

APPROVED
VIRGINIA BOARD OF FUNERAL DIRECTORS AND EMBALMERS
BOARD MEETING MINUTES

The Virginia Board of Funeral Directors and Embalmers convened for a board meeting on Tuesday, October 16, 2012 at the Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2nd Floor, Board Room #2, Henrico, Virginia.

BOARD MEMBERS PRESENT

Blair Nelsen, FSP, President
Junius Williams, Citizen Member, Vice-President
Christopher P. Vincent, FSP, Secretary-Treasurer
Randolph T. Minter, FSP
Walter Ball, Citizen Member
Eric V. Wray, II, FSP

BOARD MEMBERS PRESENT FOR ALL OR PART OF THE MEETING

Robert Oman, FSP
Robert B. Burger, Jr., FSP
Michael J. Leonard, FSP

DHP STAFF PRESENT FOR ALL OR PART OF THE MEETING

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

BOARD COUNSEL

Erin Barrett, Assistant Attorney General

QUORUM

With 7 members present a quorum was established.

GUESTS PRESENT

Barry D. Robinson, Virginia Morticians Association
Karen McPherson, Virginia Morticians Association
Meredyth Partridge, Regulatory Support Services, Inc.
Paul Harris, Regulatory Support Services, Inc.
Bruce Keeney, Independent Funeral Homes of Virginia
Lacy Whittaker, Virginia Funeral Directors Association
Joseph L. Charity, White-Tidewater Funeral Home
V. Allen White, II, White-Tidewater Funeral Home
Steven Combs, Department of Veterans Affairs
W. Scott Johnson, First Choice Consulting
Wesley Gregory, DHP

CALL TO ORDER

Blair Nelsen, President, called the meeting of the Virginia Board of Funeral Directors and Embalmers to order at 10:09 a.m.

ORDERING OF AGENDA

The agenda was accepted as amended.

ACCEPTANCE OF MINUTES

Upon a motion by Mr. Ball and properly seconded by Mr. Minter, the Board voted to accept the following Meeting Minutes:

- Board Meeting – July 16, 2012
- Formal Hearing – July 16, 2012
- Formal Hearing – July 17, 2012
- Formal Hearing – July 17, 2012

The motion carried unanimously.

INFORMAL CONFERENCES HELD

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

- (2) – held on July 17, 2012
- (2) - held on September 19, 2012

PUBLIC COMMENT PERIOD

Mr. Joseph L. Charity, Jr. stated that he had submitted a petition for rule-making asking the board for a change in the distance criteria for hardship waivers, but was informed by Ms. Hahn that the request would require a statutory change. Mr. Charity went on to say that he did follow up with a letter to the attention of several Delegates as well as copied Ms. Hahn about his request and was hoping the board would support his view. Blair Nelsen, Board President thanked Mr. Charity for addressing the board and explained to him that the board was unable to take a position on any legislation.

Mr. Barry Robinson gave special appreciation to Lynne Helmick, Deputy Executive Director for her willingness to present on Laws and Regulations at the November VMA Educational Seminar being held at John Tyler Community College. He also asked that if the Board had any input for an article for the VMA newsletter to please forward the information to them.

Mr. Allan White from White-Tidewater Funeral Home, Jamaica, Virginia introduced himself to the board.

EXECUTIVE DIRECTOR'S REPORT

Expenditure and Revenue Summary

Ms. Hahn began her report with the FY12 fiscal year numbers beginning with the cash balance as of June 30, 2011 of \$26,516; revenue received for FY 12 was \$537,780 plus an additional \$51 credit from Healthcare Workforce Expenditures, less the direct and allocated expenditures of \$628,668 leaving the cash balance as of June 30, 2012 of \$(64,321).

Ms. Hahn then gave the most recent financial numbers for FY13 beginning with the cash balance as of July 1, 2012 of \$(64,321); revenue received for FY13 was \$12,010, less the direct and allocated expenditures of \$117,987 leaving the cash balance as of August 31, 2012 at \$(170,298).

Ms. Hahn concluded that the budget would continue to go deeper in the red especially in light that the board's request for a fee increase remains unsigned at the Secretary's office.

Discipline Statistics

Ms. Hahn stated the board has 41 open cases; 15 of the 25 cases are in the Enforcement Division at the Investigative stage; 10 cases are in the Probable Cause stage, 3 cases at the APD level; 3 cases are in the informal stage; and 0 cases were in the formal stage. Ms. Hahn added that 22 funeral board Orders are being monitored for compliance by Missy Currier.

Licensee Statistics

Ms. Hahn reported that there are 1,487 Funeral Service Providers, 163 Funeral Interns, 446 Funeral Establishments, 5 Embalmers, 65 Funeral Directors, 333 Funeral Service Supervisors, 60 Branch Establishments, 95 Crematories, 25 Continuing Education Providers, 68 Courtesy Card Holders and 50 Surface Transportation and Removal Services.

