

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, July 20, 2010 at the Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2nd Floor, Board Room #3, Henrico, Virginia.

BOARD MEMBERS PRESENT

Randolph T. Minter, FSP, President
Michael J. Leonard, FSP, Vice President
Robert B. Burger, Jr., FSP, Secretary-Treasurer
Billie Watson-Hughes, FSP
Blair Nelsen, FSP
Barry M. Murphy, FSP
Walter S. Ball, Citizen Member

BOARD MEMBERS ABSENT

Willard. D. Tharp, FSP
Rev. Yvonne Jones-Bibbs, Citizen Member

DHP STAFF PRESENT FOR ALL OR PART OF THE MEETING

Lisa R. Hahn, Executive Director
Dr. Dianne Reynolds-Cane, Agency Director
Elaine J. Yeatts, Senior Policy Analyst
Missy Currier, Administrative Assistant

BOARD COUNSEL

Amy Marschean, Senior Assistant Attorney General

QUORUM

With 7 members present a quorum was established.

GUESTS PRESENT

Carl Gallup, Hollomon-Brown Funeral Home
Arlie Corbett, A.W. Bennett Co.
Barry D. Robinson, Virginia Morticians Association
Haile L. "Butch" Gatewood, Norris Funeral Services
Rusty Spencer, TDW Associates
Meredyth Partridge, Regulatory Support Services, Inc.
Bruce Keeney, Independent Funeral Homes of Virginia
Bo Keeney, Independent Funeral Homes of Virginia
Lacy Whittaker, Virginia Funeral Directors Association
Susan Ward, Virginia Hospital & Healthcare Association
Aimee Perron Seibert, VA College of Emergency Physicians

CALL TO ORDER

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

ORDERING OF AGENDA

Upon a motion by Mr. Leonard and properly seconded by Ms. Hughes, the Board voted to accept the agenda. The motion carried unanimously.

ACCEPTANCE OF MINUTES

- Upon a motion by Mr. Burger and properly seconded by Ms. Hughes, the Board voted to accept the Board Meeting Minutes dated April 13, 2010. The motion carried unanimously.
- Upon a motion by Ms. Hughes and properly seconded by Mr. Leonard, the Board voted to accept the Task Force on Death Certificates Meeting Minutes dated April 30, 2010. The motion carried unanimously.
- Upon a motion by Ms. Hughes and properly seconded by Mr. Ball, the Board voted to accept the Task Force on Preneed Issues Meeting Minutes May 10, 2010. The motion carried unanimously.
- Upon a motion by Ms. Hughes and properly seconded by Mr. Leonard, the Board voted to accept the Telephonic Conference Meeting Minutes dated June 11, 2010. The motion carried unanimously.
- Upon a motion by Mr. Leonard and properly seconded by Ms. Hughes, the Board voted to accept the Task Force on Death Certificates Meeting Minutes dated June 16, 2010. The motion carried unanimously.
- Upon a motion by Mr. Burger and properly seconded by Ms. Hughes, the Board voted to accept the Regulatory/Legislative Committee Meeting Minutes dated July 8, 2010. The motion carried unanimously.

PUBLIC COMMENT PERIOD

During the public comment period the Board President asked the audience to introduce themselves. Bruce Keeney expressed that Independent Funeral Homes of Virginia unanimously endorsed the proposed legislation regarding CE requirements.

Mr. Robinson expressed that the Virginia Morticians Association (VMA) also support the change in CE requirements and asked the board for clarification regarding the one hour of continuing education on law and whether it refers to State or Federal.

EXECUTIVE DIRECTOR'S REPORT

Agency Business

Ms. Hahn informed everyone that due to multiple board meetings going on in the building, Dr. Reynolds-Cane and Ms. Yeatts may be going in and out of the meeting.

