

Virginia Department of
Health Professions
Board of Funeral Directors and Embalmers

Full Board Meeting

October 16, 2018

The Virginia Board of Funeral Directors and Embalmers convened for a full board meeting on Tuesday, October 16, 2018 at the Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2nd Floor, Board Room #4, Henrico, Virginia.

BOARD MEMBERS PRESENT:

Joseph Frank Walton, FSL, Vice President
Muhammad Hanif, Citizen Member
Kenneth Scott Hickey, M.D., Citizen Member
Blair H. Nelsen, FSL
R. Thomas Slusser, Jr., FSL
Connie B. Steele, FSL

BOARD MEMBERS ABSENT

Larry T. Omph, FSL, President
Mia F. Mimms, FSL, JD, Secretary-Treasurer
Louis R. Jones, FSL

DHP STAFF PRESENT FOR ALL OR PART OF THE MEETING:

Barbara Allison-Bryan, MD, DHP Chief Deputy Director
Erin Barrett, Assistant Attorney General, Board Counsel
Sarah Georgen, Licensing and Operations Manager
Lynne Helmick, Deputy Director
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
Bo Keeney, Association of Independent Funeral Homes of Virginia
Bruce Keeney, Association of Independent Funeral Homes of Virginia
Kathy Martin, First Choice
Ryan O'Toole, Cozen O'Connor Law Firm
Yetty Shobo, Ph.D., Deputy Executive Director, Healthcare Workforce Data Center
Bryan Small, Virginia Funeral Directors Association
Kim Small, VisualResearch, Inc.

CALL TO ORDER

Mr. Walton called the meeting to order at 10:05 a.m. and asked the Board members and staff to introduce themselves.

With six 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, and breaks.

Ms. Tillman Wolf then read the emergency egress instructions.

WELCOME NEW BOARD MEMBERS

Mr. Walton welcomed two new Board members: Muhammad Hanif, who succeeded Ibrahim Moiz, and Kenneth Scott Hickey, M.D., who succeeded Junius Williams, Jr. Mr. Walton also stated that Mr. Slusser was reappointed to the Board for a second four-year term.

APPROVAL OF MINTUES

Ms. Tillman Wolf requested to amend the July 12, 2018 Board meeting minutes to include Tyler Cox, HDJ and Laura McHale, The Keeney Group, under "Other Guests Present." Additionally, Ms. Tillman Wolf requested to amend page seven of the minutes in regards to open session to include language that the motion to reconvene in open session was passed unanimously.

Upon a *MOTION* by Mr. Slusser, and properly seconded by Ms. Steele, the Board voted to accept the July 12, 2018 Board meeting minutes as amended and the Legislative/Regulatory Committee meeting minutes from July 12, 2018 as written. The motion passed unanimously.

ORDERING OF THE AGENDA

Upon a *MOTION* by Mr. Nelsen and properly seconded by Mr. Slusser, the Board voted to accept the agenda as written. The motion passed unanimously.

PUBLIC COMMENT

Barry D. Robinson, Virginia Morticians Association (VMA), thanked the Board staff for their service and thanked Ms. Wright for her help when he has contacted the Board in the past. He stated that the VMA has an upcoming day of education in which Ms. Helmick and Mr. Nelsen will participate. He requested that the Board provide clarification on the vote regarding §54.1-2808.3 of the Code of Virginia and the Board's intent moving forward.

Brian Small, Virginia Funeral Directors Association (VFDA), expressed his dissatisfaction with the decision of the Board on the interpretation of the Code of Virginia §54.1-2808.3. He stated that the opening of casket sales was a foregone conclusion; Mr. Small stated his concern with the issues of transparency by the Board at its last meeting. He stated that the change to the law was made without due process or legislation. Mr. Small stated that the change raises issues regarding preneed contracts and recommended the Board consider permitting licensees to trust 100% of the price of casket sales. He further stated that Funeral Service Providers are not able to make unsolicited telephone calls regarding sales, unlike cemetery providers. Mr. Small asked the Board for more information on why the change was necessary, for changes to the preneed regulations to regulate the sale of caskets, and for Code and regulation changes to prevent ambiguity.

