

**Joint Legislative Committee on Performance  
Evaluation and Expenditure Review (PEER)**

Report to  
the Mississippi Legislature



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# A Review of the Board of Funeral Service

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The Legislature established Mississippi's Board of Funeral Service in 1983, which replaced the State Board of Embalming that was established in 1918. The board regulates funeral service and funeral directing practitioners, as well as funeral home establishments, branches, commercial mortuary services, and crematory facilities.

Through the use of a national licensure examination, the Board of Funeral Service assures the competency of practitioners. However, the state's funeral service law does not require practitioners to earn continuing education hours to remain current in their profession. The lack of a continuing education requirement is a variance from requirements of other Mississippi regulatory licensure boards and other states' funeral licensing boards and diminishes the board's ability to ensure the general competency of licensees to perform funeral service activities.

The Board of Funeral Service does not have a rigorous, fully documented process to investigate complaints. Board members' investigations and board actions to resolve complaints are poorly documented in the board's investigative files and meeting minutes.

The board does not perform periodic, uniform inspections of licensed funeral establishments. Because of insufficient staffing, lack of specific inspection criteria, and the lack of a systematic approach to completing inspections, the Board of Funeral Service cannot assure protection of the health and safety of funeral establishment employees and the public.

Also, the board does not utilize disciplinary actions consistently to deter violators and, in at least one case, has administered a disciplinary action not authorized by statute.

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The Committee assigns top priority to written requests from individual legislators and legislative committees. The Committee also considers PEER staff proposals and written requests from state officials and others.

PEER Committee  
Post Office Box 1204  
Jackson, MS 39215-1204

(Tel.) 601-359-1226  
(Fax) 601-359-1420  
(Website) <http://www.peer.state.ms.us>

The Mississippi Legislature  
**Joint Committee on Performance Evaluation and Expenditure Review**  
PEER Committee

**SENATORS**  
LYNN POSEY  
Chair  
MERLE FLOWERS  
ROBERT (BUNKY) HUGGINS  
SAMPSON JACKSON  
DEAN KIRBY  
EZELL LEE  
RICHARD WHITE



Post Office Box 1204  
Jackson, Mississippi 39215-1204

**TELEPHONE:**  
(601) 359-1226

**FAX:**  
(601) 359-1457

[www.peer.state.ms.us](http://www.peer.state.ms.us)

Max K. Arinder, Ph.D.  
Executive Director

**REPRESENTATIVES**  
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HARVEY MOSS  
WALTER ROBINSON  
RAY ROGERS

**OFFICES:**  
Woolfolk Building  
501 North West Street, Suite 301-A  
Jackson, Mississippi 39201

August 10, 2004

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Honorable Amy Tuck, Lieutenant Governor  
Honorable Billy McCoy, Speaker of the House  
Members of the Mississippi State Legislature

On August 10, 2004, the PEER Committee authorized release of the report entitled **A Review of the Board of Funeral Service.**

A handwritten signature in black ink, appearing to be "L Posey".

Senator Lynn Posey, Chair



*Table of Contents*

Letter of Transmittal ..... i

List of Exhibits ..... v

Executive Summary .....vii

Introduction ..... 1

    Authority ..... 1

    Scope and Purpose..... 1

    Method ..... 1

Background ..... 2

    Statutory Authority for Regulation of Funeral Service in Mississippi ..... 2

    Federal Regulations Affecting Funeral Service Industry ..... 3

    Board Composition ..... 4

    Staff ..... 4

    Revenues and Expenditures ..... 5

Conclusions ..... 7

    Does Mississippi need a Board of Funeral Service? ..... 7

    What are the board’s responsibilities in regulating the  
    practice of funeral service?..... 9

    Does the board’s licensing process provide assurance  
    of competency of professionals? ..... 10

    Does the board effectively enforce regulatory requirements? ..... 13

Recommendations ..... 31

Agency Response ..... 35

PEER’s Note to Agency Response ..... 39



*List of Exhibits*

1. Members of the Board of Funeral Service (As of March 2004).....5

2. FY 2000-2003 Revenues, Expenditures, and Cash Balances of  
the Board of Funeral Service .....6

3. Inspection Form of the Board of Funeral Service.....17

4. Industry Standards of the Occupational Safety and Health  
Administration (OSHA) that Apply to Funeral Establishments.....22

5. Comparison of Inspections of Selected Funeral Establishments by OSHA and Board  
of Funeral Service.....25





# A Review of the Board of Funeral Service

## Executive Summary

### Introduction

The PEER Committee reviewed the Board of Funeral Service. PEER conducted the review pursuant to the authority granted by MISS. CODE ANN. Section 5-3-57 et seq. (1972). This review is a “cycle review,” which is not driven by specific complaints or allegations of misconduct.

In conducting this review, PEER sought to determine the effectiveness of the Board of Funeral Service’s oversight by answering the following questions:

- Does Mississippi need a Board of Funeral Service?
- What are the board’s responsibilities in regulating the practice of funeral service?
- Does the board’s licensing process provide assurance of competency of professionals?
- Does the board effectively enforce regulatory requirements?

### Background

All fifty states and the District of Columbia have boards with responsibility for regulation of the funeral service industry. The Legislature established Mississippi’s Board of Funeral Service in 1983, which replaced the State Board of Embalming that was established in 1918. The board regulates funeral service and funeral directing practitioners, as well as funeral home establishments, branches, commercial mortuary services, and crematory facilities in Mississippi. These individuals and establishments must also comply with requirements of the Federal Trade Commission and the Occupational Safety and Health Administration of the U. S. Department of Labor (OSHA).

The Board of Funeral Service consists of seven members:

- one funeral service licensee and one funeral director licensee from each of the state's three Supreme Court districts; and,
- one public member appointed from the state at-large.

The board presently has two employees: an Executive Director and an Administrative Secretary. Inspections are carried out by the Executive Director and board members, with some assistance provided by the Executive Director's husband and a former board member.

## Need for the Board of Funeral Service

**Risk factors associated with the funeral service profession create a need for state government to protect workers in the industry and the public. The Board of Funeral Service, if it fulfills its function properly, should diminish or eliminate the profession's potential risks.**

The practice of the funeral service profession entails risks to practitioners as well as to the general public, if hazardous chemicals and infectious materials are not properly handled. These risks require practitioners to be regulated and properly trained. The board's responsibilities in regulating the practice of funeral service consist of licensing professionals and enforcing applicable laws and regulations.

## Licensure

**Through the use of a national licensure examination, the Board of Funeral Service assures the competency of practitioners. However, the state's funeral service law does not require practitioners to earn continuing education hours to remain current in their profession.**

A major function of the Board of Funeral Service is to license individuals who want to practice in Mississippi. Licensing should involve a fair process that assures competency to practice. State law requires that the board determine that an individual engaged in funeral service or directing meets certain standards pertaining to general qualifications, education, and testing.

The Mississippi Board of Funeral Service requires candidates to achieve a passing score on a national examination prior to initial licensure. The board utilizes the National Board Examination (NBE) developed by the International Conference of Funeral Service Examining Boards to examine candidates for licensure. With the exception of California, all states utilize this examination to determine a candidate's funeral service competencies. Candidates for a Mississippi funeral service or funeral

directing license may take either the NBE or the Mississippi licensure examination.

Until 2002, MISS. CODE ANN. § 73-11-51 (1972) required all applicants for licensure to have completed at least three hours of continuing education units in areas related to federal OSHA standards. However, now, once individuals are licensed, the state's funeral service law does not require licensees to earn continuing education hours to remain current in their profession. The lack of a continuing education requirement for renewal of licenses diminishes the board's ability to ensure the general competency of licensees to perform funeral service activities.

## Enforcement

**The Board of Funeral Service does not effectively enforce regulatory requirements because it does not have a rigorous, fully documented process to investigate complaints; it does not perform periodic, uniform inspections of licensed funeral establishments; and it does not ensure that its disciplinary actions are consistent.**

PEER examined the board's complaint, inspection, and disciplinary processes with which it carries out its enforcement function.

## Complaint Process

***Board members' investigations and board actions to resolve complaints are poorly documented in the board's investigative files and meeting minutes.***

PEER found that individuals who investigate complaints regarding funeral service licensees and establishments do not consistently document their fieldwork and conclusions. Also, for the complaints that had been processed and closed for calendar year 2002, the board's meeting minutes did not include a summary of the complaint, results of the investigative board member's investigation, or a recommendation of action to be taken by the board in response to the complaint.

It is imperative that the board have a rigorous investigative process that fully documents the rationale for any actions taken by the board. The lack of such could result in penalties being inconsistently imposed or board decisions being overturned on appeal to circuit court.

## Inspection Process

***Because of insufficient staffing and the lack of a systematic approach to completing inspections, the Board of Funeral Service has not fulfilled its inspection responsibilities and thus cannot assure the protection of the health and safety of funeral establishment employees and the public.***

PEER examined a random sample of fifty-two files from a total of 442 establishments that the board should have inspected in 2001 and 2002 and found that the board had inspected only thirty-three of these establishments. This is due in part because the Board of Funeral Service has insufficient staff with which to conduct the inspections mandated by law. As noted previously, inspections are carried out by the Executive Director and board members, with some assistance provided by the Executive Director's husband and a former board member.

Concerning disciplinary proceedings, board members who have inspected a funeral establishment and participate in the full board's determination of noncompliance and any resulting disciplinary penalties regarding that same establishment could be, or appear to be, prejudiced in favor of or against the establishment. Because the board has no rule that requires members who have conducted inspections to recuse themselves from disciplinary proceedings on the establishments they have inspected, the potential exists for the appearance of bias or impropriety.

The board has no formal process or plan in place to inspect all funeral establishments within the two-year time frame mandated by law. The board cannot ensure that all inspections will be completed within the licensing period, particularly with the limited number of individuals available to conduct inspections. Thus the board cannot assure the public that funeral establishments are in compliance with state law and board rules and regulations.

Neither state law nor the board's rules and regulations contain requirements for follow-up inspections. Without a follow-up inspection, the board cannot determine whether corrective action has been taken for each violation.

