

Call to Order – Jason Graves, FSL, Board President

- Welcome and Introductions
 - Mission of the Board
 - Emergency Egress Procedures
-

Approval of Minutes (p. 4-20)

- Board Meeting – October 21, 2022
 - Formal Hearings – October 21, 2022
 - Legislative/Regulatory Committee – March 20, 2023
-

Ordering of Agenda

Public Comment

The Board will receive public comment at this time. The Board will not receive comment on any pending regulation process for which a public comment period has closed or any pending or closed complaint or disciplinary matter.

Agency Report – Arne Owens, Director

Staff Reports

- Executive Director’s and Discipline Reports – **Corie E. Tillman Wolf, Executive Director**
 - Licensing Report – **Sarah Georgen, Licensing and Operations Supervisor**
 - Inspections Report – **Lynne Helmick, Inspections Compliance Specialist**
-

Board Counsel Report – Brent Saunders, Senior Assistant Attorney General

Committee and Board Member Reports

- Legislative/Regulatory Committee – **J. Frank Walton, FSL, Committee Chair**
 - International Conference Annual Meeting Report – **Blair Nelsen, FSL, Lacyn Barton, FSL, and Jason Graves, FSL**
-

Legislative and Regulatory Report – Erin Barrett, Director of Legislative and Regulatory Affairs
(p. 22-26)

-
- General Assembly 2023
 - Report on Status of Regulatory Actions
-

Board Discussion and Actions - Erin Barrett, Corie Tillman Wolf (p. 28-99)

- Board Action on Recommendations from Legislative/Regulatory Committee:
 - Initiation of Notice of Intended Regulatory Action (NOIRA) - Board Regulations Governing the Practice of Funeral Services (18VAC65-20-10 et seq.), Regulations for Preneed Funeral Planning (18VAC65-30-10 et seq.), and Regulations for the Funeral Service Internship Program (18VAC65-40-10 et seq.)
 - Revisions to, Reorganization of, or Readoption of Guidance Documents
 - 65-18, Guidance on Surface Transportation & Removal Services
 - Consideration of exempt regulatory changes to Board Regulations Governing the Practice of Funeral Services (18VAC65-20-10 et seq.), Criteria for delegation of informal fact-finding proceedings to an agency subordinate
 - Response to Question from Licensee - Separate Charges to Guarantee Goods and Services on Preneed Contracts
-

New Business

- Presentation and Discussion - Cremation Issues and Anatomical Donations - **Richard Sikon, MLA, FSL, Operational Director, Virginia State Anatomical Program**
 - Continuing Education Related to Preneed Funeral Contracts - **J. Michael Williams, FSL**
-

Board Member Recognition

Next Meeting - July 11, 2023

Meeting Adjournment

This information is in **DRAFT** form and is subject to change. The official agenda and packet will be approved by the public body at the meeting and will be available to the public pursuant to the Code of Virginia.

Approval of Minutes

The Virginia Board of Funeral Directors and Embalmers convened for a full board meeting on Friday, October 21, 2022, at the Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2nd Floor, Board Room #2, Henrico, Virginia.

BOARD MEMBERS PRESENT:

Jason Graves, FSL, President
Joseph Michael Williams, FSL, Vice-President
Lacyn Barton, FSL, Secretary-Treasurer
Muhammad Hanif, Citizen Member
S. Jonathan Hines, FSL
Mia F. Mimms, FSL, J.D.
Blair H. Nelsen, FSL
Joseph Frank Walton, FSL

BOARD MEMBERS ABSENT:

Steve Clemons, CPA, Citizen Member

DHP STAFF PRESENT FOR ALL OR PART OF THE MEETING:

Erin Barrett, Senior Policy Analyst
Alesia Baskin, Program Manager
Sarah Georgen, Licensing and Operations Manager
Kelley Palmatier, Deputy Executive Director
Charis Mitchell, Assistant Attorney General
Brent Saunders, Senior Assistant Attorney General, Board Counsel
Corie Tillman Wolf, Executive Director

OTHER GUESTS PRESENT:

Angela Bezik, Principle Advantage
Paul Harris, Regulatory Support Services
Barry Robinson, Virginia Morticians' Association
Ben Traynham, Hancock, Daniel, & Johnson, P.C.

**participant indicates attendance to count toward continuing education requirements*

CALL TO ORDER

Mr. Graves called the meeting to order at 10:03 a.m. and asked the Board members and staff to introduce themselves.

With eight board members present at the meeting, a quorum was established.

Mr. Graves read the mission of the Board, which is also the mission of the Department of Health Professions.

Mr. Graves provided reminders to the Board members and audience regarding microphones, computer agenda materials, breaks, sign-in sheets, and attendance for continuing education requirements.

Ms. Tillman Wolf then read the emergency egress instructions.

APPROVAL OF MINUTES

Mr. Graves opened the floor to any edits or corrections regarding the draft minutes for the Board meeting and Formal Hearings held on July 15, 2022, and two Alkaline Hydrolysis Workgroup meetings held on July 14, 2022, and August 12, 2022.

Ms. Tillman Wolf noted a correction to the meeting minutes from July 15, 2022, regarding the end time of the meeting, which should reflect 11:08 a.m.

Upon a **MOTION** by Mr. Williams, properly seconded by Mr. Nelsen, the Board voted to approve the meeting minutes as amended. The motion carried (8-0).

ORDERING OF THE AGENDA

Ms. Tillman Wolf stated that the Board would not approve the Alkaline Hydrolysis report later in the agenda as the report was pending approval by the Governor's office. She stated that the report would be distributed to Board members as soon as possible.

Upon a **MOTION** by Ms. Mimms, properly seconded by Mr. Williams, the Board voted to accept the agenda as presented. The motion carried (8-0).

PUBLIC COMMENT

Mr. Robinson, Virginia Morticians' Association, provided verbal and written public comments (Attachment A).

BOARD MEMBER RECOGNITION

Mr. Graves recognized Dr. Scott Hickey for his service as a citizen member of the Board from 2018-2022 and as Board President from 2021-2022. He stated that a plaque was sent to Dr. Hickey to recognize his service.

AGENCY REPORT

Dr. Brown welcomed Mr. Hines and Mr. Clemons to the Board.

Dr. Brown announced that all Executive Branch entities had been tasked with initiating the regulatory process to reduce by at least 25 percent the number of regulations not mandated by federal or state statutes.

Dr. Brown provided a brief update on the Conference Center technology upgrade. Dr. Brown clarified that there were specific allowances for participation by video conferencing; however, DHP was not included in the General Assembly bill for regularly scheduled virtual meetings.

With no questions, Dr. Brown concluded his report.

INSPECTIONS UPDATE – *Melody Morton, Inspections Manager, Enforcement Division*

Ms. Morton provided an inspections update from the DHP Enforcement Division.

With no questions, Ms. Morton concluded her report.

STAFF REPORTS

Executive Director’s Report – Corie E. Tillman Wolf, J.D., Executive Director

Ms. Tillman Wolf welcomed Mr. Clemons to the Board as a Citizen Member appointed by the Governor, Ms. Baskin as the new Licensing Program Manager to the Board, and Mr. Saunders as the new Board Counsel.

BOARD UPDATES

Alkaline Hydrolysis Workgroup (SB 129)

Ms. Tillman Wolf provided an overview of the process of the Alkaline Hydrolysis Workgroup and the steps required by the Board. She thanked the participants that attended the meetings held on July 14, 2022, and August 12, 2022. She stated that the final Alkaline Hydrolysis Study would be provided to Board members once approved.

Licenses for Funeral Directors and Embalmers

Ms. Tillman Wolf provided an overview of the status of the Board’s emergency regulations, effective January 5, 2021, and the permanent regulations, which will become effective on December 7, 2022.

She also provided data on applications received as of October 17, 2022, for Funeral Directors, Embalmers, and Funeral Service Licensees and internships for each license type.

Federal Trade Commission (FTC) Updates

Ms. Tillman Wolf provided information a recent FTC resource for consumers, FTC Consumer Guidance: Shopping for Funeral Services by Phone or Online. She noted that this information was posted to the Board’s website for public access and sent by email to all licensed practitioners.

She also provided additional information on the FTC Funeral Rule and the initiation of possible changes resulting from an October 20, 2022, FTC meeting. Mr. Nelsen added that the FTC had voted to initiate rulemaking to require funeral homes to post all price lists online.

Ms. Tillman Wolf noted pending legal action by the FTC against the Funeral and Cremation Group of North America, LLC., Legacy Cremation Services, LLC, d/b/a Heritage Cremation Provider. Additionally, she noted that the Board has previously posted and disseminated information to licensees regarding the Board's Guidance Document on aiding and abetting unlicensed practice of funeral services.

International Conference Updates

Ms. Tillman Wolf provided information on the International Conference's 2023 Annual Meeting which will take place on March 1-2, 2023, in Chandler, Arizona. She asked if any Board members were interested in attending to contact her for more information.

She also provided information about the changes to the National Board Examination (NBE), scheduled for January 1, 2023.

Ms. Tillman Wolf announced that the International Conference would offer virtual learning sessions in the future and encouraged Board members to attend as they were able.

Expenditure and Revenue Summary as of June 30, 2022

Ms. Tillman Wolf presented the Expenditure and Revenue Summary as of June 30, 2022

Cash Balance as of June 30, 2021	\$848,630
YTD FY 2022 Revenue	\$748,565
<u>Less: FY 2022 Direct and Allocated Expenditures</u>	<u>\$701,206</u>
Cash Balance as of June 30, 2022	\$895,989

2023 Board Meeting Dates

Ms. Tillman Wolf announced the 2023 Board meeting dates.

- January 12, 2023
- April 13, 2023
- July 11, 2023
- October 12, 2023

With no questions, Ms. Tillman Wolf concluded her report.

Discipline Report – Kelley Palmatier, J.D., Deputy Executive Director

As of October 14, 2022, Ms. Palmatier reported the following disciplinary statistics:

- 53 Patient Care Cases
 - 1 at Informal
 - 1 at Formal
 - 15 at Enforcement
 - 34 at Probable Cause
 - 2 at APD
- 29 Non-Patient Care Cases
 - 2 at Informal
 - 2 at Formal
 - 4 at Enforcement
 - 18 at Probable Cause
 - 3 at APD
- 20 at Compliance

Ms. Palmatier reported the following Total Cases Received and Closed:

- Q3 2020 – 17/30
 - Q4 2020 – 16/13
 - Q1 2021 – 15/18
 - Q2 2021 – 12/12
 - Q3 2021 – 20/22
- Q4 2021 – 22/10
 - Q1 2022 – 19/18
 - Q2 2022 – 19/12
 - Q3 2022 – 24/22
 - Q4 2022 – 28/21

Percentage of all cases closed in 365 days

	Q3-21	Q4-21	Q1-22	Q2-22	Q3-22	Q4-22
FDE	51.4%	69.2%	40.0%	76.0%	30.9%	43.8%
Agency	71.1%	68.8%	66.0%	70.7%	71.9%	65.8%

With no questions, Ms. Palmatier concluded her report.

Licensure Report – Sarah Georgen, Licensing and Operations Manager

Ms. Georgen presented licensure statistics that included the following information:

Licensure Statistics – All Licenses

License	June 30, 2022	September 30, 2022	Difference (+/-)
Funeral Service Licensees	1,574	1,555	-19
Funeral Director	37	36	-1
Embalmer Only	3	3	0
Supervisors	583	570	-13

Funeral Service Interns	258	242	-16
Funeral Directing Interns	17	22	5
Embalmer Interns	0	1	1
Funeral Establishments	423	424	1
Branch Establishments	84	86	2
Crematories	124	129	5
CE Providers	11	10	-1
Courtesy Card Holders	124	124	0
Surface Transport & Removal Svc.	57	52	-5
Total (*not incl. supervisors)	2,712	2,684	-28

Ms. Georgen said she would review the reduced number of Funeral Service Licensees following renewal. She said she would provide more information at the next Board meeting if necessary.

With no questions, Ms. Georgen concluded her report.

BOARD COUNSEL REPORT – Brent Saunders, Senior Assistant Attorney General

There was no Board Counsel report.

COMMITTEE AND BOARD MEMBER REPORTS

Report from the International Conference – Blair Nelsen, FSL

Mr. Nelsen provided a report from the International Conference and provided information on upcoming examination changes, including the elimination of the State Board Examination (SBE) as a separate examination, the use of the National Board Examination (NBE) as the sole licensing examination in funeral arts and sciences effective January 1, 2023, the use of calculators during the examinations, the communication of more detailed score reports to mortuary schools, and the posting of exam results on the Conference’s website.

With no questions, Mr. Nelsen concluded his report.

Alkaline Hydrolysis Workgroup Report – Blair Nelsen, FSL

Mr. Nelsen provided a report on the Alkaline Hydrolysis Workgroup meeting on August 12, 2022.

LEGISLATION AND REGULATORY ACTIONS – Erin Barrett, Senior Policy Analyst

Report on Status of Regulations

Ms. Barrett provided a report on the status of the Board's pending regulations.

With no questions, Ms. Barrett concluded her report.

BOARD DISCUSSION AND ACTIONS

Revisions to, Reorganization of, or Readoption of Guidance Documents – Erin Barrett

Ms. Barrett provided an overview of Guidance Documents 65-1, Time credit for continuing education courses, 65-2, Disposition of disciplinary cases for practicing on an expired license, and 65-17, Initiating Disciplinary Action Against Funeral Homes for Failing to Submit Corrective Action to Deficiencies Noted During Routine Inspections.

Upon a **MOTION** by Ms. Barton, properly seconded by Mr. Walton, the Board voted to revise Guidance Document 65-1, Time credit for continuing education courses as presented. The motion carried (8-0).

Upon a **MOTION** by Mr. Walton, properly seconded by Mr. Williams, the Board voted to revise Guidance Document 65-2, Disposition of disciplinary cases for practicing on an expired license, as presented. The motion carried (8-0).

Upon a **MOTION** by Mr. Nelsen, properly seconded by Mr. Williams, the Board voted to revise Guidance Document 65-17, Initiating Disciplinary Action Against Funeral Homes for Failing to Submit Corrective Action to Deficiencies Noted During Routine Inspections as amended. The motion carried (8-0).

Discussion of Process for Review of Board Regulations – Regulations Governing the Practice of Funeral Services (18VAC65-20-10 et seq.), Regulations for Preneed Funeral Planning (18VAC65-30-10 et seq.), and Regulations for the Funeral Service Internship Program (18VAC65-40-10 et seq.) – Erin Barrett

Ms. Barrett provided information on the Process for Review of Board Regulations – Regulations Governing the Practice of Funeral Services (18VAC65-20-10 et seq.), Regulations for Preneed Funeral Planning (18VAC65-30-10 et seq.), and Regulations for the Funeral Service Internship Program (18VAC65-40-10 et seq.).

Ms. Tillman Wolf recommended that the Board convene a Legislative/Regulatory Committee meeting to review the regulatory reduction requirements, provide recommendations to the full Board, and consider the pending preneed questions from the Virginia Funeral Directors Association (VFDA).

NEXT MEETING

The next meeting date is January 12, 2023.

ADJOURNMENT

With all business concluded, the meeting adjourned at 11:14 a.m.

Corie Tillman Wolf, J.D., Executive Director

Date

Unapproved

**VIRGINIA BOARD OF FUNERAL DIRECTORS & EMBALMERS
FORMAL ADMINISTRATIVE HEARING
MINUTES**

Friday, October 21, 2022

**Department of Health Professions
Perimeter Center
9960 Mayland Drive
Henrico, Virginia 23233**

CALL TO ORDER:

The formal hearing of the Board was called to order at 1:35 p.m.

MEMBERS PRESENT:

Jason Graves, FSL, President, (Chair)
Joseph Michael Williams, FSL, Vice President
Joseph Frank Walton, FSL
Lacyn Barton, FSL
S. Jonathan Hines, FSL
Muhammad Hanif, Citizen Member
Steve Clemmons, Citizen Member

BOARD COUNSEL:

M. Brent Saunders, Senior Assistant Attorney General
James Rutkowski, Assistant Attorney General

DHP STAFF PRESENT:

Corie Tillman Wolf, Executive Director
Sarah Georgen, Licensing & Operations Manager

COURT REPORTER:

Andrea Pegram Court Reporting Services, LLC.

**PARTIES ON BEHALF OF
COMMONWEALTH:**

Claire Foley, Adjudication Specialist, Administrative Proceedings Division

**COMMONWEALTH'S
WITNESS:**

Wendy Ashworth, Senior Investigator, DHP
Robert N. Baker, IV, FSL

OTHERS PRESENT:

Kelly Baker
Angela Pearson

MATTER:

**Patrick Lee Morris, FSL
License No.: 0502-900915
Case Number: 208132**

ESTABLISHMENT OF A QUORUM:

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

DISCUSSION:

Patrick Lee Morris, FSL, was not present, nor was counsel or a representative for Patrick Morris.

