

VIRGINIA BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Department of Health Professions

Perimeter Center

9960 Mayland Drive, Henrico VA 23233-1463

Board Room #2, Second Floor

April 24, 2012 at 10:30 a.m.

BOARD MEETING AGENDA

CALL TO ORDER

ORDERING OF AGENDA

ACCEPTANCE OF MINUTES - Tab 1

- Board Meeting - January 17, 2012
- (2) Formal Hearings - January 17, 2012
- Possible Summary Suspension - January 17, 2012
- Formal Hearing - January 18, 2012
- Formal Hearing - March 8, 2012

INFORMAL CONFERENCES HELD

- January 17, 2012
- January 17, 2012
- January 18, 2012

PUBLIC COMMENT PERIOD

EXECUTIVE DIRECTOR'S REPORT - Tab 2

NEW BUSINESS

- Legislative/Regulatory Reports- **Lisa R. Hahn - Tab 3**
- Legislative/Regulatory Committee Report - **Junius Williams, Chair**
- Guidance Document Regarding Practicing on Expired License - **Lisa R. Hahn - Tab 4**
- Conflict with FTC Rule and Appendix I- **Lynne Helmick - Tab 5**
- Petition for Reconsideration of Board Order- **Tab 6**
- Election of Officers

Tab 1

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, January 17, 2012 at the Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2nd Floor, Board Room #2, Henrico, Virginia.

BOARD MEMBERS PRESENT

Robert B. Burger, Jr., FSP, President
Blair Nelsen, FSP, Vice-President
Junius Williams, Citizen Member, Secretary-Treasurer
Randolph T. Minter, FSP
Michael J. Leonard, FSP
Walter Ball, Citizen Member
Robert Oman, FSP
Christopher P. Vincent, FSP
Eric V. Wray, II, FSP

DHP STAFF PRESENT FOR ALL OR PART OF THE MEETING

Lisa R. Hahn, Executive Director
Lynne Helmick, Deputy Executive Director
Elaine J. Yeatts, Senior Policy Analyst
Missy Currier, Board Operations Manager

BOARD COUNSEL

Howard Casway, Senior Assistant Attorney General

QUORUM

With 9 members present a quorum was established.

GUESTS PRESENT

Barry D. Robinson, Virginia Morticians Association
Lacy Whittaker, Virginia Funeral Directors Association
Meredyth Partridge, Regulatory Support Services, Inc.
Markell Elder, Department of Health Professions

CALL TO ORDER

Mr. Burger, President, called the meeting of the Virginia Board of Funeral Directors and Embalmers to order at 10:05 a.m. by welcoming everyone and asking the members and the guests in the audience to introduce themselves.

ORDERING OF AGENDA

The agenda was accepted as amended by rearranging the order of the Executive Directors Report to begin with the Legislative/Regulatory report and by adding a draft guideline document under New Business.

ACCEPTANCE OF MINUTES

- Upon a motion by Mr. Williams, Jr. and properly seconded by Mr. Leonard, the Board voted to accept the Board Meeting Minutes dated October 18, 2011. The motion carried unanimously.
- Upon a motion by Mr. Minter and properly seconded by Mr. Oman, the Board voted to accept the Formal Hearing Minutes dated October 18, 2011. The motion carried unanimously.

INFORMAL CONFERENCES HELD

Mr. Burger shared that informal conferences were held on the following days and that the minutes are located on the board's website and regulatory Townhall.

- May 24, 2011
- August 9, 2011
- September 28, 2011
- October 18, 2011
- November 16, 2011

PUBLIC COMMENT PERIOD

Mr. Barry Robinson from Virginia Morticians Association requested that they be invited to the Legislative/Regulatory meeting when it is held.

NEW BUSINESS

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

- Identification of human remains – remain at the Governor's Office (432 days)
- NOIRA regarding fee increases – remain at the Secretary's Office (386 days)

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

- Fast-Track regarding termination of irrevocable trusts – remain at Governor's Office (432 days)

Exempt Regulatory Action – Adoption of amendment to conform Preneed regulations with Funeral Rule (18VAC 65-30)

Ms. Yeatts stated that the regulatory change became effective on December 21, 2011.

Ms. Yeatts gave an overview of the following bills submitted before the 2012 General Assembly that may directly or indirectly affect the Agency: HB 195; HB 260, HB 265, HB 272, HB 337, HB 378, HB 379, HB 439, HB 937, HB 938, HB 1056, SB 433

The board members responded to the following bills:

HB 439 & HB 1056 – bills to amend and reenact § 54.1-2808.1 of the Code of Virginia relating to veterans and the disposition of cremains. Motion was made by Mr. Williams, Jr. and properly seconded by Mr. Leonard for Ms. Yeatts to craft a proposed amended bill that would incorporate and include portions of HB 439, HB 1056. The motion carried unanimously.

HB 379 – upon a motion by Mr. Leonard and properly seconded by Mr. Oman, the board voted to support a three year moratorium to study Alkaline Hydrolysis. The motion carried unanimously.

HB 378 – The board is in favor of allowing the one hour covering compliance with laws and regulations governing the profession to include both federal and state law.

Ms. Yeatts concluded her report by recommending that the board wait until the conclusion of the 2012 general assembly session before forming any Adhoc committees.

EXECUTIVE DIRECTOR'S REPORT

Expenditure and Revenue Summary

Ms. Hahn stated that the beginning cash balance as of June 30, 2011 was \$26,516, revenue received for FY 12 was \$27,055 less the direct and allocated expenditures of \$265,301 leaving a cash balance as of November 30, 2011 of \$(211,731). Ms. Hahn shared that she has taken numerous steps to “tighten our belts” and takes pride in being a good fiscal steward for the board but that she has run out of areas to cut. She added that 66% of the costs were those out of her control such as VITA, investigation costs, agency shared costs. Ms. Hahn has provided a briefing document for Dr. Reynolds-Cane that might be helpful in her discussions with the Secretary's office.

Licensee Statistics

Ms. Hahn referred the members to the handout provided with updated statistics.

Discipline Statistics

Ms. Hahn referred the members to the handout provided with updated statistics. Ms. Hahn added that 5 compliance inspections have been ordered and that 7 funeral board cases are monitored by Missy Currier. She added that Ms. Currier had been given the responsibility of Compliance Case Manager in addition to Board Operations Manager for all three of Ms. Hahn's boards. Ms. Hahn concluded that there were 24 total compliance cases being monitored by Missy Currier and Lynne Helmick for all three boards.

Virginia Performs – 1st Quarter ending September 30, 2012

Ms. Hahn gave the following Virginia Performs results: 100% rating for issuing licenses in less than 30 days; a 100% rating for patient care cases closed within 250 days; customer satisfaction was at 100%; and the clearance rate was at 300%. She concluded her report by stating that she contributes great results to her outstanding staff.

Presentations

Ms. Hahn mentioned several presentations that board staff or board members have committed to already in 2012. Ms. Hahn mentioned that she had received a couple of suggestions from the associations as well as from a couple of board members regarding alternative ways to fulfill the demand for board presentations. She discussed Polycom to the board and said it was a new method available to DHP for holding live seminars via video conference. Ms. Hahn stated that she prefers the "in person" approach versus the Polycom approach but travel costs and staff time must also be considered in the decision. She concluded that her most viable solution would be to offer a couple of presentations per year, held at DHP, and to include Virginia Law as well as Preneed.

Maryland Reciprocal Agreement

Ms. Hahn stated that Dr. Hari P. Close had planned on attending the board meeting to officially sign the Reciprocal agreement but due to circumstances he could not make it. Therefore, the signing of the agreement would take place via us postal mail.

Ms. Hahn also shared that it had come to her attention that differences exist between a Virginia Courtesy Card Holder and a Maryland Courtesy Card Holder and what each licensee is allowed to do in each state. Staff is researching the matter and will report back their findings at the next board meeting.

Regulatory News

Ms. Hahn shared that she and Ms. Yeatts had a very good meeting with Delegate Alexander to review potential funeral issues for the 2012 General Assembly session.

Ms. Hahn provided the members with a copy of the letter from Ben Lacy, Attorney for SansAnderson and her response back regarding legislation he would be submitting regarding the removal of the 5% CPI rule.

Visible Identification when a body has been disinterred and the family wants to cremate

Ms. Hahn shared that Mr. Nelsen had contacted Dr. Leah Bush following the boards discussion during the October 2011 meeting and that her response was that burial is considered final disposition in Virginia, as long as the information on the disinterment permit matches the tags on the casket or body.

Website News

Ms. Hahn wanted the board to know that as she promised during the last meeting, information from the Virginia Department of Veteran Services on the program for unclaimed cremains of veterans had been added to the website.

She also mentioned that copies of the letters from Dr. Karen Remley, State Health Commissioner, regarding death certification are on the website and may be useful to reference if problems arise with a death certificate.

Newsletter

Ms. Hahn was pleased to share that Missy Currier had done a wonderful job assisting with the development of the draft newsletter and that the final copy will be distributed by the end of the month.

Calendar

Ms. Hahn announced the scheduled dates for the next meetings in 2012; April 24th, July 17th, and October 16th.

Paperless

Ms. Hahn asked the board how they were with going “paperless” for the meetings and they all replied that they were pleased with the change.

OTHER BUSINESS

Cremation Certification Course

Mr. Oman mentioned that it has been brought to his attention that the Cremation Certification Course that the board requires is difficult for many to complete because the course offerings are held infrequently or outside of Virginia. Mr. Nelsen mentioned that he would contact ICCFA to see what alternatives might be available to make the requirement less cumbersome.

Board of Health Professions

Mr. Nelsen mentioned that at his last BHP board meeting, he brought up the difficulties in getting death certificates signed during the holidays. He requested that the Boards of Medicine and Nursing convey who is now authorized to sign death certificates.

Draft Guidance Document – Lisa Hahn & Lynne Helmick

Ms. Hahn stated that she and Ms. Helmick drafted a guidance document addressing licensees who fail to respond to inspection deficiencies in a timely manner.

