



Legislating Ethics in Texas

2 CE Hours

Funeral Service Academy

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APFSP Provider 1107

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Final Exam - PREVIEW

Course Name: Legislating Ethics in Texas (2 Credit Hours)

1. Unlike _____, which carry with them pre-defined consequences when violated, ethics are not enforced per se.
 - a. Laws
 - b. Morals
 - c. Guidelines
 - d. Right and wrong

2. Texas Administrative Code 22.10.209 directs licensees to the specific Occupation Code (_____) they will be violating if they fail to adhere to specific ethical standards.
 - a. §651.452
 - b. §651.454
 - c. §651.457
 - d. §651.459

3. Per the _____, a licensee shall provide services to client families without regard to religion, race, color, national origin, sex, sexual orientation or disability.
 - a. Commission Guidelines
 - b. Specific Rules of Conduct
 - c. Code of Ethical Service
 - d. Service Principles

4. Per Section 651.451, a person commits a fraudulent and deceptive act when s/he _____.
 - a. Alters, with fraudulent intent, a license, registration, or certificate issued under this chapter or a transcript of a license, registration, or certificate
 - b. Impersonates a funeral director, embalmer, or other person regulated under this chapter
 - c. Both and b above
 - d. Neither a nor b above

5. Per Section 651.459, a person is displaying unethical conduct in providing funeral services when s/he _____.
 - a. Wilfully makes a false statement on a death certificate, including forgery of a physician's signature
 - b. Performs acts of funeral directing or embalming that are within the licensed scope and authority of the license holder
 - c. Provides a funeral director or an embalmer for direction or personal supervision for a first call.
 - d. All of the above

6. The monetary administrative penalty that may be levied for "Failure by Funeral Establishment to meet building, health & safety codes" ranges from _____.
 - a. Up to \$5,000 and/or sanction (1st Violation) - \$5,000 and Revocation (4+ Violation)
 - b. \$1,000 (1st Violation) – Up to \$5,000 and/or sanction (4+ Violation)
 - c. \$500 (1st Violation) – Up to \$5,000 and/or sanction (4+ Violation)
 - d. \$250 (1st Violation) – Up to \$5,000 and/or sanction (4+ Violation)

7. Per Section 203.35., "All records required for retention by Occupations Code Chapter 651 and Rules of the Commission, will be maintained for a minimum of _____ within the physical confines of the licensed establishment where the funeral arrangements were made."
 - a. Four years
 - b. Three years
 - c. Two years
 - d. One year

8. To avoid committing unfair or deceptive acts or practices pertaining to price disclosure (Section 203.46), funeral providers must _____.
 - a. Give a printed or typewritten price list to people who inquire in person about the offerings or prices of caskets or alternative containers
 - b. Give a printed or typewritten price list to persons who inquire in person about outer burial container offerings or prices
 - c. Give a printed or typewritten price list to persons who inquire in person about urn offerings or prices
 - d. All of the above

9. To avoid committing unfair or deceptive acts or practices pertaining to embalming provisions (Section 203.48a), funeral providers *must* represent that a deceased person is

required to be embalmed for _____.

- a. Direct cremation
- b. Immediate burial
- c. Both a and b above
- d. Neither a nor b above

10. Per Section 203.16, “The Commission shall immediately revoke the license of a person who is imprisoned following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision. Revocations under this subsection _____.”

- a. Are not subject to appeal at SOAH
- b. May be appealed to SOAH
- c. Must be appealed to SOAH
- d. Will be reversed after 5 years

CONTINUING EDUCATION

for Funeral Directors

Legislating Ethics in Texas

2 Credit Hours

Course Content:

This course covers the sections of Texas Occupations Code Chapter 651 and Texas Administrative Code Chapters 203 and 209 that pertain to ethics.

These codes can be viewed in their entirety online:

Texas Occupations Code Chapter 651

<http://www.statutes.legis.state.tx.us/Docs/OC/pdf/OC.651.pdf>

Texas Administrative Code Chapters 203 and 209

[http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=4&ti=22&pt=10&ch=203](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=22&pt=10&ch=203)

[https://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=4&ti=22&pt=10&ch=209](https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=22&pt=10&ch=209)

Course Objectives:

- Understand the role ethics play in determining professional standards.
- Review how the funeral profession legislates ethics in Texas.

Introduction

The terms “ethics” and “morality” are so intertwined, it can be difficult to separate them.

In general, morality is used to refer to the principles a specific person or culture uses to differentiate between right and wrong.

Ethics, on the other hand, can be characterized as the outcome of morality – the set of guidelines that explains how a person or culture should behave in response to the existence of right and wrong.

Often, a specific profession will define its code of ethics, and the funeral profession is no exception. For example, the National Funeral Directors Association (NFDA) has published an ethics-based Code of Professional Conduct.

BACKGROUND INFORMATION: NFDA Code of Professional Conduct

“The NFDA Code of Professional Conduct is designed to address the obligations of the funeral professional in five key areas:

- Obligations to the Family
- Obligations for the Care of the Decedent
- Obligations to the Public
- Obligations to the Government
- Obligations to NFDA

“Each area begins with an Ethical Principle that sets forth the goals and ideals of the profession. The Ethical Principle is followed by the applicable sections of the Code of Professional Conduct which lists specific types of conduct that is either required or prohibited.

“Ethical Principles are goals that every funeral professional should strive to achieve. They serve as the justification for the specific requirements of the Code of Professional Conduct. Unlike the Ethical Principles, the Code of Professional Conduct is binding upon NFDA members and violations may subject the member to disciplinary action in accordance with the NFDA Constitution and Bylaws.

“It is the duty of every NFDA Firm, Individual, Retired and Student Member to know and strictly adhere to the requirements of the Code of Professional Conduct. For the protection of the families we serve, the decedents we care for, the profession we dedicate ourselves to, the communities in which we live, and the Association that represents us, the members of NFDA agree to abide by the Code of Professional Conduct.”

The complete NFDA Code of Professional Conduct can be downloaded here: <http://nfda.org/about-nfda/code-of-professional-conduct.html>.

Unlike laws, which carry with them pre-defined consequences when violated, ethics are not enforced per se. However, having set a code of ethics, a specific profession will then proceed to spell out the consequences arising from violating those ethics – in essence, building a network of law to support them.

Within the funeral profession, the legislation of ethics is fairly common. For instance, the Federal Trade Commission (FTC) enforces the Funeral Rule, which protects the consumer from unscrupulous behavior by funeral home owners, ensuring that s/he is allowed to compare prices among funeral homes, and making it possible for him/her to choose only the goods and services s/he wants or needs, and pay only for those s/he selects.

exam question...

1. Unlike _____, which carry with them pre-defined consequences when violated, ethics are not enforced per se.
 - a. Laws
 - b. Morals
 - c. Guidelines
 - d. Right and wrong

BACKGROUND INFORMATION: FTC Funeral Rule

As summarized by the FTC, the Funeral Rule gives consumers (“you”) the right to:

- buy only the funeral goods and services you want. You have the right to buy separate goods, like caskets, and separate services, like embalming or a memorial service. You don’t have to accept a package with items you don’t want.
- get price information by telephone. Funeral directors must give you price information on the telephone if you ask for it. You don’t have to give them your name, address or telephone number first. Many funeral homes mail their price lists, although they aren’t required to; some post them online.

- get a written itemized price list when you visit a funeral home. The funeral home must give you a General Price List (GPL) to keep. It must list 16 specific items and services, but it may include others, as well.
- see a written price list for caskets before you see the actual caskets. Sometimes, detailed casket price information is included on the funeral home's GPL. More often, though, it's provided on a separate casket price list. Get the price information before you see the caskets, so you can ask about lower-priced products that may not be on display.
- see a written price list for outer burial containers. Outer burial containers surround a casket in a grave. They are not required by any state law, but many cemeteries require them to prevent a grave from caving in. If the funeral home sells containers, but doesn't list the prices on the GPL, you have the right to look at a separate price list for containers before you see them. Look for a range of prices.
- receive a written statement after you decide what you want, and before you pay. It should show exactly what you are buying and the cost of each item. The funeral home must give you an itemized statement and the total cost immediately after you make the arrangements. The statement has to identify and describe any legal, cemetery or crematory requirements that require you to pay for any particular goods or services.
- use an "alternative container" instead of a casket for cremation. No state or local law requires the use of a casket for cremation. A funeral home that offers cremations must tell you that alternative containers are available, and must make them available. The containers might be made of unfinished wood, pressed wood, fiberboard or cardboard.
- provide the funeral home with a casket or urn you purchase elsewhere. The funeral provider cannot refuse to use a casket or urn you bought online, at a local store or somewhere else, and it can't charge you a fee to use it. The funeral home cannot require you to be on site when the casket or urn is delivered to them.
- make funeral arrangements without embalming. No state law requires routine embalming for every death. Some states require embalming or refrigeration if the body is not buried or cremated within a certain time; some states don't require those services at all. In most cases, refrigeration is an acceptable alternative. Services like direct cremation and immediate burial don't require any form of preservation. Many funeral homes have a policy requiring embalming if the body is to be publicly viewed, but this is not required by law in most states. Ask if the funeral home offers private family viewing without embalming. If some form of preservation is a practical necessity, ask the funeral home whether refrigeration is available.