## Discipline and Penalties

***The Board of Funeral Service does not utilize specific criteria when conducting inspections of funeral establishments. Thus the board cannot conduct uniform inspections and cannot ensure the safety of funeral establishment employees and the public.***

Although individuals who conduct funeral establishment inspections use a standard inspection form with general guidelines, it does not provide any specific criteria for these elements. For example, one item on the inspection form, "Proper quarter for rites and ceremonies," does not

operationally define “proper.” The meaning of this term is open to the interpretation of the individual inspectors.

To gauge the effectiveness of the Board of Funeral Service’s inspections, PEER compared the results of inspections of selected establishments by the board to results of inspections of the same establishments by OSHA. Although the board’s inspection responsibilities include matters other than workplace safety (e.g., consumer protection matters), OSHA standards give some reasonable basis of comparison. PEER compared results of the board’s inspections of three establishments to the results of OSHA inspections of those same establishments. For two of the establishments, OSHA had cited multiple serious violations, while the board had cited no violations. The board had not inspected the third establishment.

When the board and OSHA conduct inspections of the same establishments and OSHA finds multiple violations and the board finds none, the board’s effectiveness in conducting inspections is called into question.

***The board does not utilize disciplinary actions consistently to deter violators and, in at least one case, has administered a disciplinary action not authorized by statute.***

If a funeral establishment is found guilty of violating state law or board rules and regulations, state law provides the following options for disciplinary actions:

- refuse to examine, issue, or renew a license;
- suspend or revoke any license; or,
- reprimand or place the holder of a license on probation.

State law also allows the board to assess monetary penalties against those funeral establishments found to be guilty of a violation. For the first violation, a monetary penalty of no less than \$50 nor more than \$500 may be assessed; for the second violation, a monetary penalty of no less than \$100 nor more than \$1,000; and for the third violation, no less than \$500 nor more than \$5,000.

Although monetary penalty ranges are provided for in state law, the board has not developed a penalty matrix that states the amount of monetary penalty that should be assessed for each violation, based on the type and severity of the violation or whether it was an initial or recurring offense. Similarly, the board does not have a penalty matrix or written procedure for determining the length of probationary periods it assesses for noncompliance.

When inspections of funeral establishments found violations of state law or the board’s rules and regulations that funeral establishment personnel acknowledged, the board has administered penalties in some cases and not in

others. Within PEER's sample of fifty-two randomly selected funeral establishment files, eleven funeral establishments whose inspection reports noted that they were out of compliance with state law or the board's rules and regulations had no action taken against them by the board. PEER's review of the board's minutes identified four other funeral establishments that received disciplinary action by the board for the same violations committed by the above-noted eleven establishments that did not receive penalties.

In at least one instance, the Board of Funeral Service has used a consent order to implement a disciplinary action not authorized by statute. A \$1,000 monetary fine assessed by the board exceeded by \$500 the fine authorized in MISS. CODE ANN. § 73-11-57 (1972) for a first violation.

## Recommendations

1. The Legislature should amend MISS. CODE ANN. § 73-11-55 (1972) to provide authority to the Board of Funeral Service to develop a comprehensive set of regulations to protect workers in the funeral service industry from the unique risks associated with their employment. Such regulations should be measurable so that trained inspectors can determine compliance with them.
2. No later than December 1, 2004, the Board of Funeral Service should develop a proposed continuing education program for all licensees. The proposed program should include annual education requirements for each class of license and the subjects required for each licensee. Upon development of a continuing education program, the board should seek legislative authorization to implement the program.
3. The Board of Funeral Service should review its current funding structure and program expenditures to determine whether sufficient funds are available from existing sources to implement recommendations contained in this report. If sufficient funds currently exist, the board should seek increased appropriations for future fiscal years from current revenue sources to offset expenses associated with implementation of report recommendations. If the board can establish that current revenue sources will not be sufficient to offset such expenses, the board should recommend to the Legislature increased or additional fees sufficient to cover such expenses.
4. The Board of Funeral Service should ensure that individuals who serve as inspectors are adequately trained to conduct investigative fieldwork. Such

training should consist of mastery of all substantive criteria for inspections and preparation of supporting workpapers.

5. The Board of Funeral Service should ensure that board members who investigate complaints against a licensee or funeral establishment do not participate in the adjudication of such complaints.
6. The Board of Funeral Service should consider employing a full-time, trained professional to conduct inspections of funeral establishments and investigate complaints.
7. The Board of Funeral Service should develop a formal process for ensuring that funeral establishment inspections are completed in a timely manner and include the process in its policy and procedure manual. The process could include, but not be limited to:
  - a schedule for the completion of a specified number of inspections per month;
  - inclusion in the board's computer system of the types of inspections (reinspection, routine, initial) and the results of the inspections;
  - a system to track the performance of funeral establishments and provide data with which to measure the effectiveness of the inspection program;
  - a report of all funeral establishments inspected each quarter or from the date of the last board meeting and the results to be presented at each board meeting; and,
  - a requirement that a report be made by the Executive Director on October 30 of each year in which the licensure period expires to identify those funeral establishments that have not been inspected to ensure that the schedule provides for an inspection prior to December 31.
8. The Board of Funeral Service should create a penalty matrix to determine the monetary penalty that should be assessed as well other penalties that should be assessed (such as probation) based on the types of violations and the severity of violations.
9. The Mississippi Legislature should amend MISS. CODE ANN. § 73-11-57 (1972) to require the board to conduct follow-up inspections within thirty days of the filing of an inspection report for funeral establishments that the board cites as failing to comply with state law or board regulations.

10. To ensure that funeral establishments are inspected consistently, the Board of Funeral Service should develop measurable criteria for each element included in the inspection process.
11. When imposing monetary fines against non-compliant licensees or funeral establishments, the Board of Funeral Service should strictly adhere to the graduated schedule of fines included in MISS. CODE ANN. § 73-11-57 (1972).
12. The Board of Funeral Service should review its disciplinary actions and consent orders for cases closed during CY 2002 and CY 2003 to determine their compliance with penalties authorized by MISS. CODE ANN. § 73-11-57 (1972). In those instances in which penalties imposed varied from state law, the board should take corrective action to ensure strict compliance with state law. Also, for each hearing conducted or administrative action taken by the board, the Executive Director should compile and include in investigative files an itemized accounting of administrative expenses associated with such action.

**For More Information or Clarification, Contact:**

PEER Committee  
P.O. Box 1204  
Jackson, MS 39215-1204  
(601) 359-1226  
<http://www.peer.state.ms.us>

Senator Lynn Posey, Chair  
Union Church, MS 601-786-6339

Representative Dirk Dedeaux, Vice Chair  
Gulfport, MS 228-255-6171

Representative Alyce Clarke, Secretary  
Jackson, MS 601-354-5453



# A Review of the Board of Funeral Service

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## Introduction

### Authority

The PEER Committee reviewed the Board of Funeral Service. PEER conducted the review pursuant to the authority granted by MISS. CODE ANN. Section 5-3-57 et seq. (1972). This review is a “cycle review,” which is not driven by specific complaints or allegations of misconduct.

### Scope and Purpose

PEER sought to determine the effectiveness of the Board of Funeral Service’s oversight by answering the following questions:

- Does Mississippi need a Board of Funeral Service?
- What are the board’s responsibilities in regulating the practice of funeral service?
- Does the board’s licensing process provide assurance of competency of professionals?
- Does the board effectively enforce regulatory requirements?

### Method

In conducting this review, PEER:

- reviewed relevant sections of federal and state laws, board rules, regulations, policies, and procedures;
- interviewed board members and staff and selected staff of the International Conference of Funeral Service Examining Boards, Inc.; and,
- reviewed financial information and board records.

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# Background

## Statutory Authority for Regulation of Funeral Service in Mississippi

According to the International Conference of Funeral Service Examining Boards, Inc.<sup>1</sup>, all fifty states and the District of Columbia have boards with responsibility for regulation of the funeral service industry. The Legislature established Mississippi's Board of Funeral Service in 1983, which replaced the State Board of Embalming that was established in 1918.

As provided in MISS. CODE ANN. Section 73-11-51 (1972), Mississippi law prohibits individuals from engaging in the practices of funeral service or funeral directing without a license. As set forth in MISS. CODE ANN. Section 73-11-41 (1972), the practices of funeral service and directing are identical with the exception that the practice of funeral service includes the practice of embalming, while the practice of funeral directing does not. The scope of both practices includes providing shelter, care, and custody of the human dead; conducting immediate post-death activities; transporting the human dead, bereaved relatives, and friends; making arrangements for the provision of services; and selling funeral merchandise. In Mississippi, the practices of funeral service and directing do not include persons or corporations engaged only in the pre-need sale of funeral merchandise or service. (This type of activity is regulated by the Secretary of State under the Pre-need Cemetery and Funeral Registration Act found at MISS. CODE ANN. Section 75-63-51 et seq. [1972]).

MISS. CODE ANN. Section 73-11-55 (1972) provides for three types of funeral establishment licenses: establishment, branch, and commercial mortuary service (i.e., a funeral establishment that embalms and transports for licensed funeral establishments and does not sell any services or merchandise directly or at retail to the public). State law prohibits funeral establishments or branches from operating without a license issued by the board and requires that the board inspect licensed establishments at least once every two-year licensing period. MISS. CODE ANN. Section 73-11-69 (1972) authorizes the Board of Funeral Service to license and regulate crematory facilities. This section prohibits operation of a crematory facility

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<sup>1</sup>The International Conference of Funeral Service Examining Boards began in 1903 when a group of state licensing boards came together to discuss common problems concerning the transportation of bodies across state lines. In 1928, the conference established a system of grading and approving schools of mortuary science. In 1930, the conference established the first National Board Examination. The conference also develops state examinations at the request of member boards. The conference serves as an information, educational, consulting, and advocacy resource for state regulatory boards.

without a license from the board and requires the board to inspect each licensed crematory at least annually. MISS. CODE ANN. Section 73-11-67 (1972) requires retail sellers of caskets to register annually with the board; however, these sellers are not subject to regulation or supervision by the board.

