, 1998 MAR p. 2959, Eff. 11/6/98; RESCIND, (CI-75), 1999 MAR p. 66, Eff. 1/15/99; AMD, 1999 MAR p. 1201, Eff. 6/4/99; AMD, 2000 MAR p. 1630, Eff. 6/30/00; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2004 MAR p. 1622, Eff. 7/23/04; AMD, 2006 MAR p. 1169, Eff. 5/5/06; AMD, 2006 MAR p. 1583, Eff. 7/1/06; AMD, 2012 MAR p. 890, Eff. 4/27/12; AMD, 2020 MAR p. 670, Eff. 4/18/20.)

24.147.402 ORIGINAL MORTICIAN LICENSE – APPLICATION

(TRANSFERRED) (History: 37-1-131, 37-19-202, MCA; IMP, 37-1-101, 37-19-302, 37-19-303, MCA; Eff. 12/31/72; AMD, 1979 MAR p. 328, Eff. 3/30/79; AMD, 1981 MAR p. 1058, Eff. 9/18/81; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1984 MAR p. 815, Eff. 5/18/84; AMD, 1985 MAR p. 1610, Eff. 11/1/85; AMD, 1998 MAR p. 2959, Eff. 11/6/98; AMD, 2000 MAR p. 1630, Eff. 6/30/00; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2006 MAR p. 1169, Eff. 5/5/06; AMD, 2013 MAR p. 1191, Eff. 7/12/13; AMD, 2016 MAR p. 314, Eff. 2/20/16; AMD & TRANS, to ARM 24.147.507, 2018 MAR p. 440, Eff. 2/24/18.)

24.147.403 INSPECTIONS – MORTUARIES, BRANCH ESTABLISHMENTS, AND CREMATORIES (1) A board-designated inspector will conduct annual on-site inspections of all existing licensed mortuaries, branch establishments, and crematories for compliance with board regulations.

(a) Inspections may be conducted with or without advance notice to the licensee.

(b) Results of the inspection will be provided to the licensee.

(c) If there are any items of noncompliance, the mortician-in-charge or crematory operator-in-charge must submit a written response to the board which addresses those items of noncompliance. The response must be received by the board within ten days of the licensee receiving notification of noncompliance.

(d) A report of significant noncompliance will be reviewed by the board screening panel per the department's standard compliance process.

(2) The following inspection process applies to applicants for licensure as a mortuary or branch establishment per ARM 24.147.904 or a crematory per ARM 24.147.1101, and applicants for transfer of an existing mortuary, branch establishment, or crematory license per ARM 24.147.407.

(a) Applicants must pass an initial inspection of the facility by a board-designated inspector prior to a license being issued.

(b) Results of the inspection will be provided to the licensee.

(c) If there are any items of noncompliance, the mortician-in-charge or crematory operator-in-charge must submit a written response to the board which addresses those items of noncompliance. The response must be received by the department within ten days of receiving notification of noncompliance.

(d) If issues of noncompliance are not corrected within ten days, a report of noncompliance will be reviewed by the board at the next regularly scheduled board meeting following the initial inspection. For good cause the board may order a re-inspection, the costs of which will be paid by the applicant. (History: 37-1-131, 37-19-202, 37-19-403, MCA; IMP, 37-1-131, 37-19-402, 37-19-403, 37-19-703, MCA; Eff. 12/31/72; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1985 MAR p. 1610, Eff. 11/1/85; AMD, 1992 MAR p. 136, Eff. 1/31/92; AMD, 1996 MAR p. 2425, Eff. 9/20/96; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2006 MAR p. 1169, Eff. 5/5/06; AMD, 2013 MAR p. 1191, Eff. 7/12/13; AMD, 2016 MAR p. 314, Eff. 2/20/16; AMD, 2018 MAR p. 440, Eff. 2/24/18.)

24.147.404 FEE ABATEMENT (1) The Board of Funeral Service adopts and incorporates by reference the fee abatement rule of the Department of Labor and Industry found at ARM 24.101.301. (History: 37-1-131, MCA; IMP, 17-2-302, 17-2-303, 37-1-134, MCA; NEW, 2006 MAR p. 1169, Eff. 5/5/06.)

24.147.405 EXAMINATION (TRANSFERRED) (History: 37-19-202, MCA; IMP, 37-19-302, 37-19-303, MCA; Eff. 12/31/72; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1982 MAR p. 2137, Eff. 12/17/82; AMD, 1985 MAR p. 1610, Eff. 11/1/85; AMD, 1989 MAR p. 2193, Eff. 12/22/89; AMD, 1998 MAR p. 2959, Eff. 11/6/98; AMD, 2002 MAR p. 84, Eff. 1/18/02; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2013 MAR p. 1191, Eff. 7/12/13; AMD & TRANS, to ARM 24.147.509, 2018 MAR p. 440, Eff. 2/24/18.)

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

(2) The "funeral rule" applies to any licensed person or licensed entity providing both "funeral goods" and "funeral services," as those terms are defined by the federal regulations and apply to both preneed and at-need funeral arrangements.

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

(4) Price lists and completed Statements of Funeral Goods and Services Selected shall be maintained and available for inspection for three years from the date of the arrangement conference, rather than one year as contemplated by the FTC. (History: 37-1-136, 37-19-202, 37-19-403, MCA; IMP, 37-1-136, 37-19-403, MCA; NEW, 1998 MAR p. 2959, Eff. 11/6/98; AMD, 2000 MAR p. 1630, Eff. 6/30/00; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2013 MAR p. 1191, Eff. 7/12/13.)

24.147.407 NAME CHANGE, CLOSURE, TRANSFER, OR CHANGE OF OWNERSHIP – MORTUARY, BRANCH ESTABLISHMENT, CREMATORY, OR CEMETERY (1) Using forms provided by the department, mortuaries, branch establishments, crematories, and cemeteries must notify the board within ten days of any of the following occurring:

- (a) change of business name;
- (b) closure;
- (c) transfer, as defined in 37-19-402, MCA, or relocation; or
- (d) change of ownership as defined in these rules.

(2) When there is a change in ownership the license issued to the previous owner is void. The new owner must:

- (a) apply for a license per the applicable requirements in this chapter;
- (b) within 30 days of the change of ownership, publish notice of the change of ownership in a newspaper of general circulation in the county in which the facility is located; and

- (c) once the change in ownership is complete, notify the board per the requirements in ARM 24.147.1506.

(3) The notice in (2)(b) must be published for no less than one week. The notice must contain the following under the title "Notice of Change of Ownership":

- (a) the name and physical address of the facility, particularly noting if the name and physical address have changed;
- (b) the name of each new owner and whether the facility is owned by a sole proprietor, partnership, or corporation. If the new owner is a corporation, the notice must contain:

- (i) name of the corporation;
 - (ii) name of the registered agent of the corporation; and
 - (iii) registered agent's address if it is different than the physical address; and
- (c) the name of the mortician-in-charge, crematory operator-in-charge, or cemetery manager. (History: 37-19-202, 37-19-403, 37-19-703, 37-19-816, MCA; IMP, 37-19-402, 37-19-403, 37-19-703, 37-19-816, MCA; NEW, 1987 MAR p. 2088, Eff. 11/13/87; AMD, 1998 MAR p. 2959, Eff. 11/6/98; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2013 MAR p. 1191, Eff. 7/12/13; AMD & TRANS, from ARM 24.147.903, 2018 MAR p. 440, Eff. 2/24/18; AMD, 2020 MAR p. 670, Eff. 4/18/20.)

24.147.408 TRANSPORTATION AND CUSTODY OF HUMAN REMAINS

(1) Authorization to remove and transport a body from place of death must be made by a physician, physician designee, advanced practice registered nurse, coroner, or mortician per 50-15-405, MCA.

(2) Once removal is authorized, only a coroner, mortician, or nonlicensed personnel under the supervision of the mortician-in-charge may transport the body.

(3) The body must be transported:

(a) to a mortuary;

(b) to a coroner's morgue; or

(c) directly to a crematory or cemetery in cases in which direct cremation or burial is legally permissible and authorized.

(4) These rules do not apply to transportation, custody, preparation, funeral arrangements, or disposition carried out individually by an authorizing agent, subject to such agent's compliance with all applicable state and local laws and regulations, including, but not limited to:

(a) Department of Public Health and Human Services laws and regulations on infectious disease and vital statistics, including the filing of death certificates; and

(b) Department of Labor and Industry laws and regulations regarding proper identification of the remains, health and safety requirements, and the execution of appropriate disclosures and authorizations.

(5) An authorizing agent, as defined in 37-19-101, MCA, can only delegate the activities set forth in (4) to a mortician employed by a mortuary. (History: 37-19-202, 37-19-703, MCA; IMP, 37-19-101, 37-19-703, 37-19-704, MCA; NEW, 2014 MAR p. 2017, Eff. 9/5/14; AMD, 2018 MAR p. 440, Eff. 2/24/18.)

24.147.409 CHANGE OF MORTICIAN-IN-CHARGE OR CREMATORY OPERATOR-IN-CHARGE

(1) When there is a change of mortician-in-charge at a mortuary or branch establishment or a crematory operator-in-charge at a crematory, the following must occur:

(a) the mortician or crematory operator who has ceased to be the person-in-charge will be held responsible for notifying the board of termination of services; and

(b) the mortuary or branch establishment or crematory must designate a new person-in-charge and notify the board within ten days.

(2) The notifications described in (1) must be done using forms provided by the department. (History: 37-1-131, 37-19-202, MCA; IMP, 37-1-131, 37-19-402, 37-19-702, MCA; NEW, 2018 MAR p. 440, Eff. 2/24/18.)

24.147.410 NONLICENSED PERSONNEL (1) Nonlicensed personnel must be supervised by the mortician-in-charge of the mortuary or branch establishment.

(2) The mortician-in-charge assumes full legal and ethical responsibility for tasks performed by nonlicensed personnel.

(3) The mortician-in-charge is responsible for determining the competency of nonlicensed personnel to perform tasks under direction and supervision.

(4) No mortician can delegate any responsibilities statutorily reserved for a mortician to nonlicensed personnel. (History: 37-1-131, 37-19-202, MCA; IMP, 37-1-131, 37-19-402, MCA; NEW, 2018 MAR p. 440, Eff. 2/24/18.)

24.147.411 CONTRACT FOR FUNERAL GOODS AND SERVICES

(1) The current address, telephone number and name of the Board of Funeral Service shall appear prominently on any contract for funeral goods and services offered by a private cemetery, crematory or mortuary. At a minimum, the information shall be in 10-point boldface type and make the following statement: "FOR MORE INFORMATION ON STATE CEMETERY, CREMATION AND MORTUARY REGULATIONS CONTACT: BOARD OF FUNERAL SERVICE, 301 SOUTH PARK, P.O. BOX 200513, HELENA, MT 59620-0513; TELEPHONE NUMBER (406) 841-2393."