Bruce Keeney, Association of Independent Funeral Homes of Virginia (IFMV), stated that what transpired at the last Board meeting was not transparent. He stated that he disagreed with the Board's interpretation of §54.1-2808.3 of the Code of Virginia. He asked the Board to remain transparent in their decisions and requested clarification of the motion made at the July 12, 2018 Board meeting. Mr. Keeney noted that the legislation was reviewed by numerous individuals and attorneys prior to becoming law and considered it to be clear. He stated that there is widespread disagreement between associations with the interpretation and the lack of understanding of the Federal Trade Commission rule by the Board. He was concerned that the Board did not make the public aware of possible discussion of the law and stated that he had requested a meeting with the DHP Director, David Brown, to fully understand the Board's position and find a resolution to these concerns.

AGENCY REPORT

Dr. Allison-Bryan reported that the Board of Pharmacy received 51 applications regarding pharmaceutical processors to operate in the Commonwealth of Virginia. She noted that five applications had been selected and were currently undergoing background checks.

Dr. Allison-Bryan noted several workgroups that had been created including a workgroup on community health workers to determine if they should be licensed and regulated. She also stated that a workgroup regarding conversion therapy used to influence an individual's sexual orientation had been assembled. Dr. Allison-Bryan noted that the conversion therapy workgroup was working to draft regulations to remove this oversight of this type of therapy from the legislature, which would allow the individual Boards to determine if the therapy was appropriate.

Dr. Allison-Bryan also reported on the security issues of the building and noted several measures that would be implemented in the future, including the collection and replacement of Board member badges with temporary badges.

PRESENTATION – Use of the Revised Sanctioning Reference Points Worksheet – Kim Small, VisualResearch, Inc.

Ms. Small provided a training presentation on the revised Sanction Reference Manual (SRP). The use of the SRPs by Board members during informal conferences ensures transparency and due process during the disciplinary process.

BREAK

The Board took a 10-minute break at 10:54 a.m. The Board reconvened at 11:07 a.m.

STAFF REPORTS

Executive Director’s Report – Corie E. Tillman Wolf

Ms. Tillman Wolf welcomed Mr. Hanif and Dr. Hickey to the Board, and welcomed back Mr. Slusser for another term.

Ms. Tillman Wolf presented the Expenditure and Revenue Summary as of June 30, 2018.

Cash Balance as of June 30, 2017	\$380,747
YTD FY18 Revenue	\$705,015
Less YTD Direct & In-Direct Expenditures	\$559,116
Cash Balance as of June 30, 2018	\$526,645

Ms. Tillman Wolf reported that The Conference is holding their 115th Annual Meeting in San Diego, CA from February 27-28, 2019. She advised Board members to contact her if they were interested in attending. Ms. Tillman Wolf also provided a draft of the Model Internship Program and 2017 Annual Report from The Conference. She requested that Board members contact her with any questions or concerns regarding those documents.

Ms. Tillman Wolf provided an overview of the status of the 2018 planning to include applications, funeral internships, Sanctioning Reference Points, and Guidance documents.

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

Licensure Statistics – All Licenses

License	October 15, 2018	July 11, 2018	Change (+/-)
Funeral Service Licensees	1,540	1,519	21
Funeral Director	36	35	1
Embalmer Only	2	2	--
Supervisors	553	543	10
Interns	200	190	10
Establishments	432	431	1
Branch Establishments	79	78	1
Crematories	116	116	--

CE Providers	13	19	(6)
Courtesy Card Holders	109	104	5
Surface Transport & Removal Svc.	40	40	--
Total (*not incl. supervisors)	2,567	2,534	33