The Board received evidence and sworn testimony on behalf of the Commonwealth regarding the allegations in the Notice.

CLOSED SESSION:

Upon a motion by Joseph Michael Williams and duly seconded by Lacyn Barton, 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 Patrick Lee Morris, FSL. Additionally, he moved that Mr. Saunders, Mr. Rutkowski, Ms. Tillman Wolf and Ms. Georgen attend the closed meeting because their presence in the closed meeting was deemed necessary and would aid the Board in its deliberations.

RECONVENE:

Having certified that the matters discussed in the preceding closed session met the requirements of §2.2-3712 of the Code, the Board reconvened in open session.

DECISION:

Upon a motion by Joseph Michael Williams and duly seconded by Lacyn Barton, the Board voted to revoke the right to renew the license of Patrick Lee Morris, FSL. The motion carried.

VOTE:

The vote was unanimous. (7-0)

ADJOURNMENT:

The Board adjourned at 2:27 p.m.

For the Board:

Corie Tillman Wolf, JD, Executive Director

Date

Unapproved
VIRGINIA BOARD OF FUNERAL DIRECTORS & EMBALMERS
FORMAL ADMINISTRATIVE HEARING
MINUTES

Friday, October 21, 2022

Department of Health Professions
Perimeter Center
9960 Mayland Drive
Henrico, Virginia 23233

CALL TO ORDER: The formal hearing of the Board was called to order at 3:30 p.m.

MEMBERS PRESENT: Jason Graves, FSL, President, (Chair)
Joseph Michael Williams, FSL, Vice President
Joseph Frank Walton, FSL
Lacyn Barton, FSL
S. Jonathan Hines
Muhammad Hanif, Citizen Member
Steven Clemons, Citizen Member

BOARD COUNSEL: M. Brent Saunders, Assistant Attorney General
James Rutkowski, Assistant Attorney General

DHP STAFF PRESENT: Corie Tillman Wolf, Executive Director
Sarah Georgen, Licensing & Operations Manager

COURT REPORTER: Andrea Pegram Court Reporting Services, LLC.

PARTIES ON BEHALF OF COMMONWEALTH: Claire Foley, Adjudication Specialist, Administrative Proceedings Division

OTHERS PRESENT: Angela Pearson

MATTER: **Fenton Lee Bland, Jr., FSL**
License No.: 0502-860051
Case Number: 216888

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

DISCUSSION: Mr. Bland appeared before the Board in accordance with the Notice of Formal Hearing dated August 24, 2022. Mr. Bland was represented by counsel, Charles Cuthbert.

The Board received evidence and sworn testimony on behalf of the Commonwealth and Mr. Bland regarding his petition to be released from probation.

CLOSED SESSION:

Upon a motion by Joseph Michael Williams and duly seconded by Lacyn Barton, 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 Fenton Bland, FSL. Additionally, he moved that Mr. Saunders, Mr. Rutkowski, Ms. Tillman Wolf and Ms. Georgen attend the closed meeting because their presence in the closed meeting was deemed necessary and would aid the Board in its deliberations.

RECONVENE:

Having certified that the matters discussed in the preceding closed session met the requirements of §2.2-3712 of the Code, the Board reconvened in open session.

DECISION:

Upon a motion by Joseph Michael Williams and duly seconded by Lacyn Barton the Board ordered that Mr. Bland's petition to be released from probation is denied and he is continued on indefinite probation under the same terms and conditions set forth in the Board Order dated March 17, 2020. The motion carried.

VOTE:

The vote was 4-3.

ADJOURNMENT:

The Board adjourned at 5:59 p.m.

For the Board:

Corie Tillman Wolf, JD, Executive Director

Date

March 20, 2023

The Virginia Board of Funeral Directors and Embalmers' Legislative/Regulatory Committee convened on Monday, March 20, 2023, at the Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2nd Floor, Board Room #1, Henrico, Virginia.

BOARD MEMBERS PRESENT

J. Frank Walton, FSL, Committee Chair
Jason Graves, FSL, Board Chair
Muhammad Hanif, Citizen Member

STAFF PRESENT FOR ALL OR PART OF THE MEETING

Erin Barrett, Director of Legislative and Regulatory Affairs
Alesia Baskin, Senior Licensing Program Coordinator
Sarah Georgen, Licensing and Operations Supervisor
Matt Novak, Policy Analyst
Brent Saunders, Senior Assistant Attorney General, Board Staff
Corie Tillman Wolf, Executive Director

OTHER GUESTS PRESENT

Barry Robinson, Virginia Morticians' Association
Ben Traynham, Hancock, Daniel, & Johnson, P.C.

CALL TO ORDER

Mr. Walton called the meeting to order at 1:12 p.m. and asked the Board members and staff to introduce themselves.

With three Committee members present at the meeting, a quorum was established.

Mr. Walton read the mission of the Board, which is also the mission of the Department of Health Professions.

Ms. Tillman Wolf read the emergency egress instructions.

ORDERING OF THE AGENDA

Mr. Walton requested any changes to the ordering of the agenda. Upon a **MOTION** by Mr. Graves, properly seconded by Mr. Hanif, the agenda was approved as presented. The motion passed unanimously (3-0).

PUBLIC COMMENT

Mr. Robinson provided public comment and asked the Committee to consider clarifying regulations pertaining to the requirement for preneed contracts when the owner and manager of a Funeral Home dies.

DISCUSSION

Ms. Barrett provided an overview of the Governor's recent directive regarding the reduction of regulations and the role of the Committee in making recommendations to the full Board for consideration. Ms. Barrett stated that the Board recently completed a periodic review in 2021.

Mr. Walton and Committee members reviewed the Board's Regulations Governing the Practice of Funeral Service (18VAC65-20-10 et seq.), Regulations for Preneed Funeral Planning (18VAC65-30-10 et seq.), and Regulations for the Funeral Service Internship Program (18VAC65-40-10 et seq.) for possible areas of reduction.

Regulations Governing the Practice of Funeral Service (18 VAC 65-20-10 et seq.)

18VAC65-20-140 – Committee members discussed the deletion of “for up to three years following expiration” in (A) to allow reinstatement of a license following the late renewal period and beyond three years.

The Committee discussed deleting language in -140(B), that references a lapsed license of three years or less.

The Committee discussed a change in (C) to change the language from “not reinstated” to “lapsed”, clarify that the licensee would “apply” for reinstatement, not “reapply,” and further clarify that the request would be for reinstatement rather than a new license.

18VAC65-20-152 – Committee members discussed the insertion of language in -152(B)(1)(b), specifying that a course outline of the continuing education course would be accepted for consideration.

18VAC65-20-153 – The Committee discussed the deletion of language in -153(E), which specifies that continuing education shall not be used to satisfy renewal requirements, as this language is customarily included in disciplinary Board Orders.

18VAC65-20-170 – The Committee discussed the deletion of language in -170(C) pertaining to “at least 30 days prior to the opening an establishment” as unnecessary since the timeline for approval of an establishment application is based upon the completion of an inspection.

18VAC65-20-231 – The Committee discussed clarifying references to the “State Board Exam” vs. the Board's state examination on laws, rules, and regulations, where appropriate in this and other sections.

18VAC65-20-350 – The Committee discussed the requirements for licensure by endorsement and recommended that the Board consider adopting amendments to grant licensure by endorsement to Funeral Directors with at least five (5) years of active licensure and practice in another jurisdiction.

Ms. Barrett requested the Committee to consider experience obtained from licensees in Canadian Provinces. Ms. Barrett and Ms. Tillman Wolf suggested that more research should be conducted to determine the equivalency of licensure requirements.

18VAC65-20-435 – The Committee discussed deleting language in -435(A) pertaining to “at least 30 days prior to opening a crematory.”

The Committee also discussed moving language from -435(F) to -435(A) for clarification: “Once the crematory equipment is deemed functional and an initial crematory inspection is completed, the board may issue the crematory a registration to operate.”

18VAC65-20-581 – The Committee discussed revising -581(A) to remove “or crematory” from two portions of this section for internal consistency of the regulations, as section -436 contains a 24 hour refrigeration requirement for crematories.

BREAK

The Committee took a break at 2:01 p.m. and returned at 2:06 p.m.

Regulations for Preneed Funeral Planning (18 VAC 65-30-10 et seq.)

Ms. Barrett suggested that the Committee consider repealing and moving the content of sections -220 (content of preneed contracts) and -230 (preneed disclosures) to appendixes of the Regulations. It would allow the Board to revise the language of the contracts and disclosures as necessary without initiating the regulatory process each time.

18VAC65-30-80 – The Committee discussed adding a reference in section -80 to direct to the required content and format of a preneed contract located in an appendix to the Board’s regulations (e.g. Appendix IV). The new appendix would reflect the information currently located in section -220.

18VAC65-30-90 - The Committee discussed adding a reference in section -90 to direct to the required consumer disclosures for preneed contracts located in an appendix to the Board’s regulations (e.g. Appendix V). The new appendix would reflect the information currently located in section -230.

Regulations for the Funeral Service Internship Program (18 VAC 65-40-10 et seq.)

18VAC65-40-130 – The Committee discussed deletion of the language related to identification of a funeral service intern that currently appears in (D) to avoid repetition of the provision that appears in (G).

18VAC65-40-185 – The Committee discussed combining and shortening -185(A) and (B) for simplification purposes.

18VAC65-40-250 – The Committee discussed the change in (B) of “will” to “may” as a possible reduction.

Upon a **MOTION** by Mr. Graves and properly seconded by Mr. Hanif, the Committee voted to recommend to the full Board the adoption of a NOIRA for amendments to Chapters 20, 30, and 40 of the Board’s regulations as discussed by the Committee. The motion passed unanimously (3-0).

REVIEW OF GUIDANCE DOCUMENTS

Guidance Document 65-4, Aiding and Abetting Unlicensed Practice

The Committee discussed Guidance Document 65-4, Aiding and Abetting Unlicensed Practice.

Upon a **MOTION** by Mr. Graves and properly seconded by Mr. Hanif, the Committee voted to recommend reaffirming Guidance Document 65-4, Aiding and Abetting Unlicensed Practice, to the full Board for consideration as discussed by the Committee. The motion passed unanimously (3-0).

Guidance Document 65-18, Guidance on Surface Transportation and Removal Services

The Committee discussed Guidance Document 65-18, Guidance on Surface Transportation and Removal Services. Ms. Barrett suggested amending the Guidance Document to remove specific Code language while also reorganizing the document for comprehensibility.

Upon a **MOTION** by Mr. Graves and properly seconded by Mr. Hanif, the Committee voted to recommend reaffirming Guidance Document 65-18, Guidance on Surface Transportation and Removal Services, with reorganization and clarification as discussed by the Committee to the full Board for consideration. The motion passed unanimously (3-0).

Guidance Document 65-19, Identification of Funeral Service Interns

The Committee discussed Guidance Document 65-19, Identification of Funeral Service Interns.

Upon a **MOTION** by Mr. Graves and properly seconded by Mr. Hanif, the Committee voted to recommend repealing Guidance Document 65-19, Identification of Funeral Service Interns, to the full Board for consideration as discussed by the Committee. The motion passed unanimously (3-0).

QUESTION RECEIVED: PRENEED CONTRACTS – ADDITIONAL CHARGES FOR GUARANTEED PRICES AND SERVICES

Ms. Tillman Wolf reviewed a question related to preneed contracts received by the Board from the Virginia Funeral Directors Association (VFDA). The Committee discussed the question received and that it was generally within the purview of a funeral home to opt to not guarantee services to a consumer. The Committee discussed that, where a funeral home charges a separate fee or a percentage rate of the total expenses to guarantee preneed goods and services, this could conflict with the Board's regulation that prohibits finance charges and/or the Federal Trade Commission's Funeral Rule, which prohibits charging non-declinable fees to consumers other than the basic services charge. The Committee recommended sending this issue to the full Board for further consideration. Ms. Tillman Wolf will draft a response for review and discussion by the full Board.

QUESTION RECEIVED: SIGNATURES FOR PERMISSION TO CREMATE

Ms. Tillman Wolf reviewed a question related to a consumer's concern with the cremation authorization form. The Committee discussed the question and the notion of whether an individual may "authorize" their

own cremation via a preneed vehicle where a designation has not been made or completed. Further statutory changes would be necessary to clarify or resolve the issue. There were no recommendations for further action by the Board at this time.

NEXT MEETING

Ms. Tillman Wolf and Ms. Barrett stated that the recommendations of the Legislative/Regulatory Committee would be presented at the full business meeting of the Board scheduled for July 16, 2023, in alignment with the Fiscal Year 2024 plan.

ADJOURNMENT

With all business concluded, the meeting adjourned at 3:01 p.m.

Corie Tillman Wolf, J.D., Executive Director

Date

Legislative and Regulatory Report

Legislative Report
Board of Funeral Directors and Embalmers
April 28, 2023 Meeting
2023 Session

HB 1573 Mental health conditions & impairment; health regulatory board w/in DHP to amend its applications.

Chief patron: Walker

Department of Health Professions; applications for licensure, certification, and registration; mental health conditions and impairment; emergency. Directs each health regulatory board within the Department of Health Professions to amend its licensure, certification, and registration applications to remove any existing questions pertaining to mental health conditions and impairment and to include the following questions: (i) Do you have any reason to believe that you would pose a risk to the safety or well-being of your patients or clients? and (ii) Are you able to perform the essential functions of a practitioner in your area of practice with or without reasonable accommodation? The bill contains an emergency clause. This bill is identical to SB 970.

EMERGENCY

03/16/23 Governor: Approved by Governor-Chapter 18 (effective 3/16/23)

03/16/23 Governor: Acts of Assembly Chapter text (CHAP0018)

HB 1622 Health regulatory boards; delegation of authority to conduct informal fact-finding proceedings.

Chief patron: Wright

AGENCY BILL

Health regulatory boards; delegation of authority to conduct informal fact-finding proceedings. Removes the requirement that a health regulatory board receive information that a practitioner may be subject to a disciplinary action in order for the board to delegate to an appropriately qualified agency subordinate the authority to conduct informal fact-finding proceedings.

03/22/23 Governor: Approved by Governor-Chapter 191 (effective 7/1/23)

03/22/23 Governor: Acts of Assembly Chapter text (CHAP0191)

HB 1638 DPOR, et al.; disclosure of certain information.

Chief patron: Walker

AGENCY BILL

Department of Professional and Occupational Regulation, Department of Health Professions, and related regulatory boards; disclosure of information regarding examinations, licensure, certification, registration, or permitting. Allows the Department of Professional and Occupational Regulation, the Department of Health Professions, and professional, occupational, and health regulatory boards to mail or email upon request records regarding applications for admission to examinations or for licensure, certification, registration, or permitting and the related scoring records to the individual to whom such records pertain. Under current law, such records may be made available for copying by the subject individual at the office of the Department or board that possesses the material during normal working hours. This bill is identical to SB 1060.

03/22/23 Governor: Approved by Governor-Chapter 249 (effective 7/1/23)

03/22/23 Governor: Acts of Assembly Chapter text (CHAP0249)

HB 1658 Health professions; proposed scope of practice changes, health regulatory board assessment required.

Chief patron: Price

**** DEAD BILL ****

Proposed scope of practice changes; health regulatory board assessment required; report. Directs the General Assembly to submit bills proposing scope of practice changes related to the health professions to the relevant health regulatory board for assessment. The bill provides that the relevant health regulatory board has 24 months to complete its assessment and directs the board to forward a report summarizing its assessment and recommendations to the chairman of the standing committee that requested the assessment.

01/26/23 House: Subcommittee recommends striking from docket (6-Y 0-N)

02/07/23 House: Left in Health, Welfare and Institutions

HJ 513 Natural organic reduction; establishment of facilities.

Chief patron: Plum

**** TECHNICALLY DEAD BILL ****

Study; Board of Funeral Directors and Embalmers; creation, operation, and duties of natural organic reduction, or human composting, facilities as cemetery

corporations. Directs the Board of Funeral Directors and Embalmers to study the creation, operation, and duties of natural organic reduction, also known as green burial or human composting, facilities as cemetery corporations; to develop recommendations for establishing natural organic reduction facilities in the Commonwealth; and to report its findings and recommendations to the Governor and General Assembly by November 30, 2023.

01/27/23 House: Assigned Rules sub: Studies

01/30/23 House: Subcommittee recommends laying on the table (4-Y 2-N)

02/07/23 House: Left in Rules

SB 870 Virginia Small Estate Act; funeral expenses and disposition, refusal to pay or deliver small asset.

