

COLORADO DEPARTMENT OF REGULATORY AGENCIES
OFFICE OF POLICY AND RESEARCH

FUNERAL SERVICE PRACTITIONERS

2002 SUNRISE REVIEW



STATE OF COLORADO

DEPARTMENT OF REGULATORY AGENCIES
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Bill Owens
Governor

October 15, 2002

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

Dear Members of the General Assembly:

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

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

Sincerely,

A handwritten signature in cursive script that reads "M. Michael Cooke".

M. Michael Cooke
Executive Director

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The Sunrise Process

Background

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

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

(II) Whether the public needs, and can reasonably be expected to benefit from, an assurance of initial and continuing professional or occupational competence; and

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

Any professional or occupational group or organization, any individual, or any other interested party may submit an application for the regulation of an unregulated occupation or profession. Applications must be accompanied by supporting signatures and must include a description of the proposed regulation and justification for such regulation. Applications received by July 1 must have a review completed by DORA by October 15 of the year following the year of submission.

Methodology

In an effort to evaluate the proposal for regulation of funeral service practitioners, analysts from DORA held discussions with numerous groups and individuals, studied statutes from Colorado and other states and conducted surveys to gather material for comparisons.

Opinions concerning licensure of funeral service providers were solicited from interest groups, and interviews were held with practitioners, Colorado Funeral Service Board members, representatives of the Colorado Funeral Directors Association, the Funeral Consumer Society of America, the administrator of Arapahoe Community College's Mortuary Science Program, and others. Discussions were held with representatives of the Colorado Division of Insurance (preneed funeral contracts), the Colorado Department of Public Health & Environment (vital statistics and administration of the federal regulations of the Occupational Safety and Health Administration and the Environmental Protection Agency), the environmental manager of the City of Lakewood (air emission ordinance), and other government officials.

Documents related to previous licensure of funeral service practitioners in Colorado were studied. These included the 1977 Board of Mortuary Science (Board) Performance Audit, the Board's sunset review in 1977 and a previous sunrise review conducted in 1990. Licensure laws in other states' statutes were reviewed, and media reports related to funeral service practitioners were compiled.

In order to determine the number and types of complaints filed against funeral service practitioners in Colorado, DORA contacted representatives of the 22 Judicial Districts in the state, the Consumer Protection Section of the Colorado Attorney General's Office and the Denver/Boulder Better Business Bureau.

The licensure boards in the other 49 states were surveyed to gain information pertaining to the number of licensees, complaints received and disciplinary actions taken in 2000 and 2001. Conversations were held with several of the boards' administrators.

Proposal for Regulation

State Representative Debbie Stafford and ten other members of the Colorado House of Representatives (Applicants) have submitted a sunrise application to the Department of Regulatory Agencies (DORA) for review in accordance with the provisions of section 24-34-104.1, Colorado Revised Statutes (C.R.S.). The application identifies state licensure of funeral service practitioners as the appropriate level of regulation to protect the public.

Along with the application requesting a sunrise review, the Applicants provided newspaper, magazine and Internet articles relating several highly publicized scandals that have occurred in the funeral industry in recent years. Following is a summary of the information provided to DORA in the sunrise application:

The application explains that funeral service practitioners are also referred to as funeral directors, morticians and undertakers. Generally, these practitioners arrange for and provide the services requested by the surviving family, ranging from retrieving and preparing the body to coordinating funeral details and logistics. Embalmers and cremationists are also funeral service practitioners who may provide embalming or cremation alone or in conjunction with other services.

The Applicants request that funeral directors, embalmers and cremationists all be licensed. Given the differences in the occupations, however, they recommend that licensing requirements vary according to the amount of education and experience established as the minimum level necessary to practice each occupation.

To detail the educational competencies necessary, the applicants attached materials from the Mortuary Science Program at Arapahoe Community College, which provides a two-year curriculum leading to an Associate of Applied Science in Mortuary Science degree (A.A.). They state that a National Board Exam is administered by the International Conference of Funeral Service Examining Boards to measure qualifications for entry.

The Applicants assert that reinstating a licensure program could potentially increase the supply of practitioners, predicting that the number of graduates from Arapahoe Community College's Mortuary Science Program who leave Colorado to practice elsewhere under a licensing program may instead stay and practice in Colorado. They state that a potential reduction in the number of practitioners could occur, however, if a licensure program did not allow current practitioners to be grandfathered into the program.

The Applicants state that the public would be protected by regulation of practitioners, claiming that the present lack of a state-mandated forum for filing complaints or concerns leaves the public with no recourse other than filing a civil lawsuit, which adds a financial and emotional burden for the consumer.

The application states that funeral providers in Colorado may be affiliated with the Colorado Funeral Directors Association (CFDA) and the Colorado Funeral Service Board (CFSB). National organizations with which practitioners may be affiliated include the National Funeral Directors Association, the International Cemetery and Funeral Home Association, the Order of the Golden Rule and Selected Independent Funeral Homes.

The Applicants explain that private credentialing exists, and it has been an alternative to government regulation. The CFSB, through development and maintenance of standards, has established a voluntary system of certification in Colorado. The CFSB provides certification to practitioners who meet its standards, but it has no enforcement authority or legal control over violations.

The Applicants stated that funeral homes are currently federally regulated through the Occupational Safety and Health Administration (OSHA), the Federal Trade Commission (FTC), the Americans with Disabilities Act (ADA) and the Environmental Protection Agency (EPA). In addition, the Mortuary Science Code in the C.R.S. governs certain practices. Copies of these regulations were provided in the application packet.

The Applicants assert that it is not possible for them to provide documentation of harm to consumers sufficient to require re-regulation, primarily because there is no place for the public to file grievances and no central location to obtain documented complaints. They also stress that providing documentation is not possible because there are no mandatory unannounced inspections performed periodically by any agencies with authority.

Profile of the Profession

The 2002-03 Edition of the *Occupational Outlook Handbook* prepared by the U.S. Bureau of Labor Statistics uses the terms funeral director, mortician and undertaker interchangeably. These practitioners of mortuary science may also be trained, licensed and practicing embalmers. Funeral directors and/or embalmers are professions that are licensed by all of the 50 states except Colorado.

Tasks performed by funeral directors usually include most of the following:

- Removing the deceased from the location where death occurred (home, hospital, accident scene, etc.) to a mortuary. County coroners or other officials may delay removal of the body in some circumstances.
- Interviewing family members to learn what type of service and merchandise they desire and ascertaining what type of final disposition they want for the deceased (burial, entombment or cremation). Burial in a casket is the most common method of final disposition in the United States, but the choice of cremation is growing because of its convenience and lower cost. According to the Cremation Society of North America, 40 percent of Colorado's dead human bodies were cremated in 1995. Preliminary numbers for 2000 indicate an increase to 46 percent, and the projection for 2010 is 61 percent.
- Preparing the body as requested. Unless they are interred, cremated or properly refrigerated, all dead human bodies must be embalmed after 24 hours (referred to as Colorado's 24-hour rule). Funeral directors may embalm the body, prepare it cosmetically for viewing and place it in the coffin.

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- Coordinating funeral arrangements with clergy, pallbearers, cemetery or crematory employees. They also prepare obituaries and funeral notices, decorate the site(s) for the service, provide a hearse and limousines, and perform other services.
 - Authenticating and filing the necessary documents with the appropriate authorities so that a formal certificate of death may be issued. They help family members apply for veterans' burial benefits, notify the Social Security Administration of the death and provide documentation for the family for financial matters affected by the death, such as pensions, insurance policies or annuities.
 - Preparing and shipping the remains out of state for burial, if requested.

Funeral directors must be familiar with the funeral and burial customs of many faiths, ethnic groups and fraternal organizations. Services may take place in homes, houses of worship, mortuaries, at gravesites or other locations, and funeral directors may be expected to provide appropriate accommodations for whichever site is chosen.

Most funeral homes, especially in rural areas and small towns, are family-run businesses. Most have a chapel, one or more viewing rooms, a casket-selection room with a variety of caskets and urns for families to purchase or rent, and a preparation room. Providing a hearse and one or more limousines is customary. Some funeral homes may also have a crematory on the premises. In more heavily populated areas where a greater volume of deaths occur, some services may be centralized. For example, several funeral homes may share a central location for embalming and cosmetic preparation of bodies, after which the bodies would be transported to the mortuaries in charge of the funeral services.

The nature of a funeral director's work requires people whose personal traits include composure, tact and the ability to communicate easily. Practitioners are expected to dress appropriately for solemn services, wearing neat, conservative clothing.

The *Occupational Outlook Handbook* reports that there were about 32,000 funeral director jobs and about 7,200 embalming jobs in the United States in 2000. Since most funeral directors are also trained, licensed and practicing embalmers, exact totals in each category vary with the source. Median annual earnings for funeral directors in 2000 were \$41,110.

Although qualifications vary, most states' laws require that applicants be at least 21 years old, have two years of education beyond high school that include mortuary science courses and serve an apprenticeship for at least one year. Some states also require applicants to pass a state or national examination, which may include written and oral sections, plus a demonstration of practical skills.

