

**TITLE 16. CEMETERY AND FUNERAL BUREAU
DEPARTMENT OF CONSUMER AFFAIRS**

INITIAL STATEMENT OF REASONS

Hearing Date: No hearing is scheduled.

Subject Matter of Proposed Regulations: Approval to Train Apprentice Embalmers

Section(s) Affected: Amendment of Section 1230 of Title 16, Division 12, of the California Code of Regulations (CCR).

Background and Statement of the Problem.

The Cemetery and Funeral Bureau (Bureau) licenses, regulates, and investigates complaints against 14 different license categories in California, totaling approximately 11,315 licensees. These licensing categories include funeral establishments, funeral directors, embalmers, apprentice embalmers, cemetery brokers, cemetery broker branch, cemetery broker additional, cemetery salespersons, cremated remains disposers, crematories, crematory managers, hydrolysis facilities, cemetery managers, and private, nonreligious cemeteries. It is the Bureau's duty to enforce and administer the Cemetery and Funeral Act (Chapter 12 (commencing with section 7600) of Division 3 of Business and Professions Code (BPC) (collectively the Act). (BPC section 7602, subdivision (a)(2).) The Bureau is authorized to establish necessary rules and regulations for the enforcement of the Act and the laws subject to its jurisdiction. (BPC section 7606.)

In 2017, the Legislature passed, and the Governor signed into law, Assembly Bill (AB) 1381 (Oberholte, Chapter 150, Statutes of 2017), amending BPC section 7670. This law authorizes a licensed funeral establishment who is seeking the Bureau's approval to train apprentice embalmers to show that they have either employed a full-time California embalmer, who has had not less than two years' practical experience as a California licensed embalmer immediately preceding the date of the application, or a trade embalmer who is hired by the establishment on a case-by-case-basis and who has had not less than two years' practical experience as a California licensed embalmer immediately preceding the date of the application. Also pursuant to BPC 7670(a), the apprenticeship must be served in a licensed funeral establishment that has been previously approved for apprenticeship training by the Bureau, and the funeral establishment must submit an application for approval to train apprentices, accompanied by the required fee, to the Bureau. With the increase in cremations, which has led to a sharp decrease in embalming in California, it has become more difficult for funeral homes to employ a full-time embalmer. By allowing a trade embalmer, who has met certain requirements, to train apprentices, more apprentices should be able to get the supervision and training they need.

Existing law, BPC 7660 defines an apprentice embalmer as a person engaged in the study of embalming under the instruction and supervision of a licensed embalmer who has had at least two years of practical experience as a licensed embalmer.

There is no existing regulation that specifies the process and procedures for how a licensed funeral establishment may apply to the Bureau to seek approval to train apprentices. Additionally, pursuant to CCR section 1230, to qualify to be treated in aggregate, the funeral establishment is required to submit to the Bureau, form 21 A-12 (12/96). The form requires the funeral establishment to certify, among other things, that the funeral establishment will continue to have a full-time employed qualified embalmer. The Bureau form 21 A-12 (12/96) is outdated, and it needs to be updated by repealing and adopting a new Bureau approved form.

The Bureau has consulted with stakeholders (licensees, consumer advocates, and members of the public) on two separate occasions regarding the proposed regulation. This proposal was first discussed at the Bureau's Advisory Committee meeting on May 24, 2018, after AB 1381 was signed into law and became effective on January 1, 2018. Staff drafted language for this regulation and on May 24, 2023, presented the language for apprentice embalmers training to the committee members during the regularly scheduled meeting. The proposed language was discussed and made available for public comment. The Bureau received no comments from stakeholders. However, since the release of the draft language, the Bureau has made minor technical modifications to the proposed text to make it easier for the regulated public to follow.

The current version of 16 CCR section 1230, titled "Training Apprentices," includes these two subdivisions:

- Subdivision (a) authorizes funeral establishments to be treated in the aggregate for the purpose of training apprentices, and lists the requirements. The licensed funeral establishment must be under common ownership. The common owners must designate one funeral establishment as the main office as defined in CCR 16 1204(c)(2), and the remaining establishments be located within 60 miles radius from the designated main office.
- Subdivision (b) specifies the Bureau approved form 21A-12 (12/96) shall be submitted when a licensed funeral establishment is requesting to be treated in aggregate, and an inspection shall be scheduled and completed to ensure compliance with BPC 7670.