(2) Every contract of a cemetery authority, including contracts executed in behalf thereof by a cemetery broker or salesman, which provides for the sale by the cemetery authority of an interment plot or any service or merchandise, shall be in writing and shall contain all of the agreements of the parties. Such a contract shall include and disclose the following:

(a) the total contract price;

(b) terms of payment, including any promissory notes or other evidences of indebtedness; and

(c) an itemized statement of charges including, as applicable, the following:

(i) charges for an interment plot;

(ii) charges for performing burial, entombment or inurnment;

(iii) charges for a monument or marker;

(iv) charges for any services to be rendered in connection with any religious or other observance at the site of interment or in any facility maintained by the cemetery;

(v) amounts to be deposited in the perpetual care and maintenance or special care fund; and

(vi) any other charges, which shall be particularized.

(3) In addition to any right of rescission which the purchaser may have under law, a purchaser entering into a contract with a cemetery manager, salesman or authority for the provision of an interment plot or any service or merchandise, may cancel such contract without payment of a revocation fee or other penalty, within five calendar days after the purchaser signs it, by giving written notice of cancellation to the seller at the address specified in the contract. The notice need not be in any particular form, but shall indicate the purchaser's intent not to be bound by the contract. Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid.

(4) Every such cemetery contract shall contain in immediate proximity to the space reserved for the purchaser's signature, in a size equal to at least 10-point boldface type, the following statement: "YOU, THE PURCHASER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE FIFTH CALENDAR DAY AFTER THE DATE OF THIS TRANSACTION, PROVIDED NO INTERMENT, SUBSTANTIAL SERVICE OR FUNERAL GOODS HAVE BEEN PROVIDED HEREUNDER. TO CANCEL, DELIVER OR MAIL WRITTEN NOTICE OF YOUR INTENT TO (NAME AND ADDRESS OF CEMETERY AUTHORITY OR CEMETERY MANAGER)."

(5) Upon receipt of a valid notice of cancellation pursuant to this rule, the cemetery authority or manager having custody of any money or property paid or transmitted by the purchaser on account of the preneed contract, shall return such money or property to the purchaser. The cemetery authority or manager shall promptly notify the trustee if any such money or property has been transmitted thereto prior to receipt of the notice of cancellation. It shall be unlawful for any person to retain money or property received from a purchaser under such contract more than five business days after receiving or being apprized of a valid notice of cancellation.

(6) Notwithstanding other provisions of this rule, the right of cancellation granted hereby shall not be applicable if an interment has been made, or substantial services or merchandise provided, under the terms of the contract. (History: 37-19-807, MCA; IMP, 37-19-807, 37-19-822, 37-19-823, MCA; NEW, 1998 MAR p. 2959, Eff. 11/6/98; AMD, 2000 MAR p. 1630, Eff. 6/30/00; TRANS, from Commerce, 2002 MAR p. 790.)

24.147.412 RECORDS (1) The person in charge of any premises on which interments or cremations are made shall keep a record of all remains interred or cremated and of the interment of remains on the premises under the person's charge, in each case stating the name of each deceased person, place of death, date of interment, name and address of the mortician and location of grave, niche or crypt.

(2) A record shall be kept of the ownership of all plots in the cemetery which have been conveyed by the cemetery authority and of all transfers of plots in the cemetery. Transfer of any plot, heretofore or hereafter made, or any right of interment, shall be complete and effective when recorded on the books of the cemetery authority. (History: 37-19-807, MCA; IMP, 37-19-807, 37-19-823, MCA; NEW, 1998 MAR p. 2959, Eff. 11/6/98; TRANS, from Commerce, 2002 MAR p. 790.)

Rule 24.147.413 reserved

24.147.414 NONROUTINE APPLICATIONS (1) For the purpose of processing nonroutine applications, the board incorporates the definitions of routine and nonroutine at ARM 24.101.402 by reference.

(2) Nonroutine applications must be reviewed and approved by the board before a license may be issued. (History: 37-1-131, MCA; IMP, 37-1-101, 37-1-131, MCA; NEW, 2021 MAR p. 556, Eff. 5/15/21.)

24.147.415 APPLICANTS WITH CRIMINAL CONVICTIONS (1) The board incorporates ARM 24.101.406 by reference with no modifications. (History: 37-1-131, MCA; IMP, 37-1-101, 37-1-131, MCA; NEW, 2021 MAR p. 556, Eff. 5/15/21.)

Subchapter 5

Morticians and Interns

24.147.501 OUT-OF-STATE MORTICIAN LICENSES (1) Applicants for licensure as morticians who are currently licensed in another state or jurisdiction must submit a completed application on forms provided by the department. Completed applications include appropriate fees and required documentation.

(2) Applicants must:

(a) hold a current, active license in good standing in another state or jurisdiction to practice under a funeral service scope of practice recognized in Montana. At the time of application, the standards of that state or jurisdiction must be substantially equivalent to Montana standards;

(b) provide verification of any professional license(s) the applicant has ever held in any state or jurisdiction;

(c) have been actively engaged in practice during the period of licensure for five of the last seven years, or have passed the national examination within the timeframe described in ARM 24.147.509; and

(d) pass the state jurisprudence examination as described in ARM 24.147.509.

(3) Incomplete applications will automatically expire one year from the date the fee was received. If an application expires, the applicant must reapply and pay all appropriate fees. (History: 37-1-131, 37-19-202, MCA; IMP, 37-1-131, 37-1-304, 37-19-302, MCA; Eff. 12/31/72; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1995 MAR p. 845, Eff. 5/12/95; AMD, 1996 MAR p. 2425, Eff. 9/20/96; AMD, 1998 MAR p. 2959, Eff. 11/6/98; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2006 MAR p. 1169, Eff. 5/5/06; AMD, 2013 MAR p. 1191, Eff. 7/12/13; AMD, 2016 MAR p. 314, Eff. 2/20/16; AMD, 2018 MAR p. 440, Eff. 2/24/18.)

24.147.502 INACTIVE STATUS AND CONVERSION TO ACTIVE STATUS

(1) A person holding an individual license may request inactive status on the renewal form or by informing the board office in writing and paying the appropriate fee. The inactive licensee must keep the board informed of any change of address during the period of time the license remains on inactive status. Inactive licensees must pay the inactive renewal fee annually to avoid expiration or termination of the license.

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

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

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

(b) submits certification from the licensing body of all jurisdictions where the applicant is licensed or has practiced that the applicant is in good standing and has not had any disciplinary actions taken against the applicant's license, or if the applicant is not in good standing by that jurisdiction, an explanation of the nature of the violation(s) resulting in that status, including the extent of the disciplinary treatment imposed; and

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

(4) The board may issue a notice of proposed board action to grant a probationary license to a practitioner who has been inactive for more than five years, and require up to one year of supervised practice by a licensed mortician, including the embalming and preparation of at least five bodies. (History: 37-1-131, 37-1-319, 37-19-202, MCA; IMP, 37-1-319, MCA; NEW, 1996 MAR p. 2425, Eff. 9/20/96; AMD, 2000 MAR p. 1630, Eff. 6/30/00; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2006 MAR p. 1169, Eff. 5/5/06; AMD, 2013 MAR p. 1191, Eff. 7/12/13.)

24.147.503 CONDITIONAL PERMISSION TO PRACTICE WHILE ON INACTIVE STATUS (REPEALED) (History: 37-19-202, MCA; IMP, 37-19-316, MCA; NEW, 1985 MAR p. 1610, Eff. 11/1/85; TRANS, from Commerce, 2002 MAR p. 790; REP, 2013 MAR p. 1191, Eff. 7/12/13.)

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

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

(3) In order to receive credit, an intern must serve for a continuous six-month period under the supervision of the same licensed mortician. The board may waive this requirement in cases involving closure of firm, hardship due to illness or death of supervising mortician, illness of intern, or such other emergency.

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

(5) If after three years from passing the jurisprudence exam, the internship has not been completed, the intern may apply for reexamination of state law and rules, and upon passing, begin the internship anew. No credit will be given for prior time served in an internship.

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

(a) "Supervision" has the meaning set forth in 37-19-101, MCA, and means the extent of oversight that a mortician believes an intern requires, based upon the intern's training, experience, judgment, and professional development. At a minimum, the term requires the supervisor, or in limited absences of the supervisor, a delegated licensed mortician to be available for consultation on all client-related activity performed by the intern, and requires direction, observation, and evaluation on a regular basis.

(b) Failure to appropriately supervise an intern may result in disciplinary action against the supervising mortician. (History: 37-1-131, 37-19-202, MCA; IMP, 37-1-131, 37-19-101, 37-19-302, 37-19-304, MCA; Eff. 12/31/72; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1985 MAR p. 1610, Eff. 11/1/85; AMD, 1996 MAR p. 2425, Eff. 9/20/96; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2013 MAR p. 1191, Eff. 7/12/13.)

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

(2) The renewal date for cemeteries is a five-year period set by 37-19-814, MCA. A "five-year period" means every five years beginning on July 1, 2000. The department will not prorate the application or license fee of newly issued licenses obtained prior to the expiration of a five-year period. (History: 37-19-202, MCA; IMP, 37-1-141, 37-19-301, 37-19-814, MCA; NEW, 2002 MAR p. 793, Eff. 1/18/02; AMD, 2006 MAR p. 1169, Eff. 5/5/06; AMD, 2006 MAR p. 1583, Eff. 7/1/06; AMD, 2013 MAR p. 1191, Eff. 7/12/13.)

24.147.506 RENEWAL OF CEMETERY LICENSE (REPEALED) (History: 37-19-814, MCA; IMP, 37-19-814, MCA; NEW, 2006 MAR p. 1169, Eff. 5/5/06; REP, 2013 MAR p. 1191, Eff. 7/12/13.)

24.147.507 MORTICIAN LICENSES (1) Applicants for licensure not currently licensed in another state or jurisdiction must submit a completed application on forms provided by the department. Completed applications include appropriate fees and required documentation.

(2) Applicants must have a minimum of an associate degree in funeral service or mortuary science from a program accredited by the American Board of Funeral Service Education (ABFSE) or its successor which consists of a minimum of 60 semester credits or 90 quarter credits. All transcripts must be certified and sent directly from the school(s).

(3) Exceptions to the education requirements in (2) are as follows:

(a) if an applicant graduated or attended a foreign school or university instead of obtaining the required education from an accredited U.S. school or university as described in (2), the applicant must submit transcripts or other official documentation which will be evaluated by the board; and

(b) per ARM 24.147.508, relevant military training, service, or education which will be evaluated by the board.

(4) In addition to the education requirements for licensure, applicants must:

(a) have completed an internship as required in 37-19-302, MCA, and ARM 24.147.504;

(b) have passed examinations as described in ARM 24.147.509; and

(c) provide verification of any professional license(s) the applicant has ever held in any state or jurisdiction.

(5) Incomplete applications will automatically expire one year from the date the fee was received. If an application expires, the applicant must reapply and pay all appropriate fees. (History: 37-1-131, 37-19-202, MCA; IMP, 37-1-131, 37-19-302, 37-19-303, MCA; Eff. 12/31/72; AMD, 1979 MAR p. 328, Eff. 3/30/79; AMD, 1981 MAR p. 1058, Eff. 9/18/81; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1984 MAR p. 815, Eff. 5/18/84; AMD, 1985 MAR p. 1610, Eff. 11/1/85; AMD, 1998 MAR p. 2959, Eff. 11/6/98; AMD, 2000 MAR p. 1630, Eff. 6/30/00; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2006 MAR p. 1169, Eff. 5/5/06; AMD, 2013 MAR p. 1191, Eff. 7/12/13; AMD, 2016 MAR p. 314, Eff. 2/20/16; AMD & TRANS, from ARM 24.147.402, 2018 MAR p. 440, Eff. 2/24/18; AMD, 2020 MAR p. 670, Eff. 4/18/20.)

