

645—103.3(17A,147,156,272C) Grounds for discipline against funeral directors. The board may initiate disciplinary action against a licensed funeral director based on any of the following grounds:

103.3(1) Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to, an intentional perversion of the truth in making application for a license to practice in this state, which includes the following:

a. False representation of a material fact, whether by word or by conduct, by false or misleading allegation, or by concealment of that which should have been disclosed when making application for a license in this state, or

b. Attempting to file or filing with the board or the department of public health any false or forged diploma or certificate or affidavit or identification or qualification in making an application for a license in this state.

103.3(2) Professional incompetency. Professional incompetency includes, but is not limited to:

a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of practice.

b. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other practitioners in the state of Iowa acting in the same or similar circumstances.

c. A failure to exercise the degree of care which is ordinarily exercised by the average practitioner acting in the same or similar circumstances.

d. Failure to conform to the minimal standards of acceptable and prevailing practice of a funeral director in this state.

103.3(3) Deceptive practices. Deceptive practices are grounds for discipline, whether or not actual injury is established, and include:

a. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of mortuary science.

b. Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a licensee in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation.

c. Acceptance of any fee by fraud or misrepresentation.

d. Falsification of business records through false or deceptive representations or omissions.

e. Submission of false or misleading reports or information to the board including information supplied in an audit of continuing education, reports submitted as a condition of probation, or any reports identified in this rule.

f. Knowingly misrepresenting any material matter to a prospective purchaser of funeral merchandise, furnishings, or services.

g. Representing oneself as a funeral director when one's license has been suspended, revoked, or surrendered, or when one's license is on inactive status.

h. Permitting another person to use the licensee's license for any purposes.

i. Misrepresenting the legal need or other requirement for embalming.

j. Fraud in representations as to skill or ability.

103.3(4) Unethical, harmful or detrimental conduct. Licensees engaging in unethical conduct or practices harmful or detrimental to the public may be disciplined whether or not injury is established. Behaviors and conduct which are unethical, harmful or detrimental to the public may include, but are not limited to, the following actions:

a. Practice outside the scope of the profession which requires licensure by a different professional licensing board.

b. Any violation of Iowa Code chapter 144.

c. Verbal or physical abuse, improper sexual contact, or making suggestive, lewd, lascivious, offensive or improper remarks or advances, if such behavior occurs within the practice of mortuary science or such behavior otherwise provides a reasonable basis for the board to conclude that such behavior would place the public at risk within the practice of mortuary science.

d. Betrayal of a professional confidence.

e. Engaging in a professional conflict of interest.

f. Failure to comply with universal precautions for preventing transmission of infectious diseases as issued by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

g. Embalming or attempting to embalm a deceased human body without first having obtained authorization from a family member or representative of the deceased, except where embalming is done to meet the requirements of applicable state or local law. However, a funeral director may embalm without authority when, after due diligence, no authorized person can be contacted and embalming is in accordance with legal or accepted standards in the community, or the licensee has good reason to believe that the family wishes embalming. The order of priority for those persons authorized to permit embalming is found in Iowa Code section 142A.2(2). If embalming is performed under these circumstances, the licensee shall not be deemed to be in violation of the prohibition in this paragraph.

h. Failure to keep and maintain records as required by Iowa Code chapter 156 and associated rules.

103.3(5) Unlicensed practice.

a. Practicing mortuary science when one's license has been suspended, revoked, or surrendered, or when one's license is on inactive status.

b. Practicing mortuary science within an unlicensed funeral or cremation establishment.

c. Permitting an unlicensed employee or other person under the licensee's control or supervision to perform activities requiring a license.

d. Knowingly aiding, assisting, procuring, advising, or allowing a person to unlawfully practice mortuary science, or aiding or abetting a licensee, license applicant or unlicensed person in committing any act or omission which is grounds for discipline under this rule or is an unlawful act by a nonlicensee under Iowa Code section 156.16.

103.3(6) Lack of proper qualifications.

a. Continuing to practice as a funeral director without satisfying the continuing education mandated by 645—Chapter 102.

b. Acting as a preceptor or continuing education provider without proper board approval or qualification.

c. Habitual intoxication or addiction to the use of drugs, or impairment which adversely affects the licensee's ability to practice in a safe and competent manner.

d. Any act, conduct, or condition, including lack of education or experience and careless or intentional acts or omissions, that demonstrates a lack of qualifications which are necessary to ensure a high standard of professional care as provided in Iowa Code section 272C.3(2) "b."

103.3(7) Negligence by the licensee in the practice of the profession. Negligence by the licensee in the practice of the profession includes:

a. A failure to exercise due care including negligent delegation of duties or supervision of employees or other individuals, whether or not injury results.

b. Any conduct, practice or condition which impairs a licensee's ability to safely and skillfully practice the profession.

103.3(8) Professional misconduct.

a. Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.

b. Violation of a regulation or law of this state, another state, or the United States, which relates to the practice of mortuary science, including, but not limited to, Iowa Code chapters 272C, 144, 147, 156, 523A, 523I, 566, and 566A; board rules, including rules of professional conduct set forth in 645—Chapter 100; and regulations promulgated by the Federal Trade Commission relating to funeral services or merchandise, or funeral or cremation establishments, as applicable to the profession. Any violation involving deception, dishonesty or moral turpitude shall be deemed related to the practice of mortuary science.

c. Engaging in any conduct that subverts or attempts to subvert a board investigation, or failure to fully cooperate with a licensee disciplinary investigation or investigation against a nonlicensee, including failure to comply with a subpoena issued by the board or to respond to a board inquiry within 30 calendar

days of the date of mailing by certified mail of a written communication directed to the licensee's last address on file at the board office.

d. Revocation, suspension, or other disciplinary action taken by a licensing authority of this state, another state, territory, or country. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, discipline by the board based solely on such action shall be vacated.

103.3(9) Willful or repeated violations. The willful or repeated violation of any provision of Iowa Code chapter 147, 156, or 272C.

103.3(10) Failure to report.

a. Failure by a licensee or an applicant for licensure to report in writing to the board any revocation, suspension, or other disciplinary action taken by a licensing authority within 30 days of the final action.

b. Failure of a licensee or an applicant for licensure to report, within 30 days of the action, any voluntary surrender of a professional license to resolve a pending disciplinary investigation or action.

c. Failure to notify the board of a criminal conviction within 30 days of the action, regardless of the jurisdiction where it occurred.

d. Failure to notify the board within 30 days after occurrence of any judgment or settlement of malpractice claim or action.

e. Failure to report another licensee to the board for any violations listed in these rules, pursuant to Iowa Code section 272C.9.

f. Failure to report a change of name or address within 30 days after it occurs.

103.3(11) Failure to comply with board order.

a. Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order, or other decision of the board imposing discipline.

b. Failure to pay costs assessed in any disciplinary action.

103.3(12) Conviction of any crime related to the practice of mortuary science or implicating the licensee's competence to safely perform mortuary science services, including but not limited to a crime involving moral character, dishonesty, fraud, theft, embezzlement, extortion, or controlled substances, in a court of competent jurisdiction in this state, or in another state, territory, or district of the United States, or in a foreign jurisdiction. For purposes of this subrule, "conviction" includes a guilty plea, deferred judgment, or other finding of guilt. A certified copy of the judgment is prima facie evidence of the conviction.

103.3(13) Violation of the terms of an initial agreement with the impaired practitioner review committee or violation of the terms of an impaired practitioner recovery contract with the impaired practitioner review committee.

103.3(14) Failure to comply with conditions of Iowa Code section 142C.10.