
Call to Order – Frank Walton, FSL, Board President

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

Approval of Minutes

- Board Meeting – January 24, 2019
- For informational purposes – Informal Conferences January 24, 2019 and March 6, 2019

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

Staff Reports

- Executive Director's Report – **Corie E. Tillman Wolf, Executive Director**
- Discipline Report – **Lynne Helmick, Deputy Executive Director**

Board Counsel Report – Erin Barrett, Assistant Attorney General

Committee and Board Member Reports

- Report from the Board of Health Professions – **Louis R. Jones, FSL**
- Report from The Conference Annual Meeting – **Frank Walton, FSL, Blair Nelsen, FSL, Lynne Helmick, Deputy Executive Director**

Legislation and Regulatory Actions – Elaine Yeatts, Sr. Policy Analyst

- Report on Status of Regulatory Actions
 - Legislative Report
 - Response to Petition for Rulemaking (Miller)
 - Proposed Guidance Document – Surface Transportation and Removal Services
-

Discussion

- Review and Recommendations Regarding Funeral Service Internship Hours
-
-

Presentations

- Training Video - Probable Cause
-
-

Next Meeting - July 11, 2019

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 Virginia Code Section 2.2-3707(F).

Approval of Minutes

January 24, 2019

The Virginia Board of Funeral Directors and Embalmers convened for a full board meeting on Thursday, January 24, 2019 at the Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2nd Floor, Board Room #2, Henrico, Virginia.

BOARD MEMBERS PRESENT:

Joseph Frank Walton, FSL, President*
Mia F. Mimms, FSL, JD, Vice-President
R. Thomas Slusser, Jr., FSL, Secretary-Treasurer
Muhammad Hanif, Citizen Member
Kenneth Scott Hickey, M.D., Citizen Member
Louis R. Jones, FSL
Blair H. Nelsen, FSL*
Larry T. Omph, FSL*
Connie B. Steele, FSL*

DHP STAFF PRESENT FOR ALL OR PART OF THE MEETING:

Erin Barrett, Assistant Attorney General, Board Counsel
Barbara Allison-Bryan, Chief Deputy Director, DHP
Sarah Georgen, Licensing and Operations Manager
Lynne Helmick, Deputy Director
Angela Pearson, Discipline Operations Manager
Corie Tillman Wolf, Executive Director
Heather Wright, Program Manager
Elaine Yeatts, Sr. Policy Analyst

OTHER GUESTS PRESENT

Paul Harris, Regulatory Support Services
Barry D. Robinson, Virginia Morticians Association
Laura McHale, Keeney Group/Association of Independent Funeral Homes of Virginia
Ross Miller

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

CALL TO ORDER

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

With nine 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.

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

Ms. Tillman Wolf then read the emergency egress instructions.

ORDERING OF THE AGENDA

Mr. Walton requested to receive public comment prior to the approval of the minutes.

Upon a *MOTION* by Ms. Steele and properly seconded by Mr. Omph, the Board voted to accept the agenda as amended. The motion passed unanimously.

PUBLIC COMMENT

The Board received public comment from Ross Miller. Mr. Miller requested the Board to revise the October 16, 2018 full Board meeting minutes regarding the Board's executive session in regards to third party casket sales. He requested the Board to clarify the statement to specify that the Board could not regulate unlicensed individuals. Mr. Miller also addressed the complaint process through the Department of Health Professions and requested a clearer process and guidance on how the Board takes action.

APPROVAL OF MINTUES

Upon a *MOTION* by Mr. Nelsen, and properly seconded by Mr. Slusser, the Board voted to accept the October 16, 2018 Board meeting minutes, the October 16, 2018 Formal Hearing meeting minutes, the November 1, 2018 Regulatory Advisory Panel on Preneed Funeral Planning meeting minutes, and the December 6, 2018 Ad Hoc Committee on Internships meeting minutes as written. The motion passed unanimously.

AGENCY REPORT

Dr. Brown and Dr. Allison-Bryan were not present at the time of the Agency Report as they were attending the General Assembly. Ms. Yeatts stated that there was no new information to provide.

STAFF REPORTS

Executive Director's Report – Corie E. Tillman Wolf

Ms. Tillman Wolf presented the Expenditure and Revenue Summary as of December 31, 2018.

Cash Balance as of June 30, 2018	\$526,645
YTD FY19 Revenue	\$46,475
<u>Less YTD Direct & In-Direct Expenditures</u>	<u>\$283,335</u>
Cash Balance as of December 31, 2018	\$289,785

Ms. Tillman Wolf reported that The Conference is holding their 115th Annual Meeting in San Diego, CA from February 27-28, 2019. She also reported that the 2018 Continuing Education Review was included in the agenda packet for review.

Ms. Tillman Wolf provided an overview of items that staff will be working on in 2019 to include developing online applications, implementing a streamlined electronic process for inspections, providing support for the periodic review of regulations, updating Board guidance documents and MOUs, reviewing and updating examination content, facilitating communication to licensees about the EDRS, and increasing overall licensee communications.

Ms. Tillman Wolf presented the Inspections Report from 2018. She stated that 149 inspections were conducted for main establishments, branch establishments and crematories. She noted the following deficiency rates:

- Crematories – 96.4% with no deficiencies
- Branches – 61% with no deficiencies
- Main Establishments – 38.7% with no deficiencies

Ms. Tillman Wolf noted the most common deficiencies for 2018 as follows:

Incorrect prices or price ranges on GPL, CPL, OBCL*	Missing or Incomplete information on GPL, CPL (e.g. address, phone # of establishment)
Required disclosures not included/incorrect on GPL*	No preneed Q&A available
Prep room deficiencies – cracks in floor, separated seams, no eye wash station, waste container issues*	Posting of licenses (e.g. expired licenses, or no posting for some licensees)
Incomplete or missing info on embalming reports*	No waste removal contract
Missing or incomplete information on preneed listing*	

As comparison, Ms. Tillman Wolf noted the most common deficiencies for 2017 as follows:

Incorrect prices or price ranges on GPL*	Incomplete information on preneed listing*
Required disclosures not included on/incorrect on GPL*	Itemized Statement – no casket warranty, disclosures
Charges not on GPL (e.g. charge for receiving remains)*	Incomplete Embalming Reports (e.g. missing dates, full names, embalmer name/lic. #, signature of supervisor)
No price lists for caskets or outer burial containers*	Prep room deficiencies – e.g. cracks in floor, separated seams in wall paneling, lack of eye wash station
Lack of chronological/alphabetical listing of preneeds*	

Ms. Tillman Wolf presented licensure statistics that included the following information:

Licensure Statistics – All Licenses

License	January 14, 2019	October 15, 2018	Change (+/-)
Funeral Service Licensees	1,565	1,540	25
Funeral Director	37	36	1
Embalmer Only	3	2	1
Supervisors	558	553	5
Interns	204	200	4
Establishments	433	432	1
Branch Establishments	82	79	3
Crematories	118	116	2
CE Providers	14	13	1
Courtesy Card Holders	114	109	5
Surface Transport & Removal Svc.	44	40	4
Total (*not incl. supervisors)	3,172	3,120	33

Ms. Tillman Wolf provided the following statistics regarding the Virginia Performs – Customer Satisfaction Survey Results:

- Q1 2018 – 100%
- Q2 2018 – N/A
- Q3 2018 – N/A
- Q4 2018 – 100%
- Q1 2019 – 100%

Ms. Tillman Wolf provided reminders to the Board members regarding continuing education credit, security badges, requests for presentations, and changes in contact information.

The Board meeting dates for 2019 are:

- April 16, 2019 at 10:00 a.m.
- July 11, 2019 at 10:00 a.m.
- October 10, 2019 at 10:00 a.m.

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

Discipline Report – Lynne Helmick, Deputy Executive Director

As of January 4, 2019, Ms. Helmick reported the following disciplinary statistics:

- 52 total cases
 - 1 in Informal
 - 34 in Investigation
 - 17 in Probable Cause
 - 8 in Compliance Monitoring

Ms. Helmick reported the following Virginia Performs statistics for Q1 2019:

- Clearance Rate – 60% Received (Goal is 100%) – 5 cases, 3 cases closed
- Pending Caseload over 250 days was at 0% (Goal is under 20%)
- Cases closed within 250 days is 33% (Goal is over 90%) – 2 of the 3 cases closed were over 250 days old

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

- Q1 2017 – 8/10
- Q2 2017 – 12/17
- Q3 2017 – 9/15
- Q4 2017 – 22/20
- Q1 2018 – 12/14
- Q2 2018 – 8/7
- Q3 2018 – 12/18
- Q4 2018 – 13/24
- Q1 2019 – 26/13

Ms. Helmick provided the following information of All Case Information:

- Percentage of all cases closed in 250 days

	Q4 – 2017	Q1 – 2018	Q2 – 2018	Q3 – 2018	Q4 – 2018	Q1 – 2019
FDE	70%	78.6%	85.7%	61.1%	87%	69.2%
Agency	86.7%	82.2%	86.7%	87.6%	80.6%	85.5%

- Average days to close a case

	Q4 – 2017	Q1 – 2018	Q2 – 2018	Q3 – 2018	Q4 – 2018	Q1 – 2019
FDE	223.3	229.3	169.1	383.3	211.8	225.7
Agency	194.1	255.7	186.5	196.4	201.1	173.8

With no further questions, Ms. Helmick concluded her report.