Ms. Tillman Wolf presented the Quarterly Exam Statistics for the National Board Exam, which included the following:

January 1, 2018 – August 31, 2018

ARTS	Total Tested	Pass	Fail	Pass/Fail %
First-Time	891	681	210	76/24%
Repeat	274	143	131	52/48%
Total	1,165	824	341	71/29%

SCIENCE	Total Tested	Pass	Fail	Pass/Fail %
First-Time	856	597	259	70/30%
Repeat	313	106	207	34/66%
Total	1,169	703	466	60/40%

Ms. Tillman Wolf presented the Quarterly Exam Statistics for the Virginia Exam, which included the following:

January 1, 2018 – August 31, 2018

NPTE	Total Tested	Pass	Fail	Pass/Fail %
Virginia	62	38	24	61.3/38.7%

VA EXAM	Total Tested	Pass	Fail	Pass/Fail %
Virginia	47	35	12	74.5/25.5%

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%

Ms. Tillman Wolf provided reminders to the Board members regarding requests for presentations and for changes in contact information.

The Board meeting dates for 2019 are:

- January 24, 2019 – 10:00 a.m.
- April 16, 2019 – 10:00 a.m.
- July 11, 2019 – 10:00 a.m.
- October 10, 2019 – 10:00 a.m.

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

Discipline Report – Lynne Helmick, Deputy Executive Director

Ms. Helmick, Deputy Executive Director, reported on the current number of open cases, discipline statistics and Key Performance Measures.

As of October 4, 2018, Ms. Helmick reported the following disciplinary statistics:

- 36 total cases
 - 3 in Informal Conferences
 - 1 in Formal
 - 21 in Investigation
 - 11 in Probable Cause
 - 8 licensees in Compliance Monitoring

Ms. Helmick reported the following Virginia Performs statistics for Q3 2018:

- Clearance Rate – 400% Received (Goal is 100%)
- Pending Caseload over 250 days was at 10% (Goal is under 20%)
- Cases closed within 250 days is 63% (Goal is over 90%)

Ms. Helmick reported the following Virginia Performs statistics for Q4 2018:

- Clearance Rate – 180% Received (Goal is 100%)
- Pending Caseload over 250 days was at 22% (Goal is under 20%)
- Cases closed within 250 days is 89% (Goal is over 90%)

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

- Q4 2016 – 12/21
- 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

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

- Percentage of all cases closed in 250 days

	Q3 – 2017	Q4 – 2017	Q1 – 2018	Q2 – 2018	Q3 – 2018	Q4 - 2018
FDE	60%	70%	78.6%	85.7%	61.1%	87%
Agency	81.7%	86.7%	82.2%	86.7%	87.6%	80.6%

- Average days to close a case

	Q3 – 2017	Q4 – 2017	Q1 – 2018	Q2 – 2018	Q3 – 2018	Q4 – 2018
FDE	295	223.3	229.3	169.1	383.3	211.8
Agency	222.8	194.1	255.7	186.5	196.4	201.1

Ms. Helmick provided the case categories in which disciplinary action was taken for fiscal years 2017 and 2018:

FY 2017	FY 2018
9 Cases Total <ul style="list-style-type: none"> • 1 FSL made arrangements with someone not authorized • 1 No permission for embalming • 1 substance abuse/impairment • 1 Refrigeration/embalming • 1 Standard of care • Non-compliance with previous Order • 2 preneed • 1 Failure to have records available • 1 Not a full time MOR • 2 Fraud/Misrepresentation • 2 Timely filing of death certificate • 1 Aiding & Abetting unlicensed activity 	16 Cases Total <ul style="list-style-type: none"> • 1 Reinstatement denied • 6 Unlicensed activities • 3 Failure to provide required documents • 3 Inspection related • 2 Not a full time MOR • 4 Aiding & Abetting unlicensed activity • 1 Fraud/Misrepresentation • 4 Timely filing of Death Certificate

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

BOARD COUNSEL REPORT – Erin Barrett, Assistant Attorney General

Ms. Barrett introduced herself to new board members and explained role of board counsel.

