

**UNAPPROVED**  
**VIRGINIA BOARD OF FUNERAL DIRECTORS AND EMBALMERS**  
**BOARD MEETING MINUTES**

The Virginia Board of Funeral Directors and Embalmers convened for a board meeting on Tuesday, April 12, 2011 at the Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2nd Floor, Board Room #2, Henrico, Virginia.

**BOARD MEMBERS PRESENT**

Michael J. Leonard, FSP, President  
Robert B. Burger, Jr., FSP, Vice-President  
Blair Nelsen, FSP, Secretary-Treasurer  
Randolph T. Minter, FSP  
Billie Watson-Hughes, FSP  
Barry M. Murphy, FSP  
Willard "Skip" Tharp, FSP  
Junius Williams, Citizen Member

**BOARD MEMBERS ABSENT**

Walter S. Ball

**DHP STAFF PRESENT FOR ALL OR PART OF THE MEETING**

Lisa R. Hahn, Executive Director  
Lynne Helmick, Deputy Executive Director  
Dr. Dianne Reynolds-Cane, Agency Director  
Arne Owens, Agency Chief Deputy Director  
Elaine J. Yeatts, Senior Policy Analyst  
Missy Currier, Board Operations Manager

**BOARD COUNSEL**

Amy Marschean, Senior Assistant Attorney General

**QUORUM**

With 8 members present a quorum was established.

**GUESTS PRESENT**

Barry D. Robinson, Virginia Morticians Association  
Meredyth Partridge, Regulatory Support Services, Inc.  
Bo Keeney, Independent Funeral Homes of Virginia  
Bruce Keeney, Independent Funeral Homes of Virginia  
Lacy Whittaker, Virginia Funeral Directors Association  
Hailen "Butch" Gatewood, Jr., Norris Funeral Services  
Richard Sikon, John Tyler Community College  
Kimberly Jordan, FSD  
Janet Rainey, Virginia Department of Health

## **CALL TO ORDER**

Mr. Leonard, President, called the meeting of the Virginia Board of Funeral Directors and Embalmers to order at 10:05 a.m. and asked the members and guests to introduce themselves.

## **ORDERING OF AGENDA**

The agenda was accepted as ordered.

## **ACCEPTANCE OF MINUTES**

- Upon a motion by Ms. Hughes and properly seconded by Mr. Nelsen, the Board voted to accept the Board Meeting Minutes dated January 18, 2011. The motion carried unanimously.
- Upon a motion by Ms. Hughes and properly seconded by Mr. Minter, the Board voted to accept the Formal Hearing minutes dated January 18, 2011. The motion carried unanimously.
- Upon a motion by Mr. Burger and properly seconded by Ms. Hughes, the Board voted to accept the Formal Hearing minutes dated January 18, 2011. The motion carried unanimously.

## **PUBLIC COMMENT PERIOD**

On behalf of the Virginia Morticians Association, Barry Robinson thanked Barry Murphy for his service and dedication to the board as well as all members whose terms will be expiring in June 2011. He extended an invitation to the board to attend the VMA Annual Convention in June and thanked them for providing a class on Preneed. Lastly, Mr. Robinson requested that when changes are made to regulations that the board provide a summary of the changes.

## **EXECUTIVE DIRECTOR'S REPORT**

### **Expenditure and Revenue Summary**

Ms. Hahn stated that the beginning cash balance as of June 30, 2010 was \$40,298, revenue received for FY 11 was \$229,785 less the direct and allocated expenditures of \$376,873 leaving a cash balance as of February 28, 2011 of \$(106,790). Ms. Hahn was pleased to share that preliminary numbers are indicating that we may have just a slight cash shortfall at the end of the fiscal year versus a more significant shortfall. Accordingly, we should have a positive cash balance as of 6/30/11 due to the carryover balance from 6/30/10. She attributed the projection to streamlining investigations, not refilling a position, and closely monitoring all expenditures.

### **Licensee Statistics**

Ms. Hahn stated that the summary of current license statistics was included in the agenda packages.

