

UNAPPROVED

BOARD OF FUNERAL DIRECTORS AND EMBALMERS MINUTES OF LEGISLATIVE/REGULATORY COMMITTEE

**Wednesday, April 19, 2006
6603 West Broad Street, 5th Floor
Richmond, Virginia 23230
Conference Room 1**

Department of Health Professions

CALL TO ORDER

A meeting of the Virginia Board of Funeral Directors and Embalmers was called to order at 9:06 a.m.

PRESIDING

Michael Leonard, Chair

MEMBERS PRESENT:

Robert Burger
Joseph Jenkins, Jr.
Randolph T. Minter

OTHER BOARD MEMBERS PRESENT:

Billie Watson Hughes
Michael Leonard
Barry Murphy

COMMITTEE MEMBERS ABSENT:

Walter S. Ball
Willard D. Tharp

COUNSEL:

Jack E. Kotvas, Assistant Attorney General

STAFF PRESENT:

Elizabeth Young, Executive Director
Elaine Yeatts, Sr. Policy Analyst
Annie B. Artis, Operations Manager

QUORUM:

With six members present, a quorum was established.

GUESTS PRESENT:

Susan Motley, Virginia Funeral Directors Association
Meredyth Patridge, Regulatory Support Services, Inc.
Caren Brown, Virginia Morticians Association
Bruce Keeney, Independent Funeral Homes of Virginia, Inc.
Tony Harrison, Shenandoah Life
Troy Matthews, Columbian Life
Rusty Spencer, Assurant Preneed
Jeff Johnson, Forethought
Gayle Miller, Administrative Proceedings Division
Cynthia Gaines, Administrative Proceedings Division

ORDERING OF THE AGENDA:

Mr. Jenkins made a motion to accept the agenda as written. The motion was seconded by Ms. Hughes. The vote carried unanimously.

PUBLIC COMMENT:

There was no public comment.

REVIEW OF MINUTES

Mr. Minter made the following recommendations under:

Part I. General provisions

§18VAC65-20-10. Definitions.

“Manager of record” means a funeral service licensee or licensed funeral director who is ~~responsible-accountable~~ for the direct supervision and management of a funeral service establishment or branch facility.

And

Part III. Requirements for Licensure.

§18VAC65-20-170. Requirements for an establishment license.

- B. Except as provided in §54.1-2810 of the Code of Virginia, every funeral service establishment and every branch or chapel of such establishment, regardless of how owned, shall have a separate manager of record who ~~has responsibility is~~ **accountable** for the establishment as prescribed in 18VAC65-20-171.

Mr. Burger made a motion to approve the minutes of the Legislative/Regulatory Committee meeting of March 22, 2006 with the recommended amendments. The motion was seconded by Ms. Hughes. The vote carried unanimously.

PRENEED ISSUES

Proposal Identifier Number - FDE - #3

Mr. Leonard gave a brief overview as to why the Board felt the need to review the preneed laws. He stated that there was a decrease in the market of insurance companies coming into the state to write preneed contracts. Mr. Leonard further stated the current law requires the Consumer Price Index (C.P.I.) or five percent interest on insurance preneeds. He stated that this calculation is not profitable for insurance companies and it limits the insurance options for consumers. Insurance industry representatives were at the meeting to help discuss the issue.

Troy Matthews of Columbian Financial Group and a funeral service licensee stated that Virginia is the only state with a guaranteed growth rate. He stated that most states use 75% of insurance for preneed. Mr. Matthews stated that trusts are pushed in most states and there are only approximately three or four states that fund solely trusts. He stated that North Carolina guarantees the growth rate for one year. Mr. Murphy reminded the Board of its main concern for consumer protection and safety. He asked about different companies and growth amounts. Mr. Matthews stated that insurance companies are competitive in different zones.

Tony Harrison of Shenandoah Life stated that his company preferred the C.P.I. and the three to five year guarantee. He stated that the guarantee protects the public; however, some companies who paid 5% are now having financial problems.

Mr. Murphy asked as to how many firms place funds into the accounts which lower their reserves. That practice appears not to be profitable for those companies.

Jeff Johnson of Forethought stated that Virginia, Michigan and New Jersey have the ability to credit more of the monies in order to receive a more steady growth rate outside of Virginia and 93% of the time funeral homes will guarantee their product. Mr. Murphy stated that this process continues to be a see-saw battle. Mr. Johnson stated that if the law is repealed, this will lead to increased competition at an advantage for consumers. Ms. Motley stated that a lot of companies wish for the current law to be dropped.

Meredyth Partridge, owner of Regulatory Support Services provided a brief overview of the genesis of the current preneed laws. She stated that the change did not occur due to a Board initiative, but was heavily lobbied for by Delegate Harvey Morgan on behalf of various trust companies in the state.

Ms. Motley stated that it might be a good idea to have an impact study done. Mr. Harrison stated he would like to see the laws changed with some guarantee. Mr. Keeney stated that his organization has not formally discussed the preneed issue. He was of the opinion that if current laws are harming consumers, then the Board needs to make the necessary changes. If this law presents no harm, however the associations and the insurance companies should discuss these issues of growth rate and lack of competition.

