

# **UNAPPROVED**

## **BOARD OF FUNERAL DIRECTORS AND EMBALMERS MINUTES OF BOARD MEETING**

**Tuesday, September 12, 2006  
6603 West Broad Street, 5<sup>th</sup> 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**

Barry Murphy, Chair

### **MEMBERS PRESENT:**

Billie Watson Hughes  
Randolph T. Minter  
Walter S. Ball  
Rev. Yvonne Jones Bibbs  
Willard D. Tharp  
Blair H. Nelsen  
Michael J. Leonard  
Robert B. Burger, Jr.

### **COUNSEL:**

Jack E. Kotvas, Assistant Attorney General

### **STAFF PRESENT:**

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

### **QUORUM:**

With nine members present, a quorum was established.

### **GUESTS PRESENT:**

Jason Jenkins, Joseph Jenkins, Jr. Funeral Home  
Barry D. Robinson, Virginia Mortuary Association  
Bruce Kenney, Independent Funeral Homes of Virginia  
Bo Kenney, Independent Funeral Homes of Virginia  
Susan Motley, Virginia Funeral Directors Association

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Rick Sikon, John Tyler Community College  
Reuben Gilliam, F.S.L.  
Meredyth Partridge, Regulatory Support Services, Inc.  
Elizabeth Carter, Executive Director, Boards of Optometry and Veterinary Medicine  
Neal Kauder, President, Visual Research Inc.  
Kim Langston, Visual Research Inc.;

**ORDERING OF THE AGENDA:**

Mr. Tharp made a motion to accept the agenda with the recommended amendments. The motion was seconded by Ms. Hughes. The vote carried unanimously.

**WELCOME TO NEWLY APPOINTED DIRECTOR AND BOARD MEMBERS:**

Mr. Murphy welcomed Sandra Ryals as our newly appointed Agency Director effective October 2, 2006. Ms. Ryals stated that she has been with the agency since February, 2006, as the Chief Deputy Director. She stated that prior to coming to DHP she worked under Governor Warner's administration for the Tobacco Foundation. Ms. Ryals was also the Chief Deputy Director of the Department of Professional and Occupational Regulations. Ms. Ryals stated that she is delighted to have the opportunity to meet everyone and that she looks forward to working with all of the boards in her new role as the Director of the Department of Health Professions.

Mr. Murphy welcomed the new board members- Blair Nelsen, FSL (Richmond) and Rev. Yvonne Jones Bibb (Richmond) and asked that they introduce themselves to the board. The current board members and staff then introduced themselves to the new board members.

**PUBLIC COMMENT:**

There was no public comment.

**REVIEW OF MINUTES**

Mr. Tharp made a motion to accept the minutes of the Legislative/Regulatory Committee meeting of June 6, 2006 as amended. The motion was properly seconded by Mr. Burger. The vote carried unanimously.

Mr. Tharp made a motion to accept the minutes as amended of the Board Meeting of June 6, 2006. The motion was properly seconded by Mr. Minter. The vote carried unanimously.

Mr. Tharp made a motion to accept the minutes of the Public Hearing of July 18, 2006. The motion was properly seconded by Mr. Leonard. The vote carried unanimously.

Mr. Tharp made a motion to defer the minutes of the Task Force on Cremation Laws and Regulations meeting of July 19, 2006 to the December 2006 Board meeting. The motion was properly seconded by Mr. Burger. The vote carried unanimously.

## **NEW BUSINESS**

### **Sanction Reference Study**

Dr. Neal Kauder, President of Visual Research, Inc. presented a PowerPoint presentation outlining the sanction reference study. He stated the purpose of the study is to make sanctioning more predictable. Dr. Kauder also stated that the sanction study is an educational tool for new board members as well as a source for staff and attorneys to help predict future case loads. Dr. Kauder stated that the data received is analyzed which enables them to determine what types of cases are involved and what type of sanctions have been received; however, they are currently in the beginning stages of data collection for funeral. He stated that only the cases that have violations will be reviewed. He further stated that once a study sample has been taken of the cases, a descriptive analysis will be done and a worksheet will be provided at the end of the study. Dr. Carder stated that worksheets can be used to change sanctioning. He stated that once the study has been completed, a data collection file will be sent to the Board.

