

Guidance Document 65-12

Board of Funeral Directors and Embalmers

CONFIDENTIAL CONSENT AGREEMENTS

Legislation enacted in 2003 authorizes the health regulatory boards to resolve certain allegations of practitioner misconduct by means of a *Confidential Consent Agreement* (“CCA”). This agreement may be used by a board in lieu of public discipline, but only in cases involving minor misconduct and non-practice related infractions, where there is little or no injury to a patient or the public, and little likelihood of repetition by the practitioner.

A CCA shall not be used if the board determines there is probable cause to believe the practitioner has (i) demonstrated gross negligence or intentional misconduct in the care of patients, or (ii) conducted his/her practice in a manner as to be a danger to patients or the public.

A CCA shall be considered neither a notice nor an order of a health regulatory board, both of which are public documents. The acceptance and content of a CCA shall not be disclosed by either the board or the practitioner who is the subject of the agreement.

A CCA may be offered and accepted any time prior to the issuance of a notice of informal conference by the board. By law, the agreement document must include findings of fact and may include an admission or a finding of a violation. The entry of a CCA in the past may be considered by board in future disciplinary proceedings. A practitioner may only enter into only two confidential consent agreements involving a standard of care violation within a 10-year period. The practitioner shall receive public discipline for any subsequent violation within the 10-year period, unless the board finds there are sufficient facts and circumstances to rebut the presumption that such further disciplinary action should be made public.

At the March 9, 2004, the Board of Funeral Directors and Embalmers voted unanimously to adopt the following list of violations of regulation or statute that may qualify for resolution by a Confidential Consent Agreement:

- Failure to correct minor deficiencies (1to2) within three to five years of earlier inspection
- Failure to renew establishment license within 6 months of expiration date without evidence of practice
- Failure to respond to first notice of inspection deficiencies citations
- Failure to notify the Board of change of manager within six months of change
- Failure to file DOH – Vital Statistics report for one to five deaths
- Failure to obtain all five cues units within first renewal without hardship request
- Failure to properly to properly advertise licensed name in advertising
- Failure to release custody of body upon request of next of kin for non-payment
- Failure to obtain permission of next of kin to embalm
- Failure to write FSL license number on preneed contracts
- Failure to properly maintain preneed documents at main establishment
- Failure to provide Q&A to buyer as part of preneed contract
- Failure to submit resident trainee reports within 60 days of due date
- Failure to notify Board of change of supervisor and/or training site
- Failure to properly document regulations stating embalming and/or funerals for 18 month reports

March 9, 2004