

APPROVED
VIRGINIA BOARD OF FUNERAL DIRECTORS AND EMBALMERS
BOARD MEETING MINUTES

The Virginia Board of Funeral Directors and Embalmers convened for a board meeting on Tuesday, January 10, 2017 at the Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2nd Floor, Board Room 2, Henrico, Virginia.

BOARD MEMBERS PRESENT

Louis R. Jones, FSL, President
Larry T. Omph, FSL, Vice-President
Connie B. Steele, FSL
R. Thomas Slusser, Jr., FSL
Blair Nelsen, FSL
Frank Walton, FSL
Junius H. Williams, Jr., Citizen Member
Ibrahim A. Moiz, Esq., Citizen Member

BOARD MEMBER ABSENT

Mia F. Mimms, FSL

DIHP STAFF PRESENT

Corie Tillman Wolf, Executive Director
Lynne Helmick, Deputy Executive Director, Discipline
Missy Currier, Deputy Executive Director, Licensing
Elaine Yeatts, Senior Policy Analyst
Lisa R. Hahn, Chief Deputy

BOARD COUNSEL

Erin Barrett, Assistant Attorney General

QUORUM

With 8 members present a quorum was established.

GUESTS PRESENT

Barry D. Robinson, VMA
Laura McHale, IFHV
Abbey Shepperson, VFDA

CALL TO ORDER

Louis Jones, President called the meeting of the Virginia Board of Funeral Directors and Embalmers to order at 11:02 a.m.

Mr. Jones stated the following before the first order of business:

- 1) Laptops were provided to the board members for the purpose of the meeting only and have no connection to the internet. The material that they are able to review on the computer is the same material that has been made available to the public.
- 2) He reminded the members to speak directly into the microphones.
- 3) Guests please make sure that you have signed in at the front door.

Ms. Tillman Wolf then read the Emergency Egress Procedures.

SPECIAL RECOGNITION

On behalf of the Board of Funeral Directors and Embalmers, Louis Jones, President gave special recognition to Lisa R. Hahn for all of her hard work and dedication while Executive Director for the Board. Connie Steele gave special thanks to Ms. Hahn for providing her with exceptional training guidance when she joined the board.

Everyone in attendance clapped in appreciation and thanks to Ms. Hahn.

ORDERING OF AGENDA

Upon a motion by Blair Nelsen and properly seconded by Junius Williams, Jr., the agenda was accepted as presented. The motion carried unanimously.

ACCEPTANCE OF MINUTES

Upon a motion by Connie Steele, and properly seconded by Frank Walton, the board voted to accept the following Meeting Minutes:

- Board Meeting – October 18, 2016
- Legislative/Regulatory Committee Meeting – December 8, 2016

The motion passed unanimously.

PUBLIC COMMENT PERIOD

Barry Robinson provided the following comment on behalf of the Virginia Morticians Association, Inc., Legislative Committee:

Guidance Document 65-8 (Permission to Embalm) – please note the date/person given verbal authorization may be different from the date/person giving written permission. We feel that a separate clearly stated paragraph would meet this requirement and a separate document is not needed.

Guidance Document 65-12 (Confidential Consent Agreements CCA) – VMA has no concerns at this time with updating the CCA as minor infractions should be treated as minor.

Guidance Document 65-18 (Refrigeration of Dead Human Bodies) – VMA has chosen to defer its official comment on the matter of defining refrigeration until further investigation and research has been conducted and the results published.

Mr. Robinson thanked Ms. Hahn for her years of dedicated service as well as the staff for keeping the VMA informed of Board business.

Mr. Robinson concluded that the VMA requests the Board to take into consideration the small family owned firms when setting regulations and policies. Many of these funeral homes will not have the additional free space for major remodeling nor have a team relationship with their competitor in their area.

AGENCY DIRECTOR'S REPORT – Lisa R. Hahn, Chief Deputy

Ms. Hahn provided the following Agency updates:

- The feedback received from the Board Member Training held in October was very positive. The training included topics on FOIA, Investigative Procedures & Experiences, the agency and its responsibilities, and the legislative/regulatory process.
- She explained some confusion over FOIA meeting requirements.
- She reviewed the legislative bills that the agency is handling during the session.

EXECUTIVE DIRECTOR'S REPORT – Corie Tillman Wolf, JD

Ms. Tillman Wolf began her report with the Expenditure and Revenue Summary.

