



A REPORT  
TO THE  
ARIZONA LEGISLATURE

Performance Audit Division

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Performance Audit

# State Board of Funeral Directors and Embalmers

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MAY • 2003  
REPORT NO. 03 – 04



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**Debra K. Davenport**  
Auditor General

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AUDITOR GENERAL

STATE OF ARIZONA  
OFFICE OF THE  
**AUDITOR GENERAL**

WILLIAM THOMSON  
DEPUTY AUDITOR GENERAL

May 1, 2003

Members of the Arizona Legislature

The Honorable Janet Napolitano, Governor

Mr. Rodolfo R. Thomas, Executive Director  
State Board of Funeral Directors and Embalmers

Transmitted herewith is a report of the Auditor General, A Performance Audit and Sunset Review of the Arizona State Board of Funeral Directors and Embalmers. This report is in response to a May 14, 2002, resolution of the Joint Legislative Audit Committee. The performance audit was conducted as part of the Sunset review process prescribed in A.R.S. §41-2951 et seq. I am also transmitting with this report a copy of the Report Highlights for this audit to provide a quick summary for your convenience.

As outlined in its response, the State Board of Funeral Directors and Embalmers agrees with all of the findings and plans to implement all of the recommendations directed to it.

My staff and I will be pleased to discuss or clarify items in the report.

This report will be released to the public on May 2, 2003.

Sincerely,

Debbie Davenport  
Auditor General

Enclosure

# PROGRAM FACT SHEET

## Arizona State Board of Funeral Directors and Embalmers

### Services:

The Board of Funeral Directors and Embalmers is responsible for enforcing Arizona's funeral laws. The Board has the following responsibilities:

- **Licensing**—Licenses all funeral practitioners, establishments, and crematories. As of February 4, 2003, the Board had 1,401 active licenses.
- **Inspections**—Inspects all funeral establishments and crematories to ensure compliance with state requirements. The Board reports that it completed 180 establishment inspections during fiscal year 2002.
- **Complaints**—Receives and investigates complaints and can take disciplinary action against licensees. The Board received 12 complaints in fiscal year 2002 and resolved 9.
- **Public information**—Provides information to the public through telephone assistance, its Web site, and a consumer brochure distributed at funeral establishments.

### Personnel:

The Board consists of seven governor-appointed members who serve 4-year terms:

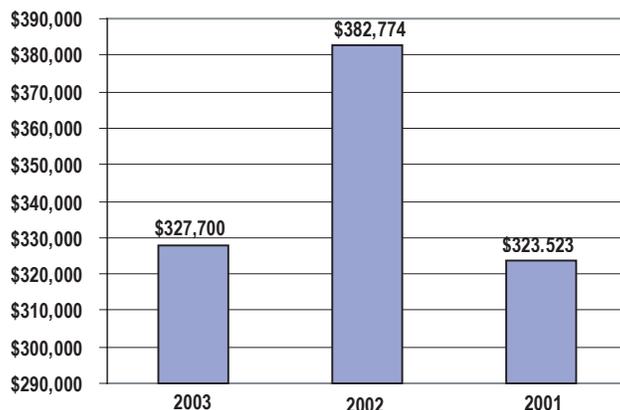
- Four of the members are licensed funeral directors or embalmers.
- Three must be members of the public. One of these three must own or manage a business that has no pecuniary or proprietary interest in a funeral establishment or crematory, or in the sale of funeral goods and services.

In fiscal year 2003, the Board is authorized to have four full-time equivalent (FTE) positions:

- Executive director, who is responsible for operations
- Deputy director, who conducts investigations
- Compliance administrator, who inspects funeral establishments and crematories
- Administrative assistant, who processes license applications and renewals

### Revenue:<sup>1</sup>

**\$327,600 (fiscal year 2003 estimated)**



<sup>1</sup> The Board remits all civil penalties and 10 percent of licenses, other fines and forfeits, service charges, and certain other revenues to the State General Fund, and deposits the remainder into the Board of Funeral Directors and Embalmers Fund.

## Facilities and Equipment:

The Board leases space in the state-owned building at 1400 West Washington Avenue in Phoenix. Its equipment includes typical office equipment such as furniture, computers, and printers.

## Mission:

“To maintain and enforce a set of standards that provides protection for the health, safety, and welfare of Arizona citizens by educating the consumer and by actively and impartially regulating those licensed to provide funeral goods and services.”

## Board goals:

The Board has established three goals:

1. To ensure that all licenses are only granted and renewed to competent individuals with high standards of professional and ethical conduct.
2. To ensure and enforce that information is made available to both the consumer and the licensee that educates them to the standards of practice relating to providing funeral goods and services.
3. To actively and impartially investigate allegations and complaints and provide enforcement to protect the public from incompetent services and unprofessional, unethical, and illegal conduct.

## Adequacy of performance measures:

While the Board's goals reasonably align with its mission, the 13 performance measures that the Board uses could better reflect the goals. For example:

- To measure its first goal's effectiveness the Board reports the number of licenses issued and denied, which are both output measures. However, an outcome measure, such as the percentage of licensees that the Board disciplines, would better address whether the Board was meeting its goal of licensing only competent individuals who act ethically and professionally.
- For the second goal, the Board uses a measure of the percentage of consumers who receive the Board's brochure. However, the Board cannot accurately measure this outcome. A more feasible outcome measure might be the percentage of funeral establishments that have violations involving consumer-disclosure requirements.
- The third goal's focus on providing fair and impartial investigations is difficult to measure. By rewording this goal to focus it on providing investigations in a timely manner, it would better reflect the efficiency measure that the Board already reports under the third goal.

# SUMMARY

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The Office of the Auditor General has conducted a performance audit and Sunset review of the Arizona State Board of Funeral Directors and Embalmers pursuant to a May 14, 2002, resolution of the Joint Legislative Audit Committee. This audit was conducted as part of the Sunset review process prescribed in Arizona Revised Statutes (A.R.S.) §41-2951 et seq.

The Legislature established the Board in 1945. The Board regulates the funeral industry in order to protect the public from deceptive funeral business practices. The Board has four main areas of responsibility:

- Licensing funeral industry workers and establishments;
- Inspecting establishments to ensure their compliance with state requirements;
- Investigating and adjudicating complaints; and
- Providing the public with the information necessary to make informed choices regarding funeral transactions.

## Board should improve inspections to better protect and inform public (see pages 7 through 12)

The Board's inspection process needs several improvements. Inspections are an important way for the Board to protect consumers from deceptive business practices and monitor funeral establishments' compliance with state laws. The Board inspects nearly all establishments at least once a year, exceeding its statutory requirement to inspect establishments once every 5 years. However, inspections are not carried out consistently, and no system is in place to indicate clearly whether funeral establishments successfully passed their inspections. Procedures are similarly lacking for following up to ensure corrective action and for monitoring inspection results over time. Finally, the Board does not currently make inspection results available to the public, although this information would be helpful to consumers making funeral arrangements. The Board should improve its inspection program by adopting rules and procedures for conducting inspections and follow-up efforts, establishing an inspection

rating system, creating a system to track inspections results, and sharing inspection results with consumers to help them make informed decisions.

## Board should improve complaint handling and investigations (see pages 13 through 17)

Although the Board resolves complaints in a timely manner, staff practices keep some complaints from being considered. When consumers have written letters of complaint, board staff have often waited to open a complaint investigation until the consumer resubmitted the complaint on the Board's official form. In addition, although statute requires the Board itself to resolve every complaint, auditors identified several complaints that staff did not forward to the Board. In one instance, the funeral establishment took action to satisfy the complainant, and the complainant withdrew the complaint, but staff did not forward the complaint to the Board. In two other instances, someone other than the person who entered into the contract had filed complaints against establishments that never reached the Board. In all of these examples, board staff did not allow the Board to determine whether violations had occurred and determine if a licensee should be disciplined. The Board should change these practices.

Problems also exist with how board staff investigate complaints. Incomplete investigations leave the Board with insufficient information to efficiently adjudicate complaints. For example, staff do not identify all potential violations stemming from complaint allegations, do not provide the Board with witnesses' statements, and do not determine whether investigation efforts supported allegations. As a result, the Board spends significant time during its meetings conducting investigational work that it employs staff to do. To help ensure staff investigations are complete, the Board should develop more comprehensive procedures that outline all necessary elements of investigations.