## **REQUEST FOR INTERPRETATION - TRADE EMBALMING FACILITIES**

Mr. Reuben Gilliam, FSL was present to speak to the Board regarding his interest in opening a trade embalming facility. He asked if the Board had jurisdiction over trade embalming and what the requirements were for having an embalming and preparation room.

### **Closed Meeting:**

On a properly seconded motion by Mr. Minter, the Board voted 9-0 in favor of the motion, to enter into a closed meeting pursuant to §2.2.3711(A) 7 for consultation with and the provision of legal advice by the Assistant Attorney General at 10:18 a.m.

### **Reconvene:**

On a properly seconded motion by Ms. Hughes, the Board voted 9-0 in favor of the motion, that only public business matters lawfully exempted from open meeting requirements under Virginia law were discussed in the executive session and only public business matters as were identified in the motion convening the closed session were heard, discussed or considered by the Board.

The Board reconvened in open session pursuant to §2.2.3711(A) 7 at 10:34 a.m.

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Mr. Murphy stated that the Board of Funeral Directors and Embalmers requires that in order to embalm in the state of Virginia, you must first be licensed by the Board. Mr. Murphy further stated that the embalming must take place in a funeral service establishment also licensed by the Board.

**UPDATE ON JOHN TYLER COMMUNITY COLLEGE**

Mr. Rick Sikon, Program Director informed the Board that the enrollment at John Tyler Community College has increased in the mortuary science program. He stated there were eleven students that graduated from the program in May 2006 and eleven are scheduled to graduate in December 2006. Mr. Sikon encouraged all alumni of the college to stay in contact.

**UPDATE ON NORFOLK STATE UNIVERSITY**

Ms. Hughes informed the Board that Norfolk State University has determined that the mortuary science program is not financially profitable for the school. However, the program passed accreditation with the American Board of Funeral Service Education. She stated that the program will be transferred to Tidewater Community College and will offer an Associates Degree. She stated that Mr. Frank Walton will move with the program. Ms. Hughes stated that those students who received a certificate from Norfolk State may attend Tidewater and further their education to receive the associate degree. She stated that the program at Tidewater will cost less than the program at Norfolk; therefore, reduced costs should increase enrollment.

Ms. Young stated last year that 156 applications were received; however, only 60 persons were licensed. She stated the growth in licensees continues to be flat.

**INTERNATIONAL CONFERENCE**

Ms. Hughes stated that Pearson Professional Centers will be the new testing facilities for the National exam effective January 1, 2007. Ms. Young asked if the Conference had considered offering a tutorial for students that would cover the Science portion of the examination. Ms. Hughes stated that a tutorial was available; however, she felt if the students were not prepared in school the tutorial would not be helpful. Mr. Sikon stated that John Tyler Community College has an on-line tutorial. Ms. Hughes stated she believed the tutorial could be very advantageous. However, statistics have shown that if the national examination is not taken directly after completing school, students do not pass the science portion. Mr. Sikon stated he felt the issue was students who graduate from the program, fail the exam, and who return to retake exam, find it is more difficult to pass because the information changes.

**BOARD OF HEALTH PROFESSIONS**

Ms. Young informed the Board that Ms. Hughes was selected as the Board's

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representative to the Board of Health Professions. She further stated that Ms. Hughes will not be able to attend the Citizen Advocacy Center conference because she will be attending the International Conference meeting in Reno, Nevada.

Ms. Ryals gave a brief overview of events that will occur at the Citizen Advocacy Center conference in Williamsburg, Virginia from October 17-20, 2006. She stated there will be a great opportunity to network during the conference and encouraged attendance from all boards.

Ms. Young thanked Joseph Jenkins, Jr. for his participation on the Board of Health Professions.

**EMAIL INFORMATION**

Ms. Young provided the information for the Board to review.

**CEMETERY BOARD**

Ms. Young provided the information for the Board to review.

**OLD BUSINESS**

**LEGISLATIVE/REGULATORY COMMITTEE**

**Adoption of NOIRA – Public Participation Guideline Regulations – Recommendation for Periodic Review**

Ms. Yeatts gave a brief overview of the Notice of Intended Regulatory Action (NOIRA) regarding the Public Participation Guideline Regulations. She stated that every board has regulations regarding how the general public will be informed of the regulatory processes. Ms. Yeatts stated it has been 5 years since the regulations have been amended; therefore, recommended changes have been made for review.