The complete text of the FTC Funeral Rule is available at:

<http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=0411c2ff228d9d47ee54e6cba7a1eab9&r=PART&n=16y1.0.1.4.58>

Watchdog organizations like the Funeral Ethics Organization (<http://funeralethics.org/rights.htm>) and Funeral Consumers Alliance (<http://www.funerals.org/forconsumersmenu/your-legal-rights>) have sprung up in order to summarize and disseminate information about consumers' legal rights.

TEXAS, THE FUNERAL PROFESSION, AND ETHICS

At the state level, several areas of Texas funeral law address ethics.

exam question...

2. Texas Administrative Code 22.10.209 directs licensees to the specific Occupation Code (_____) they will be violating if they fail to adhere to specific ethical standards.
- §651.452
 - §651.454
 - §651.457
 - §651.459

Texas Administrative Code 22.10.209 defines and speaks to the specific ethical standards to which licensees are held. Like the NFDA, it lays out Rules of Conduct. It also directs licensees to the specific Occupation Code (§651.459) they will be violating if they fail to adhere to these standards.

PLEASE NOTE: per Rule §209.1 Ethical Standards, (a), "The licensee shall be knowledgeable of and adhere to all applicable federal and state laws, rules, codes, and all procedures established by the Commission."

In other words, it's part of the licensee's job to stay abreast of all pertinent legislation.

Texas Administrative Code

TITLE 22 EXAMINING BOARDS

PART 10 TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 209 ETHICAL STANDARDS FOR PERSONS LICENSED BY THE COMMISSION

RULE §209.1 Ethical Standards

- (a) The licensee shall be knowledgeable of and adhere to all applicable federal and state laws, rules, codes, and all procedures established by the Commission. It is the obligation of the licensee to exercise reasonable judgment and skill in the performance of all duties and work performed as a licensee.
- (b) A licensee who performs his or her duties in a negligent or incompetent manner, or does not perform his or her duties with honesty, integrity, or in a trustworthy manner violates Texas Occupation Code §651.459.
- (c) Integrity.
 - (1) A licensee shall be honest and trustworthy in the performance of all duties and work performed as a licensee and shall avoid misrepresentation and deceit in any fashion, whether by acts of commission or omission.
 - (2) A licensee shall refrain from engaging in acts or practices that constitute threats, coercion, or extortion.
 - (3) A licensee shall respect a consumer's right of personal choice and decisions with regard to making arrangements.
- (d) The primary duty of the licensee is to ensure compliance with all applicable federal and state laws, rules, and codes. The licensee's position should be clear to all parties concerned while in the performance of all duties and work performed as a licensee.
- (e) Specific Rules of Conduct.
 - (1) A licensee shall provide services to client families without regard to religion, race, color, national origin, sex, sexual orientation or disability.
 - (2) A licensee shall provide to consumers and prospective consumers, where applicable, all statutorily required documentation, pricing information, and any other information concerning funerals, cremations, burials, pricing, merchandise, and services, including a consumer brochure and retail price list, in a manner which is neither unfair nor deceptive.
 - (3) A licensee shall protect from disclosure confidential information pertaining to the deceased or the family of the deceased.
 - (4) A licensee shall account properly for and remit any monies, documents, or personal property that belongs to others that comes into the licensee's possession.
 - (5) A licensee shall not participate, whether individually or in concert with others, in any plan, scheme, or arrangement attempting or having as its purpose, which he/she knew or should have known was the evasion of any provision of the laws or the rules of the Commission.
 - (6) A licensee shall not provide information he or she knew or should have known was inaccurate, deceitful, or misleading to the Commission or a consumer while performing as a licensee.
 - (7) A licensee shall not engage in any activity that constitutes dishonesty, misrepresentation, or fraud while performing as a licensee.
 - (8) A licensee shall not solicit business or offer inducement to secure or attempt to secure business except where authorized by law.
 - (9) A licensee shall not violate any statute, ordinance, or regulation affecting the handling, custody, care or transportation of a decedent.

Source Note: The provisions of this §209.1 adopted to be effective January 20, 2005, 30 TexReg 75; amended to be effective January 8, 2015, 40 TexReg 62

exam question...

3. Per the _____, a licensee shall provide services to client families without regard to religion, race, color, national origin, sex, sexual orientation or disability.
- a. Commission Guidelines
 - b. Specific Rules of Conduct
 - c. Code of Ethical Service
 - d. Service Principles

Texas Occupations Code Title 3, Subtitle L, Chapter 651, Subchapter J addresses Prohibited Practices in Cemetery and Crematory Services, Funeral Directing, and Embalming, repeatedly referencing ethics.

Texas Occupations Code

TITLE 3. HEALTH PROFESSIONS

SUBTITLE L. CEMETERY AND CREMATORY SERVICES, FUNERAL DIRECTING, AND EMBALMING

CHAPTER 651. CEMETERY AND CREMATORY SERVICES, FUNERAL DIRECTING, AND EMBALMING

SUBCHAPTER J. PROHIBITED PRACTICES

SECTION 651.451. Certain Fraudulent and Deceptive Acts.

A person violates this chapter if the person:

- (1) presents to the commission a license, certificate, registration, or diploma that was illegally or fraudulently obtained;
- (2) uses fraud or deception in passing the examination, including impersonating or acting as a proxy for another person in the examination;
- (3) purchases, sells, barter, or uses, or offers to purchase, sell, barter, or use, a license, registration, certificate, or transcript of a license, registration, or certificate in or incident to an application to the commission for a license or registration issued under this chapter;
- (4) alters, with fraudulent intent, a license, registration, or certificate issued under this chapter or a transcript of a license, registration, or certificate;

exam question...

4. Per Section 651.451, a person commits a fraudulent and deceptive act when s/he _____.

- a. Alters, with fraudulent intent, a license, registration, or certificate issued under this chapter or a transcript of a license, registration, or certificate
- b. Impersonates a funeral director, embalmer, or other person regulated under this chapter
- c. Both a and b above
- d. Neither a nor b above

- (5) uses a license, registration, certificate, or diploma issued under this chapter or a transcript of a license, registration, certificate, or diploma that has been fraudulently purchased, issued, counterfeited, or materially altered;
- (6) impersonates a funeral director, embalmer, or other person regulated under this chapter;
- (7) permits another to use the person's license or registration to perform an activity regulated under this chapter; or
- (8) presents false certification of work done as a provisional license holder.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 682, Sec. 1.25, eff. Sept. 1, 2001.

SECTION 651.452. Lack of Fitness to Practice.

A person violates this chapter if the person is:

- (1) convicted of:
 - (A) a misdemeanor related to the practice of embalming, funeral directing, or another activity regulated under this chapter; or
 - (B) a felony;
- (2) unfit to practice as a funeral director or embalmer because of insanity and determined by a court to be of unsound mind; or
- (3) unfit to practice because of current substance abuse.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 682, Sec. 1.26, eff. Sept. 1, 2001.

SECTION 651.453. Unethical Advertising.

A person violates this chapter if the person uses an advertising statement of a character that misleads or deceives the public or uses, in connection with an advertisement, the name of a person who is falsely represented to be a license holder.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SECTION 651.454.

Other Unethical Conduct in Soliciting Customers.

- (a) A person violates this chapter if the person, in arranging for funeral services or merchandise, fails to:
 - (1) provide a prospective customer at the beginning of the arrangement process with a copy of the brochure required by Section 651.404;
 - (2) provide to a prospective customer inquiring in person about any funeral service or merchandise a retail price list for the prospective customer to keep;

- (3) explain to a prospective customer that a contractual agreement for funeral services or merchandise may not be entered into before a retail price list is provided to the prospective customer; or
 - (4) provide general price information by telephone within a reasonable time.
- (b) A person violates this chapter if the person restricts, hinders, or attempts to restrict or hinder:
- (1) advertising or disclosure of prices and other information regarding the availability of funeral services and funeral merchandise that is not unfair or deceptive to consumers; or
 - (2) an agreement for funeral services between a consumer and a funeral director or embalmer.
- (c) A person associated with a funeral establishment violates this chapter if the person solicits business or offers an inducement to secure or attempt to secure business for the funeral establishment unless the solicitation is made under a permit issued under Chapter 154, Finance Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SECTION 651.455.
False or Misleading Statements Regarding Funeral Merchandise or Funeral, Cemetery, or Crematory Services.