Expenditure and Revenue Summary

Ms. Hahn stated that the beginning cash balance as of June 30, 2009 was \$19,797, revenue received for FY 10 was \$523,743 less the direct and allocated expenditures of \$466,392, leaving a cash balance as of May 31, 2010 of \$77,148. Ms. Hahn indicated that the cash balance will not remain black for long and will not look good going forward until a fee increase is implemented. She explained that investigations are taking a toll on the budget including fees from the Attorney Generals Office and from Administrative Proceedings Division as well as the VITA (IT) charges.

Licensee Statistics

Ms. Hahn provided a handout with the current license statistics.

Discipline Statistics

Ms. Hahn stated we have 40 open cases; 32 cases are in the Enforcement Division at the Investigative stage; 6 cases are in the Probable Cause stage; and 1 case is at the Informal stage.

Virginia Performs

Ms. Hahn reported we have achieved a 100% rating for issuing licenses in less than 30 days and we achieved a 100% rating for patient care cases closed within 250 days. We did not have any customer satisfaction surveys returned this cycle. The Clearance Rate is at 150% which means that more cases are clearing than being received and that there are no cases older than 250 days. Ms. Hahn thanked Ms. Artis, Licensing Manager, and Ms. Truesdale, Discipline Manager as well as the entire staff for a job well done.

Board Business

Ms. Hahn reported that it had been a very active quarter with several meetings that had taken place in an effort to tackle many difficult issues including preneed, death certificate and legislative and regulatory changes and their effect on policy. She thanked everyone

including individuals and associations, for their time and expertise and willingness to help resolve these issues.

Ms. Hahn especially thanked Ms. Hughes for her willingness to present twice during the VFDA conferences. She also thanked Mr. Minter and Mr. Murphy for attending the VMA conference and dinner, and for assisting at the board's exhibit booth.

Ms. Hahn pointed out that a hard copy of the revised Sanction Reference Points Manual had been provided to everyone and had been posted to the website.

Ms. Hahn mentioned that Josh White, Reporter for the Washington Post, had received an award for his coverage and story regarding National Funeral Home.

Ms. Hahn provided a "draft" version of an inspection form that corresponds to the new regulations and laws. She suggested the board invite Sammy Johnson, Deputy Director of Enforcement, to the next meeting to discuss the inspection report and procedures and to share the new "ticketing process" recently adopted by the Board of Pharmacy.

Calendar

Due to a conflict with board member schedules, Ms. Hahn agreed to reschedule the October 12, 2010 meeting and will notify everyone of the new date.

NEW BUSINESS

Continuing Education Provider Committee Oral Report – Billie Watson Hughes

Ms. Hughes reviewed the following recommendations the Committee made regarding CE providers:

- Continuing Education Providers when submitting applications for approval must specify whether the course is on-line or on-site;
- On-line courses shall be no more than 2 hours;
- The application fee for each course submitted for approval is \$300 (per course); no longer may a group of courses be submitted under one application;
- Certificates may not have multiple blocks to be checked (Example: Ethics and Law); there must be a separate certificate for law and another for ethics; all certificates must be signed;
- All regulation approved continuing education providers must submit a list of course offerings and instructors annually;
- Continuing education providers specifically listed in the regulations must provide the name of the course and the syllabus electronically;

- Board members will attend regulation approved continuing education sponsor courses occasionally; if they find that the course does not appear to meet the requirements, they will send a letter to the Board alerting them that they do not approve of the course and bring to full board for possible action.
- Repeated violations may result in expulsion from the regulations;
- When submitting curricular vitas and resumes; limit to 2 pages;
- Crematory Certification Trainers – in order to be certified, ICCFA and CANA guidelines must be followed. The instructor must provide training and instruction in regard to the Virginia regulations and law. Only crematory manufacturers may provide the crematory training, and
- Annual renewal of sponsors – only the \$300 renewal fee and application are required if there are no changes to the course syllabus, hours, speakers and content.

Upon a motion by Ms. Hughes and properly seconded by Mr. Leonard, the board agreed to go forward with fast track action limiting an on-line CE course to two hours. The motion carried unanimously.