Mortuary Science Education College programs in mortuary science last from two to four years. Most states require completion of a two-year mortuary science program for licensure. The American Board of Funeral Service Education has 52 accredited mortuary science programs in the United States. Sixteen are dedicated solely to funeral service education, and the remainder are located at colleges and universities.

There is one mortuary science program offered in Colorado, and it is located at Arapahoe Community College (ACC) in Littleton. The program admits 50 students each year, with full-time enrollment in the low 30s. The average age of students enrolled in the program is over 30. The program is available to students participating in distance learning and has had students in as many as 20 states enrolled. Distance learning was developed specifically for out-of-state students and for those with a strong background in funeral service. Arapahoe Community College awards students who successfully complete its program an Associate of Applied Science in Mortuary Science Degree (A.A. degree). A person who has earned the A.A. degree, passed the National Board exam and served a voluntary apprenticeship is eligible for certification as a Mortuary Science Practitioner (M.S.P.) by the Colorado Funeral Service Board.

Tuition at ACC is based on credit load and residency status: in-state students pay \$62.50 per credit hour; out-of-state students pay \$313.75; and distance learners pay \$128.45, regardless of residency status, through the Colorado Community College CCC-Online Instructional Program. The mortuary science program director estimates that in-state students at ACC pay a total of \$4,000 in tuition and fees to complete the program, while distance-learners pay approximately \$6,000. The cost for out-of-state students is approximately \$20,000. The program director pointed out that many out-of-state students transfer half of their credits, usually for the general education courses, so an estimate of \$10,000 would be more accurate for their costs to complete the program.

The curriculum for the mortuary science program includes general education courses in accounting, human anatomy and physiology, business law, English composition, psychology and interpersonal skills. Mortuary science courses at ACC include:

- Role of Death and Bereavement in Society
- Introduction to Funeral Service
- Embalming Theory 1 and Lab
- Funeral Merchandising
- Mortuary Law and Compliance
- Thanatobiology/Pathology
- Embalming Theory II and Lab
- Restorative Art
- Funeral Directing and Counseling
- Thanatochemistry
- Funeral Service Internship

Summary of Current Regulation

The Colorado Regulatory Environment

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

The name of the board was changed in 1939 to the Board of Funeral Directors and Embalmers and again in 1967 to the Board of Mortuary Science (Board). Under the Administrative Reorganization Act of 1968, the Board was placed in the Department of Regulatory Agencies (DORA) as a Type 1 agency, one in which the power and rulemaking authority are vested in the regulatory board.

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

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

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

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

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

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

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

- Membership and termination. The Board was placed under the Division of Registrations in DORA. It had five members: two were licensed practitioners and three were public members not connected to the death care industry, one of whom was a member of the clergy. One member was to be from the Western Slope.
- Powers and duties of the Board. These included licensing qualified persons, registering funeral establishments, seeing that inspections of the establishments were conducted at least every three years, issuing certificates to trainees, keeping complete records of all licensees and trainees and keeping records of all written and verbal complaints and corrective actions taken.

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- Funeral establishment – registration. A registration was valid without expiration unless it was cancelled, revoked or suspended. It had to be reissued whenever there was a change of manager. Documents and papers concerning the funeral and final disposition of all deceased persons were to be kept by the funeral establishment for a period of seven years.
 - Licensed practitioner – qualifications and examination. A licensee had to be a Colorado resident at least 18 years of age and a graduate of a college of mortuary science (completed at least 60 semester hours) or its equivalent. A licensee must have served one year as a trainee and must have passed oral and written examinations.
 - Licensee – authority and responsibility. Disinfection, preservation and final disposition of dead human bodies were to be performed by licensed practitioners. Unless cremated, interred or properly refrigerated, all dead human bodies were to be embalmed after 24 hours.
 - Revocation or suspension. Grounds included fraud or misrepresentation, conviction of a felony, unprofessional conduct, discrimination and others.
 - Unlawful acts. Included disinfecting a dead human body when there was suspicion of a crime connected with the cause of death, conducting funeral arrangements without providing survivors with an itemized price list for services, fraudulently claiming to be a licensed practitioner and others.
 - Violations and penalties. Any violation would be a misdemeanor. Upon conviction, a fine of up to \$5,000 and imprisonment in the county jail up to 24 months, or both, could be levied.

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

Licensure of funeral directors and Board of Mortuary Science terminated, 1983 In 1983, House Bill 83-1107 ended licensure of funeral directors and the Board. Portions of the former practice act were continued as the Mortuary Science Code (Code), section 12-54-101, et seq., C.R.S. (The Code statutes are summarized under “Current Regulations.”)

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

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

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

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- Existing laws and means of redress of grievances appeared sufficient to regulate and address the problems occurring in the industry.

Current Federal Regulations

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

- Definitions. Alternative container, cash advance item, casket, Commission, cremation, crematory, direct cremation, funeral goods, funeral provider, funeral services.
- Price disclosures. Preventive requirements include disclosing prices over the telephone, providing printed price lists for all merchandise and services offered and disclosing that embalming is not required by law except in certain special cases.
- Misrepresentations. To prevent deceptive acts or practices, funeral directors are required to provide full disclosure about the need for certain goods and services, along with written price lists for what they offer.
- Required purchase of funeral goods or funeral services. Unfair or deceptive acts or practices include requiring that caskets be purchased for direct cremation and that provision of certain funeral goods and services are conditional upon the purchase of other items.

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- Services provided without prior approval. A funeral provider cannot charge a fee for embalming unless state or local regulation requires it in the particular circumstance or unless it has been authorized by a family member.
 - Retention of documents. Funeral providers must retain and make available for FTC inspectors true and accurate copies of their price lists for at least one year after the date of their last distribution to customers.
 - Comprehension of disclosures. All required disclosures must be provided in a clear and conspicuous manner.
 - Declaration of intent. The provisions of the Funeral Rule are separate and severable from one another. If any provision is ruled invalid, the FTC's intent is that the remaining provisions shall continue in effect. The Funeral Rule shall not apply to the business of insurance.
 - State exemptions. If a state requirement provides greater consumer protection than the Funeral Rule, the state requirement will be in effect as long as the state administers and enforces it effectively.

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

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

A discussion with an OSHA official to determine the extent to which the agency regulates funeral homes revealed that funeral homes are not routinely inspected. Complaints are typically handled by asking the employer to explain, in writing, whatever situation is alleged in a complaint. Only a small fraction of the complaints will result in an inspection of the facility.

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

Under the Clean Water Act, the types of biohazards discharged by funeral homes, including bodily fluids, formaldehyde and other embalming fluids, are not discharged in levels high enough to warrant regulation. According to an EPA official, municipal sewage treatment systems have no problem handling this type and level of biohazard.

The EPA has delegated most of its enforcement authority under the Clean Air Act to the Colorado Department of Public Health and Environment (CDPHE). A crematorium is considered an incinerator under the Clean Air Act and, as such, must have a permit to operate. Permits, which address particulate mass, opacity of emissions and the appropriate internal temperatures, are obtained from CDPHE. The CDPHE attempts to inspect crematoriums once every five years. If a complaint is filed against a crematorium, however, the CDPHE follows an established process to assess the situation. Its disciplinary actions include inspecting facilities following complaints, issuing compliance advisories, issuing notices of violation and compliant orders, and, finally, taking the facility to court for its violations.

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

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

Current State Regulations

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

- Legislative declaration. The purpose of the Code is to provide consumers with sufficient information to make informed choices, to prohibit unfair and deceptive merchandising techniques and to prohibit activities which severely restrict consumer choices regarding funerals.
- Embalming, funeral establishment and mortuary science practitioner are defined.
- Each establishment is required to have an office, a preparation room equipped for embalming and other procedures, and a room displaying a selection of caskets in a wide price range.
- Unless they are interred, cremated or properly refrigerated, all dead human bodies must be embalmed after 24 hours (known as the “24-hour rule”).
- The Code establishes the following as unlawful acts.
 - Disinfecting, preserving or making final disposition of a dead human body if there is a reasonable suspicion of a crime in connection with the cause of death.
 - Discriminating because of race, creed, color or national origin.
 - Sending remains of a deceased person to a funeral establishment without having first made inquiry as to the desires of the next of kin.

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

Cemetery Statutes Colorado's statutes contain three sections that relate to cemeteries:

- Cemetery companies. Guidelines for both nonprofit and for-profit corporations are given. All property used as a cemetery that is owned by a nonprofit corporation is exempt from taxes, assessments, etc. Property used as a cemetery and owned by a for-profit corporation is not exempt. (§7-47-101, et seq., C.R.S.)
- Cemeteries (general). Endowment care cemeteries are defined. An irrevocable endowment care fund is established by a cemetery authority for each such cemetery. Endowment care is a provision for the benefit and protection of the public by preventing cemeteries from becoming unkempt and neglected. (§12-12-101, et seq., C.R.S.)
- Removal of cemeteries. Outlines the process and notification requirements which cities and counties must follow to move a cemetery to another location. (§25-1-654-659, C.R.S.)