## Other pertinent information (see pages 19 through 21)

During the audit, auditors reviewed information about Arizona's cemetery regulation and how it compares with some other states. The Board does not have any statutory authority over cemeteries, but estimates that it annually receives 10 to 15 cemetery-related complaints, which the Board refers to the Arizona Department of Real Estate (Department). The Department is the only state agency that has statutory authority over the cemetery business; however, it only regulates some aspects such as requiring cemeteries to maintain trust funds to perpetually care for cemetery grounds. It has limited statutory authority over many matters that involve consumer issues, such

as contractual disputes over the quality or delivery of cemetery goods and services. Department staff indicate they nevertheless often help resolve complaints.

There have been efforts across the United States to regulate cemetery business practices in order to protect consumers. The Federal Trade Commission has considered whether to place cemeteries under federal regulation, but it has yet to introduce any trade rules over cemetery business practices due to the relatively low number of complaints. Some other states, which structure cemetery regulation differently, have expanded cemetery regulation to address cemetery goods and services. For example, Maryland and Virginia require cemeteries to provide price lists of cemetery goods and services to consumers who simply inquire about cemetery arrangements.

## Sunset factors (see pages 23 through 28)

Arizona's Sunset Law requires a review of the Board's activities under a set of specific factors, including the need for statutory changes. Auditors identified one area in which the Legislature may wish to consider a statutory change: modifying the requirement that each licensed funeral establishment must have its own embalming preparation room. The requirement, which dates to the Board's establishment in 1945, creates a costly barrier for new establishments and restricts market competition. Further, the requirement that every establishment maintain an embalming preparation room appears outdated in light of the current industry practice of using centralized embalming facilities.

At least eight other states are more flexible and do not require every establishment to have an embalming preparation room. Relaxing this requirement in Arizona could help decrease barriers for new establishments to enter the market. This could in turn decrease costs for consumers.



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# INTRODUCTION & BACKGROUND

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The Office of the Auditor General has conducted a performance audit and Sunset review of the Arizona State Board of Funeral Directors and Embalmers (the Board) pursuant to a May 14, 2002, resolution of the Joint Legislative Audit Committee. This audit was conducted as part of the Sunset review process prescribed in Arizona Revised Statutes (A.R.S.) §41-2951 et seq.

## Regulation of the funeral industry

Both the State of Arizona and the federal government have rules that regulate the funeral industry. This regulation exists for several reasons. After a loved one has died, planning a funeral is often a difficult and emotional experience. Few consumers take the opportunity to compare funeral packages offered by different funeral homes. In addition, a funeral can be expensive, typically costing \$8,000 or more. The Federal Trade Commission (FTC) promulgated the Trade Regulation Rule for Funeral Industry Practices (the Funeral Rule) in 1982 with the intent of better protecting funeral consumers from deceptive and misleading business practices and requiring funeral establishments to provide them with more information to help them make informed decisions. Among the provisions of the Funeral Rule are requirements that funeral establishments give consumers a price list of funeral goods and services, and that establishments cannot embalm a body without prior approval from an authorized person.

Arizona is the only state with an exemption from some federal funeral regulations. The FTC granted Arizona a partial exemption because many of the State's funeral consumer protection laws and rules are equal to or stronger than the federal Funeral Rule. For example, Arizona's administrative rules regarding price disclosures for funeral goods and services mirrors Funeral Rule provisions covering similar areas. When Arizona's requirements are as strong as or stronger than the Funeral Rule, the Arizona provisions are the ones applied to the State's funeral establishments. However, Arizona's funeral licensees are not exempt from some federal provisions relating to misrepresentation and deceptive funeral practices because Arizona law is not as strong as the federal Funeral Rule in these areas. For example, Arizona law does not expressly require establishments to disclose that embalming is not

A typical funeral can cost approximately \$8,000.

Many of Arizona's funeral consumer protection laws are equal to or stronger than the federal regulations.

required. In contrast, the Funeral Rule states that establishments must actively inform consumers that embalming is not required. In such situations, the stricter Funeral Rule applies; however, federal enforcement activities are limited, and Arizona's Board can enforce only Arizona statute and rule.

## Board's duties and responsibilities

**Table 1** Number of Licenses by Type  
As of February 4, 2003

License Type	Number
Establishments	
Funeral establishment	158
Endorsement to sell prearranged funeral arrangements	24
Crematory	<u>42</u>
Total Establishment Licenses	<u>224</u>
Individuals	
Funeral Director	470
Funeral Director at multiple establishments	18
Embalmer	502
Embalmer Assistant	27
Intern	21
Prearranged Funeral Salesperson	28
Cremationist	<u>111</u>
Total Individual Licenses	<u>1,177</u>

Source: Auditor General staff summary of information provided by board staff.

The Board inspects nearly all establishments at least once each year.

The Legislature created the Board in 1945 to license funeral industry workers and establishments. In carrying out the enforcement of Arizona's funeral laws, which do not include the regulation of cemeteries (see Other Pertinent Information, pages 19 through 21), the Board has the following four main responsibilities:

- Licensing**—The Board issues licenses to any individual who advertises or engages in funeral directing, embalming, or cremation within the State, as well as all funeral establishments and crematories. Qualifications for licensees vary. For example, a licensed funeral director must pass either the funeral service arts section (which covers such areas as law, business, and psychology) of the national board examination or the state-equivalent examination, pass the funeral director state laws examination, be of good moral character, have held an active license as an embalmer for at least 1 year, and have assisted in the arranging of at least 25 funerals. As of February 4, 2003, the Board had 1,177 active individual licenses and 224 active establishment licenses.<sup>1</sup> See Table 1 for the number of licensees within each category. The board staff process all applications and annual renewals, collect fees, and conduct criminal history background checks on all applicants.

- Inspections**—Board staff inspect funeral establishments and crematories to ensure compliance with state requirements and also inspect all new establishments prior to issuing a license. Statute requires the Board to inspect every funeral establishment once every 5 years. The Board exceeds this requirement by inspecting nearly all establishments at least once each year.
- Complaint Resolution**—The Board investigates and adjudicates complaints against licensees. The Board receives complaints from consumers and other licensed funeral providers, but it may also initiate a complaint itself if a licensee's actions appear to be in violation of state laws or regulations. In fiscal year 2002,

<sup>1</sup> These totals do not represent the number of individuals or establishments because a single person may hold up to four licenses, and an establishment may have an endorsement to see prearranged funeral agreements.

the Board resolved nine complaints, of which four were dismissed, one resulted in a letter of concern, and four resulted in discipline.

- **Public Information**—The Board provides information to the public in three ways. First, the Board has a brochure that all funeral establishments are required to give to consumers. The brochure contains information such as some of the legal requirements concerning funerals, embalming and cremation requirements, prearranged funeral plans, and how to file a complaint. Second, the Board recently established a Web site, which includes a copy of its brochure, applications for licenses, and links to its statutes and rules. Third, the Board takes calls from consumers, providing them with information about whether a facility currently has a valid license and with its complaint history. Finally, according to board staff, board representatives have spoken to a number of civic organizations about topics related to funeral arrangements.

Funeral establishments must provide consumers with the Board's brochure about making funeral arrangements.

## Staffing and Budget

The Board consists of seven Governor-appointed members who serve 4-year terms. Four of the members are licensed funeral directors or embalmers, and the other three must be members of the public. For fiscal year 2003, the Board is authorized four full-time equivalent (FTE) positions. The staff includes an executive director responsible for operations, a deputy director who conducts investigations, a compliance administrator who inspects funeral establishments and crematories, and an administrative assistant who processes license applications and renewals.

As illustrated in Table 2 on page 4, the Board estimates revenues of approximately \$328,000 for fiscal year 2003 and expenditures of more than \$263,000. The Board's revenue is principally derived from licensing fees. The Board remits all civil penalties and 10 percent of licenses, fees, other fines and forfeits, charges for services, and certain other revenues to the State General Fund, and deposits the remainder into the Board of Funeral Directors and Embalmers Fund.

## Scope and Methodology

Audit work focused on the adequacy of the Board's inspection program and complaint processes. This performance audit and Sunset review includes two findings and associated recommendations:

- To better protect the public, the Board should establish procedures for conducting inspections of funeral establishments, implement a compliance rating system, and make inspection results available to the public (see Finding 1, pages 7 through 12).

