

This is an amendment to 16.64.4.1, 16.64.4.5, 16.64.4.8, 16.64.4.9, 16.64.4.10, 16.64.4.11 and 16.64.4.12 NMAC. 16.64.4 NMAC was renumbered and reformatted from 16 NMAC 64.4 to conform to the current NMAC requirements.

16.64.4.1 ISSUING AGENCY: ~~[Regulation and Licensing Department,]~~ New Mexico Board of
Thanatopractice. ~~[P.O. Box 25101, Santa Fe, New Mexico 87504, (505) 476-7090]~~
[6-15-96, 1-22-99; 16.64.4.1 NMAC – Rn & A, 16 NMAC 64.4.1, 09-15-01]

16.64.4.5 EFFECTIVE DATE: September 26, 1993, unless a different date is cited at the end of a Section ~~[or paragraph].~~
[6-15-96; 16.64.4.5 NMAC – Rn & A, 16 NMAC 64.4.5, 09-15-01]

16.64.4.8 GENERAL PROVISIONS: The following requirements pertain to all establishments and crematories:

A. The building in which an establishment or crematory is located shall be in conformity with the requirements of the applicable State and local statutes, rules, ordinances and zoning provisions, of good appearance and devoted primarily to the purpose for which it is licensed; provided, however, that a crematory may be located at any establishment if allowed by local ordinances and zoning provisions.

B. The site and any rooms or areas within the structure thereon, and the use thereof, shall conform to all applicable State and local statutes, rules, ordinances and zoning provisions, and shall be in clean condition and good repair at all times.

C. There shall be some identification visible from the street identifying the name of the establishment as licensed by the Board; provided, however, that crematories shall not be required to have visible identification.

D. Within this State there may be presently licensed establishments which were lawful before 16.64 NMAC was effective in its original form on September 14, 1988, but which would not conform to the provisions of 16.64.4 NMAC, or future amendment. It is the intent of 16.64 NMAC to permit these physical structure nonconformities in accordance with the Thanatopractice Act. To effectuate this intent, the application of 16.64 NMAC shall be prospective only from and after its effective date in its original form on September, 14, 1988 and any existing physical structure nonconformity in a presently licensed establishment shall not be deemed grounds for revocation, suspension, denial or non-renewal of an establishment license for facilities existing and approved under the statutes and 16.64 NMAC in force at the date of the adoption hereof. Any such establishment whose license is revoked or not renewed, or any establishment which has any change in ownership as outlined in 16.64.4.11 NMAC shall be subject to the requirements of the Board at the time such establishment applies to again become licensed. The provisions of 16.64.4 NMAC shall be deemed severable.

~~[E. Each establishment and crematory licensed by the Board is subject to inspection by the Board at all reasonable times without legal process.]~~

[2-7-76...6-15-96; 16.64.4.8 NMAC – Rn & A, 16 NMAC 64.4.8, 09-15-01]

16.64.4.9 MINIMUM REQUIREMENTS OF ESTABLISHMENTS ~~[AND CREMATORIES]:~~

A. To be licensed by the Board, each funeral establishment shall have and maintain the following minimum requirements:

(1) A chapel in which funeral services may be conducted, which shall be at least six hundred (600) square feet (inside-wall-to-inside-wall) in size, and shall:

(a) have the capacity for seating not less than sixty (60) persons and for the proper display of a casket containing the deceased;

(b) have good ventilation;

(c) be entirely and completely separated from both the preparation room and the casket display room, except for entrances and exits having doors; and

(2) A casket display room which shall be not less than four hundred fifty (450) square feet (inside-wall-to-inside-wall) in size and shall

(a) contain ~~[a stock of]~~ burial caskets ~~[in]~~ or a range of models and prices with not less than twelve different adult burial caskets or models normally displayed, and if models are displayed then the burial caskets shall be available and warehoused within 50 miles of the establishment; and

(b) be adequately illuminated; and

(3) A preparation room which shall be not less than one hundred fifty (150) square feet (inside-wall-to-

inside-wall) in size and shall:

- (a) be equipped with a sanitary flooring of tile or other suitable hard, impervious surface;
- (b) be equipped with necessary drainage, lighting and ventilation;
- (c) be equipped with the equipment and supplies necessary to embalm and otherwise prepare the human dead for final disposition and transportation; and
- (d) be entirely enclosed by flooring, walls and ceiling, except for proper ventilation and entrances and exits having doors.

