



TEXAS FUNERAL SERVICE COMMISSION

FY 18 - 1ST QUARTER NEWSLETTER

September 2017 - November 2017

October 6, 2017

Happy Fall Y'all!

If your establishment was damaged by Hurricane Harvey you can apply for authorization to operate at a temporary location. [Title 22, Tex. Admin. Code, 203.12](#) authorizes the Commission to grant temporary operation authorization to a funeral establishment, commercial embalming facility, or crematory to operate at a temporary location if the licensed location is damaged by fire, flood or other natural disaster. Look to our website for the application.

I've been notified by the Texas Sunset Commission staff that the review of our agency is tentatively planned to start in the spring of 2018. I completed and submitted the agency's Self Evaluation Report at the end of August. I look forward to working with Sunset Commission staff on how to improve the agency going forward.

The agency continues to develop an email system to notify licensees and other stakeholders of important and time-sensitive information. Every email address maintained by the agency will be automatically uploaded to the new system. While each licensee will have the option to opt-out of these emails, I would encourage you to receive the emails.

Yours truly,

A handwritten signature in cursive script that reads "Janice".

Janice S. McCoy
Executive Director

Changes at the Commission

At the September meeting, Commissioners selected Larry Allen to serve as Assistant Presiding Officer. Commissioner Allen is a public member from Mesquite. His full bio can be found on the agency's website. He will serve in his role for one year.

Jeff Morales, Commission Investigator/Inspector, left the agency effective September 30, 2017, to take a position with another licensing agency. The agency will hire an Inspector (with some Investigative duties). The job posting can be found on the agency's website.

Upcoming Commission Meetings

The upcoming TFSC meeting will occur on **Tuesday, December 12, 2017** at 9:00 a.m. in Room 2-225 of the William P. Hobby Building in Austin, Texas. Licensed Texas funeral directors and embalmers can receive up to four hours of continuing education credit for attending a Commission meeting.

The Commission has tentatively scheduled the following dates for future meetings:

- March 20, 2018
- June 19, 2018
- September 11, 2018
- December 11, 2018

A Message from Licensing

The Licensing Division fulfills the TFSC's mission to protect the public from deceptive practices by performing licensing, registration, examination and continuing education functions.

Ownership for Establishment Renewals

Lately the agency has had to return many renewal applications (both online and on paper) due to incorrect ownership provided on the renewal application. The application will not be approved if the ownership does not match the ownership in the agency's database. Providing a wrong owner name on the application will delay the renewal and could result in a late penalty being assessed. The following is provided as guidance:

- For "Sole Owner" list the name of the individual as the owner
- For "Partnership" all the names of the partners
- For "Corporation" (includes LP, LTD, LLC, S-CORP, INC, etc...) list the name of the Corporation - - do NOT provide the names of the officers of the Corporation

If you are unsure of who the agency has listed as owner of your establishment, contact Nikki Smith at nikki@tfsc.texas.gov for assistance.

Continuing Education

All active license holders must complete 16 hours of continuing education every two years. Licensees who are on retired, active status or disabled, active status are required to obtain 10 hours of continuing education. Retired, Inactive and Disabled, Inactive licensees are not required to take continuing education.

The Commission performs a random audit of continuing education credits. Each month, 10 percent of individual licensees will receive a letter with the renewal notice stating that he/she will have to submit his/her certificates to the Commission prior to renewal.

Failure to complete required continuing education will delay renewal of the license and may cause additional fees and penalties to be imposed. It is the sole responsibility of the licensee to submit continuing education certificates to the Commission, even if the licensee renewed online.

Change of Address

Licensees must notify the Commission in writing if they have a change of address. This notification helps ensure that mail and communications to licensees is not delayed.

Online Renewals

The online renewal system is administered by the Health Professions Council (an umbrella agency for health-related agencies including the Commission). The HPC runs the help-desk and is responsible for questions about renewing online. TFSC licensing staff is able to help with resetting passwords or emails for the online renewal system. Contact Nikki Smith at nikki@tfsc.texas.gov for assistance.

Mortuary Law Exam

Each individual who takes the online Mortuary Law Exam must accept the Legal Attestation under penalties of law and Commission action. Commission action could include the loss of a license or the refusal to issue a license. A copy of the attestation can be found on the TFSC website.

The Mortuary Law Exam is now offered online only. Test takers are strongly encouraged to use Google Chrome or Mozilla Firefox (version 16.0 or higher) to complete the examination. If taking the exam at work, check with the IT department to ensure the security settings (firewalls) do not block the online exam. Refunds will not be given due to browser or firewall issues.

A Message from Compliance

The Compliance Division fulfills the TFSC's mission to protect the public from deceptive practices by inspecting establishments and investigating complaints.

Facts About Funerals Brochure

As part of the inspection process, Commission inspectors will ask to see a copy of the Facts About Funerals brochure being distributed by the funeral establishment. The law requires this document to be provided to prospective customers when funeral services are discussed. The most updated version of the brochure is dated September 2015.

The agency's rules clarify that the brochure must be originals ordered from the Commission and may only be copied in limited circumstances. If an establishment is copying the brochure, a complaint will be opened and an administrative penalty may be assessed.

Filing a Death Certificate

Title 25, Tex. Admin. Code 181.2(a) states, "...the funeral director, or person acting as such, who assumes custody of a dead body or fetus shall obtain an electronically filed report of death

through a Vital Statistics Unit system or complete a report of death....” Funeral directors utilize the Texas Electronic Registration system (TER) to begin the process of filing a death certificate.