Current Regulatory Actions – Elaine Yeatts

Ms. Yeatts reviewed the status of regulations pertaining to 18VAC65-20;

- NOIRA regarding fee increases remains at the Secretary's Office
- Fast-Track regarding clarification of requirements remains at the Governor's Office

Guidance Document 65-11

- Direct Cremation: A price range must be given for a direct cremation. Your prices should range from direct cremation with a container provided by the purchaser to the price for direct cremation plus the highest priced wooden casket acceptable for cremation or the highest priced cremation casket. When in doubt, please refer to Appendix 1 for reference or call the board office.

A motion was made by Ms. Hughes and properly seconded by Mr. Nelsen to recommend a change in the guidance document pertaining to price range for cremation. Following discussion, a second motion was made by Ms. Hughes and properly seconded by Mr. Nelsen to accept the amended language in guidance document 65-11 shown above. The motion carried unanimously.

Internship Program

Ms. Yeatts reviewed the basis of the NOIRA and shared the recommendations the special committee made regarding the internship program. Mr. Leonard strongly expressed his opposition to requiring resident trainees to enroll in Mortuary School. Mr. Nelsen and Ms. Hughes commented that the suggestions came in response to the schools and students reporting that they are not getting adequate training. After much discussion, the board agreed to bring back the concerns to the special committee to work on alternative draft language in regulation or in the Code of Virginia in an effort to close potential loopholes and eliminate permanent resident trainees.

Maintenance of CE Documents

Ms. Hahn pointed out a conflict between the Code of Virginia and the regulations:

- § 54.1-2816.1 C. All course providers shall furnish written certification to licensees of the Board attending and completing respective courses, indicating the satisfactory completion of an approved continuing education course. Each course provider shall retain records of all persons attending and those persons satisfactorily completing such continuing education courses for a period of two years following each course. Applicants for renewal or reinstatement of licenses issued pursuant to this article shall retain for a period of two years the written certification issued by any Board-approved provider of continuing education courses. The Board may require course providers or licensees to submit copies of such records or certification, as it deems necessary, to ensure compliance with continuing education requirements.
- 18VAC65-20-152 C. 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 ~~three~~ two years;

Upon a motion by Mr. Burger and properly seconded by Ms. Hughes, the board voted to an exempt action to conform the regulatory requirement for maintenance of CE documents to language in Code. The motion passed unanimously.

Repeal of Section 18VAC65-20-530 of Funeral Regulations

Ms. Hahn recommended to the board that they repeal Section 18VAC65-20-530 because Section 54.1-2811.1 is in conflict and supersedes the regulation.

Upon a motion by Mr. Burger and properly seconded by Mr. Leonard, the board voted to repeal section 18VAC65-20-530 of the regulations regarding documentation of embalming. The motion passed unanimously.

BREAK

The Board took a recess at 11:15 a.m. and reconvened at 11:30 a.m.

Irrevocable Trusts

Ms. Hahn provided the clarification between the Code of Virginia and the regulations related to irrevocable trusts:

- 18VAC65-30-110. Cancellation or transfer of contract. D. If the contract buyer uses an irrevocable trust as the funding source ~~and terminates the contract after 30 days of its execution~~, the contract buyer ~~may be eligible for a refund only with the agreement of the contract buyer, the contract beneficiary, and the trustee~~ is not able to cancel or modify the trust after 30 days following its execution except in accordance with § 55-544.11 of the Code of Virginia.

Upon a motion by Mr. Nelsen and properly seconded by Mr. Leonard, the board voted to Fast Track conforming 18VAC65-30-110 of the regulatory requirements on irrevocable trusts to the language in § 55-544.11 of the Code of Virginia. The motion carried unanimously.

Adoption of Regulatory Amendments

Ms. Hahn reviewed HB 319 and explained that the board must promulgate emergency regulations to implement the provisions of Section 54.1-2818.1 - prerequisites for cremation:

- 18VAC65-20-436. Standards for registered crematories or funeral establishments that operate a crematory.
 - A. Authorization to cremate.
 2. The cremation authorization form shall include an attestation of visual identification of the deceased from a viewing of the remains or a photograph signed by the person making the identification. 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 ~~made~~, feasible, a crematory may use positive identification of the deceased in consultation with the medical personnel, a medical examiner or law enforcement ~~shall observe a 24 hour waiting period between the time of death and the cremation~~ pursuant to § 54.1-2818.1 of the Code of Virginia.

