

BEFORE THE BOARD OF FUNERAL SERVICE
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)
ARM 24.147.504 and 24.147.507 and)
the repeal of ARM 24.147.509)
pertaining to the board of funeral)
service)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT AND
REPEAL

TO: All Concerned Persons

1. On May 7, 2024, at 10:00 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

- a. Join Zoom Meeting, <https://mt-gov.zoom.us/j/81345056492>
Meeting ID: 813 4505 6492, Passcode: 766013
-OR-
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 813 4505 6492, Passcode: 766013

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on April 30, 2024, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: It is necessary that these rules reflect the passage of Senate Bill (SB) 244, Ch. 355, L. 2023, amending the one-year mortician internship that was required after graduation from mortuary school to provide the option to begin the internship simultaneously with enrollment in either the first or second year of mortuary school. This will allow for a person to become licensed one year earlier than in the past, immediately after graduation from mortuary school. The amendments also reflect the statutory change that licensing and jurisprudence examinations are only required before licensure as a mortician and not before starting the mortician internship.

While proposing the changes resulting from SB 244, board staff reviewed internship regulations in other jurisdictions and those recommended by the International Conference of Funeral Service Examining Boards. These requirements include a minimum number of hours of training, training content, recordkeeping, and minimum supervisor requirements (e.g., holding a license in good standing). In comparison, the Montana regulation only sets forth the requirement for the intern to assist in or arrange the funeral and embalming of 25 bodies during the internship.

The board is considering that it is not necessary to adopt training content standards as recommended by the International Conference of Funeral Service Examining Boards, *Model Internship Guidelines*. However, as discussed in more detail in the reasons below, it is necessary to bring Montana standards closer to national standards for legal and practical reasons related to the public health, safety, and welfare, particularly with the possibility that an intern will have had no mortuary schooling. Further, having similar standards to other states will broaden reciprocity for Montana interns and morticians transferring their licenses to another state.

Other changes strike unnecessary, repetitive, or unclear language, and reorganize the rules for ease of use.

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

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.~~

- (1) To apply for a mortician intern license, an applicant must submit:
 - (a) a completed application and fee;
 - (b) documentary evidence satisfactory to the department that the applicant is either enrolled in or has graduated from an approved mortuary science educational program; and
 - (c) a completed supervisory agreement in a format approved by the department.
- (2) To qualify for a mortician license, all mortician interns must prove, using a format approved by the department, that they have:
 - (a) completed at least 2,000 hours of supervised work at a licensed mortuary;
 - (b) made funeral arrangements or funeral directing for at least 25 cases; and
 - (c) embalmed at least 25 bodies.
- (3) A "one-year internship" as used in 37-19-302, MCA, means the requirements in (2)(a) through (c) completed in no less than 12 months and no more than 36 months. Intern licenses have an expiration date of three years after the date issued.
- (4) All interns and supervisors must maintain a current log of the requirements in (2) in a format approved by the department and produce the log if requested by the department.
- (5) A mortuary must provide a copy of the log to any intern who leaves employment with the mortuary.
- (6) The mortuary employing the intern, the supervising mortician, and the intern shall maintain a copy of the log for three years after the intern receives a mortician license or a total of seven years, whichever occurs first.
- (7) All interns must notify the department within ten days:
 - (a) if they withdraw enrollment in mortuary school or enroll in a different mortuary school; and
 - (b) any change in the intern's supervisor or employment.
- (8) All supervising morticians must:
 - (a) be currently licensed in Montana in good standing and have been licensed in any jurisdiction for a minimum of three years;
 - (b) supervise no more than three mortician interns;
 - (c) assume responsibility for the acts and omissions of the intern and be subject to license discipline for failing to supervise the intern, even while the intern is independently subject to license discipline; and
 - (d) notify the department within ten days of the change of supervising mortician, mortuary school enrollment, or employment of the intern by the mortuary.
- (9) "Supervision" has the meaning in 37-19-101, MCA, and includes the supervising mortician's onsite direction, observation, and evaluation of the intern on a regular basis and, in limited absences of the supervisor, by a licensed mortician delegated to supervise.

AUTH: 37-1-131, 37-19-202, MCA

IMP: 37-1-131, 37-19-101, 37-19-302, 37-19-304, MCA

REASON: New (1) is redrafted to be clear and simple and deletes the last sentence of former (1) because it repeats 37-1-304, MCA. Subsection (1)(b) acknowledges

the option from SB 244 to be enrolled in school to qualify as an intern, and (1)(c) authorizes the department to obtain the necessary information involving the supervisory relationship and clarifies the documents an applicant must produce in the application process. Former (2) is redrafted and deletes the examination prerequisite per SB 244.