FY17 Budget

• Cash Balance as of June 30, 2016	\$ 242,995
• YTD FY17 Revenue	31,495
• Less direct & In-Direct expenditures	<u>236,737</u>
• Cash Balance on November 30, 2016	\$ 37,754

Board Business

Virginia Board Examination

Ms. Tillman Wolf provided the following update on the State Licensing Exam (Laws, Rules & Regulations):

- The RFP was awarded to The International Conference of Funeral Service Examining Boards, which will administer the Board-developed exam through PearsonVue
- New Examination services became effective January 1, 2017
 - Registration can begin as of January 1st

- Exam will be available after January 15th
- Increase in exam fee from \$150 to \$160
- Process for determining eligibility for candidates to test remains the same.

The International Conference –Updates

The International Conference of Funeral Service Examining Boards Annual Meeting is scheduled for March 1-2, 2017 in Hilton Head, South Carolina. Nominations for the Board of Directors, District 2 which includes Delaware, Maryland, New Jersey, Pennsylvania, Virginia, West Virginia and Washington, DC are due by January 15th. Blair Nelsen has submitted his nomination for this position.

Board Staff submitted comments on the updated Model Policy on December 1st.

Plans for 2017

Staff administrative projects for 2017 include:

- Development of an online application process for initial applications
- Development of electronic inspection forms for inspectors
- Review and/or update of Guidance Documents, as necessary
- Conduct of the annual CE Audit, and
- Website updates.

Staff Notes

- Conflict of Interest – electronic filing is due January 17, 2017.
- If you have a change of address, e-mail address, cell phone number, please remember to contact us so that we have the most current information.
- Please try to respond to email requests within a timely manner especially when the email requests a reply for availability or a response to a licensure or disciplinary question.
- Never “Reply All.”
- Thank you for all your hard work & dedication!

LICENSURE REPORT – Missy Currier, Deputy Executive Director

Ms. Currier began her report by providing the licensure statistics from January 1, 2016 through December 31, 2016.

	Jan. 2017	Jan. 2016	Change
FSL's	1,547	1,547	0
Funeral Director	43	47	-4
Embalmer Only	2	3	-1

Supervisors	495	465	+30
Interns	197	210	-13
Establishments	438	438	0
Branch Establishments	71	68	+3
Crematories	111	107	+4
CE Providers	18	23	-5
Courtesy Card Holders	88	79	+9
Surface Transport & Removal Svc.	48	47	+1
Total	3,058	3,034	+24

Fees Processed (January 1 – December 31, 2016)

Applications	622
Renewals	2,334
Total Fees	2,956

We issued 182 licenses (all types).

Current Projects

Staff updated the board's webpage information by arranging topics in order of relevance. Ms. Currier asked Board members to please let Board staff know if you have any information that should be posted on our website.

Staff is also collaborating with the IT Department in order to initiate online applications and we hope to implement during 2017. One big advantage for applicants will be having the option to pay by credit card rather than mailing a check.

Renewals

Renewal notices will be mailed out the end of January or first part of February.

Customer Satisfaction

Ms. Currier reported that the Board had not received an updated survey since the last meeting but reminded the members that the results from the first quarter of FY17 were 100%. Ms. Currier added that Vicki Saxby, Heather Wright and Laura Mueller always take the extra step to ensure that our licensee questions are answered with professionalism.

Discipline Report – Lynne Helmick, Deputy Executive Director

Ms. Helmick reviewed the following statistics and Key Performance Measure slides with the board:

October 13, 2016

- 39 total open cases**
- 13 - Investigations
- 18 - Probable Cause
- 8 - Administrative Proceedings Division (APD)
- 10 - Orders are being monitored for Compliance

January 5, 2017

- 38 total open cases**
- 21 – Investigations
- 8 – Probable Cause
- 4 - APD
- 2 – Informal Conference
- 3 – Office of Attorney General
- 11 – Monitored for Compliance

All Case Information (Patient and Non-Patient Care)

Percent of all cases closed in 250 days

	<u>Q1-2016</u>	<u>Q2-2016</u>	<u>Q3-2016</u>	<u>Q4-2016</u>	<u>Q1-2017</u>
Funeral	88.2%	88.2%	100%	81.0%	80.0%
Agency	84.4%	85.8%	84.8%	85.6%	82.0%

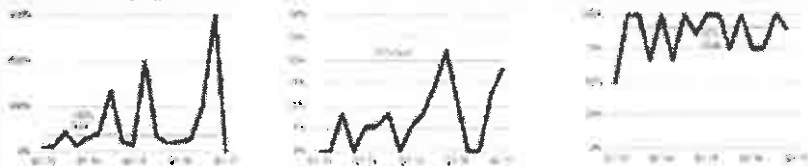
Average days to close a case

Funeral	181.3	190.7	134.3	240.6	193.9
Agency	200.1	190.8	201.6	188.5	202.7

VIRGINIA PERFORMS

Q1 2017

- Clearance Rate – 0% We received 3 cases but did not close any patient care cases. (Remember last quarter we were at 900%!)
- Pending Caseload over 250 days at 18% is under the 20% goal which is good!
- Cases closed within 250 days is N/A since we did not close any patient care cases.



