

UNAPPROVED
VIRGINIA BOARD OF FUNERAL DIRECTORS AND EMBALMERS
MEETING MINUTES

The Virginia Board of Funeral Directors and Embalmers convened for a board meeting on Tuesday, June 3, 2008 at the Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 200, 2nd Floor, Conference Room #2, Richmond, Virginia.

The following Board members were present:

Willard D. Tharp
Walter S. Ball
Rev. Yvonne Jones Bibbs
Robert B. Burger, Jr.
Billie Watson Hughes
Michael Leonard
Randolph T. Minter
Barry Murphy

DHP staff present for all or part of the meeting included:

Lisa R. Hahn, Executive Director	Leith Ellis, Inspector, Enforcement Division
Sandra Whitley Ryals, Director	Lynne Helmick, Inspector, Enforcement Division
Elaine Yeatts, Senior Policy Analyst	Marta Ishmael, Inspector, Enforcement Division
Annie B. Artis, Licensure Operations Manager	Rashaun K. Minor, Discipline Operations Manager
Kathy Truesdale, Compliance Case Manager	Sammy Johnson, Deputy Director, Enforcement Division
Mykl Egan, Adjudication Specialist	Faye Lemon, Director, Enforcement Division
William C. Garrett, Assistant Attorney General	Shannon Roberson, Enforcement Division
Wayne Halbleib, Assistant Attorney General	
Jennifer Challis, Inspector, Enforcement Division	

Representative from the Office of the Attorney General was present for the meeting:

Amy Marschean, Senior Assistant Attorney General

Guest Present:

Bo Kenney, Association of Independent Funeral Homes of Virginia (IFHV)
David Partridge, Regulatory Support Services, Inc. (RSS)
Frank Robinson, Virginia Mortician's Association, (VMA)

CALLED TO ORDER

Mr. Tharp, President, called the Board meeting to order at 9:04 a.m.

INTRODUCTION OF NEW STAFF MEMBER

Ms. Hahn introduced Ms. Truesdale to the Board. She stated Ms. Truesdale is a temporary employee who has been hired as an administrative assistant to help with disciplinary and compliance cases. Ms. Hahn stated that she has worked with Ms. Truesdale in the past and she comes to the board with a wealth of experience.

ORDERING OF AGENDA

The agenda was modified: the Agency Director's Report will come before the Legislative and Regulatory Report and the Board of Health Professions Report was added under new business.

Upon a motion by Ms. Hughes and properly seconded by Mr. Murphy the Board voted to accept the agenda as modified.

The members voting yes were Mr. Ball, Mr. Burger, Ms. Hughes, Mr. Leonard, Mr. Minter, Mr. Murphy, Mr. Nelsen, and Mr. Tharp. There were no negative votes.

Rev. Bibbs had not arrived.

The vote passed unanimously.

ACCEPTANCE OF MINUTES

Upon a motion by Ms. Hughes and properly seconded by Mr. Murphy the Board voted to accept the minutes of the March 4, 2008 board meeting as amended.

The members voting yes were Mr. Ball, Mr. Burger, Ms. Hughes, Mr. Leonard, Mr. Minter, Mr. Murphy, Mr. Nelsen and Mr. Tharp. There were no negative votes.

Rev. Bibbs had not arrived.

The vote passed unanimously.

PUBLIC COMMENT PERIOD

There was no public comment.

The Agency Director, Ms. Ryals, had not arrived; therefore, the Legislative and Regulatory Report was given by Ms. Yeatts.

Legislative and Regulatory Update – Elaine Yeatts

Regulatory Update

Ms. Yeatts informed the Board that the regulations are in the Governor's office and are at the final stage for approval. She further stated that the proposed Crematory regulations are also in the Governor's office awaiting approval.

Revision of Guidance Documents

Ms. Yeatts gave a brief overview of the guidance documents. The Board members discussed each document and voted on them individually.

Guidance Document 65-3 – Funeral Apprenticeships

Upon a motion by Mr. Burger and properly seconded by Ms. Hughes the Board voted to repeal Guidance Document 65-3.

The members voting yes were Mr. Ball, Mr. Burger, Ms. Hughes, Mr. Leonard, Mr. Minter, Mr. Murphy, Mr. Nelsen, and Mr. Tharp. There were no negative votes.

Rev. Bibbs had not arrived.

The vote passed unanimously.

