

APPROVED
VIRGINIA BOARD OF FUNERAL DIRECTORS AND EMBALMERS
MEETING MINUTES

The Virginia Board of Funeral Directors and Embalmers convened for a board meeting on Tuesday, March 4, 2008 at the Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 200, 2nd Floor, Conference Room #1, Richmond, Virginia.

The following Board members were present:

Willard D. Tharp
Billie Watson Hughes
Randolph T. Minter
Robert B. Burger, Jr.
Michael Leonard
Blair Nelsen

The following members were absent:

Walter S. Ball
Rev. Yvonne Jones Bibbs
Barry Murphy

DHP staff present for all or part of the meeting included:

Lisa R. Hahn, Executive Director
Sandra Whitley Ryals, Director
Emily Wingfield, Deputy Director
Elaine Yeatts, Senior Policy Analyst
Annie B. Artis, Licensure Operations Manager
Rashaun Minor, Discipline Operations Manager

Representative from the Office of the Attorney General was present for the meeting:

Amy Marschean, Senior Assistant Attorney General

Quorum:

With six members present, a quorum was established.

Guests present:

Samantha Pinner, VFDA
Bo Kenney, IFHV
David Partridge, RSS, Inc.

CALLED TO ORDER

Mr. Tharp, President, called the Board meeting to order at 9:15 a.m.

ORDERING OF AGENDA

Ms. Ryals, Agency Director, was added to the agenda following public comment.

PUBLIC COMMENT PERIOD

There was no public comment.

AGENCY DIRECTOR'S REPORT

Ms. Ryals greeted the board and introduced Ms. Hahn. She stated that Ms. Hahn came back to the Department of Health Professions in October, 2006 and is also serves as the Executive Director for the Boards of Audiology and Speech-Language Pathology, Long-Term Care Administrators and Physical Therapy. Ms. Ryals welcomed Ms. Artis back to the funeral board and introduced Ms. Minor. She introduced Ms. Wingfield and Ms. Marschean as the board's new counsel from the Attorney General's office. Ms. Ryals thanked Dr. Elizabeth Carter, Executive Director of the Boards of Health Professions and Optometry for stepping in after Ms. Young resigned. She stated she appreciated Ms. Young's service to the board and thanked all staff that assisted during the time of transition. Ms. Ryals also thanked Mr. Tharp for the assistance that he and the board provided.

Ms. Ryals informed the board of the budget status. She stated that even though the Department of Health Professions is a non-general fund agency and the cuts do not involve tax dollars; this does not exempt our agency from restrictions in spending. Ms. Ryals state the restrictions will be felt mostly in the area of travel; however, in-state non-discretionary travel will not be affected; only out-of-state. Therefore, attending conferences that involve out-of-state travel will probably be denied. She further stated that all vacant positions must be approved by the Secretary before they can be filled.

Ms. Ryals commended Ms. Hahn for taking on additional responsibilities, especially in overseeing the compliance study. She stated Ms. Hahn's expertise, stemming from her criminal justice background, led to a thorough and expeditious analysis of the compliance division and has resulted in a successful re-deployment.

Ms. Wingfield formally introduced Ms. Marschean, Senior Assistant Attorney General to the board. She stated Ms. Marschean also has served as counsel for legislative services and has assisted in drafting much of the legislation that has been put into place within our agency. Ms. Wingfield stated she comes to the funeral board with a wealth of experience.

Mr. Tharp thanked Ms. Ryals for being in immediate contact, notifying him of the changes, as well as Dr. Carter and Ms. Yeatts. He thanked Ms. Hahn for being highly motivated and engaged. Mr. Tharp said Ms. Hahn has taken a strong position; no steps back and as a result, tangible improvements have been made.

APPROVAL OF MINUTES

Upon a motion by Mr. Burger and seconded by Mr. Minter the Board voted to accept the minutes of the December 4, 2007 Formal Administrative Hearing; the December 11, 2007 Special Conference Committee meeting; the January 2, 2008 Special Conference Committee meeting and the December 4, 2007 Board meeting with amendments.