## **Discipline Statistics**

Ms. Hahn stated we have 37 open cases; 20 cases are in the Enforcement Division at the Investigative stage; 13 cases are in the Probable Cause stage; 2 cases at the APD level; 2 cases are at the informal stage; and 0 cases are at the formal stage.

## **Virginia Performs – 4<sup>th</sup> Quarter ending 12/31/10**

Ms. Hahn stated that the following results were unofficial because they had not been published on the Virginia Performs website; 100% rating for issuing licenses in less than 30 days; a 100% rating for patient care cases closed within 250 days; customer satisfaction surveys were unavailable due to non-participation by applicants; and the clearance rate was at 200% which indicates how many cases we closed versus how many cases were received.

## **Board Business**

### **Alkaline Hydrolysis**

Ms. Hahn announced that Ohio had blocked the use of Alkaline Hydrolysis as a method of disposition. The Department of Health directed officials not to issue permits or accept death certificates when bodies are to be disposed of through Alkaline Hydrolysis.

She also provided the members with a related magazine article in which Randy Minter obtained from the January edition of ICCFA magazine.

### **Jeanette Meade**

Ms. Hahn shared how deeply touched Jeanette Meade and her family were for the dinner gathering on her behalf with staff and board member representatives Randy Minter and Barry Murphy. Ms. Hahn shared Jeanette's contributions to the Commonwealth and reported that she not only worked for the Department of Health Professions and the Department of Professional and Occupational Regulation but pointed out that Jeanette worked many years directly with the Board of Funeral Directors & Embalmers. Jeanette was an integral part of the Unit and is missed by her colleagues. Ms. Hahn shared pictures from the special evening.

### **Examination Vendor**

Ms. Hahn shared that the contract for the examination vendor was renegotiated to include testing opportunities 5 days per week rather than only 5 days per month. She shared that this change will be greatly beneficial to the profession.

### **Board Presentations**

Ms. Hahn mentioned that the board had a very busy quarter giving presentations throughout the State. Lynne Helmick gave several presentations for VFDA Traveling Caravan, Bob Burger and Lynne Helmick will attend and present during the June 2011 VMA Convention, Ms. Hahn & Mr. Leonard will attend and present during the June VFDA Annual Meeting, and Ms. Hughes will be presenting at the Walter Reed Senior Center on May 10<sup>th</sup>. Ms. Hughes will be participating this upcoming weekend at the National Funeral Directors Association & Mortician's Association, Inc. (NFDMA).

### **Board Member Tenures**

Ms. Hahn was sad to point out that second terms for Skip Tharp, Billie Watson Hughes, and Barry Murphy will expire on June 30, 2011. Additionally, Ms. Hughes term on the Board of Health professions will expire June 30, 2011 and the position will need to be filled by another member from the Board of Funeral Directors & Embalmers. Ms. Hahn concluded that she has thoroughly enjoyed working with these members and their service and contributions made to the Commonwealth will be formally recognized at a future meeting.

### **Attorney General's Office**

**Ms. Hahn shared that she is currently working with Amy Marschean, Board Counsel on two matters:**

- A response regarding a letter from Edwin F. Brooks regarding a potential establishment license.
- A response regarding AD Price Cremains.

### **Calendar**

Ms. Hahn stated the next scheduled meetings in 2011 are May 24<sup>th</sup> (Preneed Committee meeting followed by Informal Conferences); July 19<sup>th</sup> (Board Meeting) and October 18<sup>th</sup> (Board Meeting).

### **NEW BUSINESS**

#### **Electronic Submission of Death Certificates – Janet Rainey, Virginia Department of Health**

Ms. Rainey presented background information that substantiated her need to publish a recent memorandum regarding the electronic submission of death certificates and the need for her department to ensure establishments comply with the requirements. She stated that her office is swamped with establishment waiting for approval and that they are working diligently to keep up.

Mr. Nelsen inquired about VDH developing standard software that everyone utilized rather than each establishment trying to come up with their own software resources and compatibility. Ms.

Rainey indicated that she had a meeting scheduled for the following day to discuss this possibility with her IT resources and that she would share the response.

Mr. Murphy shared that he was looking forward to the web based access and inquired when to expect the system up and running. Ms. Rainey was unable to give a definitive date for the EDR but did say that the Secretary had signed off. She concluded that burial transit permits will also be included in the EDR.