Occasionally a family begins the arrangement process with one funeral establishment but then uses a second funeral establishment to finalize arrangements. Under these circumstances, the first funeral home will need to release the death certificate and inform the second funeral home of the Electronic Death Record number for the deceased. Failure to release the record in the TER delays the filing of the death certificate and could be considered unprofessional conduct.

According to the Department of State Health Service-Vital Statistics Unit, the second funeral home can still file the death certificate even if the first funeral home does not relinquish the record. The second funeral home should enter the decedent’s information and a new Electronic Death Record number will be generated.

Disposition of a Body

One of the most common questions received by the Compliance Division relates to who has the right to control the disposition of a decedent’s body. This information is found in the Texas Health and Safety Code §711.002. Subsection (k) outlines the appropriate measures to be taken if there is a dispute among the people who may have the right to control the disposition of a decedent’s body.

Embalming

Tex. Occ. Code §651.457 states “A person violates this chapter if the person embalms a body without receiving the *express* written or oral permission of a person authorized to make funeral arrangements for the deceased” (emphasis added).

In recent months, the Commission has noticed an increase in the number of complaints related to the use of the term “prepare the body” by a funeral director. To the licensed funeral director “prepare a body” may mean to embalm the deceased. However, a family member may understand “prepare a body” to mean something else to include removal, bathing, or dressing the body.

Using the industry lingo “prepare the body” instead of expressly asking for permission to embalm may lead to embalming being performed without express permission being granted. While it may seem to be semantics, by making sure the family member knows he/she is being asked for permission to embalm, the funeral director could avoid possible administrative penalties and/or sanctions.

A Message from Legal

Out-of-State Providers

Licensed Texas Funeral Directors, Embalmers, and Establishments can be held liable for acts done by third party contractors that the licensee has contracted with to supply goods or services to a consumer. This is true even if the contractor used is an out-of-state person or business.

The Statute’s recognition of third party liability can be found in Tex. Occ. Code Chapter 651.408, which states, “The fact that a funeral director contracts for cemetery or crematory services... does not limit the director’s liability to the consumer for those services.”

If a TFSC licensee contracts with an out-of-state business, whether licensed by another jurisdiction or unlicensed, the Texas licensee can be held liable for errors, negligent or intentional acts, and unprofessional or unlawful conduct, engaged in by the out-of-state business or individual.

Deadlines to Respond

Under the rules, a licensee has a specified time to respond to the Commission. Failure to respond can result in additional violations and/or automatic license sanctions.

22 TAC §203.41 – Licensee has 15 days to respond to notice of complaint

22 TAC §203.42(b) – Licensee has 30 days to respond to initial finding of violation

Tex. Occ. Code §651.555 – Licensee has 30 days to pay penalty after final Commission action

Tex. Occ. Code §651.503 – Licensee must file Letter of Warning report in number of days specified by Agreed Order or pay administrative penalty

Informal/Formal Hearings for Violations

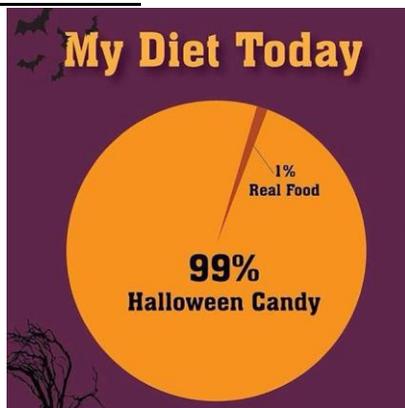
For complaints that result in a finding of violation, a licensee may opt to negotiate the violation and penalty with the agency’s Staff Attorney or opt to participate in an Informal Conference panel. If no resolution is reached, the case will be set for a hearing at the State Office of Administrative Hearings (SOAH). After SOAH’s Administrative Law Judge has issued a Proposal for Decision the case will be taken to a Commission meeting for a final determination by Commissioners.

Criminal Convictions

22 TAC §203.15 requires a current licensee to disclose, in writing, any conviction at the time of renewal or no later than 30 days after judgment in the trial court, whichever date is earlier. It also requires an applicant to disclose in writing any conviction against him/her at the time of application. Licensees and applicants with a criminal conviction must fill out a questionnaire which can be found on the TFSC website.

The Commission may suspend or revoke a license or refuse to issue a license on the grounds the licensee or applicant has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the occupation of funeral director or embalmer.

Just for Fun



Agency Contact Information

Mailing Address

Texas Funeral Service Commission
 PO Box 12217, Capitol Station
 Austin, TX 78711

Physical Address

Texas Funeral Service Commission
 333 Guadalupe Street, Ste. 2-110
 Austin, TX 78701

Web Address

www.tfsc.texas.gov

Agency Directory

Executive Director	Janice McCoy	(512) 936-2474
Staff Attorney	Kyle Smith	(512) 936-2480
Legal Assistant/PIO	Kathy Sparks	(512) 936-2469
Administrator of Compliance	Rodney van Oudekerke	(512) 936-2470
Administrator of Licensing / Establishment & Crematory Licensing Specialist	Nikki Smith	(512) 936-2479
Chief Financial Officer	Jennifer Noack	(512) 936-2474
Provisional Licensing Specialist	Maria Haynes	(512) 936-6552
Reciprocal & Reinstatement Licensing Specialist / Brochures	Robert Puig	(512) 936-2421
Investigator/Inspector	Open	(512) 936-2466
Investigator	Marty Manzi	(512) 936-2484
Inspector	Kyle Bass	(512) 936-2488
Main Number		(512) 936-2474
Toll Free Number		(888) 667-4881
Fax Number		(512) 479-5064
Email		info@tfsc.texas.gov

** as of October 1, 2017*