It is necessary to amend CCR 1230 to provide, in addition to the option to be treated in the aggregate, the process and procedures a licensed funeral establishment shall meet when requesting Bureau's approval to train apprentice embalmers. Further, an update to repeal and adopt a new bureau approved form is also needed.

The Bureau proposes to rename the section, reorder the subdivisions to match the order presented in the controlling statute, and amend the process for who may train apprentice embalmers. Here is what the Bureau proposes to do:

- Amend CCR section 1230 by changing the title from “Training Apprentices” to “Approval to Train Apprentice Embalmers”.
- Amend subdivision (a) to establish the process and procedures a licensed funeral establishment who is seeking Bureau’s approval to train apprentice embalmers must follow. Require that the funeral establishment must submit a request on a Bureau approved form, 12-TAE (New 1/24) “Approval to Train Apprentice Embalmers.” The form is incorporated by reference and specifies the fee to accompany the form.
- Amend CCR section 1230(b) by moving the regulatory text to a newly adopted subdivision (c). Subdivision (b) text is added to specify that each licensed funeral establishment who has received Bureau approval must submit to the Bureau, no later than January 15 of each year, a completed Bureau form 12-TAE (new 1/24) accompanied with the required fee specified by subdivision (a) of this section.
- Adopt CCR section 1230(c) to specify the requirements for a licensed funeral establishment requesting to be treated in the aggregate, for the purpose of training apprentice embalmers, to submit the approved Bureau form specified in subdivision (a) of this section. The licensed funeral establishment must be under common ownership. The common owners must designate one funeral establishment as the main office as defined in CCR 16 1204(c)(2), and the remaining establishments must be located within 60 miles from the designated main office.
- In the reordering, subdivision 1230(a)(3) to now 1230(c)(3) the word “radius” is deleted from the distance requirement making it consistent with other regulations addressing distance requirements under this Act, as well as making it consistent with industry standards.

Further, in order to make CCR 16 section 1230 consistent with the underlying statute, this proposal reorders subdivision (a) with the newly renumbered subdivision (c). Rather than starting CCR 16 section 1230 with the requirements for being treated in the aggregate, subdivision (a) will reference the form required in order for a funeral establishment to apply to train apprentice embalmers. This change will make the regulation easier to follow and give immediate notice to the regulated community of the required form.

Specific purpose of, and rationale for, each adoption, amendment, or repeal:

1. Amend 16 CCR section 1230 of Division 12 of Title 16 of the CCR (Training Apprentices), and subdivision (a).

Purpose: Amend 16 CCR 1230, titled “Training Apprentices,” to “Approval to Train Apprentice Embalmers,” and subdivision (a) to establish the process and procedures a licensed funeral establishment seeking Bureau’s approval to train shall meet. It provides the application for “Approval to Train Apprentice Embalmers,” form 12-TAE (New 1/24). The regulation will incorporate the form by reference and list the requirements and specifies the fee to accompany the form.

Rationale: By adding the words “Approval to” and striking the letters “ing” from the word “training” and striking the “s” from Apprentices, and adding the word “Embalmer” it better reflects the intent of the title of this section more accurately and it is grammatically correct. Also, BCP section 7670 requires the apprenticeship of an apprentice embalmer be served in a licensed funeral establishment that “has been previously approved” for apprenticeship training by the Bureau. It also requires that to qualify for approval, the funeral establishment shall submit an application accompanied by the fee.

2. Amend 16 CCR section 1230, subdivision (b)

Purpose: Amend 16 CCR 1230(b) by moving the regulatory text to a newly adopted subdivision (c). Subdivision (b) text is added to specify that each licensed funeral establishment who has received Bureau approval shall submit to the Bureau, no later than January 15 of each year, a completed Bureau form 12-TAE (new 1/24) accompanied with the required fee specified by subdivision (a) of this section.

Rationale: BPC 7670(c) states that approval granted shall be renewed annually upon application by the funeral establishment, filed with the bureau not later than January 15 of each year and the application for renewal shall be accompanied by the fee specified in BPC 7729(h). The amendment is necessary to provide notice to the licensed funeral establishment that the approval is not renewed without submitting a new Bureau approved form accompanied with the required fee specified by subdivision (a) of this section.