Meetings Held

Ms. Hahn reported that the board has been extremely busy this year with a total of 25 meetings held in 2012. She stated that the total number included informal hearings, formal hearings and board meetings.

Virginia Performs – 1st Quarter 2013

Ms. Hahn gave the following Virginia Performs results: 100% rating for issuing licenses in less than 30 days; customer satisfaction was at 100% (goal is 95%); the clearance rate which represents only patient care cases was at 29%; a 100% rating for patient care cases closed within 250 days; the percent of cases closed within 250 days was at 50% which represented 1 out of the 2 cases closed outside of the 250 days; and the pending caseload older than 250 days was 0%.

Facility Inspection Plan

Ms. Hahn reported that she and Ms. Helmick held a meeting with Faye Lemon, Enforcement Director to address the facility inspection plan. Ms. Hahn indicated that last year Enforcement had doubled their inspection hours from 600 hours to 1200 hours in order to complete all facility inspections within the three year plan. Ms. Hahn further stated that recommendations and enhancements were made in order to streamline the process and ensure that the hours are kept to no more than 600 per year.

Ms. Hahn concluded by asking that if anyone had any additional thoughts on the inspection process to let her know as soon as possible. She plans on inviting the inspectors to the January board meeting for a question and answer session.

Presentations

Ms. Hahn reported on the following presentations recently completed or on the schedule:

- VFDA – Tidewater District – Eric Wray – September 2012
- VFDA Winter Conference in Richmond – Lisa Hahn - January 2013
- VFDA Traveling Caravan (1 hour Laws & Regs)
 - Bob Burger – Salem, VA - October 17, 2012
 - Annie Artis – Bassett, VA – November 6, 2012
 - Lynne Helmick – Tidewater Community College - February 18, 2013
 - Lynne Helmick – Fredericksburg, VA – March 7, 2013
 - Lynne Helmick – Chester, VA – March 21, 2013

Pending Projects

- Virtual Funeral Homes - Ms. Hahn shared that staff continue to collect information from the Conference on what other states are doing. Although she had only received information from 8 states, she hopes to have more information to share at the next meeting.
- Examination Review and Process Audit - Ms. Hahn stated that she and Ms. Helmick have begun to conduct a thorough examination audit to ensure that all the questions include current information. Blair Nelsen will assist with the process once all exam questions have been referenced.

2012 New Board Member Orientation

Ms. Hahn shared that Blair Nelsen had been asked by Dr. Reynolds-Cane to be the key note speaker at this year's new board orientation. Ms. Hahn boasted that Blair did an excellent job and was truly a great speaker and made sure to hit the high notes of being an effective board member.

2012/2013 Board Committee's

Ms. Hahn stated that Blair Nelsen had completed his 2012/2013 committee member list and that everyone was provided with the handout. She added that once new members are appointed to the board, Blair would add them to the committee structure.

Status on Carlos Howard

Ms. Hahn shared that Mr. Howard's appeal against the Board's decision will be heard at the Norfolk Circuit Court on Thursday of this week.

Death Certificate Meeting

Ms. Hahn shared that herself, Blair Nelsen and Missy Currier met with Dr. Leah Bush, Dr. William Harp, and Dr. Reynolds-Cane in August to discuss Dr. Bush's message sent out to the funeral profession regarding the signing of death certificates. Ms. Hahn stated that meeting was productive and ended with several recommendations that can hopefully be implemented. She pointed the board to the minutes of the meeting under Tab 2 for the meeting details.

HB1206 from the 2012 General Assembly

Ms. Hahn shared that she attended a meeting at the General Assembly on August 21st with Blair Nelsen and Randy Minter regarding the possible elimination of the requirement that a life insurance policy or annuity contract provide either the 5% or the face value tied to the CPI. She mentioned that Bruce Keeney, Tom Gale, Fred Carter, Bob Oman, Buddy Moore and Pat Loving spoke, as well as several people from the Insurer's Coalition. Additionally, Frank Munyan from the Division of Legislative Services and Brian Gaudiose from SCC Spoke. The Subcommittee concluded by telling the Coalition to get together with members of the profession in an attempt to work out their differences.

Mr. Oman arrived at 10:33 a.m.

Recommendation to DOC regarding issues with the Prerequisites for Cremation

Ms. Hahn brought up that Board staff receives calls from time to time from correctional facilities not having a next of kin to provide visual identification prior to cremation. She indicated that she and Erin Barrett worked on language to address the issue and would like to propose it next year in the agency's legislative package since it was already too late to be included in this year's package. Ms. Hahn also suggested that she contact the Department of Corrections (DOC) to see if they might want to consider obtaining a sponsor to propose the matter now.

