

# **MORTUARIES AND FUNERAL FACILITIES ACT, 1998 (ACT 563)**

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### **THE FIVE HUNDRED AND SIXTY-THIRD**

### **ACT**

### **OF THE PARLIAMENT OF THE REPUBLIC OF GHANA**

### **ENTITLED**

### **THE MORTUARIES AND FUNERAL FACILITIES ACT, 1998**

AN ACT to establish a Board to control and regulate facilities connected with the storage and disposal of human remains, register practitioners and to provide for related matters.

DATE OF ASSENT: 30TH DECEMBER, 1998.

BE IT ENACTED by Parliament as follows—

## PART I—ESTABLISHMENT AND FUNCTIONS OF THE BOARD

### Section 1—Establishment of Board.

- (1) There is established by this Act a body corporate to be known as the National Board for Mortuaries and Funeral Facilities referred to in this Act as "the Board".
- (2) The Board shall have perpetual succession, a common seal and may sue and be sued in its own name.
- (3) The Board may for the discharge of its functions acquire and hold any movable or immovable property and may enter into any contract or other transaction.

### Section 2—Object and Functions of Board.

- (1) The object of the Board is to control and regulate facilities connected with the storage and disposal of human remains.
- (2) For the purpose of subsection (1) of this section, the Board shall—
  - (a) regulate facilities under this Act;
  - (b) approve and register practitioners;
  - (c) determine basic specifications of equipment for facilities;
  - (d) ensure in the public interest the provision of the highest standard of service by practitioners;
  - (e) regulate the siting of facilities in the country;
  - (f) issue licences;
  - (g) categorise the various facilities for handling human remains and classify them in accordance with their storage capacity;
  - (h) establish, develop, and maintain ethics for practitioners;
  - (i) approve or set courses of study and examinations for the qualification of applicants for registration in collaboration with such educational institutions as it may determine;
  - (j) promote public education activities with respect to this Act;
  - (k) supervise and monitor activities of the District Committees under this Act;
  - (l) act as mediator of complaints between consumers and practitioners;
  - (m) determine and approve fees payable under this Act by practitioners and licensees;
  - (n) control and monitor the standard of service for storage and disposal of human remains in government institutions and advise the Minister accordingly; and
  - (o) perform such other functions as are ancillary to the object of the Board.
- (3) The Board may delegate its functions under this Act.

### Section 3—Composition of Board.

The Board shall consist of the following persons appointed by the President acting in consultation with the Council of State<sup>¾</sup>

- (a) a Chairman who shall be a pathologist;
- (b) an anatomic pathologist working in a government institution who shall be the Registrar;
- (c) one representative each of the following, nominated by the body concerned<sup>¾</sup>
  - (i) the Ministry of Interior;
  - (ii) the Criminal Investigation Department of the Ghana Police Service;
  - (iii) the Registry of Births and Deaths;
  - (iv) the Attorney-General's Department;
  - (v) the Environmental Protection Agency;
- (d) one coroner nominated by the Chief Justice;
- (e) three representatives of practitioners under this Act; and
- (f) two other persons nominated by the Minister to represent consumer interest at least one of whom shall be a woman.

### Section 4—Tenure of Office of Members of the Board.

- (1) Members of the Board shall hold office for a term of four years and eligible for re-appointment.
- (2) A member of the Board may resign his office in writing addressed to the President through the Minister.
- (3) Where the office of a member of the Board becomes vacant before the expiration of his term of office for any reason, the Chairman shall inform the Minister who shall notify the President of the vacancy and the President shall acting on the advice of the nominating authority where applicable and in consultation with the Council of State appoint another person to hold office for the unexpired portion of his term of office.
- (4) The President may in writing remove a member for stated reasons.
- (5) A member of the Board shall be paid such allowances as may be determined by the Board with the approval of the Minister for Finance.
- (6) A member of the Board who is absent from three consecutive meetings of the Board without sufficient cause shall cease to be a member.