3. Adopt Section 1230, subdivision (c)

Purpose: Adopt 16 CCR section 1230(c) to specify the requirements for a licensed funeral establishment seeking to be treated in aggregate for the purpose of training apprentice embalmers shall submit the approved bureau form specified in subdivision (a) of this section. Subdivision (a)(1) specifies the licensed funeral establishment must be under common ownership. Subdivision (a)(2) specifies the common owners must designate one funeral establishment as the main office as defined in CCR 1204(c)(2), and subdivision (a)(3) specifies the remaining establishments be located within 60 miles from the designated main office. In this reordering, subdivision 1230(a)(3) to now 1230(c)(3) the word “radius” is deleted from the distance requirement making consistent with other regulations addressing distance requirements under this Act, as well as making it consistent with industry standards.

Rationale: BPC 7670(b) allows a licensed funeral establishment under common

ownership within close geographical proximity of each other may request any of the following from the bureau. To be treated in the aggregate for the purpose of meeting the requirements of paragraph (1) of subdivision (a). To designate one additional supervising embalmer per registered apprentice, and or to allow a registered apprentice to serve in any or all of the licensed funeral establishments requested and approved pursuant to this section.

- i. Subdivision (c)(1) requires common ownership between licensed funeral establishments approved to train and/or be treated in the aggregate is necessary to eliminate a possible conflict of interest for the funeral establishment that could occur if the apprentice embalmer is employed by two unrelated businesses. In addition, the apprentice embalmer may be unable to competently perform the duties and meet all the obligations that may be required if they work for more than one employer.
- ii. Subdivision (c)(2) requires a licensed funeral establishment to designate one funeral establishment as the main office where the principals of all the licensed funeral establishment under common ownership can be contacted. This is necessary to provide the Bureau with one centralized location for communication with the licensee, resulting in greater efficiency and ease of communication. This also establishes a main office location for the basis of the calculation of the 60-mile requirement specified in subdivision (c)(3).
- iii. Subdivision (c)(3) requires the remaining licensed funeral establishments to be located within 60-miles of the designated main office. BPC 7670(b) requires licensed funeral establishments under common ownership be within “close geographical proximity” of each other. To define “close geographical proximity,” the Bureau has determined requiring the licensed funeral establishment be located within 60-miles from the designated main office is consistent with the rationale underlying the requirements for a “close geographical proximity.”

This regulation will reference the required form. The form, Approval to Train Apprentice Embalmers, will contain the following:

A. Introductory Paragraph

The form contains an introductory paragraph explaining the purpose of the form and instructions for completing and submitting the form. It also contains a hyperlink “Notice on Collection of Personal Information”. This is necessary to provide information to the applicant regarding the purpose of the form. The “Notice on Collection of Personal information” ensure individuals are provided with clear and effective notice of the Bureau’s authority for requesting personal information, how the information will be used, who it may be shared with, and the individual’s right of access to their own records in compliance with Section 27 of the BPC section 27 and Civil Code sections 1798.24, and 1798.40.

B. Section A

The form requires the following identifying information:

1. Name of the funeral establishment.
2. Designation of the main office for funeral establishment under common ownership.
3. License number.
4. Address, city, state, and zip code of funeral establishment.
5. Mailing Address, if applicable, city, state, and zip code of funeral establishment.
6. Telephone number.
7. Fax number.
8. Contact name of this application.
9. The form contains the following question, “how many embalmings were performed by this establishment during the last 12 months from the date of the application?”.
10. The form contains the following statement: “BPC section 7670(a)(1) requires that no less than 50 human remains per apprentice employed have been embalmed in the establishment during the 12 months immediately preceding the date of this application.
11. The form asks the following question and contains a “Yes” or “No” box selection. “For each two apprentices, does this establishment employ a qualifying supervising California licensed embalmer (EMB) who has practical experience as a California licensed embalmer in the two years immediately preceding the date of this application pursuant to BPC section 7670(a)(2)?
12. This section contains the following statement: “Name of Supervising Embalmer, (Attach a separate page for additional supervising embalmers for this location), and license number”.

Requirements 1 through 12 are necessary to research and verify the applicant’s records. In addition, the Bureau requires the application to evaluate whether the applicant meets each of the conditions of approval for apprenticeship training, and to be treated in aggregate for the purpose of meeting the requirements of BPC 7670(1)(a), to designate one additional supervising embalmer per registered apprentice, and to allow a registered apprentice to serve in any or all of the licensed funeral establishments requested and approved pursuant to BPC 7670.

C. Section B, Additional Funeral Establishment Information (under common ownership)

This section contains the following statement: “if you are applying for multiple establishments to be treated in aggregate for the purpose of meeting this requirement, complete this section. Provide the name, license number, the

number of embalmings performed during the last 12 months preceding the date of this application by the establishment identified in Section A, and the number of miles from the designated main office (identified in Section B).”