Upon a motion by Mr. Wray and properly seconded by Mr. Vincent, the board voted to adopt the following Guidance Document 65-17. The motion passed unanimously.

Virginia Board of Funeral Directors and Embalmers

Initiating Disciplinary Action Against Funeral Homes for Failing to Submit Corrective Action to Deficiencies Noted During Routine Inspections

1. Board staff reviews all inspection reports and responses to deficiencies cited during the inspections
 - a. Licensees are given information at the time of inspection that they are to respond to the deficiencies within 14 days of the inspection.
 - b. Board staff tracks receipt of the inspection reports and the deficiency corrections.
2. If the licensee fails to respond within 14 days of the inspection
 - a. Board staff will send a certified letter (a copy of the letter will be sent first class mail) to the Manager of Record's (MOR) address of record in 2-5 days of the response due date. The letter will include a new due date which will be 10 days after the date of the letter.
 - b. Board staff will initiate disciplinary action against the funeral home 5 days after second due date if there is no response.
 - c. A Pre-hearing Consent Order based on the following guidelines will be sent to the MOR:
 - i. \$100 monetary penalty for failing to respond in a timely manner plus \$100 additional penalty for each citation of deficiency.
 - ii. FH must submit acceptable corrective action.
 - iii. \$100 penalty will be added for each week after the deadline the PHCO remains unsigned, unless a special conference committee has been requested by the licensee.
 - d. If the licensee fails to respond to the pre-hearing consent order or does not agree to it, the matter will be referred to an informal conference.
3. If the licensee responds with unacceptable corrective action

- a. A letter will be sent to the MOR's address of record in 2-5 days after the Board received the correction action to inform the MOR of problems with the corrective action. The letter will include a new due date, which will be 10 days after the date of the letter, for additional corrections.
 - b. If the funeral home fails to respond with new corrections within the new deadline, a certified letter will be sent to the MOR's address of record in 2-5 days of the deadline (a copy of the letter will be sent first class mail). The letter will include a new due date which will be 7 days after the date of the letter.
 - c. Disciplinary action against the funeral home will be initiated 5 days after the third due date.
 - d. A Pre-hearing Consent Order based on the following guidelines will be sent to the MOR:
 - i. \$100 monetary penalty for failing to respond in a timely manner plus \$100 additional penalty for every citation not addressed.
 - ii. FH must submit acceptable corrective action.
 - iii. \$100 penalty will be added for each week after the deadline the PHCO remains unsigned, unless a special conference committee has been requested by the licensee.
 - e. If the licensee fails to respond to the pre-hearing consent order or does not agree to it, the matter will be referred to an informal conference.
4. If the licensee has been previously disciplined for failing to respond to inspection citations of deficiencies, the matter should be referred to the Special Conference Committee.
5. Nothing in this Guidance Document prevents the Board from taking disciplinary action against the Manager of Record.

ADJOURNMENT:

With no further business before the Board, the meeting adjourned at 11:48 a.m.

Robert B. Burger, Jr., President

Lisa R. Hahn, Executive Director

Date

Date

**UNAPPROVED
VIRGINIA BOARD OF FUNERAL DIRECTORS AND EMBALMERS
POSSIBLE SUMMARY SUSPENSION
MINUTES**

The Virginia Board of Funeral Directors and Embalmers convened a conference for consideration of a possible summary suspension on Tuesday, January 17, 2012 at 11:30 a.m.

MEMBERS PRESENT

Bob Burger, FSP, Chair
Blair Nelsen, FSP
Junius William, Jr.
Randy Minter, FSP
Christopher Vincent, FSP

Mike Leonard, FSP
Bob Oman, FSP
Walter Ball
Eric Wray, FSP

DHP STAFF PRESENT

Lisa R. Hahn, Executive Director
Lynne Helmick, Deputy Executive Director
Kathy Petersen, Discipline Operations Manager
Missy Currier, Board Operations Manager
Peter Opper, Adjudication Specialist, Administrative Proceedings Division

MEMBERS FROM THE OFFICE OF THE ATTORNEY GENERAL PRESENT

James Schliessmann, Assistant Attorney General, OAG
Howard Casway, Senior Assistant Attorney General, OAG Board Counsel

MATTER SCHEDULED

Carlos A. Howard, FSP
License No: 0502-780010
Case Number: 133555, 134613, 140424, 140985

Carlos A. Howard Funeral Home
License No.: 0501-000601
Case Number: 140992

INTRODUCTION

Ms. Hahn opened the meeting by thanking everyone for their time and summarized the topic for consideration in today's conference.

CALLED TO ORDER

Mr. Burger called the meeting to order at 12:18 p.m.

ROLL CALL

A roll call was taken with nine (9) members of the Board participating, a quorum was established.

MEETING

Mr. Schliessmann presented evidence that the continued practice of funeral service by Carlos A. Howard, FSP and Carlos A. Howard Funeral Home, present a substantial danger to the health, welfare and safety of the public. Mr. Schliessmann asked the Board to consider summarily suspending the license of Mr. Howard and Carlos A. Howard Funeral Home.

CLOSED SESSION

Upon a motion by Mr. Blair Nelsen, and duly seconded by Mr. Eric Wray, Mr. Nelsen entered the Board into a closed meeting at 12:40 p.m. pursuant to §2.2-3711.A(27) of the Code of Virginia, for the purpose of deliberation to reach a decision in the matter of Carlos A. Howard, FSP and Carlos A. Howard Funeral Home. Additionally, he moved that Ms. Hahn, Ms. Helmick, Ms. Petersen, Ms. Currier and Mr. Casway attend the closed meeting because their presence in the closed meeting was deemed necessary and would aid the Committee in its discussions.

RECONVENE

Having certified that the matters discussed in the preceding closed session met the requirements of §2.2-3712 of the Code, the Committee re-convened in open session at 1:07 p.m.

DECISION:

Upon a motion by Mr. Nelsen, and duly seconded by Mr. Christopher Vincent, the Board moved to summarily suspend the licenses of Carlos A. Howard, FSP and Carlos A. Howard Funeral Home.

A roll call was taken and the motion passed unanimously with no negative votes.

The Board has set a tentative date for the Formal Hearing for March 8, 2012.

ADJOURNMENT

With no further business the meeting adjourned at 1:09 p.m.

Robert Burger, Jr., FSP, Chair

Lisa R. Hahn, Executive Director

Date

Date

**UNAPPROVED
VIRGINIA BOARD OF FUNERAL DIRECTORS & EMBALMERS
FORMAL ADMINISTRATIVE HEARING
JANUARY 17, 2012**

The Virginia Board of Funeral Directors and Embalmers convened on January 17, 2012, at the Department of Health Professions, 9960 Mayland Drive, 2nd Floor, Board Room 2, Henrico, Virginia.

BOARD MEMBERS PRESENT: Mike Leonard, FSP, Chair
Junius H. Williams, Jr., Secretary-Treasurer
Bob Oman, FSP
Chris Vincent, FSP
Eric Wray, FSP
Walter S. Bell, Citizen Member

DHP STAFF PRESENT: Lisa R. Hahn, Executive Director
Lynne Helmick, Executive Deputy Director
Kathy Petersen, Discipline Operations Manager
Missy Currier, Board Operations Manager
Tammie Jones, Adjudication Specialist
Marta Ishmael, Senior Investigator

MEMBERS FROM THE OFFICE OF THE ATTORNEY GENERAL PRESENT: Howard Casway, Senior Assistant Attorney General, Board Counsel
Wayne Halbleib, Senior Assistant Attorney General

RESPONDENT'S COUNSEL : Samantha Fredieu, Esq.

COURT REPORTER: Crane-Snead & Associates

CALL TO ORDER The Formal Administrative Hearing of the Board was called to order at 1:18 p.m.

ESTABLISHMENT OF A QUORUM: With six (6) members of the Board present, a quorum was established.

MATTER SCHEDULED: Sean Cummings, FSP
License Number: 0502-900567
Case Number: 137365

DISCUSSION: Mr. Cummings appeared before the Board in accordance with the Notice and Statement of Particulars dated December 22, 2011. Mr. Cummings was represented by Samantha Fredieu, Esq.

The Board received evidence and sworn testimony regarding the matters as set forth in the Statement of Particulars.

CLOSED SESSION: Upon a motion by Mr. Wray, and duly seconded by Mr. Oman, the Board voted to convene a closed meeting pursuant to 2.2-3711.A(27) of the *Code of Virginia*, for the purpose of deliberation to reach a decision in the matter of Mr. Cummings. Additionally, Mr. Wray moved that Ms. Hahn, Ms. Currier, and Mr. Casway attend the closed meeting because their presence in the closed meeting was deemed necessary and would aid the Board in its deliberations. The Board convened into closed session at 2:24 p.m.

OPEN SESSION: Having certified that the matters discussed in the preceding closed session met the requirements of 2.2.-3712 of the *Code of Virginia*, the Board re-convened open session at 3:16 p.m.

ACTION: Upon a motion by Mr. Williams, and duly seconded by Mr. Wray, the Board voted to place the funeral service provider license of Mr. Cummings on SUSPENSION for a period of 12 months. Mr. Cummings shall pay a monetary penalty of \$5,000.00, shall not serve as a Manager of Record for any funeral establishment and shall notify the Board of the name of the Manager of Record for his facility. Mr. Cummings suspension shall be STAYED upon compliance with terms and conditions after six months of suspension. The motion was carried.

VOTE: The vote was unanimous, with six (6) affirmative votes.

ADJOURNMENT: The Board adjourned at 3:20 p.m.

The decision shall be effective upon the entry by the Board of a written Order stating the findings, conclusions, and decision of this formal hearing panel.