Title 73, Chapter 11 of the CODE establishes a regulatory regimen by which individuals engaging in funeral service or directing are licensed. MISS. CODE ANN. Section 73-11-57 (1972) provides for administrative penalties for violations of laws, rules, and regulations governing the funeral service profession. This section authorizes the board to revoke or suspend a license, reprimand the licensee, place the licensee on probation, and/or assess and levy a monetary penalty ranging from a minimum of \$50 for a first violation to up to \$5,000 for a third or subsequent violation. CODE Section 73-11-59 (1972) provides that any person, partnership, corporation, or association who violates state funeral service laws shall be guilty of a misdemeanor punishable by a fine of not less than \$500 nor more than \$1,000 and/or imprisonment in the county jail for not more than six months.

## Federal Regulations Affecting Funeral Service Industry

Both the Federal Trade Commission and the Occupational Safety and Health Administration of the U.S. Department of Labor (OSHA) enforce rules and regulations affecting the funeral industry.

The Federal Trade Commission's Funeral Industry Practices Rule, more commonly referred to as the "Funeral Rule," (16 CFR 453), which went into effect in 1984, requires sellers of funeral goods and services to give consumers who visit a funeral home a written itemized price list (referred to as a general price list) and to disclose price and other information to callers who request it over the phone. In accordance with federal law, MISS. CODE ANN. § 73-11-61 (1972) requires every funeral director or funeral service licensee to provide, before the rendering of services, the funeral establishment's general price list, casket price list, outer container price list, and a statement of goods and services to the person (or persons) who authorizes the services and is responsible for payment of the expenses, in a manner and format as prescribed by the Funeral Rule and any future changes with regard to required disclosures. State law further specifies that the general price list must be made available to any person upon request. The federal Funeral Rule also requires funeral providers to inform consumers in writing of their right to select and purchase only the funeral goods and services that they want (with some exceptions, such as specific items that may be required in state or local law).

The rule further requires funeral providers to seek authority before performing some services such as embalming.

While OSHA general industry standards apply to funeral home employers as they would to any other workplace employer (e.g., building safety standards), as discussed in more detail on page 8, two OSHA standards are particularly relevant to the funeral home industry: 29 CFR 1910.1030 governing bloodborne pathogens and 29 CFR 1910.1048 governing formaldehyde use.

## Board Composition

MISS. CODE ANN. § 73-11-43 (1972) creates the Board of Funeral Service, consisting of the following seven members:

- one funeral service licensee and one funeral director licensee from each of the state's three Supreme Court districts; and,
- one public member appointed from the state at-large.

Exhibit 1, page 5, lists the current members of the Board of Funeral Service.

Members of the board serve four-year terms and are appointed by the Governor with the advice and consent of the Senate. MISS. CODE ANN. § 73-11-47 (1972) requires the board to hold not less than two meetings annually to conduct the business of the board and to examine applicants for licenses. The board meets at least quarterly, according to its Executive Director.

## Staff

MISS. CODE ANN. § 73-11-49 (1972) directs the Board of Funeral Service to employ an administrator--i.e., the Executive Director--to supervise and direct the office of the board, including supervision over field inspections and enforcement of applicable state laws and board regulations. State law also authorizes the board to employ other clerical assistants and employees as necessary. For the purpose of carrying out inspections, state law authorizes the board to designate the administrator to perform inspections or to hire an inspector or to contract with any other individual or entity to carry out inspections.

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**Exhibit 1: Members of the Board of Funeral Service (As of March 2004)**

<b>Name</b>	<b>Representation of Appointee</b>	<b>City</b>	<b>Supreme Court District</b>
Arthur N. Willis, Jr.	funeral director	Jackson	1 <sup>st</sup>
J. Charles Riles	funeral service	Vicksburg	1 <sup>st</sup>
Theodore R. Williams, Jr.	funeral director	Gulfport	2 <sup>nd</sup>
Guy B. Roberts, Jr.	funeral service	Biloxi	2 <sup>nd</sup>
A. Gene Phillips	funeral director	Olive Branch	3 <sup>rd</sup>
Terry W. Gentry	funeral service	Baldwyn	3 <sup>rd</sup>
Fred E. Nabors	public	Tupelo	At Large

SOURCE: Board of Funeral Service.

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The board presently has two employees: an executive director and an administrative secretary. Inspections are carried out by the Executive Director and board members, with some assistance provided by the Executive Director's husband and a former board member. The board is represented by an Assistant Attorney General who attends board meetings and assists with administrative hearings.

## **Revenues and Expenditures**

The Board of Funeral Service is a special fund agency supported by funds collected from application, licensure, inspection, permit, and examination fees as set forth in MISS. CODE ANN. § 73-11-56 (1972). CODE Section 73-11-57 (7) (1972) requires that fines the board collects from disciplinary actions be deposited to the state's general fund. Exhibit 2, page 6, shows the agency's revenues, expenditures, and cash balances for fiscal years 2000 through 2003.

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**Exhibit 2: FY 2000-2003 Revenues, Expenditures, and Cash Balances of the Board of Funeral Service**

	FY 2000	FY 2001	FY 2002	FY 2003
<i>Beginning Cash</i>	\$225,183	\$146,752	\$199,734	\$162,185
Special Funds (Fees)	\$76,235	\$208,077	\$109,000	\$225,840
<i>Subtotal</i>	\$301,418	\$354,829	\$308,734	\$388,025
Total Expenditures	(\$154,666)	(\$155,095)	(\$146,549)	(\$187,861)
<i>Ending Cash</i>	\$146,752	\$199,734	\$162,185	\$200,164

SOURCE: The Board of Funeral Service's budget requests for fiscal years 2002 through 2005.

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# Conclusions

## Does Mississippi need a Board of Funeral Service?

**Risk factors associated with the funeral service profession create a need for state government to protect workers in the industry and the public. The Board of Funeral Service, if it fulfills its function properly, should diminish or eliminate the profession's potential risks.**

State government is responsible for protecting the public's health, welfare, and safety. When potential risks to these exist, measures such as establishing a board to regulate a profession are available to diminish or eliminate the potential for risk.

### Risks of the Funeral Service Profession

*The practice of the funeral service profession entails risks to practitioners as well as to the general public, if hazardous chemicals and infectious materials are not properly handled. These risks require practitioners to be regulated and properly trained.*

**The handling of human remains involves the risk of spreading infectious and contagious diseases through blood and body fluids as well as through the improper disposal of clinical waste.**

The handling of human remains involves the risk of spreading infectious and contagious diseases to employees through pathogens spread through blood and body fluids (e.g., human immunodeficiency virus, infectious hepatitis) as well as to the general public through the improper disposal of clinical waste--e.g., contaminated sharps like syringes and needles used in the embalming process, laboratory wastes, human tissues/organs, and infectious materials from the embalming process. Clinical waste is potentially dangerous, as it may carry disease, as well as sharps like needles and scalpels that can cause physical injury. If improperly disposed of, waste collectors and the public may inadvertently come in contact with clinical waste.

**The funeral home industry also uses chemicals that are potentially harmful to human health.**

The funeral home industry also uses chemicals that are potentially harmful to human health if improperly applied, stored, and disposed of. In particular, funeral service operations use powerful chemicals such as formaldehyde (the primary chemical used in embalming) and glutaraldehyde (a toxic disinfectant and sterilizing agent) in the embalming process. These and other toxic chemicals must be properly used, stored, and disposed of to prevent health hazards. The health effects of formaldehyde exposure include respiratory, eye, and skin irritation; dermatitis; and respiratory sensitization. Formaldehyde is also a suspected human carcinogen that

is linked to nasal cancer and lung cancer. Glutaraldehyde is irritating to the lungs and respiratory tract and can cause allergic skin reactions and asthma.

**Another risk is that operators could mislead or defraud the public through unethical or unprofessional merchandising and/or practices at a time when consumers are particularly vulnerable.**

Additional risks to the public include the possibility that funeral establishment operators could mislead or defraud the public through unethical or unprofessional funeral industry merchandising and/or practices. This risk is heightened because funeral establishment operators usually interact with consumers at a time when they are particularly vulnerable.

## **Need for Regulation**

***State regulation of the funeral service profession is necessary to reduce or eliminate risks of the profession.***

The typical regulatory functions of licensure and enforcement of applicable laws, rules, and regulations provide a safeguard against risk for workers in the profession and the consuming public. Without the safeguards of licensure and enforcement in place, the likelihood of untrained or unscrupulous practitioners injuring themselves or placing the public at risk could occur.

**Without the safeguards of licensure and enforcement, untrained or unscrupulous funeral service practitioners could injure themselves or place the public at risk.**

For example, OSHA standards require the identification and evaluation of hazardous materials in the workplace and the communication of such hazards to employers and employees. OSHA's bloodborne pathogen standard requires the creation of a written Exposure Control Plan that describes how the employer will protect employees from exposure. OSHA's personal protective equipment standard requires the employer to assess the workplace to determine if hazards are present which necessitate the use of personal protective equipment and if so, to provide the equipment and ensure that employees are properly trained in use of the equipment. OSHA's respiratory protection program requires funeral homes to identify what airborne contaminants are present; conduct air monitoring to determine whether employee exposure exceeds OSHA's permissible exposure limit; to implement engineering controls such as ventilation systems to reduce employee exposure to the allowable limit; and to provide appropriate respiratory protection to employees when other options are not feasible.

As discussed on page 4, the federal Occupational Safety and Health Administration has established exposure limits and work environment requirements for employees who work with formaldehyde. Also, while not subject to a specific standard, OSHA has established exposure limits for glutaraldehyde as a hazardous material.



Also, MISS. CODE ANN. § 41-39-13 (1972) requires the affixing of a tag on the body of any deceased person identified as having an infectious or communicable disease, or its causative agent, to alert funeral service workers to take all necessary blood/body fluid precautions in handling the body.