### Section 5—Meetings of Board.

- (1) The Board shall meet for the transaction of business at such times and places as the Chairman may determine but shall meet at least once every three months.

(2) The Chairman shall preside at each meeting of the Board and in his absence a person elected by the membership of the Board present from among their number shall preside.

(3) The Chairman shall at the request in writing of not less than one-third of the membership of the Board convene an extraordinary meeting of the Board at such place and time as he may determine.

(4) A decision of the Board shall be by the majority of the members present and voting and in the event of equality of votes the Chairman or person presiding shall have a casting vote.

(5) The quorum for a meeting shall be seven members of the Board.

(6) The Board may co-opt a person to attend a Board meeting but the person shall not vote on any matter for decision by the Board.

(7) The proceedings of the Board shall not be invalidated by reason of a vacancy among the members or a defect in the appointment or qualification of a member.

(8) A member of the Board who has an interest in a contract or other transaction proposed to be entered into with the Board or any application before the Board shall disclose in writing to the Board the nature of his interest and shall be disqualified from participating in any deliberations of the Board in respect of the contract, application or other transaction.

(9) A member who infringes subsection (8) of this section is liable to be removed from the Board.

(10) Subject to the provisions of this section the Board shall regulate the procedure for its meetings.

#### Section 6—Appointment of Committees.

The Board may for the discharge of its functions appoint committees consisting of members of the Board or non-members or both to perform such of its functions as it may determine, except that a committee composed entirely of non-members may only advise the Board.

#### Section 7—Minister to give Directives.

The Minister may issue directives in writing to the Board on matters of policy and the Board shall give effect to the policies.

### PART II—DECENTRALISED MANAGEMENT OF FACILITIES

#### Section 8—Composition of District Committee.

(1) There shall be established in each district a District Mortuary and Funeral Facilities Committee referred to in this Act as "a District Committee".

(2) A District Committee shall comprise the following members in the respective district—

(a) the District Director of Health Services who shall be the chairman;

(b) the District Coroner;

(c) the District Police Commander;

(d) two representatives of the District Assembly;

- (e) the district representative of the Registrar for Births and Deaths;
  - (f) the District Town and Country Planning Officer;
  - (g) one representative of practitioners in the district registered under this Act nominated by the District Chief Executive; and
  - (h) one female citizen nominated by the District Chief Executive to represent Consumer interests.
- (3) The members of a District Committee shall be appointed by the Board.

#### Section 9—Functions of a District Committee.

- (1) A District Committee shall in the respective district have the following functions<sup>3/4</sup>
- (a) receive and consider applications for licences under this Act;
  - (b) renew licences under this Act;
  - (c) recommend to the Board the siting of facilities and hold public hearings on the issue where necessary;
  - (d) inspect and monitor facilities;
  - (e) submit a report of any contravention of the provisions of this Act to the Board within 14 days of becoming aware of the contravention;
  - (f) carry out temporary closure of facilities and report the closure to the Board;
  - (g) submit to the Board such reports as it shall direct; and
  - (h) perform any other duties and functions for the purposes of this Act as the Board may determine.
- (2) A District Committee in the exercise of its functions shall collaborate with the Sub-Committee of the District Assembly.
- (3) the provisions of sections 4 and 5 shall apply with such modifications as may be necessary to a District Committee.

#### Section 10—Petitions from District Committees.

- (1) A Person aggrieved by any decision or action of a District Committee may submit a petition to the Board.
- (2) The provisions of this section are without prejudice to any right of action to obtain redress from the courts.

### PART III—REGISTRATION OF PRACTITIONERS

#### Section 11—Registration of practitioners.

No person shall operate in a facility as a practitioner unless that person is registered under this Act.

#### Section 12—Application for Registration.

A person seeking registration to practise in a facility shall apply in the prescribed form to the Registrar of the Board through the relevant District committee.