### **Alkaline Hydrolysis Presentation – Rick Sikon, John Tyler Community College**

Rick Sikon gave a very informative and interesting presentation on Alkaline Hydrolysis; an alternative method to burial and cremation. He included information on what the method is and how it works. He shared that he sees this as being a viable and “bio-friendly” option for the future.

It was the board consensus that because not enough scientific research had been conducted, especially relating to waste water, that the matter would be monitored until more approvals and information was available.

### **Regulatory Report – Elaine Yeatts**

Ms. Yeatts reviewed the status of the following regulations pertaining to **18VAC65-20**:

- Identification of human remains – remain at the Governor’s Office
- NOIRA regarding fee increases – remain at the Governor’s Office

Ms. Yeatts reviewed the status of regulations pertaining to **18VAC65-30**:

- Fast-Track regarding termination of irrevocable trusts – remain at Governor’s Office

### **Legislative Report – Elaine Yeatts**

Ms. Yeatts reviewed the following Bills which passed and were approved during the 2011 General Assembly:

- SB 1117 – An Act to amend and reenact §§ **32.1-263 and 54.1-2972** of the Code of Virginia, relating to requirements for death certificates (**attached**).
- HB 1659 – An Act to amend and reenact § **54.1-2818.1** of the Code of Virginia, relating to identification prior to cremation (**attached**).

### **Adoption of Exempt Regulation on Cremation- Elaine Yeatts**

Ms. Yeatts presented draft amendments regulations on requirements for cremations based on changes to §§ 54.1-2811.1 and 54.1-2818.1 of the Code of Virginia made by the 2010 and 2011 General Assembly. Mr. Nelsen pointed out that the draft would allow a crematory 48 hours to hold a body after receipt of remains without refrigeration. Since that is not the board’s intent nor

is it consistent with the law, that amendment was deleted. Upon a motion by Mr. Tharp and properly seconded by Ms. Hughes, the board voted to adopt the Exempt Regulation on Cremation under 18VAC65-20-436 (**attached**). The motion passed unanimously.

### **Maryland Reciprocal Agreement**

A "draft" version of a Maryland Reciprocal Agreement was provided to the members for consideration. Discussion was made about the similarities and the differences in the laws and regulations between the two states. Ms. Hughes pointed out that Maryland offers a "spousal" license in the event of the death of a spouse which our board was strongly opposed to.

Upon a motion by Ms. Hughes and properly seconded by Mr. Nelsen, the board voted to authorize staff the ability to edit the "draft" version of the Maryland Reciprocal Agreement. The motion carried unanimously.

Ms. Hughes agreed to assist with the re-draft.

### **Letter Regarding Preneed Contract by Interns**

Mr. Leonard referred to a letter Ms. Hahn received from Regulatory Support Services, Inc. dated February 23, 2011 asking for clarification on whether or not Interns were allowed to make Preneed arrangements.

Following board discussion, a motion was made by Ms. Hughes and properly seconded by Mr. Tharp to authorize board staff to reinforce the laws and regulations regarding interns handling preneed arrangements. The motion carried unanimously.

- **Board Clarification regarding Preneed Contracts by Interns**

A Funeral Service Intern is permitted to meet with a family and assist in discussions and planning for Preneed contracts provided the Funeral Service Supervisor is present in the room. Preneed contracts are legally binding and must be signed only by a Funeral Service licensee.

### **ADJOURNMENT:**

With no further business before the Board, the meeting adjourned at 12:25 p.m.

\_\_\_\_\_  
Michael J. Leonard, President

\_\_\_\_\_  
Lisa R. Hahn, Executive Director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

# VIRGINIA ACTS OF ASSEMBLY -- 2011 SESSION

## CHAPTER 613

*An Act to amend and reenact §§ 32.1-263 and 54.1-2972 of the Code of Virginia, relating to requirements for death certificates.*

[S 1117]

Approved March 25, 2011

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 32.1-263 and 54.1-2972 of the Code of Virginia are amended and reenacted as follows:**  
§ 32.1-263. Filing death certificates; medical certification; investigation by medical examiner.