As with other regulatory boards, the Board of Funeral Service should protect the public by screening licensees, requiring continuing education and knowledge of laws and regulations, and serving as an investigative body. Under the current regulatory scheme, as outlined in Mississippi law, the Board of Funeral Service's regulatory functions do not duplicate those of other agencies.

## What are the board's responsibilities in regulating the practice of funeral service?

**The board's responsibilities in regulating the practice of funeral service consist of licensing professionals and enforcing applicable laws and regulations.**

The Board of Funeral Service exists as a separate state agency whose purpose is to protect the public's health, safety, and welfare as it is affected by the funeral service profession. The state's regulation of funeral service should ensure that funeral service and funeral director licensees meet and maintain qualifications for competency and practice in a professional manner in accordance with laws and regulations governing the profession. Failure to perform these duties could result in negative outcomes such as exposure of funeral service employees and the general public to health risks associated with improper usage, storage and disposal of chemicals and clinical waste.

The major regulatory duties of the board are licensure and enforcement. The licensure function includes processing applications, administering the NBE exam, collecting fees, and issuing licenses. The enforcement function includes processing and investigating complaints, inspecting funeral establishments, and sanctioning the practice of funeral service and funeral directing.

## Does the board's licensing process provide assurance of competency of professionals?

Through the use of a national licensure examination, the Board of Funeral Service assures the competency of practitioners. However, the state's funeral service law does not require practitioners to earn continuing education hours to remain current in their profession.

A major function of the Board of Funeral Service is to license individuals who want to practice in Mississippi. Licensing should involve a fair process that assures competency to practice. State law requires that the board determine that an individual engaged in funeral service or directing meets certain standards pertaining to general qualifications, education, and testing.

### Application Procedure

The Board of Funeral Service requires that applicants seeking licensure submit a notarized application and a licensing fee and nonrefundable application fee. The fee for the initial license is prorated in proportion to the amount of time from the date of issuance to the date of biennial license renewal as cited in MISS. CODE ANN. Section 73-11-51 (5) (1972).

The board must receive copies of the applicant's transcripts from high school (or GED) and from the accredited mortuary school or college from which the applicant graduated. Two individuals that currently hold a funeral service or funeral director's license must attest to the good moral character of the applicant.

The board uses several screening methods to verify applicants' qualifications such as educational credentials, employment as a resident trainee, and record of specified supervised funeral service activities.

### Licensure Requirements

***Mississippi state law establishes licensure requirements for individuals who engage in the funeral service profession.***

MISS. CODE ANN. Section 73-11-51 (1972) states that "no person shall engage in the business or practice of funeral service, including embalming, and/or funeral directing or hold himself out as transacting or practicing or being entitled to transact or practice funeral service, including embalming, and/or funeral directing in this state unless duly licensed." The CODE section further authorizes the Board of Funeral Service to examine applicants for licenses for the practice of funeral service and funeral directing

and to issue such licenses to those persons who successfully pass the applicable examination.

To be licensed for the practice of funeral directing or funeral service in Mississippi, a person must:

- be at least eighteen years of age;
- have a high school diploma or the equivalent;
- for funeral directing licensure, have served as a resident trainee for not less than twenty-four months under the supervision of a person licensed for the practice of funeral service or directing in Mississippi, *or*, for funeral service licensure, have completed twelve months of instruction from an accredited funeral service education institution and have served as a resident trainee for not less than twelve months under the supervision of a person licensed for the practice of funeral service in Mississippi and in an establishment licensed in Mississippi;
- have successfully passed a written and/or oral examination as prepared or approved by the board; and,
- be of good moral character.

After initial licensure, funeral service or funeral directing licensees may have their license renewed every two years by filing an application with the board and paying the applicable renewal fee.

## Licensure Examination

*As is the practice in most other states, the Board of Funeral Service requires candidates to achieve a passing score on a national examination prior to initial licensure.*

The Board of Funeral Service utilizes the National Board Examination (NBE) developed by the International Conference of Funeral Service Examining Boards to examine candidates for licensure. With the exception of California, all states utilize the examination to determine a candidate's funeral service competencies.

**The board utilizes the National Board Examination developed by the International Conference of Funeral Service Examining Boards to examine candidates for licensure.**

The NBE contains two separate sections--a 170-item Arts section and a 170-item Sciences section. The Arts section tests competencies in the following areas: sociology/funeral science history, psychology, funeral directing, business law, funeral service law, funeral service merchandising, and, accounting/computers. The Sciences section tests competencies in the areas of embalming, restorative art, microbiology, pathology, chemistry, and anatomy.

Through the use of an extensive job analysis survey, the International Conference developed a task inventory to

determine the significance/importance of various activities performed by practitioners. From analysis of this data, the conference developed a practitioner-oriented outline that is the basis for the NBE. The conference takes the position that the NBE possesses substantial content validity and is highly representative of the content/knowledge domain that it intends to measure.

The NBE is administered on a daily basis by the International Conference at select H & R Block Computerized Testing Assessment Centers throughout the nation. In addition, the Board of Funeral Service administers the NBE each February and August. Candidates for a Mississippi funeral service or funeral directing license may take the NBE or the Mississippi licensure examination, which is administered in February and August also. (The Board of Funeral Service contracted with the International Conference to design a Mississippi licensure examination for applicants who choose not to take the national examination. Questions for the Mississippi examination are taken from the same bank of questions used to construct the NBE. In essence, the NBE and Mississippi's licensure examination are identical tests.) All applicants taking the NBE or the Mississippi examination must achieve a score of 75% to be licensed in Mississippi.

**In 2002 and 2003, the majority of the applicants tested by the board failed to achieve a passing score on the licensing examination.**

During calendar years 2002 and 2003, the Board of Funeral Service tested twenty-eight applicants each year for a funeral service or funeral directing license. The majority of the applicants tested by the board failed to achieve a passing score of 75% on the licensing examination. The failure rate in CY 2002 was 54%, while the rate was 61% in CY 2003.

## **Continuing Education**

***The state's funeral service law does not require practitioners to earn continuing education hours to remain current in their profession, thus diminishing the board's ability ensure the competency of licensees.***

The purpose of continuing education is to provide an educational program through which licensees can continually become more competent and remain qualified to engage in activities for which they are licensed. Such activities involve facts and concepts about which licensees must be knowledgeable in order to conduct funeral service activities safely, confidently, in the public's best interest.

Until 2002, MISS. CODE ANN. § 73-11-51 (1972) required all applicants for licensure to have completed at least three hours of continuing education units in areas related to federal OSHA standards. However, now, once individuals receive their licenses, the state's funeral service law does not require licensees to earn continuing education hours to remain current in their profession.

**The lack of a continuing education requirement is a variance from requirements of other Mississippi regulatory boards and funeral licensing boards in most other states.**

The board's lack of a continuing education requirement is a variance from requirements of other Mississippi regulatory licensure boards and funeral licensing boards in other states. For example, state law and the Board of Cosmetology require licensed instructors to acquire twenty-four hours of continuing education every two years. Also, the Board of Chiropractic Examiners requires licensees to acquire twelve hours of continuing education credit each year. Finally, funeral licensing boards in thirty-one other states require licensees to earn continuing education credit, ranging from four to twelve hours annually.

The lack of a continuing education requirement for renewal of licenses diminishes the board's ability to ensure the general competency of licensees to perform funeral service activities.

## **Licensing Reciprocity**

The board issues reciprocal licenses to applicants who were initially licensed in a state other than Mississippi. The applicant must satisfy the board that he or she has held a license in another state and that the license is in full force and effect. The board must determine that the applicant has met licensing qualifications at least substantially similar to the requirements of Mississippi law and that the applicant has scored at least 75% on the National Board Examination.

## **Does the board effectively enforce regulatory requirements?**

**The Board of Funeral Service does not effectively enforce regulatory requirements because it does not have a rigorous, fully documented process to investigate complaints; it does not perform periodic, uniform inspections of licensed funeral establishments; and it does not ensure that its disciplinary actions are consistent.**

The enforcement of funeral service law and regulations is greatly dependent on how well the board administers processes for receiving and handling complaints against practitioners and the expediency and uniformity with which the board takes disciplinary action against violators. PEER examined the board's complaint, inspection, and disciplinary processes.

## **Complaint Process**

***The board's rules require that it investigate a complaint regarding funeral service within thirty days.***

Rule 702 of the Board of Funeral Service states that it shall be the duty of the board or its designee to investigate any licensee who is accused of violating any law, rule, or

regulation or any licensee who is accused of gross or willful malpractice of the practice of funeral service, funeral directing, or the science of embalming. The rule requires the board to conduct an investigation within thirty days of the receipt of a complaint. The licensee about whom a complaint has been lodged must respond in writing to the board within thirty days of receipt of notification of the board's investigation. Failure to respond within the time limit is deemed to be an admission of the truth of the allegations.

**If the licensee about whom a complaint has been lodged does not respond in writing within thirty days of notification of the board's investigation, the board interprets this as an admission that the allegations are true.**

The board requires that all complaints be submitted on a form provided by the board, which is accessible by calling the board office and requesting that a form be mailed or through the board's website. Upon receipt of the written complaint, the Executive Director reviews the complaint and assigns it to a board member for investigation and recommendation to the full board for disposition. The Executive Director selects the board member that she considers to be most knowledgeable in the area of the complaint to handle the investigation. For example, she would not select a board member who is licensed only as a funeral director (and is not eligible to embalm) to investigate a complaint regarding an unsatisfactory embalming.

During calendar years 2002 and 2003, the Board of Funeral Services received thirty-four and fifty-two, respectively, complaints regarding alleged violations by funeral service and funeral directing licensees. Dissatisfied customers lodged the majority (70%) of the complaints for the two years, while the board and other funeral establishments filed the remaining number (21% and 9%, respectively) for alleged noncompliance.