#### Section 13—Qualification of Practitioners.

- (1) Where the Board is satisfied that the applicant has adequate relevant training and qualification it shall direct the Registrar to record the name of the applicant in the register of practitioners.
- (2) The Registrar shall issue the applicant with a certificate of registration on the payment by the applicant of the prescribed fee.
- (3) A person issued with a certificate under subsection(2) of this section shall be known as a practitioner for the purpose of this Act.
- (4) Registration under this Act shall be in addition to registration required under any other law for the time being in force in respect of his practice.
- (5) The certificate of registration shall expire on the 31st day of December in the year of issue.
- (6) The certificate may be renewed subject to the provisions of this Act.

#### Section 14—Register of Practitioners.

- (1) The Registrar shall record in a register to be known as the Register of Practitioners the names of practitioners registered under this Act.
- (2) The Board shall determine the registration fee to be paid by practitioners.

#### Section 15—Cancellation of registration.

- (1) A certificate of a practitioner shall be cancelled by the Board on the recommendations of the Registrar where the practitioner—
  - (a) has been convicted of an offence under this Act or regulations made under this Act;
  - (b) has breached any of the terms of the licence for the facility; or
  - (c) has lost the qualification on the basis of which the registration was made.
- (2) A certificate of a practitioner shall be cancelled if the Board considers it necessary in the interest of public health.

#### Section 16—Suspension of Registration.

- (1) The Board may suspend for such period as it may determine the registration of a practitioner in any of the following circumstances where—
  - (a) an offence in relation to the practitioner is being investigated;
  - (b) allegations of misconduct have been made against the practitioner;
  - (c) a false declaration has been made in a certificate issued by him; or
  - (d) the practitioner has contravened but has not been convicted of any provision of this Act.

(2) The Board shall conduct and conclude its investigation within a period of six months from the time of suspension of the practitioner.

#### Section 17—Representation to the Board.

No registration shall be cancelled or suspended unless the Board has given the practitioner at least 30 days notice of its intention to cancel or suspend his registration and has provided the practitioner an opportunity to make representations, if any, to the Board.

### PART IV—LICENSING OF FACILITIES

#### Section 18—Licence of Facility

(1) No person shall own or operate a facility unless that facility is licensed under this Act.

(2) Facilities to which subsection (1) of this section apply are <sup>3</sup>/<sub>4</sub>

(a) cold storage facilities for human remains;

(b) mortuaries;

(c) funeral homes;

(d) crematoria;

(e) columbariums;

(f) mausoleums;

(g) cemeteries; and

(h) hearses

(3) There shall be prescribed in regulations made under this Act the details of the services to be rendered by the facilities specified in subsection (2) of this section.

#### Section 19—Application and Conditions for a Licence.

(1) A person may apply to a District Committee for a licence to own or operate a facility.

(2) There shall be attached to the application<sup>3</sup>/<sub>4</sub>

(a) a preliminary approval from the District Planning Authority of the relevant District Assembly of the suitability of the land or premises to be used for the facility;

(b) the block plan of the facility;

(c) the requisite clearance from the Environmental Protection Agency; and

(d) evidence of financial capability for the ownership or operation of the facility applied for.

(3) No licence shall be granted to an applicant unless the District Committee is satisfied that—

(a) the past or present conduct of the person concerned with the operation of the facility provides reasonable grounds to believe that the applicant will operate in accordance with this Act;



(b) the applicant or managing employee of the applicant has the experience or training to manage the facility in accordance with this Act;

(c) the applicant has submitted a plan of the facility;

(d) the applicant is able to provide the resources and equipment required to manage the facility; and

(e) any other requirement specified by the Board has been complied with.

(4) For the purposes of this Act “a person concerned with the operation of the facility” in subsection (3)(b) means—

(a) the applicant;

(b) an officer or director of the facility;

(c) a person holding more than 10 per cent of the equity shares of the facility or an officer or director of that person; or

(d) any person who has a beneficial interest in the operation of the facility.