Mr. Tharp made a motion to adopt the Notice of Public Participation Guideline Regulations as proposed. The motion was properly seconded by Mr. Burger. The vote passed unanimously.

**Adoption of Proposed Regulations – Chapter 20 (General Regulations) – Recommendations of Regulatory/Legislative Committee–Periodic Review**

Ms. Yeatts reviewed the changes that were proposed in Chapter 20. The following are additional amendments discussed at the meeting:

§18VAC65-20-10 Definitions.

§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 establishment manager **of record who has responsibility for the establishment as prescribed in 18VAC65-20-171. The owner of the establishment shall not abridge the authority of the manager of record relating to the practice of funeral services in accordance with Chapter 28 of Title 54.1 and regulations of the board.**

Mr. Leonard made a motion to amend the language in 18VAC65-20-170(B). The motion was properly seconded by Ms. Hughes. The vote carried unanimously.

§18VAC65-20-630. Disclosures.

Funeral providers shall make all required disclosures and provide accurate information from price lists pursuant to the rules of the Federal Trade Commission. **Price lists shall comply with requirements of the FTC and shall contain the information included in Appendices I, II, and III of this chapter.**

Mr. Kotvas recommended that the Appendices should remain because they are actually a part of the regulations.

Ms. Hughes made a motion to leave the language as previously written. The motion was properly seconded by Mr. Leonard. The vote carried unanimously.

Ms. Hughes made a motion to accept the proposed regulations as amended. The motion was properly seconded by Mr. Tharp. The vote carried unanimously.

### **Adoption of Final Regulations - Chapter 40 (Funeral Service Intern)**

Ms. Yeatts discussed the recommended changes in Chapter 40 in reference to Funeral Service Interns as follows:

§18VAC65-40-10. Definitions

~~“Full time school attendance” means that the individual attending mortuary science school is enrolled in 12 or more semester hours of coursework per semester.~~

§18VAC65-40-40. Fees.

- |  |      |                    |
|--|------|--------------------|
| 1. Funeral service intern registration, reinstatement or renewal                         | \$75 | <b><u>100</u></b>  |
| 2. Late fee for renewal up to <del>30 days</del> <b><u>one year</u></b> after expiration | \$25 | <b><u>35</u></b>   |
| <b><u>5. Registration of supervisor</u></b>  |      | <b><u>\$25</u></b> |

56. Change of supervisor \$15 25

7. Reinstatement fee \$170

§18VAC65-40-90. Renewal of registration.

- A. The funeral service intern registration shall expire on ~~January~~ **March** 31 of each calendar year and may be renewed by submission of the renewal notice and prescribed fee.

§18VAC65-40-110. Reinstatement of expired registration

A. A resident trainee funeral service intern whose registration has expired may be reinstated within one year following expiration by payment of the current renewal fee and the late renewal fee.

~~B. A resident trainee funeral service intern whose registration has been expired for more than one year shall apply for reinstatement by submission of a written application and payment of a reinstatement fee. The board may consider reinstatement of an expired registration for up to three years following expiration. A written application request for reinstatement shall be submitted to the board and shall include payment of all applicable fees.~~

~~BC.~~ When a registration is not reinstated within three years of its expiration date, a new application for registration shall be filed and a new internship begun.

§18VAC65-40-130. Funeral service internship.

A. The internship shall consist of at least ~~18 months~~ **3,000 hours** of training to be completed within no less than 12 months and no more than 48 months. For good cause shown, the board may grant an extension of time for completion of a resident traineeship an internship.

B. ~~An individual may hold an active internship registration for a maximum of 48 months from the date of initial registration for the internship program. The board, in its discretion, may grant an extension of the internship registration.~~ The trainee funeral service intern shall be assigned a work schedule of not less than 20 hours nor more than 60 hours per week in order to receive credit for such training. For good cause shown, the board may waive the limitation on a resident trainee's an intern's work schedule.

C. ~~A funeral service intern shall not attend school full time while serving his internship~~ shall receive training in all areas of funeral service.

§18VAC65-40-160. Intern work schedule. Repealed.

~~Every funeral service intern shall be assigned a full time work schedule of at least 40~~

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~~hours each week in order to obtain credit for such training. The intern shall be required to receive training in all areas of funeral service. Additional and further hours may be at the discretion of the supervisor or may be a requirement of the facility.~~

§18VAC65-40-220. Qualifications of training site.