The members voting 'yes' were Mr. Burger, Ms. Hughes, Mr. Leonard, Mr. Minter, Mr. Nelsen and Mr. Tharp. There were no negative votes.

The motion passed unanimously.

EXECUTIVE DIRECTOR'S REPORT

Ms. Hahn told the board she was pleased to be with the Board of Funeral Directors and Embalmers.

Licensee Statistics

Ms. Hahn stated there are currently 11 branch establishments; 22 continuing education providers; 99 courtesy card holders; 75 crematories; 6 embalmers; 107 funeral directors; 487 establishments; 1,476 funeral service providers; 183 interns; 39 transportation and removal services; for a total of 2,505.

Discipline Statistics

Ms. Hahn stated there are currently 41 disciplinary open cases; 27 are at the investigative stage; 8 are at probable cause and 5 are at the informal level. There is also one case at the formal level that is scheduled for today; however, it has been postponed to June 3, 2008. She stated the standard for have cases completed is 60 days. Ms. Hahn stated that from July 1 through December 31, 2007 cases were being resolved in 134 days which is far above the 60-day standard.

Virginia Performs

Ms. Hahn reported for the quarter ending in December, 2007, that the board met and exceeded the agency's goal with 100% rating for issuing licenses in less than 30 days. Only 33% of patient care cases were closed within 250 days. No surveys were returned for this quarter; therefore, the department could not measure the customer satisfaction rating.

Budget

Revenue and Expenditures

Ms. Hahn reported that the cash balance as of June 30, 2007 was \$4,024 and the total revenues were \$221,598. The direct and allocated expenditures were \$357,283 and the ending cash balance at the close of January 31, 2008 was at a deficit of \$131,662. Ms. Hahn informed the board that she is currently working with finance in regard to the budget. She stated there is a possibility that the licensing fees may have to be increased. Ms. Hahn also stated that the Board may wish to consider holding one less meeting per year in order to reduce expenditures as long as the agenda is light.

Mr. Tharp stated that the law requires fees to increase if expenditures are 10% below the budget and it requires fees to decrease if the expenditures are in excess of 10%. Mr. Burger suggested that the board notify the associations that the increase in fees is required by law.

Ms. Ryals commended the board for taking proactive measures to address the budget.

2008 Calendar

Ms. Hahn stated the next board meeting is scheduled for June 3, 2008. She stated having a total of four boards, she had to change the dates for some meetings; however, due to the recent changes with this board; she made adjustments to other board schedules and was able to maintain the same calendar for Funeral Board.

Miscellaneous Board Business

Office Organization

Ms. Hahn stated there will possibly be a summary suspension conference that will need to be held this week or early next week. Mr. Nelsen stated he will be on vacation next week; however, he could be reached by cell phone. Mr. Burger indicated that he is not available the remainder of this week. Ms. Hahn informed the board that the summary suspension will probably have to be done via telephone.

Ms. Hahn informed the board that Ms. Artis is the Licensing Operations Manager and she supervises and manages all aspects of licensure. She stated Ms. Clanton, Ms. Hunter and

Ms. Christian all report to Ms. Artis. Ms. Hahn reported that Ms. Minor is the Discipline Operations Manager and she supervises and manages all aspects of discipline. She stated Ms. Horner and Ms. Meade report to Ms. Minor. She informed the board that Ms. Hunter, who was a temporary employee was very instrumental in all aspects of the funeral board and handled licensure and discipline. She stated that Ms. Hunter has recently been hired as a P-14 and is to be commended for her hard work and dedication to the funeral board. Ms. Hahn stated the licensing staff is top notch and dedicated to the delivery of excellent customer service. Ms. Hahn reported that Ms. Minor is the discipline Operations Manager and she supervises and manages all aspects of discipline. She stated Ms. Horner and Ms. Meade report to Ms. Minor. Ms. Hahn further stated that Ms. Artis and Ms. Minor were two of the best employees the Department of Health Professions has ever had and she and the board applauded them for their effort and hard work.