#### Section 20—Issue and Renewal of Licence.

(1) Where a District Committee is satisfied that an applicant qualifies under subsection (3) of section 19 and has fulfilled all other conditions required under this Act, it shall make the necessary recommendation to the Board which may issue the licence.

(2) The licence shall expire on the 31st day of December of the year of issue and may be renewed subject to the provisions of this Act.

(3) There shall be paid by the applicant in respect of the licence and any renewal of it such fee as the Board may prescribe and no licence or renewal shall be issued unless the relevant fee has been paid.

#### Section 21—Revocation of Licence.

A District Committee may refuse to renew a licence to own or operate a facility if<sup>3/4</sup>

(a) The conduct or situation of the licensee is such as to disqualify him from being granted a licence

(b) the licensee is a body corporate and the shareholding of the body has changed in such a way as to compromise the financial ability or technical competence or both; or

(c) a District Committee has reasonable grounds to believe that the continued operation of the facility by the licensee will—

(i) create risk to public health, safety or is indecent; or

(ii) result in a social or financial loss to members of the public because of non-compliance with the provisions of this Act.

#### Section 22—Notice of Refusal to Renew Licence.

Where a District Committee intends to refuse to renew a licence, the District Committee shall give the applicant or licensee<sup>3/4</sup>

- (a) a notice of intention to refuse;
- (b) reasons for the intention to refuse; and
- (c) all opportunity to make representation to the Board.

#### Section 23—Representation to the Board.

- (1) An applicant or licensee who receives a notice under section 22 may make a representation to the Board within fifteen days from the date of receipt of the notice of refusal.
- (2) Where no representation is made under subsection (1), a District Committee may refuse to renew a licence or may recommend the revocation of the licence, after the time specified under subsection (1) of this section has expired.
- (3) Where representation is made under this section the affected facility shall not operate until the case is determined by the Board.

#### Section 24—Power of Entry and Inspection.

- (1) Subject to subsection (2) of this section a person authorised by a District Committee may at any time enter—
  - (a) any licensed facility used for the storage and disposal of human remains;
  - (b) any premises suspected by the authorised person to be used for the storage and disposal of human remains.
- (2) Where an authorised officer enters any place by virtue of subsection (1) of this section he shall inspect as applicable—
  - (a) the facility including plant and equipment;
  - (b) the licence, registers and books of the facility;
  - (c) the registration certificate of any practitioner;
  - (d) the premises; and make recommendations to a District Committee.
- (3) The inspector shall at the request of the person in charge of the facility or premises produce his authorisation.
- (4) The Board shall cause each licensed facility to be inspected at least once a year.
- (5) A police officer not below the rank of Assistant Superintendent may enter any facility or any premises if he has reasonable cause to believe that an offence with respect to this Act has been or is being committed there.
- (6) A District Committee may order the closure of a facility in the presence of a police officer if it is considered to be in the public interest to do so.

Section 25—Obstruction of Inspector.

No person shall obstruct an authorised inspector in the conduct of his duty under this Act.

## PART V—BURIAL GROUNDS

Section 26—Authorised Burial Grounds.

(1) No person shall bury the human remains of any person in any place other than in a burial ground authorised under this Part.

(2) A burial ground authorised under this Part shall be registered with the District Committee.

Section 27—District Assemblies to Provide Burial Grounds.

Each District Assembly shall on the advice of its District Committee provide public burial grounds for the burial of human remains or corpses in the area of authority of the District Assembly.

Section 28—Private Burial Grounds.

(1) A District Assembly may on the advice of its District Committee license as a private burial ground any parcel of land which a person may wish to set aside as a private burial ground.

(2) There shall be attached to a licence issued under subsection (1) of this Section such conditions as the District Assembly shall in consultation with its Sub-Committee determine.

Section 29—Exhumation.

(1) The Board through the Minister and in consultation with the relevant District Assembly may apply to the coroner to order the exhumation of any human remains and removal of the human remains to a place it shall direct.

(2) Subject to the provisions of the Coroners Act, 1960 (Act 18) no person shall exhume or after burial remove any human remains except under sub-section (1).