Ms. Barrett stated that she did not have a report to provide.

COMMITTEE AND BOARD MEMBER REPORTS

Report from the Board of Health Professions – Louis R. Jones, FSL

Mr. Jones reported that the meeting minutes from the Board of Health Professions were included in the agenda packet for review.

Report from the Regulatory Advisory Panel – Blair Nelsen, FSL

Mr. Nelsen reported that the meeting minutes from the Regulatory Advisory Panel were included in the agenda packet for review. He noted that meeting representatives included Board members and staff, insurance companies, State Corporation Commission, and professional associations. Mr. Nelsen reviewed the recommendations from the Regulatory Advisory Panel for the Board's consideration.

Report from the Ad Hoc Committee on Internships – Blair Nelsen, FSL

Mr. Nelsen reported that the meeting minutes from the Ad Hoc Committee on Internships were included in the agenda packet for review. Mr. Nelsen reviewed the recommendations from the Ad Hoc Committee on Internships for the Board's consideration. Mr. Nelsen requested additional discussion from the Board on the number of internship hours at the April 2019 Board meeting pending additional research of other jurisdictions.

Mr. Jones requested clarification on the issue of identification of interns.

Dr. Allison-Bryan arrived at 10:43 a.m.

AGENCY REPORT

Mr. Walton asked if Dr. Allison-Bryan if she would like to provide an agency report. Dr. Allison-Bryan reported that she and Dr. Brown had been participating in the General Assembly and reported that she was impressed with the spirit of the cooperation of everyone involved to ensure the health and safety of the public.

LEGISLATION AND REGULATORY ACTIONS

Report on Regulatory Actions

Ms. Yeatts provided a brief overview of regulatory actions pending by the Board.

Legislative Report

Ms. Yeatts provided an overview of the bills that could possibly impact the Board at the 2019 General Assembly.

Mr. Omph and Mr. Nelsen requested additional information in regards to House Bill 1828: Legislation Regarding Casket Sales. Ms. Barrett stated that the General Assembly was responsible for drafting and passing bills and the Board would have more information following the conclusion of the General Assembly. Ms. Yeatts stated that DHP did not have a position on the bill at that time.

Ms. Yeatts provided a review of Senate Bill 1300: Funeral Establishments; Full Time Manager Required. Board members discussed concerns regarding the operation of two establishments by a single full-time funeral service licensee or funeral director if the combined average number of funeral calls at the two establishments is up to an average of 135 calls per year and the distance between the two establishments is up to 50 miles.

BREAK

The Board took a 10-minute break at 11:25 a.m. The Board reconvened at 11:39 a.m.

Upon a **MOTION** by Mr. Nelsen, which was properly seconded by Mr. Omph, the Board requested communication to the Governor's Office that the Board have the opportunity to study the effects of Senate Bill 1300 and to report back to the General Assembly for the 2020 Session, or in the alternative, that an amendment be sought to require a fourth component to the hardship waiver – that the Manager of Record and facilities have current, unrestricted licenses at the time of the application for waiver. The motion passed unanimously.

Discussion of Recommendations from the Regulatory Advisory Panel – Preneed Funeral Planning

Ms. Yeatts reviewed the recommendations from the Regulatory Advisory Panel and requested the Board to discuss the recommendations for consideration.

Upon a **MOTION** by Mr. Nelsen, which was properly seconded by Ms. Mimms, the Board moved to adopt the NOIRA for the Regulations for Preneed Funeral Planning (18VAC65-30-10 et seq.). The motion passed unanimously.

Discussion of Recommendations from the Ad Hoc Committee on Internships

Ms. Yeatts reviewed the recommendations from the Ad Hoc Committee on Internships and requested the Board to discuss the recommendations for consideration.

Upon a **MOTION** by Mr. Slusser, which was properly seconded by Mr. Omph, the Board moved to adopt the NOIRA for the Regulations for the Funeral Service Internship Program (18VAC65-40-10 et seq.) and to withdraw the current notice and incorporate the issues into the new NOIRA. The motion passed unanimously.

Review of Guidance Documents for Re-adoption

Ms. Yeatts reviewed Guidance Documents 65-4 and 65-15 with the Board and the need for Guidance Documents to be reviewed every four years.

Board members discussed a revision to Guidance Document 65-15 to clarify that the Board will grant no more than two one-year extensions to an intern.

Upon a **MOTION** by Mr. Nelsen, and properly seconded by Mr. Omps, the Board voted to readopt Guidance Documents 65-4 and to revise Guidance Document 65-15. The motion passed unanimously.

Repeal of Guidance Documents for Embalming and Refrigeration

Ms. Yeatts explained that Guidance Documents 65-8 and 65-18 regarding permission to embalm and refrigeration of dead human bodies were no longer needed due to recent finalization of Board regulations on these issues.

Upon a **MOTION** by Mr. Slusser, and properly seconded by Mr. Jones, the Board voted to repeal Guidance Documents 65-8 and 65-18. The motion passed unanimously.

REVISIONS TO INSPECTION REPORTS AND APPENDIX I

Ms. Helmick discussed the revisions to the inspection reports for establishments and crematories and Appendix I of the Board's Regulations. She noted that the proposed changes to the Appendix correct the wording in two areas where the term "funeral establishment" should read as "funeral home" to ensure compliance with the relevant disclosure wording of the FTC regulations.

Upon a **MOTION** by Ms. Steele, which was properly seconded by Ms. Mimms, the Board voted to approve Appendix I as presented. The motion passed unanimously.

BOARD TRAINING

Mr. Walton approved Ms. Tillman Wolf's proposal to defer the presentation on Probable Cause to the next scheduled Board meeting due to time constraints.

Ms. Barrett provided a presentation on the Disciplinary Process.

NEXT MEETING

The next meeting date is April 16, 2019.

ADJOURNMENT

With all business concluded, the meeting adjourned at 12:44 p.m.

Joseph Frank Walton, FSL, Board President

Corie Tillman Wolf, J.D., Executive Director

Date

Date

Virginia Board of Funeral Directors and Embalmers

Aiding and Abetting Unlicensed Practice

Virginia Code § 54.1-2806(10) prohibits licensees of the Board of Funeral Directors and Embalmers (“Board”) from “[a]iding or abetting an unlicensed person to practice within the funeral service profession[.]” All licensees of the Board are responsible for adhering to the laws and regulations governing the funeral service profession in Virginia.

If a licensee of the Board contracts to provide funeral services of any kind with another funeral director, funeral home, or entity providing funeral services, where the other contracting party is not licensed to practice within the funeral service profession, the licensee of the Board is in violation of Virginia Code § 54.1-2806(10) and may face disciplinary action. Specifically, the contracting party must be licensed in the state in which arrangements are or will be made.

Before entering into a business arrangement with another funeral director, funeral home, or entity providing funeral services, the Board recommends that Virginia licensed funeral service professionals verify the licensure status of the other party in the state in which arrangements are or will be made. Virginia licenses can be verified through the Department of Health Professions’ license look-up feature, available at www.dhp.virginia.gov. Many other states have online license verification for funeral service professionals as well. As an alternative, a licensee may request that a potential contracting party provide the licensee with a copy of the contracting party’s valid license.

The burden of ensuring that a licensee is compliant with the laws and regulations governing the practice of funeral services in Virginia rests solely with the licensee. Therefore, the Board recommends that licensees verify the licensure status of all parties with which they contract to provide funeral services.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS**Guidance for Granting Internship Extensions**

In accordance with **18VAC65-40-130**, the board, for good cause shown, may grant an extension of time for completion of an internship.

The board policy on granting an extension is as follows:

- The intern has to provide the board with a letter explaining the circumstances that have prevented the completion of the program within the specified time. The letter should include the length of time the intern is requesting for the extension. Additionally, the board will require a copy of the intern's current college transcript to review the courses already completed toward the mortuary educational requirement.
- The Board will grant no more than two one-year extensions to an intern.

**VIRGINIA BOARD OF FUNERAL DIRECTORS & EMBALMERS
SPECIAL CONFERENCE COMMITTEE
MINUTES**

January 24, 2019

Department of Health Professions
Perimeter Center
9960 Mayland Drive, Suite #300
Henrico, Virginia 23233

- CALL TO ORDER:** A Special Conference Committee of the Board was called to order at 1:02 p.m.
- MEMBERS PRESENT:** Louis Jones, FSL, Chair
Blair, Nelsen, FSL
- DHP STAFF PRESENT:** Lynne Helmick, Deputy Executive Director
Angela Pearson, Discipline Operations Manager
Claire Foley, Adjudication Specialist, APD
- MATTER:** J. K. Redmond Funeral Home
License # 0501-000504
Case # 186520
- DISCUSSION:** The Board issued a Notice of Informal Conference on December 13, 2018, which was sent by certified mail and first class mail in care of Kimberly Redmond-Cosby, FSL, MOR. No one from the funeral home appeared before the Committee to represent J. K. Redmond Funeral Home nor was the funeral represented by counsel.
- CLOSED SESSION:** Upon a motion by Mr. Nelsen, and duly seconded by Mr. Jones, the Committee 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 J. K. Redmond Funeral Home. Additionally, he moved that Ms. Helmick and Ms. Pearson attend the closed meeting because their presence in the closed meeting deemed necessary and would aid the Committee in its discussions.
- RECONVENE:** Having certified that the matters discussed in the preceding closed session met the requirements of §2.2-3712 of the Code, the Committee re-convened in open session.
-

DECISION:

Upon a motion by Mr. Nelsen, and duly seconded by Mr. Jones, the Committee decided to refer this matter for a Formal Administrative Hearing.