- (a) A person violates this chapter if the person uses a statement that misleads or deceives the public, including a fraudulent statement or any other type of a false or misleading statement regarding:
- (1) a legal, religious, or cemetery requirement for funeral merchandise or funeral, cemetery, or crematory services;
 - (2) the preservative qualities of funeral merchandise or funeral, cemetery, or crematory services in preventing or substantially delaying natural decomposition of human remains;
 - (3) the airtight or watertight properties of a casket or outer enclosure;
 - (4) the licenses held by the personnel in the operation of the cemetery, crematory, or funeral establishment; or
 - (5) an activity regulated under this chapter, including the sale of funeral-related goods or services.
- (b) Repealed by Acts 2003, 78th Leg., ch. 562, Sec. 42(3).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 682, Sec. 1.27, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 562, Sec. 26, 42(3), eff. Sept. 1, 2003.

SECTION 651.456.
Unethical Conduct Regarding Custody of Dead Human Body.

A person violates this chapter if the person:

- (1) takes custody of a dead human body without the permission of:
 - (A) the person or the agent of the person authorized to make funeral arrangements for the deceased; or
 - (B) a medical examiner or a justice of the peace who has jurisdiction over the body under Articles 49.02-49.05, Code of Criminal Procedure;
- (2) refuses to promptly surrender a dead human body to a person or agent authorized to make funeral arrangements for the deceased; or
- (3) violates any state law governing the transportation, storage, refrigeration, inurnment, interment, or disinterment of a dead human body.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 562, Sec. 27, eff. Sept. 1, 2003.

SECTION 651.457.
Unethical Conduct Regarding Embalming.

- (a) A person violates this chapter if the person:
- (1) embalms a body without:
 - (A) receiving the express written or oral permission of a person authorized to make funeral arrangements for the deceased; or
 - (B) making a documented reasonable effort over a period of at least three hours to obtain the permission;
 - (2) embalms or attempts to embalm a dead human body without proper authority, evidence of which includes making an incision on the body, raising a circulatory vessel of the body, or injecting a chemical into the body;
 - (3) allows the presence or participation of a student for credit or satisfaction of academic requirements during the embalming of a dead human body without complying with Section 651.407; or
 - (4) places a chemical or substance on or in a dead human body to disinfect or preserve the body or to restore body tissues and structures without holding an embalmer's license.
- (b) Notwithstanding Subsection (a)(4), a provisional license holder does not violate this chapter if the provisional license holder places a chemical or substance on or in a dead human body to disinfect or preserve the body or to restore body tissues and structures under the supervision of an embalmer.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SECTION 651.458.

Unethical Conduct by Funeral Establishment.

A person violates this chapter if the person makes a distinction in providing funeral information to a customer regardless of any affiliation of the customer or whether the customer has a present need for the services or merchandise.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SECTION 651.459.

Other Unethical Conduct in Providing Funeral Services.

(a) A person violates this chapter if the person:

(1) wilfully makes a false statement on:

(A) a death certificate, including forgery of a physician's signature; or

(B) a document required by this chapter or a rule adopted under this chapter;

(2) engages in fraudulent, unprofessional, or deceptive conduct in providing funeral services or merchandise to a customer;

(3) engages in dishonest conduct, wilful conduct, or negligence in the practice of embalming or funeral directing that is likely to or does deceive, defraud, or otherwise injure the public;

(4) causes the execution of a document by the use of fraud, deceit, or misrepresentation;

(5) directly or indirectly employs a person to solicit individuals or institutions by whose influence dead human bodies may be turned over to a particular funeral director, embalmer, or funeral establishment;

(6) misappropriates funds held by a license holder, a funeral establishment, an employee or agent of the funeral establishment, or another depository, that create an obligation to provide a funeral service or merchandise, including retaining for an unreasonable time excess funds paid by or on behalf of the customer for which the customer is entitled to a refund; or

(7) performs acts of funeral directing or embalming that are outside the licensed scope and authority of the license holder, or performs acts of funeral directing or embalming in a capacity other than that of an employee, agent, subcontractor, or assignee of a licensed funeral establishment that has contracted to perform those acts.

(b) A funeral director or embalmer violates this chapter if the funeral director or embalmer states or implies that a customer's concern with the cost of any funeral service or funeral merchandise is improper or indicates a lack of respect for the deceased.

(c) A funeral director in charge violates this chapter if the funeral director in charge fails to provide a funeral director or an embalmer for direction or personal supervision for a first call.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 562, Sec. 28, eff. Sept. 1, 2003.

SECTION 651.460. Prohibited Practices Related to Failure to Comply with Other Legal Requirements.

(a) A person violates this chapter if the person:

(1) arranges for funeral services or merchandise and fails to provide a customer with a purchase agreement as required by Section 651.406;

(2) fails to retain and make available to the commission, on request, copies of all price lists, written notices, embalming documents, and memoranda of agreement required by this chapter for two years after the date of distribution or signing;

(3) violates this chapter, a rule adopted under this chapter, an order by the commission revoking, suspending, or probating a license, an order assessing an administrative penalty, or an agreement to pay an administrative penalty;

(4) allows the use of a dead human body by an embalming establishment for research or educational purposes without complying with Section 651.407;

(5) is associated with a funeral establishment, whether as an employee, agent, subcontractor, assignee, owner, or otherwise, and fails to comply with this chapter or a rule adopted under this chapter; or

(6) knowingly violates Section 711.002(1), Health and Safety Code.

(b) A funeral establishment violates this chapter if:

(1) the funeral establishment fails to substantially comply with Section 651.351;

(2) the funeral establishment or a person acting on behalf of the funeral establishment violates Chapter 193 or 361, Health and Safety Code; or

exam question...

5. Per Section 651.459, a person is displaying unethical conduct in providing funeral services when s/he _____.

a. Wilfully makes a false statement on a death certificate, including forgery of a physician's signature

b. Performs acts of funeral directing or embalming that are within the licensed scope and authority of the license holder

c. Provides a funeral director or an embalmer for direction or personal supervision for a first call.

d. All of the above

- (3) the funeral establishment, a person acting on behalf of the funeral establishment, or a person directly or indirectly connected with the funeral establishment violates Chapter 154, Finance Code, or a rule adopted under that chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.385(c), eff. Sept. 1, 2001; Acts 2015, 84th Leg., R.S., (S.B. 988), Sec. 9, eff. June 16, 2015.

SECTION 651.461. Defense to Violation.

A person licensed under this chapter does not violate this chapter by engaging in conduct regarding funeral arrangements under the direction of a person who:

- (1) represents to the license holder that the person is authorized to make funeral arrangements for the deceased; and
- (2) provides written directions to the license holder in the manner provided by Section 711.002, Health and Safety Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 30, eff. September 1, 2009.

Texas Administrative Code 22.10.203.43 lays out the disciplinary guidelines for violation of (among other things) the ethical standards enumerated in Occupations Code Chapter 651.

Texas Administrative Code

TITLE 22 EXAMINING BOARDS

PART 10 TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 203 LICENSING AND ENFORCEMENT - SPECIFIC SUBSTANTIVE RULES

SUBCHAPTER C - ENFORCEMENT

SECTION 203.43.

Administrative Penalties and Sanctions

- (a) If a person violates any provision of Occupations Code, Chapter 651; Health and Safety Code, Chapters 193, 361 695, 711, 716; Finance Code Chapter 154; Tex. Admin. Code, Title 22, Part 10; or an order of the Executive Director or Commissioners, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both administrative penalties and sanctions in accordance with the provisions of Occupations Code §§651.5515 - 651.552.

- (b) The Administrative Penalties and Sanctions Schedule published following this section sets penalty limits and ranges by class of offense and number of offenses.
- (c) The Commission may negotiate a lower penalty than outlined in the Administrative Penalties and Sanctions Schedule based on the following factors:
- (1) Attempts by the licensee to correct or stop the violation;
 - (2) Number of complaints previously found justified against licensee;
 - (3) Whether the act was unintentional; and
 - (4) Other mitigating factors that could warrant a lower penalty.