TOTAL CASES RECEIVED AND CLOSED

Cases received/closed

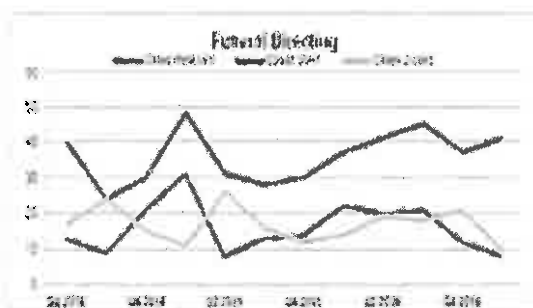
Q1 2016 12/14

Q2 2016 20/19

Q3 2016 21/18

Q4 2016 12/21

Q1 2017 8/10



Case Categories (cases in which disciplinary action was taken)

FY2016

O1 & O2 FY2017

10 Cases Total

3 Cases Total

- | | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none">• 1 Correction to inspection deficiencies• 1 Preneed• 1 Timely filing of death certificate• 2 Unlicensed activity• 1 Failure to have records available• 1 Substance Abuse• 3 Fraud/Misrepresentation | <ul style="list-style-type: none">• 1 FSL made arrangements with unauthorized person• 1 No permission for embalming• 1 Fraud/Misrepresentation |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Board Counsel Report – Erin Barrett, Assistant Attorney General

Ms. Barrett provided an update regarding a current case against the Board.

Legislative/Regulatory Committee Report – Larry T. Omms, Committee Chair

Mr. Omms reported that the Committee met on December 8th to draft guidance documents for express permission for embalming, the definition of refrigeration and what determines the time of receipt of a body, and make revisions to the Confidential Consent Agreement guidance document. Mr. Omms concluded that Ms. Yeatts would provide more details in her report.

NEW BUSINESS

Regulatory/Legislative Update – Elaine Yeatts

Ms. Yeatts stated that she was unaware of any Legislative Bills that were directly related to the Board of Funeral Directors and Embalmers.

Ms. Yeatts did state that DIHP is requesting a technical amendment for regulation to the term “licensure” that would encompass other terms such as registration and permits.

Guidance Document 65-12 Confidential Consent Orders (Attachment A)

Ms. Yeatts explained that Guidance Document 65-12 regarding Confidential Consent Orders needed updating and appropriate revisions. Following discussion and review of the draft verbiage in GD 65-12, a motion was made by Larry Omms and properly seconded by Blair Nelsen to accept the draft language as presented by the Regulatory/Legislative Committee and to re-adopt Guidance Document 65-12. The motion carried unanimously.

Guidance Document 65-18 Refrigeration of Dead Human Bodies (Attachment B)

Ms. Yeatts explained that the Staff and Committee members drafted language for a new guidance document that would provide the Boards interpretation of what is and what is not suitable refrigeration for storing a dead human body within 48 hours of taking possession.

Upon a motion by Blair Nelsen and properly seconded by Connie Steele, the board accepted the draft language as written and to adopt Guidance Document 65-18. The motion carried unanimously.

Immediately following acceptance of Guidance Document 65-18, a motion was made by Blair Nelsen and properly seconded by Tommy Slusser to pursue rulemaking in order to incorporate GD 65-18 into regulation. The motion carried unanimously.

Guidance Document 65-8 Permission to Embalm (Attachment C)

Ms. Yeatts explained the genesis for the recommendation by the Legislative/Regulatory Committee to adopt guidance on "express" permission to embalm. Following much discussion, the Board made a few changes to the draft verbiage. Upon a motion by Blair Nelsen and properly seconded by Connie Steele, the board accepted the draft language as amended and to adopt Guidance Document 65-8. The motion carried unanimously.

Immediately following acceptance of Guidance Document 65-8, a motion was made by Blair Nelsen and properly seconded by Tommy Slusser to pursue rulemaking in order to incorporate GD 65-8 into regulation. The motion carried unanimously.

Closing Comments

Ms. Tillman Wolf reported that the last state examination review was conducted in 2014 and therefore it was time again for the Examination Committee to undertake the task of reviewing the current questions and writing additional ones. Ms. Tillman Wolf stated that she would contact the Committee during the next few months to schedule a meeting.