ADJOURNMENT:

The Committee adjourned at 1:20 p.m.

Louis R. Jones

Louis Jones, FSL Chair

03/05/2019

Date

Corie Tillman Wolf

Corie Tillman Wolf, JD, Executive Director

March 6, 2019

Date



Unapproved

**VIRGINIA BOARD OF FUNERAL DIRECTORS & EMBALMERS
SPECIAL CONFERENCE COMMITTEE
MINUTES**

March 6, 2019 **Department of Health Professions
Perimeter Center
9960 Mayland Drive, Suite #300
Henrico, Virginia 23233**

CALL TO ORDER: A Special Conference Committee of the Board was called to order at 10:07 a.m.

MEMBERS PRESENT: Louis Jones, FSL, Chair
Blair Nelsen, FSL

DHP STAFF PRESENT: Lynne Helmick, Deputy Executive Director
Angela Pearson, Discipline Operations Manager
Jess Kelley, Adjudication Specialist

OTHERS PRESENT: Kristi M. Caturano
Jatinder Khokhar

MATTER: **Reid Funeral Home**
License # 0501-000504
Case # 190450

DISCUSSION: No one appeared before the Committee to represent Reid Funeral Home in accordance with the Notice of Informal Conference, dated January 31, 2019.

The Committee fully discussed the allegations as referenced in the January 31, 2019, Notice of Informal Conference.

CLOSED SESSION: Upon a motion by Mr. Nelsen, and duly seconded by Mr. Jones, the Committee 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 Reid Funeral Home. Additionally, he moved that Ms. Helmick and Ms. Pearson attend the closed meeting because their presence in the closed meeting was deemed necessary and would aid the Committee in its discussions.

RECONVENE: Having certified that the matters discussed in the preceding closed session met the requirements of §2.2-3712 of the Code, the Committee re-convened in open session and announced its decision.

DECISION:

Upon a motion by Mr. Nelsen and duly seconded by Mr. Jones, the Committee voted to refer this case to a Formal Hearing.

The motion carried.

ADJOURNMENT:

The Committee adjourned at 10:14 a.m.

Louis Jones, FSL, Chair

Corie Tillman Wolf, Executive Director

Date

Date



Agency Report

W. Scott Johnson
Ext. 416
sjohnson@hancockdaniel.com

March 8, 2019

VIA Email & US Mail

David E. Brown, DC
Director
Virginia Department of Health Professions
9960 Mayland Drive, Suite 300
Henrico, VA 23233-1463

Re: Funeral Service Licensees – Multi-Level License Options

Dear Dr. Brown:

I trust this letter finds you doing well. I am writing in follow-up to the conversation that you and I had during the 2019 Session of the Virginia General Assembly regarding a request to the Department of Health Professions (DHP) to provide an updated review of Multi-level Funeral Director licensees. I have enclosed correspondence dated October 15, 2015, on the work DHP had undertaken in response to a request from then, Senator Kenny Alexander.

In addition, Dr. Carter's workforce analysis, performed in 2018, revealed some telling information on workforce challenges involving Funeral Directors, either aging out or not pursuing the profession. Several points of interest to note from the workforce report: 1) one-third of all licensees are over age 60; 2) non-renewal of licenses exceeded new licenses issued in 2018; 3) only 20% of licensees are under age 40; 4) 30% of Virginia licensees say they work more than 50 hours per week and 13% over 60 hours per week; 5) 8% of the workforce will retire within two years and 26% within ten years; and 6) retirements will begin to reach over 10% of the current workforce very five years by 2028.

We are seeing a number of workforce candidates who are near retirement or wish to work part-time. They may be interested in serving as a funeral service director but are not willing to perform embalming activities. Today these candidates are not eligible to be licensed in the Commonwealth. Conversely, we also have a number of candidates who are willing to embalm but are not interested in the other duties required of being a funeral director, such as family interaction and participating in funerals or memorial services.

We understand that our sister jurisdictions, namely, Maryland and North Carolina use a multi-level license process for funeral directors. In addition, we understand that Florida has a multi-level license process, as well. Understanding, operationally, how these states structure their multi-level license, would be beneficial.

One question that was brought up when multi-level licenses was initially discussed in 2013 centered on the accreditation of our current training programs at community colleges. Specifically, would changing to a multi-level license adversely impact accreditation. It would be beneficial to understand how training programs in our sister jurisdictions have navigated the accreditation requirements by honoring multi-level licenses. Also coupled with this would be an inquiry to determine portability of licenses, meaning that if someone were trained in Maryland and had a multi-level license, how they could relocate to Virginia or provide services here or vice versa.

During session we reached out to several different funeral establishments in the Commonwealth and there seemed to be a willingness to make this request of DHP and to participate in reviewing what information you have to present on multi-level licenses. We certainly view this alternative approach as a means to favorably address the workforce issues facing the Commonwealth.

Thank you in advance for your consideration and I will be more than happy to meet with you to discuss this further, or if you would like me to assist in identifying stakeholders to bring in and participate in this discussion, would be more than happy to do so.

Very truly yours,



W. Scott Johnson

Enclosure

cc: Angie Bezik, Principle Advantage Government Relations Group, LLC
Chris Carter
Tripp Perrin, FirstChoice Consulting
Chuck Duvall, FirstChoice Consulting
Tyler Cox, FirstChoice Consulting



COMMONWEALTH of VIRGINIA

David E. Brown, D.C.
Director

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October 15, 2015

The Honorable Senator Kenneth Alexander
Senate of Virginia
P.O. Box 396
Richmond, VA 23218

Dear Senator Alexander:

This is in response to your request for the Department's assistance in studying options for separate funeral director-only and embalmer licenses. The review was assigned to the Board of Health Professions (BHP) due to its authority under §54.1-2510 of *Code of Virginia* to make recommendations on the need for regulation of health professions and to promote standards for their competency assessment. The following details BHP's findings and offers additional technical assistance from the Department.

Virginia issued separate licenses for Funeral Directors and for Embalmers until 1974 when a unified Funeral Service License was instituted. The separate categories of licenses were maintained because grandfathering permitted renewal of those licenses by existing holders. But since then, all *new* licensure candidates have had to demonstrate competence in the full array of funeral services, including embalming. At end of FY 2015, there were 1,422 Funeral Service Licensees (FSLs), 41 Funeral Director, and three Embalmer current, active licenses.¹

BHP conducted a review of all 50 states' statutes and regulations governing the funeral and embalming professions and the relevant public disciplinary information. A detailed overview is provided in Attachment 1, "States Licensure." Early on, it became clear that there is too much variability among the states on factors that could enable direct comparisons related to type of regulatory scheme possible. There are differing professional titles², practice scopes and standards, initial and continuing licensure requirements, and even the structure and processes employed by the overseeing regulatory bodies vary considerably from state-to-state.³

¹ Two of the Funeral Directors also held Embalmer licenses.

² Protected titles included "Embalmer," "Funeral Director," "Funeral Practitioner," "Funeral Service Provider" "Mortician" and "Undertaker," and several additional variations.

³ Some states regulate both Funeral Directors and Embalmers (or title variant), some regulate only one of these, and one state, Colorado, does not regulate either. Regulating organizations include licensing boards and agencies, health departments and, in California, a professional association.

Public disciplinary information was available in less than half of the states; the volume of cases per state was small and was reported in widely differing date ranges. What was available largely involved failing to obtain or maintain current licensure, insufficient continuing education, and a few cases of fraud related to contract arrangements. These referenced state-specific regulations that do not readily translate to other states. The Board concludes that it would not be reasonable to attribute differences in the prevalence of the states' disciplinary cases to differences in licensure scheme or any other factor.

BHP also gained independent insight into Virginian's views about multi-licensure to include a separate, new, funeral director only category. A public hearing was held on May 28, 2015 with additional written comment accepted until June 30, 2015. Attachment 2 summarizes the commenters' positions and also includes the complete public hearing transcript and all correspondence received. The responses were almost evenly divided in favor and against, with three commenters taking no position. Several pro and con themes emerged as follows:

PRO	CON
<ul style="list-style-type: none"> Noted difficulties in hiring FSLs. Held that a separate license approach would increase the pool of candidates by accommodating those interested in assisting families with arrangements but not in embalming. 	<ul style="list-style-type: none"> Countered that there is no difficulty in hiring throughout the state and no shortage of new students or graduates in Virginia. Several commented on the benefits of current regulatory provisions that enable working while completing education, with online options available. Noted difficulties in SCI's hiring are occurring nationwide, in states with multi- and single licensure schemes. Expressed strong concern over adverse effects of eliminating laboratory competency and about a funeral director-only licensee's ability to fully inform consumers about the condition and treatment of the remains.
<ul style="list-style-type: none"> Cited national funeral profession studies on declining graduation rates and trend toward graduates leaving the profession within the first five years. Also noted drop in the number of funeral homes nationwide and Virginia. Additionally noted Funeral Service Foundation survey of 18-29 year olds that revealed approximately 67% of males and 60% of females would consider a course in funeral services or joining the profession if embalming training was not required. 	<ul style="list-style-type: none"> Noted reduction in funeral homes may be attributable to larger corporations buying funeral homes and consolidating services. Further noted that by providing an "easier route" (without embalming), it may result in a future shortage of FSLs.