Table 2 Statement of Revenues, Expenditures, and Changes in Fund Balance  
Years Ended or Ending June 30, 2001, 2002, and 2003  
(Unaudited)

	2001 (Actual)	2002 (Actual)	2003 (Estimated)
Revenues:			
Licenses	\$284,215	\$349,170 <sup>1</sup>	\$282,200
Interest	16,663	10,459	11,000
Fines, forfeits, and penalties	1,370	2,905	13,100
Charges for services	7,360	5,310	4,500
Other	<u>13,915</u>	<u>14,930</u>	<u>16,900</u>
Total revenues	<u>323,523</u>	<u>382,774</u>	<u>327,700</u>
Expenditures <sup>2</sup>			
Personal services and employee-related	165,296	167,234	180,200
Professional and outside services	36,509	37,544	41,500
Travel	4,018	6,731	9,700
Other operating	25,181	18,986	31,500
Equipment	<u>5,888</u>	<u>445</u>	<u>500</u>
Total expenditures	<u>236,892</u>	<u>230,940</u>	<u>263,400</u>
Excess of revenues over (under) expenditures	<u>86,631</u>	<u>151,834</u>	<u>64,300</u>
Other financial sources (uses):			
Net operating transfers in (out)	(1,104)		
Remittances to the State General Fund <sup>3</sup>	<u>(30,966)</u>	<u>(37,412)</u>	<u>(30,300)</u>
Total other financing uses	<u>(32,070)</u>	<u>(37,412)</u>	<u>(30,300)</u>
Excess of revenues over (under) expenditures and other financing uses	54,561	114,422	34,000
Fund balance, beginning of year	<u>175,422</u>	<u>229,983</u>	<u>344,405</u>
Fund balance, end of year	<u>\$229,983</u>	<u>\$344,405</u>	<u>\$378,405</u>

<sup>1</sup> In 2002, a significant increase in licensing activity caused a corresponding increase in licensing revenue. The increased activity was caused primarily by a change in the licensing structure. For example, the Legislature eliminated the Apprentice Embalmer license and established a Cremationist license.

<sup>2</sup> Includes the prior year's administrative adjustments.

<sup>3</sup> As a 90/10 agency, the Board remits to the State General Fund all civil penalties and 10 percent of licenses, other fines and forfeits, charges for services, and certain other revenues.

Source: Auditor General staff analysis of the Arizona Financial Information System's *Revenues and Expenditures by Fund, Program, Organization, and Object* and *Trial Balance by Fund* reports for the years ended June 30, 2001 and 2002; and financial information provided by the Board for the year ending June 30, 2003.

- The Board should ensure that staff follow written policies to guide initial complaint handling and further develop its complaint investigation procedures to guide staff in preparing comprehensive investigations for the Board's review (see Finding 2, pages 13 through 17).
- This report also contains Other Pertinent Information regarding the regulation of Arizona cemeteries (see pages 19 through 21).

In addition, within the Sunset Factors (see pages 23 through 28), the report recommends that the Legislature modify funeral establishment requirements for licensing.

This audit used a variety of methods to study the issues addressed in this report, including the following:

- To assess the Board's inspection process, auditors observed seven compliance inspections, interviewed board staff who conduct inspections, and reviewed the Board's inspection forms and reports. Auditors interviewed staff at the funeral boards in four states to gain more information about their funeral establishment inspection processes.<sup>1</sup> In addition, auditors reviewed Web sites of five Arizona county and state agencies to determine the availability of inspection data on their Web sites.<sup>2</sup>
- To evaluate the Board's complaint-handling and investigation efforts, auditors interviewed staff, reviewed staff correspondence files related to complaints, and reviewed statutes, rules, and board policies and procedures. Auditors observed five board meetings and reviewed 13 complaint investigation packets that board staff prepared for these meetings. Auditors also examined the Council of State Governments' guidelines for effective investigations by regulatory agencies.
- In order to obtain information on cemetery regulation in Arizona, auditors interviewed staff at the Arizona Department of Real Estate and a representative of the Federal Trade Commission. Auditors also reviewed information regarding the Federal Trade Commission's consideration of expanding federal regulation to include cemetery trade, and consulted Arizona's and other states' statutes and rules regarding cemetery regulation.

This audit was conducted in accordance with government auditing standards.

The Auditor General and staff express appreciation to members of the Board of Funeral Directors and Embalmers, the executive director, and staff for their cooperation and assistance throughout the audit.

<sup>1</sup> Auditors interviewed funeral service regulatory board staff in Maryland, North Carolina, Texas, and West Virginia. Auditors selected these states from a review of other states' statutes that indicated the existence of funeral establishment inspection programs. These states included Alabama, Arkansas, Delaware, Florida, Iowa, Maryland, Minnesota, Nebraska, New Hampshire, New Jersey, New Mexico, North Carolina, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Washington, West Virginia, and Wisconsin.

<sup>2</sup> Auditors were aware of inspection programs in the following agencies and reviewed their Web sites for the posting of inspection results: the Arizona Department of Health Services' Assurance Licensure Service (Office of Long Term Care), the Arizona Department of Weights and Measures, the Maricopa County Environmental Services Department, the Pima County Health Department, and the Mohave County Department of Health and Social Services.



# FINDING 1

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## Board should improve inspections to better protect and inform public

Inspecting funeral establishments is an important way for the Board to protect consumers from deceptive business practices and to ensure worker safety. Although the Board does not have adequate records that auditors could verify, the Board believes inspections have enhanced compliance. However, the current process could use improvement in several respects. The Board lacks procedures for keeping inspections consistent, for indicating how well establishments are complying with requirements, and for following up when problems are found. The Board could better protect consumer interests and improve the inspection process by adopting rules and procedures for conducting inspections, establishing an inspection rating system, making the inspection follow-up process more consistent, and making inspection results available so that consumers can make informed decisions.

### Inspections cover six areas concerning compliance

Arizona statute requires the Board to inspect every funeral establishment once every 5 years. The Board instituted a more systematic inspection program in 1999 and it now inspects nearly all establishments at least once a year. The Board's inspector uses a six-page checklist to guide the inspection of six main areas:

- **General information on the establishment and all licensees who work there**—The inspector should verify the names of all licensed personnel and check that establishments properly display all licenses.
- **The display of funeral goods**—This includes ensuring that there is nothing deceptive or misleading about casket display and pricing. For example, inspectors should check that establishments appropriately display the individual casket prices.

- **Establishment policies on obtaining permission to embalm**—The inspector should confirm, for example, that funeral establishments disclose to consumers that embalming is not required for direct burials or cremations.
- **General price list**—The inspector should review an establishment’s general price list of funeral goods and services to ensure that it contains state-required items, including an itemization of charges for caskets or alternative containers, the price of embalming services, and charges for hearse or limousine use.
- **Prearranged funeral sales**—This should include ensuring that an establishment’s prearranged funeral trust agreement includes the required consumer disclosure about where money will be deposited in trust.
- **Embalming preparation room**—The inspector should check that the appropriate equipment is present and the room is maintained in a sanitary manner.

## Improvements needed in inspection process

Auditors found three main problems with the Board’s current inspection and follow-up process. First, the Board’s current checklist is not sufficient to ensure that inspections consistently cover everything they should. Second, the Board has no system to consistently convey these inspection results. Third, the Board does not have adequate rules and procedures for following up on inspections and tracking results over time. The Board needs to make improvements in all three areas.

**Shortcomings of inspections indicate need for improved procedures**—Although the Board’s inspector uses a checklist when conducting inspections, the Board has never adopted any guidelines for employing the checklist to ensure the consistency of inspections from one establishment to another. This lack of instruction can lead to instances where the inspector may miss problems that directly affect consumers. Auditors accompanied the Board’s inspector on seven inspections and identified the following improvements to address inconsistencies:

- **Closer visual examination needed**—The inspector should visually inspect displays and facilities to ensure compliance. However, at one funeral establishment the inspector did not examine the casket price display to verify the required individual price listing. Rather, the inspector relied on the funeral director’s word that the display was in compliance. Auditors observed that the price shown inappropriately packaged other funeral goods and services with the casket price, instead of listing the price of the casket as an individual item.
- **Documentation should be obtained**—The inspector should obtain policies, procedures, and forms that prove that establishments require their staff to make

The Board has no guidelines for using the inspection checklist.

proper disclosures, and obtain authorization from appropriate people as the law requires. During all seven inspections, auditors observed that the inspector did not actually obtain copies of any establishment's policies or procedures on how staff obtain authorization to embalm from the appropriate authorizing agent. Instead, the inspector relied on the funeral director's word that the funeral establishment secures permission to embalm.

- **File review guidelines needed**—The inspector should also review a small number of files to ensure that establishments followed certain mandatory procedures such as obtaining appropriate authorizations for funeral services and having a licensed funeral director sign each contract. Inspectors should have a clear understanding of what documents to examine in the establishment's client files when reviewing these records. The inspector's checklist does not provide guidance for reviewing files or designated space to record the review's results. Further, auditors observed two inspections during which the inspector did not review files.