New (2) and (3) clarify that a "one-year" internship must include a total number of hours over a minimum and maximum time. The 2,000 hours proposed is consistent with surrounding state requirements and the ICFSEB. New (2)(c) corrects an ambiguity in the former rule language and ensures that training is allocated to both embalming and the non-embalming portions of funeral services practice. The proposed 25/25 number of cases is consistent with surrounding state requirements and the ICFSEB, while accounting for Montana's rural population and high cremation rates. New (3) captures the idea in former (2) which allows for an extension of up to a third year to complete the internship. The new language simply and more efficiently calls for "one-year" to be defined in terms of total hours within a minimum and maximum range and grants the license for the entire three-year period, whether the intern requires that time or not. Former (3) is stricken because any benefit in requiring a six-month period under the same supervisor is outweighed by the unfairness of denying credit that has been earned. Reporting changes in employment or supervision in former (4) is retained in new (7) and (8). Former (5) must be stricken under SB 244 to remove the examination prerequisite, and former (6) is stricken because it repeats the definition of "intern" at 37-19-101(24), MCA. Language in former (6) regarding joint liability of the supervisor and intern is found in new (8).

New (4) through (6) clarify and standardize recordkeeping duties to memorialize and confirm the hourly and task-based requirements of the internship, under what circumstances to submit the log, and how long to keep it. The requirement is standard in other jurisdictions and necessary, because having no recordkeeping requirement could result in a loophole to avoid liability for failure to comply with internship requirements. New (7) clarifies the intern's reporting requirements contained in former (4) consistent with SB 244. New (8) clarifies that a supervising mortician must have minimum experience and a license in good standing as a necessary expectation of public health and safety and highly consistent requirement in similar professional licensing supervisory relationships. The board proposes a limit on the number of interns a single mortician has the ability to supervise safely and responsibly.

New (9) is taken from former (6)(a) and (b) clarifying that the level of supervision, although in the discretion of the supervising mortician, is meant to be onsite on a regular basis rather than remote. This clarification is necessary because interns under SB 244 may have had no mortuary schooling as compared to having graduated from mortuary school before SB 244. Even as the board intends for onsite and direct supervision, the statutory definition allows for supervisor discretion based on the individual intern and task, for which phone or video chat between supervisor and intern will suffice.

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. To apply for a mortician license, an applicant must submit:~~

~~(a) a completed application and fee;~~

~~(b) evidence of completion of the mortician internship or equivalent if completed in another jurisdiction; and~~

~~(c) evidence that the applicant has within 5 years preceding the application:~~

~~(2)(i) Applicants must have a minimum of received 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)(ii) have passed examinations as described in ARM 24.147.509 the National Board Examination of the International Conference of Funeral Service Examining Boards; and~~

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

~~(iii) passed the Montana jurisprudence exam with a score of 75% or higher.~~

~~(2) Foreign-trained applicants who do not have an ABFSE accredited degree must have their transcripts evaluated by a board-approved agency for substantial equivalency with Montana mortician requirements.~~

~~(5)(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.~~

AUTH: 37-1-131, 37-19-202, MCA

IMP: 37-1-131, 37-19-302, 37-19-303, MCA

REASON: Existing language in (1) is rewritten to be clear and concise and use similar language and organization in ARM 24.147.504(1). New (1)(b) includes language from 24.147.504(1) that allows an equivalent internship served in another state to be counted in Montana. New (1)(c) rewrites former (3) specifying the timing of graduation and exam passage before application for licensure is necessary to ensure competency measurements are recent. Elsewhere in former (3), language is stricken because it is unnecessary to have the examination requirements stated separately in ARM 24.147.509 and that rule is proposed to be repealed. It is not necessary to include language in former (4)(c) about how the department processes

applications to implement 37-1-104, MCA, involving character and fitness requirements for licensure. New (2) restates language in former (5) involving foreign-trained applicants but clarifies that the applicant has the burden to arrange and pay for an agency to review an application because neither the board or department staff have that expertise. It is not necessary to repeat 37-1-145, MCA, regarding language for military-trained applicants.

5. The rule proposed to be repealed is as follows:

24.147.509 EXAMINATIONS

AUTH: 37-1-131, 37-19-202, MCA

IMP: 37-1-131, 37-19-302, 37-19-303, 37-19-304, MCA

REASON: The rule is repealed and the content placed in ARM 24.147.507.

6. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728, Helena, Montana 59624. Comments must be received no later than 5:00 p.m., May 10, 2024.

7. An electronic copy of this notice of public hearing is available at dli.mt.gov/rules and sosmt.gov/ARM/register.

8. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728, Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on March 27, 2024, by electronic mail.

10. Pursuant to 2-4-111, MCA, the agency has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

11. Department staff has been designated to preside over and conduct this hearing.

BOARD OF FUNERAL SERVICE
JAMES AXELSON, CHAIR

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Rule Reviewer

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 2, 2024.