

## Funeral Director and Embalmer Licensure in Oklahoma

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*Oklahoma's Funeral Services Licensing Act is due to expire July 1, 2020.<sup>1</sup>*

Oklahoma requires that funeral directors and embalmers have a license from the state. Colorado once did the same, but eliminated licensing requirements in 1982. Rather, Colorado has a voluntary certification program. Attempts by these occupations to restore licensing in Colorado have not been successful.<sup>2</sup> Colorado's experience exemplifies licensing is *not* demanded by consumers. Rather members of these occupations demand licensing to limit completion, thus benefiting financially at the expense of the consumer.<sup>3</sup>

### Current Law

The Oklahoma Funeral Services Licensing Act (Title 59, Chapter 9, Oklahoma Statutes) covers funeral directors, embalmers, funeral service facilities, and crematories. The Oklahoma Funeral Board oversees these occupations and related facilities and consists of 7 members, 5 of whom must be from the funeral industry.

Funeral directors and embalmers have separate licenses, but dual licensure is the norm. Minimum education requirements are the same for both occupations, whether practiced separately or together<sup>4</sup> – 60 college-level credit hours and graduation from a program accredited by the American Board of Funeral Service Education (ABFSE). Minimum ABFSE accreditation standards specify only an associate's degree program (around 60 hours).<sup>5</sup> However, the only ABFSE-

accredited program in Oklahoma is a four-year degree requiring 127 total hours (57 hours of electives) at the University of Central Oklahoma.<sup>6</sup> Oklahoma also requires one year as a registered apprentice for full licensure.

While some states require less education for a funeral director and/or embalmer license, none require more than Oklahoma. Some have similar educational requirements, but no apprenticeship.<sup>7</sup> Oklahoma began requiring continuing education in 2006. Many states do not require continuing education hours.

Funeral facilities must be licensed. Funeral Board rules require facilities have a room to view and select caskets, as well as adequate space to view human remains. An embalmer must be so available that a body can be embalmed within 6 hours of being received.<sup>8</sup>

Oklahoma crematories must be licensed. Cremation is illegal outside of a licensed crematorium. A cremation permit from the state's Office of the Chief Medical Examiner is required to ensure there is no need for pathological study of the remains.<sup>9</sup> Cremation itself is not complex.<sup>10</sup> Fire and safety issues are the same as with the operation of any small, high-temperature furnace.

Crematory and funeral facilities can be owned by anyone, but a licensed funeral director must be employed, in charge, and live within 60 miles of the facility.<sup>11</sup> A funeral director can be in charge at only one funeral facility.

Licensing law allows for reciprocity

on a case-by-case basis. Anyone seeking reciprocity must meet the same basic educational and testing requirements as Oklahoma. This is a problem since many states do not have the same educational requirements as Oklahoma. Reciprocity also requires a licensee from another state have *five years of experience in the original state of residence*. (Apparently, Oklahoma experience is five times better than Texas experience.)

### Evaluating Whether to License Funeral Directors and Embalmers

The 1889 Institute has published *Policy Maker's Guide to Evaluating Proposed and Existing Professional Licensing Laws*.<sup>12</sup> It argues that there are two reasons for licensing an occupation: **1)** an occupation's practices present a real and probable risk of harm to the general public or patrons if practitioners fail to act properly; AND **2)** civil-law or market failure makes it difficult for patrons to obtain information, educate themselves, and judge whether an occupation's practitioners are competent.

***Do funeral direction and embalming present a real and probable risk of significant harm to the public or patrons if practitioners fail to act properly?***

**No.** Three reasons are given for licensing embalmers/funeral directors. First, there is danger of disease in disposing of dead bodies. Second, there is a need for training on dealing with the bereaved to protect their psychological

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health. Third, the bereaved, in a psychologically compromised state, need protection from charlatans. None of these “reasons” justifies licensing.

First, dead bodies are regularly handled in other countries by untrained individuals. There is no evidence that disease pathologies result from handling dead bodies or from failing to embalm bodies. The health risk issue has been studied, and dismissed by the Centers for Disease Control, the World Health Organization, and the Pan-American Health Organization. In fact, regular embalming is unique to the United States and Canada.<sup>13</sup>

Oklahoma, as is true of most states, allows individuals to deal with dead bodies themselves. No permit is required to move a body.<sup>14</sup> As long as there is a death certificate signed by a physician or coroner, anyone can bury a body on their own property, local ordinances permitting, as long as they are not compensated.<sup>15</sup> No one is required to use a casket. Federal law allows casket sales through normal online retail channels.<sup>16</sup>

Embalming is not required before burial or cremation. Further, the technical side of embalming is simple.<sup>17</sup> The risks in embalming are to the person doing the embalming since they work with sharp objects.

Second, religious ministers, health professionals, family members, and friends have dealt with the bereaved for thousands of years. The concept of a “funeral director” is a phenomenon of the last two centuries, and almost exclusive to the United States. Showing consideration for the bereaved is a basic societal norm stretching back into antiquity.