24.147.508 MILITARY TRAINING OR EXPERIENCE (1) Pursuant to 37-1-145, MCA, the board shall accept relevant military training, service, or education toward the requirements for licensure as morticians, mortician interns, crematory operators, and crematory technicians.

(2) Relevant military training, service, or education must be completed by an applicant while a member of either:

- (a) United States armed forces;
- (b) United States reserves;
- (c) state national guard; or
- (d) military reserves.

(3) An applicant must submit satisfactory evidence of receiving military training, service, or education that is equivalent to relevant licensure requirements as morticians, mortician interns, crematory operators, and crematory technicians. Satisfactory evidence includes:

- (a) a copy of the applicant's military discharge document (DD 214 or other discharge documentation);
- (b) a document that clearly shows all relevant training, certification, service, or education the applicant received while in the military, including dates of training and completion or graduation; and
- (c) any other documentation as required by the board.

(4) The board shall consider all documentation received to determine whether an applicant's military training, service, or education is equivalent to relevant licensure requirements. (History: 37-1-145, MCA; IMP, 37-1-145, MCA; NEW, 2014 MAR p. 2017, Eff. 9/5/14.)

24.147.509 EXAMINATIONS (1) Morticians and interns must pass the following examinations:

(a) the National Board Examination of the International Conference of Funeral Service Examining Boards within five years prior to the date of application; and

(b) a jurisprudence examination prescribed by the board covering the statutes and rules governing the practice of funeral service in Montana.

(2) The jurisprudence examination must be passed with a score of 75 percent or greater. Any applicant who fails the jurisprudence exam may retake the examination, but must pay the reexamination fee listed in ARM 24.147.401 for each subsequent reexamination. (History: 37-1-131, 37-19-202, MCA; IMP, 37-1-131, 37-19-302, 37-19-303, 37-19-304, MCA; Eff. 12/31/72; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1982 MAR p. 2137, Eff. 12/17/82; AMD, 1985 MAR p. 1610, Eff. 11/1/85; AMD, 1989 MAR p. 2193, Eff. 12/22/89; AMD, 1998 MAR p. 2959, Eff. 11/6/98; AMD, 2002 MAR p. 84, Eff. 1/18/02; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2013 MAR p. 1191, Eff. 7/12/13; AMD & TRANS, from ARM 24.147.405, 2018 MAR p. 440, Eff. 2/24/18.)

Subchapters 6 through 8 reserved

Subchapter 9

Mortuaries and Branch Establishments

24.147.901 MORTUARY AND BRANCH ESTABLISHMENT OPERATION STANDARDS (1) A mortuary or branch establishment cannot operate unless:

(a) a license or temporary permit has been issued to the current owner; and
(b) there is a designated mortician-in-charge as per these rules. The board must be notified of any change of mortician-in-charge per the requirements of ARM 24.147.409.

(2) To qualify for licensure as a mortuary or branch establishment, applicants must meet the minimum licensing requirements described in these statutes and rules. Minimum licensing requirements include the operation standards in (3) through (8) of this rule and ARM 24.147.904.

(3) Mortuary and branch establishment preparation rooms must be maintained in a clean and sanitary condition at all times and meet the following minimum requirements:

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

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

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

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

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

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

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

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

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

(4) A branch establishment with no preparation room may not prepare dead human bodies. The only authorized activities that may occur in a branch establishment without a preparation room include:

- (a) making at-need and preneed funeral arrangements;
- (b) viewing; and
- (c) funeral services.

(5) Preparation of human remains for final disposition must be performed in a preparation room of a licensed mortuary or branch establishment. The only exception is that washing, dressing, and casketing may be provided by a person with the right of disposition under 37-19-904, MCA.

(6) Funeral arrangements, including preneed and at-need, can only be made in a licensed mortuary or branch establishment unless the consumer making the initial contact requests otherwise.

(7) Mortuaries and branch establishments must display the facility license and licenses of all licensed staff in a conspicuous place so they can be seen by members of the public. Personal addresses on licenses may be covered.

(8) Mortuaries and branch establishments must obtain and maintain for inspection all applicable local, state, and federal permits or licenses, including, but not limited to, those relating to:

- (a) business;
- (b) zoning;
- (c) building codes (including plumbing, electrical, and mechanical);
- (d) air quality; and
- (e) water quality.

(9) The handling and disposal of all medical, hazardous, or infectious waste must be in accordance with federal, state, and local laws and regulations, including, but not limited to:

- (a) OSHA Bloodborne Pathogen Standard, 29 CFR 1910.1030;
- (b) Hazard Communication Standard, 29 CFR 1910.1200;
- (c) Personal Protective Equipment Standard, 29 CFR 1910.132;
- (d) U.S. Department of Transportation Hazardous Material Regulations, 49 CFR Part 171; and
- (e) Hazardous Waste Management and Infectious Waste Management Acts, Title 75, chapter 10, parts 4 and 10, MCA. (History: 37-19-202, 37-19-403, MCA; IMP, 37-19-101, 37-19-401, 37-19-402, 37-19-403, 37-19-904, MCA; Eff. 12/31/72; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1992 MAR p. 136, Eff. 1/31/92; AMD, 1998 MAR p. 2959, Eff. 11/6/98; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2006 MAR p. 1169, Eff. 5/5/06; AMD, 2013 MAR p. 1191, Eff. 7/12/13; AMD, 2018 MAR p. 440, Eff. 2/24/18.)

24.147.902 DISCLOSURE STATEMENT ON EMBALMING (1) As required by the FTC funeral rule, all funeral providers shall add the following statement next to the price for embalming on the funeral provider's General Price List (GPL): "Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements such as a funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement that does not require you to pay for it, such as direct cremation or immediate burial."

(2) Except as authorized by a state or local health officer, health regulations set forth at ARM Title 37, chapter 116, part 1, require either refrigeration or embalming after certain periods of time during which the body will be en route during transportation. A funeral provider that has refrigeration must give the consumer the option of either refrigeration or embalming. (History: 37-19-202, MCA; IMP, 37-19-315, MCA; NEW, 1998 MAR p. 2959, Eff. 11/6/98; AMD, 2000 MAR p. 1630, Eff. 6/30/00; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2013 MAR p. 1191, Eff. 7/12/13.)

24.147.903 NAME CHANGE, CLOSURE, OR SALE OF FACILITY
(TRANSFERRED) (History: 37-19-202, 37-19-403, MCA; IMP, 37-19-402, 37-19-403, MCA; NEW, 1987 MAR p. 2088, Eff. 11/13/87; AMD, 1998 MAR p. 2959, Eff. 11/6/98; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2013 MAR, p. 1191, Eff. 7/12/13; AMD & TRANS, to ARM 24.147.407, 2018 MAR p. 440, Eff. 2/24/18.)

24.147.904 MORTUARY AND BRANCH ESTABLISHMENT LICENSES AND TEMPORARY PERMITS (1) Applicants for licensure as a mortuary or branch establishment must submit a completed application on forms provided by the department. Completed applications include appropriate fees and required documentation.

(2) Applicants for licensure as a mortuary must:

- (a) designate a mortician-in-charge;
- (b) apply for a temporary permit; and
- (c) once a temporary permit has been issued, pass an initial inspection by a board-designated inspector. The inspection is based on the operation standards described in these statutes and rules.

(3) Applicants for licensure of an existing mortuary with a change in ownership must meet the applicable requirements in ARM 24.147.407 in addition to the requirements listed in (1) and (2).

(4) Applicants for transfer of an existing mortuary license per 37-19-402, MCA, must meet the applicable requirements in ARM 24.147.407 in addition to the requirements listed in (1) and (2).

(5) Applicants for licensure of a branch establishment must meet:

(a) the definition of a branch establishment as defined in 37-19-101, MCA;

and

(b) the requirements described in (1) and (2). (History: 37-1-131, 37-19-202, MCA; IMP, 37-1-131, 37-19-101, 37-19-402, 37-19-403, MCA; NEW, 2013 MAR p. 1191, Eff. 7/12/13; AMD, 2018 MAR p. 440, Eff. 2/24/18.)

Subchapter 10 reserved

Subchapter 11

Crematories, Crematory Operators, and
Crematory Technicians24.147.1101 CREMATORY LICENSES, TEMPORARY PERMITS, AND
OPERATION STANDARDS

(1) Crematories may not operate unless they have:

(a) been issued a license or temporary permit; and
(b) designated a crematory operator-in-charge per these rules. The board must be notified of any change of crematory operator-in-charge per the requirements of ARM 24.147.409.

(2) Applicants for licensure as a crematory must submit a completed application on forms provided by the department. Completed applications include appropriate fees and required documentation.

(3) Applicants for licensure as a crematory must:

(a) designate a crematory operator-in-charge;
(b) apply for a temporary permit; and
(c) once a temporary permit has been issued, pass an initial inspection by a board-designated inspector per ARM 24.147.403. The inspection is based on the operation standards described in these statutes and rules.

(4) Applicants for licensure of an existing crematory with a change in ownership must meet the applicable requirements in ARM 24.147.407 in addition to the requirements listed in (2) and (3).

(5) Applicants for relocation of an existing crematory license must meet the applicable requirements in ARM 24.147.407 in addition to the requirements listed in (2) and (3).

(6) Crematories must meet the following minimum operation requirements:

(a) all crematory employees must be licensed per 37-19-702, MCA;
(b) comply with all local, state, and federal laws and rules pertaining to the operation of a crematory;
(c) have floors and walls constructed of an impervious material to allow cleaning and disinfection of these surfaces;
(d) maintain the crematory and all related cremation equipment after each use in a clean and sanitary condition;
(e) conduct appropriate maintenance and safe operation of equipment used in cremations;
(f) post signs near telephones and in the vicinity of the retort to direct staff to call 911 in a fire or other emergency; and
(g) display the facility license and licenses of all staff in a conspicuous place so they can be seen by members of the public. Personal addresses on licenses may be covered.

(7) Crematories must obtain and maintain all applicable local, state, and federal permits or licenses, including, but not limited to, those relating to:

- (a) business;
- (b) zoning;
- (c) building codes (including plumbing, electrical, and mechanical);
- (d) fire codes;
- (e) air quality; and
- (f) water quality.

(8) Crematories must have procedures to ensure:

- (a) proper authorization to cremate exists; and
- (b) the identification of:
 - (i) remains awaiting cremation;
 - (ii) remains in the cremation chamber;
 - (iii) cremated remains in the processing station; and
 - (iv) the urns or containers holding the cremated remains.

(9) Crematories must notify the board of any changes in equipment described in 37-19-703, MCA, within ten days. (History: 37-1-131, 37-19-202, 37-19-703, MCA; IMP, 37-1-131, 37-19-702, 37-19-703, 37-19-704, 37-19-705, MCA; NEW, 1993 MAR p. 2670, Eff. 11/11/93; AMD, 1998 MAR p. 2959, Eff. 11/6/98; AMD, 2000 MAR p. 1630, Eff. 6/30/00; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2004 MAR p. 1622, Eff. 7/23/04; AMD, 2005 MAR p. 650, Eff. 4/29/05; AMD, 2006 MAR p. 1169, Eff. 5/5/06; AMD, 2014 MAR p. 2017, Eff. 9/5/14; AMD, 2018 MAR p. 440, Eff. 2/24/18.)