Mike Leonard, FSP, Chair

Lisa R. Hahn, Executive Director

Date

Date

**UNAPPROVED
VIRGINIA BOARD OF FUNERAL DIRECTORS & EMBALMERS
FORMAL ADMINISTRATIVE HEARING
JANUARY 17, 2012**

The Virginia Board of Funeral Directors and Embalmers convened on January 17, 2012, at the Department of Health Professions, 9960 Mayland Drive, 2nd Floor, Board Room 2, Henrico, Virginia.

**BOARD MEMBERS
PRESENT:** Robert B. Burger, Jr., FSP, President
Junius H. Williams, Jr., Secretary-Treasurer
Mike Leonard, FSP
Bob Oman, FSP
Chris Vincent, FSP
Eric Wray, FSP
Walter S. Bell, Citizen Member

**DHP STAFF
PRESENT:** Lisa R. Hahn, Executive Director
Lynne Helmick, Executive Deputy Director
Kathy Petersen, Discipline Operations Manager
Missy Currier, Board Operations Manager
Tammie Jones, Adjudication Specialist
Marta Ishmael, Senior Investigator

**MEMBERS FROM
THE OFFICE OF
THE ATTORNEY
GENERAL
PRESENT:** Howard Casway, Senior Assistant Attorney General, Board Counsel
James Schliessmann, Assistant Attorney General

**RESPONDENT'S
COUNSEL :** Isaac McBeth, Esq. of Hirschler Fleischer

OTHERS PRESENT: Miriam AbdRahmaan, FSP
Robert D. Baker, FSP

COURT REPORTER: Crane-Snead & Associates

CALL TO ORDER The Formal Administrative Hearing of the Board was called to order at 3:58 p.m.

**ESTABLISHMENT
OF A QUORUM:** With seven (7) members of the Board present, a quorum was established.

**MATTER
SCHEDULED:** **Phillip Bell, Sr., FSP**
License Number: 0502-730043
Case Number: 133970

DISCUSSION:

Mr. Bell appeared before the Board in accordance with the Notice and Statement of Particulars dated November 4, 2011. Mr. Bell was represented by Isaac McBeth, Esq. of the law firm Hirschler Fleischer.

The Board received evidence and sworn testimony regarding the matters as set forth in the Statement of Particulars.

CLOSED SESSION:

Upon a motion by Mr. Wray, and duly seconded by Mr. Oman, the Board voted to convene a closed meeting pursuant to 2.2-3711.A(27) of the *Code of Virginia*, for the purpose of deliberation to reach a decision in the matter of Mr. Bell. Additionally, Mr. Wray moved that Ms. Hahn, Ms. Currier, and Mr. Casway attend the closed meeting because their presence in the closed meeting was deemed necessary and would aid the Board in its deliberations. The Board convened into closed session at 6:34 p.m.

OPEN SESSION:

Having certified that the matters discussed in the preceding closed session met the requirements of 2.2.-3712 of the *Code of Virginia*, the Board re-convened open session at 7:06 p.m.

ACTION:

Upon a motion by Mr. Williams, and duly seconded by Mr. Oman, the Board found that there existed no clear and convincing evidence to support findings of any violation of the laws and regulations governing funeral service providers set out in the Notice of Formal Hearing. The motion carried.

VOTE:

The vote was unanimous, with seven (7) affirmative votes.

ADJOURNMENT:

The Board adjourned at 7:08 p.m.

The decision shall be effective upon the entry by the Board of a written Order stating the findings, conclusions, and decision of this formal hearing panel.

Robert Burger, Jr., FSP, President

Lisa R. Hahn, Executive Director

Date

Date

**UNAPPROVED
VIRGINIA BOARD OF FUNERAL DIRECTORS & EMBALMERS
FORMAL ADMINISTRATIVE HEARING
JANUARY 18, 2012**

The Virginia Board of Funeral Directors and Embalmers convened on January 18, 2012, at the Department of Health Professions, 9960 Mayland Drive, 2nd Floor, Board Room 2, Henrico, Virginia.

**BOARD MEMBERS
PRESENT:** Robert B. Burger, Jr., FSP, President
Junius H. Williams, Jr., Secretary-Treasurer
Mike Leonard, FSP
Bob Oman, FSP
Chris Vincent, FSP
Eric Wray, FSP
Walter S. Bell, Citizen Member

**DHP STAFF
PRESENT:** Lisa R. Hahn, Executive Director
Lynne Helmick, Executive Deputy Director
Kathy Petersen, Discipline Operations Manager
Missy Currier, Board Operations Manager
Peter Opper, Adjudication Specialist
Leith Ellis, Senior Investigator

**MEMBERS FROM
THE OFFICE OF
THE ATTORNEY
GENERAL
PRESENT:** Rachael Baer, Assistant Attorney General, Board Counsel
James Schliessmann, Assistant Attorney General

**RESPONDENT'S
COUNSEL :** Stephen H. Ratliff, Esq. – Counsel
Kimberley A. Murphy, Esq. – Co-Counsel

OTHERS PRESENT: Several family members and friends of Decedent A
Ralston O. Greene, FSP

COURT REPORTER: Comiller T. Boyd, Certified Court Reporter – Crane-Snead & Assoc.

CALL TO ORDER The Formal Administrative Hearing of the Board was called to order at 9:36 a.m.

**ESTABLISHMENT
OF A QUORUM:** With seven (7) members of the Board present, a quorum was established.

**MATTER
SCHEDULED:** **Oliver P. Chiles, Jr., FSP**
License Number: 0502-860019
Case Number: 136070

DISCUSSION: Mr. Chiles appeared before the Board in accordance with the Notice and Statement of Particulars dated December 13, 2011. Mr. Chiles was represented by Steven Ratliff, Esq. as counsel and Kimberley Murphy, Esq. as co-counsel.

The Board received evidence and sworn testimony regarding the matters as set forth in the Statement of Particulars.

CLOSED SESSION: Upon a motion by Mr. Leonard, and duly seconded by Mr. Oman, the Board voted to convene a closed meeting pursuant to 2.2-3711.A(27) of the *Code of Virginia*, for the purpose of deliberation to reach a decision in the matter of Mr. Chiles. Additionally, Mr. Leonard moved that Ms. Hahn, Ms. Currier, and Ms. Baer attend the closed meeting because their presence in the closed meeting was deemed necessary and would aid the Board in its deliberations. The Board convened into closed session at 2:17 p.m.

OPEN SESSION: Having certified that the matters discussed in the preceding closed session met the requirements of 2.2-3712 of the *Code of Virginia*, the Board re-convened open session at 4:27 p.m.

ACTION: Upon a motion by Mr. Oman, and duly seconded by Mr. Wray, the Board voted to place the funeral service provider license of Mr. Chiles on INDEFINITE SUSPENSION for not less than 12 months. Upon request for reinstatement, Mr. Chiles shall provide the Board with verification that he has completed ten (10) pre-approved hours of continuing education hours. Two (2) hours in state law and regulations governing funeral service and eight (8) hours in ethics. The motion was carried.

VOTE:

The vote was unanimous, with seven (7) affirmative votes.

ADJOURNMENT: The Board adjourned at 4:46 p.m.

The decision shall be effective upon the entry by the Board of a written Order stating the findings, conclusions, and decision of this formal hearing panel.

Robert Burger, Jr., FSP, President

Lisa R. Hahn, Executive Director

Date

Date

UNAPPROVED
VIRGINIA BOARD OF FUNERAL DIRECTORS & EMBALMERS
FORMAL ADMINISTRATIVE HEARING
MARCH 8, 2012

The Virginia Board of Funeral Directors and Embalmers convened on March 8, 2012, at the Department of Health Professions, 9960 Mayland Drive, 2nd Floor, Board Room 2, Henrico, Virginia.

BOARD MEMBERS PRESENT: Robert B. Burger, Jr., FSP, President
Junius H. Williams, Jr., Secretary-Treasurer
Randy Minter, FSP
Mike Leonard, FSP
Bob Oman, FSP
Chris Vincent, FSP
Walter S. Bell, Citizen Member

DHP STAFF PRESENT: Lisa R. Hahn, Executive Director
Lynne Helmick, Executive Deputy Director
Kathy Petersen, Discipline Operations Manager
Missy Currier, Board Operations Manager
Peter Opper, Adjudication Specialist
Anthony Sellers, Senior Investigator
Karen Schaller, Senior Investigator

MEMBERS FROM THE OFFICE OF THE ATTORNEY GENERAL PRESENT: Charis A. Mitchell, Assistant Attorney General, Board Counsel
James Schliessmann, Assistant Attorney General

RESPONDENT'S COUNSEL : Kimberley A. Murphy, Esq. – Counsel
Samantha S. Fredieu, Esq. – Co-Counsel

OTHERS PRESENT: Leslie Keenan, FSL
Marjorie Allen
John Allen
Velma McClurney
Arlene Howard
Marie Barnett, FD
David Brisbon
Christine Austin-Williams
JoAnn Ware
James Arrington
Roderick D. Jenkins
Bill Thomas

COURT REPORTER: Lanieda Briggs, Certified Court Reporter – Crane-Snead & Assoc.

CALL TO ORDER

The Formal Administrative Hearing of the Board was called to order at 9:49 a.m.

ESTABLISHMENT OF A QUORUM:

With seven (7) members of the Board present, a quorum was established.

MATTER SCHEDULED:

Carlos A. Howard, FSP
License Number: 0502-780010
Case Numbers: 140985, 133555, 134613 & 140424

Carlos A. Howard Funeral Home
License Number: 0501-000601
Case Number: 140992

PRELIMINARY MATTER:

Mr. Schliessmann introduced two additional documents; an expert report of Ms. Leslie Keenan, FSL and several photographs provided by the source of case number 140985 and 140992. Ms. Murphy objected to the entry.

RULING:

The objection was overruled by the Chair and the documents were entered into the record as Commonwealth Exhibits 7 and 8 and Commonwealth Exhibits 4 and 5 respectively.

PRELIMINARY MATTER:

Ms. Murphy introduced a document to accompany the Commonwealth's Evidence 3 in both cases. Mr. Schliessmann had no objection.