Guidance Document 65-4 – Inspection Report

Upon a motion by Mr. Burger and properly seconded by Mr. Murphy the Board voted to repeal Guidance Document 65-4.

The members voting yes were Mr. Ball, Mr. Burger, Ms. Hughes, Mr. Leonard, Mr. Minter, Mr. Murphy, Mr. Nelsen and Mr. Tharp. There were no negative votes.

Rev. Bibbs had not arrived.

The vote passed unanimously.

Guidance Document 65-6 Apprenticeship Application

Upon a motion by Ms. Hughes and properly seconded by Mr. Minter the board voted to repeal guidance Document 65-6.

The members voting 'yes' were Mr. Ball, Mr. Burger, Ms. Hughes, Mr. Leonard, Mr. Minter, Mr. Murphy, Mr. Nelsen, and Mr. Tharp.

Rev. Bibbs had not arrived.

The vote passed unanimously.

Guidance Document 65-8 Casket Stores

~~Excerpt from Minutes of Board Meeting of June 10, 1998~~

“This Board ~~does not have a problem with~~ **permits** casket stores **to provide** ~~ing~~ the sale of caskets **to the public** as long as they are licensed as an establishment or branch of an establishment and abide by the same laws and regulations as a licensee.”

The Code of Virginia §54.1-2800) defines “Practice of funeral services” as “engaging in the care and disposition of the human dead, the preparation of the human dead for the funeral service burial or cremation, the making of arrangements for the funeral service or arrangements for the sale of funeral supplies to the public.”

Upon a motion by Mr. Nelsen and properly seconded by Mr. Burger the Board voted to reaffirm Guidance Document 65-8 as amended above.

The members voting ‘yes’ were Mr. Ball, Mr. Burger, Ms. Hughes, Mr. Leonard, Mr. Minter, Mr. Murphy, Mr. Nelsen, and Mr. Tharp.

Rev. Bibbs had not arrived.

The vote passed unanimously.

Ms. Yeatts provided a revised copy of the By-Laws Guidance 65-10.

Guidance Document 65-11 Inspection Guidance

~~18VAC65-20-700(1) Retention of documents. Price lists shall be retained for one year after the date on which they are no longer effective.~~

~~Guidance: All funeral service establishments shall maintain a General Price List and Itemized Statement. The board may accept electronic copies of forms that are no longer current.~~

18VAC65-20-700(4) Retention of documents. Documents shall be maintained on the premises of the funeral establishment and made available for inspection; and

~~Guidance: All funeral service establishments shall maintain a General Price List and Itemized Statement. The Board may accept electronic copies of forms that are no longer current.~~

~~Appendix IV Embalming Reports~~ was eliminated.

Upon a motion by Mr. Leonard and properly seconded by Ms. Hughes the Board voted to adopt Guidance Document 65-11 as amended.

The members voting 'yes' were Mr. Ball, Mr. Burger, Ms. Hughes, Mr. Leonard, Mr. Minter, Mr. Murphy, Mr. Nelsen, and Mr. Tharp.

Rev. Bibbs had not arrived.

The vote passed unanimously.

Adoption of Exempt Regulations

Ms. Yeatts gave a brief overview of the Act to amend and reenact §54.2816.1 of the *Code of Virginia*, relating to continuing education for funeral directors and embalmers.

Change in the Continuing Education Law

Ms. Yeatts discussed the changes to the continuing education statute for funeral directors and embalmers.

§18VAC65-20-151 Continued competency requirements for renewal of an active license.

- A. ~~After March 31, 2004, funeral~~ **Funeral** service licensees, funeral directors or funeral embalmers shall be required to have completed a minimum of ~~five~~ **ten** hours of continuing education offered by a board-approved sponsor for ~~each~~ annual licensure renewal **in even years** in courses that emphasize the ethics, standards of practice, preneed contracts and funding, or laws and regulations, governing the profession of funeral service in Virginia. **One hour per year shall cover compliance with laws and regulations governing the profession, and at least one hour per year shall cover preneed funeral arrangements.**

Upon a motion by Mr. Minter and properly seconded by Ms. Hughes the Board voted to accept 18VAC65-20-151 as amended.

The members voting 'yes' were Mr. Ball, Mr. Burger, Ms. Hughes, Mr. Leonard, Mr. Minter, Mr. Murphy, Mr. Nelsen, and Mr. Tharp.