A. A death certificate, including, if known, the social security number or control number issued by the Department of Motor Vehicles pursuant to § 46.2-342 of the deceased, shall be filed for each death which occurs in this Commonwealth with the registrar of the district in which the death occurred within three days after such death and prior to final disposition or removal of the body from the Commonwealth, and shall be registered by such registrar if it has been completed and filed in accordance with the following requirements:

1. If the place of death is unknown, but the dead body is found in this Commonwealth, a death certificate shall be filed in the registration district in which the dead body is found in accordance with this section. The place where the dead body is found shall be shown as the place of death. If the date of death is unknown, it shall be determined by approximation, taking into consideration all relevant information, including but not limited to, information provided by the immediate family regarding the date and time that the deceased was last seen alive, if the individual died in his home; and

2. When death occurs in a moving conveyance, in the United States of America and the body is first removed from the conveyance in this Commonwealth, the death shall be registered in this Commonwealth and the place where it is first removed shall be considered the place of death. When a death occurs on a moving conveyance while in international waters or air space or in a foreign country or its air space and the body is first removed from the conveyance in this Commonwealth, the death shall be registered in this Commonwealth but the certificate shall show the actual place of death insofar as can be determined.

B. The licensed funeral director, funeral service licensee, office of the state anatomical program, or next of kin as defined in § 54.1-2800 who first assumes custody of a dead body shall file the certificate of death with the registrar. He shall obtain the personal data, including the social security number of the deceased or control number issued to the deceased by the Department of Motor Vehicles pursuant to § 46.2-342, from the next of kin or the best qualified person or source available and obtain the medical certification from the person responsible therefor.

C. The medical certification shall be completed, signed in black or dark blue ink, and returned to the funeral director within 24 hours after death by the physician in charge of the patient's care for the illness or condition which resulted in death except when inquiry or investigation by a medical examiner is required by § 32.1-283 or 32.1-285.1, or by the physician that pronounces death pursuant to § 54.1-2972.

In the absence of the *such* physician or with his approval, the certificate may be completed and signed by ~~an associate~~ *another physician employed or engaged by the same professional practice, a nurse practitioner or physician assistant supervised by such physician, the chief medical officer of the institution in which death occurred, a physician specializing in the delivery of health care to hospitalized or emergency department patients who is employed by or engaged by the facility where the death occurred,* or the physician who performed an autopsy upon the decedent, if such individual has access to the medical history of the case and death is due to natural causes.

D. When inquiry or investigation by a medical examiner is required by § 32.1-283 or 32.1-285.1, the medical examiner shall investigate the cause of death and shall complete and sign the medical certification portion of the death certificate within 24 hours after being notified of the death. If the medical examiner refuses jurisdiction, the physician last furnishing medical care to the deceased shall prepare and sign the medical certification portion of the death certificate.

E. *If the death is a natural death and a death certificate is being prepared pursuant to § 54.1-2972 and the physician, nurse practitioner or physician assistant is uncertain about the cause of death, he shall use his best medical judgment to certify a reasonable cause of death or contact the health district physician director in the district where the death occurred to obtain guidance in reaching a determination as to a cause of death and document the same.*

If the cause of death cannot be determined within 24 hours after death, the medical certification shall be completed as provided by regulations of the Board. The attending physician or medical examiner shall give the funeral director or person acting as such notice of the reason for the delay, and final disposition of the body shall not be made until authorized by the attending physician or medical

examiner.

*F. A physician, nurse practitioner or physician assistant who, in good faith, signs a certificate of death or determines the cause of death shall be immune from civil liability, only for such signature and determination of causes of death on such certificate, absent gross negligence or willful misconduct.*

§ 54.1-2972. When person deemed medically and legally dead; determination of death; nurses' or physician assistants' authority to pronounce death under certain circumstances.