Preneed Funeral Contracts The Division of Insurance (Division) in DORA oversees the statutes pertaining to preneed funeral contracts. (§10-15-101, et seq., C.R.S.) Under a preneed funeral agreement, the seller agrees to provide future funeral, interment, entombment or cremation merchandise or services for a consumer who pays for the expenses in advance. In Colorado, all preneed sellers must be licensed as preneed contract sellers. The majority of the licenses are held by funeral homes, mortuaries and cemeteries. The Division lists 68 active preneed contract sellers and 99 inactive sellers, many of whom are monitored because they still have contract obligations. Preneed funeral contracts are generally in the range of \$1,000; few are as high as \$5,000.

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

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

Death Registration, Vital Statistics and Organ Donation Laws

Registration of each death occurring in the state is mandated by section 25-2-110, C.R.S. Death certificates are used for legal, medical and statistical purposes. Data also are used by public health agencies to identify and monitor public health problems. Death certificates are filed with the Center for Health & Environmental Information & Statistics (Center) in the Colorado Department of Public Health & Environment (CDPHE). The Center maintains an up-to-date registry of every funeral home in the state, along with the name of its manager, and CDPHE field officers make on-site visits to instruct the personnel about the procedures necessary for compliance with their regulations.

Local health departments act as the Center's agents by accepting completed death certificates and sending them on to the Center. They issue final disposition permits after death certificates have been properly filed. The funeral director, or the person acting in the role, is responsible for collecting and recording the legal information on the death certificate (decedent's full name, place of birth, etc.). He/she is also responsible for obtaining the medical certification and the signature of the certifying physician or coroner.

Under section 12-34-108(5), C.R.S., a mortuary science practitioner who has successfully completed a course in eye enucleation and has received a certificate of competence from the Department of Ophthalmology of the University of Colorado School of Medicine, or its equivalent, may enucleate eyes for donation to an eye bank.

Local Government Ordinances

City and county environmental health departments monitor and enforce air pollution standards for smoke and odor emissions by crematories, which are classified as incinerators. Officials inspect facilities on a rotation schedule or on a complaint basis.

Local public health departments' vital records offices issue death certificates and burial permits (final disposition of body). They also provide certified copies of both forms to those permitted access to the confidential records.

Regulation in Other States

Licensure Requirements The National Funeral Directors Association (NFDA) published information about licensure, education and apprenticeship requirements in the 50 states in 2001. Appendix B on page 40 presents data from the survey and shows that Colorado is the only state with a voluntary certification program instead of government-regulated licensure. Its requirements for voluntary certification are compared with the state-mandated requirements in the other states. The certification requirements of the Colorado Funeral Service Board (CFSB) follow state licensure, education and apprenticeship requirements data in Appendix B.

- **Type of License.** Most of the states license funeral directors and embalmers, either with separate licenses or with one license covering both professional titles. A few issue licenses to individuals referred to as mortuary science practitioners or funeral service practitioners. Five states (Hawaii, Nevada, Tennessee, Vermont and Washington) license embalmers only, while eight states (Delaware, Idaho, Iowa, Montana, New Jersey, New York, Pennsylvania and Wisconsin) issue licenses only to funeral directors/morticians.
- **Educational requirements.** Nearly all of the states require high school graduation and completion of a two-year mortuary science program resulting in an Associate of Arts (A.A.) degree. Applicants in Hawaii must meet one of three qualifications: graduation from a school of embalming and one year of practical experience, graduation from high school and two years of practical experience or five years of practical experience. Two states, Minnesota and Ohio, require an applicant to have a bachelor's degree.

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- Continuing education. Approximately two-thirds of the states require continuing education for license renewal, ranging from three to 12 hours per year. Florida requires an HIV/AIDS course in addition to its continuing education requirement. Illinois requires six hours per year for funeral directors but 12 hours per year for funeral directors who are also embalmers.
 - Apprenticeships. The length of time specified for apprenticeships varies, but most states require one year. States with variable lengths of time include Arkansas, which requires one year for embalmers and two for funeral directors. If funeral directors have completed mortuary school, however, the apprenticeship is one year. Wyoming licenses funeral directors and embalmers separately. It requires a one-year apprenticeship for embalmers, but funeral directors have no requirement.

States' Licensees DORA conducted a survey of the regulatory authorities in all of the other states to discover the number of licensees in each state, and the results are shown in Appendix C on page 44. The appendix also shows the number and types of complaints filed and the disciplinary actions taken by the boards in the states that responded.

As mentioned earlier, some states issue separate licenses to funeral directors and embalmers, while others issue one license that incorporates both professions. The total number of licensees discussed here refers to the number of practitioners in a state, whether they are licensed funeral directors, embalmers or some combination of the two. Several states also issue licenses to assistants, apprentices and interns, but those individuals are not included here, with one exception. West Virginia reported that it currently has 707 funeral service licensees (funeral directors and/or embalmers) but explained that the total includes 12 individuals who were grandfathered into the license group in the 1960s. At that time, they were employed as funeral director assistants, but they were granted licensure. It is possible that West Virginia is not the only state with this distinction.

California reported the largest number of licensees with 8,213, followed by New York with 4,684 and Texas with 4,436. Predictably, states with smaller populations have significantly fewer licensees. Alaska has 45 practitioners, and most are dual-licensed as funeral directors and embalmers. Delaware and New Mexico each reported 163 licensees, followed by Wyoming with 167 and Montana with 180.

Since there is no required licensure in Colorado, the exact number of practitioners is not known. The Colorado Funeral Directors Association (CFDA) estimates the total to be about 325.

Complaints Filed Complaints filed in 2000 and 2001 are also shown in Appendix C on page 44. The types of complaints filed include practicing without a license, fee dispute, scope of practice, standard of practice, theft, preneed contract violation and others. Determining an accurate total number of complaints is difficult because categories and/or violations may overlap. Connecticut, for instance, reported that the seven cases it listed as fee disputes were also listed as scope of practice and standard of practice violations.

In the "Other" complaint area, New Jersey listed false advertising and funeral home inspection violations, and Oklahoma included refusal of a summons.

Several of the boards explained that they do not have authority over preneed contracts. Instead, other state agencies have that responsibility. In Iowa, the Division of Insurance has the regulatory authority, as does the Division of Insurance in Colorado. In Connecticut, the Department of Consumer Protection regulates preneed contracts.

Board representatives from several states pointed out that most complaint cases are dismissed because they lack merit. The total disciplinary actions taken in the various states correlates with that statement, as it shows many fewer disciplinary actions than complaints filed. Kansas had 157 complaints in 2000 and 2001 combined, but only 14 disciplinary actions. Minnesota reported 72 complaints and 18 disciplinary actions, while Pennsylvania had 494 and 89.

Disciplinary Actions Also shown in Appendix C on page 44, disciplinary actions taken in the two-year period included license revocations, license suspensions, letters of admonition, injunctions or stipulations, fines and others. Unless guidelines are uniform, a valid comparison of other states' disciplinary actions is difficult. Criteria that could require revocation of licensure in one state might not require it in another.

Of the states that responded, Hawaii, Indiana and Nevada reported no disciplinary actions had been taken in 2000 or 2001.

Virginia revoked seven licenses, the largest number reported, and Oklahoma was second with six revocations. Pennsylvania suspended the most licenses with nine, followed closely by Virginia with eight and Kentucky with seven. California topped the other states in issuing injunctions or stipulations with 59; North Carolina was next highest with 22, and Oklahoma reported 21.

California issued more letters of admonition than any other state, with a total of 72. The largest number of monetary fines was issued by Pennsylvania with 54, followed by Louisiana with 37 and Virginia with 23. Although the amounts of the financial penalties were not requested, New Jersey included that information: \$47,250 in 2000 and \$126,500 in 2001.

Analysis and Recommendation

Public Harm

The first sunrise criterion asks:

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

Public Harm or Illegal Activity Reported in the Media. Without government-sponsored licensure and the record-keeping that accompanies state regulation, Colorado lacks a centralized location to track consumer complaints regarding services provided by mortuary practitioners. However, a clear picture of the types of public harm that have occurred in Colorado and the extent to which consumers have been affected was shown in documents the applicants provided. Additional articles were collected by the Department of Regulatory Agencies (DORA) to broaden the picture of public harm or illegal activity in Colorado and elsewhere. Appendix A on page 34 presents several lists of the cases discovered. In all, there were four clear cases of wrongdoing in Colorado brought forth. Those cases and their outcomes are presented below.

Case 1

Incident: Funeral director who conducted business in three mountain towns during the past 25 years was charged with selling preneed contracts without a license and not honoring existing preneed contracts of funeral homes he purchased.

Outcome: The Colorado Division of Insurance filed a lawsuit in Denver District Court against the funeral director. A settlement was reached without his admission of any wrongdoing. He was ordered to honor the existing contracts up to a combined total of \$50,000.

Case 2

Incident: Man working for a company that transports bodies from the coroner's office to mortuaries admitted photographing at least 40 bodies posed with props such as party horns and banners. Pictures were taken in funeral homes in Littleton, Denver and Englewood.

Outcome: Two misdemeanor charges of outrageous treatment and abuse of a corpse were filed in Arapahoe County Court. Guilty pleas were entered in both cases; the man was sentenced to 12 months in jail for each charge. He is currently in jail.

Case 3

Incident: Residents near a crematory located in Jefferson County had complaints about smoke, odor and ashes being emitted from the crematory.