Since the completion of audit work, board staff have started revising the inspection checklist. For example, the checklist now includes a section that addresses reviewing establishment case files, thus giving more guidance to the inspector about what documents to review. Staff have also begun developing a broader set of inspection guidelines that provide more explicit instruction for completing an inspection.

**System needed to determine compliance and convey inspection results**—The Board has not developed a standard to determine whether an establishment passes an inspection. The Board should adopt an administrative rule to define inspection standards and identify violations that cause noncompliance as part of its statutory obligation to establish rules about inspections. Because some violations have a greater impact on consumers or the workers' safety, the Board should assign greater weight to more serious violations in determining whether an establishment passes inspection.

Once these standards are set, the Board should implement a compliance rating system for funeral establishments and adopt this system in administrative rule. Any rating system the Board develops should be easy for consumers to understand, and it should allow consumers to compare results among establishments. This system should clearly indicate whether a violation could affect consumers, such as deceptive merchandise displays, or whether a violation concerns worker safety, such as an unsanitary embalming preparation room. In developing this rating system the Board could draw from systems used by other agencies. One option is a simple pass-or-fail grade that merely differentiates between establishments that are either in compliance or not. For example, the Maryland Board of Morticians has a simple yes/no

Current inspections are inconsistent and may miss problems that directly affect consumers.

A compliance rating system should allow consumers to compare results among establishments.

determination at the end of its inspection report. Another option is to adopt a grading system that indicates levels of compliance, similar to what some county health departments use when inspecting restaurants.

**Follow-up procedures are insufficient**—The Board also needs to improve efforts to monitor noncompliant establishments. The Board has no written guidelines regarding inspection follow-up procedures and does not compile or track inspection results. As a first step, the Board should establish time frames for establishments to correct violations noted during an inspection. The Board should incorporate these time frames into administrative rule so that establishments know what is required of them to be in compliance. The rule regarding time frames should also describe potential actions the Board may take if an establishment failed to correct violations in a timely manner.

Besides establishing time frames for corrective action, the Board should establish internal written procedures for inspection follow-up efforts and develop an inspection tracking system. Procedures should, for example, specify when a follow-up inspection is required, or when an establishment can simply submit photographs or other documents to prove the correction of violations identified during an inspection. An inspection tracking system would allow inspectors to review previous inspections before conducting a new inspection and monitor the inspection history of each establishment. It would also allow the Board to track and check the status of corrections to violations. Such a tracking system could also help facilitate sharing inspection results with the public. During the audit's course, board staff started developing follow-up procedures for the Board to consider adopting. Additionally, staff have designed and piloted a computerized database to track inspections.

Knowledge of inspection results could help consumers make more informed decisions in selecting a funeral establishment.

## Board should make inspection results public

After establishing the compliance rating system, the Board should make this information available to the public. Although the Board has been working on a format to communicate these results, it does not yet have anything in place. Completing these efforts is important. By sharing inspection results with the public, the Board could further help consumers in making informed decisions about funeral arrangements. Depending on the extent of the resources it has available, the Board could choose one or more of the following approaches:

- **Provide information over the phone**—At a minimum, the Board should develop and implement a policy that requires staff to provide inspection results to consumers over the phone. Board staff currently provide callers with information about whether an establishment has a valid license and its complaint history, but

do not share inspection results. In contrast, West Virginia's Board of Funeral Service Examiners makes inspection information available to those who call the Board's office.

- **Use the Board's Web site**—The Board uses its Web site to make its brochure available and also incorporates other information such as its statutes and rules. It could also make inspection information available, as several Arizona state and county agencies do for other types of establishments. For example, the Department of Health Services' Office of Long Term Care makes nursing home inspection information available through the Department's Web site.
- **Require establishments to post inspection results**—The posted notice could simply state the establishment's rating from the last inspection, or it could consist of the entire inspection report. For example, Maryland's Board of Morticians currently requires funeral establishments to publicly display a letter from the Board showing that the funeral establishment passed the inspection. Requiring the posting of inspection results would require the Legislature to change statute.

Since the audit's completion, the Board updated its consumer brochure to inform consumers that they can contact the Board for inspection results. The Board will distribute the updated brochures in 2 to 3 months once it exhausts its current stock.

## Recommendations

1. The Board should improve inspection procedures to ensure that the inspection process is consistent across establishments. The procedures should include guidelines for appropriate methods to use in determining compliance with state requirements, specifically:
  - a. When an inspector should make a visual examination of the premises;
  - b. When the inspector should obtain supporting documentation; and
  - c. How to conduct a file review.
2. The Board should adopt an administrative rule that defines a standard for whether an establishment is in compliance at the end of an inspection.
3. The Board should implement a rating system that is understandable to consumers and describes the violations of funeral establishments, and adopt this system in administrative rule.
4. The Board should develop administrative rules and procedures that govern the inspection follow-up process. These should include:
  - a. Time frames for correcting deficiencies;
  - b. The circumstances under which the Board may open a complaint against an establishment in order to take disciplinary action as the result of an inspection; and
  - c. Methods for verifying correction of violations.
5. The Board should implement a system for tracking the results of compliance inspections.
6. The Board should develop and implement a policy that requires staff to make inspection results available to the public via the telephone. If resources are available, the Board should also make results available on its Web site or at establishments.

# FINDING 2

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## Board should improve complaint handling and investigations

Although the Board completes complaint investigations in a timely manner, current procedures for processing and investigating complaints are not adequate in several respects. The staff's current procedures for handling complaints have caused several complaints not to reach the Board for consideration. Further, the investigations that staff have prepared for board consideration are incomplete and result in an inefficient use of the Board's time and resources. The Board should ensure that it receives all complaints for consideration and should take steps to improve the investigation process.

According to the Board's complaint log, 12 complaints were received in fiscal year 2002. The Board most commonly receives complaints of unprofessional services, which involve allegations of a funeral establishment treating a funeral consumer insensitively or not being responsive to a consumer's particular needs or requirements concerning funeral arrangements. For example, a consumer may complain that visitation preparations were insufficient. The Board also receives some complaints about poor-quality embalming, which can impact the appearance of the deceased.

### Complaint-handling and adjudication process

According to statute, the Board is required to investigate all potential violations received in writing. The Board has delegated complaint investigations to staff and has developed procedures for written complaints that fall within the Board's jurisdiction.

At a board meeting, the Board performs an initial review of a complaint to determine whether there are grounds for disciplinary action. The Board may conclude at this point that no violations occurred and dismiss the complaint. If the Board determines

that discipline may be necessary, it may request an informal interview with the licensee at a future board meeting or issue a notice of formal hearing. The Board generally prefers informal interviews and has not held a formal hearing in recent years. When conducting an informal interview, the Board considers the actions of, and consequently may discipline, individual licensees as well as the licensed funeral establishment or crematory that employs the individual licensee.

At the conclusion of an informal interview, the Board may dismiss a complaint, issue a letter of concern to a licensee, or take any or all of the following disciplinary options:

- Issue a letter of censure or reprimand.
- Impose probationary terms, including temporary suspension for not more than 30 days, restrictions on the licensee's right to practice, and restitution to the complainant.
- Impose a civil penalty of not more than \$1,000 for each violation by an individual and not more than \$3,000 for each violation by an establishment.
- Assess the licensee for administrative costs and expenses associated with the complaint investigation and informal interview.

The staff investigator takes an average of 81 days to investigate a complaint for the Board's initial review of the complaint and an average of 144 total days for the Board to resolve complaints at an informal interview. These average time frames are within the 180-day standard established in previous Auditor General regulatory board reports. In fiscal year 2002, the Board resolved nine complaints about funeral establishments. The Board dismissed four of these complaints, issued a letter of concern for one complaint, and imposed discipline on licensees in four complaints.

## Some consumer concerns do not reach the Board

Although the Board resolves complaints in a timely manner, staff actions sometimes limit the public's access to the Board. Statute requires consumers to submit complaints in writing, but when consumers have written letters of complaint, staff have often waited to open an investigation until the consumer completes the Board's official complaint form. If a consumer calls the Board with a complaint or writes a letter of complaint, staff send the complainant the Board's complaint form to complete and return. According to board staff, some consumers complete the form while others do not, but staff do not track the number of complaint forms sent out to callers or letter writers. Providing the Board's complaint form to consumers who call is an appropriate way for board staff to encourage consumers to submit a written complaint.

The Board resolved nine complaints in fiscal year 2002.