Upon a motion by Ms. Hughes and properly seconded by Mr. Burger, the board voted to promulgate emergency regulations in order to adopt regulatory amendments to Section 18VAC65-20-436 as required by HB 319. The motion passed unanimously.

Handling & Storage of Remains

Ms. Hahn reviewed HB201 as it relates to the handling of human remains and explained that the language in the regulations (shown below) allows the board to take disciplinary action if this Section is violated.

18VAC65-20-500. Disciplinary action.

4. Inappropriate handling and storage of dead human bodies, consistent with § 54.1-2811.1 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.

Upon a motion by Ms. Hughes, and properly seconded by Mr. Leonard, the board voted to Fast Track conforming 18VAC65-20-500 of the regulatory requirements to the language in § 54-1.2811 of the Code of Virginia. The motion carried unanimously.

Discussion regarding Section 18VAC65-20-436(B)(5) and 54.1-2811.1 (B)

Ms. Hahn reviewed a letter she received from Ms. Partridge asking for clarification between crematory regulations and the new law effective July 1, 2010 regarding refrigeration. Ms. Hahn also provided the response to that letter. The board concurred with her response but began to look at additional types of scenarios. After much discussion, the board stated that it is impossible to attempt to answer all the possible scenarios that may occur and felt they would need to look at this on a case by case decision.

Preneed Issues

Ms. Hahn reported on the status and purpose of several meetings she has held during the year regarding preneed concerns registered by one of the legislators. Meetings included representatives from the Special Committee of the Board of Funeral Directors & Embalmers, chaired by Mr. Leonard, the State Corporation Commission (SCC) – Bureau of Insurance, Department of Social Services (DSS), and the Department of Medical Assistance Services (DMAS).

Ms. Hahn explained that the committee addressed “Medicaid Burial Set Aside” and how to properly refund excess funds back to Medicaid when the deceased burial wishes are changed. She pointed out several issues and possible solutions that had been discussed and concluded her summary with the following proposed action steps to be taken:

- DMAS will look into amending their current annual Medicaid eligibility audit process to include validation of existing preneed contract. This added step in the annual audit process would spotlight those individuals who terminated their preneed contract to receive a refund or those that changed their preneed arrangements in order to receive a partial refund. It is not anticipated that this would be in violation of the current MOE requirements.
- DHP will request the Funeral Service Licensee to include notification to the contract buyer that if preneed arrangements for Medicaid burial set aside are reduced from the original contract that DMAS is entitled to receive the remainder of the funds. Likewise if the contract is modified or terminated to reduce the original set aside amount, DMAS is entitled to receive any remaining funds resulting from the termination or modification of the contract.

Letter Dated June 29, 2010

Ms. Hahn shared a letter she received from Meredyth Partridge, President of Regulatory Support Services, Inc. asking for the Board's guidance. All questions were addressed and answered by the board.

CE Requirements

Ms. Yeatts explained the following draft legislation regarding § 54.1-2816.1 of the Code of Virginia pertaining to continuing education requirements:

- **§ 54.1-2816.1. Continuing education requirements; promulgation of regulations.**

B. The Board shall approve criteria for continuing education courses, requiring no more than ~~10~~ five hours ~~over two years~~ per year, that are directly related to the respective license and scope of practice of funeral service licensees, funeral directors and embalmers. Approved continuing education courses shall include, but not be limited to, at least one hour per year covering compliance with laws and regulations governing the profession, and at least one hour per year covering preneed funeral arrangements. Course providers may be required to register continuing education courses with the Board pursuant to Board regulations. The Board shall not allow continuing education credit for courses where the principal purpose of the course is to promote, sell or offer goods, products or services to funeral homes.