Outcome: The City Council of Lakewood unanimously passed an ordinance to regulate the amount of smoke emitted by crematories operating in Lakewood. The ordinance requires crematory operators to submit monthly readings from their smoke monitors. It also calls for annual inspections of furnaces as well as operator training. Operators must be certified annually, and crematories must be licensed by the city.

Case 4

Incident: The interim coroner in Lincoln County was charged in district court with embalming without permission from the next of kin following a car crash. Other possible violations of law included:

1. A county coroner is not allowed to provide mortuary services except in an emergency.
2. A mortician is not allowed to embalm a body (thereby deciding there is no need for an autopsy) without first checking with the district attorney's office in a potential homicide case. The truck driver who caused the fatal crash in this case was charged with vehicular homicide.

Outcome: The mortician resigned as interim coroner. He received a deferred sentence in a plea-bargain agreement. He pleaded "no contest" to the charge of embalming without permission. He could face a \$5,000 fine and up to 24 months in jail if he violates probation during the one-year deferred judgment.

The four cases representing documented harm were submitted in support of the proposition that new regulation should be imposed. All four of these cases were resolved through Colorado's existing legal framework. Two of the cases resulted in criminal convictions,

another case was filed in district court resulting in a settlement and the fourth case resulted in local government action. It is also probable that the CDPHE may have had jurisdiction in the latter case had a complaint been filed. It is therefore reasonable to conclude that Colorado's existing safeguards provided adequate public protection. While it is true that three of the four submissions are after the fact responses, it is equally true that criminal convictions serve as a deterrent to others who may contemplate similar transgressions.

It could be argued that a licensing board could remove the license to practice of the practitioners implicated in the four examples. Absent such a regulatory structure, the argument would continue, these practitioners would be free to return to practice.

While this hypothesis has merit, the practical effect of overlaying a licensing body is questionable. First, licensing boards are reluctant to revoke or even suspend licenses except in the most egregious of cases. Secondly, the argument envisions a vast landscape of jurisdiction for a mortuary science board. To be able to remove these four licensees from practice, the board would need statutory jurisdictions over individuals who transport bodies, individuals who sell preneed funeral contract, individuals who operate crematories and the board would require jurisdiction over coroners.

Preneed Contract Complaints Filed with Division of Insurance

Consumer complaints pertaining to disputes over preneed contracts are filed with the Colorado Division of Insurance (Division). If agreement is reached between the parties or if a complaint cannot be verified, it may be dismissed. In cases where the Division determines a preneed contract seller is at fault, one or more disciplinary actions may be imposed on the seller. If disputes are not resolved by these methods, cases may be referred to the Attorney General.

In the past few years, at least three disciplinary actions have resulted in stipulated agreements between the Division and the preneed contract sellers. The Division receives an average of 10 complaints a year from consumers. Since January 1997, the Division has opened 34 preneed complaints and 20 inquiries. However, nearly all of these cases were filed against just five specific establishments.

The Division does not break down the complaints and inquiries into categories, but most fall into one of two general areas: The funeral home fails to provide services listed in the contract or the establishment has changed hands and the new owner will not honor the preneed contract of the former owner.

In the September 2002 issue of Governing, a magazine published by the American Society for Public Administration, an article entitled “Whistling Past the Graveyard” discusses regulation of the funeral industry. It points out some problems associated with preneed insurance contracts.

The article reveals that some states allow funeral homes to keep the interest earned on trust accounts and some require only a percentage of the money paid in advance to be placed in the trust. The article focused on Florida, which requires only 70 percent of the money paid in advance to be put in the trust (Colorado requires 75 percent). The article pointed out that funeral homes have come to rely on their up-front percentage from these sales for cash flow. Concern about this situation was also mentioned by funeral directors during DORA’s interviews for this report.

Public Harm Reported to Colorado’s Judicial Districts A survey was conducted in conjunction with this sunrise review to determine the volume and type of complaints brought to Colorado’s 22 judicial districts from 1999 to 2001. Table 1 shows that only a handful of complaints were filed, with no lawsuits resulting. Appendix D on page 46 provides the responses from all of the judicial districts.

Table 1
Colorado Judicial Districts - Complaints & Outcomes - 1999-2001

Judicial District	Complaint	Outcome
2	Pre-need contracts not honored (2 cases).	Settled informally through mediation
2	Price dispute.	No charges filed. Could not verify conflicting information
4	Pre-need contract disputes (2 cases).	Turned over to Colorado Funeral Services Board
10	Mortician solicited business from dying woman; son demanded body be released to another mortuary.	Body relinquished to avoid prosecution. No charges filed.
10	Pre-need contract buyers wanted out of agreements after rescission period had passed (2 cases).	No charges filed.
11	Pre-need contract seller died and mortuary changed hands. Family dissatisfied with services provided.	Settlement negotiated. No provable criminal case.
11	Coroner took body to his mortuary. Another funeral director complained that out-of-state family would have chosen his facility.	Parties reached understanding. No charges filed.
19	Mortician was paid double: by family and also by D.A.’s Victim’s Assistance Office.	D.A. had to threaten lawsuit to get refund.

The single case reported from Judicial District 19 (Weld County), while not prosecuted, was only resolved when the district attorney threatened a lawsuit. The deceased person in the case was a crime victim. Funeral expenses were paid by the Victims' Compensation Fund (Fund) without realizing that the family had already paid the expenses. The district attorney's office had to threaten a lawsuit to be reimbursed for the Fund money.

Six cases involving disputes over preneed contracts were referred to district attorneys, but none resulted in a lawsuit. Two were turned over to the CFSB; two were settled by mediation or negotiation; and two were dismissed. (The buyers wanted out of their contracts after the three-day rescission period had passed.)

Two cases were violations of the Code in the C.R.S. They involved sending the remains of a deceased person to a funeral establishment without first making an inquiry as to the desires of the next of kin and refusing to relinquish custody of a body to a person with the legal right to request it. The parties were able to settle the cases without charges being filed.

Colorado Funeral Service Board Voluntarily Fields Complaints
CFSB members expressed their thoughts to DORA about consumer complaints brought to them. Individual Board members serve as voluntary negotiators between consumers and funeral service practitioners when disputes are brought to them. (More detailed information about the CFSB is found under "Alternatives to Regulation," the third sunrise criteria.)

Even when the volume of complaints brought to them or to the media is very small, the attendant sensationalism, as with the tragic discoveries of uncremated bodies in Georgia, can cast a shadow over the entire industry. While nothing of that scope has occurred in Colorado, some consumers do have legitimate complaints about the services they receive. Board members stressed the critical importance of maintaining professionalism and high ethical standards to keep consumer problems at a minimum. They also mentioned that resolving complaints can be difficult at times since the Board has no enforcement power.

Not all of CFSB's Annual Reports mention complaints, but the 1997 and 1998 issues stated that very few complaints had been brought to the Board. In 1997, the Annual Report said, "The past year was also one of virtually no complaints against funeral directors – members and non-members alike . . . only two written complaints . . . When you consider that Colorado's funeral directors handle some 25,000 cases a year, that record is absolutely amazing."

Public Harm Potential – CDPHE Discussions with representatives of CDPHE revealed concerns about potential biohazard situations connected to Creutzfeldt-Jacob disease. The same apprehension was echoed by members of the CFSB. Research into this human disease is in the early stages, but there is speculation that it may be related to bovine spongiform encephalopathy, the fatal brain disease known as “mad cow disease.” At this time, it is not known how the disease is transmitted, and public health officials feel any contact with the disease may be extremely dangerous. They stress the importance of strict adherence to the standards established by the Occupational Safety and Health Administration (OSHA) for workers’ safety. Funeral directors and their employees are classified as healthcare workers by OSHA and are considered to be at occupational risk because they are exposed to blood and certain body fluids.

The CDPHE is responsible for enforcing the Clean Water Act on behalf of the federal Environmental Protection Agency. Until Creutzfeldt-Jacob disease appeared, CDPHE had no fear that public water supplies would be contaminated when body fluids, including bloodborne pathogens, were flushed into sewage systems during embalming procedures. Public health officials were confident that the relatively small quantities, combined with embalming fluids, presented no hazards to the public. However, with regard to Creutzfeldt-Jacob disease, their position is much less certain. There is not enough known about the disease at this time to determine its potential for harm.

The CDPHE also is responsible for enforcing Colorado’s “24-hour rule” (§12-54-111, C.R.S.), which states that unless a human body is cremated or refrigerated, it must be embalmed after 24 hours. The officials who provided information for this sunrise review recalled no cases related to violations of the “24-hour rule” ever being brought to the CDPHE.

Other Potential Scenarios of Public Harm In addition to the above, this review contemplates that instances of harm that have occurred elsewhere have the potential of happening in other jurisdictions, including Colorado. Among the situations discovered while conducting this review were cases in which unscrupulous practitioners dismembered corpses and sold body parts without the knowledge or permission of the next of kin and cases in which the cremains delivered to the next of kin proved to be another’s ashes or even some substance other than ashes.

Several funeral service practitioners voiced their concerns about another potentially harmful scenario. Because some of the practices of the industry take place outside of public view (i.e., embalming) and because Colorado does not have a program in which unscheduled facility inspections take place, practitioners fear that situations that violate the law could exist undetected for a long time.