However, it is inappropriate for staff to wait before opening an investigation until a consumer who has already written a letter resubmits the complaint on the Board's form. In these instances, the form can serve as an obstacle for some consumers to have the Board hear their concerns. The Board should ensure that staff open complaint investigations upon receiving complaints written either as letters or on the Board's form.

In addition to requiring consumers to submit complaints on the Board's complaint form, board staff also do not forward all consumer complaints to the Board for disposition. Although statute requires the Board itself to decide if a complaint constitutes a violation and may warrant discipline, auditors identified several complaints that staff never forwarded to the Board to make such decisions. For example, in one instance, the funeral establishment took action to satisfy a complainant, the complainant withdrew the complaint, but staff did not forward the complaint to the Board. While the complainant received compensation and was satisfied, this practice does not allow the Board to determine whether a violation had occurred and take action to prevent possible future violations. In two other instances, someone other than the person who entered into the contract complained about establishments, and staff did not forward the complaints to the Board. Regardless of who files a complaint, board staff need to forward complaints to the Board so it can decide if a violation occurred and determine if a licensee should be disciplined.

## Investigations need improvement

In addition to ensuring that staff follow initial complaint-handling procedures, the Board should require investigation staff to conduct complete investigations. Currently, investigations are incomplete and do not provide sufficient information for the Board to efficiently adjudicate complaints. For example, auditors reviewed 13 complaint investigations and found three cases in which staff did not identify all potential violations. Consequently, the Board spends a significant amount of time during its meetings gathering additional information and identifying additional potential violations that staff could have identified had the investigation been more thorough. The example on page 16 illustrates the incompleteness of staff investigation efforts.

To help ensure complete staff investigations, the Board should develop more comprehensive procedures and ensure that staff follow them. Specifically, the procedures should require board staff to:

- Specify all potential violations stemming from allegations to provide the Board with sufficient information to decide a case. If staff, rather than the Board, identify all laws potentially violated, the Board can more efficiently adjudicate complaints and determine disciplinary actions.

Incomplete investigations leave the Board with insufficient information to efficiently adjudicate complaints.

A complete investigation should determine whether complaint allegations were substantiated.

### Example:

In one case, a consumer complained that two funeral establishments failed to communicate about transporting a deceased person, which significantly worsened the condition of the body. Board staff identified one potential violation of the rule regarding unprofessional services. However, the Board itself identified an additional violation while taking testimony at a board meeting. The Board learned that the funeral director in charge of one of the establishments was not on-site at the time of the complaint incident and had not appointed another licensed funeral director to serve on his behalf during his absence, as required by statute. The Board determined that this funeral director failed to ensure an intern was appropriately supervised. This intern underestimated the condition of the deceased and made the arrangements to transport the body prior to embalming. In addition, board staff did not document whether the investigation supported the complaint allegations, which hampered the Board's ability to efficiently decide the facts of the case. Further, because staff did not obtain a complete statement from an important witness, details that this witness could have provided about making the transportation arrangements were unavailable for the Board's consideration.

- Clearly indicate whether the investigation supported complaint allegations. Auditors reviewed 13 complaint information packets provided by staff and noted that board staff do not indicate whether the investigation supported the complainant's allegations. Instead, staff prepare reports that summarize the complainant's concerns and the licensee's response, but do not draw a conclusion from the evidence provided.
- Interview and take statements from witnesses to include in the Board's complaint information packet. Although Board procedures require witnesses to be interviewed, of the 13 complaint packets reviewed, only 1 included witness statements taken by staff. Instead, staff usually depend on the willingness of witnesses to write their own statements or attend a board meeting to address the Board in person, believing it is better to have witnesses express themselves in their own words. However, when witnesses write their own statements, they may not address the case's essential points as the investigator would. Further, if a witness fails to write a statement and does not attend the hearing, the Board will not have the witnesses' information.
- Obtain the licensees' complete documentation prior to the Board's review of a complaint. Board staff request funeral establishments to provide all documents related to the complaint. However, according to board staff, not all establishments comply with the request and, in particular, frequently fail to provide the establishments' case file notes that record consultations with family of the

deceased. Auditors' review of the 13 complaint information packets noted that, in 3 complaints directly related to the funeral establishment's communications with the complainants, the establishments' case file notes were not included in the Board's information packet. If licensees fail to provide all pertinent records requested by board staff during the investigation, staff should use the Board's statutory authority to subpoena these documents.

Since the audit's completion, board staff issued a subpoena for records in one case in which the licensee failed to provide case file notes. Additionally, staff now expressly request case file notes in the form letter used to obtain complaint-related documentation from the licensee. Staff have also drafted revised procedures that address the use of subpoenas to obtain investigation records.

## Recommendations

1. The Board should ensure that staff follow established procedures for complaint handling. Specifically, staff should:
  - a. Open complaint investigations upon receiving complaints written either as letters or on the Board's complaint form; and
  - b. Ensure all written complaints are forwarded to the Board for final disposition.
2. The Board should further develop its complaint investigation procedures to instruct and guide staff in preparing complete investigations for the Board's review, and the Board should ensure that staff follow the procedures. The procedures should require staff to:
  - a. Identify all potential violations;
  - b. Determine whether the investigation supported complaint allegations;
  - c. Take witnesses' statements during interviews; and
  - d. Obtain all necessary records for a complete investigation and use subpoenas as appropriate.



# OTHER PERTINENT INFORMATION

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During the audit, auditors reviewed information about cemetery regulation in Arizona and how it compares to some other states. The Funeral Board estimates that it receives approximately 10 to 15 consumer complaints about cemeteries each year. Because the Funeral Board has no statutory authority over cemeteries, board staff refer consumers with cemetery concerns to the Arizona Department of Real Estate (Department). The Department is the sole state agency with statutory authority over cemetery matters. Although not all cemetery consumers act on the Board's referral, the Department also reports receiving approximately the same number of consumer complaints regarding cemeteries annually. These complaints generally concern such issues as cemetery upkeep, pre-arranged burial contracts, and failure to install cemetery goods, such as grave markers, in a timely manner.

Among the small number of cemetery complaints the Department receives annually, however, department staff estimate that only one or two complaints actually fall within the Department's jurisdiction. The Department has limited authority in cemetery matters that directly affect consumers. Most significantly, the Department has no statutory authority to regulate cemetery goods and services, and therefore cannot intervene in contractual disputes regarding the delivery or quality of goods and services.

Additionally, the Department has no statutory authority over how cemeteries maintain their grounds on a daily basis. However, despite the Department's limited authority, department staff report that they routinely make courtesy calls to cemeteries on behalf of consumers, and this oftentimes helps resolve complaints in the consumers' favor.

Statute centers the Department's regulatory authority over cemeteries on the following efforts:

- **Issuing certificates of authority to transact cemetery business**—The Department issues a certificate of authority to transact cemetery business to applicants that meet criteria outlined in statute. There is a fee of \$500 to apply for certification, and there is no annual renewal fee. However, not all cemeteries must hold certificates of authority. Religiously affiliated, municipal, and certain fraternal organizations' cemeteries are exempt from state regulation. While the Department

The Arizona Department of Real Estate oversees Arizona's cemetery business practices.

Arizona statute does not provide for the regulation of cemetery goods and services.

estimates that there are approximately 100 cemeteries in the State, it has authority over only 39 of them.

- **Accepting cemetery plan amendments from certificate holders**—Once a cemetery obtains a certificate of authority, it must notify the Department when it makes any material change to its cemetery plan, such as building a new mausoleum. A fee of \$500 is charged for a certified cemetery to register a cemetery plan amendment with the Department.
- **Licensing cemetery brokers and salespersons**—The Department licenses cemetery brokers and salespersons to expressly sell cemetery plots. Cemetery broker and salesperson applicants must pass an examination on cemetery business practices, land sales transactions, and state laws on the regulation of cemeteries, cemetery brokers, and cemetery salespersons. Additionally, cemetery broker applicants must have at least 3 years' experience as a cemetery salesperson, or licensed real estate salesperson or broker. However, any licensed real estate agent may also engage in cemetery sales. According to Department staff, if a person who sells cemetery plots works for a cemetery that is exempt from the Department's regulation, that individual is exempt from licensure. The Department had a combined total of 278 active cemetery brokers and salespersons as of January 22, 2003.
- **Auditing perpetual care trust funds**—Approximately once every 5 years, the Department conducts audits of cemeteries with endowed trusts for cemetery maintenance and operation. These audits are conducted to verify that the trust funds exist and ensure that cemeteries are making appropriate deposits from plot and burial space sales into the trust fund. Department staff attempt to audit newly certified cemeteries within the first year of operation. Statute requires cemeteries certified after January 1, 1998, to maintain perpetual care trusts. Certified cemeteries operating prior to January 1, 1998, must establish a trust fund only if they make a material change to their cemetery plans. According to department staff, approximately 28 of the 39 certified cemeteries in the State maintain these trusts.