Chief patron: Cosgrove

Virginia Small Estate Act; payment or delivery of small asset; disposition and funeral expenses. Requires any person having possession of a small asset belonging to a decedent, upon presentation of an affidavit by the funeral service establishment handling the disposition of the decedent and any related funeral service, to pay or deliver to such funeral service establishment so much of the small asset as does not exceed the amount given priority and has not already been paid. Under current law, such payment is discretionary and made to the undertaker or mortuary. The bill also provides for the discharge and release of a person paying or delivering a small asset in accordance with the provisions of the bill to the same extent as if such person dealt with the personal representative of the decedent. The bill provides that if any person to whom an affidavit is presented refuses to pay or deliver any small asset, such small asset may be recovered, payment or delivery compelled, and damages recovered, on proof of rightful claim, unless such refusal was made in good faith. This bill is identical to HB 2128.

03/23/23 Governor: Approved by Governor-Chapter 414 (effective 7/1/23)

03/23/23 Governor: Acts of Assembly Chapter text (CHAP0414)

SB 1054 Interjurisdictional compacts; criminal history record checks.

Chief patron: Peake

AGENCY BILL

Interjurisdictional compacts; criminal history record checks. Provides that when an interjurisdictional compact requires criminal history record checks as a condition of participation, the applicable health regulatory board shall require each applicant to submit to fingerprinting and provide personal descriptive information to be forwarded along with his fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information. This bill is identical to HB 2157.

03/21/23 Governor: Approved by Governor-Chapter 119 (effective 7/1/23)

03/21/23 Governor: Acts of Assembly Chapter text (CHAP0119)

SB 1487 Alkaline hydrolysis; establishes registration requirement, regulations.

Chief patron: Morrissey

**** DEAD BILL ****

Alkaline hydrolysis; registration; regulations. Establishes a registration requirement for alkaline hydrolysis providers. The bill defines alkaline hydrolysis and adds alkaline hydrolysis and hydrolyzed remains to statutes dealing with cremation and cremains. The bill grants the Board of Funeral Directors and Embalmers the power to inspect alkaline hydrolysis providers and their operations. The bill requires the Board of Funeral Directors to consult with the Department of Environmental Quality, the Department of Health, and representatives of wastewater treatment plant to promulgate regulations related to alkaline hydrolysis.

02/14/23 House: Assigned HWI sub: Subcommittee #3

02/22/23 House: Left in Health, Welfare and Institutions

Board of Funeral Directors and Embalmers
Current* Regulatory Actions

Chapter	Action	Stage	Location	Duration
18VAC65-20	Adjustment of requirements related to documentation of continuing education pursuant to 2022 legislation	Fast-track	Secretary	195 days

*As of April 4, 2023

Board Discussion and Actions

Agenda Item: Consideration of Notice of Intended Regulatory Action for regulatory reductions to Chapter 20

Included in your agenda package:

- A copy of 18VAC65-20

Staff Note: The Legislative/Regulatory Committee recommends that the Board adopt a NOIRA to:

- Eliminate the restriction on reinstatement of expired licenses and registrations to three years;
- Increase the type of documents that can be provided to the Board for approval of continuing education;
- Remove redundant language regarding documentation of compliance with continuing education requirements;
- Remove date restrictions regarding when an establishment or crematory must apply for a license or registration;
- Update references where appropriate to the state rules and regulations examination;
- Allow a funeral director to apply for license by endorsement by demonstrating active practice in another jurisdiction if the applicant did not receive education that meets Virginia's regulatory requirement for education;
- Reorganize 18VAC65-20-435 regarding registration of crematories for clarity; and
- Revise 18VAC65-20-581 to clarify that crematories must follow requirements of 18VAC65-20-436 regarding refrigeration.

Action needed:

- Motion to accept the recommendation of the legislative/regulatory committee to issue a NOIRA covering the stated potential reductions for Chapter 20.

Commonwealth of Virginia



REGULATIONS GOVERNING THE PRACTICE OF FUNERAL SERVICES

Title of Regulations: 18 VAC 65-20-10 et seq.

**Statutory Authority: § 54.1-2400 and Chapter 28
of Title 54.1 of the *Code of Virginia***

Revised Date: December 7, 2022

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Part I. General Provisions.

18VAC65-20-10. Definitions.

Words and terms used in this chapter shall have the definitions ascribed in § 54.1-2800 of the Code of Virginia or in 16 CFR Part 453, Funeral Industry Practices, of the Federal Trade Commission, which is incorporated by reference in this chapter. In addition, the following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Affiliation" or "affiliated" means a relationship involving a degree of common or subsidiary ownership between two establishments or entities.

"Branch" or "chapel" means a funeral service establishment that is affiliated with a licensed main establishment and that conforms with the requirements of § 54.1-2811 of the Code of Virginia.

"Courtesy card" means the card issued by the board that grants limited and restricted funeral service privileges in the Commonwealth to out-of-state funeral service licensees, funeral directors, and embalmers.

"Cremation container" means a container in which human remains are transported to the crematory and placed in the retort for cremation.

"Cremation urn" means a wood, metal, stone, plastic, or composition container or a container of other material, which is designed for encasing cremated ashes.

"Cremation vault" or "cremation outer burial container" means any container that is designed for encasement of an inner container or urn containing cremated ashes. Also known as a cremation box.

"FTC" means the Federal Trade Commission.

"Manager of record" means a funeral service licensee or licensed funeral director who is responsible for the direct supervision and management of a funeral service establishment or branch facility.

18VAC65-20-15. Criteria for delegation of informal fact-finding proceedings to an agency subordinate.

A. Decision to delegate.

In accordance with § 54.1-2400 (10) of the Code of Virginia, the board may delegate an informal fact-finding proceeding to an agency subordinate upon determination that probable cause exists that a practitioner may be subject to a disciplinary action.

B. Criteria for delegation. Cases that may not be delegated to an agency subordinate, except with the concurrence of a committee of the board, are those that involve:

1. Intentional or negligent conduct that causes or is likely to cause injury;
2. Conducting the practice of funeral services in such a manner as to constitute a danger to the health, safety, and well-being of the staff or the public;
3. Impairment with an inability to practice with skill and safety;
4. Inappropriate handling of dead human bodies;
5. Sexual misconduct;

6. Misappropriation of funds;
7. Aiding or abetting unauthorized practice; or
8. Felony conviction by an applicant.

C. Criteria for an agency subordinate.

1. An agency subordinate authorized by the board to conduct an informal fact-finding proceeding may include board members deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals.
2. The executive director shall maintain a list of appropriately qualified persons to whom an informal fact-finding proceeding may be delegated.
3. The board may delegate to the executive director the selection of the agency subordinate who is deemed appropriately qualified to conduct a proceeding based on the qualifications of the subordinate and the type of case being heard.

18VAC65-20-20 to 18VAC65-20-40. [Repealed]

18VAC65-20-50. Posting of license.

- A. Each licensee shall post an original or photocopy of his license in a place conspicuous to consumers of funeral services in each establishment or branch where he practices.
- B. The establishment license shall be posted in a place conspicuous to consumers of funeral services.

18VAC65-20-60. Accuracy of information.

- A. All changes in the address of record or the public address, if different from the address of record, or in the name of a licensee or registrant shall be furnished to the board within 30 days after the change occurs.
- B. Any change in ownership or manager of record for an establishment or crematory shall be reported to the board within 14 days of the change.
- C. A surface transportation and removal service shall notify the board within 14 days of any change in the name of the manager of record with the board.
- D. All notices required by law and by this chapter to be provided by the board to any registrant or licensee shall be validly given when mailed to the latest address of record on file with the board and shall not relieve the licensee, funeral service intern, establishment, crematory, or firm of obligation to comply. Renewal notices may be mailed or sent electronically by the board.

18VAC65-20-70. Required fees.

- A. The following fees shall apply for initial licensure or registration:

1. License to practice funeral service or as a funeral director or an embalmer	\$325
2. Funeral service establishment license	\$600
3. Surface transportation and removal service registration	\$325
4. Courtesy card	\$325
5. Crematory	\$250
6. Waiver of full-time manager requirement	\$150

B. The following fees shall apply for renewal of licensure or registration:

1. License to practice funeral service or as a funeral director or an embalmer	\$225
2. Funeral service establishment license	\$400
3. Surface transportation and removal service registration	\$300
4. Courtesy card	\$300
5. Crematory	\$200
6. Waiver of full-time manager requirement	\$100
7. Inactive funeral service, funeral director, or embalmer license	\$115

C. The following fees shall apply for late renewal of licensure or registration up to one year following expiration:

1. License to practice funeral service or as a funeral director or an embalmer	\$75
2. Funeral service establishment license	\$135
3. Surface transportation and removal service registration	\$100
4. Courtesy card	\$100
5. Crematory	\$75
6. Waiver of full-time manager requirement	\$35
7. Inactive funeral service, funeral director, or embalmer license	\$40

D. The following fees shall apply for reinstatement of licensure or registration:

1. License to practice funeral service or as a funeral director or an embalmer	\$400
2. Establishment license	\$635
3. Surface transportation and removal service registration	\$425

4. Courtesy card	\$425
5. Crematory	\$275
6. Reinstatement following suspension	\$1,000
7. Reinstatement following revocation	\$2,000

E. Other fees.

1. Change of manager or establishment name	\$100
2. Verification of license or registration to another state	\$50
3. Duplicate license, registration, or courtesy card	\$25
4. Duplicate wall certificates	\$60
5. Change of ownership	\$100
6. Nonroutine reinspection (i.e., structural change to preparation room, change of location or ownership)	\$400

F. Fees for approval of continuing education providers.

1. Application or renewal for continuing education provider	\$400
2. Late renewal of continuing education provider approval	\$100
3. Review of additional courses not included on initial or renewal application (per application for review of additional courses not per individual course)	\$300

18VAC65-20-80 to 18VAC65-20-100. [Repealed]

18VAC65-20-110. Additional fee information.

A. There shall be a handling fee of \$50 for returned checks or dishonored credit cards or debit cards.

B. Fees shall not be refunded once submitted.

C. The fee for the Virginia State Board Examination shall be paid directly to the examination service contracted by the board for its administration.

Part II. Renewals and Reinstatement.

18VAC65-20-120. Expiration dates.

A. A funeral service establishment license, crematory registration, or surface transportation and removal service registration shall expire on March 31 of each calendar year.

B. The funeral service license, funeral director license, or embalmer license shall expire on March 31 of each calendar year.

C. Courtesy cards expire on March 31 of each calendar year.

18VAC65-20-130. Renewal of license; registration.

A. A person, establishment, crematory, courtesy card holder, or surface transportation and removal service that desires to renew its license or registration for the next year shall, not later than the expiration date as provided in 18VAC65-20-120, submit the renewal form and applicable fee.

1. In order to renew an active funeral service, funeral director, or embalmer license, a licensee shall be required to comply with continuing competency requirements set forth in 18VAC65-20-151.

2. The board shall not renew a license for any licensee who fails to attest to compliance with continuing competency requirements on the renewal form.

3. In order to renew a courtesy card, the courtesy card holder shall provide documentation of current, unrestricted licensure for funeral service, funeral directing, or embalming from the licensing authority in the states in which the courtesy card holder is licensed to practice.

B. A person who or entity that desires to renew an expired license for up to one year following expiration shall comply with requirements of subsection A of this section and also submit the applicable fee for late renewal.

C. A person who or entity that fails to renew a license, registration, or courtesy card by the expiration dates prescribed in 18VAC65-20-120 shall be deemed to have an invalid license, registration, or courtesy card and continued practice may subject the licensee to disciplinary action by the board.

18VAC65-20-140. Reinstatement of expired license or registration.

A. The board may consider reinstatement of an expired license or registration that has not been renewed within one year of expiration for up to three years following expiration. An application request for reinstatement shall be submitted to the board and shall include payment of the reinstatement fee prescribed in 18VAC65-20-70.

B. If the Virginia license of a funeral service licensee, a funeral director, or an embalmer is lapsed three years or less and the applicant is seeking reinstatement, the applicant shall provide evidence of having completing the number of continuing competency hours required for the period in which the license has been lapsed.

C. When a license is not reinstated within three years of its expiration date, an applicant shall reapply for licensure and pass the state examination.

18VAC65-20-150. [Repealed]

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

A. Funeral service licensees, funeral directors, or embalmers shall be required to have completed a minimum of five hours per year of continuing education offered by a board-approved sponsor for licensure renewal in courses that emphasize the ethics, standards of practice, preneed contracts and funding, or federal or state laws and regulations governing the profession of funeral service.

1. One hour per year shall cover compliance with laws and regulations governing the profession or preneed funeral arrangements. At least one hour of continuing education in preneed funeral arrangements must be completed every three years. The one-hour requirement on compliance with laws and regulations may be met once every two years by attendance at a meeting of the board or at a committee of the board or an informal conference or formal hearing.

2. One hour of the five hours required for annual renewal may be satisfied through delivery of professional services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for one hour of providing such volunteer services, as documented by the health department or free clinic. For the purposes of continuing education credit for volunteer service, an approved sponsor shall be a local health department or free clinic.

B. Courses must be directly related to the scope of practice of funeral service. Courses for which the principal purpose is to promote, sell, or offer goods, products, or services to funeral homes are not acceptable for the purpose of credit toward renewal.

C. The board may grant an extension for good cause of up to one year for the completion of continuing education requirements upon written request from the licensee prior to the renewal date. Such extension shall not relieve the licensee of the continuing education requirement.

D. The board may grant an exemption for all or part of the continuing education requirements for one renewal cycle due to circumstances determined by the board to be beyond the control of the licensee.

E. A licensee shall be exempt from the continuing education requirements for the first renewal following the date of initial licensure by examination in Virginia.

18VAC65-20-152. Continuing education providers.

A. Unless disqualified by action of the board, courses offered by the following providers are approved for continuing education credit:

1. Local, state or federal government agencies;
2. Regionally accredited colleges and universities; or
3. Board-recognized national, regional, state and local associations or organizations as follows:
 - a. National Funeral Directors Association and state chapters;
 - b. National Funeral Directors and Morticians Association and state chapters;
 - c. Association of Independent Funeral Homes of Virginia;

- d. Cremation Association of North America;
- e. American Board of Funeral Service Education;
- f. International Conference of Funeral Service Examining Boards;
- g. Virginia Morticians Association; and
- h. Other similar associations or organizations as approved by action of the board.

B. Course providers not listed in subsection A of this section may apply for approval by the board as continuing education providers.

1. To be considered for board approval, a continuing education provider shall submit 60 days prior to offering a continuing education course:

- a. Documentation of an instructional plan and course objectives for the continuing education course that meets the criteria set forth in 18VAC65-20-151 B;
- b. A syllabus of the course to be offered with the credentials of the course instructors, a description of each session, including number of continuing education hours; and
- c. The continuing education provider fee set forth under 18VAC65-20-70.

2. Board approval of continuing education providers under this subsection shall expire on July 1 of each year and may be renewed upon resubmission of documentation on courses and instructors and the provider fee as required by the board.

3. Renewed approval of a continuing education provider may be granted without submission of an additional course review fee if the provider submits a statement that courses and instructors offered for the coming year will not change from the previous year. If there will be additions or alterations to the continuing education offerings of a provider, resubmission of course documentation and ~~a~~-an additional course review fee is required.

4. If additional courses are submitted for board approval beyond those courses submitted with an initial or renewal application, the continuing education provider shall remit the fee for review under 18VAC65-20-70.

C. Continuing education providers approved under subsection A or B of this section shall:

- 1. Maintain and provide to the board upon request documentation of the course titles and objectives and of licensee attendance and completion of courses for a period of two years;
- 2. Monitor attendance at classroom or similar educational experiences for compliance with law and regulations; and
- 3. Provide a certificate of completion for licensees who successfully complete a course.

18VAC65-20-153. Documenting compliance with continuing education requirements.

A. All licensees with active status are required to maintain original documentation of continuing education for a period of two years after the corresponding annual renewal period.

B. After the end of each renewal period, the board may conduct a random audit of licensees to verify compliance with the requirement for that renewal period.

C. Upon request, a licensee shall provide documentation within 14 days as follows:

1. Official transcripts showing credit hours earned from an accredited institution; or
2. Certificates of completion from approved providers.

D. Compliance with continuing education requirements, including the subject and purpose of the courses as prescribed in 18VAC65-20-151 B, the maintenance of records and the relevance of the courses to the category of licensure is the responsibility of the licensee. The board may request additional information if such compliance is not clear from the transcripts or certificates.