***Board members' investigations and board actions to resolve complaints are poorly documented in the board's investigative files and meeting minutes.***

Upon receipt of a formal written complaint, the Board of Funeral Service's staff opens an investigative file and tracks the progress of the investigation through a "check-off sheet." One step in the investigative process (and an item on the check-off sheet) is to provide the investigating board member with a copy of the complaint form, the respondent's response to the complaint, and a "Determination of Jurisdiction" form to be used by the board member to document his or her analysis of state law or board regulations relative to the complaint and steps taken by the board member to investigate the complaint.

Despite being provided "Determination of Jurisdiction" forms, investigating board members do not consistently complete the form and/or formally document their fieldwork and conclusions regarding a complaint. PEER randomly reviewed files for seven of the thirty-four

complaints handled by the board during CY 2002. Six of the seven files either did not contain a "Determination of Jurisdiction" form or contained a blank form that had not been completed by the investigating board member. None of the seven files contained any evidence of investigative steps taken by the investigating board member to determine the validity of the complaint. (Board members state that they typically investigate complaints by telephoning the parties involved to obtain relevant information.) None of the seven files contained formal field notes and analytical information with which the investigating board member developed a recommendation to the full board to resolve the complaint.

**The board's lack of a rigorous investigative process that fully documents the rationale for its actions could result in penalties being inconsistently imposed or board decisions being overturned on appeal.**

In addition to board members' investigations being poorly documented, the board's meeting minutes do not fully reflect actions taken by the board to resolve complaints. Of the thirty-four complaints handled by the board during CY 2002, thirty-two had been completely processed and closed as of January 2004. For those complaints, the board's meeting minutes do not include a summary of the complaint, results of the investigative board member's investigation, or a recommendation of action to be taken by the board in response to the complaint. Also, for more than one-half of the thirty-two closed complaints for CY 2002, the board's minutes contain no explanation for closure or only a cryptic entry that the complaint was not a violation of board regulations. The minutes reflect for the remainder of the closed complaints that the parties had settled their differences or chose not to pursue further action by the board. The minutes indicate that the board imposed a monetary penalty in only three of the thirty-two complaint cases closed by the board during CY 2002.

Licenses who have punitive actions taken against them by the board in response to a complaint investigation have the right to appeal the board's decision to circuit court. Therefore, it is imperative that the board have a rigorous investigative process that fully documents the rationale for any actions taken by the board. The lack of such could result in penalties being inconsistently imposed or board decisions being overturned on appeal to circuit court.

## **Inspection Process**

***State law requires the Board of Funeral Service to inspect funeral establishments at least once during each licensing period.***

State law requires the Board of Funeral Service to inspect funeral establishments at least once during each licensing period. [See MISS. CODE ANN. § 73-11-55 (2) (1972).] According to the Executive Director, a licensing period begins on January 1 of each odd-numbered year and expires on December 31 of each even-numbered year.

**Although the board's rules and regulations do not state specifically who is responsible for conducting inspections, the Executive Director has supervisory responsibility over inspections and enforcement of regulations.**

Thus, for the most recently completed licensing review period (January 1, 2001 through December 31, 2002), all 442 of the state's funeral establishments should have been inspected at least once. PEER was unable to determine the total number of funeral service establishment inspections that the board completed during the 2001-2 licensing period because the board's Executive Director stated that computer problems prevented her from providing this data. PEER could not confirm the dates or types of technical difficulties that prevented compilation of the data.

Concerning who is responsible for inspections, as noted on page 4, MISS. CODE ANN. §73-11-49 (4) (1972) states that the administrator of the Board (the Executive Director) has supervisory responsibilities over field inspections and enforcement of regulations. Subparagraph (8) provides the board with the following options for conducting inspections of funeral establishments:

- designate the Executive Director to conduct inspections;
- hire an individual to conduct inspections; or,
- contract with any other individual or entity to perform such inspections.

The board's rules and regulations do not state specifically who is responsible for conducting inspections. The Executive Director stated that she and several board members conduct these inspections. The board's minutes indicate that the Executive Director's husband and a former board member have also conducted inspections.

According to state law and the board's rules and regulations, funeral establishments are inspected for the following elements including, but not limited to:

- proper facilities for preparation and arrangement for burial and cremation;
- to ensure consumers are informed of the services provided by the funeral establishment and their costs; and,
- that the facility is clean and sanitary.

The individual conducting the inspection uses an inspection form created by the board. (See Exhibit 3, page 17.)



# Exhibit 3: Inspection Form of the Board of Funeral Service

Inspection Report  
 Mississippi State Board of Funeral Service  
 3010 Lakeland Cove, Suite W  
 Flowood, MS 39232

Date:  / /

- Routine inspection
- Reinspection
- New firm inspection

License Number: \_\_\_\_\_

County: \_\_\_\_\_

Licensee in Charge: \_\_\_\_\_

	Yes	No	Refused
1. Proper licenses displayed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. All operating and preparation rooms equipped with:			
(a) Hot and cold running water	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b) Sanitary floor (type of material) _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(c) Walls (type of material) _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(d) Ventilation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(e) Approved sanitary table with running water draining from the table into drain connected with sewer or other proper receptable	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(f) Normal professional instruments, equipment, and supplies	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. All instruments and tables sanitary and clean	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Preparation room maintained in a clean, sanitary, and acceptable condition	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Preparation room of each establishment used only for the preparation of dead human bodies	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Embalming log	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. A display room providing a minimum of at least 6 adult caskets	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Proper quarter for rites and ceremonies	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Adequate arrangement room/office	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. Funeral home provides a copy of a General Price List	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Remarks: \_\_\_\_\_

This report received by: \_\_\_\_\_ Inspector's Signature: \_\_\_\_\_

***Because of insufficient staffing and the lack of a systematic approach to completing inspections, the Board of Funeral Service has not fulfilled its inspection responsibilities and thus cannot assure the protection of the health and safety of funeral establishment employees and the public.***

*PEER examined a random sample of fifty-two files from a total of 442 establishments that the board should have inspected in 2001 and 2002 and found that the board had inspected only thirty-three of these establishments.*

During the licensing period of January 1, 2001, through December 31, 2002, Mississippi had 442 funeral establishments that the board should have inspected, as required by CODE Section 73-11-55 (2) (1972). PEER staff randomly selected and reviewed fifty-two of the 442 funeral establishment files and found that the board actually inspected only 63% of the funeral establishments included in the sample. The board had inspected thirty-three of the funeral establishments and had not inspected sixteen establishments. Because of the board's poor recordkeeping, PEER could not determine when the other three establishments had been inspected.

*The Board of Funeral Service has insufficient staff with which to conduct the inspections mandated by law.*

As noted above, MISS. CODE ANN. §73-11-49 (4) (1972) states that the administrator of the board (e.g., the Executive Director) has supervisory responsibilities over the field inspections and enforcement of regulations. The law states that the Executive Director may conduct inspections, hire an individual to conduct inspections, or contract for such inspections.

The board's rules and regulations do not state specifically who is responsible for conducting inspections. As noted on page 4, the board has only two staff members—the Executive Director and an administrative secretary. Because of the lack of staff designated to conduct inspections, the Executive Director and several board members conduct these inspections (see discussion of this in next section).

**The board is not able to implement fully any type of organized inspection program without personnel to conduct the inspections.**

Because MISS. CODE ANN. Section 73-11-55 (1972) requires that the board inspect each funeral establishment at least once every two years, and because that section also lays out minimum inspection criteria, it is the board's duty to have these inspections carried out. Also, although CODE Section 73-11-49 (4) (1972) states that the Executive Director may conduct inspections, this one individual could not be expected to conduct approximately 442 inspections in a two-year period, as well as manage other business of the agency.

Thus the board is not able to implement fully any type of organized inspection program without personnel to conduct the inspections.

*Because the board has no rule that requires members who have conducted inspections to recuse themselves from disciplinary proceedings on the establishments they have inspected, the potential exists for the appearance of bias or impropriety.*

**A board member could be, or appear to be, prejudiced in favor of or against an establishment due to contact made during an inspection and in theory his or her vote could reflect this prejudice.**

As noted above, several of the board's members have conducted inspections of funeral establishments. Because the board has no rule that prohibits such, board members who have inspected a funeral establishment could participate in the full board's determination of noncompliance and any resulting disciplinary penalties regarding that same establishment. The board member could be, or appear to be, prejudiced in favor of or against an establishment due to contact made during the inspection and in theory his or her vote could reflect this prejudice.

Although PEER has no evidence that any board member has prejudged any funeral establishment in reference to disciplinary proceedings, it is the board's responsibility to avoid the appearance of bias or impropriety.

**The lack of a board rule or policy addressing potential bias in the disciplinary process could result in some of the board's disciplinary decisions being overturned on appeal.**

Although the board's minutes of January 16, 2003, state that board members are no longer to conduct inspections, PEER found documentation in the files showing that board members continued to conduct inspections subsequent to that date.

The lack of a board rule or policy addressing potential bias in the disciplinary process could result in some of the board's disciplinary decisions being overturned on appeal to circuit court.

*The board has no formal process or plan in place to inspect all establishments within the two-year time frame mandated by law.*

The Board of Funeral Service does not have a systematic approach for completing funeral establishment inspections. The board has not addressed through rules or policies such issues as assigning inspections based on geographic location, how many inspections should be conducted per month, method of selection for completing all inspections within the required timeframe, or method of documenting the inspections that have been completed.

Without a formal process for completing funeral establishment inspections, the board cannot ensure that all inspections will be completed within the licensing period, particularly with the limited number of individuals available to conduct inspections. Thus the board cannot

assure the public that funeral establishments are in compliance with state law and board rules and regulations. The public and/or funeral service establishment employees may suffer from unscrupulous or hazardous practices.

*Neither state law nor the board's rules and regulations contain requirements for follow-up inspections.*

**Without follow-up inspections, the board cannot determine whether corrective action has been taken for each violation.**

Although the board's inspection form includes a blank to indicate whether the inspection is a "reinspection," neither the Mississippi Code nor the board's policies and procedures require the board to conduct follow-up inspections for those funeral establishments who are found to be out of compliance. Without a follow-up inspection, the board cannot determine if corrective action has been taken for each violation.