Rev. Bibbs had not arrived.

The vote passed unanimously.

The Board recommended that a letter be disseminated to all licensees to make them aware of the changes in the continuing competency law.

Mr. Burger asked if the presentation given at the Virginia Funeral Directors Association (VFDA) conference would qualify to meet the one hour requirement in regard to the statutes and regulations. Ms. Hahn stated that the presentation would fulfill that requirement.

Senate Bill 698 and House Bill 1484

Ms. Yeatts gave a brief overview in regard to Senate Bill 698 and House Bill 1484.

AGENCY DIRECTOR'S REPORT

Ms. Ryals stated that according to the Government Performance Project, Virginia was named as one of the best managed states in the country. She stated Utah and Washington were tied with Virginia. Ms. Ryals stated that further details may be found on the Governor's website.

Ms. Ryals reported that the Virginia Performs Initiative is going very well. She stated that customer satisfaction is 94% and processing of licensure applications is 100%. Ms. Ryals stated the board received 211% clearance rate of old cases and received one of the highest scores in regard to blitzing of cases. She further stated that this board has received 100% in all areas.

Ms. Ryals stated the goal to complete patient care cases is 250 days. She stated the Agency hired Neal Kauder, President, Visual Research, Inc. to assist in the resolution of patient care cases.

Ms. Ryals stated the Secretary is pleased with board member attendance. She thanked Ms. Hahn, the Board, and board staff for doing an exceptional job in the resolution of old cases.

Break

The board recessed at 10:35 a.m.

Reconvene

The board reconvened at 10:51 a.m.

EXECUTIVE DIRECTOR'S REPORT

Licensee Statistics

Ms. Hahn reported that 152 new funeral licensees have been licensed since the last board meeting.

Discipline Statistics

Ms. Hahn stated there are currently 41 open cases; 21 are at the investigative level; 4 are in probable cause; 3 are in administrative proceedings; 2 are at the informal level and 2 formal cases will be adjudicated today.

Virginia Performs

Ms. Hahn reported that on February 11, 2008 there were 21 open cases and success is measured within 60 days. Ms. Hahn stated that from July 1, 2007 through December 31, 2007 cases were in probable cause for 134 days. She further stated that from the period January 1, 2008 through May 31, 2008 cases were moved out of probable cause within 33 days. Ms. Hahn stated this is a reflection of hard work of the Board members and staff.

Budget

Ms. Hahn stated that the cash balance as of March 31, 2008 was \$4,024. The year-to-date revenues are \$486,088. The cash balance as of March 31, 2008 is \$43,201. Ms. Hahn stated the figures will be slightly in the red; therefore, a fee increase may be required. Ms. Yeatts informed the Board that the Department of Planning and Budget requires that if revenues are over budget 10%, fees must be reduced and if the budget is under by 10%, the fees must be increased.

2008 Calendar

The next scheduled board meetings are September 9, 2008 and December 2, 2008.

Miscellaneous Board Business

Ms. Hahn stated the Examination Committee met on June 2, 2008 to review the funeral service provider state examination.

NEW BUSINESS

Status Report of Kip L. Jordan

Ms. Hahn reported that Mr. Jordan will be prosecuted on several counts in July or August, 2008. She stated there may be a lot of media attention. Ms. Hahn stated the

Board will render a final case decision after the disposition of the cremated remains has been secured. She stated that the Board will ask the receivers to release a statement so that the cremated remains can be disposed of, in the most appropriate manner.

Ms. Ryals stated the Office of the Secretary has asked that the Board proceed very cautiously in handling the cremated remains. It was suggested if there is media attention, that Ms. Hahn and Mr. Tharp prepare a written response to the media. Ms. Hahn stated she will contact Ms. Jolly and ask for her assistance in developing talking points.

Board Member Arrival

Rev. Bibbs arrived at approximately 11:45 a.m.

Meeting with Inspectors Regarding Pre-Need

Mr. Tharp welcomed the inspectors and Enforcement staff and asked them to introduce themselves. Mr. Tharp thanked them for providing excellent service. Mr. Tharp stated the Board wanted an opportunity to dialect with the inspectors in regard to preneed funding. Mr. Tharp stated he has contacted Provider Funding and they are eager to work with the board. He outlined the method in which preneed funding should be handled. He asked that the inspectors focus on the funding and familiarize themselves with the proper processes so that fraud will be easily detected.