Ms. Hahn stated that the phone number for the Board of Funeral Directors and Embalmers is (804) 367-4699; all of the other numbers are no longer associated with funeral. Ms. Hahn also informed the board that if applicants take the funeral jurisprudence exam and would like to see if they have been issued a license; they may contact the automated verification number, (804) 270-6836, enter their social security number and if a license was issued, the automated system will provide the new licensure information to them.

Funeral Conferences – Ms. Hughes

Ms. Hughes reported that she attended the Federation of Association of Regulatory Boards meeting which was held in Santa Fe, New Mexico. She stated the main issues discussed were the budget and disciplinary issues. Ms. Hughes further stated that she attended the International Conference in San Antonio, Texas on February 28-29, 2008. She stated she presented a session on the Sanction Reference Study that went exceptionally well. Ms. Hughes has received inquiries on additional speaking engagements. Ms. Hughes stated the 105th International Conference will be held in Williamsburg, VA on February 26-27, 2009. She stated during the conference the board performs exam writing; they reviewed 1,200 items and wrote approximately 60 new items. Ms. Hughes stated she has completed her first term as the District II Representative and was recently re-elected for three more years. She invited board members to attend the 2009 conference.

Pre-Need Issues – Mr. Tharp

Mr. Tharp stated that the funeral industry is faced with a tremendous amount of pre-need fraud. He stated he would like to see the board put something in place, whether it is a recovery fund or some other mechanism to protect the consumers. Mr. Tharp reviewed one recent investigation that had approximately 55 individual cases of pre-need

fraud totaling \$144,000. Mr. Nelsen recommended that the commonwealth's attorney become involved and have the perpetrators prosecuted and incarcerated. Mr. Minter reiterated Mr. Tharp's suggestion to have a recovery fund. Mr. Tharp recommended that the inspectors attend the next board meeting to have a procedure be put in place to take a random sampling of pre-need funds. Ms. Hahn suggested that once the random sampling was pulled, have the information verified by the funding source. It was agreed that implementing these procedures would help protect the public and help the board to be more proactive. Ms. Hahn stated that the Enforcement Division holds an annual investigators training and suggested that perhaps we offer a separate pre-need training session to offer their knowledge and expertise as to what inspectors/investigators should review.

Break

The board recessed for a break at 10:29 a.m.

Reconvene

The board reconvened at 10:44 a.m.

UNFINISHED BUSINESS

Guidance Document

Guidance Document 65-11 – Inspection Guidance Document

Ms. Yeatts gave a brief overview regarding Guidance Document 65-11 and also reviewed the Task Force Meeting minutes of the October 16, 2007 board meeting.

18VAC 65-20-540(A)- Preparation room requirements.

Guidance: For every licensed funeral establishment, there must be an operable preparation room at either the main establishment or at a branch establishment. Even if a preparation room at the main establishment is not used, it shall be inspected and contain requirements and must be operable.

Upon a motion by Mr. Minter and seconded by Ms. Hughes the board voted to amend guidance under 18VAC 65-20-540(A).

The members voting 'yes' were Mr. Burger, Ms. Hughes, Mr. Leonard, Mr. Minter, Mr. Nelsen and Mr. Tharp. There were no negative votes.

The motion passed unanimously.

18VAC 65-20-590 – Disposal of waste materials

Guidance: The funeral service establishment shall provide evidence of contractual agreement with or services provided by a licensed medical waste disposal provider by a hospital that accepts medical waste. Evidence may include a letter of agreement, a contract or a recent billing for the service.

Upon a motion by Mr. Burger and seconded by Mr. Minter the board voted to amend guidance under 18VAC 65-20-590.

The members voting 'yes' were Mr. Burger, Ms. Hughes, Mr. Leonard, Mr. Minter, Mr. Nelsen and Mr. Tharp. There were no negative votes.

The motion passed unanimously.

18VAC 65-20-700(1) – Retention of documents

Guidance: All funeral service establishments shall maintain a General Price List and Itemized Statement. The Board may accept electronic copies of forms that are no longer current.