Requirements in Section B of the form are necessary to research and verify the applicant’s records. In addition, the Bureau requires the application to evaluate whether the applicant meets each of the conditions to be treated in aggregate for the purpose of training apprentice embalmers.

D. Section C, Funeral Director Certification

BPC section 7616.2 requires the funeral establishment shall at all times employ a funeral director to manage, direct, or control its business or professions as is necessary to ensure full compliance with the applicable provisions of the Code, the Health and Safety Code, and any regulations adopted thereto.

The Funeral Director certification requirement in Section D requires the funeral director to certify that all information provided is true, complete, and accurate.

Certification under penalty of perjury helps to ensure that the documentation contains truthful, factual representations made in good faith. (See e.g., *In re Marriage of Reese & Guy* (1999) 73 Cal.App.4th 1214, 1223 [judicial explanation for the use of certifications under penalty of perjury: “The whole point of permitting a declaration under penalty of perjury, in lieu of a sworn statement, is to help ensure that declarations contain a truthful factual representation and are made in good faith.”].) Accordingly, the certification under penalty of perjury in the form is necessary to ensure that applicants submit truthful and accurate information to the Bureau. In addition, the certification under penalty of perjury helps ensure the reliability of the statements to the Bureau (since certifying under penalty of perjury can have a deterrent effect on those who may be considering not providing true, accurate or complete information), and provides the Bureau with the option of seeking sanctions and referring the matter to law enforcement in the event that such information is not true, complete or accurate. [“The oath or declaration must be in such form that criminal sanctions of perjury might apply where material facts so declared to be true, are in fact not true or are not known to be true.” *In re Marriage of Reese & Guy* (1999) 73 Cal.App.4th 1214, 1223 [holding modified by *Laborde v. Aronson* (2001) 92 Cal.App.4th 459.]

The Bureau relies upon applicants’ self-reported information in evaluating applications. The certification requirement protects consumers because it helps ensure that only applicants who meet the Bureau requirements, as demonstrated by their application materials, will be eligible for approval.

The application Approval to Train Apprentice Embalmers, form 12-TAE (new 1/24, incorporated by reference, would be cumbersome, unduly expensive, and otherwise impractical to publish in the California Code of Regulations. The form will be available on the Bureau’s website and hard copies will be available from the Bureau upon

request.

Underlying Data:

Technical documents relied upon:

1. AB 1381 (Oberholte, Chapter 150, Statutes of 2017).
2. Meeting Minutes from Advisory Committee Meeting, dated Thursday, May 24, 2018.
3. Meeting Minutes from Advisory Committee Meeting, dated Wednesday, May 24, 2023.
4. CFB Apprentice Fiscal Workload Analysis - Application.

Business Impact:

The Bureau has made an initial determination that the proposed regulatory action would not have a statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states because this proposal only affects licensed funeral establishments. Option to seek Bureau approval is a voluntary business decision made by the licensed funeral establishment and therefore any business impact is a result of this choice and not the regulations.

The Bureau does not anticipate additional costs to a representative private person or business to comply with the proposed action. Licensees are currently required to complete and submit the existing Application for Approval to Train Apprentice Embalmer form and the proposal is not anticipated to increase workload or costs to individuals or businesses.

Economic Impact Assessment:

This regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because licensees are currently required to complete and submit the existing Application for Approval to Train Apprentice Embalmers form.
- It will not create new businesses or eliminate existing businesses within the State of California because licensees are currently required to complete and submit the existing Application for Approval to Train Apprentice Embalmers form.
- It will not affect the expansion of businesses currently doing business within the State of California because licensees are currently required to complete and submit the existing Application for Approval to Train Apprentice Embalmers form.
- There are no anticipated benefits to the health and welfare of California residents because licensees are currently required to complete and submit the existing Application for Approval to Train Apprentice Embalmers form.

- This regulatory proposal does not affect worker safety because it does not involve worker safety.
- This regulatory proposal will have no impact on the state's environment because it is not relevant to the state's environment.

Specific Technologies or Equipment:

These regulations do not require the use of any specific technologies or equipment.

Consideration of Alternatives:

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

No such alternatives have been proposed, however, the Bureau welcomes comments from the public.

Description of reasonable alternatives to the regulation that would lessen any adverse impact on small business:

No such alternatives have been proposed, however, the Bureau welcomes comments from the public.