24.147.1102 CASKET/CONTAINERS (1) All caskets and alternative containers holding human remains presented at a crematory for cremation shall:

- (a) be closed to provide a complete covering for the human remains;
- (b) be composed of readily combustible materials suitable for cremation;
- (c) be resistant to leakage or spillage;
- (d) be sufficiently rigid for handling with ease;
- (e) provide protection for the health and safety of crematory personnel; and
- (f) have the name of the deceased affixed to it in a permanent, plainly visible manner.

(2) The crematory may, as notified or disclosed on a cremation authorization form, remove noncombustible materials such as handles or rails from caskets or containers prior to cremation and discard them in a nonrecoverable manner.

(3) A crematory that sells urns and combustible containers directly to the public is deemed to be providing "funeral services" and "funeral goods" and must comply with the funeral rule referenced at ARM 24.147.406. (History: 37-19-202, 37-19-703, MCA; IMP, 37-19-705, MCA; NEW, 1993 MAR p. 2670, Eff. 11/11/93; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2014 MAR p. 2017, Eff. 9/5/14.)

24.147.1103 SHIPPING CREMATED HUMAN REMAINS (REPEALED)

(History: 37-19-202, 37-19-703, MCA; IMP, 37-19-705, MCA; NEW, 1993 MAR p. 2670, Eff. 11/11/93; TRANS, from Commerce, 2002 MAR p. 790; REP, 2014 MAR p. 2017, Eff. 9/5/14.)

Rule 24.147.1104 reserved

24.147.1105 CREMATORY RECORDS (1) Crematories must maintain permanent records of all cremations.

(2) Each cremation record must consist of the following:

- (a) ART form as defined in ARM 24.147.302;
- (b) cremation authorization form as described in ARM 24.147.1107;
- (c) if applicable, disposition directions from a prepaid funeral contract as described in 37-19-903, MCA;
- (d) a cremation log including, but not limited to the following information:
 - (i) decedent's name;
 - (ii) date and time the body was received by the crematory;
 - (iii) metal tag number;
 - (iv) date(s) and times of refrigeration, if applicable;
 - (v) date and starting time of cremation; and
 - (vi) name(s) and license number(s) of the crematory operator(s) and/or technician(s) who performed the cremation;
- (e) copy of the form containing all the information required under 37-19-706(5), MCA; and
- (f) if applicable, shipping and tracking information as required by 37-19-705(13), MCA.

(3) Crematories must maintain records of final disposition of unclaimed remains per 37-19-706, MCA, and ARM 24.147.1111.

(4) If the authorizing agent gives the crematory authority to dispose of the cremated remains in the cremation authorization form, the crematory must maintain the identifying metal tag as a permanent record of the facility.

(5) Crematories providing funeral goods as described in ARM 24.147.1102 must comply with board and FTC recordkeeping requirements per ARM 24.147.406. (History: 37-19-202, 37-19-703, MCA; IMP, 37-19-702, 37-19-703, 37-19-706, 37-19-708, 37-19-903, MCA; NEW, 2014 MAR p. 2017, Eff. 9/5/14; AMD, 2020 MAR p. 670, Eff. 4/18/20.)

Rule 24.147.1106 reserved

24.147.1107 CREMATION AUTHORIZATIONS (1) A cremation authorization form as defined in ARM 24.147.302 must include:

- (a) full identification of the decedent;
 - (b) warranty of positive identification of the decedent by the authorizing agent or personal representative of the authorizing agent;
 - (c) the authorizing agent's relationship to the deceased;
 - (d) the superiority of the authorizing agent's authority among competing rights to act per 37-19-904, MCA;
 - (e) disclosure by the authorizing agent of any potentially hazardous implants or other medical devices;
 - (f) disclosures and authorizations regarding the casket or alternative container as described in ARM 24.147.1102;
 - (g) disclosures and authorizations regarding multiple cremations per 37-19-705, MCA;
 - (h) disclosures and authorizations regarding witnessing;
 - (i) disclosures and descriptions regarding the cremation process;
 - (j) authorization by the authorizing agent to cremate;
 - (k) disclosures and selections regarding containers;
 - (l) disclosures, authorizations, and selections regarding final disposition of cremated remains;
 - (m) directions regarding disposition of personal property;
 - (n) disclosures regarding the time and place of cremation and whether the decedent is to be embalmed;
 - (o) a release from liability per 37-19-707, MCA; and
 - (p) if applicable, certification by a mortician on behalf of a mortuary that:
 - (i) the remains presented to the crematory are those of the decedent identified by the authorizing agent;
 - (ii) the mortician has taken reasonable precautions to ensure the removal of any hazardous implants; and
 - (iii) the personal property identified in the cremation authorization has been removed from the remains of the decedent and delivered to the authorizing agent.
- (History: 37-19-202, 37-19-703, 37-19-708, MCA; IMP, 37-19-703, 37-19-704, 37-19-707, 37-19-708, 37-19-903, MCA; NEW, 2014 MAR p. 2017, Eff. 9/5/14; AMD, 2020 MAR p. 670, Eff. 4/18/20.)

Rules 24.147.1108 and 24.147.1109 reserved

24.147.1110 INTEGRITY OF IDENTIFICATION OF HUMAN REMAINS

- (1) To maintain the integrity of the identification of human remains, a crematory must:
- (a) follow the requirements in ARM 24.147.1111; and
 - (b) develop procedures and train crematory operators and crematory technicians on those procedures in order to accurately maintain the identification of the remains throughout the cremation process. At minimum, the following must be addressed in the procedures:
 - (i) upon receipt of the human remains, the crematory operator or crematory technician must examine the ART form and any preneed cremation authorization. Those forms must be kept with the cremation container at all times;
 - (ii) prior to cremation, the crematory operator or crematory technician must assign a number to the remains from a sequentially numbered metal tag. The number on the assigned tag must be recorded on all cremation documents and the cremation log described in ARM 24.147.1105;
 - (iii) the crematory operator or crematory technician must place the metal tag on the outside of the cremation chamber retort during the cremation;
 - (iv) the crematory operator or crematory technician must place the metal tag on the cremation container or tray during final processing of the remains;
 - (v) following final processing, the crematory operator or crematory technician must ensure the metal tag is kept with the remains. If the remains do not fit within one temporary container, then the temporary containers must be identified and labeled per ARM 24.147.1111; and
 - (vi) the crematory operator or crematory technician must affix an identification label to:
 - (A) the temporary container;
 - (B) an urn, as defined in 37-19-101(34), MCA; or
 - (C) a sealed container. (History: 37-19-202, 37-19-703, MCA; IMP, 37-19-703, 37-19-704, 37-19-705, 37-19-707, 37-19-708, MCA; NEW, 1993 MAR p. 2670, Eff. 11/11/93; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2014 MAR p. 2017, Eff. 9/5/14; AMD, 2020 MAR p. 670, Eff. 4/18/20.)

24.147.1111 CREMATION PROCEDURES (1) In addition to the requirements and procedures in 37-19-704 through 37-19-706, MCA, and the rules in this subchapter, crematories must comply with this rule.

- (2) A crematory must have the following authorizations in its possession before a crematory operator or crematory technician can begin cremation:
- (a) ART form as defined in ARM 24.147.302;
 - (b) cremation authorization form as described in ARM 24.147.1107; or
 - (c) if applicable, one of the following:
 - (i) preneed cremation authorization executed in accordance with 37-19-708, MCA;
 - (ii) disposition directions from a prepaid funeral contract as described in 37-19-903, MCA; or
 - (iii) at-need cremation authorization.

(3) Unembalmed human remains held longer than 48 hours after the time of death must be refrigerated per ARM 37.116.103.

(4) Human remains not cremated by a crematory operator or crematory technician immediately upon receipt per 37-19-705, MCA, or ARM 24.147.1111 must be held in a holding facility marked "private" or "authorized personnel only."

(5) When processing cremated remains following cremation, crematory operators and crematory technicians shall:

(a) commingle cremated human remains only if authorized by the authorizing agent in the cremation authorization form;

(b) remove the recoverable residual of the cremation process from the cremation chamber and sweep the cremation chamber clean;

(c) separate, collect, and secure for permanent waste disposal in a container designed to avoid loss or exposure of the contents, any nonhuman residue, such as dental fillings or nonhazardous medical implants, unless such items, if reasonably identifiable, are directed to be returned to the authorizing agent;

(d) process remaining bone fragments to unidentifiable particles and place the particles and all remaining residue from (b) in a container as described in ARM 24.147.1110. If the cremated remains:

(i) do not adequately fill the interior dimensions of the temporary container or urn, the crematory operator or crematory technician may fill the extra space with packing material that will not become intermingled with the cremated remains; and/or

(ii) do not fit within one temporary container or urn, the crematory operator or crematory technician must use an additional temporary container or urn per 37-19-705, MCA. The temporary container(s) and/or urn(s) must further be labeled "1 of 2" and "2 of 2."

(6) Cremated remains being shipped shall be shipped per 37-19-705(10) through (13), MCA. Additionally:

(a) the shipping container must be labelled "CREMATED REMAINS"; and

(b) if there are multiple temporary containers and/or urns containing the same decedent's remains, the crematory operator or crematory technician must place temporary containers and/or urns within the same shipping container.

(7) Crematories which dispose of unclaimed remains per 37-19-706(2), MCA, must maintain a record of the disposition and may issue an invoice to the authorizing agent to recover the costs of the disposition. (History: 37-19-202, 37-19-703, MCA; IMP, 37-19-703, 37-19-704, 37-19-705, 37-19-706, MCA; NEW, 1993 MAR p. 2670, Eff. 11/11/93; AMD, 1998 MAR p. 2959, Eff. 11/6/98; AMD, 2000 MAR p. 1630, Eff. 6/30/00; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2014 MAR p. 2017, Eff. 9/5/14; AMD, 2020 MAR p. 670, Eff. 4/18/20.)

24.147.1112 CREMATORY PROHIBITIONS (1) Crematories, crematory operators, and crematory technicians shall not:

- (a) engage in mortuary science as defined in 37-19-101, MCA;
- (b) commingle human remains from more than one person unless authorized per 37-19-705, MCA, and ARM 24.147.1107;
- (c) cremate fetuses, limbs, and body parts from private or public health agencies, medical doctors, or colleges and universities, without:
 - (i) required federal, state, and local permits; and
 - (ii) cremation authorizations as described in ARM 24.147.301 and 24.147.1107;
- (d) use the same cremation chamber for the cremation of human remains and animals;
- (e) accept prepayment for cremation services, unless covered in a prepaid funeral agreement executed by a mortician per 37-19-903, MCA;
- (f) require that human remains be placed in any particular container other than a basic combustible container, including but not limited to a casket, before cremation;
- (g) require that cremated remains be placed in a cremation urn, cremation vault, or receptacle designed to permanently encase the cremated remains;
- (h) remove any dental gold, jewelry, medical devices, body parts, or other items of value from human remains prior to the cremation or from the cremated remains after cremation, unless the cremation authorization form described in ARM 24.147.301 and 24.147.1107 specifically authorizes such removal; or
- (i) knowingly cremate human remains with a potentially hazardous implant in place.