Ms. Lemon, Director, Enforcement Division asked that a preneed protocol be established by the Board. Mr. Tharp stated that the Board would develop a preneed protocol; however, the difficulty will be in identifying all of the funding agencies. Ms. Hahn suggested developing a list of funding agencies. It was also recommended that a Memorandum of Understanding be developed.

Ms. Lemon suggested that information regarding the preneed process be placed in the Board newsletter or perhaps a letter from the president. She stated it was good that the Enforcement Division and the Board are being proactive and moving quickly to combat these issues.

Ms. Hahn stated that all information is provided on the board's website. She stated she will talk with Ms. Jolly to develop information to disseminate to consumers.

Discussion of Funeral Service Intern Program

Ms. Hahn reported that there are currently 136 funeral service interns. She stated there are approximately 780 funeral service interns that are inactive; however, they have gone beyond the required 48 months. Ms. Hahn stated letters will be sent to the expired funeral service interns and their intern program supervisors. Ms. Hahn stated the entire length of the funeral service intern program is five (5) years from beginning to end. She

stated the board does not license or certify funeral service assistants or funeral service technicians.

Board of Health Professions Report

Ms. Hughes stated an audit report, from the Auditor of Public Accounts, reporting on the year end of June 3, 2006 and June 30, 2007 were discussed. She stated the report revealed that the Department of Health Professions was not completing Employment Eligibility Verification forms (I-9) in accordance with guidance issued by the U.S. Citizenship and Immigration Services of the U.S. Department of Homeland Security in its Handbook for Employers (M-274). Ms. Hughes stated the report indicated that during fiscal years 2006 and 2007, the Department of Health Professions collected and deposited penalties from sanctions into the Commonwealth's Literary Fund of \$202,300 and \$141,758 respectively.

Election of Officers

Upon a motion by Ms. Hughes and properly seconded by Mr. Burger the Board voted to retain the same officers that were elected last year in accordance with the amended By-Laws.

The members voting 'yes' were Mr. Ball, Rev. Bibbs, Mr. Burger, Ms. Hughes, Mr. Leonard, Mr. Minter, Mr. Murphy, Mr. Nelsen, and Mr. Tharp.

The vote passed unanimously.

Formal Hearings – Not Held – Consent Orders Presented

For the Board's Consideration:

In the matter of **Carson A. Robbins, F.S.P.**, Mr. Halbleib and Mr. Egan presented to the Board a signed and notarized Consent Order from Mr. Carson A. Robbins agreeing to be CONTINUED ON INDEFINITE SUSPENSION and during Mr. Robbins suspension he will reimburse all preneed funeral contract purchasers in the full amount of their preneed funeral contract plus interest at the rate of 6% per annum from the date of the contract. Mr. Robbins will not petition the Board for reinstatement of his Funeral Service Provider license for at least twenty-four (24) months from the entry of the Consent Order.

Upon a motion by Mr. Burger and properly seconded by Mr. Nelsen the Board voted to accept the Consent Order.

The members voting 'yes' were Mr. Ball, Rev. Bibbs, Mr. Burger, Ms. Hughes, Mr. Leonard, Mr. Minter, Mr. Murphy, Mr. Nelsen, and Mr. Tharp.

In the matter of **Aaron L. Bailey, F.S.P.**, Mr. Garrett presented to the Board a signed and notarized copy of a Consent Order from Mr. Aaron L. Bailey agreeing to REVOCATION of his Funeral Service Provider license and he will not seek reinstatement of his license for a period of not less than three (3) years from the entry of the Consent Order. Mr. Bailey is also assessed a MONETARY PENALTY of \$57,500.00 with said monetary penalty STAYED until such time that Mr. Bailey seeks reinstatement of his Funeral Service Provider license.

Upon a motion by Mr. Ball and properly seconded by Mr. Burger the Board voted to accept the Consent Order.

The members voting 'yes' were Mr. Ball, Rev. Bibbs, Mr. Burger, Ms. Hughes, Mr. Leonard, Mr. Minter, Mr. Murphy, Mr. Nelsen, and Mr. Tharp.

ADJOURNMENT

There being no further business before the Board, the meeting adjourned at 1:45 p.m.

Willard D. Tharp, FSP, Chair

Lisa R. Hahn, Executive Director

DATE

DATE