RULING:

The Chair entered Ms. Murphy's document into the record as page number 82B and 79B respectively.

PRELIMINARY MATTER:

Ms. Murphy introduced additional documentation regarding information she had referenced in her opening remarks. Mr. Schliessmann had no objections.

RULING:

The Chair accepted the additional documentation and ruled that it would be marked as Respondent Exhibit A, B, C, D and entered into the record.

DISCUSSION:

Mr. Howard appeared before the Board in accordance with the Amended Notice and Statement of Particulars dated February 28, 2012. Mr. Howard was represented by Kimberley Murphy, Esq. as counsel and Samantha Fredieu as co-counsel.

The Board received evidence and sworn testimony from witnesses called by the parties and Mr. Howard regarding the matters as set forth in the Statement of Particulars.

During the course of testimony of the witnesses called to testify and

Mr. Howard, various objections were made and ruled on by the Chair.

CLOSED SESSION: Upon a motion by Mr. Leonard, and duly seconded by Mr. Williams, the Board voted to convene a closed meeting pursuant to §2.2-3711.A(27) of the *Code of Virginia*, for the purpose of deliberation to reach a decision in the matter of Carlos A. Howard, FSP and Carlos A. Howard Funeral Home. Additionally, Mr. Leonard moved that Ms. Hahn, Ms. Mitchell, Ms. Helmick, Ms. Petersen and Ms. Currier attend the closed meeting because their presence in the closed meeting was deemed necessary and would aid the Board in its deliberations. The Board convened into closed session at 5:53 p.m.

OPEN SESSION: Having certified that the matters discussed in the preceding closed session met the requirements of §2.2.-3712 of the *Code of Virginia*, the Board re-convened open session at 8:08 p.m.

ACTION: Upon a motion by Mr. Leonard, and duly seconded by Mr. Ball, the Board voted to continue the SUSPENSION of the funeral service provider license of Carlos A. Howard, FSP for not less than 6 months, a monetary penalty of \$12,500 to be paid in full before reinstatement can occur. Upon reinstatement, Mr. Howard cannot serve as a Manager of Record for one year from the date of reinstatement. If Mr. Howard is found in violation of any laws or regulations relating to the practice of funeral service in the Commonwealth of Virginia, within two (2) years following entry of said Order, Mr. Howard's license will be revoked immediately.

In the matter of Carlos A. Howard Funeral Home, the Board voted to continue the SUSPENSION, until a new Manager of Record is approved by the Board. Upon reinstatement, Carlos A. Howard Funeral Home will be subject to six (6) unannounced inspections at the funeral homes expense. The motion was carried.

VOTE: The vote was unanimous, with seven (7) affirmative votes.

ADJOURNMENT: The Board adjourned at 8:17 p.m.

The decision shall be effective upon the entry by the Board of a written Order stating the findings, conclusions, and decision of this formal hearing panel.

Robert Burger, Jr., FSP, President

Lisa R. Hahn, Executive Director

Date

Date

Tab 2

Virginia Department of Health Professions
Cash Balance
As of February 29, 2012

	<u>104- Funeral Directors and Emba</u>
Cash Balance as of June 30, 2011	\$ 26,516
YTD FY12 Revenue	215,920
Less: YTD FY12 Direct and In-Direct Expenditures	<u>436,461</u>
Cash Balance as of February 29, 2012	<u>\$ (194,025)</u>

Virginia Dept. of Health Professions
Revenue and Expenditures Summary
 July 1, 2011 through February 29, 2012

	104- Funeral Directors and Emba			
	<u>Jul '11 - Feb' 12</u>	<u>Budget</u>	<u>\$ Over Budget</u>	<u>% of Budget</u>
Revenue				
2400 · Fee Revenue				
2401 · Application Fee	24,700.00	34,225.00	-9,525.00	72.17%
2406 · License & Renewal Fee	178,660.00	488,660.00	-310,000.00	36.56%
2407 · Dup. License Certificate Fee	120.00	480.00	-360.00	25.0%
2409 · Board Endorsement - Out	1,400.00	2,600.00	-1,200.00	53.85%
2421 · Monetary Penalty & Late Fees	1,890.00	5,395.00	-3,505.00	35.03%
2430 · Board Changes Fee	3,850.00	5,075.00	-1,225.00	75.86%
2432 · Misc. Fee (Bad Check Fee)	0.00	35.00	-35.00	0.0%
Total 2400 · Fee Revenue	<u>210,620.00</u>	<u>536,470.00</u>	<u>-325,850.00</u>	<u>39.26%</u>
9000 · Other Revenue				
Miscellaneous Revenue	0.00	5,700.00	-5,700.00	0.0%
9060 · Miscellaneous Revenue	5,300.00			
Total 9000 · Other Revenue	<u>5,300.00</u>	<u>5,700.00</u>	<u>-400.00</u>	<u>92.98%</u>
Total Revenue	<u>215,920.00</u>	<u>542,170.00</u>	<u>-326,250.00</u>	<u>39.83%</u>
Expenditures				
1100 · Personal Services				
1110 · Employee Benefits				
1111 · Employer Retirement Contrib.	3,777.75	4,909.03	-1,131.28	76.96%
1112 · Fed Old-Age Ins- Sal St Emp	3,761.48	5,707.30	-1,945.82	65.91%
1113 · Fed Old-Age Ins- Wage Earners	0.00	783.00	-783.00	0.0%
1114 · Group Insurance	538.32	760.97	-222.65	70.74%
1115 · Medical/Hospitalization Ins.	11,792.90	20,440.80	-8,647.90	57.69%
1116 · Retiree Medical/Hospitalizatn	522.21	738.59	-216.38	70.7%
1117 · Long term Disability Ins	348.20	492.39	-144.19	70.72%
Total 1110 · Employee Benefits	<u>20,740.86</u>	<u>33,832.08</u>	<u>-13,091.22</u>	<u>61.31%</u>
1120 · Salaries				
1123 · Salaries, Classified	52,491.37	74,605.27	-22,113.90	70.36%
1125 · Salaries, Overtime	0.00	200.00	-200.00	0.0%
Total 1120 · Salaries	<u>52,491.37</u>	<u>74,805.27</u>	<u>-22,313.90</u>	<u>70.17%</u>
1130 · Special Payments				
1131 · Bonuses and Incentives	0.00	0.00	0.00	0.0%
1138 · Deferred Compnstrn Match Pmts	391.00	816.00	-425.00	47.92%
Total 1130 · Special Payments	<u>391.00</u>	<u>816.00</u>	<u>-425.00</u>	<u>47.92%</u>
1140 · Wages				
1141 · Wages, General	0.00	10,026.00	-10,026.00	0.0%
Total 1140 · Wages	<u>0.00</u>	<u>10,026.00</u>	<u>-10,026.00</u>	<u>0.0%</u>
1160 · Terminatn Personal Svce Costs				
1165 · Employee Retirement Contributio	438.72	439.00	-0.28	99.94%
Total 1160 · Terminatn Personal Svce Costs	<u>438.72</u>	<u>439.00</u>	<u>-0.28</u>	<u>99.94%</u>
Total 1100 · Personal Services	<u>74,061.95</u>	<u>119,918.35</u>	<u>-45,856.40</u>	<u>61.76%</u>

Virginia Dept. of Health Professions
Revenue and Expenditures Summary
 July 1, 2011 through February 29, 2012

	104- Funeral Directors and Emba			
	<u>Jul '11 - Feb' 12</u>	<u>Budget</u>	<u>\$ Over Budget</u>	<u>% of Budget</u>
1200 · Contractual Services				
1210 · Communication Services				
1211 · Express Services	35.46	500.00	-464.54	7.09%
1214 · Postal Services	1,454.82	4,500.00	-3,045.18	32.33%
1215 · Printing Services	0.00	400.00	-400.00	0.0%
1216 · Telecommunications Svcs (DIT)	332.92	800.00	-467.08	41.62%
Total 1210 · Communication Services	<u>1,823.20</u>	<u>6,200.00</u>	<u>-4,376.80</u>	<u>29.41%</u>
1220 · Employee Development Services				
1221 · Organization Memberships	0.00	500.00	-500.00	0.0%
1224 · Emp Trning Courses, Wkshp & Cnf	250.00	500.00	-250.00	50.0%
1225 · Employee Tuition Reimbursement	315.00	900.00	-585.00	35.0%
Total 1220 · Employee Development Services	<u>565.00</u>	<u>1,900.00</u>	<u>-1,335.00</u>	<u>29.74%</u>
1240 · Mgmnt and Informational Svcs				
1242 · Fiscal Services	28.13	9,520.00	-9,491.87	0.3%
1244 · Management Services	13.96			
1247 · Legal Services	835.00	550.00	285.00	151.82%
Total 1240 · Mgmnt and Informational Svcs	<u>877.09</u>	<u>10,070.00</u>	<u>-9,192.91</u>	<u>8.71%</u>
1260 · Support Services				
1264 · Food & Dietary Services	843.54	2,000.00	-1,156.46	42.18%
1266 · Manual Labor Services	137.98	700.00	-562.02	19.71%
1267 · Production Services	648.30	1,200.00	-551.70	54.03%
1268 · Skilled Services	0.00	1,241.00	-1,241.00	0.0%
Total 1260 · Support Services	<u>1,629.82</u>	<u>5,141.00</u>	<u>-3,511.18</u>	<u>31.7%</u>
1280 · Transportation Services				
1282 · Travel, Personal Vehicle	2,446.45	4,000.00	-1,553.55	61.16%
1283 · Travel, Public Carriers	0.00	700.00	-700.00	0.0%
1285 · Travel, Subsistence & Lodging	750.32	1,500.00	-749.68	50.02%
1288 · Trvl, Meal Reimb- Not Rprtble	305.50	780.00	-474.50	39.17%
Total 1280 · Transportation Services	<u>3,502.27</u>	<u>6,980.00</u>	<u>-3,477.73</u>	<u>50.18%</u>
Total 1200 · Contractual Services	8,397.38	30,291.00	-21,893.62	27.72%
1300 · Supplies And Materials				
1310 · Administrative Supplies				
1311 · Apparel Supplies	5.28			
1312 · Office Supplies	355.33	700.00	-344.67	50.76%
1313 · Stationery and Forms	71.20	-15.00	86.20	-474.67%
Total 1310 · Administrative Supplies	<u>431.81</u>	<u>685.00</u>	<u>-253.19</u>	<u>63.04%</u>
1360 · Residential Supplies				
1362 · Food and Dietary Supplies	0.00	50.00	-50.00	0.0%
1363 · Food Service Supplies	3.11	50.00	-46.89	6.22%
Total 1360 · Residential Supplies	<u>3.11</u>	<u>100.00</u>	<u>-96.89</u>	<u>3.11%</u>
1370 · Specific Use Supplies				
1373 · Computer Operating Supplies	8.89			