(2) Only the following persons are permitted in the cremation chamber area of a crematory while any human remains are being placed within the cremation chamber, being cremated, or being removed from the cremation chamber:

- (a) persons authorized by the crematory operator-in-charge;
- (b) department and board personnel; and
- (c) persons having the right of disposition under 37-19-904, MCA, who request to witness a cremation.

(3) Crematories which dispose of unclaimed remains per 37-19-706, MCA, and ARM 24.147.1111 must dispose of remains in a recoverable manner, such as burial in a grave, crypt, or niche. (History: 37-19-202, 37-19-703, MCA; IMP, 37-19-101, 37-19-703, 37-19-704, 37-19-705, 37-19-706, 37-19-707, 37-19-708, MCA; NEW, 1993 MAR p. 2670, Eff. 11/11/93; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2014 MAR p. 2017, Eff. 9/5/14; AMD, 2020 MAR p. 670, Eff. 4/18/20.)

24.147.1113 DESIGNATION AS CREMATORY OPERATOR OR TECHNICIAN (REPEALED) (History: 37-19-202, MCA; IMP, 37-19-702, MCA; NEW, 1995 MAR p. 845, Eff. 5/12/95; AMD, 1996 MAR p. 2425, Eff. 9/20/96; TRANS, from Commerce, 2002 MAR p. 790; REP, 2005 MAR p. 650, Eff. 4/29/05.)

24.147.1114 LICENSURE AS A CREMATORY OPERATOR (1) Applicants for original licensure as a crematory operator shall submit an application provided by the department and the application fee.

(2) The application shall require evidence that:

(a) applicant is at least 18 years of age;

(b) applicant is a high school, or equivalency program graduate, as shown by certified transcripts, degrees, or certificates of completion;

(c) applicant is of good moral character as shown by two letters of reference.

(History: 37-1-131, 37-19-202, MCA; IMP, 37-19-702, 37-19-703, MCA; NEW, 1995 MAR p. 845, Eff. 5/12/95; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2004 MAR p. 1622, Eff. 7/23/04; AMD, 2006 MAR p. 1169, Eff. 5/5/06.)

24.147.1115 LICENSURE AS A CREMATORY TECHNICIAN (1) Applicants for original licensure as a crematory technician shall submit an application provided by the department and the application fee.

(2) The application shall require:

(a) name of licensed crematory facility where applicant will be employed;

(b) name of supervising licensed crematory operator; and

(c) summary of training to be completed by applicant, including subject areas, method of testing, length of training, and name of person providing training.

(History: 37-1-131, 37-19-202, MCA; IMP, 37-19-702, 37-19-703, MCA; NEW, 1995 MAR p. 845, Eff. 5/12/95; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2004 MAR p. 1622, Eff. 7/23/04; AMD, 2006 MAR p. 1169, Eff. 5/5/06.)

Subchapter 12 reserved

Subchapter 13

Cemeteries

24.147.1301 APPLICATIONS FOR CEMETERY LICENSES (1) Applicants for a license to operate a cemetery must submit a completed application on forms provided by the department, electronically or by paper. Completed applications include appropriate fees and required documentation, including:

- (a) a certified copy of:
 - (i) articles of incorporation, if applicable; and
 - (ii) perpetual care and maintenance trust agreement executed by the owner, the presiding officer, or other agent;
- (b) a statement signed by a majority and verified by the owner, the presiding officer, or other agent, which contains the following information:
 - (i) names and addresses of the owners, partners, incorporators, directors, officers, cemetery manager, and trustees of the perpetual care and maintenance fund, including the person who will be in charge of sales;
 - (ii) size, location and topography of, and water available for, the property to be used for cemetery purposes;
 - (iii) the name(s) and address(es) of the banking institution, savings or building and loan association, or credit union in which the trust(s) is held; and
 - (iv) the total amount deposited to the perpetual care and maintenance fund, type of investment made or to be made and the proposed rate of contribution for the future. The amount deposited must be broken out by the initial principal investment and the trust interest and dividends earned to date by the previous owner if the cemetery was purchased from a previous licensee;
- (c) an independent confirmation from the banking institution, savings or building and loan association, or credit union in which the trust(s) is held with proof of deposit of the initial contribution to the perpetual care and maintenance fund;
- (d) an accurate and readable map of the proposed cemetery site (scale not less than one inch to 500 feet) and surrounding area showing number of acres, highways, access roads, etc., and area to be initially developed delineated for the cemetery;
- (e) such other matters as the board may require by written notice to the applicant; and
- (f) if the cemetery is not a preexisting cemetery, a certified copy of the:
 - (i) application to the city or county planning commission for a cemetery use permit or rezoning for cemetery purposes, or both, if applicable; and
 - (ii) land use or zoning permit, if applicable.

(2) An application for a new cemetery license must be submitted whenever ownership of a cemetery company changes as described in ARM 24.147.1313. (History: 37-1-131, 37-19-202, 37-19-807, MCA; IMP, 37-1-131, 37-19-807, 37-19-814, MCA; NEW, 1998 MAR p. 2959, Eff. 11/6/98; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2006 MAR p. 1169, Eff. 5/5/06; AMD, 2017 MAR p. 2187, Eff. 11/25/17.)

24.147.1302 MANAGERS (1) Each cemetery for which a new license is required shall be operated under the supervision of a cemetery manager. The applicant for a new cemetery license will designate the cemetery manager. The cemetery company will notify the board within 30 days of a change in the cemetery manager.

(2) Each cemetery manager shall post in a conspicuous place in the office or offices where sales are conducted a legible sign which shall indicate the name of the cemetery manager, as well as the salespeople's names. This sign shall be at least 5 1/2 inches high and 8 1/2 inches wide. (History: 37-1-131, 37-19-202, 37-19-807, MCA; IMP, 37-19-814, 37-19-822, MCA; NEW, 1998 MAR p. 2959, Eff. 11/6/98; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2006 MAR p. 1169, Eff. 5/5/06.)

24.147.1303 CEMETERY CONTRACTS; PRICE DISCLOSURE (1) A contract for the sale of prearranged cemetery services or commodities, the price of which may be modified at the time of delivery of those services or commodities, shall contain the following disclosure statement immediately adjacent to the signature block, with a requirement for initials, in 10-point bold type: "YOU, THE PURCHASER, WILL HAVE TO PAY, AT THE TIME OF NEED, ANY ADDITIONAL CHARGES RESULTING FROM PRICE INCREASES FOR THE FOLLOWING PREARRANGED SERVICES AND COMMODITIES:...". (History: 37-19-807, MCA; IMP, 37-19-822, MCA; NEW, 1998 MAR p. 2959, Eff. 11/6/98; TRANS, from Commerce, 2002 MAR p. 790.)

24.147.1304 PERPETUAL CARE AND MAINTENANCE FUND REPORTS (REPEALED) (History: 37-1-131, 37-19-202, 37-19-807, MCA; IMP, 37-19-807, 37-19-822, 37-19-823, MCA; NEW, 1998 MAR p. 2959, Eff. 11/6/98; AMD, 2000 MAR p. 1630, Eff. 6/30/00; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2004 MAR p. 1622, Eff. 7/23/04; AMD, 2006 MAR p. 1169, Eff. 5/5/06; REP, 2017 MAR p. 2187, Eff. 11/25/17.)

24.147.1305 AUDIT FEES (REPEALED) (History: 37-1-131, 37-19-202, 37-19-807, MCA; IMP, 37-19-807, 37-19-808, 37-19-822, 37-19-823, MCA; NEW, 2004 MAR p. 1622, Eff. 7/23/04; AMD, 2006 MAR p. 1169, Eff. 5/5/06; REP, 2017 MAR p. 2187, Eff. 11/25/17.)

Rules 24.147.1306 through 24.147.1309 reserved

24.147.1310 REQUIREMENTS FOR BURIALS (1) Except as provided in (2) and (3), there shall be no less than 18 inches of dirt or turf on top of all vaults or caskets, and no less than six inches of dirt or turf on top of other containers of cremated remains.

(2) Cremated remains placed in an urn or urn vault and covered with at least three-quarters of an inch of concrete, brass, granite, marble or metal plate, affixed to the urn or vault shall be exempt from the requirement of (1).

(3) In the case of consensual double burials, the casket or vault that is on top shall be covered with at least 12 inches of dirt or turf as measured at the time of burial. (History: 37-19-807, MCA; IMP, 37-19-807, MCA; NEW, 1998 MAR p. 2959, Eff. 11/6/98; TRANS, from Commerce, 2002 MAR p. 790.)

24.147.1311 CEMETERY AUTHORITY RULES (REPEALED) (History: 37-19-807, MCA; IMP, 37-19-807, MCA; NEW, 1998 MAR p. 2959, Eff. 11/6/98; TRANS, from Commerce, 2002 MAR p. 790; REP, 2006 MAR p. 1169, Eff. 5/5/06.)

24.147.1312 RESTRICTIONS ON USE OF CEMETERY FUNDS (REPEALED) (History: 37-1-131, 37-19-202, 37-19-807, MCA; IMP, 37-19-807, 37-19-822, MCA; NEW, 1998 MAR p. 2959, Eff. 11/6/98; AMD, 2000 MAR p. 1630, Eff. 6/30/00; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2006 MAR p. 1169, Eff. 5/5/06; REP, 2017 MAR p. 2187, Eff. 11/25/17.)

24.147.1313 TRANSFER OF CEMETERY OWNERSHIP (1) In addition to the requirements of this rule, an application for a new cemetery license as described in ARM 24.147.1301 must be submitted when ownership of a cemetery company changes.

(2) When there is a change in ownership, the existing license is void and a new license will be issued to the new owner.

(3) When ownership of any cemetery company is proposed to be transferred, the cemetery company must notify the board. The notice shall specify:

- (a) the address of the principal offices of the cemetery company; and
- (b) the name and address of each new owner and/or the stockholders, regardless of whether or not the principal address has changed.

(4) Notice of such a change of ownership shall be published in a newspaper of general circulation in the county in which the cemetery is located. The notice shall specify:

- (a) the address of the principal offices of the cemetery company, whether changed or unchanged; and
- (b) the name and address of each new owner and/or each stockholder owning more than 5 percent of the stock.

(5) Every cemetery company shall post and continuously maintain at the main public entrance to the cemetery, a sign which must:

(a) specify the current name and mailing address of the cemetery company;

(b) contain a statement that the name and mailing address of each owner, presiding officer, and/or their agent of the cemetery company may be obtained by contacting the board;

(c) contain the mailing address of the board;

(d) be at least 16 inches high and 24 inches wide; and

(e) be prominently mounted upright and vertical.

(6) The board shall suspend the license of any cemetery company which is in violation of any of the requirements in this rule. The license may be reinstated only when the cemetery company is in compliance with all requirements. (History: 37-1-131, 37-19-202, 37-19-807, 37-19-816, MCA; IMP, 37-1-131, 37-19-816, MCA; NEW, 1998 MAR p. 2959, Eff. 11/6/98; AMD, 2000 MAR p. 1630, Eff. 6/30/00; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2006 MAR p. 1169, Eff. 5/5/06; AMD, 2006 MAR p. 1583, Eff. 7/1/06; AMD, 2017 MAR p. 2187, Eff. 11/25/17.)