A. A person shall be medically and legally dead if:

1. In the opinion of a physician duly authorized to practice medicine in this Commonwealth, based on the ordinary standards of medical practice, there is the absence of spontaneous respiratory and spontaneous cardiac functions and, because of the disease or condition which directly or indirectly caused these functions to cease, or because of the passage of time since these functions ceased, attempts at resuscitation would not, in the opinion of such physician, be successful in restoring spontaneous life-sustaining functions, and, in such event, death shall be deemed to have occurred at the time these functions ceased; or

2. In the opinion of a physician, who shall be duly licensed and a specialist in the field of neurology, neurosurgery, electroencephalography, or critical care medicine, when based on the ordinary standards of medical practice, there is the absence of brain stem reflexes, spontaneous brain functions and spontaneous respiratory functions and, in the opinion of another physician and such specialist, based on the ordinary standards of medical practice and considering the absence of brain stem reflexes, spontaneous brain functions and spontaneous respiratory functions and the patient's medical record, further attempts at resuscitation or continued supportive maintenance would not be successful in restoring such reflexes or spontaneous functions, and, in such event, death shall be deemed to have occurred at the time when these conditions first coincide.

B. A registered nurse or a physician assistant who practices under the supervision of a physician may pronounce death if the following criteria are satisfied: (i) the nurse is employed by or the physician assistant works at (a) a home health organization as defined in § 32.1-162.7, or (b) a hospice as defined in § 32.1-162.1, or (c) a hospital or nursing home as defined in § 32.1-123, including state-operated hospitals for the purposes of this section, or (d) the Department of Corrections; (ii) the nurse or physician assistant is directly involved in the care of the patient; (iii) the patient's death has occurred; (iv) the patient is under the care of a physician when his death occurs; (v) the patient's death has been anticipated; (vi) the physician is unable to be present within a reasonable period of time to determine death; and (vii) there is a valid Do Not Resuscitate Order pursuant to § 54.1-2987.1 for the patient who has died. The nurse or physician assistant shall inform the patient's attending and consulting physicians of his death as soon as practicable.

The nurse or physician assistant shall have the authority to pronounce death in accordance with such procedural regulations, if any, as may be promulgated by the Board of Medicine; however, if the circumstances of the death are not anticipated or the death requires an investigation by a medical examiner, the nurse or physician assistant shall notify the chief medical examiner of the death and the body shall not be released to the funeral director.

This subsection shall not authorize a nurse or physician assistant to determine the cause of death. Determination of cause of death shall continue to be the responsibility of the attending physician, *except as provided in § 32.1-263*. Further, this subsection shall not be construed to impose any obligation to carry out the functions of this subsection.

This subsection shall not relieve any registered nurse or physician assistant from any civil or criminal liability that might otherwise be incurred for failure to follow statutes or Board of Nursing or Board of Medicine regulations.

C. Death, as defined in subdivision A 2, shall be determined by one of the two physicians and recorded in the patient's medical record and attested by the other physician. One of the two physicians determining or attesting to brain death may be the attending physician regardless of his specialty so long as at least one of the physicians is a specialist, as set out in subdivision A 2.

D. The alternative definitions of death provided in subdivisions A 1 and A 2 may be utilized for all purposes in the Commonwealth, including the trial of civil and criminal cases.

# VIRGINIA ACTS OF ASSEMBLY -- 2011 SESSION

## CHAPTER 88

*An Act to amend and reenact § 54.1-2818.1 of the Code of Virginia, relating to identification prior to cremation.*

[H 1659]

Approved March 15, 2011

**Be it enacted by the General Assembly of Virginia:**

**1. That § 54.1-2818.1 of the Code of Virginia is amended and reenacted as follows:**

§ 54.1-2818.1. Prerequisites for cremation.

No dead human body shall be cremated without permission of the medical examiner as required by § 32.1-284 and visual identification of the deceased by the next-of-kin or his representative, who may be any person designated to make arrangements for the decedent's burial or the disposition of his remains pursuant to § 54.1-2825 or, an agent named in an advance directive pursuant to § 54.1-2984, *or a sheriff, upon court order, if no next-of-kin, designated person or agent is available.* When visual identification is not feasible, other positive identification of the deceased may be used as a prerequisite for cremation.