1. Have ~~35~~ **50** or more funerals and ~~35~~ **50** or more bodies for embalming over a 12-month period for each person to be trained. This total must be maintained throughout the period of training. If the establishment does not meet the required number of funerals or embalmings, the funeral service intern may seek approval for an additional training site.

The Board received one comment about this regulation. The Virginia Morticians Association commented that the increase in the number of funerals and bodies for embalming from 35 to 50 for establishments serving as training sites for funeral interns could cause a hardship.

The Board responded that it has recognized the needs of small establishments in serving as training sites for funeral service interns. By not requiring a 40 hour schedule, smaller funeral homes that do not have enough business to justify hiring a full-time intern may be able to serve as training sites for interns who want part-time training in combination with school or while holding another job.

§18VAC65-40-250. Requirements for supervision.

- A. Training shall be conducted under the direct supervision of a licensee or licensees approved by the board. **Credit shall only be allowed for training under direct supervision.**
- B. The board shall approve only funeral service licensees, licensed funeral directors, or licensed embalmers to give funeral training who have a full and unrestricted Virginia funeral license, **have at least two consecutive years in practice** and are employed full time in or **under contract with** the establishment where training occurs.

**E. If a supervisor is unable or unwilling to continue providing supervision, the resident trainee funeral service intern shall obtain a new supervisor. Credit for training shall resume when a new supervisor is approved by the board and the trainee intern has paid the prescribed fee for the change of supervisor.**

§18VAC65-40-300. ~~Interruption and reinstatement.~~ Repealed.

- ~~A. If the program is interrupted, the intern shall obtain a new supervisor and submit a new application for approval.~~
- ~~B. Credit shall be only be allowed for training under direct supervision. Credit for training shall resume when a new supervisor is approved~~



~~by the board and the applicant has been reinstated.~~

§18VAC65-40-320. Reports to the board. ~~six month report; partial report.~~

- A. the intern, the supervisor or supervisors, and the establishment shall submit a written report to the board at the end of every ~~six months~~ **1,000 hours** of training. The report shall:
1. **Specify the period of time in which the 1,000 hours has been completed and verify that the intern has actually served in the required capacity during the preceding six months period; and**
  2. Be received in the board office no later than 10 days following the end of the ~~six month period completion of 1,000 hours.~~ Late reports may result in additional time being added to the internship.
- B. If the internship is terminated or interrupted prior to completion of a ~~six month period~~ **1,000 hours or if the trainee intern is changing supervisors or training sites,** the intern and the supervisor shall submit a partial report to the board with a written explanation of the cause of program termination or interruption **or of the change in training or supervision.**
1. The partial report shall provide the amount of time served and the dates since the last reporting period. Credit for partial reports shall be given ~~in increments of one month~~ **for the number of hours of training completed.**
  2. Partial reports shall be received in the board office no later than 10 days after the interruption or termination of the internship **or after the change in supervisors or training sites.** Credit may be deducted for late reports.

§18VAC65-40-340 Supervisors' responsibilities.

- F. **The supervisor shall provide instruction on cremation and on the laws and regulations pertaining to cremation.**
- G. **If a training site does not offer preneed funeral planning or cremation services, the supervisor shall arrange for such training at another licensed funeral establishment that does.**

Mr. Minter made a motion to adopt the final regulations of the Funeral Service Intern as proposed. The motion was properly seconded by Mr. Tharp. The vote carried unanimously.

### **Adoption of Final Regulations – Chapter 20 – General Regulations**

Ms. Yeatts stated that the Virginia Funeral Directors Association is opposed to the proposed fee increases. She stated that the Finance department prepared an analysis

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which determined that due to the current status, there is a deficit in the budget; fees are required to be increased. Ms. Yeatts stated that the Code of Virginia requires that the board levy fees to meet expenditures; when this does not happen; fees must be increased.

Ms. Hughes made a motion to increase the renewal fee of courtesy cards to \$275.00 and increase the late fee to \$90.00. The motion was properly seconded by Mr. Tharp. The vote carried unanimously.