B. To be licensed by the Board, each commercial establishment shall have and maintain the following minimum requirements:

- (1) A preparation room as outlined in Paragraph (3) of Subsection A of 16.64.4.9 NMAC~~[, above]~~; and
- (2) An office which is entirely enclosed by flooring, walls and ceiling, except for proper ventilation and entrances and exits having doors, and which is totally separate from the preparation room except for entrances and exits having doors; and
- (3) Commercial establishments shall be exempt from the requirements of Paragraphs (1) and (2) of Subsection A of 16.64.4.9 NMAC~~[, above]~~, provided the licensee in charge certifies to the Board that the commercial establishment will not exceed the provisions allowed for commercial establishments in the Thanatopractice Act.

C. To be licensed by the Board, each direct disposition establishment shall have and maintain the following minimum requirements:

- (1) A room for sheltering dead human bodies which shall:
 - (a) be equipped with a sanitary flooring of tile or other suitable hard, impervious surface;
 - (b) be equipped with necessary drainage, lighting and ventilation;
 - (c) have a refrigeration unit ~~[thermodynamically]~~ thermostatically controlled with a minimum storage area of twelve and one-half (12.5) cubic feet per body;
 - (d) be entirely enclosed by flooring, walls and ceiling, except for proper ventilation and entrances and exits having doors; ~~and~~
- (2) An office which is entirely enclosed by flooring, walls and ceiling, except for proper ventilation and for entrances and exits having doors, and which is totally separate from the room where bodies are sheltered except for entrances and exits having doors; and
- (3) If the establishment contains burial caskets and/or a range of models the establishment shall comply with the requirements of Paragraph (2) of Subsection A of 16.64.4.9 NMAC.

~~[D. The following requirements pertain to crematories:~~

- ~~(1) Each new crematory must be inspected by the Board or its designee before opening for business; and~~
- ~~(2) A new crematory, upon successfully passing an inspection by the Board, may be issued a temporary license until the next regular meeting of the Board, at which time a license may be issued which is subject to annual renewal.]~~

[2-7-76...9-26-93, 1-22-99; 16.64.4.9 NMAC – Rn & A, 16 NMAC 64.4.9, 09-15-01]

16.64.4.10 LICENSEE IN CHARGE AND SEPARATE ESTABLISHMENTS:

~~[Each establishment must have in charge, full time therein, a licensee in charge, provided, however that if any establishment is part of a multi-unit enterprise within this State, only one establishment needs to have a licensee in charge, full time therein, as long as the establishments are within fifty (50) miles by road travel, and permission has been granted by the Board.~~

A. For purposes of complying with the Thanatopractice Act and 16.64 NMAC establishments are considered part of a multi-unit enterprise if they have:

- ~~(1) the same ownership; and~~
- ~~(2) the same management; and~~
- ~~(3) are generally considered the same operation, in two or more locations, with one establishment being the main establishment and any other(s) being the branch(es) of the main establishment.~~

~~B. When a licensee makes application to be in charge of more than one establishment of a multi-unit enterprise, he or she shall notify the Board as to which establishment is the main establishment and which is (are) the branch(es).~~

- ~~(1) While a licensed funeral service practitioner may also be licensed as a direct disposer, no person shall concurrently be the funeral service practitioner in charge of a funeral or commercial establishment and the direct~~

~~disposer in charge of a direct disposition establishment.~~

~~(2) When a licensee proposes to be the licensee in charge of more than one establishment, he or she must make application, together with the proper fee, for each establishment. In determining whether a licensee may be the licensee in charge of more than one establishment, the Board shall file a rule of reasonableness with full consideration of the need for the licensee assuming full responsibility for the operation and conduct of each establishment.~~

~~C. No licensee shall be in charge of more than one establishment unless the establishments are part of a multi unit enterprise and are within fifty (50) miles by road travel.~~

~~D. No licensee shall be the licensee in charge of any establishment which is in excess of fifty (50) miles by road travel of where he or she lives.]~~

A. Each establishment shall have in charge, full-time therein, a licensee in charge.

(1) The licensee in charge for a funeral establishment shall be a licensed funeral service practitioner, and shall live within fifty (50) miles by road travel of the establishment.

(2) The licensee in charge of a commercial establishment shall be a licensed funeral service practitioner, and shall live within fifty (50) miles by road travel of the establishment.

(3) The licensee in charge of a direct disposition establishment shall be a licensed direct disposer, and shall live within fifty (50) miles by road travel of the establishment.

B. A licensee in charge may be licensee in charge of more than one establishment provided that the requirements outlined in Subsection A of 16.64.4.10 NMAC have been met, and:

(1) the establishments are within fifty (50) miles by road travel of each other;

(2) the licensee in charge lives within fifty (50) miles by road travel of each establishment; and

(3) application is made in accordance with the requirements outlined in 16.64.4.11 NMAC for a change in the licensee in charge.