Administrative Penalties and Sanctions Schedule

Class A Offenses:

1st Violation: \$250

2nd Violation: \$750

3rd Violation: \$1,000 and/or sanction

4+ Violation: Up to \$5,000 and/or sanction

- 1. 651.157 - Failure to have premises open at all times to inspection
- 2. 651.261 - Failure to conspicuously display holder's license in each location
- 3. 651.304(a) - Failure by provisional licensee to timely notify Commission of employment
- 4. 651.304(d) - Failure by FD/Embalmer to prepare affidavit of completed cases if provisional leaves employment
- 5. 651.351(d)(1) - Failure by Funeral Establishment to meet building, health & safety codes
- 6. 651.351(d)(3) - Failure by Funeral Establishment to include facilities in which funeral services may be conducted
- 7. 651.351(d)(4) - Failure by Funeral Establishment to have access to rolling stock
- 8. 651.351(d)(5) - Failure to maintain preparation room (i.e. have necessary equipment/supplies)
- 9. 651.351(d)(6) - Failure by Funeral Establishment to include facilities to comply with sanitary codes
- 10. 651.351(d)(7) / 651.351(f) - Failure by Funeral Establishment to include required casket display
- 11. 651.403 - Failure to promptly notify Commission of FDIC change
- 12. 651.404 / 651.454(a)(1) - Failure to provide consumer brochure
- 13. 651.407 - Failure to retain written consent for two years

14. 651.454(a)(4) - Failure to provide general price information by telephone within reasonable time
15. 651.454(b)(1) - Restrict, hinder, or attempted to restrict or hinder advertising or disclosure of prices and other information regarding the availability of funeral services and funeral merchandise that is not unfair or deceptive to consumers
16. 651.457(a)(3) - Allowed the presence/participation of a student for credit or satisfaction of academic requirements during the embalming of a dead human body without complying with 651.407
17. 651.503 - Failure to file written report in 15 days as required for "Letter of Warning" finding
8. 651.454(b)(2) - Restricted, hindered, or attempted to restrict or hinder: an agreement for funeral services between a consumer and a funeral director or embalmer
9. 651.454(c) - Solicited business or offered an inducement to secure or attempt to secure business for the funeral establishment unless the solicitation was made under a permit issued under Chapter 154, Finance Code
10. 651.455(a)(1) - Used false statement to mislead or deceive the public regarding a legal, religious, or cemetery requirement for funeral merchandise or funeral, cemetery, or crematory services

Class B Offenses:

1st Violation: \$500

2nd Violation: \$1,000

3rd Violation: Up to \$3,500 and/or sanction

4+ Violation: Up to \$5,000 and/or sanction

1. 651.405 - Failure of Funeral Establishment to include all provisions/notifications on GPL
2. 651.4055 - Failure of Cemetery/Crematory to include all provisions/notifications on GPL
3. 651.406 - Failure of Funeral Establishment to include all provisions/notifications on Purchase Agreement
4. 651.4065 - Failure of Cemetery/Crematory to include all provisions/notifications on Purchase Agreement
5. 651.4085 - Failure of FD or agent to be present when casket is interred or entombed unless out of state
6. 651.454(a)(2) - Failure to provide to a prospective customer inquiring in person about any funeral service or merchandise a retail price list for the prospective customer to keep
7. 651.454(a)(3) - Failure to explain to a prospective customer that a contractual agreement for funeral services or merchandise may not be entered into before a retail price list is provided to the prospective customer
11. 651.455(a)(2) - Used false statement to mislead or deceive the public regarding the preservative qualities of funeral merchandise or funeral, cemetery, or crematory services in preventing or substantially delaying natural decomposition of human remains
12. 651.455(a)(3) - Used false statement to mislead or deceive the public regarding the airtight or watertight properties of a casket or outer enclosure
13. 651.455(a)(4) - Used false statement to mislead or deceive the public regarding the licenses held by the personnel in the operation of the cemetery, crematory, or funeral establishment
14. 651.455(a)(5) - Used false statement to mislead or deceive the public regarding an activity regulated under this chapter, including the sale of funeral-related goods or services
15. 651.456(3) - Violated state law regarding transportation, storage, refrigeration, inurnment, interment, or disinterment of dead human body
16. 651.459(a)(3) - Engaged in negligence in the practice of embalming or funeral directing that is likely to or does deceive, defraud, or otherwise injure the public
17. 651.459(a)(5) - Directly or indirectly employed a person to solicit individuals or institutions by whose influence dead human bodies are turned over to a particular funeral director, embalmer, or funeral establishment

exam question...

6. The monetary administrative penalty that may be levied for "Failure by Funeral Establishment to meet building, health & safety codes" ranges from _____.
 - a. Up to \$5,000 and/or sanction (1st Violation) - \$5,000 and Revocation (4+ Violation)
 - b. \$1,000 (1st Violation) – Up to \$5,000 and/or sanction (4+ Violation)
 - c. \$500 (1st Violation) – Up to \$5,000 and/or sanction (4+ Violation)
 - d. \$250 (1st Violation) – Up to \$5,000 and/or sanction (4+ Violation)

18. 651.459(b) - Stated or implied that a customer's concern with the cost of any funeral service or funeral merchandise was improper or indicated a lack of respect for the deceased
19. 651.460(a)(1) - Failed to provide a customer with a purchase agreement as required by Section 651.406
20. 651.460(a)(2) - Failed to retain and make available to the Commission copies of all price lists, written notices, embalming documents, and memoranda of agreement required for two years after the date of distribution or signing

21. 651.460(a)(5) - Associated with a funeral establishment, whether licensed or not, and failed to comply with Chapter 651 or Commission rule
22. 651.460(a)(6) – Knowingly violates Section 711.002(l), Health and Safety Code
23. 651.460(b)(1) - Failure by a funeral establishment to substantially comply with requirements of Section 651.351 (i.e., have a preparation room at all)

Class C Offenses:

1st Violation: \$1,000

2nd Violation: \$1,500

3rd Violation: Up to \$4,000 and/or sanction

4+ Violation: Up to \$5,000 and/or sanction

1. 651.306 - FD/Embalmer is not physically present when supervising provisional licensee
2. 651.401(c) - Unlicensed person commits first call violations
3. 651.407 - Use of dead human body by mortuary school without written consent
4. 651.451(7) - Permitted another to use the person's license or registration to perform an activity regulated under 651
5. 651.453 - Advertised in misleading or deceptive way or used the name of person who is falsely represented to be the license holder
6. 651.456(1) - Took custody of body without permission
7. 651.456(2) - Refused to promptly surrender a body to authorized agent (or representative)
8. 651.457(a)(1) - Embalmed a body without receiving the express written or oral permission of a person authorized to make funeral arrangements for the deceased; or making a documented reasonable effort over a period of at least three hours to obtain the permission
9. 651.457(a)(4) - Placed a chemical or substance on or in a dead human body to disinfect or preserve the body or to restore body tissues and structures without holding an embalmer's license or provisional embalmer's license
10. 651.458 - Made a distinction in providing funeral information to a customer
11. 651.459(a)(1) - Wilfully made a false statement on a death certificate, including forgery of a physician's signature; or a document required by this law/rule
12. 651.459(a)(2) - Engaged in fraudulent, unprofessional, or deceptive conduct in providing funeral services or merchandise to a customer
13. 651.459(a)(3) - Engaged in dishonest conduct, wilful conduct, in the practice of embalming or funeral directing that is likely to or does deceive, defraud, or otherwise injure the public

14. 651.459(a)(4) - Caused the execution of a document by the use of fraud, deceit, or misrepresentation
15. 651.459 (a)(6) - Misappropriated funds held by a license holder, a funeral establishment, an employee or agent of the funeral establishment, or another depository, that created an obligation to provide a funeral service or merchandise, including retaining for an unreasonable time excess funds paid by or on behalf of the customer for which the customer is entitled to a refund
16. 651.459(c) - FDIC fails to provide a funeral director or an embalmer for direction or personal supervision for a first call
17. 651.460(a)(4) - Allowed the use of a dead human body by an embalming establishment for research or educational purposes without complying with Section 651.407
18. 651.460(b)(2) - A funeral establishment or a person acting on behalf of the funeral establishment violated Chapter 193 or 361, Health and Safety Code
19. 651.460(b)(3) - A funeral establishment, a person acting on behalf of the funeral establishment, or a person directly or indirectly connected with the funeral establishment violated Chapter 154, Finance Code, or a rule adopted under that chapter

Class D Offenses:

1st Violation: Up to \$5,000 and/or sanction

2nd Violation: Up to \$5,000 and sanction

3rd Violation: Up to \$5,000 and sanction

4+ Violation: \$5,000 and Revocation

1. 651.452(1) - Conviction of misdemeanor related to the practice of funeral directing or embalming or of a felony
2. 651.452(2-3) – Ongoing/current substance abuse or determined by court to be of unsound mind
3. 651.460 (a)(3) - Fails to comply with Order of Commission or pay administrative penalty
4. 651.251 - Engaged or professed to be engaged in business of funeral directing/embalming unless licensed by Commission
5. 651.351(a) - Funeral Establishment may not conduct business unless licensed
6. 651.352 - Commercial embalming facility may not conduct business unless licensed
7. 651.353 - Cemetery may not conduct business unless licensed and not exempt under (d)
8. 651.656 - Crematory may not conduct business unless licensed
9. 651.451(1) - Presented to Commission license, certificate, registration, or diploma that was illegally or fraudulently obtained

10. 651.451(2) - Used fraud or deception in passing the examination, including impersonating or acting as a proxy for another person in the examination
11. 651.451(3) - Purchased, sold, bartered, or used, or offered to purchase, sell, barter, or use, a license, registration, certificate, or transcript of a license, registration, or certificate in or incident to an application to the Commission for a license or registration issued under this chapter
12. 651.451(4) - Altered, with fraudulent intent, a license, registration, or certificate issued under Chapter 651 or a transcript of a license, registration, or certificate
13. 651.451(5) - Used a license, registration, certificate, or diploma issued or a transcript of a license, registration, certificate, or diploma that was fraudulently purchased, issued, counterfeited, or materially altered
14. 651.451(6) - Impersonated a funeral director, embalmer, or other person regulated under 651
15. 651.451(8) - Presented false certification of work done as a provisional license holder
16. 651.459 (a)(7) - Performed acts of funeral directing or embalming that are outside the licensed scope and authority of the license holder, or performed acts of funeral directing or embalming in a capacity other than that of an employee, agent, subcontractor, or assignee of a licensed funeral establishment that has contracted to perform those acts

Source Note: The provisions of this §203.43 adopted to be effective October 18, 2015, 40 TexReg 7070

Specific rules within Texas Administrative Code 22.10.203 address “unfair or deceptive acts or practices,” and those steps which must be taken to avoid them, further enforcing ethical standards. They also grant that the Commission “...may, in its discretion, refuse to issue or renew a license or may fine, revoke, or suspend any license granted by the Commission if the Commission finds that the applicant or licensee has engaged in unprofessional conduct as defined in this section.”