The Board review comment from the Virginia Funeral Directors Association opposing the fee increase. The Board stated that it did understand the perspective of the comment and regrets the necessity for an increase in fees, it has a responsibility to uphold its statutory duty to: *levy and collect fees for application processing, examination, registration, certification or licensure or the issuance of a multistate licensure privilege and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards."*

A motion was made by Mr. Leonard to accept the draft language in response to the Virginia Funeral Directors Association's objection to the fee increase. The motion was properly seconded by Mr. Tharp. The vote carried unanimously.

Mr. Tharp made a motion to accept the Final Regulations – Chapter 20 – General Regulations as adopted with the amendments. The motion was properly seconded by Mr. Burger. The vote carried unanimously.

### **Executive Director's Report**

#### **Licensee Statistics**

Ms. Young provided that the total number of licensees is 2467.

#### **Disciplinary Statistics**

Ms. Young stated that there are currently 100 open disciplinary cases.

#### **Budget**

Ms. Young discussed the list of expenditures/revenue for the period ending June 30, 2006.

#### **Board Calendar**

Ms. Young presented the Board's calendar for the upcoming year.

Ms. Sandra Ryals provided information about the upcoming Citizens Advocacy Center annual meeting in October 2006 in Williamsburg, Virginia. Mr. Murphy, Mr. Ball and Mr. Leonard will represent the Board in Williamsburg.

**Mr. Tharp left the meeting.**

### **Report from Agency Subordinate – Informal Conferences**

### **CONSIDERATION OF AGENCY SUBORDINATE RECOMMENDATIONS**

#### **Closed Session**

Ms. Hughes moved that the Board of Funeral Directors and Embalmers convene a closed meeting pursuant to Section 2.2-3711(A)(28) of the *Code of Virginia* at 12:40 p.m. for the purpose of consideration of recommendations of the agency subordinate. Additionally, Ms. Hughes moved that Ms. Young, Ms. Artis, Ms. Ryals and Mr. Kotvas attend the closed meeting because their presence in the closed meeting was deemed necessary and their presence would aid the Board in its deliberations. The motion was properly seconded by Mr. Burger and carried unanimously.

#### **Reconvene:**

The Board reconvened in open session at 1:10 p.m.

Mr. Burger moved that the Board of Funeral Directors and Embalmers certify that it heard, discussed or considered only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act and only such public business matters as were identified in the motion by which the closed meeting was convened. The motion was properly seconded by Ms. Hughes and carried unanimously.

Mr. Minter moved to extend the funeral service internship of **Mr. Jason Jenkins** through April 30, 2007. Mr. Jenkins is required to successfully pass the National and State Examinations prior to the April 30, 2007. He shall provide evidence that he has made application to each examination and submit the scores or his internship. Failure to comply within the extension period will be grounds for the revocation of the internship. Mr. Jenkins shall be required to enroll in any course or courses which will assist him in preparing for the National exam and he shall provide proof of enrollment and proof of completion to the Board within ten days of the date the Order is entered. The motion was properly seconded by Mr. Leonard. The vote carried 7-1 in favor of the motion. Mr. Tharp was not present.

**Rev. Bibbs left the meeting.**

Mr. Leonard moved to accept the recommendation to REVOKE the funeral service internship of **Mr. Paul T. Kennedy, Jr.** The motion was properly seconded by Ms. Hughes and carried unanimously.

Mr. Nelsen moved to REVOKE the funeral service internship of **Ms. Karen Davis.** The motion was properly seconded and carried unanimously

Ms. Hughes moved to extend the funeral service internship of **Mr. Carrell W. Grandle** through April 30, 2007. Mr. Grandle is required to successfully pass the National and State Examinations prior to the April 30, 2007, extension date and provide evidence that he has made application to each examination and submit the scores or his internship Failure to comply within the extension period will be grounds for the revocation of the internship. Mr. Grandle shall be required to enroll in any course or courses which will assist him in preparing for the National exam and he shall provide proof of enrollment and proof of completion to the Board within ten days of the date the Order is entered. The motion was properly seconded by Mr. Nelsen. The vote carried 6-1 in favor of the motion.

Mr. Leonard moved to REVOKE the funeral service intern certificate of **Barry W. Garnett.** The motion was properly seconded by Mr. Ball and carried unanimously.

**ADJOURNMENT:**

With no further business, the committee adjourned at 1:27 p.m.

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Barry Murphy, Chair

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Elizabeth Young, Executive Director

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