PRO (continued)	CON (continued)
<ul style="list-style-type: none"> Reported that cremation is on the rise, currently in about 30-50% of cases each year in Virginia. Held that this reduces the need for embalming and that greater regulatory flexibility would permit funeral homes to redirect resources to meet growing consumer demands in other areas. 	<ul style="list-style-type: none"> Countered that embalming is used in approximately 50-70% of funerals in Virginia, especially those involving public viewing. Noted that clinical training extends beyond the embalming process to include pre-embalming examination for positive identification and detection of potential abuse.
<ul style="list-style-type: none"> Expressed concern over ecological and health impact of embalming chemicals. 	<ul style="list-style-type: none"> Countered that adherence to laboratory safety requirements avoids these issues.
<ul style="list-style-type: none"> Responded to the need for new curriculum approval by stating that it had been accomplished in other states with funeral director, only, licensure. 	<ul style="list-style-type: none"> Noted that original legislative draft from 2014 used the term "funeral service counselor." Several commenters and members of the Board had issue with the term used alone or in combination with other title because of its potential confusion with the Board of Counseling's Licensed Professional Counselor and Substance Abuse Counselor licenses and, therefore, imply comparable behavioral health expertise. Reported that the proposed curriculum in the original legislative draft would eliminate the laboratory component and could not be instituted without undergoing a new approval process through the individual community college, Virginia Community College System, State Council on Higher Education in Virginia, and accreditation through the American Board of Funeral Service Education. Approval would be contingent upon substantiation of financial aid receipt for students and assessments of student success. Noted the entire process could be two years or more.
NO POSITION	
<ul style="list-style-type: none"> Acknowledged the even split in opinion within the funeral service community and noted concerns on both sides of the issue Recommended that the Department of Health Professions Healthcare Workforce Data Center (DHP HWDC) institute a survey on behalf of the Board of Funeral Directors and Embalmers so that objective workforce data can be obtained and tracked. 	

With careful consideration of these findings, the Board concluded that there is insufficient empirically-based information and too evenly divided subjective viewpoints to substantiate their recommendation for or against a new license type. The Board's policy recommendations concerning the appropriate regulation of health professions rely heavily upon their standard evaluative methodology described in Attachment 3 *Policies and Procedures for the Evaluation of the Need to regulate Health Occupations and Professions*.⁴ In this case, the profession in question is already regulated by the Board of Funeral Directors and Embalmers for the public's protection either as a Funeral Director under grandfathering or subsumed under the unified Funeral Service License. Due to the tremendous variation in licensure schemes across the country and lack of consistently comparable disciplinary data, it is not possible to objectively determine whether the regulatory practices in other states are superior or inferior to Virginia's.

One of the chief points of contention is the perception that there is an insufficient number or distribution of Funeral Service Licensees in Virginia's workforce. Existing employment and licensure data, alone, cannot fully address this issue or whether the current embalming competency requirements unduly restrict the supply of practitioners. What is needed is objective data on the actual funeral practitioner workforce in Virginia.

As referenced in public comment, the DHP HWDC works to improve the data collection and measurement of the Commonwealth's healthcare workforce through regular assessment of workforce supply and demand issues among the multiple professions and over 370,000 practitioners licensed in Virginia through the Department. DHP HWDC surveys systematically glean key workforce-related data that detail the demographics, education, geographic distribution, full-time equivalencies, and other key variables to describe the licensees practicing in Virginia and their work settings. At the BHP's request, DHP HWDC staff is currently coordinating with the Board of Funeral Directors and Embalmers to develop and launch a new survey for renewing licensees. As with all DHP HWDC research, the results will be presented to the Board and published by the Department. Once instituted, the survey is administered with each year's renewals and will provide an ongoing, objective means to inform on the current funeral workforce environment and track trends over time.⁵

The Department of Health Professions remains available as a resource with regard to this important workforce issues and to offer technical assistance in the preparation of legislative language if so desired.

Very Truly Yours,



David E. Brown, D.C.
Director

⁴ Also available online through http://www.dhp.virginia.gov/bhp/bhp_guidelines.htm) as Guidance Document, **75-2 Appropriate Criteria in Determining the Need for Regulation of Any Health Care Occupation or Professions**, revised February 1998.

⁵ For more details on the methodology and research, to date, see the Center's website at <http://www.dhp.virginia.gov/hwdc/default.htm>.

Staff Reports

Virginia Department of Health Professions
Cash Balance
As of February 28, 2019

**104- Funeral
Directors and
Embalmers**

Board Cash Balance as June 30, 2018	\$ 526,645
YTD FY19 Revenue	227,495
Less: YTD FY19 Direct and Allocated Expenditures	<u>377,394</u>
Board Cash Balance as February 28, 2019	<u><u>376,747</u></u>

Virginia Department of Health Professions
Revenue and Expenditures Summary
Department 10400 - Funeral Directors and Embalmers
For the Period Beginning July 1, 2018 and Ending February 28, 2019

Account Number	Account Description	Amount	Budget	Amount	% of Budget
				Under/(Over) Budget	
4002400 Fee Revenue					
4002401	Application Fee	35,670.00	34,845.00	(825.00)	102.37%
4002406	License & Renewal Fee	178,480.00	628,860.00	450,380.00	28.38%
4002407	Dup. License Certificate Fee	320.00	360.00	40.00	88.89%
4002409	Board Endorsement - Out	1,600.00	3,850.00	2,250.00	41.56%
4002421	Monetary Penalty & Late Fees	1,340.00	10,025.00	8,685.00	13.37%
4002430	Board Changes Fee	4,250.00	7,695.00	3,445.00	55.23%
4002432	Misc. Fee (Bad Check Fee)	35.00	35.00	-	100.00%
	Total Fee Revenue	221,695.00	685,670.00	463,975.00	32.33%
4003000 Sales of Prop. & Commodities					
4003020	Misc. Sales-Dishonored Payments	600.00	-	(600.00)	0.00%
	Total Sales of Prop. & Commodities	600.00	-	(600.00)	0.00%
4009000 Other Revenue					
4009060	Miscellaneous Revenue	5,200.00	3,300.00	(1,900.00)	157.58%
	Total Other Revenue	5,200.00	3,300.00	(1,900.00)	157.58%
	Total Revenue	227,495.00	688,970.00	461,475.00	33.02%
5011110 Employer Retirement Contrib.					
5011110	Employer Retirement Contrib.	5,462.22	10,213.00	4,750.78	53.48%
5011120 Fed Old-Age Ins- Sal St Emp					
5011120	Fed Old-Age Ins- Sal St Emp	3,013.11	5,779.00	2,765.89	52.14%
5011130 Fed Old-Age Ins- Wage Earners					
5011130	Fed Old-Age Ins- Wage Earners	-	623.00	623.00	0.00%
5011140 Group Insurance					
5011140	Group Insurance	529.32	990.00	460.68	53.47%
5011150 Medical/Hospitalization Ins.					
5011150	Medical/Hospitalization Ins.	11,273.82	28,998.00	17,724.18	38.88%
5011160 Retiree Medical/Hospitalizatn					
5011160	Retiree Medical/Hospitalizatn	472.90	884.00	411.10	53.50%
5011170 Long term Disability Ins					
5011170	Long term Disability Ins	251.47	469.00	217.53	53.62%
	Total Employee Benefits	21,002.84	47,956.00	26,953.16	43.80%
5011200 Salaries					
5011230	Salaries, Classified	40,778.74	75,539.00	34,760.26	53.98%
5011250	Salaries, Overtime	781.71	-	(781.71)	0.00%
	Total Salaries	41,560.45	75,539.00	33,978.55	55.02%
5011300 Special Payments					
5011340	Specified Per Diem Payment	1,050.00	3,000.00	1,950.00	35.00%
5011380	Deferred Compnstn Match Pmts	100.75	720.00	619.25	13.99%
	Total Special Payments	1,150.75	3,720.00	2,569.25	30.93%
5011400 Wages					
5011410	Wages, General	-	8,133.00	8,133.00	0.00%
	Total Wages	-	8,133.00	8,133.00	0.00%
5011600 Terminatn Personal Svce Costs					
5011620	Salaries, Annual Leave Balanc	224.45	-	(224.45)	0.00%
5011640	Salaries, Cmp Leave Balances	101.64	-	(101.64)	0.00%
	Total Terminatn Personal Svce Costs	326.09	-	(326.09)	0.00%
5011930	Turnover/Vacancy Benefits	-	-	-	0.00%
	Total Personal Services	64,040.13	135,348.00	71,307.87	47.32%
5012000 Contractual Svs					