24.147.1314 PERPETUAL CARE AND MAINTENANCE FUNDS

(REPEALED) (History: 37-1-131, 37-19-202, 37-19-807, MCA; IMP, 37-19-807, 37-19-822, MCA; NEW, 1998 MAR p. 2959, Eff. 11/6/98; AMD, 2000 MAR p. 1630, Eff. 6/30/00; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2006 MAR p. 1169, 5/5/06; REP, 2017 MAR p. 2187, Eff. 11/25/17.)

Subchapter 14 reserved

Subchapter 15

Prearranged Funeral Agreements

24.147.1501 BRANCH FACILITY (REPEALED) (History: 37-1-131, 37-19-202, MCA; IMP, 37-19-827, 37-19-828, 37-19-829, MCA; NEW, 2000 MAR p. 1630, Eff. 6/30/00; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2006 MAR p. 1169, Eff. 5/5/06; REP, 2013 MAR p. 1191, Eff. 7/12/13.)

24.147.1502 PREARRANGED, PREFINANCED, OR PREPAID FUNERALS

(1) Mortuaries, crematories, and cemeteries shall provide information to allow all people the opportunity to consider, in advance and prior to need, the type and prices of funeral arrangements which best meet their needs.

(2) All prearranged, prefinanced, or prepaid funeral arrangements shall be according to the law and rules of the state of Montana.

(3) All cemetery perpetual care and maintenance trusts and mortuary and crematory trusts must be managed per the requirements of statute and this chapter. (History: 37-1-131, 37-19-202, 37-19-807, MCA; IMP, 37-1-131, 37-19-822, 37-19-827, 37-19-828, 37-19-829, MCA; NEW, 2000 MAR p. 1630, Eff. 6/30/00; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2017 MAR p. 2187, Eff. 11/25/17.)

24.147.1503 REQUIREMENTS FOR SALE OF AT-NEED, PRENEED, AND PREPAID FUNERAL ARRANGEMENTS

(1) No person, firm, or corporation shall sell or offer to sell, or make or offer to make at-need funeral arrangements, preneed funeral arrangements, or prepaid funeral agreements, unless that person is a duly licensed mortician.

(2) The following monies shall be held in trust by a mortician, mortuary, branch establishment, cemetery, or any other person, firm, or corporation:

(a) any monies paid under or in connection with a funeral trust agreement where:

(i) the funeral trust agreement is intended to provide funeral goods and/or service for the named person referred to in this part as beneficiary, who may or may not be the same person as the purchaser;

(ii) the sale of personal property to be used in connection with a funeral or burial, wherein the delivery of such personal property is not to occur until after the death of the beneficiary of the trust; and/or

(iii) the furnishing of personal services are not rendered until the occurrence of the death of the beneficiary of the trust.

(3) Trust funds shall be deposited in accordance with 37-19-828, MCA.

(4) Trust funds shall be held on deposit, together with any interest until the personal property has been delivered and the personal services have been rendered, unless sooner repaid, in whole or in part.

(a) When there is a closure or change of ownership of a mortuary, branch establishment, or crematory, the requirements of ARM 24.147.1506 must be met.

(5) Any funeral trust agreement shall include a provision that a preneed purchaser shall receive a receipt for the deposited funds from the depository institution. The funeral trust agreement must include a disclosure to the preneed purchaser that the purchaser should receive the receipt within 30 days, and if the receipt is not received within the 30-day timeframe, the purchaser should contact the preneed seller.

(6) No later than 30 days from issuance of the death certificate following the performance of preneed funeral arrangements pursuant to a prepaid funeral agreement, the mortician, mortuary, branch establishment, cemetery, crematory, or any other person, firm, or corporation holding trust funds shall close and distribute the funds to trust beneficiaries. (History: 37-1-131, 37-19-202, 37-19-807, MCA; IMP, 37-1-131, 37-19-807, 37-19-823, 37-19-827, 37-19-828, 37-19-829, MCA; NEW, 2000 MAR p. 1630, Eff. 6/30/00; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2006 MAR p. 1169, Eff. 5/5/06; AMD, 2016 MAR p. 314, Eff. 2/20/16; AMD, 2017 MAR p. 2187, Eff. 11/25/17; AMD, 2020 MAR p. 670, Eff. 4/18/20.)

24.147.1504 PRENEED FUNERAL AGREEMENTS (1) Every preneed funeral agreement executed in this state shall be reduced to writing, and must:

- (a) be signed by the provider and by the purchaser or the intended funeral recipient or the intended funeral recipient's guardian, agent or next of kin, and
- (b) include at least the following information:
 - (i) the name, address and telephone number of the mortuary intended to be utilized at the time of the agreement;
 - (ii) the name and license number of the individual licensee acting as or on behalf of the provider;
 - (iii) the purchaser's name, address and social security number;
 - (iv) the name, address and social security number of the intended funeral recipient;
 - (v) both a copy of the provider's current general price list and an itemized statement of funeral goods and services to be included in the agreement;
 - (vi) full and complete disclosure of how the agreement is to be funded;
 - (vii) whether the agreement is a guaranteed price agreement or nonguaranteed price agreement, which term, as applicable, shall be defined in the agreement in accordance with this subchapter; together with complete disclosure of how the planned funeral expenses shall be funded in the event the funds held by the trust are insufficient and means of disposition of any proceeds of the trust in excess of that needed for planned funeral goods and services;
 - (viii) complete disclosure of rates of interest to be accrued on the invested funds, including any fees to be charged against the invested funds, how those fees are determined and how, when and to whom such fees are paid.
 - (ix) full identification of the depository institution where the funds will be held, together with all pertinent account numbers or other means whereby the funds may be identified.

(c) provide that all funeral arrangements and prepaid funeral trust agreements are revocable upon demand of the purchaser, if alive, and if not, then by the intended funeral recipient where they are different persons. The amount of any and all moneys paid under or in connection with such an agreement together with any and all interest, if any, accrued thereon while on deposit shall be repaid on demand at any time prior to the delivery of the prepaid funeral goods or the performance of the prepaid funeral services. Upon the death of the intended funeral recipient, the intended funeral recipient's authorizing agent shall have the right to revoke the funeral arrangements and to sever the funeral funding arrangements from the funeral arrangements; except however, as provided in 37-19-708, MCA the means of disposition specified by the preneed funeral agreement may not be changed by the authorizing agent. In those instances where a prepaid funeral agreement is revoked, the moneys used to fund the agreement, including all principal and all accrued interest, shall be paid to:

(i) the purchaser if alive, and if not, then to the personal representative or estate of the deceased purchaser; or

(ii) the intended funeral recipient if the funds originally paid for a prepaid funeral agreement belonged to the intended funeral recipient and the agreement is funded through a trust; or

(iii) the named beneficiaries on the insurance policy if the agreement is funded through a funeral insurance policy.

(d) notwithstanding the provisions of (c) above to the contrary, an agreement may provide that the trust shall be irrevocable during the lifetime of the beneficiary, if at the time of the signing of an agreement, the intended funeral recipient of the trust is an applicant for or recipient of, benefits pursuant to the regulations of any public assistance agency or the medicaid program and utilizing the eligibility criteria of the supplemental social security income program in regard to burial spaces and funds set aside for burial expenses; or, a person who reasonably anticipates applying for, or receiving, such benefits within six months. A prepaid funeral agreement made irrevocable pursuant to this subchapter shall not affect the selection of funeral goods or services or the selection of the funeral home. If the intended funeral recipient of the trust enters into an agreement, reasonably anticipating that the intended funeral recipient will become an applicant for, or recipient of these programs within six months from the execution of the agreement, the agreement shall provide that, in the event the intended funeral recipient does not become an applicant for, or recipient of, any of these programs within the six month period, the trust shall revert to a revocable trust.

(e) in circumstances wherein the agreement is made irrevocable, provisions must be made for a change of provider at the sole discretion of the purchaser or intended funeral recipient, without financial penalty or charge for such a change.

(f) provide that, unless otherwise specified therein, a prepaid funeral agreement anticipates the provision of prepaid funeral goods and services in the area served by the provider. The agreement shall further provide that, if the intended funeral recipient's place of death is in a location other than that served by the provider, alternative funeral arrangements will be necessary unless otherwise provided for in the terms of the agreement.

(g) provide for the provider's substitution of any funeral goods or services to be furnished or rendered thereunder for funeral goods of equal quality, value and workmanship, or services of equal quality and value in the event of the unavailability of any funeral goods or services set forth in the agreement. Any change in the price of the agreement resulting from such substitution of funeral goods and/or services shall be reflected in the statement of funeral goods and services rendered.

(h) provide that, in the case of an agreement funded through a funeral trust, if the purchaser predeceases the intended funeral recipient where they are different persons, and no provision is made within the agreement for designation of the purchaser's successor, then the intended funeral recipient shall automatically assume the legal right to administer the funeral trust as purchaser, including the right to withdraw any and all funds held in the funeral trust, and with all other rights formerly held by the purchaser.

(2) Any provision of any such agreement whereby a person who pays money under or in connection therewith waives any provision of these rules shall be void. (History: 37-1-131, 37-19-101, 37-19-202, MCA; IMP, 37-19-827, 37-19-828, 37-19-829, MCA; NEW, 2000 MAR p. 1630, Eff. 6/30/00; TRANS, from Commerce, 2002 MAR p. 790.)

24.147.1505 TRUST FUNDS (REPEALED) (History: 37-1-131, 37-19-101, 37-19-202, MCA; IMP, 37-19-827, 37-19-828, 37-19-829, MCA; NEW, 2000 MAR p. 1630, Eff. 6/30/00; TRANS, from Commerce, 2002 MAR p. 790; REP, 2017 MAR p. 2187, Eff. 11/25/17.)

24.147.1506 PRENEED AGREEMENTS – NOTIFICATION OF CLOSURE OR CHANGE OF OWNERSHIP – MORTUARY, BRANCH ESTABLISHMENT, OR CREMATORY (1) When there is a closure of a mortuary, branch establishment, or crematory, in addition to the requirements in ARM 24.147.407, the owner must:

(a) notify all preneed funeral arrangement purchasers prior to closure or change of ownership; and

(b) within 30 days of the closure, notify the board that the purchasers have been notified of the closure.

(2) When there is change of ownership of a mortuary, branch establishment, or crematory, the following must occur within 30 days of the change of ownership:

(a) the previous owner must notify the board that the new owner has been informed of all existing preneed agreements and monies held in trust; and

(b) the new owner must:

(i) notify all preneed funeral arrangement purchasers of the change of ownership; and

(ii) notify the board that all purchasers have been notified of the change of ownership. (History: 37-1-131, 37-19-202, 37-19-807, MCA; IMP, 37-1-131, 37-19-402, 37-19-403, 37-19-703, 37-19-807, 37-19-823, 37-19-827, 37-19-828, MCA; NEW, 2020 MAR p. 670, Eff. 4/18/20.)

Subchapter 16

Trust Funds – Cemeteries, Mortuaries, and Crematories

24.147.1601 TRUST FUNDS – GENERAL (1) This rule applies to cemetery perpetual and maintenance trust funds and preneed funeral trust funds managed by mortuaries and crematories.