E. Continuing education hours required by disciplinary order shall not be used to satisfy renewal requirements.

18VAC65-20-154. Inactive license.

A. A funeral service licensee, a funeral director, or an embalmer who holds a current, unrestricted license in Virginia shall, upon a request for inactive status on the renewal application and submission of the required renewal fee, be issued an inactive license.

1. An inactive licensee shall not be entitled to perform any act requiring a license to practice funeral service, funeral directing, or embalming in Virginia.
2. The holder of an inactive license shall not be required to meet continuing education requirements, except as may be required for reactivation in subsection B of this section.

B. A funeral service licensee, a funeral director, or an embalmer who holds an inactive license may reactivate his license by:

1. Paying the difference between the renewal fee for an inactive license and that of an active license for the year in which the license is being reactivated; and
2. Providing proof of completion of the number of continuing competency hours required for the period in which the license has been inactive, not to exceed three years.

Part III. Requirements for Licensure.

18VAC65-20-160. [Repealed]

18VAC65-20-170. Requirements for an establishment license.

A. No person shall maintain, manage, or operate a funeral service establishment in the Commonwealth, unless such establishment holds a license issued by the board. The name of the

funeral service licensee or licensed funeral director designated by the ownership to be manager of record for the establishment shall be included on the license.

B. Except as provided in §54.1-2810 of the Code of Virginia, every funeral service establishment and every branch or chapel of such establishment, regardless of how owned, shall have a separate manager of record who has responsibility for the establishment as prescribed in 18VAC65-20-171. The owner of the establishment shall not abridge the authority of the manager of record relating to compliance with the laws governing the practice of funeral services and regulations of the board.

C. At least 30 days prior to opening an establishment, an owner or licensed manager seeking an establishment license shall submit simultaneously a completed application, any additional documentation as may be required by the board to determine eligibility, and the applicable fee. An incomplete package will be returned to the licensee. A license shall not be issued until an inspection of the establishment has been completed and approved.

D. Within 30 days following a change of ownership, the owner or licensed manager shall request a reinspection of the establishment, submit an application for a new establishment license with documentation that identifies the new owner, and pay the licensure and reinspection fees as required by 18VAC65-20-70. Reinspection of the establishment may occur on a schedule determined by the board, but shall occur no later than one year from the date of the change.

E. The application for licensure of a branch or chapel shall specify the name of the main establishment and contain an attestation of the affiliation of the branch or chapel and the main establishment.

F. In the event of an emergency requiring the evacuation or discontinued use of a funeral establishment, the impacted establishment may be approved by the board to continue operations out of another licensed funeral establishment for a period of no more than 60 days. The impacted establishment may request an extension of emergency operations for an additional 30 days upon good cause shown. In requesting approval for conducting emergency operations under this section, the impacted funeral establishment shall submit documentation that identifies the manager of record for both the impacted establishment and establishment for emergency operations and any agreement for emergency usage.

18VAC65-20-171. Responsibilities of the manager of record.

A. Every funeral establishment shall have a manager of record who is employed full time by and in charge of the establishment.

B. The manager shall be fully accountable for the operation of the establishment as it pertains to the laws and regulations governing the practice of funeral services, to include:

1. Maintenance of the facility within standards established in this chapter;
2. Retention of reports and documents as prescribed by the board in 18VAC65-20-700 during the period in which he serves as manager of record;
3. Reporting to the board of any changes in information as required by 18VAC65-20-60; and

4. Correcting or seeking corrections of any deficiencies identified during the course of an inspection of the establishment.

18VAC65-20-180 to 18VAC65-20-230. [Repealed]

18VAC65-20-231. Requirements for a funeral director license by examination.

A. To qualify for licensure as a funeral director, a person shall:

1. Be at least 18 years of age and hold a high school diploma or its equivalent;
2. Have completed a funeral service or funeral directing internship as prescribed by the board in regulation;
3. Have graduated from a school of mortuary science or funeral service accredited by the American Board of Funeral Service Education, Incorporated or have completed an associate's degree or its equivalent, which consists of at least 60 credit hours of coursework, of which at least 30 hours shall be from a funeral directing program approved by the board;
4. Have successfully completed coursework in the area of pathology as approved by the board;
5. Have passed the National Board Examination in Arts or State Board Examination in Arts of the International Conference of Funeral Service Examining Boards; and
6. Have passed the Virginia State Board Examination on the laws, rules, and regulations for funeral practice.

B. Applicants shall submit school transcripts and National Board Examination or State Board Examination scores as part of an application package, including the required fee and any additional documentation as may be required to determine eligibility.

C. The board, in its discretion, may license an individual convicted of a felony if such individual has successfully fulfilled all conditions of sentencing, been pardoned, or has had his civil rights restored. The board may refuse to license an individual who has a criminal or disciplinary proceeding pending against him in any jurisdiction in the United States.

18VAC65-20-232. Requirements for an embalmer license by examination.

A. To qualify for licensure as an embalmer, a person shall:

1. Be at least 18 years of age and hold a high school diploma or its equivalent;
2. Have completed a funeral service or an embalming internship as prescribed by the board in regulation;
3. Have graduated from a school of mortuary science or funeral service accredited by the American Board of Funeral Service Education, Incorporated or have completed an embalming program approved by the board;
4. Have passed the National Board Examination in Sciences or State Board Examination in Sciences of the International Conference of Funeral Service Examining Boards; and

5. Have passed the Virginia State Board Examination on the laws, rules, and regulations for funeral practice.

B. Applicants shall submit school transcripts and National Board Examination or State Board Examination scores as part of an application package, including the required fee and any additional documentation as may be required to determine eligibility.

C. The board, in its discretion, may license an individual convicted of a felony if such individual has successfully fulfilled all conditions of sentencing, been pardoned, or has had his civil rights restored. The board may refuse to license an individual who has a criminal or disciplinary proceeding pending against him in any jurisdiction in the United States.

18VAC65-20-235. Approval of educational programs.

All applicants for licensure as a funeral service licensee are required to have graduated from a funeral service program offered by a school of mortuary science or funeral service accredited by the American Board of Funeral Service Education, Incorporated.

18VAC65-20-236. Requirements for Students Assisting with Embalming.

In accordance with § 54.1-2805 of the Code of Virginia, a student who is duly enrolled in a mortuary education program in the Commonwealth and who is not registered with the board as a funeral intern may assist in embalming in a funeral service establishment provided the following requirements are met:

1. The funeral establishment holds a current, unrestricted license issued by the board;
2. The funeral establishment and funeral service licensee or embalmer providing student supervision meet the accreditation standards of the American Board of Funeral Service Education and the Commission on Accreditation for off-campus embalming instruction;
3. Students shall receive instruction and shall observe embalming of a dead human body prior to assisting with an embalming in a funeral service establishment and shall assist with embalming in conjunction with an embalming laboratory course;
4. A funeral service licensee or embalmer may supervise up to three students under his immediate supervision, which shall mean the supervisor is physically and continuously present in the preparation room with the students to supervise each task to be performed;
5. A funeral service establishment shall include on the form granting permission to embalm information disclosing that the establishment is a training facility for mortuary education students and that a student may be assisting the licensee with embalming; and
6. The embalming report shall include the names of students assisting with an embalming and shall be signed by the supervisor.

18VAC65-20-240. Requirements for funeral service licensure by examination.

A. Application requirements. Applicants shall submit official mortuary school transcripts and national examination board scores as part of an application package, including the required fee and any additional documentation as may be required to determine eligibility.

B. National examination requirements. Prior to applying for licensure by examination, every applicant shall pass the National Board Examination of the International Conference of Funeral Service Examining Boards.

C. State examination requirements. All applicants shall pass the Virginia State Board Examination.

18VAC65-20-250 to 18VAC65-20-340. [Repealed]

18VAC65-20-350. Requirements for licensure by reciprocity or endorsement.

A. Licenses for the practice of funeral service, funeral directing, embalming, or an equivalent license issued by other states, territories, or the District of Columbia may be recognized by the board and the holder of such license may be granted a license to practice funeral service, funeral directing, or embalming within the Commonwealth.

Licenses may be granted to applicants by the board on a case-by-case basis if the applicant holds a valid license for the practice of funeral service, funeral directing, embalming, or an equivalent license in another state, territory, or the District of Columbia and possesses credentials that are substantially similar to or more stringent than required by the Commonwealth for initial licensure at the time the applicant was initially licensed.

B. An applicant for licensure by reciprocity or endorsement shall pass the Virginia State Board Examination.

18VAC65-20-360 to 18VAC65-20-390. [Repealed]

Part IV. Registration.

18VAC65-20-400. Registration of surface transportation and removal services.

All persons applying to own or operate a surface transportation and removal service, according to requirements of § 54.1-2819 of the Code of Virginia, shall submit an application package for registration which shall include:

1. A completed and signed application;
2. The fee prescribed in 18VAC65-20-70 A 3;
3. Additional documentation as may be required by the board to determine eligibility of the applicant, including evidence of training of the service manager and staff in compliance with standards of the Occupational Safety and Health Administration (OSHA) for universal precautions and bloodborne pathogens, and proof of bonding or liability insurance coverage related to the operation of the service; and

4. The name of the manager for the service.

18VAC65-20-410. [Repealed]

18VAC65-20-420. Misrepresentation.

A person employed or operating a surface transportation and removal service shall not in any manner misrepresent himself to the public as being an official of any local jurisdiction, the Commonwealth, federal, or any other governmental body unless granted such authority. This shall include the name and title of the company or service, uniforms, equipment, vehicles, and any other instruments used or proffered by the services or its agents.

18VAC65-20-430. [Repealed]

18VAC65-20-435. Registration of crematories.

A. At least 30 days prior to opening a crematory, any person intending to own or operate a crematory shall apply for registration with the board by submitting a completed application and fee as prescribed in 18VAC65-20-70. The name of the individual designated by the ownership to be the crematory manager shall be included on the application. The owner of the crematory shall not abridge the authority of the crematory manager relating to compliance with the laws governing the practice of funeral services and regulations of the board. The designated crematory manager may be the manager of record of a funeral establishment co-located on the same premises.

B. Every crematory, regardless of how owned, shall have a manager who has (i) achieved certification by the Cremation Association of North America (CANA); the International Cemetery, Cremation and Funeral Association (ICCFA); or other certification recognized by the board and (ii) received training in compliance with standards of the Occupational Health and Safety Administration (OSHA) for universal precautions and bloodborne pathogens.

C. The manager shall be fully accountable for the operation of the crematory as it pertains to the laws and regulations governing the practice of funeral services, to include but not be limited to:

1. Maintenance of the facility within standards established in this chapter;
2. Retention of reports and documents as prescribed by the board in 18VAC65-20-436 during the period in which he serves as crematory manager; and
3. Reporting to the board of any changes in information as required by 18VAC65-20-60.

D. All persons who operate the retort in a crematory shall have certification by the Cremation Association of North America (CANA); the International Cemetery, Cremation and Funeral Association (ICCFA); or other certification recognized by the board. Persons receiving training toward certification to operate a retort shall be allowed to work under the supervision of an operator who holds certification for a period not to exceed six months.

E. A crematory providing cremation services directly to the public shall also be licensed as a funeral service establishment or shall be a branch of a licensed establishment.

F. When a crematory application is pending and the conduct of a cremation is necessary to ensure the proper function of retort equipment, the board may authorize the crematory to conduct a test cremation prior to registration. Once the crematory equipment is deemed functional and an initial crematory inspection is completed, the board may issue the crematory a registration to operate.

G. The board may take disciplinary action against a crematory registration for a violation of § 54.1-2818.1 of the Code of Virginia or for the inappropriate handling of dead human bodies or cremains.

18VAC65-20-436. Standards for registered crematories or funeral establishments relating to cremation.

A. Authorization to cremate.

1. A crematory shall require a cremation authorization form executed in person or electronically in a manner that provides a copy of an original signature in accordance with § 54.1-2818.1 of the Code of Virginia.

2. The cremation authorization form shall include an attestation of visual identification of the deceased from a viewing of the remains or a photograph of the remains signed by the person making the identification. Visual identification may be made by viewing unique identifiers or markings on the remains. 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 feasible, a crematory may use other positive identification of the deceased in consultation with law enforcement, a medical examiner, or medical personnel 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 chamber of the retort or cremation unit, 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 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.

Part V. Issuance of Courtesy Cards.

18VAC65-20-440. Courtesy cards.

A. An out-of-state person applying for a courtesy card pursuant to §54.1-2801 B of the Code of Virginia shall hold a valid license for funeral service, funeral directing, or embalming in another state, territory, or the District of Columbia.

B. An applicant for a courtesy card shall submit:

1. A completed application and prescribed fee; and
2. Verification of current, unrestricted licensure for funeral service, funeral directing, or embalming from the licensing authorities in the states in which the courtesy card holder is licensed to practice.

C. The holder of a Virginia courtesy card shall only engage in the practice for which he is currently licensed in another jurisdiction. The privilege to practice shall not include the right to establish or engage generally in the business of funeral directing and embalming in Virginia.

18VAC65-20-450 to 18VAC65-20-490. [Repealed]

Part VI. Refusal, Suspension, Revocation, and Disciplinary Action.

18VAC65-20-500. Disciplinary action.

In accordance with the provisions of §54.1-2806 of the Code of Virginia, the following practices are considered unprofessional conduct and may subject the licensee to disciplinary action by the board:

1. Breach of confidence. The unnecessary or unwarranted disclosure of confidences by the funeral licensee.

2. Unfair competition.

a. Interference by a funeral service licensee, funeral director, or registered surface transportation and removal service when another has been called to take charge of a dead human body and the caller or agent of the caller has the legal right to the body's disposition.

b. Consent by a funeral service licensee or funeral director to take charge of a body unless authorized by the person or his agent having the legal right to disposition.

3. False advertising.

a. No licensee or registrant shall make, publish, disseminate, circulate or place before the public, or cause directly or indirectly to be made, an advertisement of any sort regarding services or anything so offered to the public that contains any promise, assertion, representation, or statement of fact which is untrue, deceptive, or misleading.

b. The following practices, both written and verbal, shall constitute false, deceptive, or misleading advertisement within the meaning of subdivision 4 of §54.1-2806 of the Code of Virginia:

(1) Advertising containing inaccurate statements; and

(2) Advertisement which gives a false impression as to ability, care, and cost of conducting a funeral, or that creates an impression of things not likely to be true.

c. The following practices are among those that shall constitute an untrue, deceptive, and misleading representation or statement of fact:

(1) Representing that funeral goods or services will delay the natural decomposition of human remains for a long term or indefinite time; and

(2) Representing that funeral goods have protective features or will protect the body from gravesite substances over or beyond that offered by the written warranty of the manufacturer.

4. Inappropriate handling and storage of dead human bodies, consistent with § 54.1-2811.1 of the Code of Virginia and regulations of the board. Transportation and removal vehicles shall be of such nature as to eliminate exposure of the deceased to the public during transportation. During the transporting of a human body, consideration shall be taken to avoid unnecessary delays or stops during travel.

5. Failure to furnish price information disclosing the cost to the purchaser for each of the specific funeral goods and funeral services used in connection with the disposition of deceased human bodies.

6. Conducting the practice of funeral services in such a manner as to constitute a danger to the health, safety, and well-being of the staff or the public.

7. Inability to practice with skill or safety because of physical, mental, or emotional illness, or substance abuse.

8. Failure to register as a supervisor for a funeral service intern or failure to provide reports to the board as required by the Code of Virginia and 18VAC65-40-320.

9. Failure to comply with applicable federal and state laws and regulations, including requirements for continuing education.

10. Inappropriate sexual contact between a supervisor and a funeral service intern if the sexual contact is a result of the exploitation of trust, knowledge, or influence derived from the professional relationship or if the contact has had or is likely to have an adverse effect on the practice of funeral services or on intern training.

11. Conducting activities or performing services that are outside the scope of a licensee's practice or for which the licensee is not trained and individually competent.

Part VII. Standards for Embalming and Refrigeration.

18VAC65-20-510. Embalming report.

A. In accordance with the provisions of subdivision 26 of § 54.1-2806 and subsection B of § 54.1-2811.1 of the Code of Virginia, express permission by a next of kin for embalming means written authorization to embalm as a specific and separate statement on a document or contract provided by the funeral establishment. Express permission may include direct, verbal authorization to embalm, provided it is followed as soon as possible by a written document or statement signed by the next of kin confirming the verbal authorization to embalm and including the time, date, and name of the person who gave verbal authorization.