## PART VI—STAFF, FINANCIAL AND MISCELLANEOUS PROVISIONS

Section 30—Registrar and his Functions.

(1) There shall be appointed by the President in accordance with the advice of the Board given in consultation with the Public Services Commission, a Registrar of the Board.

(2) The Registrar shall be responsible for the day-to-day administration of the Board and shall be answerable to the Board in the discharge of his functions.

(3) The Registrar shall keep up-to-date records of registered practitioners and licensed facilities under this Act.

(4) The Registrar shall as approved by the Board, issue and renew the registration certificates of practitioners.

(5) The Registrar shall perform such other functions as the Board may determine.

(6) The Registrar may delegate any of his functions to another officer of the Board but he shall not be relieved from ultimate responsibility for the discharge of any delegated function.

#### Section 31—Administrative Secretary.

(1) There shall be appointed by the President in accordance with the advice of the Board given in consultation with the Public Services Commission an Administrative Secretary of the Board.

(2) The Administrative Secretary shall assist the Registrar in the exercise of his functions and shall be the secretary to the Board.

#### Section 32—Appointment of Staff.

(1) The Board shall have such other officers and staff as may be necessary for the proper and effective performance of its functions.

(2) The staff of the Board shall perform such functions as the Registrar may assign to them.

(3) The President shall in accordance with the advice of the Board given in consultation with the Public Services Commission and on such terms and conditions as he may determine appoint the staff of the Board.

(4) The President may in accordance with article 195 (2) of the Constitution delegate the power of appointment of the public officers under this Act.

(5) The Board may engage the services of such consultants and advisers as it may upon the recommendation of the Registrar determine.

(6) Other public officers may be transferred or seconded to the Board or may otherwise give assistance to it.

#### Section 33—Funds of the Board.

The funds of the Board shall include<sup>3/4</sup>

- (a) money approved by Parliament for the Board;
- (b) grants and loans received through Government;
- (c) fees received by the Board in the discharge of its functions, and
- (d) donations.

#### Section 34—Accounts and Audit.

(1) Board shall keep books of account and proper records in relation to them and the account books and records of the Board shall be in a form approved by the Auditor-General.

(2) The books of account of the Board shall be audited by the Auditor-General or by an auditor appointed by him within three months of the end of the immediately preceding financial year.

(3) The financial year of the Board shall be the same as the financial year of the Government.

#### Section 35—Opening of Bank Account.

The Board may with the approval of the Accountant-General open and operate bank accounts.

#### Section 36—Annual Reports.

- (1) The Board shall, within six months of the end of the financial year, submit to the Minister an annual report of the activities and operations of the Board in respect of the preceding year.
- (2) The annual report shall include a copy of the audited accounts together with the Auditor-General's report and the Minister shall within two months after receipt of the annual report submit the report to Parliament with such comments as he considers necessary.
- (3) The Board shall also submit to the Minister such other reports as the Minister may in writing require.

#### Section 37—Offences.

A person who<sup>3/4</sup>

- (a) practises in a facility without registering as a practitioner under this Act, contrary to section 11;
- (b) uses a facility for services other than what it is licensed for;
- (c) fails to license a facility contrary to section 18;
- (d) makes a false declaration in pursuance of an application for registration or for a licence under this Act;
- (e) having failed to renew his registration or licence operates the facility contrary to sections 13 and 20;
- (f) obstructs an inspector appointed under this Act contrary to section 25;
- (g) obstructs a District Committee from implementing the closure of a facility;
- (h) disregards safety regulations made under this Act;
- (i) pollutes the environment in the course of his operations under this Act;
- (j) accepts, releases or disposes of human remains contrary to this Act or any regulations made under this Act;
- (k) buries human remains in a place other than an authorised burial ground contrary to section 27 or 28;
- (l) exhumes or after burial removes any human remains contrary to section 29; or (m) contravenes any other provision of this Act;

commits an offence and is liable on summary conviction to a fine not exceeding €10 million cedis or imprisonment for a term not exceeding 2 years or to both and the court may order temporary or permanent closure of the facility, if any, concerned.