Upon a motion by Mr. Nelsen and seconded by Mr. Minter the board voted to amend guidance under 18VAC 65-20-700(2).

The members voting 'yes' were Mr. Burger, Ms. Hughes, Mr. Leonard, Mr. Minter, Mr. Nelsen and Mr. Tharp. There were no negative votes.

The motion passed unanimously.

Ms. Yeatts suggested that Guidance Document 65-11 be placed on the agenda for adoption at the June 3, 2008 meeting.

NEW BUSINESS

Update Regarding Funeral Jurisprudence Examination

Ms. Hahn reported that in reviewing the results of recent funeral jurisprudence exams, 4 applicants failed within 2 points. She stated when the results are that close to passing, she requests that PCS rescore the exams. Ms. Hahn stated it was found that PCS did not have the most recent regulations; therefore, one question has been removed from the exam. Ms. Hahn stated that all of the current regulations have been forwarded to PCS to compare the reference material to the item bank. Ms. Hahn asked that Ms. Hughes be a part of the review process, if indicated, because her expertise is very valuable. Ms. Hahn gave a brief overview of the pass/fail statistics over the past two years. Mr. Tharp

informed the board that there are 300 questions in the bank and 50 questions on the exam. He stated that he would like to keep the state exam in place as requirement for licensure bank and 50 questions on the exam. He stated that he would like to keep the state exam in place as a requirement for licensure in the state of Virginia. Mr. Leonard stated he felt Virginia colleges should incorporate the regulations and laws as part of their review in their funeral service classes.

Legislative & Regulatory Update

Ms. Yeatts gave an overview of the bills that were currently in the 2008 session of the General Assembly.

HB 1484

Ms. Yeatts requested that the board members make comments and offer suggestions on HB 1484 Funeral and burials; designation of persons authorized to make decisions. Ms. Yeatts asked that they submit their comments and suggestions to Ms. Hahn by e-mail. She also asked that HB 1484 be placed on the agenda for the June 3, 2008 meeting.

HB 1521

Ms. Yeatts stated that the associations did not oppose HB 1521 Embalmers and Funeral Directors; continuing education. Mr. Nelsen expressed opposition to the bill. Mr. Minter stated he was very disappointed that the associations did not take a stronger position and that they did not consider the board's position in regard to continuing education. Ms. Ryals stated that the board could articulate their position to the Governor.

Upon an amended motion by Ms. Hughes and seconded by Mr. Nelsen the board voted to request that the Governor include a second re-enactment clause that will not go into effect until 2009.

The members voting 'yes' were Mr. Burger, Ms. Hughes, Mr. Leonard, Mr. Minter, Mr. Nelsen and Mr. Tharp. There were no negative votes.

The motion passed unanimously.

SB 218 – Health Professions, Department of; investigative procedures

Ms. Yeatts stated this bill reinforces the ability of the inspectors and investigators to request funding information from funeral establishments.

SB 692 – Insurance agents; revises definition of limited burial insurance authorities

Ms. Yeatts stated that the cremation regulations are currently in the Department of Planning and Budget. She stated she has requested information from ICCFA; however,

she has not had any communication. Mr. Nelsen stated he is the President of ICCFA and will have someone contact Ms. Yeatts today. Ms. Yeatts suggested that SB 692 be placed on the agenda for the June 3, 2008 meeting.

Update on Kip Jordan's case regarding cremated remains

Mr. Tharp stated that the Department of Health Professions initially housed 77 sets of cremated remains. He stated Ms. Hunter sent out letters to the families and only two letters were returned. Ms. Tharp stated he believes the board and staff have gone beyond due diligence and would like to have closure in this matter. Ms. Wingfield suggested that a second letter be sent out to families stating that if the cremated remains are not claimed by March 31, 2008; they will be catalogued and buried.

ADJOURNMENT

There being no further business before the Board, the meeting adjourned at 12:15 p.m.

Willard D. Tharp, FSL, Chair

Lisa R. Hahn, Executive Director

DATE

DATE