**Project 2807 – Exempt action**

**BOARD OF FUNERAL DIRECTORS AND EMBALMERS**

**Exempt action on cremation criteria**

**18VAC65-20-436. Standards for registered crematories or funeral establishments that operate a crematory.**

A. Authorization to cremate.

1. In accordance with § 54.1-2818.1 of the Code of Virginia, a crematory shall require a cremation authorization form executed in person or electronically in a manner that provides a copy of an original signature of the next-of-kin ~~or the person designated pursuant to § 54.1-2825 of the Code of Virginia~~ or his representative, who may be any person designated to make arrangements for the decedent's burial or the disposition of his remains pursuant to § 54.1-2825, an agent named in an advance directive pursuant to § 54.1-2984, or a sheriff, upon court order, if no next-of-kin, designated person or agent is available.

2. The cremation authorization form shall include an attestation of visual identification of the deceased from a viewing of the remains or a photograph signed by the person making the identification. The identification attestation shall either be given on the cremation authorization form or on an identification form attached to the cremation authorization form.

3. In the event visual identification is not made feasible, a crematory shall ~~observe a 24-hour waiting period between the time of death and the cremation~~ may use other positive identification of the deceased as a prerequisite for cremation, pursuant to § 54.1-2818.1 of the Code of Virginia.

B. Standards for cremation. The following standards shall be required for every crematory:

1. Every crematory shall provide evidence at the time of an inspection of a permit to operate issued by the Department of Environmental Quality (DEQ).
2. A crematory shall not knowingly cremate a body with a pacemaker, defibrillator or other potentially hazardous implant in place.
3. A crematory shall not cremate the human remains of more than one person simultaneously in the same retort, unless the crematory has received specific written authorization to do so from the person signing the cremation authorization form.
4. A crematory shall not cremate nonhuman remains in a retort permitted by DEQ for cremation of human remains.
5. Whenever a crematory is unable to cremate the remains within 24 hours upon taking custody thereof, the crematory shall maintain the remains in refrigeration at approximately 40 degrees Fahrenheit or less, unless the remains have been embalmed.

C. Handling of human remains.

1. Human remains shall be transported to a crematory in a cremation container and shall not be removed from the container unless the crematory has been provided with written instructions to the contrary by the person who signed the authorization form. A cremation container shall substantially meet all the following standards:

- a. Be composed of readily combustible materials suitable for cremation;

- b. Be able to be closed in order to provide complete covering for the human remains;
- c. Be resistant to leakage or spillage; and
- d. Be rigid enough for handling with ease.

2. No crematory shall require that human remains be placed in a casket before cremation nor shall it require that the cremains be placed in a cremation urn, cremation vault or receptacle designed to permanently encase the cremains after cremation. Cremated remains shall be placed in a plastic bag inside a rigid container provided by the crematory or by the next-of-kin for return to the funeral establishment or to the next-of-kin. If cremated remains are placed in a biodegradable container, a biodegradable bag shall be used. If placed in a container designed for scattering, the cremated remains may be placed directly into the container if the next-of-kin so authorized in writing.

3. The identification of the decedent shall be physically attached to the remains and appropriate identification placed on the exterior of the cremation container. The crematory operator shall verify the identification on the remains with the identification attached to the cremation container and with the identification attached to the cremation authorization. The crematory operator shall also verify the identification of the cremains and place evidence of such verification in the cremation record.

D. Recordkeeping. A crematory shall maintain the records of cremation for a period of three years from the date of the cremation that indicate the name of the decedent, the date and time of the receipt of the body, and the date and time of the cremation and shall include:

1. The cremation authorization form signed by the person authorized by law to dispose of the remains and the form on which the next-of-kin or ~~his designee~~ the person authorized by § 54.1-2818.1 to make the identification has made a visual identification of the deceased or evidence of positive identification, if visual identification is not feasible;

2. The permission form from the medical examiner;

3. The DEQ permit number of the retort used for the cremation and the name of the retort operator; and

4. The form verifying the release of the cremains, including date and time of release, the name of the person and the entity to whom the cremains were released and the name of the decedent.

Certification Statement:

I certify that this regulation is full, true, and correctly dated.

\_\_\_\_\_ (Signature of certifying official)

Name and title of certifying official: Lisa R. Hahn, Executive Director

Name of agency: Board of Funeral Directors and Embalmers

Date: \_\_\_\_\_