In comparison to the Department's responsibilities to register real estate development projects, and license and audit real estate brokers and salespersons, the volume of the Department's cemetery-related work is minimal. For example, while the Department received 1,690 development-related applications in fiscal year 2002, it received only 7 cemetery certification applications and three cemetery plan amendments in the last 4 fiscal years. Likewise, the Department's 278 active cemetery brokers and salespersons represent only 0.6 percent of the Department's active licensees.

## Nation-wide efforts to regulate cemeteries

There have been efforts across the United States to regulate cemetery business practices in order to protect consumers. For several years, the Federal Trade Commission has been considering whether to place cemeteries under federal regulation. However, the Federal Trade Commission, like Arizona, has found relatively few cemetery complaints. Because the Commission must document the pervasiveness and prevalence of a problem to justify the cost of regulation, it has yet to introduce any trade rules over cemetery business practices.

Like Arizona, other states have licensing and trust fund monitoring responsibilities over cemeteries, but some states have structured cemetery regulation differently and adopted regulation of cemetery goods and services. For example, Maryland, New York, and Virginia have established cemetery oversight agencies and boards that collect annual fees from cemeteries to support regulation efforts. Like Arizona, each of these states' statutes requires cemeteries within their jurisdiction to maintain perpetual care trust funds; however, unlike Arizona, each of these states also requires cemeteries to submit annual financial reports of these trusts. New York's state law, for example, requires cemeteries to post price lists of cemetery property in their business offices. Maryland and Virginia laws require cemeteries to provide such price lists to not only buyers, but also to consumers who simply inquire about cemetery arrangements, and these lists must also include the prices of cemetery services, such as opening and closing gravesites. Virginia law also prescribes a form on which pre-arranged burial contracts must be made.

In contrast to Arizona, some other states regulate cemetery goods and services.



# SUNSET FACTORS

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## 1. The objective and purpose in establishing the agency.

The Legislature established the Arizona State Board of Funeral Directors and Embalmers in 1945. The Board's mission is to maintain and enforce a set of standards that provides protection for the health, safety, and welfare of Arizona citizens by educating the consumer, and by actively and impartially regulating those licensed to provide funeral goods and services. In order to carry out this mission the Board:

- Issues licenses to anyone who advertises or engages in funeral directing, embalming, or cremation. As of February 4, 2003, the Board had 1,177 active individual licenses and 224 active establishment licenses.<sup>1</sup>
- Investigates complaints and disciplines licensees for violating statute or rule.
- Inspects funeral establishments to ensure compliance with state requirements.
- Provides the public with information about funeral laws and business practices through a consumer brochure, telephone assistance, and the Board's Web site.

## 2. The effectiveness with which the agency has met its objectives and purpose and the efficiency with which it has operated.

The Board has met some of its objectives and purpose with effectiveness and efficiency, but it could improve in some areas. While administrative rule provides the Board 110 days to issue most of its licenses, the Board issues most licenses in fewer than 41 days. In addition, the Board takes an average of 144 days to resolve complaints, which is within the 180-day standard established in previous Auditor General regulatory board reports.

<sup>1</sup> These totals do not represent the number of individual persons or establishments, however, as a single person may hold up to four licenses, and an establishment may have an endorsement to sell prearranged funeral agreements.

Despite the timeliness of licensing and complaint resolution, the Board could improve the effectiveness of its inspections (see Finding 1, pages 7 through 12). Specifically, the Board should improve formal guidelines for conducting routine and follow-up inspections to ensure consistent inspections across establishments, implement an inspection tracking system, and develop a compliance rating system to consistently convey inspection results. Further, the Board should share inspection results with the public to help consumers make informed decisions about funeral arrangements.

In addition, to further improve the efficiency of board operations, the Board should develop better procedures to guide staff investigations (see Finding 2, pages 13 through 17). Because complaint investigations performed by staff have been incomplete, the Board has insufficient information to efficiently adjudicate complaints.

**3. The extent to which the agency has operated within the public interest.**

The Board has largely operated in the public interest. The Board's licensing of practitioners helps ensure that licensees are qualified and professional. Through a Board-produced brochure distributed at all funeral establishments, telephone assistance, and its Web site, the Board advises consumers of their rights and helps them make more informed decisions about funeral arrangements. According to board staff, board representatives have also provided consumers with information through speaking engagements at numerous civic organizations. Additionally, the Board's inspection program helps protect consumers from misleading and deceptive funeral practices. The Board conducts inspections of nearly all licensed funeral establishments at least once a year.

Opportunity exists, however, for improvement in some areas. The Board should improve the inspection program by making inspection results available to the public (see Finding 1, pages 7 through 12). In addition, to improve consumer access to the Board, board staff should open complaint investigations for all written complaints received and forward these to the Board for resolution (see Finding 2, pages 13 through 17).

**4. The extent to which rules adopted by the Board are consistent with the legislative mandate.**

At the request of Auditor General staff, the Governor's Regulatory Review Council (GRRC) reviewed the Board's statutory requirements for promulgating rules and determined that the Board has adopted most but not all of the rules required by statute. In particular, GRRC noted that the Board has no rules related to inspections of funeral establishments and crematories. Audit work conducted

on the Board's inspection process (see Finding 1, pages 7 through 12) further supports the need for rules to address the inspection process. Specifically, the Board should establish in rule how inspectors rate compliance in establishments. Further, rules should outline the time frame that licensees have to correct deficiencies identified by the inspector, the steps the Board may take to verify improvements, and the consequences of noncompliance.

The Board completed a 5-year review of its rules in January 2002 and identified several rules to revise. The Board has since started the process of amending its rules regarding some general provisions, such as hearing procedures, as well as some licensing provisions and continuing education requirements. The Board filed a notice with the Secretary of State's Office in February 2003 to begin the rulemaking process.

**5. The extent to which the Board has encouraged input from the public before adopting its rules, and the extent to which it has informed the public of its actions and their expected public impact.**

The Board adheres to statute by publishing notices in the Arizona Administrative Register as a means of notifying the public of proposed rules and soliciting feedback. According to staff, the Board has also contacted professional entities involved in or impacted by the Board's rules and mailed them copies of proposed rules. As part of the process of adopting rules in 2000 regarding licensing time frames, the Board held meetings in Phoenix, Flagstaff, and Tucson to explain the proposed rules and obtain input from the public.

Additionally, the Board appears to use executive session appropriately. The Board has recently filed with the Secretary of State the required statement of where meeting notices will be posted. However, the Board should ensure that notices appear at all designated locations at least 24 hours in advance of the meeting. Further, in order to avoid any appearance of conflict of interest on the part of a board member, staff should note in the meeting minutes when a board member recuses him/herself from a vote.

**6. The extent to which the Board has been able to investigate and resolve complaints that are within its jurisdiction.**

The Board has sufficient statutory authority and disciplinary options to investigate and adjudicate complaints within its jurisdiction. The Board resolved nine complaints in fiscal year 2002. The Board most commonly receives complaints involving unprofessional services, which involve insensitive or disrespectful treatment of a funeral consumer or the deceased. The types of discipline the Board

can impose on licensees include civil penalties, probation, reprimand, censure, and license suspension and revocation.

**7. The extent to which the Attorney General or any other applicable agency of state government has the authority to prosecute actions under the enabling legislation.**

A.R.S §32-1306 authorizes the Attorney General's Office to represent the Board in all legal actions and proceedings, including prosecution. In addition to the disciplinary actions that the Board may take against licensees who commit violations, the Board may also prevent any person from engaging in any act that violates board statutes and rules in one of two ways: the Board may issue a cease and desist order, or it may seek an injunction in a superior court through the Attorney General or a county attorney. One assistant attorney general currently advises the Board on legal matters during board meetings.