B. Every funeral establishment shall record and maintain a separate, identifiable report for each embalming procedure conducted, which shall at a minimum include the following information:

1. The name of the deceased and the date of death;
2. The date and location of the embalming;
3. The name and signature of the embalmer and the Virginia license number of the embalmer;
4. If the embalming was performed by a funeral service intern, the name and signature of the supervisor; and
5. The name of each student and the signature of the supervisor of any mortuary science student who assisted in the embalming.

18VAC65-20-520. [Repealed]

18VAC65-20-530. [Repealed]

18VAC65-20-540. Preparation room requirements.

A. Every funeral service establishment at which embalming of dead human bodies is performed shall have at least one room used exclusively for embalming or preparation of the body.

B. The following are required of the preparation room or rooms:

1. The walls shall extend floor to ceiling;
2. The floor and wall surfaces shall be of a material or covered by a material impervious to water; and
3. The material shall extend from wall to wall with all joints tight and sanitary.

C. All functions connected with embalming shall be performed within the preparation room.

18VAC65-20-550 to 18VAC65-20-560. [Repealed]

18VAC65-20-570. Condition of preparation room.

A. The preparation room or rooms shall be kept in a clean and sanitary condition at all times, subject to inspection.

B. Inventories of embalming and preparation materials shall be stored in a container and in a manner that makes them impervious to water and protects them from contamination.

C. Any items or supplies not directly used in an embalming procedure shall not be stored in the preparation room.

18VAC65-20-580. Preparation room equipment.

The preparation room or rooms shall be equipped with:

1. A ventilation system which operates and is appropriate to the size and function of the room;
2. Running hot and cold water;
3. Flush or slop sink connected with public sewer or with septic tank where no public sewer is available;
4. Metal, fiberglass or porcelain morgue table;
5. Covered waste container;
6. Instruments and apparatus for the embalming process;
7. A means or method for the sterilization or disinfection of reusable instruments by chemical bath or soak; autoclave (steam); or ultraviolet light;
8. Disinfectants and antiseptic solutions;
9. Clean gowns or aprons, preferably impervious to water;
10. Rubber gloves for each embalmer, intern or student using the room;
11. An electric aspirator or hydroaspirator equipped with a vacuum breaker;
12. An eye wash station that is readily accessible; and
13. A standard first aid kit, that is immediately accessible, either in the preparation room or outside the door to the preparation room.

18VAC65-20-581. Refrigeration requirements.

A. If a dead human body is to be in the possession of a funeral establishment or crematory for more than 48 hours from the time the funeral establishment or crematory takes physical possession of the body until embalming, cremation, or burial, the body shall be placed and maintained in refrigeration

in a mechanical refrigeration unit suitable for storing human remains in accordance with subsection B of § 54.1-2811.1 of the Code of Virginia.

B. The mechanical refrigeration unit may be located in the funeral establishment or crematory, or the funeral establishment or crematory may enter into an agreement or contract with another funeral establishment, crematory, or other licensed entity for refrigeration in a mechanical refrigeration unit.

C. Evidence of compliance with the requirement for refrigeration shall be maintained as a log entry or other documentation indicating times of placement in and removal of a body from refrigeration.

18VAC65-20-590. Disposal of waste materials.

Disposal of all waste materials shall be in conformity with local, state, and federal law and regulations to avoid contagion and the possible spread of disease. Upon inspection, the establishment shall provide evidence of compliance, such as a copy of a contract with a medical waste disposal company.

18VAC65-20-600 to 18VAC65-20-610. [Repealed]

Part VIII. Pricing Standards and Forms.

18VAC65-20-620. [Repealed]

18VAC65-20-630. Disclosures.

Funeral licensees shall make all required disclosures and provide accurate information from price lists pursuant to the rules of the Federal Trade Commission. Price lists shall comply with requirements of the FTC and shall contain the information included in:

APPENDIX I - General Price List;

APPENDIX II - Casket Price List, Outer Burial Container Price List; and

APPENDIX III - Itemized Statement of Funeral Goods and Services Selected.

18VAC65-20-640 to 18VAC65-20-690. [Repealed]

18VAC65-20-700. Retention of documents.

A. The following retention schedule shall apply to retention of embalming reports, price lists, and itemized statements:

1. Price lists shall be retained for three years after the date on which they are no longer effective;
2. Itemized statements shall be retained for three years from the date on which the arrangements were made; and
3. Embalming reports shall be retained at the location of the embalming for three years after the date of the embalming.

B. The manager of record shall be responsible for retention and maintenance of all required documents.

C. Documents shall be maintained on the premises of the funeral establishment and made available for inspection.

D. In instances where the funeral establishment is sold, documents shall be transferred to the new owner, unless the existing firm is relocating to a new facility. The new owner shall retain transferred documents in accordance with the provisions of this section. When transferred documents include preneed contracts, the documents shall be retained and maintained in accordance with the provisions of the Code of Virginia and regulations of the board.

Agenda Item: Consideration of Notice of Intended Regulatory Action for regulatory reductions to Chapter 30

Included in your agenda package:

- A copy of 18VAC65-30

Staff Note: The Legislative/Regulatory Committee recommends that the Board adopt a NOIRA to:

- Amend portions of Chapter 30 which provide form contracts and disclosures for licensees. These amendments would remove the form contracts from the regulatory section and add those to an appendix. The language of the sections will be amended to direct licensees to the new appendices. This change would include the following:
 - 18VAC65-30-110;
 - 18VAC65-30-220; and
 - 18VAC65-30-230.

Action needed:

- Motion to accept the recommendation of the legislative/regulatory committee to issue a NOIRA covering the stated potential reductions for Chapter 30.

Commonwealth of Virginia



REGULATIONS
FOR
PRENEED FUNERAL PLANNING

VIRGINIA BOARD OF
FUNERAL DIRECTORS AND EMBALMERS

Title of Regulations: 18VAC65-30-10 et seq.

Statutory Authority: § 54.1-2400 and Chapter 28
of Title 54.1 of the *Code of Virginia*

Revised Date: December 7, 2022

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Part I. General Provisions.

18VAC65-30-10. Definitions.

In addition to those defined in § 54.1-2800 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Appointee" means the individual selected by the contract beneficiary to arrange a preneed funeral plan on behalf of the contract beneficiary.

"Cash advance item" means any item of service or merchandise described to a purchaser as a "cash advance," "accommodation," "cash disbursement," or similar term. A cash advance item is also any item obtained from a third party and paid for by the funeral provider on the behalf of the contract buyer. Cash advance items may include cemetery or crematory services, pallbearers, public transportation, clergy honoraria, flowers, musicians or singers, nurses, obituary notices, gratuities, and death certificates.

"Consideration," "contract price," or "funds" means money, property, or any other thing of value provided to be compensation to a contract seller or contract provider for the funeral services and funeral goods to be performed or furnished under a preneed funeral contract. Consideration does not include late payment penalties and payments required to be made to a governmental agency at the time the contract is entered into.

"Contract" means a written, preneed funeral contract and all documents pertinent to the terms of the contract under which for consideration paid to a contract seller or a contract provider by or on behalf of a contract buyer prior to the death of the contract beneficiary, a person promises to furnish, make available, or provide funeral services or funeral goods after the death of a contract beneficiary.

"Contract beneficiary" means the individual for whom the funeral services and supplies are being arranged.

"Contract buyer" means the purchaser of the preneed contract.

"Contract provider" means the funeral establishment designated by the contract buyer and contracting with the contract buyer to provide for funeral services and supplies in the preneed funeral contract.

"Contract seller" means the funeral service licensee or funeral director who makes the preneed arrangements with the contract buyer for the funeral service and who makes the financial arrangements for the service and the goods and supplies to be provided.

"Designee" means the individual designated to make arrangements for burial or final disposition of the remains pursuant to § 54.1-2825 of the Code of Virginia.

"Funding source" means the trust agreement, insurance policy, annuity, personal property, or real estate used to fund the preneed plan.

"Funeral supplies and services" means the items of merchandise sold or offered for sale or lease to consumers that will be used in connection with a funeral or an alternative to a funeral or final disposition of human remains including caskets, combination units, and catafalques. Funeral goods does not mean land or interests in land, crypts, lawn crypts, mausoleum crypts, or niches that are sold by a cemetery that complies with Chapter 23.1 (§ 54.1-2310 et seq.) of Title 54.1 of the Code of Virginia. In addition, "funeral supplies and services" does not mean cemetery burial vaults or other outside containers, markers, monuments, urns, and merchandise items used for the purpose of memorializing a decedent and placed on or in proximity to a place of interment or entombment of a casket, catafalque, or vault or to a place of inurnment that are sold by a cemetery operating in accordance with Chapter 23.1 of Title 54.1 of the Code of Virginia.

"Guaranteed contract price" means (i) the amount paid by the contract buyer on a preneed funeral contract, and income derived from that amount, or (ii) the amount paid by a contract buyer for a life insurance policy or annuity as the funding source and its increasing death benefit. These amounts shall be accepted as payment in full for the preselected funeral goods and services.

"Income" means the amount of gain received in a period of time from investment of consideration paid for a preneed contract.

"Nonguaranteed contract price" means the costs of items on a preneed funeral contract that are not fixed for the specified funeral goods or funeral services selected and nonguaranteed costs may increase from the date of the contract to the death of the contract beneficiary and the family or estate will be responsible for paying at the time of need for the services and supplies that were nonguaranteed. Cash advance items are not guaranteed.

18VAC65-30-20 to 18VAC65-30-30. [Repealed]

Part II. Sale of Preneed Plans.

18VAC65-30-40. [Repealed]

18VAC65-30-50. Solicitation.

A. In accordance with provisions of § 54.1-2806 of the Code of Virginia, a licensee shall not initiate any preneed solicitation using in-person communication by the licensee or his agents, assistants, or employees.

B. After a request to discuss preneed planning is initiated by the contract buyer or interested consumer, any contact and in-person communication shall take place only with a funeral service licensee or a licensed funeral director. Funeral interns shall not engage in preneed planning or sales.

Part III. Operational Responsibilities.

18VAC65-30-60. Records; general.

A. A licensee shall keep accurate accounts, books, and records of all transactions required by this chapter.

B. Preneed contracts and reporting documents shall be retained on the premises of the establishment for three years after the death of the contract beneficiary.

C. A funeral home shall keep on file a written verification from the insurance company that the insurance or annuity contract complies with § 54.1-2820 C of the Code of Virginia.

D. All preneed records shall be available for inspection by the Department of Health Professions.

18VAC65-30-70. Record reporting.

A. A contract provider shall keep a chronological or an alphabetical listing of all preneed contracts. The listing shall include the following:

1. Name of contract buyer;
2. Name of contract beneficiary;
3. Date of contract;
4. How contract was funded, where the contract is funded, and where the funds are maintained;
5. Whether up to 10% of funds are retained by the contract provider for contracts funded through trust; and
6. Whether funeral goods and supplies are stored for the contract buyer.

B. A contract provider that discontinues its business operations, whether by closure or change of ownership, shall notify the board and each existing contract buyer in writing in accordance with the following provisions:

1. A contract provider that discontinues its business operations by closure shall:
 - a. Provide to the board a current list of preneed contracts at the time of closure; and

b. Notify each existing contract buyer in writing prior to closure and include a statement in the notification regarding the contract buyer's right to change the contract provider at any time prior to at-need.

2. If a contract provider changes ownership and the new establishment intends to honor existing contracts, the new establishment shall provide notice of the change of ownership and intent to honor existing contracts in a publication of general circulation in the locality where the establishment is located within 90 days after the change in ownership.

3. If a contract provider changes ownership and the new establishment does not intend to honor existing contracts, notification shall be provided to each existing contract buyer in writing within 90 days after the change in ownership. The notice shall include a statement regarding the contract buyer's right to change the contract provider at any time prior to at-need.

Part IV. Contract.

18VAC65-30-80. Content and format.

A. A person residing or doing business within the Commonwealth shall not make, either directly or indirectly by any means, a preneed contract unless the contract buyer has been given in writing all information and disclosures required by law and regulation.

B. In addition to requirements of §54.1-2820 of the Code of Virginia, the contract shall contain the following:

1. The date of the contract;
2. Whether or not the price of the supplies and services purchased is guaranteed;
3. The appointee agreement when applicable; and
4. Signatures of the contract seller and the contract buyer.

C. If an appointee agreement has been signed, it shall be attached to the preneed contract as a valid part of the contract.

Part V. Disclosures.

18VAC65-30-90. Disclosures.

A. At the time of the inquiry, licensees shall furnish to each person inquiring about preneed arrangements a copy of the general price list and preneed disclosure questions and answers.

B. Immediately upon concluding the arrangement conference, licensees shall furnish to each person who makes a preneed arrangement a copy of the preneed contract and funding contract. Licensees shall receive a written acknowledgment from the contract buyer that the buyer has received a copy of the general price list and preneed disclosure questions and answers.

C. An itemized statement of funeral goods and services shall be given at the time of need even if the arrangements were made through a preneed contract.

Part VI. Funding.

18VAC65-30-100. Finance charges prohibited.

A licensee shall not charge finance charges on a preneed arrangement.

18VAC65-30-110. Cancellation or transfer of contract.

A. Any person who makes payment under this contract may terminate the agreement at any time prior to the time for which the services or supplies are furnished.

B. If the contract buyer terminates the contract within 30 days of the execution of the contract, the contract buyer shall be refunded all consideration paid or delivered and any interest or income accrued on it.

C. If the contract buyer uses a revocable trust as the funding source and terminates the contract after 30 days of the execution of the contract, the contract buyer shall be refunded:

1. All consideration paid or delivered on nonguaranteed items;
2. At least 90% of all consideration paid for guaranteed items; and
3. All interest or income accrued on it.

D. If the contract buyer uses an irrevocable trust as the funding source, the contract buyer is not able to cancel the trust after 30 days following its execution except in accordance with §§ 64.2-729 and 64.2-730 of the Code of Virginia.

E. The contract buyer shall have the right to change the contract provider and the trustee at any time prior to the furnishing of the services or supplies contracted for under the preneed contract.

18VAC65-30-120. Escrow account.

Within five banking days after the day of receipt of any money from the contract buyer and until the time the money is invested in a trust, life insurance, or annuity policy, the contract seller or the contract provider shall deposit the money into an escrow account in a bank or savings institution approved to do business in the Commonwealth.

18VAC65-30-130. Real estate.

When the consideration consists in whole or in part of any real estate, the following shall occur:

1. The preneed contract shall be recorded as an attachment to the deed whereby the real estate is conveyed; and
2. The deed shall be recorded in the clerk's office in the circuit court of the city or county in which the real estate being conveyed is located.

18VAC65-30-140. Personal property.

When the consideration consists in whole or in part of any personal property, the following shall occur:

1. Personal property shall be transferred by:
 - a. Actual delivery of the personal property; or
 - b. Transfer of the title to the personal property.
2. Within 30 days of receiving the personal property or the title to the personal property, the licensee or person delivering the property shall:
 - a. Execute a written declaration of trust setting forth the terms, conditions, and considerations upon which the personal property is delivered; and
 - b. Record the trust agreement in the clerk's office of the circuit court of the locality in which the person delivering the property is living; or
 - c. Record the preneed contract in the clerk's office of the circuit court of the locality in which the person delivering the property or trust agreement is living provided that the preneed contract sets forth the terms, conditions, and considerations of the trust.

18VAC65-30-150 to 18VAC65-30-160. [Repealed]

18VAC65-30-170. Trust accounts.

If funds are to be trusted, the trust account is to be established according to provisions of §§54.1-2822 and 54.1-2824 of the Code of Virginia and the following information shall be disclosed in writing to the contract buyer:

1. The amount to be trusted;

2. The name of the trustee;
3. The disposition of the interest;
4. The fees, expenses, and taxes which may be deducted from the interest;
5. Whether up to 10% is retained by the contract provider; and
6. A statement of the contract buyer's responsibility for taxes owed on the interest.

18VAC65-30-180. Life insurance or annuity.

If a life insurance or annuity policy is used to fund the preneed funeral contract, the contract shall be in compliance with provisions of §§ 38.2-3100.3 and 54.1-2820 C of the Code of Virginia and shall contain the following information:

1. Name of the contract provider;
2. Name and funeral license number of contract seller;
3. Place of employment of contract seller;
4. Name of insurance agent and agent's insurance license number;
5. Insurance agent's employer and insurance company represented by insurance agent;
and
6. Identification as to whether the insurance agent is a funeral service licensee and, if so, the funeral service license number.

18VAC65-30-190. [Repealed]

Part VII. Supplies and Services.

18VAC65-30-200. Supplies and services.

A. If the contract seller will not be responsible for furnishing the supplies and services to the contract buyer, the contract seller shall attach to the preneed funeral contract a copy of the contract seller's agreement with the contract provider.