[2-7-76...9-26-93; 16.64.4.10 NMAC – Rn & A, 16 NMAC 64.4.10, 09-15-01]

16.64.4.11 CHANGES OF ESTABLISHMENT AND CREMATORY LICENSES:

A. An establishment or crematory license is an authority granted to the person, firm partnership, corporation, association, joint venture, or other organization, or any combination thereof, and is not transferable. A change in business designation of an establishment or crematory or of a licensee in charge of an establishment may have the legal effect of attempting to transfer the license and of operating without a license. Therefore, all such changes shall be filed with the Board on an application form prescribed by the Board, accompanied by the required fees, within thirty (30) days following any such change.

(1) Incorporation creates a new legal entity which requires a new license even though one or more stockholders, officers or directors have been previously issued a license. A license to practice funeral service or direct disposition held by a stockholder, officer or director is not authority to the corporation to operate as a funeral or direct disposition establishment.

(2) The organization of a partnership or joint venture creates a new legal entity which requires a new license, even though one or more of the partners have previously been issued a license.

(3) The dissolution of a corporation or partnership which has been issued a license, operates to terminate the license and no individual or firm may operate under such a terminated license.

(4) The change of members of a general partnership, or in the general partner membership of a limited partnership, either the addition or withdrawal of a partner or partners, establishes a new legal entity which requires a new license and such partnership cannot operate on a license of the former partnership.

(5) The change of ownership of fifty (50) percent or more of the stock in a corporation or shares in a partnership operates to terminate the license and a new license is required, even if the licensee in charge does not change.

(6) A change in the licensee in charge operates to terminate the establishment license and the establishment can continue to operate only under a new license granted by the Board and designating the new licensee in charge. The revocation, suspension, lapse or other loss of the license of the licensee in charge shall likewise cause a termination of the existing establishment license.

(7) A change in location of an establishment or crematory shall require a new establishment or crematory license.

(8) A change in the name of an establishment or crematory shall require a new establishment or crematory license.

(a) Any change in name shall not be announced, used, or in any way conveyed to the public until the new license is issued by the Board.

(b) All advertising, signs, listings, newspaper notices, as well as all stationery, business cards, etc., of an establishment or crematory licensed by the Board shall include the name of the establishment or crematory, exactly as licensed by the Board, and all references to the new name shall be changed within thirty (30) days following the Board meeting at which the new license was issued.

B. Prior to the issuance of a new license under Subsection A of 16.64.4.11 NMAC the Board may require an inspection of the establishment or crematory, however an inspection of the establishment or crematory shall be required for a change under Paragraph (7) of Subsection A of 16.64.4.11 NMAC prior to the issuance of a new license.

C. Failure to file for a change of an establishment or crematory license within the thirty (30) day period shall be grounds for termination of licenses of the establishment and the licensee in charge, or of the crematory license.

D. Upon filing for any change, the establishment or crematory shall continue to operate under its current license until the next Board meeting, provided all other provisions of the Thanatopractice Act are followed.

E. Re-inspections.

(1) The requirement for a re-inspection is based on the following:

(a) the inspector has attempted on two occasions to inspect the establishment or crematory to no avail, and would include the situation where the establishment or crematory is closed during normal business hours ~~for~~ and that the licensee in charge is not available within one (1) hour of contact made or attempted by the inspector; or

(b) the establishment or crematory is found to be in non-compliance with the Board's inspection requirements.

(2) A re-inspection and/or penalty fee will be imposed on any establishment or crematory if a re-inspection is required. The licensee in charge of an establishment or a crematory authority will be informed that a re-inspection and/or penalty fee is being assessed and the reason for the re-inspection.

(3) If the Board has good reason to believe that the Thanatopractice Act or 16.64 NMAC, governing the inspection requirements have been violated, a re-inspection and/or penalty fee will be assessed only if a violation exists.

[2-7-76...9-26-93; 1-22-99; 16.64.4.11 NMAC – Rn & A, 16 NMAC 64.4.11, 09-15-01]

16.64.4.12 REFRIGERATION: All bodies which are refrigerated in lieu of, or prior to, embalming shall be stored at a temperature not to exceed forty (40) degrees Fahrenheit { five (5) degrees Celsius } and shall not be taken out of refrigeration until such time as the dead human body is being prepared to be embalmed, upon final disposition, or for identification purposes only not to exceed thirty (30) minutes.

[2-6-82...9-26-93; 16.64.4.12 NMAC – Rn & A, 16 NMAC 64.4.12, 09-15-01]