Closed Meeting

Upon a **MOTION** by Ms. Steele, and duly seconded by Mr. Nelsen, the Board voted to convene in a closed meeting pursuant to Section 2.2-3711(A)(7) and (8) of the *Code of Virginia* for the purpose of consultation with legal counsel pertaining to probable litigation from the Virginia Funeral Directors Association, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body and for consultation with legal counsel regarding specific legal matters requiring the provision of legal advice by such counsel. Additionally, she moved that Ms. Barrett, Ms. Tillman Wolf, Ms. Helmick, Ms. Georgen, Ms. Wright, Ms. Yeatts, and Dr. Allison-Bryan attend the closed meeting because their presence in the closed meeting is deemed necessary and would aid the Board in its consideration of the topic.

Reconvene

Upon a **MOTION** by Ms. Steele to reconvene in open session, Ms. Steele certified that the matters discussed in the preceding closed session met the requirements of Section 2.2-3712 of the *Code of Virginia* and the Board reconvened in open session. The motion passed unanimously.

Ms. Barrett stated that the Board does not have jurisdiction over unlicensed individuals. She further stated that based upon the legislation and the Board's interpretation of the sale of caskets by third parties at the last meeting, the Board would not have the ability to pursue claims of the aiding and abetting of casket sales by unlicensed individuals.

COMMITTEE AND BOARD MEMBER REPORTS

Legislative/Regulatory Committee

Mr. Walton provided the Legislative/Regulatory Committee report. He stated that the Committee discussed the periodic review of the Regulations of the Board of Funeral Directors and Embalmers, and reviewed staff recommendations, which the Committee recommends for the Board's consideration of a NOIRA.

Report from the International Conference

Mr. Nelsen provided the report from the International Conference. He stated that they met in February in New Orleans, LA, and in June in Kansas City, MO. He provided the International Conference's Annual Report for review by the Board members. Mr. Nelsen reported that the fee for each section of the national exam increased on July 1 to \$285. He further reported that the International Conference has created a Model Internship Program.

LEGISLATION AND REGULATORY ACTIONS

Report on Regulatory Actions

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

Periodic Review – Discussion and/or Adoption of NOIRAs

Ms. Yeatts first reviewed the NOIRA for the Regulations of the Board of Funeral Directors and Embalmers (18VAC65-20-10 et seq.). Ms. Yeatts provided an overview of the proposed sections that may be amended per the recommendations of the Legislative/Regulatory Committee. Ms. Tillman Wolf provided a review of sections with additional amendments proposed by staff.

Upon a **MOTION** by Mr. Slusser, and properly seconded by Mr. Nelsen, the Board voted to adopt the NOIRA for the Regulations of the Board of Funeral Directors and Embalmers Chapter 20. The motion passed unanimously.

With regard to the periodic review status of the Regulations for Preneed Funeral Planning (18VAC65-30-10 et seq.), Ms. Yeatts announced that the Regulatory Advisory Panel (RAP) on Preneed Funeral Planning was scheduled for November 1, 2018 in Training Room 2.

Ms. Yeatts provided an overview of the periodic review for an existing NOIRA related to the Regulations for the Funeral Service Internship Program (18VAC65-40-10 et seq.).

Ms. Yeatts requested discussion by the Board on the internship hours in Chapter 40. She noted that the Committee on Internships should review the required hours in comparison with other jurisdictions. She further recommended that the Board roll the existing NOIRA related to funeral internships into one periodic review action and send the regulations back to the Committee on Internships for review and recommendation.

Upon a **MOTION** by Ms. Steele, and properly seconded by Mr. Nelsen, the Board voted to refer the issue regarding internship hours in Chapter 40 to the Committee on Internships for further research and recommendation, and to roll the previous NOIRA related to funeral internships into the current periodic review. The motion passed unanimously.