Virginia Department of Health Professions
Revenue and Expenditures Summary
Department 10400 - Funeral Directors and Embalmers
For the Period Beginning July 1, 2018 and Ending February 28, 2019

Account Number	Account Description	Amount	Budget	Amount	
				Under/(Over) Budget	% of Budget
5012100 Communication Services					
5012110	Express Services	3.66	200.00	196.34	1.83%
5012130	Messenger Services	35.73	-	(35.73)	0.00%
5012140	Postal Services	814.47	3,500.00	2,685.53	23.27%
5012150	Printing Services	112.67	1,500.00	1,387.33	7.51%
5012160	Telecommunications Svcs (VITA)	163.60	300.00	136.40	54.53%
5012190	Inbound Freight Services	20.69	-	(20.69)	0.00%
	Total Communication Services	1,150.82	5,500.00	4,349.18	20.92%
5012200 Employee Development Services					
5012210	Organization Memberships	250.00	1,200.00	950.00	20.83%
5012220	Publication Subscriptions	-	600.00	600.00	0.00%
5012240	Employee Training/Workshop/Conf	375.00	1,945.00	1,570.00	19.28%
5012270	Emp Trning- Trns, Ldgng & Meals	-	3,250.00	3,250.00	0.00%
	Total Employee Development Services	625.00	6,995.00	6,370.00	8.93%
5012400 Mgmnt and Informational Svcs					
5012420	Fiscal Services	730.14	9,520.00	8,789.86	7.67%
5012440	Management Services	97.84	120.00	22.16	81.53%
5012460	Public Infrmntl & Relatn Svcs	412.11	-	(412.11)	0.00%
5012470	Legal Services	165.00	500.00	335.00	33.00%
	Total Mgmnt and Informational Svcs	1,405.09	10,140.00	8,734.91	13.86%
5012500 Repair and Maintenance Svcs					
5012530	Equipment Repair & Maint Srvc	974.06	640.00	(334.06)	152.20%
	Total Repair and Maintenance Svcs	974.06	640.00	(334.06)	152.20%
5012600 Support Services					
5012640	Food & Dietary Services	300.36	2,100.00	1,799.64	14.30%
5012660	Manual Labor Services	68.40	1,200.00	1,131.60	5.70%
5012670	Production Services	510.94	1,120.00	609.06	45.62%
5012680	Skilled Services	64.82	910.00	845.18	7.12%
	Total Support Services	944.52	5,330.00	4,385.48	17.72%
5012800 Transportation Services					
5012820	Travel, Personal Vehicle	2,679.52	6,200.00	3,520.48	43.22%
5012830	Travel, Public Carriers	-	700.00	700.00	0.00%
5012850	Travel, Subsistence & Lodging	837.28	1,600.00	762.72	52.33%
5012880	Trvl, Meal Reimb- Not Rprtble	492.00	750.00	258.00	65.60%
	Total Transportation Services	4,008.80	9,250.00	5,241.20	43.34%
	Total Contractual Svcs	9,108.29	37,855.00	28,746.71	24.06%
5013000 Supplies And Materials					
5013100 Administrative Supplies					
5013120	Office Supplies	1,063.35	1,500.00	436.65	70.89%
5013130	Stationery and Forms	-	675.00	675.00	0.00%
	Total Administrative Supplies	1,063.35	2,175.00	1,111.65	48.89%
5013300 Manufctrng and Merch Supplies					
5013350	Packaging & Shipping Supplies	-	85.00	85.00	0.00%

Virginia Department of Health Professions
Revenue and Expenditures Summary
Department 10400 - Funeral Directors and Embalmers
For the Period Beginning July 1, 2018 and Ending February 28, 2019

Account Number	Account Description	Amount			% of Budget
		Amount	Budget	Under/(Over) Budget	
	Total Manufctrng and Merch Supplies	-	85.00	85.00	0.00%
5013500	Repair and Maint. Supplies				
5013520	Custodial Repair & Maint Matrl	2.24	-	(2.24)	0.00%
5013530	Electrcal Repair & Maint Matrl	0.64	-	(0.64)	0.00%
	Total Repair and Maint. Supplies	2.88	-	(2.88)	0.00%
5013600	Residential Supplies				
5013620	Food and Dietary Supplies	6.23	30.00	23.77	20.77%
5013630	Food Service Supplies	43.21	90.00	46.79	48.01%
5013640	Laundry and Linen Supplies	2.53	-	(2.53)	0.00%
	Total Residential Supplies	51.97	120.00	68.03	43.31%
5013700	Specific Use Supplies				
5013730	Computer Operating Supplies	-	15.00	15.00	0.00%
	Total Specific Use Supplies	-	15.00	15.00	0.00%
	Total Supplies And Materials	1,118.20	2,395.00	1,276.80	46.69%
5015000	Continuous Charges				
5015100	Insurance-Fixed Assets				
5015160	Property Insurance	35.87	36.00	0.13	99.64%
	Total Insurance-Fixed Assets	35.87	36.00	0.13	99.64%
5015300	Operating Lease Payments				
5015340	Equipment Rentals	4.04	-	(4.04)	0.00%
5015350	Building Rentals	25.20	-	(25.20)	0.00%
5015360	Land Rentals	-	15.00	15.00	0.00%
5015390	Building Rentals - Non State	3,076.37	4,569.00	1,492.63	67.33%
	Total Operating Lease Payments	3,105.61	4,584.00	1,478.39	67.75%
5015500	Insurance-Operations				
5015510	General Liability Insurance	128.75	135.00	6.25	95.37%
5015540	Surety Bonds	7.60	8.00	0.40	95.00%
	Total Insurance-Operations	136.35	143.00	6.65	95.35%
	Total Continuous Charges	3,277.83	4,763.00	1,485.17	68.82%
5022000	Equipment				
5022600	Office Equipment				
5022610	Office Appurtenances	-	132.00	132.00	0.00%
	Total Office Equipment	-	132.00	132.00	0.00%
	Total Equipment	-	132.00	132.00	0.00%
	Total Expenditures	77,544.45	180,493.00	102,948.55	42.96%
	Allocated Expenditures				
20600	Funeral\LTCA\PT	73,059.57	104,688.15	31,628.58	69.79%
30100	Data Center	68,137.21	93,469.32	25,332.10	72.90%
30200	Human Resources	4,529.74	11,428.30	6,898.56	39.64%
30300	Finance	15,280.18	27,930.31	12,650.13	54.71%
30400	Director's Office	6,974.25	11,087.73	4,113.48	62.90%

Virginia Department of Health Professions
 Revenue and Expenditures Summary
 Department 10400 - Funeral Directors and Embalmers
 For the Period Beginning July 1, 2018 and Ending February 28, 2019

Account		Amount			
Number	Account Description	Amount	Budget	Under/(Over)	% of Budget
			Budget	Budget	
30500	Enforcement	95,795.86	163,084.11	67,288.25	58.74%
30600	Administrative Proceedings	16,611.56	31,216.78	14,605.22	53.21%
30700	Impaired Practitioners	-	275.09	275.09	0.00%
30800	Attorney General	9,890.27	10,436.29	546.02	94.77%
30900	Board of Health Professions	5,118.24	8,934.92	3,816.69	57.28%
31100	Maintenance and Repairs	6.80	1,844.12	1,837.32	0.37%
31300	Emp. Recognition Program	36.20	253.55	217.35	14.28%
31400	Conference Center	135.11	161.34	26.23	83.74%
31500	Pgm Devlpmnt & Implmentn	4,274.43	6,486.81	2,212.38	65.89%
Total Allocated Expenditures		<u>299,849.44</u>	<u>471,296.84</u>	<u>171,447.39</u>	<u>63.62%</u>
Net Revenue in Excess (Shortfall) of Expenditures		<u>\$ (149,898.89)</u>	<u>\$ 37,180.16</u>	<u>\$ 187,079.06</u>	<u>403.17%</u>

----- Forwarded message -----

From: **Lauren Thomas** <services@theconferenceonline.org>

Date: Mon, Mar 11, 2019 at 11:47 AM

Subject: FW: Follow Up: Radiation Protection Guidelines for Safe Handling of Decedents

To: Lauren Thomas <services@theconferenceonline.org>

Hello,

We have been asked to share the below from Barbara Kemmis, Executive Director of CANA, regarding radiation protection guidelines.

From: Cremation Assoc. of North America <info@cremationassociation.org>

Sent: Friday, March 8, 2019 9:15 AM

To: Barbara Kemmis

Subject: Follow Up: Radiation Protection Guidelines for Safe Handling of Decedents

Dear Lori,

UPDATE: We are receiving calls from members whose employees are very concerned about potential exposure and risk and seeking guidance for new policies or procedures. Here is new and updated information from the medical community indicating that the risk of exposure is "minimal":

[Ontario Urged to Update Law Forbidding Cremation of Bodies with Radioactive Implants](#)

[AAPM, ACR release statement on radioactive material in cremated bodies](#)

[American Association of Physicists in Medicine - Low Risk of Radioactive Contamination from Cremation When Proper Safety Procedures Followed](#)

The best defense is a good offense and I invite each of you to read and share the information we are sharing and discuss your current policies and procedures. I spoke with a reporter this week who has the medical beat. He indicated to me that radiopharmaceuticals are very promising treatments and will be more widely used into the future. Now is the perfect time to engage your employees in reviewing policies and procedures and training.