Virginia Dept. of Health Professions
Revenue and Expenditures Summary
July 1, 2011 through February 29, 2012

	104- Funeral Directors and Emba			
	<u>Jul '11 - Feb' 12</u>	<u>Budget</u>	<u>\$ Over Budget</u>	<u>% of Budget</u>
Total 1370 · Specific Use Supplies	8.89			
Total 1300 · Supplies And Materials	443.81	785.00	-341.19	56.54%
1400 · Transfer Payments				
1410 · Awards, Contrib., and Claims				
1413 · Premiums	180.00			
Total 1410 · Awards, Contrib., and Claims	180.00			
Total 1400 · Transfer Payments	180.00			
1500 · Continuous Charges				
1510 · Insurance-Fixed Assets				
1516 · Property Insurance	35.74	51.00	-15.26	70.08%
1510 · Insurance-Fixed Assets - Other	0.00	0.00	0.00	0.0%
Total 1510 · Insurance-Fixed Assets	35.74	51.00	-15.26	70.08%
1530 · Operating Lease Payments				
1534 · Equipment Rentals	0.00	0.00	0.00	0.0%
1535 · Building Rentals	7.29			
1539 · Building Rentals - Non State	5,550.28	8,288.00	-2,737.72	66.97%
Total 1530 · Operating Lease Payments	5,557.57	8,288.00	-2,730.43	67.06%
1550 · Insurance-Operations				
1551 · General Liability Insurance	128.27	183.00	-54.73	70.09%
1554 · Surety Bonds	7.57	11.00	-3.43	68.82%
Total 1550 · Insurance-Operations	135.84	194.00	-58.16	70.02%
Total 1500 · Continuous Charges	5,729.15	8,533.00	-2,803.85	67.14%
2200 · Equipment Expenditures				
Electronic & Photo Equip Impr	0.69			
2210 · Computer Equipment				
2218 · Computer Software Purchases	184.00			
Total 2210 · Computer Equipment	184.00			
2220 · Educational & Cultural Equip				
2224 · Reference Equipment	0.00	300.00	-300.00	0.0%
Total 2220 · Educational & Cultural Equip	0.00	300.00	-300.00	0.0%
2260 · Office Equipment				
2262 · Office Furniture	0.00	200.00	-200.00	0.0%
2263 · Office Incidentals	29.89			
Total 2260 · Office Equipment	29.89	200.00	-170.11	14.95%
Total 2200 · Equipment Expenditures	214.58	500.00	-285.42	42.92%
Total Direct Expenditures	89,026.87	160,027.35	-71,000.48	55.63%
9001 · Allocated Expenditures				
9206 · Funeral/LTCA/PT	62,322.84	89,715.46	-27,392.62	69.47%

Virginia Dept. of Health Professions
Revenue and Expenditures Summary
 July 1, 2011 through February 29, 2012

	104- Funeral Directors and Emba			
	<u>Jul '11 - Feb' 12</u>	<u>Budget</u>	<u>\$ Over Budget</u>	<u>% of Budget</u>
9301 · DP Operations & Equipment	67,499.48	138,158.88	-70,659.40	48.86%
9302 · Human Resources	8,537.23	12,462.60	-3,925.37	68.5%
9303 · Finance	14,134.34	22,249.56	-8,115.22	63.53%
9304 · Director's Office	7,597.81	12,263.52	-4,665.71	61.96%
9305 · Enforcement	130,549.24	164,598.84	-34,049.60	79.31%
9306 · Administrative Proceedings	29,290.97	16,468.20	12,822.77	177.86%
9307 · Impaired Practitioners	0.00	12.96	-12.96	0.0%
9308 · Attorney General	18,763.54	25,290.72	-6,527.18	74.19%
9309 · Board of Health Professions	5,237.96	8,871.96	-3,634.00	59.04%
9311 · Moving Costs	0.00	801.36	-801.36	0.0%
9313 · Emp. Recognition Program	46.75	419.04	-372.29	11.16%
9314 · Conference Center	108.87	626.04	-517.17	17.39%
9315 · Pgm Devlpmnt & Implmentn	3,344.85	5,402.99	-2,058.14	61.91%
987900 · Cash Trsfr Out- Appr Act Pt. 3	0.00	1,530.36	-1,530.36	0.0%
Total 9001 · Allocated Expenditures	<u>347,433.88</u>	<u>498,872.49</u>	<u>-151,438.61</u>	<u>69.64%</u>
Total Direct and Allocated Expenditures	<u>436,460.75</u>	<u>658,899.84</u>	<u>-222,439.09</u>	<u>66.24%</u>
Net Cash Surplus\Shortfall	<u><u>-220,540.75</u></u>	<u><u>-116,729.84</u></u>	<u><u>-103,810.91</u></u>	<u><u>188.93%</u></u>

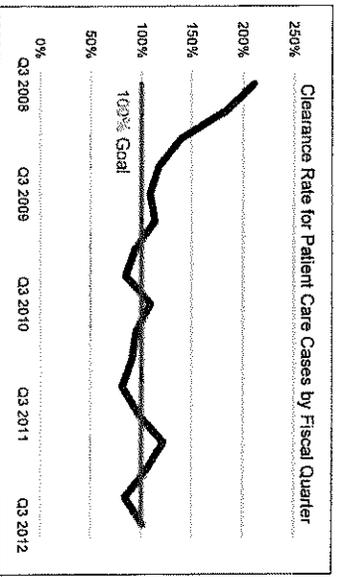
Virginia Department of Health Professions Patient Care Disciplinary Case Processing Times: Quarterly Performance Measurement, Q3 2008 - Q3 2012

Dianne Reynolds-Cane, M.D.
Director

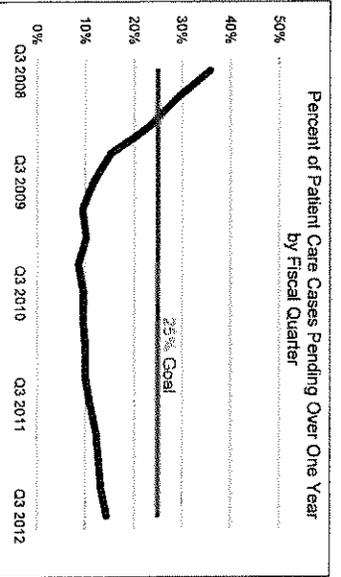
"To ensure safe and competent patient care by licensing health professionals, enforcing standards of practice, and providing information to health care practitioners and the public."
DHP Mission Statement

In order to uphold its mission relating to discipline, DHP continually assesses and reports on performance. Extensive trend information is provided on the DHP website, in biennial reports, and, most recently, on Virginia Performs through Key Performance Measures (KPMs). KPMs offer a concise, balanced, and data-based way to measure disciplinary case processing. These three measures, taken together, enable staff to identify and focus on areas of greatest importance in managing the disciplinary caseload: Clearance Rate, Age of Pending Caseload and Time to Disposition uphold the objectives of the DHP mission statement. The following pages show the KPMs by board, listed in order by caseload volume; volume is defined as the number of cases received during the previous 4 quarters. In addition, readers should be aware that vertical scales on the line charts change, both across boards and measures, in order to accommodate varying degrees of data fluctuation.

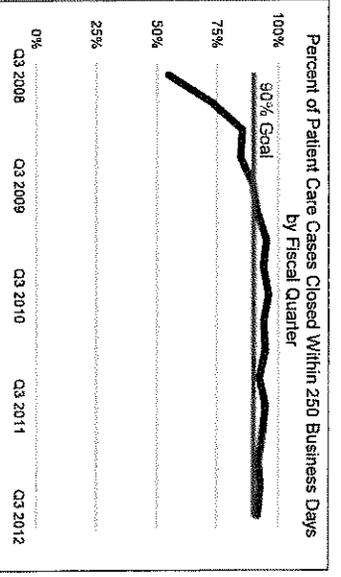
Clearance Rate - the number of closed cases as a percentage of the number of received cases. A 100% clearance rate means that the agency is closing the same number of cases as it receives each quarter. DHP's goal is to maintain a 100% clearance rate of allegations of misconduct through the end of FY 2012. The current quarter's clearance rate is 101%, with 985 patient care cases received and 998 closed.



Age of Pending Caseload - the percent of open patient care cases over 250 business days old. This measure tracks the backlog of patient care cases older than 250 business days to aid management in providing specific closure targets. The goal is to maintain the percentage of open patient care cases older than 250 business days at no more than 25% through the end of FY 2012. That goal continues to be achieved with the percent of cases pending over 250 business days dropping dramatically from 45% to 15%. For the last quarter shown, there were 1817 patient care cases pending, with 264 pending over 250 business days.