Need for Regulation

The second sunrise criterion asks:

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

This criterion speaks to the proposition of whether or not the state should require a certain level of education and/or impose a requirement that practitioners pass an examination before being licensed to practice in Colorado. As this report has shown, most states impose such requirements. In fact, almost all states require completion of a two-year mortuary science curriculum, and some require completion of an examination in order to be licensed.

No evidence has been presented that would demonstrate that Colorado practitioners lack the skills, education or competence necessary to practice safely. This review uncovered no significant evidence of harm to the public resulting from lack of education of practitioners. Neither an initial educational requirement, examination requirement nor continuing education are needed to safeguard Colorado consumers.

In the funeral service field particularly, establishing a reputation based on the competence of its practitioners is essential. In Colorado, the fact that over half of the practitioners voluntarily achieve the required education and other requirements for certification by the Colorado Funeral Service Board is significant. The attained certification by Colorado practitioners demonstrates their desire for professional standing and respect.

Alternatives to Regulation

The third sunrise criterion asks:

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

Mortuary science practitioners in Colorado occupy a unique position in regard to regulation. After state-sponsored licensure was discontinued in the early 1980s, members of the Colorado Funeral Directors Association (CFDA) created a voluntary system of certification and registration. It formed the Colorado Funeral Service Board (CFSB) to administer its professional certification program for applicants meeting the criteria for the following:

- Mortuary Science Practitioner (MSP)
- Certified Funeral Director (CFD) – Options A and B
- Certified Embalming Technician (CET) – Options A and B
- Intern (INT)

The Board consists of nine members and includes practitioners and citizen representatives. In a relatively short time, the total number of certified practitioners has reached 201 (of an estimated total of 325 practitioners in Colorado). The requirements for certification show that Board-established qualifications are similar to many of the other states' and more rigorous than some (see Appendix B on page 40).

During a Board meeting attended by members of the DORA, Board members ranked Colorado's criteria for certification as comparable to the higher end of the continuum of standards of practice found in other states. Among other provisions, it defines terms used, identifies inappropriate and/or illegal acts, lists exceptions and provides guidelines for consumer disclosures.

National attention has focused on CFSB's commitment to professionalism. A Board member has served on the International Conference of Funeral Service Examining Boards (ICFSEB) as Colorado's representative. The ICFSEB is responsible for developing and administering the national mortuary science board exam, which must be passed by applicants in many states as a requirement for licensure. It was revealed in the Board's 1999 Annual Report that the criteria and requirements for voluntary certification in Colorado would be presented "side by side" with the requirements for licensure in the other 49 states in the ICFSEB international directory of funeral service regulation.

Members of the CFSB were actively involved in developing the mortuary science program at Arapahoe Community College in the 1990s, and its program director sits on the Board. That the only state without government-sponsored licensure contains both a voluntary professional certification program and a college-level mortuary science curriculum accredited by the American Board of Funeral Service Education is a notable achievement.

While the public expects the services that they desire will be provided by competent and professional practitioners, the practitioners themselves have similar objectives. Attitudes of mortuary science practitioners toward government licensure and toward the professionalism of their industry were expressed in a 1999 survey related to Colorado's unique situation regarding its lack of licensing for the profession. The survey was conducted by the executive director of the CFDA, and the complete survey results are published on the CFDA website (www.cofda.org) as "Practitioner Attitudes Regarding the Regulation of Funeral Service in Colorado."

The selected responses shown in Appendix E on page 48 lack a clear consensus of opinion toward licensure in Colorado, perhaps even an ambivalence. However, the funeral directors' responses show that gaining and sustaining professional respect from the public they serve and from their peers is a common goal.

It is reasonable to conclude that the success of Colorado's free market is due in large part to the private credential available through the CFSB. Consumers who practice a relatively small amount of diligence can, in essence, avail themselves of most of the benefits afforded by a state licensing program.

The third sunrise criterion asks whether the public can be adequately protected by means other than licensure by the government. It is clear that an efficient and effective alternative already exists. From within the profession, practitioners have stepped forward and taken on the responsibility of self-regulation. It is self-serving in the sense that maintenance of high professional and ethical standards benefits the practitioners themselves, but it also provides an example of a successful alternative to government regulation.

Conclusion

Colorado is the only state that does not license the occupations of funeral directors and embalmers. The State Board of Mortuary Science (Board) was eliminated, in part, as a result of reviews conducted by the Office of the State Auditor in 1977 and the Department of Regulatory Agencies (DORA), also in 1977. In addition, a sunrise review conducted in 1990 concluded that the Board not be reinstated.

While there appears to be support for the regulation among many of the constituencies contacted as part of this review, Colorado's sunrise review process is guided by statutory criteria.

The most significant argument raised in support of imposing new regulation concerns the potential for harm through the spread of infectious disease. However, the responses of the CDPHE and OSHA are persuasive. There is no evidence that a licensing board could improve on this existing oversight.

Recommendation - The proposal to license funeral directors, embalmers and cremationists fails to meet the statutory burden to establish new regulation. Therefore, this sunrise review recommends that the General Assembly not license or otherwise regulate these professions.

Appendix A – List of Articles

Documented Cases of Actual Harm or Illegal Activity in Colorado (Articles Submitted with Application)		
Source/Date	Article/Author	Subject of Article/Case Description
GJSentinel.com. 4/12/02 (website of The Daily Sentinel, Grand Junction)	“Funeral home settles lawsuit over preneed contracts,” by Gary Harmon	Explains that Colorado Division of Insurance filed lawsuit in Denver District Court against a funeral director. Case was settled without funeral director admitting any wrongdoing.
Funeral Monitor, 4/29/02	“Colorado’s Regulatory Disconnect and the Divine Miss M”	Describes unscrupulous activities of funeral director who conducted business in three mountain towns during past 25 years. Offenses were selling preneed contracts without a license and not honoring existing preneed contracts of funeral homes he purchased. Funeral director reached settlement with Division of Insurance, ordered to honor existing contracts up to a combined total of \$50,000. One contract holder faulted Colorado’s lack of licensure as the cause of the problems.
Rocky Mountain News, 5/7/97	“Corpse artwork in question,” by Hector Guitierrez	Man is arrested and faces misdemeanor charges of abuse of a corpse. He admits to photographing at least 40 bodies posed with props such as party horns and banners. The pictures were taken in funeral homes in Littleton, Denver and Englewood. He had access to the bodies because he worked for a company that transports bodies from coroners’ offices to funeral homes.

Nationwide Problems of Inconsistent Regulation and Oversight (Article Submitted with Application)		
Source/Date	Article/Author	Subject of Article/Case Description
funeralWire.com, 2/25/02 (article originally appeared in The New York Times)	“Crematory Case Highlights Gaps in Oversight of Funeral Business,” by Pam Belluck and Greg Winter	Relates problems that have occurred in different states, stating crematory oversight is particularly difficult since the practice has grown so rapidly.

Current Protections in Colorado/Potential Legislative Efforts (Articles Submitted with Application)		
Source/Date	Article/Author	Subject of Article/Case Description
Colorado Springs Gazette, 6/27/99	"Where no license is required," by Victor Greto	Points out that Colorado is the only state not licensing morticians but that most local funeral home owners think there's sufficient monitoring with current federal and state regulations (mandatory price lists to consumers, etc.). Mentions concern that large "chain" ownerships might raise prices and vulnerable consumers won't shop around for better deals. Quotes state legislators saying no need for licensing since few complaints.
funeral Wire.com, 2/21/02 (article originally appeared in the Denver Post)	"Lawmakers, Morticians Ask Colorado Agency for Plan on Licensing Rules"	States that the Colorado Dept. of Regulatory Agencies will be asked to craft a plan to impose rules on crematories and funeral homes in the aftermath of ghoulish discovery in Georgia crematory that did not cremate bodies as was thought. Quotes Rep. Debbie Stafford, Sen. Bob Hagedorn and Eric Wolverton, chair of the Colorado Funeral Services Board. Hagedorn and Wolverton both mentioned very few complaints and no major issues have been seen in the death care industry in Colorado.
funeral Wire.com. 2/22/02 (article originally was in the Pueblo Chieftain)	"Pueblo, Colo, Funeral Directors Wince at Gruesome News of Georgia Crematory"	Refers to public reaction to Georgia case. Quotes former secretary of Colorado's State Board of Mortuary Science, which ceased in 1982. Said she never heard of a complaint about improper disposal of bodies in the 20 years she was with the Board. Said "main reason Board was disbanded was lobbying by funeral home owners who didn't want the expense of sending people to attend mortuary science classes and taking state and national licensing tests." A Pueblo mortician said he "was uneasy that any new board would probably 'grandfather' and license all the current funeral homes, whether the staff had professional training or not."
funeral Wire.com, 3/20/02 (article originally appeared in the Colorado Springs Gazette)	"There's no need for more regulation of funeral industry," by former State Rep. Jerry Kopel	Sketches history of Mortuary Board and licensing of morticians in Colorado. Lists current state and federal laws that regulate industry. Concludes that fears of a decline in professional standards that were expressed when Board and licensing ended 20 years have proved to be unfounded.
funeralWire.com, 4/12/02 (article originally was an editorial in the Denver Post)	"Already regulated"	States that Colorado consumer law and criminal statutes provide ample protection. Explains Rep. Debbie Stafford's efforts to have sunrise review of morticians, though she isn't sure licensure is the goal. Urges more precise standards of practice for the industry. Mentions need for time limit for cremains to be held at crematories after which they could be disposed of.