Below is the original content from last week's email in case you missed it. Keep those questions coming!

Barbara

The recent study published in the *Journal of the American Medical Association (JAMA)* has captured everyone's attention. [Radiation Contamination Following Cremation of a Deceased Patient Treated With a Radiopharmaceutical](#) (link is to executive summary) brings to light potential exposure for staff who handle any of the nearly 40 million people treated with nuclear medicine each year.

In case you and your staff have questions about the safe handling of these cases, CANA has compiled the following resources to help you review your existing procedures and training.

On-demand free webinar: Radioactive Decedents: What is the Risk?

Jeffrey Brunette, MS, CHP is a health physicist who works for the Mayo Clinic in Rochester, MN. In this 50-minute presentation, Brunette covers risks in perspective, Radiation 101, how to minimize risk, medical uses of radiation, and risks from handling decedents (*no CE available*). [Listen free by logging in here.](#)

Technical Papers and Guidelines

CANA has a library of Technical Papers, including discussion on:

- [Brachytherapy](#)
- [Strontium-89](#)
- [Radiation Decedent Guidelines](#)
- [Radiation Safety Information Regarding Bodies Containing Radioactive Metastron](#)

More recently, the Canadian Nuclear Safety Commission developed detailed guidelines that cover the most common isotopes. Read the complete document on [their website](#).

Best Practice

CANA recommends asking all families for detailed medical information to properly understand and respond to potential risks. Just as you ask about the presence of pacemakers, ask about nuclear medicine treatments.

Paul Harris of [Regulatory Support Services](#) encourages all funeral home, crematory, and cemetery owners to ask the pertinent questions of their families. Cause of death is the first indicator that a case is at risk for radiation therapy, but all families should be asked in the case of death unrelated to their ailment. In many cases, families may be unaware or not understand the procedures the decedent has undergone. In these cases, you may need to ask for a Health Insurance Portability and Accountability Act (HIPAA) release form to contact the medical provider yourself. Asking the radiologist for information on the treatment

and about the specific isotope and its half-life is the best way to determine when (or if) it is safe to cremate or embalm the body. Depending on the isotope and when the treatment was administered, this could take weeks or even months.

As we learn more about this research and its implications I will share findings with you. I always welcome your questions, suggestions and feedback.

Sincerely,

Barbara Kemmis

Committee and Board Member Reports

In Attendance

Lisette P. Carbajal, MPA, Citizen Member
Helene D. Clayton-Jeter, OD, Board of Optometry
Kevin Doyle, EdD, LPC, LSATP, Board of Counseling
Mark Johnson, DVM, Board of Veterinary Medicine
Allen R. Jones, Jr., DPT, PT, Board of Physical Therapy
Louis R. Jones, FSL, Board of Funeral Directors and Embalmers
Derrick Kendall, NHA, Board of Long-Term Care Administrators
Alison R. King, PhD, CCC-SLP, Board of Audiology & Speech-Language Pathology
Ryan Logan, RPh, Board of Pharmacy
Trula E. Minton, MS, RN, Board of Nursing
Kevin O'Connor, MD, Board of Medicine
Maribel Ramos, Citizen Member
John M. Salay, MSW, LCSW, Board of Social Work
Herb Stewart, PhD, Board of Psychology
James D. Watkins, DDS, Board of Dentistry
James Wells, RPh, Citizen Member

Absent

Martha S. Rackets, PhD, Citizen Member

DHP Staff

Barbara Allison-Bryan, MD
David Brown, DC, Director DHP
Elizabeth A. Carter, Ph.D., Executive Director BHP
Laura L. Jackson, MSHSA, Operations Manager BHP
Charise Mitchel, OAG
Yetty Shobo, PhD, Deputy Executive Director BHP
Elaine Yeatts, Senior Policy Analyst DHP

Speakers

No speakers signed-in

Observers

Jerry Gentile, DPB
W. Scott Johnson, Hancock Daniel
Jaime Hoyle, JD, Executive Director for the Behavioral Sciences Boards
Corie Tillman-Wolf, JD, Executive Director Boards of Funeral Directors and Embalmers, Long Term Care and Physical Therapy

Call to Order

Chair: Dr. Clayton-Jeter **Time** 10:01 a.m.

Quorum Established

Approval of Minutes

Presenter Dr. Clayton-Jeter

Discussion

The meeting minutes from the August 23, 2018 and December 4, 2018 Full Board were approved. All members in favor, none opposed.

Directors Report

Presenter Dr. Brown

Discussion

- Dr. Brown reported that a bill to reinstate staggering board member terms passed. This helps to prevent loss of experience is not lost at one time. This bill allows for a one-time fix.
- Music therapists passed over the sunrise review process and went straight to the General Assembly initiating a bill for the Board of Medicine to provide title protection and registration. He stated that the Board of Health Professions would be receiving a letter requesting a study to be completed by November 2019.
- Four telemedicine bills are in the process of review. DHP is to convene a workgroup to discuss the issues driving these requests.
- Delegate Tran requested that DHP review the need for Virginia to utilize foreign-trained providers. A workforce advisory panel will be convened to review this.
- Cannabidiol oil is under review for further regulation.
- The Board of Nursing website has been redesigned. It will be user friendly both internally and externally. It is no longer HTML based, allowing board staff to make their own changes.

Welcome of New Board Members

Presenter Dr. Clayton-Jeter

Discussion

Dr. Clayton Jeter welcomed three new board members:

- Louis R. Jones, Board of Funeral Directors & Embalmers
- Alison R. King, PhD, CCC-SLP, Board of Audiology & Speech Language Pathology
- John M. Salay, MSW, Board of Social Work

All board members provided a brief introduction of themselves.

Legislative and Regulatory Report

Presenter Ms. Yeatts

Discussion

Ms. Yeatts advised the Board of updates to the laws and regulations that affect DHP currently in the General Assembly.

Public Comment

Discussion

There was no public comment

Board Chair Report

Presenter Dr. Clayton-Jeter

Discussion

Dr. Clayton-Jeter read the agencies Mission statement and stressed that it is each board members job to serve and protect the public.

Executive Directors Report

Presenter Dr. Carter

Board Budget

Dr. Carter stated that the Board is operating under budget.

Agency Performance

Dr. Carter stated that it is becoming very difficult for some boards to close cases in the 250 days allotted as they are inundated with an increasing number of cases. This process is currently under review.

New Staff Member

Dr. Carter introduced Rajana Siva as the Board's new Data Analyst.

Board Policies & Procedures

After discussion, a motion was made to approve the Policies & Procedures as provided. Motion was approved and properly seconded. All members in favor, none opposed.

Board Mission Statement

After discussion, a motion was made to move discussion of the boards' mission statement to the May 14, 2019 meeting. All members in favor, none opposed.

Board Bylaws

After discussion, a motion was made to approve the boards Bylaws as provided. On properly seconded motion, the Bylaws were approved unchanged.

Healthcare Workforce Data Center (DHP HWDC)

Presenter Dr. Shobo

Discussion

Dr. Shobo provided a PowerPoint presentation. Attachment 1

- ❖ **Lunch break – 11:50 a.m.**
- ❖ **Meeting resumed at 12:01 p.m.**

Board Reports

Presenter Dr. Clayton-Jeter

- **Board of Psychology**
Dr. Stewart provided an overview of the Board since the last meeting. Attachment 2
- **Board of Counseling**
Dr. Doyle provided an overview of the Board since the last meeting. Attachment 3
- **Board of Veterinary Medicine**
Dr. Johnson provided an overview of the Board since the last meeting. Attachment 4
- **Board of Social Work**
Mr. Salay provided an overview of the Board since the last meeting. Attachment 5
- **Board of Pharmacy**
 - Mr. Logan provided an overview of the Board since the last meeting. He stated that the Board completed its review of guidance documents that have not been reviewed or re-adopted in the past 4 years.
 - The Board selected five of the 71 pharmaceutical processor applications received. These processors must be operational by December 2019.
 - The Board worked in collaboration with the Board of Medicine on the NP and PA legislation.
 - An agent must be assigned to receive oils.
- **Board of Nursing**
 - Ms. Minton stated that the Board is very excited about the new website. It will improve office staff efficiency and be more user friendly for the public.
 - HB 793 allows nurse practitioners to practice autonomously with 4,000 NP in Virginia.
 - The Board is working on updating guidance documents.
 - Ms. Saxby is retiring April 1, 2019. A search for her replacement is underway.