B. If any funeral supplies are sold and delivered to the contract provider prior to the death of the contract beneficiary, the risk of loss or damage shall be upon the contract provider during such period of storage.

C. If the particular supplies and services specified in the contract are unavailable at the time of delivery, the contract provider shall be required to furnish supplies and services similar in style and at least equal in quality of material and workmanship. The representative of the deceased shall have the right to choose the supplies or services to be substituted.

Part VIII. Required Content of Contracts and Disclosures.

18VAC65-30-210. [Repealed]

18VAC65-30-220. Content of preneed contracts.

Required Content of Contracts and Disclosures

The following information shall be contained in any contract for preneed funeral planning.

Date: _____

Contract: _____

PRENEED FUNERAL CONTRACT

for

(Name of Recipient of Services)

_____ (Zip) _____

I. SUPPLIES AND SERVICES PURCHASED

If goods and services are guaranteed and your contract is fully paid or funded at the time of your death, no additional cost will incur for your family or estate even though the actual prices of goods and services may increase between the date of this contract and the time of need. (Please see the disclosure document.)

If goods and services are nonguaranteed, your family or estate may incur additional costs for goods and services as the prices for these items may increase from the date of the contract to the time of need.

Cash advance items are not guaranteed. A cash advance item is any item obtained from a third party by the funeral home on your behalf. Cash advance items may include cemetery or crematory services, pall bearers, public transportation, clergy honoraria, flowers, musicians or singers, nurses, obituary notices, gratuities, and death certificates.

Charges are only for those items that you selected or that are required. If we are required by law or by a cemetery or crematory to use an item, we will explain the reasons in writing below. If you selected a funeral that may require embalming, such as a funeral with a viewing, you may have to pay for embalming. You do not have to pay for embalming you did not select if you select arrangements such as a direct cremation or immediate burial.

Guaranteed Services Purchased

I. BASIC SERVICES OF FUNERAL DIRECTOR AND STAFF \$ _____

II. FUNERAL HOME FACILITIES

A. Facilities and Staff for visitation/viewing \$ _____

B. Facilities and Staff for funeral ceremony \$ _____

C. Facilities and Staff for memorial service \$ _____

D. Equipment and Staff for graveside service \$ _____

(NOTE TO FUNERAL HOME: If you have additional charges such as facilities and staff for home/church viewing, or a charge for additional staff person or through calculation of manhours, etc., add here as extra items. If you have a charge for equipment for interment, add here.)

III. EMBALMING

A. Normal remains \$ _____

B. Autopsy remains \$ _____

IV. OTHER PREPARATION OF THE BODY \$ _____

(NOTE: List all items that you placed under Other Preparation on your General Price List.)

V. IMMEDIATE BURIAL \$ _____

VI. DIRECT CREMATION \$ _____

VII. TRANSFER OF REMAINS TO FUNERAL ESTABLISHMENT \$ _____

VIII. FORWARDING REMAINS TO ANOTHER FUNERAL HOME \$ _____

IX. RECEIVING REMAINS FROM ANOTHER FUNERAL HOME \$ _____

X. AUTOMOTIVE EQUIPMENT

A. Hearse \$ _____

B. Limousine \$ _____

(NOTE: List all others that you placed on General Price List.)

XI. FUNERAL MERCHANDISE

A. Casket (*describe)

_____ \$ _____

B. Outer Burial Container (*describe)

_____ \$ _____

C. List any others
_____ \$ _____

Supplies Purchased

Clothing \$ _____

Temporary marker \$ _____

Acknowledgment cards \$ _____

Register/attendance books \$ _____

Memorial folders \$ _____

Other \$ _____

SUBTOTAL COSTS OF (GUARANTEED) SUPPLIES PURCHASED: \$ _____

XII. PACKAGE PRICES

(NOTE: List all package prices by name.)

SUBTOTAL COSTS OF (GUARANTEED) SUPPLIES PURCHASED: \$ _____

Nonguaranteed Goods and Services Purchased

The actual prices of goods and services below are NOT GUARANTEED. These items may include obituary notices, death certificates, cemetery fees, flowers, sales tax, etc. The prices are estimated and the estimates will be included in the Grand Total Contract Price. The differences between the estimated prices below and the actual cost will be settled with your family or estate at the time of need:

SUBTOTAL ESTIMATED COSTS OF NONGUARANTEED ITEMS: \$ _____

GRAND TOTAL FOR PRENEED ARRANGEMENTS

1. Total cost of (guaranteed) services purchased \$ _____

2. Total cost of (guaranteed) supplies purchased \$ _____

3. Total estimated cost of nonguaranteed items \$ _____

GRAND TOTAL \$ _____

The only warranties, express or implied, granted in connection with the goods sold in this preneed funeral contract, are the express written warranties, if any, extended by the manufacturers thereof. No other warranties and no warranties of MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE are extended by the (funeral home) _____.

GENERAL INFORMATION

In order that the Buyer may understand the relationship of all parties involved in this preneed arrangement and contract, the following is provided:

A. Buyer:

B. Funeral Home Providing Services:

C. Contract seller:

Employed by: (Funeral Home)

Virginia Funeral Director or Funeral Service Licensee License Number:

II. METHOD OF FUNDING

A. Trust.

The following information will be given if a trust is used to fund this agreement:

1. Amount to be trusted:

2. Name of trustee:
3. Disposition of Interest:
4. Fees, expenses, taxes deducted from earned interest:
5. Buyer's responsibility for taxes owned on interest:

B. Insurance or annuity contract.

The following information will be given if an insurance policy or annuity contract is used to fund this agreement:

1. Buyer:
2. Insurance Company:
3. Insurance Agent:

Employed by: (Insurance Company)

Licensed Funeral Director or Funeral Service Licensee in Virginia: ___yes ___no

Funeral Director or Funeral Service Licensee License Number (If Applicable):

Employed by Funeral Home (If Applicable):

4. The life insurance or annuity contract provides that the face amount of any life insurance policy issued to fund a preneed funeral contract shall not be decreased over the life of the life insurance policy except for life insurance policies that have lapsed due to the nonpayment of premiums or have gone to a nonforfeiture option that lowers the face amount as allowed for in the provisions of the policy.

III. CONSUMER INFORMATION

The Board of Funeral Directors and Embalmers is authorized by Chapter 28 (§ 54.1-2800 et seq.) of Title 54.1 of the Code of Virginia to regulate the practice of preneed funeral planning. Consumer complaints should be directed to:

The Board of Funeral Directors and Embalmers

9960 Mayland Drive, Suite 300

Richmond, Virginia 23233

Telephone Number: (804) 367-4479

Toll Free Number for complaints: 1-800-533-1560

FAX: (804) 527-4413

Website: www.dhp.virginia.gov

IV. DISCLOSURES

The disclosure statements will be available for your review. The General Price List shall be furnished to you by the contract seller. These contain information that you must receive by law and/or the authority of the Board of Funeral Directors and Embalmers. You are entitled to receive all information in clear and simple language including the language of the funding agreement for this preneed arrangement.

If any law, cemetery, or crematory requires the purchase of any of those items listed in Part I, the requirements will be explained in writing.

By signing this contract, buyer acknowledges availability of and opportunity to read a copy of all of the required documents.

By signing this contract, contract seller acknowledges that the General Price List and the required disclosures have been furnished to the contract buyer.

V. TERMINATION OF CONTRACT

This person who funds this contract through a trust agreement may terminate this preneed contract at any time prior to the furnishing of the services or supplies contracted for:

Within 30 days

If you terminate this preneed contract within 30 days of the date of this contract, you will be refunded all payments of whatever type you have made, plus any interest or income you may have earned.

More than 30 days

If you terminate this preneed contract more than 30 days after the date on this contract, you will be refunded whatever amount was required to be placed in a revocable trust fund, plus any interest or income it has earned.

Any person who funds this contract through a trust fund that is irrevocable or through an insurance/annuity policy or through the transfer of real estate/personal property may not be eligible for a refund.

VI. STATEMENT OF GUARANTEE

By signing this contract, (Funeral Home) _____ agrees to the statement checked below (check one):

_____ Prefinancing guarantees that no additional payment will be required from the family or estate for guaranteed services and supplies provided the Grand Total of these arrangements is paid in full and the interest is allowed to accumulate in your account (see page _____ for Grand Total amount). Payment of the difference will be required for the nonguaranteed estimated items if they increase in price.

_____ The prices for items under supplies and services are not guaranteed.

VII. AGREEMENT

In witness whereof, the Buyer and the Funeral Home have executed this contract, intending its terms to be in accordance with the Code of Virginia and any regulations implementing the Code. By signing this contract you acknowledge that you have been provided access to and the opportunity to read the Disclosure Statements.

(Designee of Funeral Home)

(Buyer)

(Funeral Home)

(Contract Date)

VIII. PENALTIES OR RESTRICTIONS

The (funeral home) _____, has the following penalties or restrictions on the provisions of this contract.

1. (Insert geographic restrictions);
2. (Insert an explanation of the Funeral Home's inability to perform the request(s) of the Buyer);
3. (Insert a description of any other circumstances that apply);
4. (Insert information that if particular goods and services specified in the contract are unavailable at the time of need):

A. The funeral home shall be required to furnish supplies and services similar in style and at least equal in quality of material and workmanship; and

B. The representative of the deceased shall have the right to choose the supplies or services to be substituted.

IX. ADDENDUM TO PRENEED CONTRACT

APPOINTEE AGREEMENT

I appoint _____ of (address) _____ to assist with the preneed arrangements in my behalf. The relationship of my appointee to me is _____.

Contract Beneficiary: _____ Date: _____

I accept the request of (contract beneficiary) _____ to assist with his/her preneed arrangements.

Appointee: _____ Date: _____

The foregoing was acknowledged before me this _____ day of _____, 20__

Notary: _____

Date Commission Expires: _____

18VAC65-30-230. Content of disclosure statements.

The following disclosure statements shall be provided as a part of any contract used for preneed funeral planning:

We are required by law and/or the Virginia Board of Funeral Directors and Embalmers to provide access to and the opportunity for you to read the following information to assist you in preplanning. A question and answer format is used for clarity and includes the most commonly asked questions.

PRENEED CONTRACTS

-- Is there more than one type of preneed agreement?

Yes. Guaranteed contracts mean that the costs of certain individual items or the cost of the total package will never be more to your family or estate. Nonguaranteed contracts mean just the opposite. Nonguaranteed contracts mean costs may increase or decrease between the time of the agreement and the time of need. A preneed contract may have both guaranteed and nonguaranteed costs. (See the section entitled "General Funding Information" for more information on guaranteed and nonguaranteed costs.)

Contracts may be funded by insurance/annuity policies, trusts, or transfer of real estate/personal property.

-- What are my protections?

You should take your completed preneed contract home before you sign it and review it with your family or your legal advisor. You have a right to this review before you sign the contract or pay any money.

You should also read carefully the information in this disclosure statement. If you have any questions, contact the seller for more information or contact your legal advisor.

CANCELLATION

-- Can I cancel my preneed agreement if I change my mind? Will I get my money back?

You may cancel payment for supplies or services within 30 days after signing the agreement. If you funded your preneed arrangement through a trust (revocable or irrevocable), the contract seller will refund all the money you have paid plus any interest or income you have earned.

If you funded your preneed arrangement through a revocable trust and you cancel the preneed contract AFTER the 30-day deadline, you will be refunded all of your money on the items that are not guaranteed and 90% of all your money on the items that are guaranteed. You will also receive any interest or income on that amount. A revocable trust is a trust that you can cancel.

There may be a penalty to withdraw money from a revocable trust account which has already been established in your name. If there is, your contract will give you this information. (See the first question under the section entitled "Payment" below.)

If you have funded your preneed arrangement through an irrevocable trust, you will not be able to cancel the trust agreement or receive a refund after 30 days following the signing of the agreement except in accordance with §§ 64.2-729 and 64.2-730 of the Code of Virginia.

If you funded your preneed arrangement through an insurance policy/annuity contract which will be used at the time of your death to purchase the supplies and services you have selected, you will need to pay careful attention to the cancellation terms and conditions of the policy. You may not be eligible for a refund.

PAYMENT

-- What happens to my money after the contract is signed?

Your money will be handled in one of several ways. It may be deposited in a separate trust account in your name. The trust account will list a trustee who will be responsible for handling your account. The funeral home you have selected as your beneficiary will

also be listed. You have the right to change the funeral home and the trustee of your account prior to receiving the supplies and services under the preneed contract.

Your money may be used to purchase a preneed life insurance policy which may be used to pay for your arrangements upon your death. The proceeds of the policy will be assigned to the funeral home of your choice. You may change the funeral home assignment at any time prior to receiving the supplies and services under the preneed contract.

You may decide to choose a life insurance policy or a trust account that requires regular premium payments and not have to make an up-front, lump sum payment.

-- May I pay for goods and services with real estate or personal property?

Yes. When you pay for these supplies and services in whole or in part with any real estate you may own, the preneed contract that you sign will be attached to the deed on the real estate and the deed will be recorded in the clerk's office of the circuit court in the city or county where the real estate is located.

If you pay for goods and services with personal property other than cash or real estate, the contract seller will declare in writing that the property will be placed in a trust until the time of your death and will give you written information on all the terms, conditions, and considerations surrounding the trust. The contract seller will confirm in writing that he has received property.

You may decide not to transfer the title of the personal property to the contract seller of your preneed contract. In this situation, you will have to submit information to the contract seller in writing that you are giving him the property without a title, and describe the property and where it will be kept until the time of your death.

In either case, the written statements will be recorded in the clerk's office of the circuit court of the city or county in which you live. The written statement does not have to be a separate document.

GENERAL FUNDING INFORMATION

-- If the prices of the goods and services are affected by inflation between now and my death, will the funding I choose be adjusted accordingly?

There is a possibility that the funding may fail to keep up with inflation. This could mean that the funding you choose may not have enough value to cover all expenses at the time of need.

-- What happens if my funding is not enough to cover the full cost of these arrangements?

If the entire funeral or specific items in the agreement are guaranteed by the contract seller, your family or estate will not have to pay any more for those items provided that you have paid the grand total in full and all interest earned is allowed to accumulate in your account. However, if you have not paid the account in full and have not allowed the interest to accumulate in the account and any items increase in price, your family or estate would be responsible for the extra amount if the funds are not sufficient. In some situations where you pay toward your funding with regular premiums rather than in one lump sum, your account may not be enough at the time of your death to cover everything.

-- What happens to the extra money if my funding is more than what is needed to pay for these arrangements?

Sometimes, as explained in the answer above, your funding account may not have had the time to grow sufficiently before your death to cover items which are guaranteed in price to you, yet have increased in price for the funeral home.

After funeral expenses are paid, there may be money left over. Because of the ongoing risk that a funeral home takes in guaranteeing prices for you, the funeral home may not be required to return this excess money.

Some funding agreements and funeral homes, however, require that extra money be returned to the estate or family. Others do not. You should obtain information concerning this in writing before signing the preneed contract.

The answers to the following questions will depend upon the terms and conditions of the individual's funding and preneed agreements.

Please review your preneed contract and/or funding agreement for answers to these questions.

-- What happens to my preneed contract if I change my assignment from one funeral home to another?

(Funeral home shall place answer here)

-- What happens to my preneed contract if I change the beneficiary of my funding or the use of my proceeds from the funding?

If you make such changes, it could void your contract. You should request specific information from the contract seller and the funding arrangement.

-- What will happen to my preneed contract if I fail to make agreed to premium payments to my funding source?

(Funeral home shall place answer here)

-- Do I get any money back if I surrender or cancel my funding arrangements?

(Funeral home shall place answer here)

-- What happens if the funeral home closes? Will I be able to transfer my contract to another funeral home?

You have the right to change the funeral home (contract provider) at any time prior to receiving services or supplies under the preneed contract. A funeral home is required to notify you in writing if it closes or is sold to a buyer that does not intend to honor your preneed contract.

TRUST ACCOUNT

-- If my money goes into a trust account, what information will I receive about that account?

If you want your money to go into a trust fund, the trust agreement must furnish you with information about the amount to be deposited into the account, the name of the trustee, information about what happens to the interest your trust account will earn, and information about your responsibility to file and pay taxes on that interest.

If there are filing expenses connected with your trust account, you will be notified what the expenses are and whether you or the contract seller is the responsible party for paying those.

-- What happens to the interest earned by the trust?

The interest earned by the trust may be handled in different ways by different trust arrangements. The interest may have to go back into your account if items on your contract are guaranteed. You may be responsible for reporting that interest to the Internal Revenue Service and paying taxes on it. You will be responsible to pay any taxes on the interest earned even if you cancel your trust account.

Some trust accounts cannot be cancelled.