**8. The extent to which the Board has addressed deficiencies in its enabling statutes which prevent it from fulfilling its statutory mandate.**

The Legislature repealed the Board's statutes in 1998 and approved new statutes to address numerous deficiencies in the Board's statutes. The changes included establishing standards for funeral establishment operation, pre-arranged funeral agreements, clarifying license qualifications, crematory requirements, and disciplinary processes. More recent statutory changes have further enhanced the Board's ability to fulfill its statutory mandate. For example:

- Laws 2002, Chapter 190 established licensure requirements for persons who perform cremation of human remains. The changes outlined the license application process, prescribed a licensing fee, and clarified the responsibility of the individual who manages a crematory to ensure compliance with state law.
- Laws 2002, Chapter 168 expanded the disciplinary actions that the Board may take against funeral establishments, including censure, probation, and civil penalties. Previously, the Board could only revoke or temporarily suspend the license of an establishment. The changes also clarified that the Board considers any violation committed by an agent or employee of an establishment to be a violation committed by the employing establishment.

9. **The extent to which changes are necessary in the laws of the Board to adequately comply with the factors listed in the Sunset law.**

Auditors identified an area in which a statutory change could eliminate a barrier to marketplace competition in the funeral services industry. Currently, A.R.S. §32-1382 requires each licensed funeral establishment to have an embalming preparation room. This requirement, which dates to the Board's creation in 1945, creates a barrier for new establishments to enter the market, and thereby limits competition. The Legislature should consider modifying this requirement by requiring that any establishment that offers embalming must have a preparation room or access to one. Having access to a preparation room could mean access to another establishment under the same ownership or a contractual agreement with another funeral establishment. Establishments that do not offer embalming would not be subject to this requirement. The Auditor General made a similar recommendation in its last performance audit in 1983.

Arizona's embalming preparation room requirement is costly and acts as a barrier to new competition. Establishments can spend anywhere between \$10,000 and \$35,000 on embalming equipment and building space for the preparation room. These increased costs are then passed along to consumers in the form of higher funeral prices. However, in today's funeral services market, many funeral establishments do not need to have their own in-house preparation rooms because they provide embalming services through other establishments. For example, one corporation owns 24 establishments in Phoenix, but embalms at only 5 of these facilities. Similarly, of the five establishments this corporation owns in Tucson, one establishment provides embalming services for all Tucson locations. However, every one of these establishments is required by law to have a preparation room.

In contrast to Arizona, several other states are more flexible in their requirements for preparation rooms. In a review of 23 other states' laws and rules, auditors identified eight states (Arkansas, California, Florida, Maryland, Texas, Utah, Washington, and West Virginia) that do not require preparation rooms in every establishment.<sup>1</sup> Four states require only establishments that offer embalming to have access to a preparation room, either in-house or at a separate location. The four other states allow establishments under the same management to share embalming facilities, usually if they are within a specified geographic distance of one another.<sup>2</sup>

<sup>1</sup> Auditors reviewed the statutes of the following states: Alabama, Arkansas, California, Delaware, Florida, Iowa, Maryland, Minnesota, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Washington, West Virginia, and Wisconsin. Auditors selected these states by reviewing section titles of other states' statutes and identifying the several states with section titles that distinctly addressed license requirements for funeral establishments.

<sup>2</sup> The four states that require only access to an embalming preparation room are Arkansas, Florida, Maryland, and Washington. The four states that allow establishments under the same management to share embalming facilities are California, Texas, Utah, and West Virginia. In practice, Texas does require all establishments to have a preparation room, as they do not currently grant exemptions to this requirement.

Additionally, as discussed in Finding 1 (see pages 7 through 12), if the Board elects to require funeral establishments to post inspection results, the Board would have to seek a statutory change to add this requirement.

**10. The extent to which termination of the Board would significantly harm the public health, safety, or welfare.**

Without the Board's regulatory and enforcement activities that ensure funeral establishment compliance with state law, the public could be subject to unprofessional, deceptive, or misleading business practices. Because funeral consumers often do not comparison shop for this costly and infrequent purchase, and it is a purchase made at a time of significant emotional distress, they are more susceptible to these problems. Therefore, terminating the Board would harm the public's welfare because there would be a gap in regulatory oversight to protect consumer economic interests.

**11. The extent to which the level of regulation exercised by the agency is appropriate and whether less or more stringent regulation would be appropriate.**

The Board appears to exercise an appropriate amount of regulation through its enforcement of Arizona law, with the exception of its statutory requirement for funeral establishments to have an embalming preparation room (see Sunset Factor 9, page 27).

**12. The extent to which the Board has used private contractors in the performance of its duties and how effective use of private contractors could be accomplished.**

The Board does not currently hold any private contracts, and auditors did not identify any uses for private contractors.

# AGENCY RESPONSE

Office of the Auditor General  
Debra K. Davenport  
2910 N. 44<sup>th</sup> Street Suite 410  
Phoenix Arizona 95018

April 28, 2003

Dear Ms. Davenport,

Pursuant to the Auditor General's findings and recommendations, the Arizona State Board of Funeral Directors and Embalmers submit the attached responses for your review. The conduct and professionalism displayed by representatives of your agency is to be commended. The Board appreciates the consideration given in terms of down time and minimum loss of consumer service provided by your staff. The Arizona State Board of Funeral Directors and Embalmers ultimate goal is to provide the best possible service to residents of this state. The audit performed by your staff will assist in creating a more effective and efficient agency benefiting both consumer and licensee alike.

Sincerely,

Rodolfo R. Thomas  
Executive Director

## **AUDITOR GENERAL FINDING 1**

### **Recommendation 1**

Improvements needed in inspection process

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Agency Response: The finding of the Auditor General is agreed to and the findings will be implemented.

Voluntary compliance and education of licensees is the Boards goal. The increase in the number of inspections should facilitate these efforts.

Statutory guidelines mandate the inspection of all funeral establishments and crematories at least once every five years. In July of 2000 an Inspector was appropriated and the effort to provide consumers with optimum funeral services began. Prior inspections though sporadic, provided an experimental base of which to improve upon. The Board has developed a detailed checklist, which precludes guesswork by the inspector ensuring that every area of compliance is evaluated. This initial modified form will be continually revised to meet the recommendations of the Auditor General' Office. The inspecting official while utilizing the modified checklist will be required to take closer visual inspection and not rely on the responses of the licensee. Documentation randomly gathered by the inspector will be scrutinized for accuracy, authorization and compliance. The General Price List and Statement of Goods and Services shall be reviewed for containment of necessary disclosures and accurate pricing as indicated in the modified checklist. A compliance/inspection guideline has been created with procedures that are synergetic to the checklist in an effort to identify deficiencies and protect consumers. The checklist is to be utilized on every inspection per established guidelines. Modifications of the checklist and guidelines will be made accordingly and reflect continuity and directions for the compliance administrator. This initial form will also be revised and updated to ensure effectiveness and efficiency in this area.

## **AUDITOR GENERAL FINDING 1**

**Recommendation 2** - The Board should adopt an administrative rule that defines a standard for whether an establishment is in compliance at the end of an inspection.

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Agency Response: The finding of the Auditor General is agreed to and the findings will be implemented.

The Board's notice of proposed rulemaking was February 28, 2003. This provides an excellent opportunity for revisions concerning the standard for establishment compliance upon conclusion of an inspection. The modified rating system and Compliance Checklist should enhance the

standard for determining whether an establishment is in compliance after an inspection. The inclusion of this finding shall be applied to the rule making process

#### **AUDITOR GENERAL FINDING 1**

**Recommendation 3** – The Board should implement a rating system that is understandable to consumers and describes the violations of funeral establishments, and adopt this system in administrative rule.

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Agency Response: The finding of the Auditor General is agreed to and the findings will be implemented.

The Board has included in the checklist six areas of concern and the maximum achievable percentage rating obtained through evaluation by the inspector. One hundred is the maximum amount of percentile that an establishment may obtain. Through visual inspection, deficiencies found by the inspector will be documented on the checklist. Each deficiency will create a negative adjustment to the total score for each establishment. The Board will determine the methodology for the rating system and advise all licensees. After determination by the Board of the rating system, the licensee will be advised of passing or failure of the inspection. The computerized compliance tracking system additionally provides space for a description of any violations or deficiencies and the date corrections made. Lastly, the licensee is also notified in writing of violations and when corrections are acceptable. The inclusion of this finding shall be applied during the rule making process.

#### **AUDITOR GENERAL FINDING 1**

**Recommendation 4** – The Board should develop administrative rules and procedures that govern the inspection follow-up process.

Agency Response: The finding of the Auditor general is agreed to and the findings will be implemented.

The Board has created guidelines for time frames for correcting deficiencies, normally thirty days. The circumstances under which the Board may open a complaint against an establishment in order to take disciplinary action as the result of an inspection are additionally included in guidelines. Board has included many of the guidelines provided in A.R.S. 41-0009 as a template in obtaining the best results from inspections. The inclusion of these findings shall be applied during the rule making process.