***The Board of Funeral Service does not utilize specific criteria when conducting inspections of funeral establishments. Thus the board cannot conduct uniform inspections and cannot ensure the safety of funeral establishment employees and the public.***

*Although individuals who conduct funeral establishment inspections use a standard inspection form with very general guidelines, they cannot conduct uniform inspections because the board does not have specific criteria with which to determine whether a funeral establishment is in compliance.*

As noted on page 3, state law requires the Board of Funeral Service to inspect funeral establishments at least once during each two-year licensing period. The individuals conducting these inspections use the form shown in Exhibit 3, page 17.

**The board's inspection form does not define what is "adequate" or "proper" in terms of the elements to be reviewed.**

Although the inspection form lists the elements that are required to be reviewed during the inspection, it does not provide any formal criteria for these elements and the board could not provide PEER with documentation of any criteria that it uses in conducting inspections. For example, item 8 on the inspection form, "Proper quarter for rites and ceremonies" does not operationally define "proper." Item 9, "Adequate arrangement room/office," does not operationally define "adequate." Without specific criteria, the board cannot ensure that it conducts uniform, thorough inspections. The following paragraphs discuss other examples of inadequate criteria for inspection items related to worker health and safety.

To gauge the types of standards needed for such inspections, PEER compared the board's standards to those of the federal Occupational Safety and Health Administration (OSHA). As noted on page 8, OSHA's

purpose is to protect against workplace safety and health hazards and its standards apply to private-sector employers with one or more employees. While OSHA has authority to inspect funeral homes meeting the “one or more employees criteria,” its routine inspections focus on workplaces that pose a higher risk for a greater number of employees. Most OSHA inspections result from employee complaints. OSHA has developed mandatory job safety and health standards and enforces them through worksite inspections, employer assistance, and citations and/or penalties. While OSHA has no standard specific to funeral establishments, there are several regulations within OSHA’s industry standards that apply to funeral homes—e.g., formaldehyde regulations, personal protective equipment standards, and disposal of hazardous waste standards. (See Exhibit 4, page 22.)

The following are two examples of PEER’s comparison of similar standards of the Board of Funeral Service and OSHA:

- *Ventilation*— Rule 402 (3)(E) of the board’s rules and regulations states:

*The room shall be properly ventilated and comply in respect to ventilation with federal, state and local laws or ordinances and regulations.*

However, the rule does not specify how the ventilation should be inspected and what types of ventilation systems are acceptable.

Item 2 (d) of the board’s inspection form has the following checklist item:

*All operating and preparation rooms equipped with ventilation.*

The inspection form does not indicate what the board will accept as “ventilation.” The Executive Director stated to PEER that most funeral establishments have fans in the embalming room, which implies that the board would accept the establishment’s possession of a fan as “ventilation.”

In comparison, OSHA’s concern with ventilation focuses on whether whatever ventilation system used is adequate to protect employee health. Rather than issuing specifications for a ventilation system, OSHA requires funeral establishments to implement systems that keep airborne contaminants below maximum limits. OSHA standards require funeral establishments to determine what airborne contaminants are present in a facility and monitor the air to determine whether employee exposures exceed OSHA’s permissible limit for the identified contaminants. In their inspections, OSHA employees conduct their own scientific

**Exhibit 4: Industry Standards of the Occupational Safety and Health Administration (OSHA) that Apply to Funeral Establishments**

OSHA Standard:	Requirements of Standard:
Hazard Communication (Right to Know Law)	<ul style="list-style-type: none"> <li>• identify and evaluate chemical hazards in the workplace</li> <li>• communicate hazard information to employers and employees</li> </ul>
Bloodborne Pathogens	<ul style="list-style-type: none"> <li>• create a written Exposure Control Plan that describes how the employer will protect employees from exposure to blood or other potentially infectious bodily fluids</li> </ul>
Personal Protective Equipment	<ul style="list-style-type: none"> <li>• assess work area to determine if hazards are or are likely to be present which necessitate the use of specialized protective clothing or equipment and make the equipment and clothing available to employees</li> </ul>
Respiratory Protection	<ul style="list-style-type: none"> <li>• create a written respiratory protection program</li> <li>• identify which airborne contaminants are present</li> <li>• conduct regular monitoring to determine whether exposure levels exceed OSHA limits</li> <li>• implement engineering and administrative controls where exposure levels exceed limits to bring levels within limits</li> </ul>
Formaldehyde	<ul style="list-style-type: none"> <li>• monitor employee exposure unless employer can document that presence of airborne formaldehyde will not exceed OSHA limits under foreseeable conditions</li> </ul>
Eye/Face and Wash/Shower	<ul style="list-style-type: none"> <li>• provide suitable facilities for quick drenching or flushing of the eyes and body for employees who may be exposed to injurious corrosive materials</li> </ul>
Medical and First Aid	<ul style="list-style-type: none"> <li>• if not close to an infirmary, clinic, or hospital, have an individual trained to provide first aid</li> <li>• maintain first aid kits on-site, filled according to OSHA specifications</li> </ul>
Storage of Chemicals	<ul style="list-style-type: none"> <li>• segregate incompatible chemicals to prevent adverse outcomes (e.g., fires, explosions, release of toxic gases)</li> </ul>
Hazardous Waste Disposal	<ul style="list-style-type: none"> <li>• comply with disposal requirements established by state and local authorities</li> </ul>

SOURCE: PEER analysis of information from OSHA.

monitoring of air quality to determine whether the levels of contaminants exceed limits. Air quality monitoring devices, such as diffusion badges, are available for purchase and use by inspectors. The price of these devices includes analysis of the results by a laboratory.

- Cleanliness of rooms and instruments-Rule 402(3) (F) of the board's rules and regulations requires that:

*. . .the preparation or embalming room be maintained in a clean and sanitary condition at all times. All instruments and other appliances used in embalming dead human bodies shall be thoroughly cleansed.*

Several of the checklist items on the inspection form refer to floors, tables, instruments, or rooms being "sanitary" or "clean," but do not state how this should be determined (see Exhibit 3, page 17.) The board's rules contain some specifications regarding types of materials to be used for the floor, tables, walls, etc., but do not specify how sanitizing is to be accomplished. The Executive Director stated she determines if instruments and tables are sanitary and clean through a visual inspection and could not provide documentation of any criteria used in the determination of compliance.

In comparison, OSHA requires that facilities that handle toxic or hazardous substances, such as funeral establishments, utilize a bloodborne pathogens program to protect employees against the hepatitis B virus and human immunodeficiency virus. OSHA requires engineering controls such as sharps disposal containers for needles and scalpels, exposure incident procedures that provide specific tasks to be performed in the event of exposure with infectious materials, and sterilization procedures that ensure destruction of bacteria on instruments.

PEER contends that a visual inspection alone is not sufficient to determine cleanliness and that the board could adopt procedures for ensuring that funeral establishments are adhering to proper controls of bloodborne pathogens and proper decontamination of instruments and rooms. For example, the inspector could determine whether proper disinfectants are being used and whether there is a written procedure for cleaning instruments and rooms.

The effect of having general inspection guidelines without specific criteria is that the board cannot ensure uniform inspections because each individual conducting inspections may have a different concept of how compliance should be measured. The lack of operational

definitions for terms such as “clean” and “sanitary” increases risk to the public of health hazards.

*PEER compared results of the Board of Funeral Service’s inspections of three funeral home establishments to the results of OSHA inspections of those same funeral establishments. For two of these establishments, OSHA had cited multiple serious violations, while the board had cited no violations. The board had not inspected the third establishment.*

To gauge the effectiveness of the Board of Funeral Service’s inspections, PEER also compared the results of inspections of selected establishments by the board to results of inspections of the same establishments by OSHA. Although the board’s inspection responsibilities include matters other than the condition of the workplace (e.g., consumer protection matters), OSHA standards give some reasonable basis of comparison.

**When the Board of Funeral Service and OSHA conduct inspections of the same establishments and OSHA finds multiple violations because of a more rigorous inspection program and the board finds none, the board’s effectiveness in conducting inspections is called into question.**

Exhibit 5, page 25, describes the results of OSHA’s inspections of three Mississippi funeral establishments. At one of the establishments, OSHA cited eight violations including not updating their Exposure Control Plan, employee overexposure to formaldehyde, and no controls to protect employees from the high levels of air contaminants. OSHA fined the funeral establishment \$6,425. The Board of Funeral Service inspected this same establishment within ten days of the OSHA inspection and found no violations, most likely because of its less stringent criteria. The board only checks to see whether the home has some form of ventilation; it does not monitor air quality as does OSHA. Also, the board has no written requirements to look for and evaluate exposure control plans as does OSHA.

At another establishment, OSHA found six violations and fined the establishment \$3,150. Violations included failure to decontaminate sinks and tables in the embalming room (as documented through observation of procedures and materials used by employees) and failure to train employees annually that are exposed to blood or other potential infectious material. The board does not include a review of training requirements in its inspection routine even though such a review would serve to better protect funeral home employees.

OSHA also cited a third selected funeral establishment for violations, but a review of the funeral establishment’s file included no documentation that the Board of Funeral Service had ever inspected this establishment. State law requires an initial inspection before the funeral establishment is allowed to open for business and subsequent inspections once every two years.