Texas Administrative Code

TITLE 22 EXAMINING BOARDS

PART 10 TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 203 LICENSING AND ENFORCEMENT - SPECIFIC SUBSTANTIVE RULES

SUBCHAPTER B - DUTIES OF A FUNERAL ESTABLISHMENT/LICENSEE

SECTION 203.34. Retention of Documents

To prevent the unfair or deceptive acts or practices specified in §203.46 of this title and §203.48 of this title, funeral providers must retain and make available for inspection by Commission officials true and accurate copies of the price lists specified in §203.46(b) (2) - (5) of this title, as applicable, for at least two years after the date of their last distribution to customers, and a copy of each Purchase Agreement, as required by §203.47 of this title, for at least two years from the date of the arrangements conference.

Source Note: The provisions of this §203.34 adopted to be effective October 18, 2015, 40 TexReg 7069

SECTION 203.35. Location of Retained Records

- (a) All records required for retention by Occupations Code Chapter 651 and Rules of the Commission, will be maintained for a minimum of two years within the physical confines of the licensed establishment where the funeral arrangements were made. The records must be made available to a family member or the person responsible for making arrangements for final disposition during regular business hours. Copies must be provided upon request to the Commission during the course of an investigation or inspection.
- (b) Any licensed establishment may submit a petition to the Commission requesting an exemption to the portion of subsection (a) of this section which requires that retained records be kept within the physical confines of the licensed funeral establishment where the funeral arrangements were made.
- (c) Each petition will clearly state:
 - (1) a brief explanation of the problem(s) created by maintaining the records at that location;
 - (2) the rational or justification for the granting of the exemption;
 - (3) the specific remedy requested, including the alternative location selected;

exam question...

7. Per Section 203.35., “All records required for retention by Occupations Code Chapter 651 and Rules of the Commission, will be maintained for a minimum of _____ within the physical confines of the licensed establishment where the funeral arrangements were made.”
- a. Four years
 - b. Three years
 - c. Two years
 - d. One year

- (4) assurances that the Commission will be able to easily access all records by name of the establishment, name of individual, or by date of service.
- (d) The Executive Director will grant, deny, or modify the requested relief.
- (e) The Executive Director will advise the licensed establishment in writing of the action taken.
- (f) Each petition will be considered separately and upon its own merit. When considering the petition, the Executive Director will take into account the proposed geographical location of the records and the licensee's demonstrated ability to substantially comply with the mortuary laws and the rules and regulations of the Commission as demonstrated in prior inspection reports and other documents submitted to the Commission.
- (7) physically abusing or threatening to physically abuse a Commission employee during the performance of his lawful duties;
- (8) conduct which is willful, flagrant, or shameless or which shows a moral indifference to the standards of the community;
- (9) in the practice of funeral directing or embalming, engaging in:
 - (A) fraud, which means an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him, or to surrender a legal right, or to issue a license; a false representation of a matter of fact, whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives or is intended to deceive another;
 - (B) deceit, which means the assertion, as a fact, of that which is not true by any means whatsoever to deceive or defraud another;
 - (C) misrepresentation, which means a manifestation by words or other conduct which is a false representation of a matter of fact;
- (10) communicating directly or indirectly with a Commissioner during the pendency of a complaint in connection with an issue of fact or law, except upon notice and opportunity for each party to participate;
- (11) attempting to influence a complainant or witness in any complaint case to change the nature of the complaint, or withdraw the complaint by means of coercion, harassment, bribery, or by force, or threat of force;
- (12) retaliating or threatening to retaliate against a complainant who has filed a complaint with the Commission in good faith; or
- (13) violating any Texas law or administrative rules governing the transportation, storage, refrigeration, interment, cremation, or disinterment of the dead.

Source Note: The provisions of this §203.35 adopted to be effective October 18, 2015, 40 TexReg 7069

SUBCHAPTER C - ENFORCEMENT

SECTION 203.45. Unprofessional Conduct

- (a) The Commission may, in its discretion, refuse to issue or renew a license or may fine, revoke, or suspend any license granted by the Commission if the Commission finds that the applicant or licensee has engaged in unprofessional conduct as defined in this section.
 - (b) For the purpose of this section, unprofessional conduct shall include but not be limited to:
 - (1) providing funeral goods and services or performing acts of embalming in violation of Occupations Code, Chapter 651, the Rules of the Commission or applicable health and vital statistics laws and rules;
 - (2) refusing or failing to keep, maintain or furnish any record or information required by law or rule, including a failure to timely submit any documentation requested during the course of a Commission investigation;
 - (3) operating a funeral establishment in an unsanitary manner;
 - (4) failing to practice funeral directing or embalming in a manner consistent with the public health or welfare;
 - (5) obstructing a Commission employee in the lawful performance of such employee's duties of enforcing Occupations Code, Chapter 651, or the Rules of the Commission;
 - (6) copying, retaining, repeating, or transmitting in any manner the questions contained in any examination administered by the Commission;
- Source Note: The provisions of this §203.45 adopted to be effective October 18, 2015, 40 TexReg 7070*
- ### **SECTION 203.46. Price Disclosure**
- (a) In selling or offering to sell funeral goods or funeral services to the public it is an unfair or deceptive act or practice for a funeral provider to fail to furnish accurate price information disclosing the cost to the purchaser or prospective customer for each of the specific funeral goods and funeral

services used in connection with the disposition of deceased human bodies. Such price information must include at least the price of embalming, transportation of remains, use of facilities, caskets, outer burial containers, urns, immediate burials, or direct cremations. Any funeral provider who complies with the preventive requirements in subsection (b) of this section is not engaged in the unfair or deceptive acts or practices defined here.

(b) To prevent these unfair or deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in §203.49(b)(1) of this title, funeral providers must:

(1) Telephone price disclosure. Tell persons who ask by telephone about the funeral provider's offerings or prices any accurate information from the price lists described in paragraphs (2) - (5) of this subsection and any other readily available information that reasonably answers the question.

(2) Casket price list.

(A) Give a printed or typewritten price list to people who inquire in person about the offerings or prices of caskets or alternative containers. The funeral provider must offer the list upon beginning discussion of, but in any event before showing caskets. In lieu of a written list, other formats, such as notebooks, brochures, or charts may be used if they contain the same information as would the printed or typewritten list, and display it in a clear and conspicuous manner. Provided, however, that funeral providers do not have to make a casket price list available if the funeral providers place on the general price list, specified in paragraph (5) of this subsection, the information required by this subsection.

(B) The list must contain the effective date and the retail prices of all caskets and alternative containers offered which do not require special ordering, and must include, at a minimum, the following specifications:

- (i) The type of material that is predominantly used in the construction of the merchandise, i.e.:
 - (I) steel, identified as stainless or by gauge, e.g., 18 gauge;
 - (II) wood, identified by type, e.g., pecan or cherry;
 - (III) bronze, described by weight, e.g., 32 oz.;

(IV) copper, described by weight, e.g., 32 oz.; or

(V) other specifically named material, e.g., such as cardboard or corrugated wood;

(ii) The type of sealing feature, e.g., sealer, non-sealer, gasketed, or non-gasketed, if specified on the funeral provider's general price list; and

(iii) The material lining the interior of the casket, e.g., crepe, velvet, satin, twill or silk.

(C) Place on the list, however produced, the name of the funeral provider's place of business and a caption describing the list as a "casket price list."

(3) Outer burial container price list.