### **AUDITOR GENERAL FINDING 1**

**Recommendation 5** – The Board should implement a system for tracking the results of compliance inspections.

Agency Response: The finding of the Auditor General is agreed to and the finding will be implemented.

The Board has created a system for monitoring the results of inspections. The program recently implemented and installed on the Funeral Board database monitors discrepancies and contains pertinent dates. Additional information such as the date of corrections and method of verifying corrections is provided in the system. The inspection data also indicates status of an inspection including the percentage obtained as a result of the inspection. Lastly, included in the system is a means of obtaining the results of all compliance visits by indicating time parameters of compliance visits conducted. Again, time frames and Board rules for disciplinary action will be included in rules.

### **AUDITOR GENERAL FINDING 1**

**Recommendation 6** – The Board should make inspection results available to the public via the telephone and inform the public about the availability of this information through its consumer brochure. If resources are available, the Board should also make results available on its Web site or at establishments.

Agency Response: The finding of the Auditor General is agreed to and the finding will be implemented.

The programming utilized for monitoring compliance/inspections results for the two years of enhanced inspections was in developmental stages and subsequent recommendation provided by the evaluation of the Auditor Generals Office has been implemented. The brochure has been modified to include the statement “Additionally, establishment complaint history and inspection results can be obtained by contacting this office”. Future brochures will inform the public of these services and will be distributed immediately. Relative to providing this information on the Web site, current resources preclude the Board from implementing this recommendation at this time. However, in the future when appropriations become available, the recommendation of including this consumer information on the Web site will be considered.

**AUDITOR GENERAL FINDING 2**

**Recommendation 1** – Board should ensure that staff follow established procedures for complaint handling.

Agency Response: The finding of the Auditor General is agreed to and the recommendations will be implemented.

The Board has in the past stressed the importance of having a State Board Complaint Form completed and forwarded by the complainant. Additionally, the Board has previously received complaints written on stationary other than Board Complaint forms and processed the complaint without receipt of official forms. This practice was not intended to discourage or hamper the process but provide all pertinent documentation required in the completion of a thorough investigation. In these instances, an official complaint form was mailed to the complainant while the investigation continued. This Board will investigate and forward all complaints to the Board for disposition. Additionally, procedures and guidelines for complaint investigations has been revised and implemented based upon Auditor General recommendations. These procedures will be continually updated and revised to ensure that all recommendations by the Auditor General are completed. Included in the procedures are guidelines for ensuring that all complaints will be forwarded to the Board for disposition.

**AUDITOR GENERAL FINDING 2**

**RECOMMENDATION 2** - The Board should further develop its complaint investigation procedures to instruct and guide staff in preparing complete investigations for the Board’s review, and the Board should ensure that staff follow the procedures.

Agency Response: The finding of the Auditor General is agreed to and the recommendations will be implemented in sub-category 2 (a).

The Auditor General finding indicates that the Board should identify all potential violations. This Board has always attempted to review and provide all possible violations for disposition by Board. The Board will place additional emphasis on determining the possible violations for all disciplinary phrases of the investigation.

Agency Response: The finding of the Auditor General is agreed to and the recommendation will be implemented in sub-category 2(b).

The Auditor General's finding recommended that the Board should determine whether the investigation has supported complaint allegations. The Board agrees with the finding in so much as staff should support all allegations. However, the Board should make its own determination on the merits of each complaint and not be tainted or prejudiced by the staff investigative response. The Board's concern is that complaints identified as being substantiated by staff will impede with the process and further taint the Board's disposition. The Board investigative staff as indicated previously shall provide all potential violations and conduct a thorough investigation for final disposition by Board members. All allegations will be supported with proper documentation.

Agency Response: 2 © The finding of the Auditor General is agreed to and the recommendation will be implemented.

The Auditor General Finding recommends that the Board take witnesses statements during interviews. The Board has in fact taken witness statements during interviews however not specifically indicated as such in the report. The procedures now included in the investigation guidelines mandate interviews and statements be included in the report and have been additionally noted on correspondence to both complainants and licensee.

Agency Response: 2(d) The findings of the Auditor General is agreed to and the recommendation will be implemented.

The Board shall include in the investigations, case file management notes and any other fragments or written material contributing directly or indirectly to the case. Additionally, complaint history will be provided for Board review. The investigative guidelines also include the procedures to be followed. The Board has and will always utilize subpoenas powers for investigative processes and these guidelines as with previously mentioned procedures shall be revised and updated to meet recommendations stated by the Auditor General's Office.

## **AUDITOR GENERAL FINDING SUNSET FACTORS**

**RECOMMENDATION 9** - The requirement for a new establishment to contain a preparation room creates a barrier and unnecessarily creates increased costs to the consumer.

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Agency Response: The finding of the Auditor General is not agreed with and the agency will not implement or seek to implement any changes in this requirement.

The core purpose of a funeral establishment license in the State of Arizona is to provide to the consumer offerings of their choice as to the disposition of a loved one. It is a reasonable assumption of a consumer that an establishment can provide to them a full choice of offerings concerning their care.

The requirement of a functioning preparation room is both reasonable and necessary in providing this care. If a body is prepared at a sight away from the establishment and a problem occurs with

the body, it is reasonable to expect that a consumer could have that problem resolved in a timely manner. It would not be in public health interests to not have the necessary equipment and area to perform these procedures on sight and immediately. It is a requirement that each establishment employ a licensed responsible funeral director to comply with statutes and rules that apply to the industry of both federal and state laws. In the State of Arizona a licensed funeral director must also be a licensed embalmer.

Statutes at this time do not require that these embalming facilities be used but that they must be functional and operative. Many establishments in the state utilize service centers where they centralize preparation procedures. In our findings these centralized preparation facilities do not reduce the cost to the consumer. In fact the opposite may be the case. The cases stated in the findings of the Auditor General's report in both Maricopa County and Tucson have some of the highest costs for these professional services to the consumer yet the economies of scale would suggest the opposite.

A chain of custody is necessary to determine if a licensee is complying with not only our statutes and rules, but also the requirements of many governmental agencies. Some of these agencies include EPA and OSHA. They include the tracking of hazardous waste and the use of protective equipment that both protect the individual and the consuming public.

In the State of Arizona over 50 percent of the dispositions is cremation. This does not preclude a consumer from desiring services that require embalming. A large percentage of the deaths in our state are shipped to a decedent's state of residence. Embalming in these cases is almost always required for shipping purposes. Embalming and the ability to embalm at a funeral establishment is a fundamental requirement for licensure.

The analogy may be used that when a consumer enters a restaurant for service he assumes that the licensed restaurant has a kitchen and that the kitchen is inspected and functional. He may order only a salad and not anything from the grill or oven yet it is reasonable to expect that those services are available if desired. The costs attributable to the cost of the menu items have more to do with location, size, décor, ambiance and other factors than the size and functionality of the kitchen.

As to an agency we feel that the statutes and rules that we have provide a reasonable and functional way to protect and serve the consumers of this state. We support the way requirements are now constituted. The three or four other states that have different requirements do not necessarily reflect the needs and practices that this state mandates to protect its consumers and licensees.

## Performance Audit Division reports issued within the last 12 months

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<b>02-01</b>	Arizona Works	<b>02-11</b>	Department of Health Services—Health Start Program
<b>02-02</b>	Arizona State Lottery Commission	<b>02-12</b>	HB2003 Children’s Behavioral Health Services Monies
<b>02-03</b>	Department of Economic Security—Kinship Foster Care and Kinship Care Pilot Program	<b>02-13</b>	Department of Health Services—Office of Long Term Care
<b>02-04</b>	State Parks Board—Heritage Fund	<b>03-01</b>	Government Information Technology Agency—State-wide Technology Contracting Issues
<b>02-05</b>	Arizona Health Care Cost Containment System—Member Services Division	<b>03-02</b>	Registrar of Contractors
<b>02-06</b>	Arizona Health Care Cost Containment System—Rate Setting Processes	<b>03-03</b>	Water Infrastructure Finance Authority
<b>02-07</b>	Arizona Health Care Cost Containment System—Medical Services Contracting		
<b>02-08</b>	Arizona Health Care Cost Containment System—Quality of Care		
<b>02-09</b>	Arizona Health Care Cost Containment System—Sunset Factors		
<b>02-10</b>	Department of Economic Security—Division of Children, Youth and Families, Child Protective Services		

## Future Performance Audit Division reports

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Department of Commerce

Electric Deregulation