Ms. Brown stated that her organization has not discussed the issue at any length. She asked if a public forum was going to be held. Mr. Minter agreed with Mr. Murphy that the impetus should be on the insurance companies and the associations to look at this law rather than on board to do so. Mr. Kotvas reminded everyone to look at the charge of the Board to ensure the protection, safety and welfare of the consumer as outlined in §54.1-100 of the *Code of Virginia*. He further stated that if the consumer is being gouged, then the law needs to be changed. Mr. Kotvas stated that the board should continue to discuss the issues regarding preneed. He also encouraged the insurance companies and the associations to continue their discussions as well.

Mr. Murphy stated that it is not the charge or the responsibility of the Board to look at profitability of insurance companies. The purpose and mission of the board is to protect the consumer.

Mr. Leonard asked what the pleasure of the Board was concerning preneed. The recommendation and consensus of the Board was to take no action regarding preneed at this time. The Board does encourage the associations to collaborate with the insurance companies.

PRENEED RECOVERY FUND

Ms. Young gave a brief overview regarding the preneed recovery fund. She provided information about the preliminary research that she and staff had conducted in regard to preneed. Ms. Young stated that she reviewed approximately 150 disciplinary case files and found ten individuals who had embezzled funds totaling approximately \$100,000; One individual's license was revoked and one licensee was now deceased. She stated that she and staff reviewed 462 establishment files to determine the number of preneed accounts; only 108 files had chronological listings which totaled around 11,108 contracts. She reminded the Committee that the review is not reflective of all the funeral homes licensed by the Board and therefore is not comprehensive enough to be a valid study.

Ms. Young stated that North Carolina Board's revenue stream is large and is able to administer a recovery fund. Ms. Young suggested that the Board may wish to ask Delegate Alexander to request a comprehensive study of a recovery fund in the state of Virginia. Ms. Hughes stated that the International Conference has research grants available; perhaps Delegate Alexander might ask them to fund a study. She stated that the Board does not have the staff to maintain a recovery fund. Ms. Motley stated that NFDA has looked at the issue and has a Consumer Bill of Rights for preneed contracts.

She stated that it explains to the consumer exactly what preneed is and how it works. It also advises the public to call the state board if problems occur. Mr. Kenney suggested the Board place some information regarding preneed on the agency website; Ms. Young informed him that is currently being done. Mr. Keeney stated that his organization is against a recovery fund. Mr. Burger stated that there was not enough loss of monies for the Board to be involved in this issue. Ms. Motley reminded the Board that there is already legislation in the general assembly regarding the recovery fund. Mr. Matthews stated that many licensees in North Carolina do not like the recovery fund; they are audited every year and there is a tremendous amount of paperwork that has to be filed. Ms. Motley reiterated that consumer education should be a priority for the Board. A program like SCORE should be initiated for funeral homes to offer help to other funeral homes. Also, Ms. Motley stated that surety bonds may be an alternative to a recovery funds. She stated South Carolina currently uses surety bonds; however, some bonding companies may not accept the income due to the fluctuation. Mr. Kenney agreed with Ms. Motley; however, he stated he was not sure about bonding because some companies are small and do not have the capital needed for bonding. Mr. Leonard asked that in order to address some of the preneed funding problems, the Board needs to have stringent requirements for preneed contracts when a funeral home closes. Mr. Kenney suggested that the board contact the Board of Medicine regarding their procedure for maintenance of records after the closure of a medical practice.

The recommendation of the Committee in regard to the Recovery Fund was that the staff prepares a preliminary report to submit to Delegate Alexander to explain the fiscal requirement for the administration of a preneed recovery fund: the hiring of 3-5 additional staff persons and assessment of an additional fee of \$25.00 to \$500.00 for each licensee. The Board will receive a report for their review at the September 2006 meeting.

Mr. Murphy asked that the Board request a letter from the North Carolina board inquiring information about their recovery fund.

PLANS

Ms. Young stated that there will be a Legislative/Regulatory committee meeting on May 3, 2006 at 9:00 a.m. to finalize the Board's legislative proposals for 2007. The Continuing Education committee meeting will be held also on May 3, 2006 at 1:00 p.m. The Task Force on Cremation will meet on May 4, 2006 at 9:00 a.m. Ms. Young also stated there will be a public forum held on June 21, 2006 during the VMA & VFDA Conventions.

Ms. Hughes announced that Ms. Young was elected at the Vice President of the Association of Executives for the National Conference. Ms. Young announced that Ms. Hughes was elected as the Secretary/Treasurer of the International Conference.

With no further business, Mr. Murphy made a motion to adjourn the meeting at 11:40 a.m. The motion was properly seconded by Ms. Hughes. The vote carried unanimously.

**Virginia Board of Funeral Directors and Embalmers
Legislative/Regulatory Committee Meeting
April 19, 2006**

Michael Leonard, Chair

Elizabeth Young, Executive Director