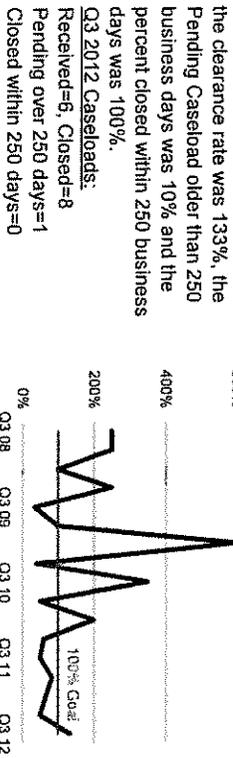
Time to Disposition - the percent of patient care cases closed within 250 business days for cases received within the preceding eight quarters. This moving eight-quarter window approach captures the vast majority of cases closed in a given quarter and effectively removes any undue influence of the oldest cases on the measure. The goal is to resolve 90% of patient care cases within 250 business days through the end of FY 2012. That goal continues to be achieved with 92% percent of patient care cases being resolved within 250 business days this past quarter. During the last quarter, there were 986 patient care cases closed, with 904 closed within 250 business days.



Virginia Department of Health Professions - Patient Care Disciplinary Case Processing Times, by Board

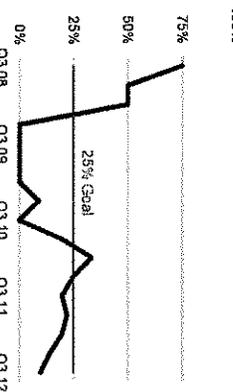
Clearance Rate

Physical Therapy - In Q3 2012, the clearance rate was 133%, the Pending Caseload older than 250 business days was 10% and the percent closed within 250 business days was 100%.



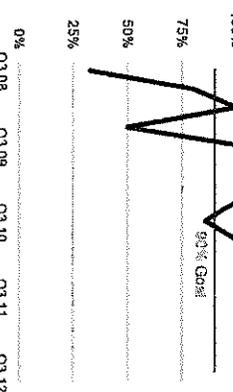
Age of Pending Caseload (percent of cases pending over one year)

Q3 2012 Caseloads: Received=6, Closed=8
Pending over 250 days=1
Closed within 250 days=0

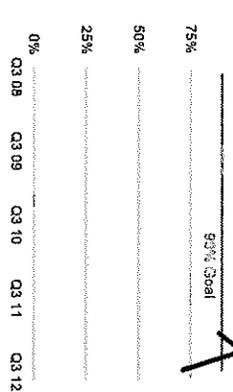
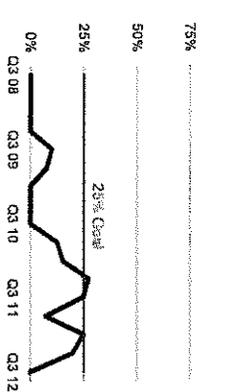
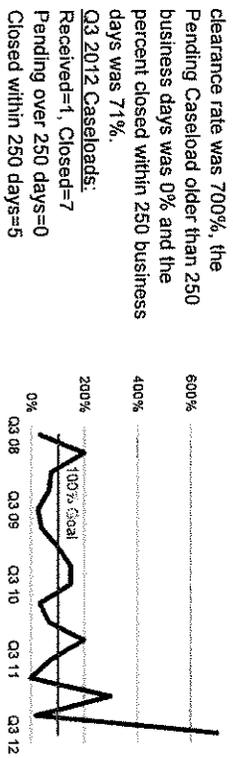


Percent Closed in 250 Business Days

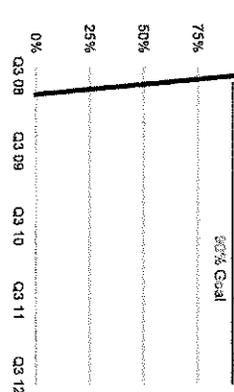
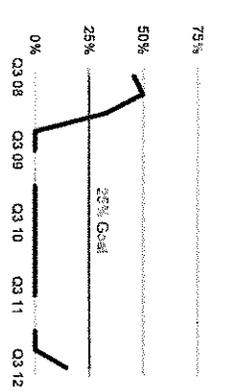
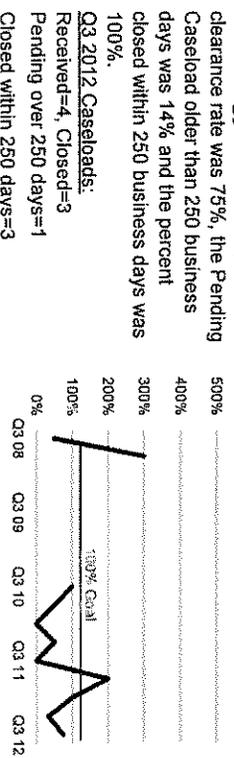
Q3 2012 Caseloads: Received=4, Closed=3
Pending over 250 days=1
Closed within 250 days=3



Funeral - In Q3 2012, the clearance rate was 700%, the Pending Caseload older than 250 business days was 0% and the percent closed within 250 business days was 71%.



Audiology - In Q3 2012, the clearance rate was 75%, the Pending Caseload older than 250 business days was 14% and the percent closed within 250 business days was 100%.



Note: Vertical scales on line charts change, both across boards and measures, in order to accommodate varying degrees of data fluctuation.

Disciplinary Case Report for Funeral Directors

April 24, 2012

Investigations	17	
Probable Cause	10	
APD	6	
Informal Stage	5	
Formal Stage	0	
Total	38	
Compliance Inspections Ordered		3
FDE Cases being Monitored by Compliance Manager		13

Data as of 04/10/2012

License Count Report for Funeral Directors

April 24, 2012

Branch Establishment	49
Continuing Education Provider	24
Courtesy Card	51
Crematories	92
Funeral Establishments	435
Funeral Service Interns	147
Embalmer	5
Funeral Service Director	65
Funeral Service Providers	1,430
Funeral Service Supervisors	320
Surface Transportation & Removal Services	44
Total	2,662

Data as of 04/10/2012

Tab 3

**Information
will be
provided at the
meeting**

Tab 4

VIRGINIA BOARD OF FUNERAL DIRECTORS AND EMBALMERS

DISPOSITION OF DISCIPLINARY CASES FOR PRACTICING ON EXPIRED LICENSES

The Board of Funeral Directors and Embalmers delegates to the Executive Director for the Board the authority to offer a prehearing consent order to resolve disciplinary cases in which a Funeral Service Licensee or Funeral Service Establishment has been found to be practicing with an expired license.

Disciplinary Action for Practicing with an Expired License

The Board adopted the following guidelines for resolution of cases of practicing with an expired license:

Cause	Possible Action
First offense; 90 days or less	Confidential Consent Agreement
First offense; 91 days to two years	Consent Order; Monetary Penalty of \$500
First offense; more than two years	Consent Order; Monetary Penalty of \$1000
Second offense	Consent Order; Monetary Penalty of \$1500

Tab 5

We discovered a funeral reg that is in conflict with FTC. FTC requires that on the GPL, under direct cremation, that the FH list a separate price for each direct cremation offered where an alternative container is provided. If you offer two alternative containers for direct cremation than there should be two separate prices listed. (Attached is the description in the funeral rule and an GPL example that shows this.) Appendix I of our regulations indicates that the funeral home only has to list "direct cremation with lowest priced alternative container" (see attached part of Appendix 1).

Last year, FTC did a sweep of inspections of FH in the Richmond area. Several FH were found deficient because they only listed one alternative container fee under direct cremation when they actually offered more.

Rev. _____

VIRGINIA BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Perimeter Center

9960 Mayland Drive, Suite 300 – Henrico, Virginia 23233-1463

E-Mail: FanBd@dhp.virginia.gov Website: www.dhp.virginia.gov Phone: 804-367-4479

APPENDIX I

GENERAL PRICE LIST

Note to Establishments: The following General Price List has been prepared as a guideline. All General Price Lists must contain at least the following content if you offer the goods and services for sale at your establishment. You may use any format arrangement you choose and may add to this information to fit your establishment's services.

This sample form has notes throughout that are for your information only and are not intended to be included on the form when you prepare the form for use at your establishment. The board has marked these notes with asterisks (*).

The statements in italics are required by the Federal Trade Commission and the Board. The FTC disclosure requirements must be placed under the appropriate category as indicated on this sample form.

APPENDIX I

Any Funeral Home

Main Street

Anytown, Virginia

Telephone Number

GENERAL PRICE LIST

These prices are effective as of _____ (Date)

(Prices are subject to change without prior notice)

I. General Information:

Required Disclosure: *"The goods and services shown below are those we can provide to our customers. You may choose only the items you desire. However, any funeral arrangements you select will include a charge for our basic services and overhead. If legal or other requirements mean you must buy any items you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the funeral goods and services you selected."*

"Certain funeral services may be provided off-premises by other funeral service providers."

Optional Disclosure: "This list does not include prices for certain items that you may ask us to buy for you such as cemetery or crematory services, flowers, and newspaper notices. The prices for these items will be shown on your bill or the statement describing the funeral goods and services you selected."

II. Professional Services of Funeral Director and Staff

A. Basic Services of Funeral Director and Staff \$ _____

"This fee for our basic services and overhead will be added to the total cost of the funeral arrangements you select. (This fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving remains.)" OR

Please note that a fee of \$ _____ for the use of our basic services and overhead is included in the price of our caskets. This same fee shall be added to the total cost of your funeral arrangements if you provide the casket."

Our services include: (*Note: List what charge for basic services includes)

III. Funeral Home Facilities

A. Facilities and staff for visitation and viewing \$

Our charge includes:

B. Facilities and staff for funeral ceremony \$

Our charge includes:

C. Facilities and staff for memorial service \$

Our charge includes:

D. Equipment and staff for graveside service \$

Our charge includes:

(*Note: If you have additional charges such as facilities and staff for home/church viewing, of a charge for additional staff per person or through calculation of manhours, etc., add here as extra items. If you have a charge for interment, add here. Describe what charges include.)

IV. Embalming

"Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements such as a funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement that does not require you to pay for it, such as direct cremation or immediate burial."