(A) Give a printed or typewritten price list to persons who inquire in person about outer burial container offerings or prices. The funeral provider must offer the list upon beginning discussion of, but in any event before showing the containers. The list must contain at least the retail prices of all outer burial containers offered which do not require special ordering, enough information to identify each container, and the effective date for the prices listed. In lieu of a written list, the funeral provider may use other formats, such as notebooks, brochures, or charts, if they contain the same information as the printed or typewritten list, and display it in a clear and conspicuous manner. Provided, however, that funeral providers do not have to make an outer burial container price list available if the funeral providers place on the general price list, specified in paragraph (5) of this subsection, the information required by this subsection. The description of an outer burial container under this section must, at a minimum, include the following specifications:

- (i) The type of material that is predominantly used in the construction of the merchandise, i.e.:
 - (I) concrete, specifying type of construction, e.g., liner, box, or vault;
 - (II) steel, identified as stainless or by gauge, e.g., 12 gauge (or described as galvanized of a particular gauge);
 - (III) wood;

- (IV) bronze or copper, described by weight or gauge, e.g., 32 oz. or 18 gauge; or
 - (V) other specifically named material; and
 - (ii) The type of sealing feature, e.g., sealer, non-sealer, gasketed, or non-gasketed, if specified on the funeral establishment price list.
 - (B) Place on the list, however produced, the name of the funeral provider's place of business, address, and telephone number, and a caption describing the list as an "outer burial container price list."
- (4) Urn price list.
- (A) Give a printed or typewritten price list to persons who inquire in person about urn offerings or prices. The funeral provider must offer the list upon beginning discussion of, but in any event, before showing the containers. The list must contain at least the retail prices of all urns offered which do not require special ordering, the description of an urn under this section must, at a minimum, include the type of material predominately used in its construction. Bronze urns must be described as sheet bronze or caste bronze, whichever is applicable. The price list must include the effective date for the prices listed. In lieu of a written list, the funeral provider may use other formats, such as notebooks, brochures, or charts, if they contain the same information as the printed or typewritten list, and display it in a clear and conspicuous manner. Provided, however, that funeral providers do not have to make an urn price list available if the funeral providers place on the general price list, specified in paragraph (5) of this subsection, the information required by this subsection.
 - (B) Place on the list, however produced, the name of the funeral provider's place of business, address and telephone number and a caption describing the list as an "urn price list."
- (5) General price list.
- (A) Availability of general price list.
 - (i) Give a printed or typewritten price list for retention to persons who inquire in person about the funeral goods, funeral services or prices of funeral goods or services offered by the funeral provider. The funeral provider must give the list upon beginning discussion of any of the following:
 - (I) the prices of funeral goods or funeral services;
 - (II) the overall type of funeral service or disposition; or
 - (III) specific funeral goods or funeral services offered by the funeral provider.
 - (ii) The requirement in clause (i) of this subparagraph applies whether the discussion takes place in the funeral home or elsewhere. Provided, however, that when the deceased is removed for transportation to the funeral home, an in-person request at that time for authorization to embalm, required by §203.50(a)(2) of this title, does not, by itself, trigger the requirement to offer the general price list if the provider in seeking prior embalming approval discloses that embalming is not required by law except in certain special cases, if any. Any other discussion during that time about prices or the selection of funeral goods or services triggers the requirement under clause (i) of this subparagraph to give consumers a general price list.
 - (iii) The list required in clause (i) of this subparagraph must contain at least the following information:
 - (I) the name, address, and telephone number of the funeral provider's place of business;
 - (II) a caption describing the list as a "general price list"; and
 - (III) the effective date for the price list.
 - (B) Include on the price list, in any order, the retail prices (expressed either as the flat fee, or as the price per hour, mile or other unit of computation) and the other information specified below for at least each of the following items, if offered for sale:
 - (i) forwarding of remains to another funeral home, together with a list of the services provided for any quoted price;
 - (ii) receiving remains from another funeral home, together with a list of the services provided for any quoted price;

- (iii) the price range for the direct cremations offered by the funeral provider, together with:
 - (I) a separate price for a direct cremation where the purchaser provides the container;
 - (II) separate prices for each direct cremation offered including an alternative container; and
 - (III) a description of the services and container (where applicable), included in each price;
 - (iv) the price range for the immediate burials offered by the funeral provider, together with:
 - (I) a separate price for an immediate burial where the purchaser provides the casket;
 - (II) separate prices for each immediate burial offered including a casket or alternative container; and
 - (III) a description of the services and container (where applicable) included in that price;
 - (v) transfer of remains to funeral home;
 - (vi) embalming;
 - (vii) other preparation of the body;
 - (viii) use of facilities and staff for viewing;
 - (ix) use of facilities and staff for funeral ceremony;
 - (x) use of facilities and staff for memorial service;
 - (xi) use of equipment and staff for graveside service;
 - (xii) hearse;
 - (xiii) limousine; and
 - (xiv) filing a claim seeking life insurance proceeds on behalf of the beneficiaries.
- (C) Include on the general price list, in any order, the following information:
- (i) Either of the following:
 - (I) The price range for the caskets offered by the funeral provider, together with the statement: “A complete price list will be provided at the funeral home.”; or
 - (II) The prices of individual caskets, disclosed in the manner specified by paragraph (2)(A) of this subsection; and
- (ii) Either of the following:
 - (I) The price range for the outer burial containers offered by the funeral provider, together with the statement: “A complete price list will be provided at the funeral home.”; or
 - (II) The prices of individual outer burial containers, disclosed in the manner specified by paragraph (3)(A) of this subsection; and
 - (iii) Either of the following:
 - (I) The price for the basic services of funeral director and staff, together with a list of the principal basic services provided for any quoted price and, if the charge cannot be declined by the purchaser, the statement: “This fee for our basic services will be added to the total cost of the funeral arrangements you select. (This fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving remains.)” If the charge cannot be declined by the purchaser, the quoted price shall include all charges for the recovery of unallocated funeral provider overhead, and funeral providers may include in the required disclosure the phrase “and overhead” after the word “services”; or
 - (II) The following statement: “Please note that a fee of (specify dollar amount) for the use of our basic services is included in the price of our caskets. This same fee shall be added to the total cost of your funeral arrangements if you provide the casket. Our services include (specify).” The fee shall include all charges for the recovery of unallocated funeral provider overhead, and funeral providers may include in the required disclosure the phrase “and overhead”

after the word “services.” The statement must be placed on the general price list together with the casket price range, required by clause (i)(I) of this subparagraph, or together with the prices of individual caskets, required by clause (i)(II) of this subparagraph.

- (iv) If the funeral home charges for processing the insurance claim, that fee shall be disclosed.
 - (v) If a consumer intends to use the proceeds from an insurance policy to pay for a funeral and the funeral provider requires payment before the proceeds from such policy can be obtained and, if the funeral provider does not provide the service of filing a claim seeking life insurance proceeds on behalf of the beneficiary (or, if the funeral provides the service and the consumer does not wish to utilize the services of the funeral provider), the funeral provider shall include the following statement on the general price list: “Please note that if you utilize a third party to file a claim seeking expedited receipt of life insurance proceeds on behalf of a beneficiary, there will be a fee to be paid associated with the filing of such a claim.”
- (D) The services fee permitted by subparagraph (C)(iii)(I) or (II) of this paragraph is the only funeral provider fee for services, facilities or unallocated overhead permitted by this part to be non-declinable, unless otherwise required by law.

exam question...

8. To avoid committing unfair or deceptive acts or practices pertaining to price disclosure (Section 203.46), funeral providers must _____.

- a. Give a printed or typewritten price list to people who inquire in person about the offerings or prices of caskets or alternative containers
- b. Give a printed or typewritten price list to persons who inquire in person about outer burial container offerings or prices
- c. Give a printed or typewritten price list to persons who inquire in person about urn offerings or prices
- d. All of the above

- (6) Funeral providers may give persons any other price information, in any other format, in addition to that required by paragraphs (2) - (5) of this subsection so long as the statement required by §203.47 of this title is provided when required.

Source Note: The provisions of this §203.46 adopted to be effective October 18, 2015, 40 TexReg 7070

SECTION 203.47.

Purchase Agreement (Statement of Funeral Goods and Services Selected)

- (a) Funeral providers must give an itemized written statement for retention to each person who arranges a funeral or other disposition of human remains, at the conclusion of the discussion of arrangements. The Purchase Agreement must list at least the following information:
 - (1) the funeral goods and funeral services selected by that person and the prices to be paid for each of them, unless there is a discounted package arrangement that itemizes the discount provided by the package arrangement;
 - (2) specifically itemized cash advance items. (These prices must be given to the extent then known or reasonably ascertainable. If the prices are not known or reasonably ascertainable, a good faith estimate shall be given and a written statement of the actual charges shall be provided before the final bill is paid.);
 - (3) the total cost of the goods and services selected;
 - (4) the complete description of all goods purchased as described in §203.46(2) - (5) of this title.
- (b) The information required by this section may be included on any contract, statement, or other document which the funeral provider would otherwise provide at the conclusion of discussion of arrangements.
- (c) If a funeral provider’s graphically illustrated logo or a bold listing of the logo is included in an obituary, the funeral provider shall list separately the additional cost, if any, related to the inclusion of such logo in the cash advance portion of the Purchase Agreement.

Source Note: The provisions of this §203.47 adopted to be effective October 18, 2015, 40 TexReg 7070

SECTION 203.48. Misrepresentations

(a) Embalming provisions.