Both the Board of Funeral Service and OSHA are oversight bodies responsible for helping reduce risks of disease or bodily harm. When the board and OSHA conduct



## Exhibit 5: Comparison of Inspections of Selected Funeral Establishments by OSHA and Board of Funeral Service

Establishment and Date of OSHA Inspection	Findings of OSHA Inspection	Penalties Assessed by OSHA	Establishment and Date of Board of Funeral Service's Inspection	Findings of Board's Inspection	Penalties Assessed by Board
Establishment A 5/23/03	<p>Emergency eye wash did not have a quick opening valve</p> <p>Employee did not sign the Hepatitis B vaccination statement</p> <p>Employer modified the statement on the Hepatitis B vaccination statement</p>	No fines	<p>Establishment A</p> <p>File contains no evidence of inspection within licensing period</p>	not applicable	not applicable
Establishment B 09/13/02	<p>Exposure Control Plan not updated since 1992</p> <p>Training records for bloodborne pathogens did not include the contents or summary of training sessions.</p> <p>Employee exposed to airborne concentration of formaldehyde that exceeded two parts formaldehyde per million parts of air as a 15 minute short exposure time limit on 12/11/00.</p> <p>Engineering controls do not adequately reduce employee exposure level below the short time exposure limit.</p> <p>Employee did not wear respiratory protection.</p> <p>Company has not established or implemented a written respirator program.</p> <p>Company has not instituted a medical surveillance program for the embalmers.</p> <p>Employer has not provided all the training materials to embalmers as required in 1910.1048 (n)(3)</p>	\$6,425	<p>Establishment B</p> <p>9/23/02</p>	None	None

<p>Establishment C 3/24/03</p>	<p>Employer did not ensure that employees were not exposed to the hazard of being struck by falling roof joists in the ceiling of the garage.</p> <p>Sinks and tables in the embalming room were not decontaminated after contact with blood, thereby exposing employees to the hazard of coming in contact with infectious material.</p> <p>The regulated waste container in the embalming room was not a closeable container, thereby exposing employees to the hazard of coming in contact with infectious material.</p> <p>Employees exposed to blood or other potential infectious material were not given training annually.</p> <p>Exit signs throughout the facility were not suitably illuminated by a reliable light source.</p> <p>Employer's exposure control plan was not reviewed or updated annually.</p>	<p>\$3,150</p>	<p>Establishment C 6/3/02</p>	<p>None</p>	<p>None</p>
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SOURCE: PEER analysis of files and minutes of the Board of Funeral Service.

inspections of the same establishments and OSHA finds multiple violations because of a more rigorous inspection program and the board finds none, the board's effectiveness in conducting inspections is called into question.

## Discipline and Penalties

After a violation has been determined, MISS. CODE ANN. §73-11-57 (2) (1972) allows, but does not require, the board to hold a hearing to determine if a funeral establishment is guilty of violating state law or board rules and regulations governing funeral establishments and provides the following options for disciplinary actions.

The board may:

- refuse to examine, issue or renew a license;
- suspend or revoke any license; or,
- reprimand or place the holder of a license on probation.

**State law also allows, but does not require, the board to assess monetary penalties against funeral establishments found guilty of a violation.**

State law also allows, but does not require, the board to assess monetary penalties against those funeral establishments found to be guilty of a violation. MISS. CODE ANN. §73-11-57 (3) (1972) allows the board to assess monetary penalties in addition or in lieu of revocation or suspensions of licenses. The monetary penalties may be assessed as follows:

- (a) For the first violation, a monetary penalty of no less than \$50 nor more than \$500;
- (b) For the second violation, a monetary penalty of no less than \$100 nor more than \$1,000;
- (c) For the third violation, no less than \$500 nor more than \$5,000.

***The board does not utilize disciplinary actions consistently to deter violators and, in at least one case, has administered a disciplinary action not authorized by statute.***

*Although penalty ranges are provided for in state law, the board does not have criteria for determining the amount of monetary penalties or length of probation periods to assess for specific violations.*

**The board has not developed a penalty matrix.**

The Board of Funeral Service does not have criteria for determining the amounts of monetary penalties or the length of probation periods that should be assessed for specific violations. Although the monetary penalty categories are provided for in state law (see previous

section), the board has not developed a penalty matrix that states the amount of monetary penalty that should be assessed for each violation, based on the type and severity of the violation or whether it was an initial or recurring offense. Similarly, the board does not have a penalty matrix or written procedure for determining the length of probationary periods it assesses for noncompliance.

**PEER found several examples in the board's files of funeral service establishments with similar numbers and types of violations being assessed different monetary penalties and probationary periods by the board.**

The absence of criteria for determining the amount and severity of penalties creates the opportunity for inconsistent enforcement of laws, rules, and regulations regarding funeral service. PEER found several examples in the board's files of funeral service establishments with similar numbers and types of violations being assessed different monetary penalties and probationary periods by the board.

If the board's disciplinary actions are not consistent, potential violators may not be deterred. Thus the board cannot ensure that funeral service establishments will not, as a result of either intent or carelessness, harm their employees or consumers.

*In cases in which inspections of funeral establishments found violations of state law or the board's rules and regulations that funeral establishment personnel acknowledged, the board administered penalties in some cases and not in others.*

**The board has not uniformly and consistently enforced laws, rules, and regulations regarding funeral service across the state.**

Within PEER's sample of fifty-two randomly selected funeral establishment files, eleven funeral establishments whose inspection reports noted that they were out of compliance with state law or the board's rules and regulations had no action taken against them by the board. These violations ranged from "proper license not displayed" to "blood on table" and "no hot water." Six establishments had violations regarding their price lists—"general price list does not meet Federal Trade Commission compliance" or "no general price list available." PEER's review of the board's minutes identified four other funeral establishments that received disciplinary action by the board for the same violations committed by the above-noted eleven establishments that did not receive penalties. Thus the board has not uniformly and consistently enforced laws, rules, and regulations regarding funeral service across the state.

If the board does not enforce laws, rules, and regulations uniformly, it cannot ensure the public of protection against the risks of unscrupulous or incompetent practitioners.

*In at least one instance, the Board of Funeral Service has used a consent order to implement a disciplinary action not authorized by statute.*

A “consent order” is similar to a settlement in a civil action in that the accused agrees with the accuracy and validity of the complaint against him or her and agrees to abide by the remedy for the violation assigned by the board. By using a consent order, the board uses an administrative means to settle cases and avoid lengthy formal hearings or litigation.

PEER found that in at least one instance, the Board of Funeral Service used a consent order to implement a penalty not authorized in state law. On August 8, 2002, the Board of Funeral Service adopted a motion to require the owner of Chancellor Funeral Home to come before the board to show cause regarding the “unlawful practice of funeral service.” The board alleged that the owner handled a funeral through a funeral establishment not licensed by the board. By mutual agreement of the board and the owner, the board did not conduct a hearing into this matter. Instead, the board adopted a consent order in which the board fined the owner \$1,000 and assessed him \$500 for the administrative costs of the investigation. The board also placed the owner on probation for one year.

The board’s actions in this matter are not consistent with state law and are not fully documented in its investigative files or meeting minutes, as described below.

- *The \$1,000 monetary fine assessed by the board exceeded fines authorized in MISS. CODE ANN. § 73-11-57 (1972). This section authorizes the board to assess a monetary penalty of not less than \$50 nor more than \$500 for the first violation of any provision contained in the CODE section. Licensees who have a second or third violation may be fined up to \$1,000 or \$5,000 respectively. Nothing in the board’s minutes or investigative files indicate that the owner of Chancellor Funeral Home had a previous violation of funeral service laws. Therefore, the owner’s monetary penalty should not have exceeded \$500.*
- *Neither the board’s minutes nor its investigative files contain information from the investigating board member describing how the owner engaged in “unlawful practice of funeral service.” While the file contains some field notes, a death certificate, and related correspondence, there is no analysis to document violations of state funeral service laws or regulations. In addition, unlike other investigative files reviewed by PEER, the file in this matter does not contain an itemization of the \$500 in administrative expenses charged to the owner. Supposedly the expense amount represents time spent by the board’s attorney in assisting with this*

matter. However, nothing in the file supports this assertion.

PEER does not criticize the board's use of consent orders, but they should always be used to implement a disciplinary remedy given to a board in state law. Neither consent orders nor other disciplinary actions should exceed the penalties prescribed by law. When the Legislature establishes a comprehensive scheme of regulation, including permissible remedies for violations of agency rules, any agency's actions that extend beyond the permissible remedies constitute a usurpation of the Legislature's prerogative.

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## Recommendations

### Protection of Funeral Service Workers

1. The Legislature should amend MISS. CODE ANN. § 73-11-55 (1972) to provide authority to the Board of Funeral Service to develop a comprehensive set of regulations to protect workers in the funeral service industry from the unique risks associated with their employment. Such regulations should be measurable so that trained inspectors can determine compliance with them.

### Continuing Education

2. No later than December 1, 2004, the Board of Funeral Service should develop a proposed continuing education program for all licensees. The proposed program should include annual education requirements for each class of license and the subjects required for each licensee. Upon development of a continuing education program, the board should seek legislative authorization to implement the program.

### Agency Funding

3. The Board of Funeral Service should review its current funding structure and program expenditures to determine whether sufficient funds are available from existing sources to implement recommendations contained in this report. If sufficient funds currently exist, the board should seek increased appropriations for future fiscal years from current revenue sources to offset expenses associated with implementation of report recommendations. If the board can establish that current revenue sources will not be sufficient to offset such expenses, the board should recommend to the Legislature increased or additional fees sufficient to cover such expenses.

### Enforcement

4. The Board of Funeral Service should ensure that individuals who serve as inspectors are adequately trained to conduct investigative fieldwork. Such

training should consist of mastery of all substantive criteria for inspections and preparation of supporting workpapers.

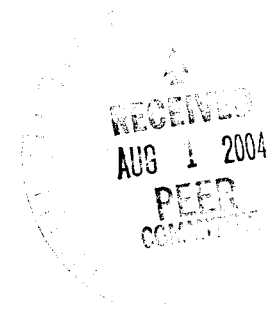
5. The Board of Funeral Service should ensure that board members who investigate complaints against a licensee or funeral establishment do not participate in the adjudication of such complaints.
6. The Board of Funeral Service should consider employing a full-time, trained professional to conduct inspections of funeral establishments and investigate complaints.
7. The Board of Funeral Service should develop a formal process for ensuring that funeral establishment inspections are completed in a timely manner and include the process in its policy and procedure manual. The process could include, but not be limited to:
  - a schedule for the completion of a specified number of inspections per month;
  - inclusion in the board's computer system of the types of inspections (reinspection, routine, initial) and the results of the inspections;
  - a system to track the performance of funeral establishments and provide data with which to measure the effectiveness of the inspection program;
  - a report of all funeral establishments inspected each quarter or from the date of the last board meeting and the results to be presented at each board meeting; and,
  - a requirement that a report be made by the Executive Director on October 30 of each year in which the licensure period expires to identify those funeral establishments that have not been inspected to ensure that the schedule provides for an inspection prior to December 31.
8. The Board of Funeral Service should create a penalty matrix to determine the monetary penalty that should be assessed as well other penalties that should be assessed (such as probation) based on the types of violations and the severity of violations.
9. The Mississippi Legislature should amend MISS. CODE ANN. § 73-11-57 (1972) to require the board to conduct follow-up inspections within thirty days of the filing of an inspection report for funeral establishments that the board cites as failing to comply with state law or board regulations.