A. Normal remains. \$

B. Autopsy remains. \$

(*Note: If the cost for embalming is the same for normal and autopsied remains, only one price may be listed)

V. Other Preparation of the Deceased

(*Note: List below each preparation service that you offer and the price. If you do not charge for other preparation, remove this section.)

A. \$

B. \$

C. \$

VI. Immediate Burial (*List price range) \$

(*Note: A price range must be given for this service. Your prices should range from your immediate burial package with container provided by purchaser to your immediate burial package plus your highest priced casket.)

Our charges include: (*Note: List under each category what the charge includes)

A. Immediate burial with container provided by purchaser \$

B. Immediate burial with lowest priced alternative container \$

(*Note: If an alternative container is not offered, this line item may be omitted; if an alternative container is offered, include a brief description.)

C. Immediate burial with highest priced casket \$

VII. Direct Cremation (*List price range) \$ _____ to \$

"State and local laws do not require a casket for direct cremation. If you want to arrange a direct cremation, you can use an alternative container. Alternative containers encase the body and can be made of materials like fiberboard or composition materials (with or without an outside covering). The containers we provide are [specify containers]."

(*Note: A price range must be given for a direct cremation. Your prices should range from direct cremation with a container provided by the purchaser to the price for direct cremation plus the highest priced wooden casket acceptable for cremation or highest priced cremation casket. Describe the services included for each category listed below.)

A. Direct cremation with container provided by the purchaser. \$

ADD →

B. Direct cremation with (list each alternative container specified in the above disclosure) \$ _____

C. Direct cremation with highest priced wooden casket acceptable for cremation or highest priced cremation casket \$ _____

VIII. Transfer of Remains to Funeral Establishment \$

(*Note: This is added only when it is not included under professional services. You must explain what this charge includes if listed separately.)

IX. Forwarding Remains to Another Funeral Establishment \$

Our charge includes:

X. Receiving Remains from Another Funeral Establishment \$

Our charge includes: \$

XI. Automotive Equipment and Services

(*Note: Specify a range of miles for local service. If a fee is charged beyond local miles, please specify the fee per mile. The cost of any vehicle that you must rent should be included on the itemized statement as a cash advance item.)

A. Use of hearse \$

B. Use of limousine \$

C. Other automotive equipment and services \$

(*Note: You should provide a description and price for each automotive equipment and service listed.)

XII. Funeral Merchandise

A. Caskets \$ _____ to \$

"A complete price list will be provided at the funeral establishment."

B. Outer Burial Container \$ _____ to \$

"A complete price list will be provided at the funeral establishment."

"In most areas of the country, state or local law does not require you to buy a container to surround the casket in the grave. However, many cemeteries require that you have such a container so that the grave will not sink in. Either a grave liner or a burial vault will satisfy these requirements."

C. Other funeral merchandise

(*Note: List all other merchandise that you offer including acknowledgment cards, register book, memorial folders, etc. and include the price.)



13. Hearse;
14. Limousine;
15. Either individual casket prices or the range of casket prices that appear on the Casket Price List; and
16. Either individual outer burial container prices or the range of outer burial container prices that appear on the Outer Burial Container Price List.

You can list these items in any order you want. You only have to list the items that you actually offer. If you do not offer one or more of the 16 items, you need not list those items on the General Price List. In addition to these 16 items, you also may list other items that you offer, such as acknowledgement cards and cremation urns. You also may provide prices for package funerals on your GPL. However, you must offer any package funerals *in addition to and not in place of* the required itemized prices.⁽⁹⁾

The itemized prices on your General Price List, as well as your Casket Price List and Outer Burial Container Price List, should be accurate and up-to-date. These prices should reflect the prices that you actually charge your customers.

Of course, you can offer a discount when there are special circumstances, such as arrangements for a friend or relative or a family that otherwise could not afford your services. The Rule does not prevent you from doing this. However, you should not inflate the prices on any of your price lists in order to offer all or most of your customers a discount. In that case, the "discounted" prices would be the *accurate* prices and should be reflected on the price lists.

Items 1-4: Minimal Services

Four items that the Rule requires you to list are: (1) forwarding of remains; (2) receiving remains; (3) direct cremation; and (4) immediate burial. Unlike the rest of the goods and services that you must list on the GPL, the prices for

these four items *must include* any fee that you will charge consumers for the basic professional services of the funeral director and staff.

Example: Ms. James wants to arrange an immediate burial for her father. In addition, she chooses acknowledgement cards, use of a limousine, and a graveside service. You should charge her the fee for an immediate burial plus the fees for the other items that she wants. But, you should not charge her an additional non-declinable basic services fee. **A charge for your basic services is already included in the price for the immediate burial.** The required disclosure about the basic services fee (see pages 10-11) informs the consumer of this fact.

For *forwarding of remains* and *receiving remains*, the GPL should list one price for each of these items and describe all services you will provide for the quoted price. The prices for these items should include all charges relating to each service, including any basic services fee and any facilities or equipment fees.

For *direct cremations*, your GPL must state a price range, along with the required disclosure about the availability of an alternative container (see page 7), then list each of the following options within the range:

- one price where the consumer provides the casket or container; and
- * ● a separate price for each direct cremation offered where you provide an alternative container. The Rule requires you to offer an alternative container for use in direct cremations if you provide direct cremations. (See pages 21-22.)

You also must describe in the GPL the services and container provided for each price. If you wish, you also may list other options, such as direct cremation with a memorial service or direct cremation with scattering of ashes.



Sample 1

ABC FUNERAL HOME
100 Main Street
Yourtown, USA 12345
(123) 456-7890

GENERAL PRICE LIST

These prices are effective as of [date].

The goods and services shown below are those we can provide to our customers. You may choose only the items you desire. However, any funeral arrangements you select will include a charge for our basic services and overhead. If legal or other requirements mean you must buy any items you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the funeral goods and services you selected.

Basic Services of Funeral Director and Staff and Overhead\$ _____

Our services include: conducting the arrangements conference; planning the funeral; consulting with family and clergy; shelter of remains; preparing and filing of necessary notices; obtaining necessary authorizations and permits; coordinating with the cemetery, crematory, or other third parties. In addition, this fee includes a proportionate share of our basic overhead costs.

This fee for our basic services and overhead will be added to the total cost of the funeral arrangements you select. (This fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving remains.)

Embalming\$ _____

Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement that does not require you to pay for it, such as direct cremation or immediate burial.

Other Preparation of the Body\$ _____

[list individual services and prices]

Transfer of Remains to the Funeral Home (within __ mile radius)\$ _____

beyond this radius we charge __ per mile

Use of Facilities and Staff For Viewing\$ _____

Use of Facilities and Staff For Funeral Ceremony at the Funeral Home\$ _____

Use of Facilities and Staff For Memorial Service at the Funeral Home\$ _____

Use of Equipment and Staff For Graveside Service\$ _____

Hearse\$ _____

Limousine\$ _____

Caskets\$ _____ to \$ _____

A complete price list will be provided at the funeral home.



Outer Burial Containers\$ _____ to \$ _____

A complete price list will be provided at the funeral home.

Forwarding of Remains to Another Funeral Home\$ _____

Our charge includes; basic services of funeral director and staff; a proportionate share of overhead costs; removal of remains; embalming or other preparation of remains, if relevant; and local transportation.

Receiving Remains from Another Funeral Home\$ _____

Our charge includes; basic services of funeral director and staff; a proportionate share of overhead costs; care of remains; transportation of remains to funeral home and to cemetery or crematory.

Direct Cremation\$ _____ to \$ _____

Our charge for a direct cremation (without ceremony) includes: basic services of funeral director and staff; a proportionate share of overhead costs; removal of remains; transportation to crematory; necessary authorizations; and cremation if relevant.

If you want to arrange a direct cremation, you can use an alternative container. Alternative containers encase the body and can be made of materials like fiberboard or composition materials (with or without an outside covering). The containers we provide are a fiberboard container or an unfinished wood box.

A. Direct cremation with container provided by the purchaser\$ _____

B. Direct cremation with a fiberboard container\$ _____

C. Direct cremation with an unfinished wood box\$ _____

Immediate Burial\$ _____ to \$ _____

Our charge for an immediate burial (without ceremony) includes: basic services of funeral director and staff; a proportionate share of overhead costs; removal of remains; and local transportation to cemetery.

A. Immediate burial with casket provided by purchaser\$ _____

B. Immediate burial with alternative container [if offered]\$ _____

C. Immediate burial with cloth covered wood casket\$ _____

(*Note: A price range must be given for this service. Your prices should range from your immediate burial package with container provided by purchaser to your immediate burial package plus your highest priced casket.)

Our charges include: (*Note: List under each category what the charge includes)

- A. Immediate burial with container provided by purchaser \$ _____
- B. Immediate burial with lowest priced alternative container \$ _____

(*Note: If an alternative container is not offered, this line item may be omitted; if an alternative container is offered, include a brief description.)

- C. Immediate burial with highest priced casket \$ _____

VII. Direct Cremation (*List price range) \$ _____ to \$ _____

"State and local laws do not require a casket for direct cremation. If you want to arrange a direct cremation, you can use an alternative container. Alternative containers encase the body and can be made of materials like fiberboard or composition materials (with or without an outside covering). The containers we provide are [specify containers]."

(*Note: A price range must be given for a direct cremation. Your prices should range from direct cremation with a container provided by the purchaser to the price for direct cremation plus the highest priced wooden casket acceptable for cremation or highest priced cremation casket. Describe the services included for each category listed below.)

- A. Direct cremation with container provided by the purchaser. \$ _____

- * B. Direct cremation with lowest priced alternative container \$ _____
(*A price and description for alternative container should be provided)

- C. Direct cremation with highest priced wooden casket acceptable for cremation or highest priced cremation casket \$ _____

VIII. Transfer of Remains to Funeral Establishment \$ _____

(*Note: This is added only when it is not included under professional services. You must explain what this charge includes if listed separately.)