- (1) In selling or offering to sell funeral goods or funeral services to the public, it is deceptive act or practice for a funeral provider to:
 - (A) represent that state or local law requires that a deceased person be embalmed when such is not the case; or
 - (B) fail to disclose that embalming is not required by law except in certain special cases, if any.
- (2) To prevent these deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in §203.49(b)(1) of this title and §203.50(a) of this title, funeral providers must:
 - (A) not represent that a deceased person is required to be embalmed for:
 - (i) Direct cremation;
 - (ii) Immediate burial; or
 - (iii) A closed casket funeral without viewing or visitation when refrigeration is available and when state or local law does not require embalming; and
 - (B) Place the following disclosure on the general price list, required by §203.46(b)(5) of this title, in immediate conjunction with the price shown for embalming: “Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement that does not require you to pay for it, such as direct cremation or immediate burial.” The phrase “except in certain special cases” need not be included in this disclosure if state or local law in the area(s) where the provider does business does not require embalming under any circumstances.

exam question...

9. To avoid committing unfair or deceptive acts or practices pertaining to embalming provisions (Section 203.48a), funeral providers must represent that a deceased person is required to be embalmed for _____.
- a. Direct cremation
 - b. Immediate burial
 - c. Both a and b above
 - d. Neither a nor b above

(b) Casket for cremation provisions.

- (1) In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:
 - (A) represent that state or local law requires a casket for direct cremations; or
 - (B) represent that a casket is required for direct cremations.
- (2) To prevent these deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in §203.49(a)(1) of this title, funeral providers must place the following disclosure in immediate conjunction with the price range shown for direct cremations: “If you want to arrange a direct cremation, you can use an alternative container. Alternative containers encase the body and can be made of materials like fiberboard or composition materials (with or without an outside covering). The containers we provide are (specify containers).” This disclosure only has to be placed on the general price list if the funeral provider arranges direct cremations.

(c) Outer burial container provisions.

- (1) In selling or offering to sell funeral goods and funeral services to the public, it is a deceptive act or practice for a funeral provider to:
 - (A) represent that state or local laws or regulations, or particular cemeteries, require outer burial containers when such is not the case; or
 - (B) fail to disclose to persons arranging funerals that state law does not require the purchase of an outer burial container.
- (2) To prevent these deceptive acts or practices, funeral providers must place the following disclosure on the outer burial container price list, required by §203.46(b)(3)(A) of this title, or, if the prices of outer burial containers are listed on the general price list, required by §203.46(b)(5) of this title, in immediate conjunction with those prices: “In most areas of the country, state or local law does not require that you buy a container to surround the casket in the grave. However, many cemeteries require that you have such a container so that the grave will not sink in. Either a grave liner or a burial vault will satisfy these requirements.” The phrase “in most areas of the country” need not be included in this disclosure if state or local law in the area(s) where the provider does business does not require a container to surround the casket in the grave.

(d) General provisions on legal and cemetery requirements.

SECTION 203.49.
Required Purchase of Funeral Goods or Funeral Services

- (1) In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for funeral providers to represent that federal, state, or local laws, or particular cemeteries or crematories, require the purchase of any funeral goods or funeral services when such is not the case.
 - (2) To prevent these deceptive acts or practices, as well as the deceptive acts or practices identified in subsections (a)(1), (b)(1), and (c)(1) of this section, funeral providers must identify and briefly describe in writing on the Purchase Agreement required by §203.47 of this title any legal, cemetery, or crematory requirement which the funeral provider represents to persons as compelling the purchase of funeral goods or funeral services for the funeral which that person is arranging.
- (e) Provisions on preservative and protective value claims. In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:
- (1) represent that funeral goods or funeral services will delay the natural decomposition of human remains for a long-term or indefinite time; or
 - (2) represent that funeral goods have protective features or will protect the body from gravesite substances, when such is not the case.
- (f) Cash advance provisions.
- (1) In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:
 - (A) represent that the price charged for a cash advance item is the same as the cost to the funeral provider for the item when such is not the case; or
 - (B) fail to disclose to persons arranging funerals that the price being charged for a cash advance item is not the same as the cost to the funeral provider for the item when such is the case.
 - (2) To prevent these deceptive acts or practices: Funeral providers must place the following sentence in the itemized Purchase Agreement in immediate conjunction with the list of itemized cash advance items required by §203.49 of this title: “We charge you for our services in obtaining: (specify cash advance items),” if the funeral provider makes a charge upon, or receives and retains a rebate, commission or trade or volume discount upon a cash advance item.
- (a) Casket for cremation provisions.
- (1) In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for a funeral provider, or a crematory, to require that a casket be purchased for direct cremation.
 - (2) To prevent this unfair or deceptive act or practice, funeral providers must make an alternative container available for direct cremations, if they arrange direct cremations.
- (b) Other required purchases of funeral goods or funeral services.
- (1) In selling or offering to sell funeral goods or funeral services, it is an unfair or deceptive act or practice for a funeral provider to:
 - (A) condition the furnishing of any funeral good or funeral service to a person arranging a funeral upon the purchase of any other funeral good or funeral service, except as required by law or as otherwise permitted by this part; or
 - (B) charge any fee as a condition to furnishing any funeral goods or funeral services to a person arranging a funeral, other than the fees for:
 - (i) services of funeral director and staff, permitted by §203.46(b)(5)(C)(iii) of this title;
 - (ii) other funeral services and funeral goods selected by the purchaser; and
 - (iii) other funeral goods or services required to be purchased, as explained on the itemized statement in accordance with §203.48(d)(2) of this title.
 - (2) Preventative Requirements
 - (A) To prevent these unfair or deceptive acts or practices, funeral providers must:
 - (i) Place the following disclosure in the general price list, immediately above the prices required by §203.46(b)(5)(B) and (C) of this title: “The goods and services shown below are those we can provide to our customers. You may choose only the items you desire. If legal or other requirements mean you must buy any items you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the funeral goods and services you selected.” Provided, however, that if the charge for “services of funeral director and staff” cannot

Source Note: The provisions of this §203.48 adopted to be effective October 18, 2015, 40 TexReg 7070

be declined by the purchaser, the statement shall include the sentence: "However, any funeral arrangements you select will include a charge for our basic services" between the second and third sentences of the statement specified above herein. The statement may include the phrase "and overhead" after the word "services" if the fee includes a charge for the recovery of unallocated funeral provider overhead;

- (ii) Place the following disclosure in the Purchase Agreement, required by §203.47 of this title: "Charges are only for those items that you selected or that are required. If we are required by law or by a cemetery or crematory to use any items, we will explain the reasons in writing below."

- (B) A funeral provider shall not violate this section by failing to comply with a request for a combination of goods or services which would be impossible, impractical, or excessively burdensome to provide.

Source Note: The provisions of this §203.49 adopted to be effective October 18, 2015, 40 TexReg 7070

SECTION 203.50. **Embalming Provided Without Prior Approval**

- (a) In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for any provider to embalm a deceased human body for a fee unless:
 - (1) state or local law or regulation requires embalming in the particular circumstances regardless of any funeral choice which the family might make;
 - (2) prior approval for embalming (expressly so described) has been obtained from a family member or other authorized person; or
 - (3) the funeral provider is unable to contact a family member or other authorized person after exercising due diligence, has no reason to believe the family does not want embalming performed, and obtains subsequent approval for embalming already performed (expressly so described). In seeking approval, the funeral provider must disclose that a fee will be charged if the family selects a funeral which requires embalming, such as a funeral with viewing, and that no fee will be charged if the family selects a service which does not require embalming, such as direct cremation or immediate burial.

- (b) To prevent these unfair or deceptive acts or practices, funeral providers must include on the itemized Purchase Agreement, required by §203.47 of this title, the statement: "If you selected a funeral that may require embalming, such as a funeral with viewing, you may have to pay for embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial. If we charged for embalming, we will explain why below."

Source Note: The provisions of this §203.50 adopted to be effective October 18, 2015, 40 TexReg 7070

SECTION 203.51. Comprehensive of Disclosures

To prevent the unfair or deceptive acts or practices specified in §§203.46 - 203.50 of this title, funeral providers must make all disclosures required by those sections in a clear and conspicuous manner. Providers shall not include in the casket, outer burial container, urn, and general price lists, required by §203.46(b) (2) - (5) of this title, any statement or information that alters or contradicts the information required to be included in those lists.

Source Note: The provisions of this §203.51 adopted to be effective October 18, 2015, 40 TexReg 7070

SECTION 203.52. Violation to Engage in Unfair or Deceptive Acts or Practices

Except as otherwise provided in §203.46(a) of this title, it is a violation to engage in any unfair or deceptive acts or practices specified in Occupations Code Chapter 651 or in the Rules of the Commission, or to fail to comply with any of the preventive requirements specified in Occupations Code Chapter 651 or in the Rules of the Commission.

Source Note: The provisions of this §203.52 adopted to be effective October 18, 2015, 40 TexReg 7070

BACKGROUND INFORMATION: Consumer Brochures

Rule §203.26 of Texas Administrative Code 22.10.203 addresses “Presentation of Consumer Brochure” – this is a brochure that enumerates, for the consumer, some of the ethical practices legislated above.