(2) The following individuals or entities cannot borrow any prepaid funeral trust funds, including principal or accrued interest either directly or indirectly, for the director or officer, or as the partner or agent of others:

- (a) any licensee of the board;
- (b) any director, officer, or employee of any mortuary, cemetery, crematory, or other provider; and
- (c) any member of a cemetery company.

(3) None of those listed in (2) can:

- (a) become an endorser or surety for loans to others; or
- (b) in any manner be an obligor for money borrowed from or loaned by the prepaid funeral trust funds.

(4) No business entity in which a licensee, employee of a licensee, or family member of a licensee has an interest can borrow any of the funds of a prepaid funeral trust fund.

(5) Per 37-19-829, MCA, banking institutions, savings or building and loan associations, or credit unions in which trusts are held are required to submit an annual report to the board regarding trust accounts held by those institutions using a board-developed reporting form. (History: 37-1-131, 37-19-202, 37-19-807, MCA; IMP, 37-1-131, 37-19-807, 37-19-827, 37-19-828, 37-19-829, MCA; NEW, 2017 MAR p. 2187, Eff. 11/25/17.)

24.147.1602 CEMETERY PERPETUAL CARE AND MAINTENANCE TRUST ACCOUNTS – GENERAL (1) These rules are for the purpose of regulating management of cemetery perpetual care and maintenance trusts per the requirements of Title 37, chapter 19, part 8, MCA.

(2) Cemeteries licensed by the board must establish, maintain, and manage perpetual care and maintenance trust funds and appropriate financial records per requirements in 37-19-822, 37-19-823, and 37-19-828, MCA, and these rules.

(3) Perpetual care and maintenance funds must be kept separate from all other cemetery funds.

(4) Records for perpetual care and maintenance funds must be kept separate from all other cemetery financial records.

(5) Cemeteries licensed by the board must maintain all financial records pertaining to cemetery perpetual care and maintenance trusts so those are readily available for inspection and examination by the board.

(6) Cemeteries licensed by the board must submit an annual perpetual care and maintenance fund report to the board on a board-developed reporting form per the requirements in ARM 24.147.1604. (History: 37-1-131, 37-19-202, 37-19-807, MCA; IMP, 37-1-131, 37-19-807, 37-19-822, 37-19-823, 37-19-829, MCA; NEW, 2017 MAR p. 2187, Eff. 11/25/17.)

24.147.1603 CEMETERY PERPETUAL CARE AND MAINTENANCE TRUST ACCOUNTS – FINANCIAL RECORDS (1) Cemeteries licensed by the board must maintain appropriate records per 37-19-822 and 37-19-823, MCA.

(2) In addition to the minimum requirements in 37-19-822(4), MCA, cemeteries must maintain the following:

(a) appropriate records of plans adopted for general care and maintenance and associated financial records;

(b) appropriate records of any real or personal property that is bequeathed, devised, granted, given, or otherwise contributed; and

(c) any additional associated documents. (History: 37-1-131, 37-19-202, 37-19-807, MCA; IMP, 37-1-131, 37-19-807, 37-19-822, 37-19-823, MCA; NEW, 2017 MAR p. 2187, Eff. 11/25/17.)

24.147.1604 CEMETERY PERPETUAL CARE AND MAINTENANCE TRUST ACCOUNTS – ANNUAL REPORTING REQUIREMENTS (1) Per ARM

24.147.1602 cemeteries will report annually to the board:

(a) the name(s) and address(es) of the banking institution, savings or building and loan association, or credit union in which the trust(s) is held;

(b) final trust balances for both the current year's and previous year's reporting cycles, broken out by institution;

(c) the amount of trust interest or dividends earned during the current reporting cycle;

(d) total number of preneed and at-need sales during the current reporting cycle. In addition to the number sold, the cemetery must report the total monetary amounts collected and deposited in the trust per 37-19-822, MCA;

(e) total expenditures from the net income for the care and maintenance of the cemetery during the current reporting cycle; and

(f) a signed attestation from the cemetery as to the information contained within the report.

(2) Annual perpetual care and maintenance fund reports must be submitted to the board by March 1.

(a) A cemetery may request a reporting extension prior to the submission deadline. The board will:

(i) evaluate requests on a case-by-case basis; and

(ii) notify the requestor whether the extension was granted. If the extension is granted, the board will also notify the requestor as to the length of the extension.

(b) A cemetery that does not file its report within the time prescribed above may be subject to disciplinary action as prescribed by the Montana Administrative Procedure Act and Title 37, chapter 1, part 3, MCA, including a fine of up to \$1000.

(3) The board will compare the trust principal and interest and dividends reported by the financial institution in ARM 24.147.1601 to the corresponding information reported by the licensed cemeteries in their annual reports per this rule.

(a) Using this information, the board will make a determination as to whether or not further information and/or an audit is necessary.

(b) If an audit is deemed necessary, the board will conduct an audit per ARM 24.147.1605. (History: 37-1-131, 37-19-202, 37-19-807, MCA; IMP, 37-1-131, 37-19-807, 37-19-822, 37-19-823, 37-19-828, 37-19-829, MCA; NEW, 2017 MAR p. 2187, Eff. 11/25/17.)

24.147.1605 CEMETERY PERPETUAL CARE AND MAINTENANCE TRUST ACCOUNTS – AUDITS (1) At its discretion, the board may conduct audits of licensed cemeteries per 37-19-807(1) and 37-19-808, MCA, and these rules.

Reasons for audits include, but are not limited to:

(a) public complaints; and
(b) board action on annual trust reports submitted per ARM 24.147.1601 and 24.147.1604.

(2) The board will contract with an independent licensed or certified public accountant to conduct the audit.

(3) The contracted auditor will conduct the audit per these statutes, rules, general audit standards, and board audit guidelines. The audit includes, but is not limited to:

- (a) opinion of the independent public accountant;
- (b) report of the evaluation of internal controls;
- (c) the accountant's letter of qualification;
- (d) trust agreement(s);
- (e) financial statements; and
- (f) documents supporting and verifying each asset of the fund.

(4) The fee charged by the accountant for the actual cost of the audit must be paid by the cemetery company per 37-19-808, MCA. (History: 37-1-131, 37-19-202, 37-19-807, MCA; IMP, 37-1-131, 37-19-807, 37-19-808, 37-19-822, 37-19-823, MCA; NEW, 2017 MAR p. 2187, Eff. 11/25/17.)

24.147.1606 MORTUARY AND CREMATORY PRENEED TRUST ACCOUNTS – GENERAL (1) These rules are for the purpose of regulating management of preneed funeral trust accounts per the requirements of Title 37, chapter 19, part 8, MCA.

(2) Mortuaries and crematories licensed by the board must establish, maintain, and manage preneed funeral trust funds and appropriate financial records per requirements in statute and these rules.

(3) Mortuaries and crematories licensed by the board must maintain all financial records pertaining to preneed funeral trusts so those are readily available for inspection and examination by the board.

(4) Mortuaries and crematories licensed by the board must submit an annual preneed funeral trust report to the board on a board-developed reporting form per the requirements in ARM 24.147.1608. (History: 37-1-131, 37-19-202, 37-19-708, 37-19-807, MCA; IMP, 37-1-131, 37-19-708, 37-19-827, 37-19-828, 37-19-829, MCA; NEW, 2017 MAR p. 2187, Eff. 11/25/17.)

24.147.1607 MORTUARY AND CREMATORY PRENEED TRUST ACCOUNTS – FINANCIAL RECORDS (1) Mortuaries and crematories licensed by the board must maintain appropriate records per statute and these rules.

(2) In addition to preneed agreements as described in ARM 24.147.1504, mortuaries and crematories must maintain the following records:

(a) Montana Department of Public Health and Human Services Medicaid documents;

(b) statement of goods and services for preneed contracts funded by insurance; and

(c) any additional associated documents. (History: 37-1-131, 37-19-202, 37-19-708, 37-19-807, MCA; IMP, 37-1-131, 37-19-708, 37-19-827, 37-19-828, 37-19-829, MCA; NEW, 2017 MAR p. 2187, Eff. 11/25/17.)

24.147.1608 MORTUARY AND CREMATORY PRENEED TRUST ACCOUNTS – ANNUAL REPORTING REQUIREMENTS (1) Per ARM 24.147.1606, mortuaries and crematories will report annually to the board:

(a) the name(s) and address(es) of the banking institution, savings or building and loan association, or credit union in which the trust(s) is held;

(b) final trust balances for both the current year's and previous year's reporting cycles, broken out by institution;

(c) the amount of trust interest or dividends earned during the current reporting cycle;

(d) total number of preneed contracts sold during the current reporting cycle. In addition to the number sold, the mortuaries and crematories must report the total monetary amounts collected and deposited in the trust; and

(e) a signed attestation from the mortuaries and crematories as to the information contained within the report.

(2) Annual funeral preneed trust reports must be submitted to the board by March 1.

(a) Mortuaries and crematories may request a reporting extension prior to the submission deadline. The board will:

(i) evaluate requests on a case-by-case basis; and

(ii) notify the requestor whether the extension is granted. If the extension is granted, the board will also notify the requestor as to the length of the extension.

(b) Mortuaries and crematories that do not file their reports within the time prescribed above may be subject to disciplinary action as prescribed by the Montana Administrative Procedure Act and Title 37, chapter 1, part 3, MCA, including a fine of up to \$1000.

(3) Per 37-19-829, MCA, and ARM 24.147.1606, financial institutions must report to the board regarding all amounts received and held in trust.

(4) The board will compare the trust principal and interest and dividends reported by the financial institutions in ARM 24.147.1601 to the corresponding information reported by the licensed mortuaries and crematories in these annual reports.

(a) Using this information, the board will make a determination as to whether or not further information and/or an audit is necessary.

(b) If an audit is deemed necessary, the board will conduct an audit per ARM 24.147.1609. (History: 37-1-131, 37-19-202, 37-19-708, 37-19-807, MCA; IMP, 37-1-131, 37-19-708, 37-19-827, 37-19-828, 37-19-829, MCA; NEW, 2017 MAR p. 2187, Eff. 11/25/17.)

24.147.1609 MORTUARY AND CREMATORY PRENEED TRUST

ACCOUNTS – AUDITS (1) At its discretion, the board may conduct audits of preneed funeral trusts. Reasons for audits include, but are not limited to:

(a) public complaints; and

(b) board action on annual trust reports submitted per ARM 24.147.1601 and 24.147.1608.

(2) The board will contract with an independent licensed or certified public accountant to conduct the audit.

(3) The contracted auditor will conduct the audit per these statutes, rules, general audit standards, and board audit guidelines. The audit includes, but is not limited to:

(a) opinion of the independent public accountant;

(b) report of the evaluation of internal controls;

(c) the accountant's letter of qualification;

(d) trust agreement(s);

(e) financial statements; and

(f) documents supporting and verifying each asset of the fund.

(4) The fee charged by the accountant for the actual cost of the audit must be paid by the mortuary or crematory. (History: 37-1-131, 37-19-202, 37-19-807, MCA; IMP, 37-1-131, 37-19-708, 37-19-827, 37-19-828, 37-19-829, MCA; NEW, 2017 MAR p. 2187, Eff. 11/25/17.)