Newspaper and Magazine Articles (Submitted by Practitioners)

Source/Date	Article/Author	Subject of Article/Case Description
The New York Times, 12/21/01	"Funeral Company Accused of Desecration," by Tamar Lewin	Details class-action lawsuit filed in Florida against Service Corporation International, the nation's largest funeral company. Survivors of people buried in Jewish cemeteries in Fort Lauderdale sued for desecrating remains and sought unspecified damages. Cases involved plots already containing remains being sold by cemeteries, with the earlier remains being removed and discarded. Florida's attorney general is investigating.
www.prnewswire.com , 4/1/02	"Lawsuit Charges Conspiracy between Funeral Homes and University to Secretly Embalm, Desecrate Dead Bodies Slated for Cremation."	Reports filing of class-action lawsuit in Florida that alleges an agreement between funeral homes, a transporting company and Palm Beach County-based Lynn University resulted in the illegal use of numerous bodies as cadavers for students to practice embalming techniques. Conduct of the defendants to be regarded as atrocious and intolerable. Further element was that remains were of Jews, whose religion forbids embalming.
The Orange County Register, 4/6/02	"Crematory owner accused of bribe attempt," by Michael Fisher	Describes case filed against a Lake Elsinore (California) crematory owner charged with illegally selling body parts from human remains scheduled for cremation. The parts were allegedly sold to medical-research institutions.
Mortuary Management, April 2002	"Horrific Crime Goes Beyond Imagination."	Discusses the Noble, Georgia, discovery of hundreds of bodies that were supposed to have been cremated. Lists legislative reactions by several states and at the federal level.
Mortuary Management, April 2002	"Funeral Home Workers Fatally Shot."	Reports discovery of funeral director and his college intern shot to death in Hudson, Wisconsin. Possibly occurred during break-in to steal embalming chemicals thought to make marijuana more potent.
Mortuary Management, April 2002	"Parents Sue Over Grave Location"	Describes basis of lawsuit filed against North Carolina firms by parents who discovered another's monument at daughter's grave and question location of correct grave.
Mortuary Management, April 2002	"Wrong Ashes Scattered Round the World."	Reports a Florida case where survivor traveled the world scattering what she believed were her mother's ashes to fulfill the mother's wishes, only to discover that the ashes were not her mother's. Lawsuit filed in Palm Beach Circuit Court for negligent handling of a dead body, etc.
www.prnewswire.com , 5/29/02	"Cremation Consumer Protection Bill Endorsed by Funeral Directors."	Discusses proposed legislation in Pennsylvania to provide new oversight of crematories. Would require proper identification and handling of human remains and would provide for regular inspections of crematories.

Newspaper and Magazine Articles (Submitted by Practitioners)

Source/Date	Article/Author	Subject of Article/Case Description
Mortuary Management, September 2002	"FBI Probes Possible Body Part Sales."	Reveals that the University of Texas Medical Branch in Galveston has asked the FBI to investigate whether body parts have been sold from bodies that were willed to the University for science and research purposes. There is a suspect who has been associated with a California funeral home owner accused of body-part brokering.
The Director, November 2001	"Licensing Laws: The Colorado Experience," by John J. Horan	Reflects author's thoughts about funeral practices in Colorado, including concerns about sufficient oversight in potential problem areas.

Other Newspaper & Magazine Articles

Source/Date	Article/Author	Subject of Article/Case Description
Newsweek, 5/15/00	"Of Death and Rent Seeking," by George F. Will	Rent seeking is what economists call the bending of public power for private economic advantage. Often it is done under the guise of licensing requirements for professions. An example given in this article was of morticians in Tennessee attempting to make it illegal for anyone other than a mortician to sell caskets.
Denver Post, 2/20/02	"Lawmakers, morticians ask for plan," by Trent Seibert	Points out legislators' interest in licensure in the wake of the Georgia case. Quotes lawmakers, funeral directors.
Rocky Mountain News, 2/20/02	"State urged to weigh licensing crematories," news staff	Refers to request being made by Rep. Debbie Stafford and Sen. Bob Hagedorn for sunrise review.
Rocky Mountain News, 2/21/02	"Neighbors worry about crematory," by Charley Able	Mentions complaints about smoke, odor and ashes emitted from a crematory in Lakewood. Crematory owner and neighborhood residents agree situation has improved in past two years. City of Lakewood working on ordinance to regulate amount of smoke emitted.
Rocky Mountain News, 2/21/02	Advertisement/announcement by the Monarch Society	Mortuary/crematory purchased space for ad to assure public of its high standards and professionalism following revelations in Georgia.
The New York Times, 2/23/02	"Crematory Case Highlights Gaps in Oversight of Funeral Business," by Pam Belluck and Greg Winter	Points out that while all states have some laws on the books governing elements of the funeral industry, the laws are often applied inconsistently. In reference to the Georgia case, mentions that use of cremation is growing very quickly. Says Colorado ceased regulating the industry 20 years ago but has asked to investigate regulating again.
Rocky Mountain News, 2/29/02	"Insiders debate need for cremation laws," by Howard Pankratz	Quotes several funeral directors giving opinions of whether licensure for cremators is necessary.

Other Newspaper & Magazine Articles

Rocky Mountain News, 3/12/02	"Funeral industry hurting," by Neva Nolan	Letter to the editor – Writer lists governmental agencies that currently regulate parts of the death care industry and questions need for licensure. Says with every change and every layer of government, consumer prices go up to cover the costs of compliance. Says licensure is usually just a method of generating revenue.
www.usnews.com , 3/15/02	"Burial Plots," by Kit R. Roane	Details abuses related to crematoriums, mortuaries and cemeteries and mentions how they are notoriously under-regulated.
Denver Post, 3/20/02	"Legislator considering funeral laws," by Trent Seibert	Rep. Stafford lists two new laws related to the industry that she wants to pursue. One will give crematories the right to dispose of remains after three years if not claimed. Law currently says morticians must hold them indefinitely. Also seeks tougher punishments for those stealing personal items from bodies.
Denver Post, date not given	"Lawmaker pushes for tougher burial law," by Trent Seibert	Relates Rep. Stafford's visit to the site of the Georgia case. Says among new rules she would like are one to make it illegal for residents to cremate bodies of loved ones themselves and one to force the state treasurer's office to hold cremains that are not claimed. She also wants tougher rules on those stealing personal items from a body and those using false advertising claims.
Denver Post, 4/11/02	"Already regulated already," editorial	Editorial says clarification of existing laws on the funeral industry may be helpful but licensure or re-regulation is not necessary.
Denver Post, 4/11/02	"Funeral homes back off study request," by Trent Seibert	Fred Caruso, executive director of the Colorado Funeral Directors' Association, announced that his organization would not seek a sunrise review for morticians after all, that possibly occupational licensing is not what is needed. Rep. Stafford stated that she will pursue the review.
Denver Post, 4/18/02	"State funeral reforms include necrophilia ban," by Trent Seibert	Discusses HB 02-1451 – bill introduced by Rep. Stafford that would prohibit necrophilia, cremation without permission, reckless embalming and cremation within public view. Designated state treasurer as option for caretaker of cremains held longer than three years.
Denver Post, 5/7/02	"Mortuary-standards bill dies"	States that HB 02-1451 that addressed several issues pertaining to the death care industry, had been killed in the Legislature.
Denver Post, 5/21/02	"Coroner accused in crash case," by Kit Miniclier	Interim coroner in Lincoln County (Limon) charged with embalming bodies without permission from next of kin following Feb. 2002 car crash. Other violations occurred.
AARP Newsletter, May 2002	"Crematoriums under close scrutiny as states seek tougher regulations," by Al Karr	Lists states that are considering regulating crematoriums or beefing up the regulations they already have. Gives brief overview of proposed legislation. Mentions several violations for which cremators have been sued, including selling body parts to medical schools without the knowledge of the families or regulators.

Other Newspaper & Magazine Articles

Rocky Mountain News, 8/13/02	"Lakewood cracks down on smoke from crematories," by Charley Able	Announces that the Lakewood City Council voted unanimously to pass an ordinance requiring crematories to monitor air emissions and submit monthly reports to the city; also requires crematories be licensed by the city.
Denver Post, 4/26/02	"Local funeral homes challenge the chains," by Dick Woodbury	Discusses competition that exists between large corporate funeral home chains and those owned and operated independently. Large chains control 30 percent of the market in Colorado. Mentions increasing use of cremation. Lists some extra marketing tools used to attract consumers, including mortuaries specializing in services for specific ethnic or religious groups, Internet memorials, grief counseling and creative ways to personalize services.
Governing, September 2002	"Whistling Past the Graveyard," by Christopher Swope	Discusses differences in regulatory controls over the funeral service industry in several states. Mentions Rep. Stafford's legislative efforts during the 2002 Session.