- **Board of Medicine**
 - The Board passed approved and passed NP autonomous practice.
 - The Board provided CME for licensees who attended training on prescribing and tapering of opioids.
 - The Board is currently collaborating with the Board of Pharmacy on compounding.
 - Dr. O'Connor stated that complaints are up due to the new "File A Complaint" button on the website
- **Board of Funeral Directors and Embalmers**

Mr. Jones provided an overview of the Board since the last meeting. Attachment 6
- **Board of Optometry**

Dr. Clayton-Jeter provided an overview of the Board since the last meeting. Attachment 7
- **Board of Physical Therapy**

Dr. Jones, Jr. provided an overview of the Board since the last meeting. Attachment 8
- **Board of Audiology & Speech-Language Pathology**

Dr. King provided an overview of the Board since the last meeting. Attachment 9
- **Board of Dentistry**

Dr. Watkins provided an overview of the Board since the last meeting. Attachment 10
- **Board of Long Term Care Administrators**

Dr. Carter provided an overview on behalf of Mr. Kendall. Attachment 11

Election of Officers - Nominating Committee

Presenter Dr. Johnson

Discussion

The Nominating Committee met prior to the December 4, 2018 Full Board meeting to organize a slate of officers. Dr. Johnson stated that Dr. Allen Jones, Jr., submitted interest in the Chair position and James Wells, RPh, submitted interest in the Vice Chair position. Nominations were open to the floor. With no additional nominations the Board elected by verbal vote Dr. Allen Jones, Jr. as Chair and James Wells as Vice Chair. All members were in favor, none opposed.

New Business

Presenter Dr. Clayton-Jeter

Dr. Clayton-Jeter asked Ms. Jackson to review the status of the Boards committees. After discussion, Dr. Clayton-Jeter asked interested board members to email Ms. Jackson if they are interested in filling a vacant seat on a committee. Ms. Jackson will notify new board Chair, Dr. Jones, Jr., of individuals interested in serving.

DRAFT

May 14, 2019 Full Board Meeting

Presenter Dr. Clayton-Jeter

Dr. Clayton-Jeter announced the next Full Board meeting date as May 14, 2019.

Adjourned

Adjourned 1:02 p.m.

Chair Allen Jones, Jr.

Signature: _____ Date: ____/____/____

Board Executive Director Elizabeth A. Carter, Ph.D.

Signature: _____ Date: ____/____/____

Board of Health Professions attachments can be found at
https://www.dhp.virginia.gov/bhp/bhp_calendar.htm.

Legislation and Regulatory Actions

Report on Regulatory Actions (as of April 9, 2019)

Chapter		Action / Stage Information
[18 VAC 65 - 20]	Regulations of the Board of Funeral Directors and Embalmers	<p><u>Results of periodic review</u> [Action 5165]</p> <p>NOIRA - <i>At Secretary's Office for 155 days</i></p>
[18 VAC 65 - 30]	Regulations for Preneed Funeral Planning	<p><u>Periodic review 2018</u> [Action 5220]</p> <p>NOIRA - <i>At Secretary's Office for 53 days</i></p>
[18 VAC 65 - 40]	Regulations for the Funeral Service Intern Program	<p><u>Periodic review 2019</u> [Action 5221]</p> <p>NOIRA - <i>At Secretary's Office for 53 days</i></p>

Board of Funeral Directors and Embalmers Report of 2019 Legislation

HB 1828 Sale of caskets; preneed arrangements for funeral services.

Chief patron: Orrock

Summary as passed House:

Funeral services; sale of caskets. Prohibits any person except a licensed funeral service establishment or funeral service licensee from offering for sale or selling a casket when preneed arrangements for funeral services are being made, including preneed funeral contracts and preneed funeral planning. The bill provides that the requirement that a funeral service licensee accept a casket provided by a third party applies only in cases in which funeral arrangements are made at-need. This bill is identical to SB 1247.

HB 2116 Disposition of the remains of a decedent; right to control.

Chief patron: Sickles

Summary as introduced:

Disposition of the remains of a decedent; right to control. Establishes a priority order for the right to control the disposition of the remains of a decedent; the location, manner, and condition of disposition; and the arrangements for funeral goods and services to be provided, as well as circumstances that would forfeit this right. The bill establishes procedures for resolving disagreements among those who have the right to control and provides liability protections for licensed funeral establishments, funeral service licensees, registered crematories, or registered crematory operators that rely in good faith upon the instructions of an individual claiming the right of disposition.

02/05/19 House: Tabled in Health, Welfare and Institutions

HB 2445 Death certificates; medical certification, electronic filing.

Chief patron: Wilt

Summary as passed House:

Death certificates; medical certification; electronic filing. Requires the completed medical certification portion of a death certificate to be filed electronically with the State Registrar of Vital Records through the Electronic Death Registration System and provides that, except under certain circumstances, failure to file a medical certification of death electronically through the Electronic Death Registration System shall constitute grounds for disciplinary action by the Board of Medicine. The bill includes a delayed effective date of January 1, 2020, and a phased-in requirement for registration with the Electronic Death Registration System and electronic filing of medical certifications of death for various categories of health care providers. The bill directs the Department of Health to work with stakeholders to educate and encourage physicians, physician assistants, and nurse practitioners to timely register with and utilize the Electronic Death Registration System.

HB 2713 Death with Dignity Act; penalties.

Chief patron: Kory

Summary as introduced:

Death with Dignity Act; penalties. Allows an adult who has been determined by an attending

physician and consulting physician to be suffering from a terminal condition to request medication for the purpose of ending his life in a humane and dignified manner. The bill requires that a patient's request for medication to end his life be given orally on two occasions and in writing, signed by the patient and two witnesses, and that the patient be given an express opportunity to rescind his request. The bill requires that before a patient is prescribed medication to end his life, the attending physician must (i) confirm that the patient is making an informed decision; (ii) refer the patient to a capacity reviewer if the physician is uncertain as to whether the patient is making an informed decision; (iii) refer the patient to a consulting physician for confirmation or rejection of the attending physician's diagnosis; and (iv) inform the patient that he may rescind the request at any time. The bill provides that neither a patient's request for medication to end his life in a humane and dignified manner nor his act of ingesting such medication shall have any effect upon a life, health, or accident insurance policy or an annuity contract. The bill makes it a Class 2 felony (a) to willfully and deliberately alter, forge, conceal, or destroy a patient's request, or rescission of request, for medication to end his life with the intent and effect of causing the patient's death or (b) to coerce, intimidate, or exert undue influence on a patient to request medication for the purpose of ending his life or to destroy the patient's rescission of such request with the intent and effect of causing the patient's death. Finally, the bill grants immunity from civil or criminal liability and professional disciplinary action to any person who complies with the provisions of the bill and allows health care providers to refuse to participate in the provision of medication to a patient for the purpose of ending the patient's life.

02/05/19 House: Left in Courts of Justice

SB 1247 Sale of caskets; preneed arrangements for funeral services.

Chief patron: Reeves

Summary as passed Senate:

Funeral services; sale of caskets. Prohibits any person except a licensed funeral service establishment or funeral service licensee from offering for sale or selling a casket when preneed arrangements for funeral services are being made, including preneed funeral contracts and preneed funeral planning. The bill provides that the requirement that a funeral service licensee accept a casket provided by a third party applies only in cases in which funeral arrangements are made at-need. This bill is identical to HB 1828.

SB 1300 Funeral establishments; full time manager requirement, exception, number of calls.

Chief patron: Edwards

Summary as introduced:

Funeral establishments; full-time manager requirement; exception; number of calls.

Provides that the Board of Funeral Services may grant a hardship waiver from the requirement that each licensed funeral service establishment have a person licensed for the practice of funeral services or a licensed funeral director in charge, full time, allowing for the operation of two establishments by a single full-time funeral service licensee or funeral director if the combined average number of funeral calls at the two establishments over the previous three years is no more than 135 calls per year and the distance between the two establishments is 50 miles or less. Currently, the Board may grant the exception if the combined average number of annual calls at the two establishments is no more than 85 per year.

SB 1439 Death certificates; medical certification, electronic filing.

Chief patron: McClellan

Summary as passed:

Death certificates; medical certification; electronic filing. Requires the completed medical certification portion of a death certificate to be filed electronically with the State Registrar of Vital Records through the Electronic Death Registration System and provides that, except for under certain circumstances, failure to file a medical certification of death electronically through the Electronic Death Registration System shall constitute grounds for disciplinary action by the Board of Medicine. The bill includes a delayed effective date of January 1, 2020, and a phased-in requirement for registration with the Electronic Death Registration System and electronic filing of medical certifications of death for various categories of health care providers. The bill directs the Department of Health to work with stakeholders to educate and encourage physicians, physician assistants, and nurse practitioners to timely register with and utilize the Electronic Death Registration System.

Request for Comment on Petition for Rulemaking

Promulgating Board: **Board of Funeral Directors and Embalmers**

Regulatory Coordinator: Elaine J. Yeatts
(804)367-4688
elaine.yeatts@dhp.virginia.gov

Agency Contact: Corie Tillman Wolf
Executive Director
(804)367-4479
fanbd@dhp.virginia.gov

Contact Address: Department of Health Professions
9960 Mayland Drive
Suite 300
Richmond, VA 23233

Chapter Affected:
18 vac 65 - 20: Regulations of the Board of Funeral Directors and Embalmers

Statutory Authority: State: Chapter 28 of Title 54.1

Date Petition Received 01/18/2019

Petitioner Ross Miller

Petitioner's Request

For the Board to establish clear processes and guidance for the compelling disclosure of information when a Board investigation identifies potential class 1 misdemeanors

Agency Plan

The petition will be published on February 18, 2019 in the Register of Regulations and also posted on the Virginia Regulatory Townhall at www.townhall.virginia.gov to receive public comment ending March 20, 2019. Following receipt of all comments on the petition to amend regulations, the Board will decide whether to make any changes to the regulatory language. This matter will be on the Board's agenda for its first meeting after the comment period, which is scheduled for April 16, 2019.