10. To ensure that funeral establishments are inspected consistently, the Board of Funeral Service should develop measurable criteria for each element included in the inspection process.
11. When imposing monetary fines against non-compliant licensees or funeral establishments, the Board of Funeral Service should strictly adhere to the graduated schedule of fines included in MISS. CODE ANN. § 73-11-57 (1972).
12. The Board of Funeral Service should review its disciplinary actions and consent orders for cases closed during CY 2002 and CY 2003 to determine their compliance with penalties authorized by MISS. CODE ANN. § 73-11-57 (1972). In those instances in which penalties imposed varied from state law, the board should take corrective action to ensure strict compliance with state law. Also, for each hearing conducted or administrative action taken by the board, the Executive Director should compile and include in investigative files an itemized accounting of administrative expenses associated with such action.



# Agency Response



**STATE OF MISSISSIPPI**  
**MISSISSIPPI STATE BOARD OF FUNERAL SERVICE**  
**Dolores Killebrew-Kenney**  
Executive Director

3010 Lakeland Cove, Suite W  
Flowood, Mississippi 39232-9709

(601) 932-1973  
FAX (601) 932-1901

July 30, 2004

Mr. James Barber  
Post Office Box 1204  
Woolfolk Building  
Jackson, MS 39201

Dear Ladies and Gentlemen:

The Mississippi State Board of Funeral Service has received and reviewed the executive summary of your evaluation of our office. First, we would like to commend your staff for its professionalism during the review and exit conference. We appreciate the suggestions and find that we are in agreement with many of the recommendations.

Recommendation 1. The Legislature should amend MISS. CODE ANN. § 73-11-55 to provide authority to the Board of Funeral Service to develop a comprehensive set of regulations to protect workers in the funeral service industry from the unique risks associated with their employment. Such regulations should be measurable so that trained inspectors can determine compliance with them.

Response: The Board agrees with this recommendation. It should be noted however, that the staff of the Mississippi State Board of Funeral Service is currently comprised of an executive director and one support person. Any modification of the statute to require measures, the enforcement of which calls for the use of additional personnel, must be accompanied by the authority to have additional personnel positions along with a mechanism to fund the same. In light of the current legislative trend of "borrowing" special fund dollars, while we agree with this recommendation it does not appear feasible within the Board's current economic condition.

Recommendation 2. No later than December 1, 2004, the Board of Funeral Service should develop a proposed continuing education program for all licensees. The proposed program should include annual education requirements for each class of license and the subjects required for each license. Upon development of a continuing education program, the board should seek legislative authorization to implement the program.

Response: The Board has made several prior attempts to gain legislative authority to implement a continuing education program without success.

Recommendation 3. The Board of Funeral Service should review its current funding structure and program expenditures to determine whether sufficient funds are available from existing sources to implement recommendations contained in this report. If sufficient funds currently exist, the board should seek increased appropriations for future fiscal years from current revenue sources to offset expenses associated with implementation of report recommendations. If the board can establish that current revenue sources will not be sufficient to offset such expenses the board should recommend to the Legislature increased or additional fees sufficient to cover such expenses.

Response: The Board's current funding structure may be sufficient to cover the implementation of some of the recommendations should the Legislature discontinue the practice of "borrowing" the special fund dollars. The Board agrees that if the current funding sources are not sufficient to cover the recommendations then an additional appropriation may be required and will be requested if funds exist after the legislative "borrowing".

Recommendation 4. The Board of Funeral Service should ensure that individuals who serve as inspectors are adequately trained to conduct investigative fieldwork. Such training should consist of mastery of all substantive criteria for inspections and preparation of supporting workpapers.

Response: The Board agrees with this recommendation. Please see response to recommendation 1.

Recommendation 5. The Board of Funeral Service should ensure that board members who investigate complaints against a licensee or funeral establishment do not participate in the adjudication of such complaints.

Response: The Board agrees with this recommendation. The current practice of the Board is to separate the investigative and adjudicatory functions in order to comply with due process.

Recommendation 6. The Board of Funeral Service should consider employing a full-time, trained professional to conduct inspections of funeral establishments and investigate complaints.

Response: The Board agrees with this recommendation, but would require additional funding to implement this recommendation as well as the authority to hire for this position.

Recommendation 7. The Board of Funeral Service should develop a formal process for ensuring that funeral establishment inspections are completed in a timely manner and include the process in its policy and procedure manual.

Response: The Board agrees with this recommendation. Please note however, the composition of board staff. This recommendation will more likely be achieved if additional staff is approved and funded by the Legislature.

Recommendation 8. The Board of Funeral Service should create a penalty matrix to determine the monetary penalty that should be assessed as well [as] other penalties that should be assessed (such as probation) based on the types of violations and the severity of violations.

Response: The Board is considering the implementation of such a matrix.

Recommendation 9. The Mississippi Legislature should amend MISS. CODE ANN. § 73-11-57 (1972) to require the board to conduct follow-up inspections within thirty days of the filing of an inspection report for funeral establishments that the board cites as failing to comply with state law or board regulations.

Response: The Board of Funeral Service is not adverse to this recommendation if provided with necessary funding and staff to carry out the legislative mandate.

Recommendation 10. To ensure that funeral establishments are inspected consistently, the Board of Funeral Service should develop measurable criteria for each element included in the inspection process and avoid vague, unmeasurable terms such as “adequate” and “proper”.

Response: The Board currently uses an objective inspection tool. The terms “adequate” and “proper” are derived directly from the statute, as such the board is loathe to modify the same. The Board will give consideration, however, to an attempt to define the terms by rule to increase measurability.

Recommendation 11. When imposing monetary fines against non-compliant licensees or funeral establishments, the Board of Funeral Service should strictly adhere to the graduated schedule of fines included in MISS.CODE ANN. § 73-11-57 (1972).

Response: The Board agrees with this recommendation.

Recommendation 12. The Board of Funeral Service should review its disciplinary actions and consent orders for cases closed during CY 2002 and CY 2003 to determine their compliance with penalties authorized by MISS.CODE ANN. § 73-11-57 (1972). In those instances in which penalties imposed varied from state law, the board should take corrective action to ensure strict compliance with state law. Also, for each hearing conducted or administrative action taken by the board, the Executive Director should compile and include in investigative files an itemized accounting of administrative expenses associated with such action.

Response: This recommendation is noted and the Board shall take the necessary steps to more accurately document the relationship between the offenses and the penalties imposed. The Board shall further document with increased detail the accounting for imposition of cost assessments.

Thank you for the opportunity to respond to your recommendations.

Sincerely,

A handwritten signature in black ink that reads "Dolores Kenny". The signature is written in a cursive, flowing style.

For and On Behalf of  
The Mississippi State Board of Funeral Service.

## **PEER's Note to Agency Response**

**August 10, 2004**

In its response to PEER's report *A Review of the Board of Funeral Service*, the board noted that some of the Committee's recommendations would be difficult to implement "in light of the current legislative trend of 'borrowing' special fund dollars." While it is correct that the Legislature has transferred special funds to the Budget Contingency Fund in recent fiscal years to increase funds available to the Legislature for appropriation, such practices have not affected the Board of Funeral Service. Staff of the State Treasurer's Office and the Department of Finance and Administration report that neither the Legislature nor the State Fiscal Officer transferred funds from the Board of Funeral Service during fiscal years 2000 through 2003, the period covered in this report.

House Bill 1279 (2004 Regular Session) authorizes the State Fiscal Officer to transfer \$83,400,000 from the aggregate of special funds in the State Treasury to the Budget Contingency Fund during FY 2005. The bill requires the State Fiscal Officer to notify each agency that is subject to the provisions of the bill of the total amount of funds to be transferred from the agency. The State Fiscal Officer recently notified the Board of Funeral Service that he would transfer \$16,000 (in quarterly installments of \$4,000 each) from the board's account during FY 2005.

The Executive Director of the Board of Funeral Service contends that, due to its biennial fee collection practices, the board cannot afford to have its cash balance reduced by \$16,000 during FY 2005. However, as shown on page 6 of this report, the board consistently had ending cash balances averaging approximately \$170,000 in each of the past four fiscal years. The board's available cash balance and revenues more than offset the board's operating expenses each year. Therefore, a \$16,000 reduction in the board's available funds should not irreparably harm the agency. Also, the board appears to have sufficient resources with which to implement PEER's recommendations, primarily those relating to hiring additional staff.

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## PEER Committee Staff

Max Arinder, Executive Director  
James Barber, Deputy Director  
Ted Booth, General Counsel

### Evaluation

David Pray, Division Manager  
Linda Triplett, Division Manager  
Larry Whiting, Division Manager  
Antwyn Brown  
Pamela O. Carter  
Kim Cummins  
Barbara Hamilton  
Kelly Kuyrkendall  
Karen Land  
Sara Miller  
Joyce McCants  
Charles H. Moore  
John Pearce  
Brad Rowland  
Sara Watson  
Candice Whitfield

### Editing and Records

Ava Welborn, Editor and Records Coordinator  
Tracy Bobo  
Sandra Haller

### Administration

Mary McNeill, Accounting and Office Manager  
Terry Littlefield  
Gale Taylor

### Data Processing

Larry Landrum, Systems Analyst

### Corrections Audit

Louwill Davis, Corrections Auditor