Unknown Next of Kin

Ms. Hahn recommended that the Legislative/Regulatory Committee meet prior to the January 2013 board meeting to work on language for instances when there is no known next of kin. Ms. Hahn shared that it was a huge problem and that the issue needs to be addressed by the board. At

the suggestion of the board, Ms. Hahn agreed to poll other states to see how they address the issue and bring the results back to the board at the next meeting.

Ms. Hahn also added that when the Committee meets in January, they will need to work on broadening the Surface Transportation and Removal Service regulations.

Calendar

Ms. Hahn shared the 2013 Board Meeting Calendar dates; January 15th, April 23rd, July 23rd and October 22nd.

PRESENTATION

Mr. Combs, the Director of Policy & Planning for the Virginia Department of Veterans Services made a presentation to the members regarding the Veterans Unclaimed Cremains program. He explained that it is a program following the passage of the 2012 legislation requesting funeral homes to provide DVS with the names of unclaimed cremains in their possession. Mr. Combs shared that the ultimate goal of the program is to be able to bury qualified veterans in a National Cemetery and to provide them with full military honors.

Ms. Hahn thanked Mr. Combs for his presentation and stated that she had posted the letter from DVS addressed to Virginia Funeral Directors on the website and will post the draft of the application form for "Identification of Unclaimed Remains". If the draft is amended, she will replace it on the website.

NEW BUSINESS

Report on Status of Regulations

Ms. Yeatts referred the members to the Chart of Regulatory Actions as of October 1, 2012 included in the agenda package:

18VAC65-20

- Identification of human remains – Close of Comment on NOIRA: 11/7/2012
- NOIRA regarding fee increases – re-proposed remain at the Secretary's Office
- Continuing Education Hours – effective date: 9/26/12

18VAC65-30

- Fast-Track regarding termination of irrevocable trusts – effective date: 11/23/12

Ms. Yeatts informed the board that she has recently been alerted that as part of the Governor's

Regulatory Reform Project, they would be required to conduct a periodic review of 18VAC65-20; 18VAC65-30; and 18VAC65-40. The goal of the review would be to repeal unnecessary regulations that are no longer in use; reduce unnecessary regulatory burdens on individuals, businesses, and other regulated groups; and identify statutes that require unnecessary or overly burdensome regulations.

Ms. Yeatts further stated the board would seek public comment on any issues relating to the review from November 5, 2012 – December 5, 2012.

Mr. Minter responded that Staff had always provided good guidance when assisting with periodic reviews and he felt that they would be very capable of handling the task.

Ms. Yeatts stated that the following clarification needed to be made in the regulations:

- **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 one year 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 B~~ 54.1-2820 C of the Code of Virginia.

Upon a motion by Mr. Oman and properly seconded by Mr. Wray, the board voted to make the change in section 18VAC65-30-60 (C) in order to conform to §54.1-2820 (C) of the Code of Virginia. The motion carried unanimously.

Conflict with FTC Rule and Appendix 1

Ms. Helmick reported that she and Paul Harris of Regulatory Support Services held a meeting with Craig Tregillus in July to discuss the possible conflict with the FTC rule and Appendix 1. Ms. Helmick stated that FTC indicated that it has always been the regulation for the Funeral Home to list on the GPL a separate price for each direct cremation offered where an alternative container is provided. Therefore, if two alternative containers are provided, there should be two separate prices listed. She concluded that FTC was unwilling to make any changes and that the board should therefore change Appendix 1 in order to be in compliance with FTC.

Upon a motion by Mr. Oman and properly seconded by Mr. Wray, the board voted to adopt the required change in Appendix 1 of the Guidance Documents page 4 of 5 Section VII. (B) from “Direct cremation with lowest priced alternative container” to “Direct cremation with (list each alternative container specified in the above disclosure)”. The motion carried unanimously.

New Maryland Statutes

Ms. Hahn reported that she and Erin Barrett, Board Counsel reviewed the Maryland Statutes and both agree that they are unenforceable in Virginia. Ms. Hahn further stated that Maryland cannot enter a Virginia facility and conduct an inspection that would hold any enforceability. The board agreed to Ms. Hahn's suggestion that she contact bordering states to see if they would agree to send a group letter to Maryland explaining their position. Ms. Hahn concluded that regardless of how the other states responded, she would still draft a letter to Maryland on behalf of the Virginia board.

Transferability of Mortuary Affairs MOS into Civilian Sector

Ms. Hahn shared that she had been approached about the possibility of giving military personnel who have worked in the Mortuary Affairs Division some type of credit toward a Funeral Service Internship in Virginia. Ms. Hahn then stated that she and Arne Owens, Agency Executive Deputy Director had scheduled a meeting at Fort Lee where they will meet with officials to review course curriculums and share information about the profession .

Following discussion, Blair Nelsen, Board President suggested that a subcommittee be formed to review the information and then make recommendations to the full board.

ADJOURNMENT:

With no further business before the Board, the meeting adjourned at 11:20 a.m.

Blair Nelsen, President

Lisa R. Hahn, Executive Director

Date

Date