

UNAPPROVED

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

**Wednesday, February 8, 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 9:08 a.m.

PRESIDING

Michael Leonard, Chair

MEMBERS PRESENT:

Randolph Minter
Robert Burger
Joseph Jenkins, Jr.

OTHER BOARD MEMBERS PRESENT:

Billie Watson Hughes

COMMITTEE MEMBERS ABSENT:

Walter Ball
Willard D. Tharp

COUNSEL:

Jack E. Kotvas, Assistant Attorney General

STAFF PRESENT:

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

QUORUM:

With six members present, a quorum was established.

GUESTS PRESENT:

Bruce Keeney, Independent Funeral Homes of Virginia, Inc.
David Partridge, Regulatory Support Services, Inc.

ORDERING OF THE AGENDA:

Ms. Young asked that the committee add a discussion of the 2006 proposed legislation to the agenda. Mr. Burger made a motion to accept the agenda with the recommended changes. Ms. Hughes properly seconded the motion. The vote carried unanimously.

PUBLIC COMMENT:

There was no public comment.

REVIEW OF MINUTES

Ms. Young informed the committee that the full Board has already approved the Legislative/Regulatory committee minutes of the September 27, 2005 meeting.

2006 LEGISLATION

Ms. Young stated that House Bill No. 571 regarding funeral preneed contracts was re-referred to committee. She stated that there are still concerns regarding the commingling of funds. Ms. Young stated that she, Ms. Hughes and Ms. Yeatts met with Delegate Alexander who is not in agreement with this bill. Ms. Young stated that she will forward the information to the board members once amendments have been approved by the House.

Ms. Young stated that House Bill No. 1299 regarding the recovery of preneed funds was carried over to the next session due to conversations with Delegate Alexander and the willingness of the Board to conduct a study of the issue. Ms. Young stated that she and staff will conduct a comparison with other states. Ms. Young stated there was also discussion to assess each licensee \$100.00 to generate monies for a recovery fund to provide restitution for the loss of preneed monies by consumers. Ms. Young stated that in order to have a recovery fund, there would be the need for additional staff to administer the fund. Delegate Alexander was concerned about the increased number of incidents of preneed contract losses. Mr. Minter raised a question as to whether or not the Board needed a recovery fund. He further stated that if there is currently a need, we should review the processes that other states currently use. Ms. Hughes stated that Florida would be a good example to look at and that she would provide Ms. Young contact information. Mr. Kotvas asked what amount of monies may have been dispersed. He further stated that the funding losses must be determined and then it would have to be decided what percentage of the loss would be recovered and returned to the consumer.

Ms. Young stated that she recently pulled approximately 6 cases and the total cost was \$50,000. Mr. Leonard inquired as to whether there was a mechanism to find out whether or not families had recovered their losses through civil court, the funeral home, etc. Ms. Young stated that when sanctions are imposed on licensees, it may direct them to make restitution to the consumer. She stated she would do a search of these cases to try to determine if restitution has been made and to allow research on other possible

revenue streams. Mr. Minter felt as though the impetus should be placed on Delegate Alexander to research the information before sending it back to the legislature. Mr. Kotvas stated that as a Board, it should want to have input regarding legislation because the Board members are specialists and the legislators are regulants. He further stated that it is a great opportunity to tailor legislation. Mr. Leonard further stated that Delegate Alexander is a funeral director; therefore, he has the interest of the profession in mind.

DEVELOPMENT OF WORKPLAN FOR STUDY OF PRENEED RECOVERY FUND

Ms. Young prepared a comparison of states by the International Conference for the Board members' review regarding preneed. Mr. Minter stated that he is neither for nor against the recovery fund; however, he feels we have good regulations already in place. Mr. Leonard suggested that Delegate Alexander be a participant in the development of the work plan for the study of the recovery plan. Ms. Young stated she would draft a work plan and present it to the board for their comments.

DEVELOPMENT OF THE 2007 LEGISLATIVE PROPOSAL

FDE-1

Ms. Young stated she had a suggestion from Mr. Tharp to change the name of the Board from Board of Funeral Directors and Embalmers to the Board of Funeral Services. She stated that other states speak to the profession; therefore, she will do a comparison and survey other states. Ms. Hughes stated that in other states such as Delaware people are applying for occupational licenses other than funeral directors and embalmers. She stated that funeral service encompasses all entities such as hairdressing, casketing, etc. Ms. Young stated that licensing other entities may conflict with the Cemetery Board.

FDE-2

Ms. Young stated that she drafted the definition of funeral supplies directly from the preneed regulations. She stated that if the Board wanted the definition to be added, changes are necessary through statute.

FDE-3

There was discussion regarding the calculation of interest for preneed funded contracts. Ms. Yeatts suggested that the board invite some of the insurance companies to come in and discuss their business. Mr. Leonard recommended that the board invite Mr. Spencer with Fortis, and/or Mr. Matthews with Columbia and Forethought, to attend the next Board meeting.

Ms. Yeatts stated that the Board of Pharmacy has a limited use license in which the applicant must specify what aspects of the license they will not be complying with. Ms. Hughes stated that the funeral industry is currently seeing an increase in trade embalmers. She further stated that due to this practice, funeral service licensees are losing a lot of business and if this allowed, who know what else will they be doing?

There was discussion regarding whether or not regulations were needed to regulate trade embalmers and casket stores. Ms. Hughes stated that John Tyler Community College currently has a program in place to license trade embalmers. The American Board of Funeral Service Education opposes separate curriculums for directing and embalming. She further stated the community colleges viewed this as an additional source of revenue.