Appendix B – State Licensure, Education and Apprenticeship Requirements

State	Type of License	Education Requirements	Continuing Education Requirements	Apprenticeship
Alabama	Embalmer and/or Funeral Director	High school plus mortuary college	None	2 years
Alaska	Embalmer	Mortuary college	None	1 year
	Funeral Director	30 semester hours from college or university	None	1 year
Arizona	Embalmer	High school plus mortuary college; pass national board exam	12 hours/year	1 year
	Funeral Director	High school plus mortuary college; one year embalmer licensure and experience; pass national board exam	12 hours/year	1 year
Arkansas	Embalmer	High school plus mortuary college	8 hours/year	1 year
	Funeral Director	High school	8 hours/year	2 years (1 year w/mortuary college)
California	Embalmer	High school plus mortuary college	None	2 years
	Funeral Director	(Only business entities are licensed in this respect.)	None	2 years
Colorado	Voluntary certification program: Mortuary Science Practitioner (MSP), Funeral Director (CFD), Embalming Technician (CET)	High school for all voluntary certifications; mortuary college for MSP and CFD	6 hours/year for voluntary certification renewal	1 year for MSP 2 years for CFD
Connecticut	Embalmer and Funeral Director	High school plus mortuary college; pass national board exam	None	1 year; 50+ bodies embalmed under direct supervision
Delaware	Funeral Director	High school plus A.A. degree in Mortuary Science or equivalent	10 hours/2 years	1 year
Florida	Embalmer and/or Funeral Director	High school plus mortuary college; pass national board exam	12 hours/2 years; HIV/AIDS course	1 year
Georgia	Embalmer and/or Funeral Director	High school plus mortuary college; pass national board exam & state laws exam (funeral directors)	10 hours/2 years	18 months
Hawaii	Embalmer	One of three qualifications: 1 year practical experience and graduate of embalming school; 2 years practical experience and high school; or five years practical experience under registered embalmer	None	1, 2, or 5 years of practical experience
Idaho	Mortician	Two years of college plus mortuary college	None	1 year
Illinois	Embalmer and Funeral Director	30 semester hours plus mortuary college or A.A. or B.A. degree in mortuary science	12 hours/2 years for Funeral Directors; 24 hours/2 years for Funeral Directors/Embalmers	1 year
Indiana	Embalmer or Funeral Director	One year college plus mortuary college	10 hours/2 years	1 year

State	Type of License	Education Requirements	Continuing Education Requirements	Apprenticeship
Iowa	Funeral Director	60 semester hours (academic) at college or university plus mortuary science course	24 hours/2 years	1 year
Kansas	Embalmer	A.A. degree in mortuary Science; pass national board exam	6 hours/year	1 year
	Funeral Director	60 semester hours from a college or university; pass state board exam	6 hours/year	1 year before taking board exam
Kentucky	Embalmer	High school plus A.A. degree in mortuary science	4 hours/year	1 year
	Funeral Director	High school	4 hours/year	1 year
Louisiana	Embalmer	High school plus mortuary science program	4 hours/year	1 year
	Funeral Director	High school plus 30 semester hours of college	4 hours/year	1 year
Maine	Practitioner in funeral service	Choice of mortuary science or equivalent courses; pass national board exams	12 hours/2 years	1 year
Maryland	Embalmer/Funeral Director combination	A.A. degree in mortuary science	12 hours/2 years	1,000 hours
Massachusetts	Embalmer and Funeral Director	High school plus mortuary college; pass national board exams	5 hours/year	2 years
Michigan	Mortuary Science	Two years college with specific curriculum requirements	None	1 year
Minnesota	Mortuary Science	B.S. degree with major in mortuary science	12 hours/2 years	1 year
Mississippi	Funeral Director	High school	None	2 years
	Funeral Service	High school plus mortuary college	None	1 year
Missouri	Embalmer	High school plus mortuary college	None	1 year
	Funeral Director	High school	None	1 year
Montana	Mortician	Two years college plus mortuary college	6 hours/year	1 year
Nebraska	Embalmer and Funeral Director	60 semester hours of college credit with specific curriculum requirements	16 hours/2 years	1 year
Nevada	Embalmer	Two years college plus mortuary college	None	1 year
New Hampshire	Embalmer and Funeral Director	One year college plus mortuary college	15 hours/2 years	1 year
New Jersey	Funeral Director	Two years college plus one year mortuary college	10 hours/2 years	2 years
New Mexico	Funeral Service Practitioner	Two years college plus mortuary college	10 hours/year	1 year
New York	Funeral Director	Mortuary college	12 hours/2 years	1 year
North Carolina	Funeral Director and Embalmer Funeral Service	High school plus mortuary college	5 hours/year	1 year
North Dakota	Embalmer and Funeral Director	Two years college plus one year mortuary science	None	1 year
Ohio	Embalmer	B.S. degree plus mortuary college	12 hours/2 years	1 year
	Funeral Director	B.S. degree	12 hours/2 years	1 year
Oklahoma	Embalmer and/or Funeral Director	60 college credit hours plus mortuary college	None	1 year
Oregon	Embalmer	High school plus mortuary college	None	1 year
	Funeral Practitioner	A.A. degree	None	1 year

State	Type of License	Education Requirements	Continuing Education Requirements	Apprenticeship
Pennsylvania	Funeral Director	Two years college plus mortuary college; pass national board and state exam	None	1 year
Rhode Island	Embalmer and Funeral Director	High school plus mortuary college; pass national board exam	None	1 year
South Carolina	Embalmer and Funeral Director	High school plus mortuary college	3 hours/year	2 years
South Dakota	Embalmer/Funeral Director	Two years college plus mortuary college or B.S. in mortuary science	None	1 year in South Dakota
Tennessee	Embalmer	High school plus mortuary college	10 hours/year	1 year
Texas	Embalmer and Funeral Director	High school plus mortuary college, pass national board exam and state law exam	20 hours/2 years	1 year
Utah	Embalmer and Funeral Director	A.A. degree in mortuary science, pass national and state board exams	10 hours/2 years	1 year
Vermont	Embalmer	Mortuary college (2 years), pass written and practical exams	6 hours/2 years	1 year
Virginia	Funeral Service	High school plus mortuary college	None	18 months
Washington	Embalmer	A.A. degree in mortuary science or its equivalent	10 hours/2 years	1 year
West Virginia	Embalmer and Funeral Director	A.A. degree prior to apprenticeship and mortuary school	7 hours/2 years	1 year
Wisconsin	Funeral Director	Two years of college, specific curriculum required	15 hours/2 years	1 year
Wyoming	Embalmer	One year of college plus one year of mortuary college	None	1 year in Wyoming
	Funeral Director	No educational requirements	None	None

Source: National Funeral Directors Association, 2001

Certification Program Requirements

COLORADO FUNERAL SERVICE BOARD

*A Voluntary Professional Certification Agency
For the Advancement of Professionalism in Funeral Service in Colorado*

7853 East Arapahoe Court #2100, Englewood, CO 80112

Phone: (303) 694-4728 • FAX: (303) 694-4869

REQUIREMENT FOR CERTIFICATION BY THE C.F.S.B	Mortuary Science Practitioner (MSP)	Certified Funeral Director (CFD) Option A	Certified Funeral Director (CFD) Option B	Certified Embalming Technician (CET) Option A	Certified Embalming Technician (CET) Option B
Submit Completed Application Form To the CFSB	YES	YES	YES	YES	YES
Verify High School Diploma or GED	YES	YES	YES	YES	YES
Verify completion of 60 semester hours (90 quarter hours) of academic college or university which may include mortuary science school	YES	YES	NO substitute case requirements	NO	NO
Verify completion of mortuary science training at an accredited mortuary science school	YES	NO	NO	YES	NO substitute case requirements
75% score on national board exams	YES	NO	NO	YES	NO
Colorado internship under supervision of a registered MSP	12 months (1 year)	24 months (2 years)	72 months (6 years)	24 months (2 years)	48 months (4 years)
Required number of Documented embalming cases or funerals directed	Not applicable	50 funeral directing cases	150 funeral directing cases	50 embalming cases	100 embalming cases
Annual continuing education requirements (CEUs) to retain designation	6 CEUs	6 CEUs	6 CEUs	6 CEUs	6 CEUs
Application fee (includes current year registration fees)	\$65	\$65	\$65	\$65	\$65

NOTE: Reciprocity will be considered for applicants licensed in other states when applicant meets or exceeds the above requirements. See MSP application for reciprocity requirements.