Third, the Federal Trade Commission requires disclosure and grants specific rights to the bereaved regarding pricing and the selection of services from funeral homes, including opting out of embalming.<sup>18</sup> This rule was promulgated in 1984 to combat unscrupulous practices by *licensed* funeral practitioners.<sup>19</sup>

That is, licensing has already been shown NOT to protect the bereaved.

***Is there a civil law or market failure that makes it difficult for patrons of these services to obtain information, educate themselves, and judge whether an occupation’s practitioners are competent?***

**No.** Customers can easily reveal their experiences, and service-providers advertise their skills and provide customer endorsements. Normal civil law can provide financial compensation if service providers do a bad job. Therefore, without licensing, service providers have incentives to do their best to satisfy customers, and customers have legal recourse when they fail to do so.

## Conclusion

There is **no need** for licensing the occupations currently regulated by the Oklahoma Funeral Board. The Funeral Services Licensing Act should expire on its current sunset date, if not repealed sooner. Oklahoma law should continue to require physician or coroner sign-off on death certificates, and State Medical Examiner sign off on cremations. Otherwise, there should be no state involvement.

The Oklahoma Legislature might allow private certification, enacting a version of the model, *21st Century Consumer Protection & Private Certification Act*, available as an appendix to *The Need to Review and Reform Occupational Licensing in Oklahoma*, available at <http://www.1889institute.org/licensing.html>. It would allow professionals who form private certifying associations to enforce private credentials through criminal fraud enforcement instead of costly civil actions if a certifying organization follows several practices, including certain transparency and disclaimer requirements.

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<sup>1</sup> Oklahoma Statutes, §59.396. <https://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=438563>.

<sup>2</sup> “State Laws & Regulations,” website, Colorado Funeral Directors Association, <http://www.cofda.org/laws>.

<sup>3</sup> Schlachter, Byron, *The Need to Review and Reform Occupational Licensing in Oklahoma* (Oklahoma City, OK: 1889 Institute Policy Analysis, September 2016), <http://nebula.wsimg.com/b845ef32a491f4a35fb2ef7c97b05704?AccessKeyId=CB55D82B5028ABD8BF94&disposition=0&alloworigin=1>.

<sup>4</sup> A funeral director must be an embalmer but an embalmer does not have to be funeral director.

<sup>5</sup> American Board of Funeral Service Education and the Committee on Accreditation, Accreditation and Policy Manual (Woodbury Heights, NJ: American Board of Funeral Service Education), 4-1, <http://www.abfse.org/docs/manual-accreditation.pdf>.

<sup>6</sup> “ABFSE Director of Programs – Oklahoma,” website, American Board of Funeral Service Education, <http://www.abfse.org/html/dir-ok.html>.

Funeral Service: College of Mathematics and Science, brochure, University of Central Oklahoma, <http://sites.uco.edu/cms/funeral/files/UCOFuneralServiceBrochure%20oct%202016.pdf>.

<sup>7</sup> “Licensing Boards and Requirements,” website, National Funeral Directors Association, <http://www.nfda.org/careers/licensing-requirements>.

<sup>8</sup> Rules & Regulations of the Oklahoma Funeral Board, effective July 11, 2013, <https://www.ok.gov/funeral/documents/RULES%20Effective%202013%20FINAL%20235.pdf>.

<sup>9</sup> Oklahoma Statutes, §63.1-329.1, <https://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=98044>.

<sup>10</sup> “How to Operate a Crematory: 4 Steps,” website, News Today, <http://news-today.space/2016/03/how-to-operate-a-crematory-4-steps-wikihow-2/>.

<sup>11</sup> Rules & Regulations of the Oklahoma Funeral Board, 7.

<sup>12</sup> Available at <http://www.1889institute.org/licensing.html>.

<sup>13</sup> “Dead Bodies and Disease: The “Danger” That Doesn’t Exist,” website dated January 30, 2008, Funeral Consumers Alliance, <https://funerals.org/embalming-myths-facts/>.

<sup>14</sup> Gillespie, Jessica, “Oklahoma Funeral Laws,” web article, NOLO.com, <http://www.nolo.com/legal-encyclopedia/oklahoma-home-funeral-laws.html>.

<sup>15</sup> Oklahoma Statutes, §63.1-317. <http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=98030>.

<sup>16</sup> Irving, Shae, “Burial & Cremation Laws in Oklahoma,” web article, NOLO.com, <http://www.nolo.com/legal-encyclopedia/burial-cremation-laws-oklahoma.html>.

<sup>17</sup> “How to Embalm,” website, wikiHow, <http://www.wikihow.com/Embalm>.

<sup>18</sup> “The FTC Funeral Rule,” website, Federal Trade Commission, <https://www.consumer.ftc.gov/articles/0300-ftc-funeral-rule>.

<sup>19</sup> “Understanding the FTC’s Funeral Rule When Buying Funeral Services,” website, US Funerals Online, <http://www.us-funerals.com/funeral-articles/understanding-the-ftc-funeral-rule-and-how-it-affects-your-rights-when-arranging-a-funeral.html#.WROGDlJyuCg>.