IX. Forwarding Remains to Another Funeral Establishment \$ _____

Our charge includes:

X. Receiving Remains from Another Funeral Establishment \$ _____

Our charge includes:

XI. Automotive Equipment and Services

Tab 6

DHP MAR 02 2012

February 6, 2012

The Board of Funeral Directors and Embalmers
Attn: Executive Director

Perimeter Center
9960 Mayland Drive
Suite 300
Henrico, Virginia 23233-1463

FDE
MAR 02 2012

To Whom It May Cocern:

Please find the enclosed MOTION TO RECONSIDER and place on the Boards Docket for sometime after October 1st 2012, so that I can fully investigate any and all allegations in regards to this MOTION TO RECONSIDER. I plan to file subpoenas as well in regard to to this issue.

Thank-you for your time in this regard, and I look forward to your prompt attention in regard to this matter.

Sincerely,



Kiplin Lane Jordan

pro se

VIRGINIA:

BEFORE THE BOARD OF FUNERAL DIRECTORS AND EMBALMERS

**IN RE: KIPLIN LANE JORDAN, F.S.L.
 License No. 0502-860009**

CONSENT ORDER

By letter dated September 4, 2007, the Virginia Board of Funeral Directors and Embalmers ("Board") summarily suspended Mr. Jordan's license to practice funeral services and noticed Mr. Jordan for a formal administrative hearing to review his compliance with the Board's Order entered October 25, 2006, and to determine if Mr. Jordan has violated certain laws and regulations governing the practice of funeral services in the Commonwealth of Virginia.

In lieu of proceeding to this formal administrative hearing, the Board and Mr. Jordan, as evidenced by their signatures affixed below, agree to enter into this Consent Order affecting the license of Mr. Jordan to practice funeral services in Virginia.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Kiplin Lane Jordan holds license number 0502-860009 issued by the Board to practice funeral services in the Commonwealth of Virginia. Said license was summarily suspended by the Board on September 4, 2007.

2. Mr. Jordan is in violation of Term 2 of the Consent Order entered October 25, 2006, in that he was required to retake and successfully pass the Virginia Board of Funeral Directors and Embalmers State Examination for Licensure during his probationary period. Mr. Jordan has not submitted the necessary documents to take the examination.

3. Mr. Jordan is in violation of Term 3 of the Consent Order entered October 25, 2006, in that he was required to cease and desist as the manager of record for K. L. Jordan Funeral and Cremation Services ("K. L. Jordan") while on probation. Mr. Jordan was required to submit

documentation identifying the new manager of record, with the new manager sending the required documentation of his position as the manager of record for K. L. Jordan. Mr. Jordan has not submitted documentation naming a new manager of record, nor has a new manager of record provided the required documentation of his position as the manager of record with K. L. Jordan.

4. Mr. Jordan is in violation of Term 5 of the Consent Order entered October 25, 2006, in that he was required to maintain a course of conduct in his practice of funeral services commensurate with the requirements of Title 54.1, Chapter 28 of the Code of Virginia (1950), as amended (“Code”), all applicable Board Regulations, and all laws of the Commonwealth while on probation. Specifically:

a. Mr. Jordan is in violation of § 54.1-2806(2) and (3) of the Code, in that he received an overpayment in the amount of \$4,875.74 for Decedent A’s funeral. After attempting, in good faith, to collect the refund from Mr. Jordan through telephone calls and letters, the Administrator of Decedent A’s estate sought relief through a Warrant in Debt. On or about October 30, 2006, a judgment was entered for Decedent A’s estate that ordered Mr. Jordan to remit the amount of \$4,875.74 plus 6% interest from October 6, 2005, until paid and \$36.00 for court costs. Mr. Jordan has not refunded the estate.

b. Mr. Jordan is in violation of § 54.1-2806(2) and (3) of the Code, in that on or about June 27, 2006, Mr. Jordan sold Client B a preneed funeral contract in the amount of \$8,100.00. Mr. Jordan did not provide Client B with a General Price List of the goods and services he offers to his clients. On or about February 20, 2007, Client B sent a letter to Mr. Jordan cancelling the preneed contract and requesting a full refund. As of April 27, 2007, Client B had

not received his refund, and has filed a Warrant in Debt against Mr. Jordan. Contact with the two insurance carriers that Mr. Jordan has been appointed to represent reveals that Mr. Jordan has not written a preneed funeral policy in the name of Client B.

c. Mr. Jordan is in violation of § 54.1-2806(2) and (3) of the Code, in that Mr. Jordan failed to provide Decedent C's daughter with an itemized statement of goods and services in a timely manner. Further, Mr. Jordan filed a Virginia Claim Form with Fore Thought authorizing payment by the preneed insurance carrier with a forged signature of Decedent C's daughter, which was dated approximately one month prior to Decedent C's death.

5. Mr. Jordan is in violation of Term 6 of the Consent Order entered October 25, 2006, which required that Mr. Jordan cooperate fully with the Board and the Department of Health Professions ("DHP") in any investigation or inspection while on probation. Specifically:

a. On several occasions DHP Senior Investigator Jennifer Challis requested a response from Mr. Jordan regarding the cases she was investigating for the Board. By certified letters dated January 24, 2007, Ms. Challis requested a written response from Mr. Jordan regarding two separate complaints. Mr. Jordan was given until February 7, 2007 to respond. Although the letters were received and signed for, Mr. Jordan did not respond to Ms. Challis' request.

b. On February 21, 2007, Mr. Jordan refused to allow Ms. Challis and DHP Senior Inspector Leith Ellis to conduct a routine inspection of K. L. Jordan.

c. On August 30, 2007, Mr. Jordan refused to allow DHP Senior Inspector Leith Ellis to conduct a routine inspection of K. L. Jordan.

d. By letter dated April 16, 2007, to Mr. Jordan's attorney, with a copy to Mr. Jordan, Ms. Challis requested additional documentation and a written response to Client B's complaint by April 12, 2007. Neither Mr. Jordan nor his attorney responded to Ms. Challis' request.

6. Mr. Jordan is in violation of Term 7 of the Consent Order entered October 25, 2006, which required Mr. Jordan to return all copies of his current license within ten (10) days of entry of the Consent Order, for issuance of a new license marked "Probation with Terms." On November 4, 2006, Mr. Jordan's current license was due to be returned to his Compliance Case Manager. Mr. Jordan did not return his license until November 8, 2006.

7. Mr. Jordan is in violation of § 54.1-2806(2) and (3) of the Code, in that on or about April 17, 2007, Mr. Jordan conducted funeral services for Decedent D. Mr. Jordan received an overpayment approximately in the amount of \$3,084.55 for Decedent D's funeral expenses from two life insurance policies on Decedent D. Mr. Jordan has failed to refund Decedent D's family the overpaid amount, although they have requested a refund in writing and by telephone.

8. Mr. Jordan is in violation of § 54.1-2806(2) and (3) of the Code, in that, on or about December 27, 2006, Mr. Jordan conducted funeral services for Decedent E. Mr. Jordan received overpayments in the amounts of approximately \$15,140.99 and \$52,461.29 for Decedent E's funeral expenses from a life insurance policy on Decedent E. Mr. Jordan has failed to refund Decedent E's family the overpaid amount, although they have requested a refund in writing and by telephone.

CONSENT

Kiplin Lane Jordan, F.S.L., by affixing his signature hereon, agrees to the following:

Consent Order – Kiplin Lane Jordan, F.S.L.

Page 5 of 6

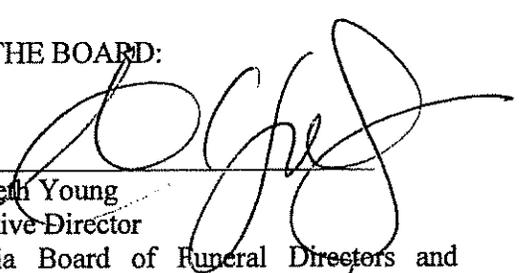
1. He has been advised specifically to seek the advice of counsel prior to signing this document;
2. He is fully aware that without his consent, no legal action can be taken against his license except pursuant to the Virginia Administrative Process Act, § 2.2-4000.A et seq. of the Code of Virginia;
3. He has the following rights, among others:
 - a. the right to a formal administrative hearing before the Board;
 - b. the right to appear in person or by counsel, or other qualified representative before the agency; and
 - c. the right to cross – examine witnesses against him.
4. He waives all rights to a formal administrative hearing;
5. He admits the truth of the above Findings of Fact and Conclusions of Law; and
6. He consents to the following Order affecting his license to practice funeral services in the Commonwealth of Virginia.

ORDER

WHEREFORE, on the basis of the foregoing Findings of Fact and Conclusions of Law, and with the consent of the licensee, it is hereby ORDERED that the license of Kiplin Lane Jordan, F.S.L., be REVOKED.

Pursuant to § 2.2-4023 and § 54.1-2400.2 of the Code of Virginia, the signed original of this Consent Order shall remain in the custody of the Department of Health Professions as a public record and shall be made available for public release, inspection and copying upon request.

FOR THE BOARD:



Elizabeth Young
Executive Director
Virginia Board of Funeral Directors and
Embalmers

ENTERED: 10/9/07

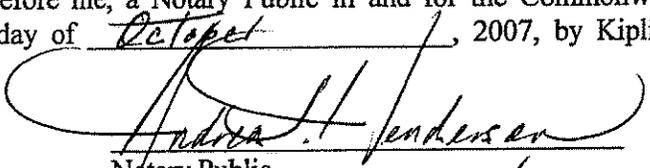
SEEN AND AGREED TO:



Kiplin Lane Jordan, F.S.L.

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF Richmond

Subscribed and sworn to before me, a Notary Public in and for the Commonwealth of Virginia, at large, this 8th day of October, 2007, by Kiplin Lane Jordan, F.S.L.



Notary Public

My Commission Expires: 9/30/2009

Registration No.: 145796