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Appendix C – Other States’ Licensees, Complaints and Disciplinary Actions

State	Total Licensees ¹	Complaints Filed 2000	Complaints Filed 2001	Nature of Complaints (2000-2001)	Disciplinary Actions (2000-2001)
Alabama	1,337				
Alaska	45				
Arizona	500 ²	No totals provided		Practice w/o license, standard of practice, theft, preneed contract	Revoke license, suspend license, letter of admonition, injunction/stipulation, fine
Arkansas	1,200 ²				
California	8,213	214	312	Practice w/o license, scope of practice, standard of practice, preneed contract	3 license revocations, 72 letters of admonition, 59 stipulations or injunctions
Colorado	325 ³				
Connecticut	858	12	27	Not specified	
Delaware	163				
Florida					
Georgia	2,900 ²				
Hawaii		0	1	Practice w/o license	None
Idaho	268	4	2	Practice w/o license, standard of practice	1 license revocation, 1 letter of admonition, 1 injunction/stipulation
Illinois	2,801				
Indiana		5	6	None	None
Iowa	922	19	18	Practice w/o license, scope of practice, standard of practice	2 letters of admonition, 5 fines
Kansas	1,494	69	88	Practice w/o license, fee dispute, scope of practice, standard of practice, preneed contract	6 license suspensions, 6 letters of admonition, 1 injunction/stipulation, 1 other
Kentucky	2,075 ²	31	30	Practice w/o license, scope of practice, standard of practice, theft, preneed contract, other	3 license revocations, 7 license suspensions, 11 letters of admonition, 18 fines
Louisiana	1,349	76	50	Practice w/o license, fee dispute, scope of practice, standard of practice, theft, preneed contract, other	4 license revocations, 4 license suspensions, 5 letters of admonition, 37 fines, 56 other
Maine					
Maryland	847	2	2	Practice w/o license	1 license revocation, 1 license suspension, 2 injunctions/stipulations
Massachusetts					
Michigan	2,161	45	41	Not specified	1 fine
Minnesota	1,450 ²	33	39	Practice w/o license, fee dispute, scope of practice, standard of practice, preneed contract, other	2 license revocations, 2 license suspensions, 7 injunctions/stipulations, 7 fines
Mississippi	700 ²				
Missouri	2,512				
Montana	180	No totals provided		Not specified.	2 license revocations, 1 injunction/stipulation
Nebraska	405				
Nevada		0	0	None	None

State	Total Licensees	Complaints Filed 2000	Complaints Filed 2001	Nature of Complaints (2000-2001)	Disciplinary Actions (2000-2001)
New Hampshire					
New Jersey	1,674	90	76	Practice w/o license, fee dispute, standard of practice, preneed contract, other	3 license suspensions, fines (number not given)
New Mexico	163				
New York	4,684				
North Carolina	2,006	31	48	Preneed contract, other	22 injunctions/stipulations
North Dakota	250 ²	0	3	Fee dispute, standard of practice	2 letters of admonition
Ohio	3,200 ²				
Oklahoma	2,308	66	53	Practice w/o license, fee dispute, scope of practice, standard of practice, preneed contract, other	6 license revocations, 3 license suspensions, 6 letters of admonition, 21 injunctions/stipulations, 3 fines
Oregon	667				12 letters of admonition
Pennsylvania	3,400 ²	207	287	Practice w/o license, scope of practice, standard of practice, theft, preneed contract, other	4 license revocations, 9 license suspensions, 14 letters of admonition, 54 fines, 8 other
Rhode Island					
South Carolina	2,000 ²				
South Dakota		5	0	Practice w/o license, fee dispute, standard of practice, theft, preneed contract	1 license revocation
Tennessee	3,600 ²				
Texas	4,436				
Utah	267				
Vermont	236	No totals provided		Fee dispute, standard of practice, theft	3 license revocations, 1 license suspension, 3 injunctions/stipulations
Virginia			125	Practice w/o license, scope of practice, standard of practice, preneed contract	7 license revocations, 8 license suspensions, 26 letters of admonition, 3 injunctions/stipulations, 23 fines
Washington					
West Virginia	707	20	15	Practice w/o license, fee dispute, scope of practice, standard of practice, theft	2 letters of admonition, 5 injunctions/stipulations, 4 fines, 20 other
Wisconsin	1,143	26	35	Practice w/o license, standard of practice, preneed contract, other	1 license revocation, 3 license suspensions, 2 letters of admonition, 1 other
Wyoming	167	2	7	Practice w/o license, scope of practice, standard of practice, other	2 letters of admonition

Survey conducted by Office of Policy & Research, Department of Regulatory Agencies, 2002

¹Some states issue separate licenses to funeral directors and embalmers. Some issue licenses that cover both practices. The number of practitioners given in the "Total licensed" column represents both professions. It does not include apprentice licensees or others in the death care industry who are licensed in some states.

²Approximate total.

³Estimated by the Colorado Funeral Directors Association to be the number of full-time funeral directors and embalmers.

Appendix D - Colorado Judicial Districts – Complaints & Outcomes (1999–2001)

Dist.	Counties in the District	Complaints	Outcomes
1	Gilpin, Jefferson	0	n/a
2	Denver	2 – Preneed contracts not honored	Settled informally through mediation
		1 – Price dispute	Conflicting statements; couldn't verify from available information – therefore, no charges filed.
3	Huerfano, Las Animas	0	n/a
4	El Paso, Teller	2 – Preneed contract disputes. They were turned over to the Colorado Funeral Services Board in Englewood.	
5	Clear Creek, Eagle, Lake, Summit	0	n/a
6	Archuleta, San Juan, La Plata	0	n/a
	Delta, Ouray, San Miguel, Gunnison, Hinsdale, Montrose	0	n/a
8	Jackson, Larimer	0	n/a
9	Garfield, Rio Blanco, Pitkin	0	n/a
10	Pueblo	1 – Mortician visited dying woman in hospital to solicit business. She agreed, even though she already had a preneed contract elsewhere. At her death, mortician claimed body. Deceased's son demanded body be released to other mortuary. It was relinquished to avoid prosecution. No charges filed.	
		2 – Preneed contracts. Buyers wanted out of contracts after the three-day recision period had passed. No charges filed.	
11	Chaffee, Fremont, Custer, Park	1 – Preneed contract dispute. Contract seller died and mortuary changed hands. Family dissatisfied with services provided. Settlement was negotiated. No provable criminal case.	
		1 – Dispute over which mortuary would handle services. Coroner took body to his mortuary. Another funeral director complained that out-of-state family would have chosen his facility. Parties reached understanding. No charges filed.	
12	Alamosa, Conejos, Rio Grande, Costilla, Mineral, Saguache	0	n/a
13	Kit Carson, Logan, Morgan, Phillips, Yuma, Sedgwick, Washington	0	n/a
14	Grand, Routt, Moffat	0	n/a
15	Baca, Prowers, Kiowa, Cheyenne	0	n/a

Dist.	Counties in the District	Complaints	Outcomes
16	Bent, Otero, Crowley	0	n/a
17	Adams	0	n/a
18	Arapahoe, Elbert, Douglas, Lincoln	0	n/a
19	Weld	1 – Mortician was paid double - by the family and also by District Attorney's Victim Assistance Office (deceased was victim). District Attorney had to threaten lawsuit to get refund.	
20	Boulder	0	n/a
21	Mesa	0	n/a
22	Delores, Montezuma	0	n/a

Source: Survey conducted by Office of Policy & Research, Department of Regulatory Agencies, 2002

Appendix E - Excerpted Comments from Practitioner Attitudes Regarding the Regulation of Funeral Service in Colorado

By Fred Caruso, Executive Director, Colorado Funeral Directors Association, October 1999	
1. Have you experienced any difficulties in Colorado due to the fact that the state has no licensing?	<ul style="list-style-type: none"> o Wanting to go to a different state to practice and not being recognized for work I've done in Colorado. o No, but it is embarrassing that Colorado, with supposedly one of the highest educated workforces in the U.S., is the only state without a state licensing board. o There are many people practicing that are not qualified and give the industry a bad name.
2. Do you think that the lack of licensing in Colorado has had an effect on your personal earning power?	<ul style="list-style-type: none"> o I believe pay would be somewhat higher with licensing. o I have worked hard for my achievements and earn less now than in my previous career as a phlebotomist. o I currently make the same amount of money, maybe less, than an apprentice would make in Connecticut or New Hampshire.
3. What do you feel is the most compelling reason why funeral directors should be licensed?	<ul style="list-style-type: none"> o Too many companies are employing people just off the street. This is eroding professionalism. o Laws that give the public assurance that minimum qualifications have been met by mortuary staff. o Licensing denotes integrity, respect, and professionalism. o To create uniform training standards and practice requirements. o A license doesn't necessarily mean a quality service will be provided, but it does give the public someone who should be properly trained in this most unique field.
4. What do you feel is the most compelling reason why funeral directors in Colorado should not be licensed?	<ul style="list-style-type: none"> o Experience has proven that licensure does not define an individual's capabilities. o A degree does not insure honesty, integrity, dedication. o Our voluntary Colorado Funeral Services Board is doing a good job. Consumer complaints have not increased. o Many states license persons who are not qualified but can pass the test. It is the community and its feelings about you that make you a trusted and good funeral director. o I passed a test and have a driver's license, but that doesn't make me a good driver. o Licensure does not guarantee competency.
5. In other states, do you feel licensing is an effective means of regulation?	<ul style="list-style-type: none"> o Probably – because it gives continuity and public recognition that funeral service is a profession. o To some degree. A license gives a licensing authority disciplinary powers. o If licensing has "teeth," it works.
6. Since Colorado's certification program is voluntary, what motivated you most to become or remain certified?	<ul style="list-style-type: none"> o Possible grandfathering if licensing came back. o Personal/professional high standards. o It is the closest we have to licensing and represents the desire for professionalism. o I think it helps give dignity to our business and somewhat improves quality for those who operate within the association's recommendations. o To be a part of the industry and to support and build the CFDA to make the profession stronger without the state government doing it for us. o To be recognized by my professional colleagues and to get promoted at work.