Report on the Status of Periodic Review for the Public Participation Guidelines (18VAC65-11-10 et seq.) and the Regulations for Preneed Funeral Planning (18VAC 65-30-10 et seq.)

Ms. Yeatts stated that all regulations need to be reviewed once every four years and that the Public Participation Guidelines should be reviewed following the comment period. She noted that the Board will likely retain the current regulations as written.

Consideration of Petition for Rulemaking (Watkins)

Ms. Yeatts presented the Petition for Rulemaking and the Board's options for response to the petition. The Board discussed the issue.

Upon a **MOTION** by Mr. Nelsen, and properly seconded by Mr. Slusser, the Board voted to deny initiation of rulemaking at this time, but to consider the issue further at the Regulatory Advisory Panel meeting regarding Preneed Funeral Planning in November. The motion passed unanimously.

BREAK

The Board took a five-minute break at 12:11 p.m. The Board reconvened at 12:17 p.m.

NEW BUSINESS

Report from the Healthcare Workforce Data Center: Virginia's Funeral Service Provider Workforce (2017) – Yetty Shobo, Ph.D., Deputy Executive Director

Ms. Shobo provided the report from the Healthcare Workforce Data Center: Virginia's Funeral Service Provider Workforce (2018). Ms. Shobo provided data trends and comparisons from the prior workforce survey and provided data resources to Board members.

Upon a **MOTION** by Dr. Hickey, and properly seconded by Mr. Slusser, the Board voted to accept the workforce survey as presented. The motion passed unanimously.

ELECTIONS

Mr. Walton opened the floor for nominations for the positions of Board President, Vice-President, and Secretary-Treasurer.

Upon a **MOTION** by Mr. Nelsen, and properly seconded by Ms. Steele, Mr. Walton was nominated for President of the Board. The motion passed unanimously.

Upon a **MOTION** by Mr. Nelsen, and properly seconded by Ms. Steele, the nominations for President were closed. The motion passed unanimously.

Upon a **MOTION** by Mr. Slusser, and properly seconded by Mr. Nelsen, Ms. Mimms was nominated for Vice-President of the Board. The motion passed unanimously.

Upon a **MOTION** by Mr. Nelsen, and properly seconded by Ms. Steele, the nominations for Vice-President were closed. The motion passed unanimously.

Upon a **MOTION** by Mr. Walton, and properly seconded by Ms. Steele, Mr. Slusser was nominated for Secretary-Treasurer of the Board. The motion passed unanimously.

Upon a **MOTION** by Mr. Nelsen, and properly seconded by Ms. Steele, the nominations for Secretary-Treasurer were closed. The motion passed unanimously.

Upon a **MOTION** by Mr. Walton, and properly seconded by Ms. Steele, the Board voted to elect Mr. Slusser as Secretary-Treasurer of the Board. The vote was unanimous.

Upon a **MOTION** by Mr. Nelsen, and properly seconded by Ms. Steele, the Board voted to elect the slate of candidates as nominated for President, Vice-President, and Secretary-Treasurer of the Board. The vote was unanimous.

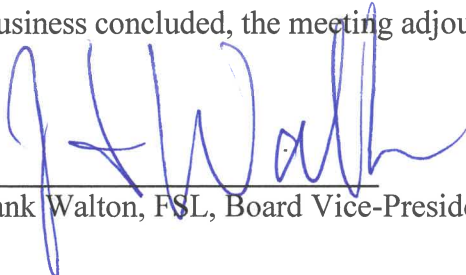
Mr. Walton congratulated the Board's new officers.

NEXT MEETING

The next meeting date is January 24, 2019.

ADJOURNMENT

With all business concluded, the meeting adjourned at 12:33 p.m.



Joseph Frank Walton, FSL, Board Vice-President



Corie Tillman Wolf, J.D., Executive Director

1-24-19

Date

1/24/19

Date