RULE §203.26 Presentation of Consumer Brochure

- (a) Consumer brochures as promulgated under §201.7 of this title shall be prominently displayed in the public view, offered free of charge for keeping to any person, and presented at the beginning of the arrangement conference for the disposition of a dead body.
- (b) Consumer brochures are designed and printed by the Commission and may be copied only when the Commission is unable to furnish the funeral establishment with an ordered supply.
- (c) The Commission determines the minimum order size and the fees for the brochures.

Source Note: The provisions of this §203.26 adopted to be effective October 18, 2015, 40 TexReg 7069

Preview an English-language brochure:

<http://www.tfsc.state.tx.us/files/News/Facts%20About%20Funerals%20English.pdf>

Preview a Spanish-language brochure:

<http://www.tfsc.state.tx.us/files/News/Facts%20About%20Funerals%20Spanish.pdf>

Order form:

<http://tfsc.texas.gov/files/Forms/Publication%20Order%20Form.pdf>

Finally, Texas Administrative Codes 22.10.203.15-17 speak to criminal conviction, criminal history, and the ways both affect licensure.

SECTION 203.15.

Required Notification of Criminal Conviction

- (a) An applicant for licensure shall disclose in writing to the Commission any conviction against him or her related to the occupations of funeral directing or embalming as defined by §203.16(h) of this title at the time of application.
- (b) A current licensee shall disclose in writing to the Commission any conviction against him or her related to the occupations of funeral directing or embalming as defined by §203.16(h) of this title at the time of renewal or no later than 30 days after judgment in the trial court, whichever date is earlier.

- (c) Upon notification of a conviction, the Commission shall request that the person respond by filing information demonstrating why the Commission should not deny the application or take disciplinary action against the person, if already licensed. The response must be filed within 21 days of the date of receipt of notice from the Commission. An applicant for licensure is responsible for filing documentation that will allow the Commission to take action under §203.16 of this title.

Source Note: The provisions of this §203.15 adopted to be effective October 18, 2015, 40 TexReg 7065

SECTION 203.16.

Consequences of Criminal Conviction

- (a) The Commission may suspend or revoke a license or deny a person from receiving a license on the grounds that the person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of an occupation required to be licensed by Occupations Code, Chapter 651 (Chapter 651).
- (b) The Commissioners may place an applicant or licensee who has been convicted of an offense as outlined in subsection (h) on probation by authorizing the Executive Director to enter into an Agreed Order with the licensee. The Agreed Order shall specify the terms of the probation and the consequences of violating the Order.
- (c) If the Commissioners suspend or revoke a license or deny a person from getting a license, the licensee or applicant may appeal that decision to SOAH.
- (d) The Commission shall immediately revoke the license of a person who is imprisoned following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision. Revocations under this subsection are not subject to appeal at SOAH.
- (e) A person in prison is ineligible for licensure. Revocation or denial of licensure under this subsection is not subject to appeal at SOAH.
- (f) The Commission shall consider the following factors in determining whether a criminal conviction directly relates to an occupation required to be licensed by Chapter 651:
 - (1) the nature and seriousness of the crime;
 - (2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;
 - (3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and
 - (4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

- (g) If a person has been convicted of a crime, the Commission shall consider the following in determining a person's fitness to perform the duties and discharge the responsibilities of a Chapter 651 occupation:
- (1) the extent and nature of the person's past criminal activity;
 - (2) the age of the person when the crime was committed;
 - (3) the amount of time that has elapsed since the person's last criminal activity;
 - (4) the conduct and work activity of the person before and after the criminal activity;
 - (5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release;
 - (6) letters of recommendation from:
 - (A) prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;
 - (B) the sheriff or chief of police in the community where the person resides; and
 - (C) any other person in contact with the convicted person; and
 - (7) evidence that the applicant has:
 - (A) maintained a record of steady employment;
 - (B) supported the applicant's dependents;
 - (C) maintained a record of good conduct; and
 - (D) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.
- (h) The following crimes are related to the occupations of funeral directing or embalming:
- (1) Class B misdemeanors classified by Occupations Code §651.602:
 - (A) acting or holding oneself out as a funeral director, embalmer, or provisional license holder without being licensed under Chapter 651 and the Rules of the Commission;
 - (B) making a first call in a manner that violates Occupations Code §651.401;
 - (C) engaging in a funeral practice that violates Chapter 651 or the Rules of the Commission; or
 - (D) violating Finance Code, Chapter 154, or a rule adopted under that chapter, regardless of whether the Texas Department of Banking or another governmental agency takes action relating to the violation.
 - (2) The commission of acts within the definition of Abuse of Corpse under Penal Code, §42.08, because those acts indicate a lack of respect for the dead.
 - (3) The following crimes because the commission of each reflects a lack of respect for human life and dignity or a lack of fitness to practice the occupations:
 - (A) a misdemeanor or felony offense involving:
 - (i) murder;
 - (ii) assault;
 - (iii) burglary;
 - (iv) robbery;
 - (v) theft;
 - (vi) sexual assault;
 - (vii) injury to a child;
 - (viii) injury to an elderly person;
 - (ix) child abuse or neglect;
 - (x) tampering with a governmental record;
 - (xi) forgery;
 - (xii) perjury;
 - (xiii) bribery;
 - (xiv) harassment;
 - (xv) insurance claim fraud; or
 - (xvi) mail fraud;
 - (B) delivery, possession, manufacture, or use of or the dispensing or prescribing a controlled substance, dangerous drug, or narcotic; or
 - (C) violations of the Penal Code, Titles 4, 5, 7, 9, and 10, which indicate an inability or tendency for the person to be unable to perform as a licensee or to be unfit for licensure or registration.

Source Note: The provisions of this §203.16 adopted to be effective October 18, 2015, 40 TexReg 7065

exam question...

10. Per Section 203.16, "The Commission shall immediately revoke the license of a person who is imprisoned following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision. Revocations under this subsection _____."
- a. Are not subject to appeal at SOAH
 - b. May be appealed to SOAH
 - c. Must be appealed to SOAH
 - d. Will be reversed after 5 years

SECTION 203.17. Criminal History Evaluation Letter

- (a) Prior to submitting an application for licensure, a person may request the Commission issue a criminal history evaluation letter regarding the person's eligibility for a license if the person is enrolled or planning to enroll in an educational program that prepares a person for an initial license.
- (b) A person may request a criminal history evaluation letter if he or she has reason to believe the Commission may determine that he or she is ineligible for a license due to a conviction or deferred adjudication for a felony or misdemeanor offense outlined in §203.16(h) of this title. The request must state the basis for the potential ineligibility.
- (c) The Commissioners must consider the application for a criminal history evaluation letter at the next regularly scheduled Commission meeting if all requested information is received in a timely manner.
- (d) If the Commissioners determine that a ground for ineligibility does not exist, the Commission shall notify the requestor in writing of the Commission's determination of eligibility. The motion for eligibility is subject to the criminal behavior known to the Commission as of the date of the determination. Any future criminal behavior could impact the issuance of a license.
- (e) If the Commissioners determine that a ground for ineligibility does exist, the Commission shall notify the requestor in writing of the Commission's determination of ineligibility.
- (f) The Commission may charge a person requesting an evaluation under this section a fee. Fees must be in an amount sufficient to cover the cost of administering this section.
- (g) The Commissioners may issue a probated license to an applicant who is not ineligible under subsection (d) of this section, but has been convicted of an offense by authorizing the Executive Director to enter into an Agreed Order with the licensee. The Agreed Order shall specify the terms of the probation and the consequences of violating the Order. Once the terms of the probated license have been satisfied, the person shall be licensed as any other licensee who had not been on probation.
- (h) The Commission shall revoke, without hearing, a probated license if the license holder commits a new offense; commits an act or omission that causes the person's community supervision, mandatory supervision, or parole to be revoked, if applicable; or violates Occupations Code Chapter 651 or the Rules of the Commission.
- (i) A person who is on community supervision, mandatory supervision, or parole and who is issued a license under this section shall provide to the Commission the name and contact information of the probation or parole department to which the person reports. The Commission shall notify the probation or parole department that a license has been issued.

Source Note: The provisions of this §203.17 adopted to be effective October 18, 2015, 40 TexReg 7065

Funeral Service Academy

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Learner Name: _____

	Low			High		
Orientation was thorough and clear	1	2	3	4	5	
Course objectives were clearly stated	1	2	3	4	5	
Content was organized	1	2	3	4	5	
Content was what I expected	1	2	3	4	5	
Program met my needs	1	2	3	4	5	
Satisfied with my learning experience	1	2	3	4	5	
Satisfied with customer service, if applicable	1	2	3	4	5	n/a

What suggestions do you have to improve this program, if any?

What educational needs do you currently have?

What other courses or topics are of interest to you?