Ms. Yeatts asked Board members what they thought about granting trade embalmers, casket stores, i.e. a limited use license. She asked the Board if it would rather have them licensed and regulated as opposed to having no oversight or practicing without a license.

Mr. Kotvas stated that the Board could work on this legislation first and then have it placed in the regulations. Ms. Young stated she could submit it as emergency regulations. She stated that she would work on these issues with Ms. Yeatts. Ms. Young stated the current interpretation by our Assistant Attorney General states that if a facility sells caskets, it must be licensed as a funeral establishment, or have a funeral service licensee employed within the facility. Mr. Minter suggested the Board register trade embalmers and casket stores in the same manner that we license crematories. Ms. Yeatts stated that if a limited license were issued, there would be more control by the Board. Mr. Kotvas suggested that the Board not limit itself in broadening the legislation.

REVIEW OF LEGISLATION

Ms. Yeatts highlighted bills that directly affected the Board of Funeral Directors and Embalmers.

HB 151 Resident trainee; name changed to funeral service interns.

The bill changes the term "resident trainee" to "funeral service intern".

HB 300 Physician assistants; provides that they may sign various forms and certificates, etc.

The bill provides that physician assistants may sign various forms and certificates, and provide medical information or treatment in certain situations. Mr. Leonard stated he would like to see this issue addressed regarding the funeral Board. Ms. Yeatts stated there was an ad-hoc committee of the Board of Medicine reviewing this issue and she believes that the issue is one worth revisiting. She stated she will bring it to the attention of the Board of Medicine.

HB 571 Preneed funeral contracts; clarifies deposits in trust accounts thereof.

The bill clarifies that deposits in a preneed funeral trust account may be commingled for the purposes of the management of the trust account or investment of funds. Ms. Yeatts stated that amendments were suggested and this bill was referred back to the Committee on Commerce and Labor and continued to the 2007 General Assembly.

HB 1145 Emergency medical services agencies; surface transportation and removal surfaces exemption.

The bill exempts emergency medical services agencies holding a permit issued by the Commissioner of Health and funeral service establishment from registration as surface transportation and removal services to remove and transport dead human bodies. The bill passed. Ms. Yeatts stated this was legislation originated with this Board.

HB 1299 Preneed Funeral Contract Recovery Fund; created.

The bill establishes a recovery fund to allow restitution of mismanagement of preneed funds. This bill was continued to 2007 legislation. Ms. Yeatts stated that Delegate Alexander stated the funding mechanism was not what he had in mind; therefore, he recommended that the board continue the study.

HB 1300 Funeral services licensees, funeral directors and embalmers; continuing education requirements

The bill amends the existing continuing education statute. Ms. Hughes stated that Delegate Alexander suggested that the Board approve courses instead of sponsors. Ms. Young stated the board could “grandfather” current sponsors and they proceed to a course review regulation.

HB 1486 Administrative Process Act; summary case decisions.

The bill authorizes requests for summary case decisions by persons who have (i) applied for a permit, certificate, license, or other approval from an agency or (ii) received notice of a potential violation or other deficiency from an agency. The bill was referred to the House Committee on General Laws. Ms. Yeatts stated that this bill was created to ensure that cases are processed and adjudicated in a timely manner.

HB 1501 Physicians; information to be provided by Board of Medicine to individuals filing complaints.

The bill requires restrictions on disclosure included in present law.

HJ 71 Health regulatory boards; Department of Health Professions, et al to study hearing process.

The bill requests the Department of Health Professions, in cooperation with the Virginia Bar Association, to study ways to increase the efficiency of the investigative and hearing process of the Department of Health Professions and its health regulatory boards.

SB 214 Health professions; reinstatement hearing for mandatory suspension or revocation of license.

The bill increases the time between receipt of an application for reinstatement and the relevant health regulatory board's reinstatement hearing after a mandatory suspension or revocation of a health professional's license, certificate, or registration from 30 days to 60 days.

Other issues:

Mr. Keeney stated he had conversations with Delegate Alexander who had concerns about OSHA courses allowed meeting continuing education requirements. He stated Delegate Alexander is also interested in standards of practice and that OSHA degrades the process. Mr. Keeney also stated that in the opinion of Delegate Alexander the Funeral Board has not been using additional continuing education as sanctions. He further stated that the names of licensees who were sanctioned should be placed in the newsletter. Mr. Keeney stated that some of the organizations that were approved by the board were manufacturers. Ms. Young stated that if these concerns are not reported to the Board, it has no mechanisms for disciplining these violators. Mr. Keeney also wanted to go on record saying that the Association of Independent Funeral Homes of Virginia is not in agreement with the establishment of a recovery fund.

REVIEW OF GENERAL REGULATIONS

Ms. Young stated that a review of the general regulations will be initiated at the next meeting of the Legislative/Regulatory Committee.

CALENDAR

The next scheduled board meeting will be held on March 7, 2006, with a formal hearing scheduled at 1:00 p.m. The Board calendar is as follows:

- The next Legislative/Regulatory committee meeting will be March 22, 2006 at 9:00 a.m.
- The Continuing Education scheduled for April 19, 2006 will be cancelled and the Legislative/Regulatory committee meeting will be held on 4/19/06. The 5% CPI for insurance contracts will be discussed.
- The Legislative/Regulatory Committee meeting will be May 3, 2006 to discuss the 2007 legislative proposal.
- The full board meeting will be held on June 6, 2006 at which time, officers will be elected.

ADJOURNMENT

The Committee adjourned at 11:50 a.m.

Michael Leonard, Chair

Elizabeth Young, Executive Director