There may be special fees deducted from your interest. However, you may still be responsible for paying taxes on the entire amount of interest earned before the fees

were deducted. Please ask your contract seller for a written list of any fees so you will have a clear understanding about them before you sign the contract.

-- If I pay my trust in premium payments, what happens if I die before the grand total of the funeral has been placed in trust?

(Funeral home shall place answer here)

CLAIMS AGAINST THIS CONTRACT

-- Can someone to whom I owe money make a claim against the money, personal property, or real estate that I have used to pay for this contract?

No. This money or property cannot be used to settle a debt, a bankruptcy, or resolve a claim. These funds cannot be garnished.

-- Can the money or property be taxed?

No. Currently, interest earned on the money you deposit in a trust, savings account, or the value of the property you used for payment can be taxed but not the original amount which you invested. Interest earned on annuities is generally deferred until withdrawal.

GENERAL GOODS AND SERVICES

-- If I choose goods and services that might not be available at the time of my death, what is the provider required to do?

The funeral home that you select is required to furnish supplies and services that are similar in style and equal in value and quality if what you choose is no longer made or is not available at the time of your death.

Your representative or next-of-kin will have the right to choose the supplies or services to be substituted. However, if the substitute is more expensive than the item originally selected by you, your designee or next-of-kin would be responsible for paying the difference. Under no circumstances will the funeral establishment be allowed to substitute lesser goods and services than the ones you chose.

If, before your death, the funeral home goes out of business or is otherwise unable to fulfill its obligation to you under the preneed contract, you have the right to use the proceeds at the funeral home of your choice.

If the inability to provide services does not become apparent until the time of your death, the individual that you named as your designee could use the funds for services at another funeral home.

-- May I choose the exact item I want now and have the funeral home store it until my death?

If the funeral home or supplier has a storage policy you may ask for this service. If the funeral home or contract seller agrees to store these items, the risk of loss or damage shall be upon the funeral home during the storage period.

For example, what would happen if you select a casket that is in-stock at the time you make these arrangements and the funeral home or supplier agrees to store it for you in their warehouse and: (i) damage occurs, (ii) the funeral home or supplier goes out of business, (iii) the funeral home or supplier is sold, etc.? You need to be assured in writing of protection in these types of situations.

-- What happens if I choose to have a unique service that is not customary or routine in my community? Must the funeral home comply with my wishes?

The funeral home which you have chosen to conduct your service may be able to only provide certain types of services. They may not be able to fulfill your request. If there is a restriction on what they can provide, you will be notified in writing before you sign the preneed contract.

If the funeral home agrees in writing before you sign the contract to perform such services, the funeral home shall provide you a written, itemized statement of fees which you will be charged.

-- Will the funeral home agree to transport my body to another area for burial?

Again, the funeral home may have restrictions on the distance they are willing to travel to conduct a burial. If restrictions apply, you will be notified in writing.

If the funeral home agrees in writing before you sign the contract to honor your wishes, the funeral home shall provide you a written, itemized statement of any penalties (fees) which you will be charged.

-- I may die and be buried in a city other than one where the funeral home that I select for my goods and services is located. Will the funeral home that I select under this contract deliver my merchandise to the city where I die and am to be buried?

This is entirely up to the funeral home to decide. If the funeral home has restrictions on this, they will notify you in writing. If they agree to ship merchandise to another area for your funeral, you will be notified before signing this contract of the fees involved if they can be determined and guaranteed at this time.

However, the preneed contract arrangements and funding is considered portable. This means that they are available for transfer from one locality to another. It is unusual for actual goods and merchandise to be transferred.

PRICING

-- How will I know that the prices of items which I select are the same for everyone?

The funeral home maintains a general price list and a casket and outer burial container price list. Your contract seller will give this to you before you begin talking about arrangements. After your discussion is finished, you will be given a copy of your preneed contract on which charges will be listed. Charges will only be made for the items you select. If there are any legal or other requirements that mandate that you must buy any items you did not specifically ask for, the contract seller will explain the reason for the charges to you in writing.

You may ask a funeral home to purchase certain items or make special arrangements for you. If the funeral home charges you for these services, you will receive an explanation in writing. The charges to you for these services may be higher than if you or your family purchased them directly.

At the time of your death, your family or estate will be given an itemized statement which will list all of the specific charges.

-- What is meant by guaranteed and nonguaranteed prices?

Some contract sellers may agree that certain prices are guaranteed. Some may guarantee the price of the total package. Other funeral homes may not guarantee any prices.

Guaranteed prices are those that will not increase for your family or estate at the time of your death, provided your preneed contract is fully paid for or funded at the time of your death. Basically, this means that your funeral arrangement for those items will be covered by and will not exceed your funding and the interest it earns.

Nonguaranteed prices are those which might increase or decrease. The nonguaranteed prices may be written in at the time of this contract with your understanding that the price is an estimate only and may increase or decrease. A settlement of any difference in

the estimated cost and the actual cost at death may have to be made with your family or representative after your death. Examples of prices that are often not guaranteed include cemetery or crematory services, pallbearers, public transportation, clergy honoraria, flowers musicians or singers, obituary notices, gratuities, and death certificates.

-- Can the contract seller and I negotiate a projected charge for the nonguaranteed items based on the rate of inflation?

It is entirely up to the contract seller to inform you of the funeral home policy in that regard.

CASKETS AND CONTAINERS

-- Do I have to buy a vault or a container to surround the casket in the grave?

In most areas of the country, state and local laws do not require that you buy a container to surround the casket in the grave. However, many cemeteries ask that you have such a container to support the earth above the grave. Either a burial vault or a grave liner will satisfy if such requirements exist.

-- Is a casket required?

A casket is not required for direct cremation. If you want to arrange a direct cremation, you may use an unfinished wood box or an alternative container made of heavy cardboard or composition materials. You may choose a canvas pouch.

-- Do certain cemeteries and crematoriums have special requirements?

Particular cemeteries and crematoriums may have policies requiring that certain goods and services be purchased. If you decide not to purchase goods and services required by a particular cemetery or crematorium, you have the right to select another location that has no such policy.

EMBALMING

-- Is embalming always required?

Embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements such as viewing or visitation with an open casket. You do not have to pay for embalming you did not approve if you select arrangements such as a direct cremation or immediate burial. If the funeral home must charge to conduct an embalming, your designee will be notified of the reasons in writing.

RECORDS

-- What should I do with my preneed contract and documents?

A preneed contract is a legal document. You should keep a copy of your preneed contract and related documentation as you would any similar legal document such as in a safe place or with the person designated to make arrangements at the time of your death.

-- Will the funeral home keep a copy of the preneed contract?

The funeral home is required to maintain a copy of the preneed contract on file prior to and after need. Preneed contracts and related documents are required to be kept by the funeral home for three years after your death.

ASSISTANCE

-- This is all very confusing to me. May I pick someone close to me to help with all of this? May this person also work with the funeral home to ensure that my wishes as written in the preneed contract are carried out?

You may designate in writing a person of your choice to work with the funeral home and contract seller either before or after your death to ensure that your wishes are fulfilled. You must sign the statement and have it notarized. The person that you designate must agree to this in writing. Under the laws governing preneed contracts, the individual whom you designate has final authority at the time of your death.

-- Where can I complain if I have a problem concerning my preneed contract, the contract seller, or the funeral home?

You may direct your complaints or concerns to:

The Board of Funeral Directors and Embalmers

9960 Mayland Drive, Suite 300

Richmond, Virginia 23233

Telephone Number: (804) 367-4479

Toll Free Number for complaints: 1-800-533-1560

Fax: (804) 527-4413

Website: www.dhp.virginia.gov

Agenda Item: Consideration of Notice of Intended Regulatory Action for regulatory reductions to Chapter 40

Included in your agenda package:

- A copy of 18VAC65-40

Staff Note: The Legislative/Regulatory Committee recommends that the Board adopt a NOIRA to:

- Amend 18VAC65-40-40 to remove unnecessary language regarding fee direction;
- Amend 18VAC65-40-130 and 180 to reorganize and list requirements for internships and applications in order to make the section more readable and provide clarity; and
- Amend 18VAC65-40-250 to allow the Board discretion to deny a supervisor registration in certain circumstances rather than require the Board deny the supervisor registration.

Action needed:

- Motion to accept the recommendation of the legislative/regulatory committee to issue a NOIRA covering the stated potential reductions for Chapter 40.

Commonwealth of Virginia



REGULATIONS
FOR THE
FUNERAL SERVICE INTERNSHIP
PROGRAM

VIRGINIA BOARD OF
FUNERAL DIRECTORS AND EMBALMERS

Title of Regulations: 18 VAC 65-40-10 et seq.

Statutory Authority: § 54.1-2400 and
Chapter 28 of Title 54.1 of the *Code of Virginia*

Revised Date: December 7, 2022

9960 Mayland Drive, Suite 300
Richmond, VA 23233-1463

(804) 367-4479 (TEL)
(804) 939-5973 (e-FAX)
email: fanbd@dhp.virginia.gov

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Part I. General Provisions.

18VAC65-40-10. Definitions.

In addition to words and terms defined in § 54.1-2800 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Direct supervision" means that a person licensed for the practice of funeral service, funeral directing, or embalming is present and on the premises of the facility.

"Supervisor" means a licensed employee at the training site who has been approved by the board to provide supervision for the funeral intern.

"Training site" means the licensed funeral establishment, facility, or institution that has agreed to serve as a location for a funeral service internship and has been approved by the board.

18VAC65-40-20 to 18VAC65-40-30. [Repealed]

18VAC65-40-40. Fees.

A. The following fees shall be paid as applicable for registration:

1. Funeral service, funeral directing, or embalming intern registration	\$150
2. Funeral service, funeral directing, or embalming intern renewal	\$125
3. Late fee for renewal up to one year after expiration	\$45
4. Duplicate copy of intern registration	\$25
5. Handling fee of \$50 for returned checks or dishonored credit cards or debit cards	\$50
6. Registration of supervisor	\$35
7. Change of supervisor	\$35
8. Reinstatement fee	\$195

B. Fees shall be made payable to the Treasurer of Virginia and shall not be refundable once submitted.

18VAC65-40-50 to 18VAC65-40-80. [Repealed]

18VAC65-40-90. Renewal of registration.

- A. The funeral service, funeral directing, or embalming intern registration shall expire on March 31 of each calendar year and may be renewed by submission of the renewal notice and prescribed fee.
- B. A person who fails to renew a registration by the expiration date shall be deemed to have an invalid registration. No credit will be allowed for an internship period served under an expired registration.
- C. The funeral service, funeral directing, or embalming intern is responsible for notifying the board within 14 days of any changes in name, address, employment, or supervisor. Any notices shall be validly given when mailed to the address on record with the board. Renewal notices may be mailed or sent electronically.

18VAC65-40-100. [Repealed]

18VAC65-40-110. Renewal or reinstatement of expired registration.

- A. A funeral service, funeral directing, or embalming intern whose registration has expired may be renewed within one year following expiration by payment of the current renewal fee and the late renewal fee.
- B. A funeral service, funeral directing, or embalming intern whose registration has been expired for more than one year shall apply for reinstatement by submission of an application and payment of a reinstatement fee. The board may consider reinstatement of an expired registration for up to three years following expiration.
- C. When a registration is not reinstated within three years of its expiration date, a new application for registration shall be filed and a new internship begun.

18VAC65-40-120. [Repealed]

Part II. Funeral Service Internship Requirements.

18VAC65-40-130. Funeral service internship.

- A. An internship for funeral service, funeral directing, or embalming shall consist of at least 2,000 hours of training to be completed within no less than 12 months and no more than 48 months. The board may grant an extension of time for completion of an internship only for extenuating circumstances.
- B. The intern shall be assigned a work schedule of not less than 20 hours nor more than 60 hours per week in order to receive credit for such training. For good cause shown, the board may waive the limitation on an intern's work schedule.
- C. A funeral service intern shall receive training in all areas of funeral service.

D. A funeral service intern shall be identified to the public as a funeral service intern in a title used, name tag worn, and any correspondence or communication in which the intern's name is used.

A funeral directing intern shall receive training in all areas of funeral directing, including assisting in at least 25 funerals, 25 arrangement conferences, as well as visitations and financing of funeral services.

E. An embalming intern shall receive training in all aspects of embalming practice, including assisting in at least 25 embalmings, as well as treatment, restorative art, safety and sanitation, and organ, tissue, or anatomical donation.

F. An intern registration shall expire upon issuance by the board of a license to practice as a funeral service licensee, a funeral director, or an embalmer. When an internship has been completed for licensure as a funeral director or as an embalmer, the approval of an additional internship to meet the requirements for licensure as a funeral service licensee may be approved by the board in accordance with § 54.1-2817 of the Code of Virginia and the regulations of the board. Any additional internship granted shall be limited in duration to the time required for completion of hours and cases required for licensure. An internship may not be used to expand the scope of practice of a licensee.

G. An intern shall be identified to the public as a funeral service intern, a funeral directing intern, or an embalming intern in a title used, name tag worn, and any correspondence or communication in which the intern's name is used.

18VAC65-40-140 to 18VAC65-40-170. [Repealed]

18VAC65-40-180. Intern application for funeral service licensure.

A. Any person who meets the qualifications of §54.1-2817 of the Code of Virginia may seek registration with the board as a funeral service intern by submission of an application package, which shall include documentation of the qualifications and signatures of any supervising licensees.

B. Applicants shall submit school transcripts as part of an application package, including the required fee and any additional documentation as may be required to determine eligibility.

18VAC65-40-185. Intern application for funeral directing or embalming licensure.

A. An applicant who attests to holding a high school diploma or its equivalent may seek registration with the board as a funeral directing or an embalming intern by submission of an application package, which shall include documentation of the qualifications and signatures of any supervising licensees.

B. Applicants shall submit school transcripts as part of an application package, including the required fee and any additional documentation as may be required to determine eligibility.

C. The board, in its discretion, may approve an application to be a funeral directing or an embalming intern for an individual convicted of a felony, if the applicant has successfully fulfilled all conditions of sentencing, been pardoned, or has had civil rights restored. The board shall not, however, approve an application to be an intern for any person convicted of embezzlement or of violating subsection B of § 18.2-126 of the Code of Virginia. The board, in its discretion, may refuse to approve an application to be a funeral directing or an embalming intern for an individual

who has a criminal or disciplinary proceeding pending against him in any jurisdiction in the United States.

18VAC65-40-190 to 18VAC65-40-200. [Repealed]

18VAC65-40-201. Failure to register.

If the internship is not approved by the board prior to initiation of training, no credit shall be allowed for the length of time served.

18VAC65-40-210. Training sites.

A. Funeral training shall be given at the licensed funeral service establishment or at any branch of such establishment that complies with the provisions of this chapter and is approved by the board as a training site.

B. An individual, firm, or corporation owning or operating any funeral service establishment shall apply to and be approved by the board prior to permitting funeral training to be given or conducted in the establishment.

18VAC65-40-220. Qualifications of training site.

A. The board shall approve only an establishment or two combined establishments to serve as the training site or sites that:

1. Have a full and unrestricted Virginia license;
2. Have complied in all respects with the provisions of the regulations of the Board of Funeral Directors and Embalmers; and
3. For a funeral service internship, have 50 or more funerals and 50 or more bodies for embalming over a 12-month period for each person to be trained. This total must be maintained throughout the period of training. If the establishment does not meet the required number of funerals or embalmings, the funeral service intern may seek approval for an additional training site; or
4. For a funeral directing internship, have 50 or more funerals over a 12-month period for each person to be trained. This total must be maintained throughout the period of training. If the establishment does not meet the required number of funerals, the funeral directing intern may seek approval for an additional training site; or
5. For an embalming internship, have 50 or more bodies for embalming over a 12-month period for each person to be trained. This total must be maintained throughout the period of training. If the establishment does not meet the required number of embalmings, the embalming intern may seek approval for an additional training site.

B. The board may grant approval for an intern funeral service or an embalming intern to receive all or a portion of the embalming training at a facility of state or federal government or an accredited educational institution.

18VAC65-40-230 to 18VAC65-40-240. [Repealed]

18VAC65-40-250. Requirements for supervision.

A. Training shall be conducted under the direct supervision of a licensee approved by the board. Credit shall only be allowed for training under direct supervision.

B. The board shall approve only funeral service licensees, licensed funeral directors, or licensed embalmers to give funeral training who have a full and unrestricted Virginia funeral license, have at least two consecutive years in practice as a funeral service licensee, funeral director, or embalmer and are employed full time in or under contract with the establishment, facility, or institution where training occurs. The board will not approve registration of a supervisor who has been subject to board disciplinary action within the most recent two years.