Ms. Hahn shared very sad news that she had just learned of the passing of Barry Michael Murphy, past Board Member, who had served two terms on the Board. Ms. Hahn added that Mr. Murphy served as an integral member of the Board and was always pleasant to work with. He will be greatly missed by all.

ADJOURNMENT:

With no further business the meeting was adjourned at 12:30 p.m.



Louis R. Jones, President



Corie Tillman Wolf, Executive Director

4/19/17

Date

4/19/17

Date

Attachment A

Board of Funeral Directors and Embalmers

Guidance Document 65-12 - CONFIDENTIAL CONSENT AGREEMENTS

Legislation enacted in 2003 authorizes the health regulatory boards to resolve certain allegations of practitioner misconduct by means of a *Confidential Consent Agreement ("CCA")*. This agreement may be used by a board in lieu of public discipline, but only in cases involving minor misconduct and non-practice related infractions, where there is little or no injury to a patient or the public, and little likelihood of repetition by the practitioner.

A CCA shall not be used if the board determines there is probable cause to believe the practitioner has (i) demonstrated gross negligence or intentional misconduct in the care of patients, or (ii) conducted his/her practice in such a manner as to be a danger to the health and welfare of patients or the public.

A CCA shall be considered neither a notice nor an order of a health regulatory board, both of which are public documents. The acceptance and content of a CCA shall not be disclosed by either the board or the practitioner who is the subject of the agreement.

A CCA may be offered and accepted any time prior to the issuance of a notice of informal conference by the board. By law, the agreement document must include findings of fact and may include an admission or a finding of a violation. The entry of a CCA in the past may be considered by board in future disciplinary proceedings. A practitioner may only enter into only two confidential consent agreements involving a standard of care violation within a 10-year period. The practitioner shall receive public discipline for any subsequent violation within the 10-year period, unless the board finds there are sufficient facts and circumstances to rebut the presumption that such further disciplinary action should be made public.

Violations of regulation or statute that may qualify for resolution by a Confidential Consent Agreement include, but are not limited to:

- Failure to notify the Board of change of manager within 14 days of change (18VAC65-20-60).
- Failure to obtain required continuing education credit hours within the renewal period without a Board-approved exemption or extension, except in instances where a licensee is found to have untruthfully reported compliance.
- Failure to properly maintain preneed documents.
- Failure to provide Q&A disclosures to buyer as part of preneed contract.
- Failure of intern to notify Board of change of supervisor and/or training site.
- Failure to post licenses as required by 18VAC65-20-50.
- Inadvertent breach of confidentiality.

Attachment B

Virginia Board of Funeral Directors and Embalmers

Guidance Document 65-18 - Refrigeration of Dead Human Bodies

Virginia Code §54.1-2811.1 (B) states, "if a dead human body is to be stored for more than 48 hours prior to disposition, a funeral services establishment having custody of such body shall ensure that the dead human body is maintained in refrigeration at no more than approximately 40 degrees Fahrenheit or embalmed."

The Board of Funeral Directors and Embalmers interprets this provision as meaning that if a body is to be in the possession of the funeral home or crematory for more than 48 hours from the time the funeral establishment or crematory takes physical possession of the body until embalming, cremation, or burial, the body is to be placed in a mechanical refrigeration unit suitable for storing human remains. The Board does not interpret lowering the air conditioning in a storage room to 40 degrees or packing the body in ice or dry ice as meeting the statutory requirement.

The Board would view evidence of compliance with Virginia Code §54.1-2811.1 (B) as a working refrigeration unit in the funeral home or crematory or a letter of agreement/contract with another funeral establishment, hospital, or morgue to allow the funeral home or crematory to refrigerate in its refrigeration unit. The Board would view evidence of the body being "maintained in refrigeration" as log entries indicating times of placement and removal of a body in refrigeration.

Attachment C

Virginia Board of Funeral Directors and Embalmers

Guidance Document 65-8 - Permission to Embalm

Virginia Code §54.1-2806 (26) and §54.1-2811.1 (B) state that a dead human body "shall not be embalmed in the absence of express permission by a next of kin of the deceased or a court order."

The Board of Funeral Directors and Embalmers interprets "*express permission by a next of kin*" to mean written authorization *to embalm* as a specific and separate statement on a document or contract provided by the facility. Express permission may include direct, verbal authorization *to embalm*, provided it is followed as soon as possible by a written document signed by the next of kin confirming the verbal authorization to embalm and including the time, date, and name of the person who gave verbal authorization.