Subchapters 17 through 20 reserved

Subchapter 21

Continuing Education

24.147.2101 CONTINUING EDUCATION REQUIREMENTS – MORTICIANS

- (1) Continuing education consists of educational activities designed to:
 - (a) review existing concepts and techniques;
 - (b) convey information beyond the basic professional education; and
 - (c) update knowledge on the practice and advances in mortuary science.
- (2) Continuing education approved by the board must directly relate to the scope of practice of mortuary science as defined in board statutes and rules.
- (3) The primary objective of continuing education is the protection of the health, safety, and welfare of the public, and deals primarily with the scope of practice, professional conduct, or ethical obligations of the license held. Licensees are responsible for selecting quality programs that contribute to their knowledge and competence and meet these objectives.
 - (a) Courses in which the principal purpose is to promote, sell, or offer goods, products, or services to funeral providers, or to promote the personal interests of the licensees do not meet continuing education requirements.
- (4) Continuing education requirements will not apply until the licensee's first full year of licensure.
- (5) The board may randomly audit up to 50 percent of renewed licensees' continuing education hours.
- (6) Morticians with active licenses are required to obtain a total of six continuing education hours annually, prior to renewal on July 1.
 - (a) A minimum of 1.5 hours of the six hours must address the FTC funeral rule, federal or state regulations governing safety and sanitation of funeral services practice, board rules governing funeral trusts, or funeral services ethics.
- (7) Board meetings are approved as continuing education.
 - (a) A licensee must attend at least half of a meeting to obtain credit.
 - (b) A board meeting is worth two hours of continuing education credit.
- (8) All continuing education must be documented to show proof of completion. The licensee is responsible for maintaining these records for one year following the renewal cycle reporting period, and for making those records available upon board request. Documentation must include the following information:
 - (a) licensee name;
 - (b) course title and description of content;
 - (c) presenter or sponsor;
 - (d) course date(s); and
 - (e) number of continuing education hours earned.
- (9) All licensees will affirm understanding of their recurring duty to comply with continuing education requirements as a part of annual license renewal.

(10) Licensees found to be in noncompliance with continuing education requirements may be subject to administrative suspension. Licensees may not apply continuing education hours used to complete delinquent continuing education plan requirements for the next continuing education reporting period.

(11) Any continuing education hours required by disciplinary order do not apply toward the six hours that are required annually under this rule.

(12) A licensee may request a hardship exemption from continuing education requirements due to certified illness or undue hardship. Requests will be considered by the board. (History: 37-1-131, 37-1-319, MCA; IMP, 37-1-131, 37-1-306, 37-1-319, 37-1-321, MCA; NEW, 1983 MAR p. 273, Eff. 4/1/83; AMD, 1995 MAR p. 845, Eff. 5/12/95; AMD, 1996 MAR p. 2425, Eff. 9/20/96; AMD, 2000 MAR p. 1630, Eff. 6/30/00; AMD, 2002 MAR p. 84, Eff. 1/18/02; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2013 MAR p. 1191, Eff. 7/12/13; AMD, 2014 MAR p. 215, Eff. 1/31/14; AMD, 2018 MAR p. 440, Eff. 2/24/18; AMD, 2020 MAR p. 670, Eff. 4/18/20.)

24.147.2102 SPONSORS (REPEALED) (History: 37-1-319, 37-19-202, MCA; IMP, 37-1-306, MCA; NEW, 1983 MAR p. 273, Eff. 4/1/83; AMD, 1995 MAR p. 845, Eff. 5/12/95; AMD, 1996 MAR p. 2425, Eff. 9/20/96; AMD, 2002 MAR p. 84, Eff. 1/18/02; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2013 MAR p. 1191, Eff. 7/12/13; REP, 2018 MAR p. 440, Eff. 2/24/18.)

Rules 24.147.2103 through 24.147.2107 reserved

24.147.2108 EXCEPTIONS – NOT ENGAGING IN THE PRACTICE OF FUNERAL SERVICE (REPEALED) (History: 37-1-131, 37-1-319, 37-19-202, MCA; IMP, 37-1-306, MCA; NEW, 1983 MAR p. 273, Eff. 4/1/83; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2006 MAR p. 1169, Eff. 5/5/06; REP, 2013 MAR p. 1191, Eff. 7/12/13.)

24.147.2109 PENALTY FOR NONCOMPLIANCE (REPEALED) (History: 37-19-202, 37-19-316, MCA; IMP, 37-19-316, MCA; NEW, 1983 MAR p. 273, Eff. 4/1/83; TRANS, from Commerce, 2002 MAR p. 790; REP, 2013 MAR p. 1191, Eff. 7/12/13.)

Subchapter 22 reserved

Subchapter 23

Unprofessional Conduct

24.147.2301 UNPROFESSIONAL CONDUCT (1) For the purpose of implementing 37-1-319, MCA, the board defines unprofessional conduct to include, but not be limited to, the following:

- (a) solicitation of dead human bodies by the licensee, the licensee's agents, assistants, or employees, whether such solicitation occurs after death or while death is impending, providing that this shall not be deemed to prohibit general advertising;
- (b) employment by the licensee of persons known as "cappers", or "steerers", or "solicitors", or other such persons to obtain the services of a holder of a license for the practice of funeral service;
- (c) employment directly or indirectly of any apprentice, agent, assistant, employee, or other person on part- or full-time, or on commission for the purpose of calling upon individuals or institutions for solicitation of dead human bodies for a particular mortuary, mortician, or crematory;
- (d) the direct or indirect payment or offer of payment of a commission by the licensee, the licensee's agent, assistants, or employees for the purpose of securing business for that particular mortuary, mortician, or crematory; provided however, that compliance with a state preneed law shall not constitute a violation thereof;
- (e) failing to exercise appropriate supervision over interns who are authorized to practice only under the supervision of the licensed mortician;
- (f) failing to exercise appropriate supervision of nonlicensed personnel;
- (g) failing to exercise appropriate supervision of students working in the mortuary or branch establishment who are engaged in a clinical practicum as described in 37-19-308, MCA;
- (h) allowing nonlicensed personnel to perform duties that are statutorily reserved for licensees or exempt students as described in 37-19-308, MCA;
- (i) allowing the licensee's license number to be placed on a death certificate or any other official form of any dead human body, as the mortician or funeral director, if the licensee did not prepare the body or supervise the final disposition of that body;
- (j) using any funeral merchandise previously used, without informing a new consumer or person selecting and/or paying for the use of the merchandise, that the merchandise has been used;
- (k) failure to provide funeral goods that the consumer selected, or substitution of funeral goods or services without the consumer's knowledge or consent;
- (l) violation of any of the provisions of Title 37, chapter 19, MCA, and/or ARM Title 24, chapter 147;
- (m) violation of any state law or municipal or county ordinance or regulation affecting the handling, custody, care, transportation, or final disposition of dead human bodies;
- (n) refusing to properly release a dead human body to the custody of the person or entity who has the legal right to effect such release;

- (o) knowingly making any false statement on a certificate of death;
- (p) violation of applicable statutes or regulations of the state of Montana or any other state involved with the prearrangement and/or prefinancing of a funeral;
- (q) discriminating in services because of race, creed, color, national origin, or medical condition;
- (r) knowingly making false statements regarding other licensees;
- (s) personnel of a mortuary, crematory, or cemetery whose services are desired shall not recommend auxiliary services or funeral goods, or deprive the consumer the freedom of choice for such services or funeral goods;
- (t) removing or possessing dental gold, dental silver, or any other personal effects from deceased persons without specific written permission of the authorizing agent;
- (u) attaching, detaining, claiming to detain, or failing to release any human remains or human cremated remains for any debt or demand; or upon any pretended lien or charges upon delivery of authorization for release of remains;
- (v) disposing of human remains in any manner not specified by the authorizing agent, or otherwise permitted by law;
- (w) failure to deposit or keep on deposit, misapply, misappropriate, or to repay on valid demand, any and all moneys received in payment for preneed funeral goods or services;
- (x) failure to comply with statutory or board requirements for preneed or prepaid arrangements, agreements, or trusts; or failure to disclose any material facts regarding preneed or prepaid arrangements, agreements, or trusts;
- (y) in circumstances where there is conflict in direction provided by authorizing agents of equal rank, it shall be considered unprofessional conduct for a licensee to proceed without requiring the parties to either come to agreement or submit the matter for judicial resolution of the conflict; or
- (z) removal of, embalming, or cremating a dead human body prior to proper authorization from a county coroner or state medical examiner, when the licensee has information connecting crime or violence to the cause of death. (History: 37-1-131, 37-1-136, 37-1-319, MCA; IMP, 37-1-136, 37-1-316, 37-1-319, MCA; NEW, 1982 MAR p. 2137, Eff. 12/17/82; AMD, 1988 MAR p. 2377, Eff. 11/11/88; AMD, 1989 MAR p. 225, Eff. 1/27/89; AMD, 1993 MAR p. 2670, Eff. 11/11/93; AMD, 1996 MAR p. 2425, Eff. 9/20/96; AMD, 2000 MAR p. 1630, Eff. 6/30/00; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2013 MAR p. 1191, Eff. 7/12/13; AMD, 2018 MAR p. 440, Eff. 2/24/18; AMD, 2020 MAR p. 670, Eff. 4/18/20.)

24.147.2302 LICENSEE RESPONSIBILITY IN CASE OF CRIME OR VIOLENCE IN CONNECTION WITH CAUSE OF DEATH (REPEALED) (History: 37-1-136, 37-19-202, MCA; IMP, 37-1-136, 37-19-311, 37-19-404, MCA; NEW, 1982 MAR p. 2137, Eff. 12/17/82; TRANS, from Commerce, 2002 MAR p. 790; REP, 2013 MAR p. 1191, Eff. 7/12/13.)

24.147.2303 FREEDOM OF CHOICE RIGHTS OF NEXT OF KIN AND FAMILY (REPEALED) (History: 37-1-136, 37-19-202, MCA; IMP, 37-1-136, 37-19-311, 37-19-404, MCA; NEW, 1982 MAR p. 2137, Eff. 12/17/82; TRANS, from Commerce, 2002 MAR p. 790; REP, 2013 MAR p. 1191, Eff. 7/12/13.)

24.147.2304 UNLAWFUL PRACTICE (REPEALED) (History: 37-1-136, 37-19-202, MCA; IMP, 37-1-136, 37-19-311, 37-19-404, MCA; NEW, 1982 MAR p. 2137, Eff. 12/17/82; TRANS, from Commerce, 2002 MAR p. 790; REP, 2013 MAR p. 1191, Eff. 7/12/13.)

24.147.2305 SCREENING PANEL (REPEALED) (History: 37-19-202, MCA; IMP, 37-1-307, MCA; NEW, 1996 MAR p. 2425, Eff. 9/20/96; TRANS, from Commerce, 2002 MAR p. 790; REP, 2013 MAR p. 1191, Eff. 7/12/13.)

Subchapter 24

Complaint Procedures

24.147.2401 COMPLAINT FILING (REPEALED) (History: 37-1-131, 37-19-202, MCA; IMP, 37-1-307, 37-1-308, 37-1-309, MCA; NEW, 1996 MAR p. 2425, Eff. 9/20/96; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2006 MAR p. 1169, Eff. 5/5/06; REP, 2013 MAR p. 1191, Eff. 7/12/13.)