#### Section 38—Regulations.

The Minister may by legislative instrument make regulations—

- (a) for the supervision and inspection of facilities;
- (b) prescribing the standards of sanitary, safety and security arrangements of a facility;
- (c) specifying details and method of rendering services by facilities;
- (d) for the management, accommodation and equipment of a facility;
- (e) for the preparation and storage of chemical agents and human remains;
- (f) for the procedures to disinfect facilities and prevent infection;
- (g) prescribing the records and statistics to be kept in respect of human remains;
- (h) prescribing the registers to be kept in the facilities in respect of human remains;
- (i) regulating the admission and discharge of corpses;
- (j) prescribing the hours of work, working conditions and number of staff to be employed in a facility;
- (k) relating to—
  - (i) embalming;
  - (ii) cremation;
  - (iii) exportation,
  - (iv) importation;
  - (v) burial and
  - (vi) exhumation of human remains;
- (l) for generally carrying into effect the provisions of this Act.

#### Section 39—Interpretation.

In this Act unless the context otherwise requires <sup>3</sup>/<sub>4</sub>

“anatomic pathologist” means a person with relevant qualification and training to make diagnosis of disease from the gross and microscopic examination of tissues and cells removed during surgery, by biopsy or during postmortem examination;

"Board" means the National Board for Mortuaries and Funeral Facilities;

“burial ground” means land set aside to be used for the interment of human remains and includes a mausoleum, cemetery, columbarium or other structure intended for the interment of human remains or cremated human remains;

“cold storage facility” means a building with refrigeration equipment for storage of human remains;

“Columbarium” means a structure designed for the purpose of interring cremated human remains in sealed compartment;

“crematorium” means a building or structure fitted with appliances for the purpose of cremating human remains, a place or site used for burning human remains and anything used in connection with cremation;

“district” means the area of authority of a District Assembly and includes a municipality and metropolis;

“District Assembly” includes Municipal and Metropolitan Assembly;

“District Committee” means a District Committee on Mortuary and Funeral Facilities;

“embalment” means the preservation and disinfection of all or part of a human body by any means other than refrigeration;

“facility” includes a cold store for human remains, mortuary, funeral home, crematoria, cemetery, columbarium, mausoleum and a hearse;

“funeral home” means premises with or without cold storage facility for dead bodies where funeral services are supplied;

“hearse” means a mechanically propelled vehicle registered for the purpose of carrying or transporting human remains with or without a coffin;

“human remains” means a body of a deceased person or still born child and includes any part or remains of a body or still born child or any part of a body removed in the course of surgical operation;

“mausoleum” means a building or structure other than a columbarium used as a place of interment of human remains in sealed crypt or compartment;

“Minister” means the Minister responsible for Health;

“Ministry” means the Ministry for Health;

“mortuary” means a building with equipment for autopsy and cold storage where human remains are kept until disposal;

"pathologist" means a person with relevant professional qualification and training to make diagnoses of disease from specimen removed from patients;

"practitioner" means any person with relevant training and qualification acceptable by the Board registered to operate under this Act and includes an anatomic pathologist, anatomic pathology technician, undertaker, embalmer, cremator and sexton;

“premises” includes any house, building, structure, tent, caravan, land, ship, boat, aircraft;

"Registrar" means the Registrar appointed under this Act;

"Sub-Committee" means the Social Services Sub-Committee or the Environmental Management Sub-Committee of a District Assembly.

Section 40—Repeal and Savings.

(1) Part V of the Registration of Births and Deaths Act, 1965 (Act 301) is hereby repealed.

(2) Notwithstanding the repeal of the Part specified in subsection (1) any burial ground in use under the provisions of the Part is hereby continued in existence but subject to the provisions of this Act.

Date of Gazette Notification: 5th February, 1999.