D. The Board shall have the authority to grant exemptions or waivers in cases of certified illness or undue hardship. A licensee shall be exempt from the requirement for continuing education at the first renewal following initial licensure by examination.

Upon a motion made by Ms. Hughes, and properly seconded by Mr. Leonard, the board voted to accept the proposed amendment to CE section of the Code (law) to require five (5) hours every year rather than ten (10) hours every two years and to provide CE exemption for first renewal after initial licensure. The motion carried unanimously.

Death Certificates

Ms. Yeatts provided the following proposed language to adopt for public comment prior to the 2011 Session of the General Assembly:

- **§ 32.1-263. Filing death certificates; medical certification; investigation by medical examiner.**

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

In the absence of the physician or with his approval, the certificate may be completed and signed by an associate or partner of the physician, or by a nurse practitioner or physician assistant supervised by the physician, the chief medical officer of the institution in which death occurred, a hospitalist employed or engaged by the facility where the death occurred or the physician who performed an autopsy upon the decedent, if such individual has access to the medical history of the case and death is due to natural causes.

E. If the physician, nurse practitioner or physician assistant is uncertain about the cause of death, he shall use his best medical judgment to certify a reasonable cause of death or contact the office of the chief medical examiner in the district where the death occurred and obtain guidance in reaching a determination as to a cause of death and document the same. If the cause of death cannot be determined within 24 hours after death, the medical certification shall be completed as provided by regulations of the Board. The attending physician or medical examiner shall give the funeral director or person acting as such notice of the reason for the delay, and final disposition of the body shall not be made until authorized by the attending physician or medical examiner.

F. A physician, nurse practitioner or physician assistant who, in good faith, signs a certificate of death or determines the cause of death shall be immune from civil liability absent gross negligence or willful misconduct.

§ 54.1-2809.1. Requirement for a signed death certificate.

Prior to removal of a dead human body from a licensed hospital, a funeral service establishment or a surface transportation and removal service shall have a signed death certificate for the decedent.

Upon a motion by Ms. Hughes and properly seconded by Mr. Burger, the board voted to adopt the proposed bills for Public Comment. The motion carried unanimously.

Discussion Regarding Unlicensed Funeral Personnel – Amy Marschean

Ms. Marschean updated the board with research she had performed regarding unlicensed funeral personnel. Ms. Marschean suggested that the board mirror North Carolina's law regarding this issue and offered the following resolution:

- An unlicensed individual may wash or use soap and water to cleanse or prepare a dead human body for disposition by the authorized agents, family, or friends of the deceased who do so privately without pay or as part of the ritual washing and preparation of dead human bodies prescribed by religious practices.

Upon a motion by Ms. Hughes and properly seconded by Mr. Leonard, the board voted to amend Guidance Document 65-11 to reflect body washing. The motion carried unanimously.

ELECTION OF OFFICERS

Upon a motion by Ms. Hughes and properly seconded by Mr. Nelsen, the board nominated the election of Mr. Leonard as Board President.

The motion carried unanimously.

Upon a motion by Ms. Hughes and properly seconded by Mr. Nelsen, the board nominated the election of Mr. Burger as Board Vice-President.

The motion carried unanimously.

Upon a motion by Ms. Hughes and properly seconded by Mr. Leonard, the board nominated the election of Mr. Nelsen as Board Secretary-Treasurer.

The motion carried unanimously.

OTHER BUSINESS

On behalf of the board members, Ms. Hughes thanked Mr. Minter for his hard work and acceptance of many responsibilities during his tenure as President.

Mr. Minter thanked Ms. Hahn and her staff and their efforts and for making his job easier and expressed his gratitude to the members for their hard work and involvement with many of the issues they faced during the past year. He especially thanked Dr. Reynolds-Cane for her care and support of the board and for being instrumental in making things happen.

ADJOURNMENT:

With no further business before the Board, the meeting adjourned at 12:45 p.m.

Randolph T. Minter, President

Lisa R. Hahn, Executive Director

Date

Date