



DHMH

Maryland Department of Health and Mental Hygiene

Larry Hogan, Governor – Boyd K. Rutherford, Lt. Governor – Van T. Mitchell, Secretary

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Maryland Board of Morticians and Funeral Directors

To: All MD and Out of State Licensed Funeral Establishments

Re: Removal and Transportation in Maryland

On January 26, 2016, Service Corporation International requested, through Maryland Delegate Susan Krebs, an opinion of the Maryland Attorney General regarding whether out-of-State funeral establishments were exempted from the laws relating to mortuary transport services in the State of Maryland. By letter dated March 30, 2016, Counsel for the General Assembly, in consultation with Counsel to the Department of Health and Mental Hygiene and Counsel to the Board, advised Delegate Krebs that out-of-State funeral establishments were exempted from the statutory definition of a mortuary transport service. At the Board's subsequent open meeting on April 13, 2016, the Board went into a closed session to seek legal advice from Board Counsel regarding implementation of this interpretation for the removal and transport of a decedent from Maryland by an out-of-State funeral establishment. Based on that discussion, an out-of-State funeral establishment has three options in that regard.

A practitioner of mortuary science who is licensed in another state may apply for a courtesy card, which would allow the practitioner to make a removal of human remains in Maryland and to return the body to another state or country, to return a dead human body from another state or country to Maryland for final disposition, to fill out the family history portion of the death certificate, and to sign the death certificate in the holder's capacity as a licensed practitioner of mortuary science. *See* Md. Code Ann., Health Occ. § 7-311(b). Pursuant to Md. Code Ann., Health Occ. § 7-311(c), however, a courtesy card is non-transferable; thus it is valid for the named licensed practitioner only and is not valid for any other individual employed by or outside of the out-of-State establishment.

The out-of-State funeral establishment may also enter into an agreement with a Maryland licensed mortician from a Maryland licensed funeral establishment in order to remove and transport human remains in Maryland. Under this option, unlicensed individuals employed by an out-of-State funeral establishment may remove and transport human remains if they are acting under the direction of a Maryland mortician or funeral director. *See* Md. Code Ann., Health Occ. 7-101(u)(3)(i). While the Board generally interprets its statute on a case-by-case basis in response to specific complaints, it is likely that the Board would consider several factors in assessing whether an unlicensed individual was "acting under the direction" of a Maryland licensee. These factors could include, but not necessarily be limited to:

(1) the form and manner of the Maryland licensee's authorization to the unlicensed individual to remove and transport human remains from the State of Maryland;

(2) the extent of the contact between the Maryland licensee and the unlicensed individual throughout the transportation and removal of human remains from the State of Maryland; and

(3) the extent of the Maryland licensee's own participation with the removal and transportation of the human remains.

Please note, as the removal and/or transportation would be done under the Maryland mortician's or funeral director's direction, the unlicensed out-of-State individuals would be acting at the Maryland licensee's authority and discretion. Thus, the Maryland licensee would be fully accountable for any acts or misconduct occurring in Maryland on the part of the unlicensed out-of-State individual throughout the removal and/or transportation of a decedent, just as the licensee would be for any other unlicensed individual operating at the licensee's direction.

Finally, while the letter to Delegate Krebs makes it clear that an out-of-State funeral establishment was exempted from the definition of mortuary transport service, obtaining a mortuary transport permit remains an option. By obtaining a mortuary transport permit, an out-of-State funeral establishment is able to register multiple transporters, who may or may not be licensed morticians in their state, to remove and transport human remains in Maryland. This option provides greater flexibility than the courtesy card option, at a lower licensing cost.