Publication Date 02/18/2019 *(comment period will also begin on this date)*

Comment End Date 03/20/2019



COMMONWEALTH OF VIRGINIA

Board of Funeral Directors and Embalmers

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

(804) 367-4592 (Tel)
(804) 527-4471 (Fax)

Petition for Rule-making

The Code of Virginia (§ 2.2-4007) and the Public Participation Guidelines of this board require a person who wishes to petition the board to develop a new regulation or amend an existing regulation to provide certain information. Within 14 days of receiving a valid petition, the board will notify the petitioner and send a notice to the Register of Regulations identifying the petitioner, the nature of the request and the plan for responding to the petition. Following publication of the petition in the Register, a 21-day comment period will begin to allow written comment on the petition. Within 90 days after the comment period, the board will issue a written decision on the petition.

Please provide the information requested below. (Print or Type)

Petitioner's full name (Last, First, Middle Initial, Suffix,)

Miller, Ross, M.

Street Address
9605 Leeta Cornus Lane

Area Code and Telephone Number
703-794-7515

City
Nokesville

State Virginia	Zip Code 20181
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Email Address (optional)
Miller.Ross@DOL.Gov

Fax (optional)

Respond to the following questions:

1. What regulation are you petitioning the board to amend? Please state the title of the regulation and the section/sections you want the board to consider amending.

18VAC65-20-500. Disciplinary action.

2. Please summarize the substance of the change you are requesting and state the rationale or purpose for the new or amended rule.

Under the sections shown in answers to question 3, the Board establish clear processes and guidance for the compelling disclosure of information when the Board or a Board investigation identifies potential (multiple?) class I misdemeanors occurring within a 36 month period. Such referral is not limited by Board action. Currently it appears that the Board does not make referrals for prosecution because of the stringency of the language found elsewhere in § 54.1-2400.2. Instead it seems that the Board solely relies on Monetary and licensing restriction or suspension. The Board should consider adopting language similar to the language in Maryland Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE, Subtitle 29 BOARD OF MORTICIANS AND FUNERAL DIRECTORS, Chapter 14 Compelling Purpose Disclosure. Additional guidelines should be established for such action and published. It could be part of or separate from the sanctioning manual.

10.29.14.02 Disclosure for Compelling Public Purpose.

The custodian may find that a compelling public purpose warrants disclosure of information in a licensing or investigative file, regardless of whether there has been a request for the information, and may disclose the information under the following circumstances:

- A. The information concerns possible criminal activity, and is disclosed to a federal, state, or local law enforcement or prosecutorial official or authority;
- B. The information concerns a possible violation of law, and is disclosed to a federal, state, or local authority that has jurisdiction over the individual whose conduct may be a violation, and the information disclosed is limited to information relevant to the possible violation by that individual; or
- C. The information concerns conduct by an individual which the Board reasonably believes may pose a risk to the public health, safety, or welfare, and is disclosed to a law enforcement authority, administrative official or agency that regulates the individual, or to a hospital or other health care facility where the individual has privileges.

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Ross M. Miller 4/16/2019

3. State the legal authority of the board to take the action requested. In general, the legal authority for the adoption of regulations by the board is found in § 54.1-2400 of the Code of Virginia. If there is other legal authority for promulgation of a regulation, please provide that Code reference.

<https://law.lis.virginia.gov/vacode/title54.1/chapter1/section54.1-111/>

Code of Virginia, Title 54.1. Professions and Occupations, Chapter 1. General Provisions

Any person who willfully engages in any unlawful act enumerated in this section shall be guilty of a Class 1 misdemeanor. The third or any subsequent conviction for violating this section during a 36-month period shall constitute a Class 6 felony. In addition, any person convicted of any unlawful act enumerated in subdivision 1 through 8 of this subsection, for conduct that is within the purview of any regulatory board within the Department of Professional and Occupational Regulation, may be ordered by the court to pay restitution in accordance with §§ 19.2-305 through 19.2-305.4.

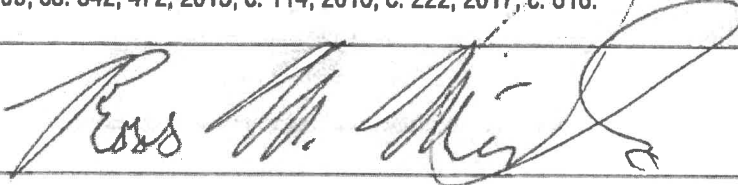
§ 54.1-2809. Penalties.

Any person, partnership, corporation, association, or its agents or employees who violate any of the provisions of this chapter shall be guilty of a Class 1 misdemeanor. (Code 1950, § 54-260.61; 1956, c. 220; 1972, c. 797, § 54-260.75; 1988, c. 765.)

§ 54.1-2400.2. Confidentiality of information obtained during an investigation or disciplinary proceeding; penalty.

...
D. This section shall not prohibit the Director of the Department of Health Professions, after consultation with the relevant health regulatory board president or his designee, from disclosing to the Attorney General, or the appropriate attorney for the Commonwealth, investigatory information which indicates a possible violation of any provision of criminal law, including the laws relating to the manufacture, distribution, dispensing, prescribing or administration of drugs, other than drugs classified as Schedule VI drugs and devices, by any individual regulated by any health regulatory board. 1997, c. 698; 1998, c. 744; 1999, c. 888; 2003, cc. 753, 762; 2004, c. 49; 2006, cc. 155, 184; 2007, c. 395; 2009, cc. 342, 472; 2015, c. 114; 2016, c. 222; 2017, c. 616.

Signature:



Date: 01/16/2019

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Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 29 BOARD OF MORTICIANS AND FUNERAL DIRECTORS

Chapter 14 Compelling Purpose Disclosure

**Authority: Health Occupations Article, §7-205; State Government Article, §10-617(h)(3);
Annotated Code of Maryland**

10.29.14.01

.01 Scope.

A. This chapter permits the Board to disclose investigative information to other agencies, or other entities, or both, under certain circumstances.

B. A custodian may disclose information in a licensing or investigative file if the custodian determines that a compelling public purpose exists to warrant disclosure.

10.29.14.02

.02 Disclosure for Compelling Public Purpose.

The custodian may find that a compelling public purpose warrants disclosure of information in a licensing or investigative file, regardless of whether there has been a request for the information, and may disclose the information under the following circumstances:

A. The information concerns possible criminal activity, and is disclosed to a federal, state, or local law enforcement or prosecutorial official or authority;

B. The information concerns a possible violation of law, and is disclosed to a federal, state, or local authority that has jurisdiction over the individual whose conduct may be a violation, and the information disclosed is limited to information relevant to the possible violation by that individual; or

C. The information concerns conduct by an individual which the Board reasonably believes may pose a risk to the public health, safety, or welfare, and is disclosed to a law enforcement authority, administrative official or agency that regulates the individual, or to a hospital or other health care facility where the individual has privileges.

10.29.14.03

.03 Other Disclosures.

This chapter does not prevent or limit the ability of the Board to disclose general licensing information as provided in State Government Article, §10-617(h), Annotated Code of Maryland, or any information which the Board may otherwise disclose by law.

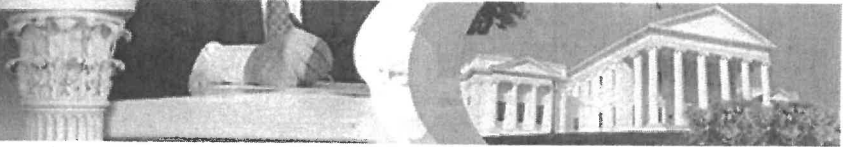
10.29.14.9999

Administrative History

Effective date: April 15, 2002 (29:7 Md. R. 621)



VIRGINIA
REGULATORY TOWN HALL



Agency

Department of Health Professions

Board

Board of Funeral Directors and Embalmers

Chapter

Regulations of the Board of Funeral Directors and Embalmers [18 VAC 65 - 20][Back to List of Comments](#)

Commenter: Ross Miller

3/15/19 12:48 pm

Request for Guidelines to release Funeral Board Findings of multiple class 1 Misdemeanor vilations

Specifically, it appears that law provides a Board finding involving certain illegal activities which requires licensing action does not satisfy the penalty for a criminal act:

§ 18.2-7. Criminal act not to merge civil remedy.

The commission of a crime shall not stay or merge any civil remedy.

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. 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 transportation 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 transportation 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, guardian, or designated representative, but not to a location or facility chosen by the surface transportation and removal service. Further, the surface transportation and removal service may not store dead human bodies or arrange for storage of dead human bodies at locations or facilities not otherwise designated by the governmental entity, court order, decedent's next of kin, guardian, 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.

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.