C. A supervisor licensed as an embalmer or a funeral director shall provide supervision only in the areas of funeral practice for which he is licensed. A supervisor shall ensure that an intern receives training under the direct supervision of a licensee who has a current license in good standing.

D. A supervisor shall register with the board for each intern for whom the supervisor is providing supervision. Such registration shall expire 48 months after registration or at the completion of the intern's training, whichever occurs first. If the intern has been granted an extension beyond 48 months for extenuating circumstances, the supervisor may continue to provide supervision for a time period specified by the board.

E. Failure to register as a supervisor may subject the licensee to disciplinary action by the board.

F. If a supervisor is unable or unwilling to continue providing supervision, the intern shall obtain a new supervisor. Credit for training shall resume when a new supervisor is approved by the board and the intern has paid the prescribed fee for the change of supervisor.

G. No more than a combined total of two funeral service, funeral directing, or embalming interns shall be concurrently registered under any one person licensed for the practice of funeral service, funeral directing, or embalming. Each supervisor for a registered funeral directing intern or a registered embalming intern must be actively employed by or under contract with a funeral establishment.

18VAC65-40-260 to 18VAC65-40-270. [Repealed]

18VAC65-40-280. Supervisor application package.

A. A licensee seeking approval by the board as a supervisor of an intern shall submit a completed application and any additional documentation as may be required to determine eligibility for each intern to be supervised.

B. The application for supervision of a funeral service, a funeral directing, or an embalming intern shall be signed by the establishment manager and by the persons who will be providing supervision for embalming, for funeral directing, or for funeral services.

18VAC65-40-290. through 18VAC65-40-310. [Repealed]

18VAC65-40-320. Reports to the board: six-month report; partial report.

A. The intern, the supervisor or supervisors, and the establishment shall submit a written report to the board at the end of every 1,000 hours of training. The report shall:

1. Specify the period of time in which the 1,000 hours has been completed and verify that the intern has actually served in the required capacity during the preceding period; and
2. Be received in the board office no later than 14 days following the end of the completion of 1,000 hours.

B. If the internship is terminated or interrupted prior to completion of 1,000 hours or if the intern is changing supervisors or training sites, the intern and the supervisor shall submit a partial report to the board with a written explanation of the cause of program termination or interruption or of the change in training or supervision.

1. The partial report shall provide the amount of time served and the dates since the last reporting period. Credit for partial reports shall be given for the number of hours of training completed.
2. Partial reports shall be received in the board office no later than 14 days after the interruption or termination of the internship or after the change in supervisors or training sites.

C. An intern shall not receive credit for training hours on a new 1,000-hour report until the previous 1,000-hour report has been approved by the board.

D. Credit shall not be allowed for any period of internship that has been completed more than three years prior to application for license or more than five years prior to examination for license. If all requirements for licensure are not completed within five years of initial application, the board may deny an additional internship. A funeral directing or an embalming intern may continue to practice for up to 90 days from the completion of internship hours or until the intern has taken and received the results of all examinations required by the board. However, the board may waive such limitation for any person in the armed service of the United States when application for the waiver is made in writing within six months of leaving service or if the board determines that enforcement of the limitation will create an unreasonable hardship.

18VAC65-40-330. Failure to submit training report.

If the intern, supervisor, or establishment manager fails to submit the reports required in 18VAC65-40-320, the intern may forfeit all or partial credit for training or disciplinary action may be taken against the intern, supervisor and establishment manager.

Part III. Internship: Funeral Supervisors' Responsibilities.

18VAC65-40-340. Supervisors' responsibilities.

A. The supervisor shall provide the intern with all applicable laws and regulations or sections of regulations relating to the funeral industry.

B. The supervisor shall provide the intern with copies of and instruction in the use of all forms and price lists employed by the funeral establishment.

C. The supervisor shall provide the funeral service or funeral directing intern with instruction in all aspects of funeral services and shall allow the intern under direct supervision to assist in conducting a minimum of 25 funerals.

D. The embalming supervisor shall provide instruction on all necessary precautions, embalming functions, and reporting forms and shall allow the funeral service or embalming intern under direct supervision to assist in the performance of a minimum of 25 embalmings.

E. The supervisor shall provide the funeral service or funeral directing intern with instruction in making preneed funeral arrangements and instruction on the laws and regulations pertaining to preneed funeral contracts and disclosures.

F. The supervisor shall provide the funeral service or funeral directing intern instruction on cremation and on the laws and regulations pertaining to cremation.

G. If a training site does not offer preneed funeral planning or cremation services, the supervisor shall arrange for such training at another licensed funeral establishment that does.

18VAC65-40-350 to 18VAC65-40-630. [Repealed]

Part IV. Refusal, Suspension, Revocation, and Disciplinary Action.

18VAC65-40-640. Disciplinary action.

The board may refuse to issue or renew a license, registration, or approval to any applicant; and may suspend for a stated period of time or indefinitely, or revoke any license, registration, or approval, or reprimand any person, or place his license or registration on probation with such terms and conditions and for such time as it may designate or impose a monetary penalty for failure to comply with the laws and regulations of the Board of Funeral Directors and Embalmers.

Agenda Item: Amendment of Guidance Document 65-18, Guidance on Surface Transportation and Removal Services

Included in your agenda package is:

- Redline of changes to Guidance Document 65-18;
- Clean version of Guidance Document 65-18.

Action needed:

- Motion to adopt the revisions to Guidance Document 65-18 as presented.

Virginia Board of Funeral Directors and Embalmers Guidance on Surface Transportation & Removal Services

Virginia Code § 54.1-2819 requires the registration of persons or private businesses that engage in the business of surface transportation or removal of dead human bodies in the Commonwealth. That section lists restrictions on what an individual or private business may do as a registered surface transportation and removal service, including restrictions from arranging or conducting funerals, providing for the care or preparation of dead human bodies, including embalming, or selling or providing funeral-related goods or services without obtaining a funeral service establishment license. The section additionally states that licensed funeral service establishments do not need to obtain a separate registration to provide these services, although those establishments will be subject to the Board’s regulations regarding transportation and removal services.

Based on the restrictions contained in statute, the Board provides the following guidance: ~~This section further provides that:~~

~~Surface transportation and removal services shall not arrange or conduct funerals, provide for the care or preparation, including embalming, of dead human bodies, or sell or provide funeral-related goods and services without the issuance of a funeral service establishment license.~~

- Where a registered surface transport and removal service that is not otherwise licensed as a funeral service establishment contracts to provide transportation and removal services with a local governmental entity, the surface transport and removal service may take the dead human body to a location or facility designated by the governmental entity, by a court order, or by the decedent’s next of kin or designated representative, but not to a location or facility chosen by the surface transport and removal service. ~~Furthermore, the statute does not allow surface transport and removal services may not to store dead human bodies or arrange for storage of dead human bodies at appropriate and/or licensed locations or facilities not otherwise designated by the governmental entity, court order, decedent’s next of kin, or designated representative.~~

Virginia Code § 54.1-2819 also provides that:

~~No licensed funeral service establishment shall be required to receive such registration in addition to its funeral service establishment license. However, such establishment shall be subject to the regulations pertaining to transportation and removal services.... [N]o person or private business shall engage in the business as a surface transportation and removal service without holding a valid registration.~~

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Guidance document: -65-18

~~Adopted~~ Revised: ~~April 16, 2019~~ April 28, 2023
Effective: ~~June 13, 2019~~ TBD

- Where an individual or private business independently contracts with a funeral establishment to provide surface transportation and removal services, the individual or business is required to be registered with the Board as a surface transportation and removal service.

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Virginia Board of Funeral Directors and Embalmers

Guidance on Surface Transportation & Removal Services

Virginia Code § 54.1-2819 requires the registration of persons or private businesses that engage in the business of surface transportation or removal of dead human bodies in the Commonwealth. That section lists restrictions on what an individual or private business may do as a registered surface transportation and removal service, including restrictions from arranging or conducting funerals, providing for the care or preparation of dead human bodies, including embalming, or selling or providing funeral-related goods or services without obtaining a funeral service establishment license. The section additionally states that licensed funeral service establishments do not need to obtain a separate registration to provide these services, although those establishments will be subject to the Board's regulations regarding transportation and removal services.

Based on the restrictions contained in statute, the Board provides the following guidance:

- Where a registered surface transport and removal service that is not otherwise licensed as a funeral service establishment contracts to provide transportation and removal services with a local governmental entity, the surface transport and removal service may take the dead human body to a location or facility designated by the governmental entity, by a court order, or by the decedent's next of kin or designated representative, but not to a location or facility chosen by the surface transport and removal service. Furthermore, the statute does not allow surface transport and removal services to store dead human bodies or arrange for storage of dead human bodies at appropriate and/or licensed locations or facilities not otherwise designated by the governmental entity, court order, decedent's next of kin, or designated representative.
- Where an individual or private business independently contracts with a funeral establishment to provide surface transportation and removal services, the individual or business is required to be registered with the Board as a surface transportation and removal service.

Agenda Item: Consideration of exempt regulatory changes to 18VAC65-20-15

Included in your agenda packet is:

- Changes to 18VAC65-20-15 to allow agency subordinates to hear credentials cases;
- HB1622

Staff Note: Due to regulatory review timelines, these changes will be effective November 22, 2023 or sooner.

Action Needed:

- Motion to amend 18VAC65-20-15 as presented by exempt action effective July 1, 2023.

Project 7540 - Exempt Final

Board of Funeral Directors And Embalmers

Exempt regulatory changes to allow agency subordinates to hear credentials cases

18VAC65-20-15. Criteria for delegation of informal fact-finding proceedings to an agency subordinate.

A. Decision to delegate. In accordance with § 54.1-2400 (10) of the Code of Virginia, the board may delegate an informal fact-finding proceeding to an agency subordinate ~~upon determination that probable cause exists that a practitioner may be subject to a disciplinary action.~~

B. Criteria for delegation. Cases that may not be delegated to an agency subordinate, except with the concurrence of a committee of the board, are those that involve:

1. Intentional or negligent conduct that causes or is likely to cause injury;
2. Conducting the practice of funeral services in such a manner as to constitute a danger to the health, safety, and well-being of the staff or the public;
3. Impairment with an inability to practice with skill and safety;
4. Inappropriate handling of dead human bodies;
5. Sexual misconduct;
6. Misappropriation of funds;
7. Aiding or abetting unauthorized practice; or
8. Felony conviction by an applicant.

C. Criteria for an agency subordinate.

1. An agency subordinate authorized by the board to conduct an informal fact-finding proceeding may include board members deemed knowledgeable by virtue of their training

and experience in administrative proceedings involving the regulation and discipline of health professionals.

2. The executive director shall maintain a list of appropriately qualified persons to whom an informal fact-finding proceeding may be delegated.

3. The board may delegate to the executive director the selection of the agency subordinate who is deemed appropriately qualified to conduct a proceeding based on the qualifications of the subordinate and the type of case being heard.

VIRGINIA ACTS OF ASSEMBLY -- 2023 SESSION

CHAPTER 191

An Act to amend and reenact § 54.1-2400 of the Code of Virginia, relating to health regulatory boards; delegation of authority to conduct informal fact-finding proceedings.

[H 1622]

Approved March 22, 2023

Be it enacted by the General Assembly of Virginia:

1. That § 54.1-2400 of the Code of Virginia is amended and reenacted as follows:

§ 54.1-2400. General powers and duties of health regulatory boards.

The general powers and duties of health regulatory boards shall be:

1. To establish the qualifications for registration, certification, licensure, permit, or the issuance of a multistate licensure privilege in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.

2. To examine or cause to be examined applicants for certification, licensure, or registration. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.

3. To register, certify, license, or issue a multistate licensure privilege to qualified applicants as practitioners of the particular profession or professions regulated by such board.

4. To establish schedules for renewals of registration, certification, licensure, permit, and the issuance of a multistate licensure privilege.

5. To levy and collect fees for application processing, examination, registration, certification, permitting, or licensure or the issuance of a multistate licensure privilege and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions, and the health regulatory boards.

6. To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) that are reasonable and necessary to administer effectively the regulatory system, which shall include provisions for the satisfaction of board-required continuing education for individuals registered, certified, licensed, or issued a multistate licensure privilege by a health regulatory board through delivery of health care services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those health services. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.).

7. To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate, license, permit, or multistate licensure privilege which such board has authority to issue for causes enumerated in applicable law and regulations.

8. To appoint designees from their membership or immediate staff to coordinate with the Director and the Health Practitioners' Monitoring Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.). Each health regulatory board shall appoint one such designee.

9. To take appropriate disciplinary action for violations of applicable law and regulations, and to accept, in their discretion, the surrender of a license, certificate, registration, permit, or multistate licensure privilege in lieu of disciplinary action.

10. To appoint a special conference committee, composed of not less than two members of a health regulatory board or, when required for special conference committees of the Board of Medicine, not less than two members of the Board and one member of the relevant advisory board, or, when required for special conference committees of the Board of Nursing, not less than one member of the Board and one member of the relevant advisory board, to act in accordance with § 2.2-4019 upon receipt of information that a practitioner or permit holder of the appropriate board may be subject to disciplinary action or to consider an application for a license, certification, registration, permit or multistate licensure privilege in nursing. The special conference committee may (i) exonerate; (ii) reinstate; (iii) place the practitioner or permit holder on probation with such terms as it may deem appropriate; (iv) reprimand; (v) modify a previous order; (vi) impose a monetary penalty pursuant to § 54.1-2401, (vii) deny or grant an application for licensure, certification, registration, permit, or multistate licensure privilege; and (viii) issue a restricted license, certification, registration, permit or multistate licensure privilege subject to terms and conditions. The order of the special conference committee shall become final 30 days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the 30-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 2.2-4020, and the action of the committee shall be vacated.

This subdivision shall not be construed to limit the authority of a board to delegate to an appropriately qualified agency subordinate, as defined in § 2.2-4001, the authority to conduct informal fact-finding proceedings in accordance with § 2.2-4019; ~~upon receipt of information that a practitioner may be subject to a disciplinary action.~~ The recommendation of such subordinate may be considered by a panel consisting of at least five board members, or, if a quorum of the board is less than five members, consisting of a quorum of the members, convened for the purpose of issuing a case decision. Criteria for the appointment of an agency subordinate shall be set forth in regulations adopted by the board.

11. To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 2.2-4020, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 2.2-4019 shall serve on a panel conducting formal proceedings pursuant to § 2.2-4020 to consider the same matter.

12. To issue inactive licenses or certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of licenses or certificates.

13. To meet by telephone conference call to consider settlement proposals in matters pending before special conference committees convened pursuant to this section, or matters referred for formal proceedings pursuant to § 2.2-4020 to a health regulatory board or a panel of the board or to consider modifications of previously issued board orders when such considerations have been requested by either of the parties.

14. To request and accept from a certified, registered, or licensed practitioner; a facility holding a license, certification, registration, or permit; or a person holding a multistate licensure privilege to practice nursing, in lieu of disciplinary action, a confidential consent agreement. A confidential consent agreement shall be subject to the confidentiality provisions of § 54.1-2400.2 and shall not be disclosed by a practitioner or facility. A confidential consent agreement shall include findings of fact and may include an admission or a finding of a violation. A confidential consent agreement shall not be considered either a notice or order of any health regulatory board, but it may be considered by a board in future disciplinary proceedings. A confidential consent agreement shall be entered into only in cases involving minor misconduct where there is little or no injury to a patient or the public and little likelihood of repetition by the practitioner or facility. A board shall not enter into a confidential consent agreement if there is probable cause to believe the practitioner or facility has (i) demonstrated gross negligence or intentional misconduct in the care of patients or (ii) conducted his practice in such a manner as to be a danger to the health and welfare of his patients or the public. A certified, registered, or licensed practitioner, a facility holding a license, certification, registration, or permit, or a person holding a multistate licensure privilege to practice nursing who has entered into two confidential consent agreements involving a standard of care violation, within the 10-year period immediately preceding a board's receipt of the most recent report or complaint being considered, shall receive public discipline for any subsequent violation within the 10-year period unless the board finds there are sufficient facts and circumstances to rebut the presumption that the disciplinary action be made public.

15. When a board has probable cause to believe a practitioner is unable to practice with reasonable skill and safety to patients because of excessive use of alcohol or drugs or physical or mental illness, the board, after preliminary investigation by an informal fact-finding proceeding, may direct that the practitioner submit to a mental or physical examination. Failure to submit to the examination shall constitute grounds for disciplinary action. Any practitioner affected by this subsection shall be afforded reasonable opportunity to demonstrate that he is competent to practice with reasonable skill and safety to patients. For the purposes of this subdivision, "practitioner" shall include any person holding a multistate licensure privilege to practice nursing.