

APPROVED MINUTES

December 10, 2013
Vermont Board of Funeral Service
89 Main St., 3rd Floor
Montpelier, VT 05620-3402

8:30 AM – Curriculum Committee
9:00AM – Board Meeting

Board Members present: Lyndon Mann, Larry Gile, Robert Covey, Mary Alice Bisbee and Peter Beck via Telephone.

Staff Attending: Colin Benjamin, Board Counsel; Terry Gray, Licensing Administrator; Dan Vincent, Inspector; and Danielle Rubalcaba, Licensing Board Specialist,

Visitors: Greg Camp, Eric Hanley, and Roger St. Hilaire Jr.

1. **Call to Order:** Meeting called to order at 9:00 am by Chairman Mann
2. **Approval of Minutes:** Motion made by Robert Covey to approve the Minutes of the November 12, 2013 meeting with corrections to line item #2 Paragraph 3. Change the spelling of personal to personnel. Seconded by Larry Gile. Motion passed unanimously. Changes are as follows:

Peter Beck moved to give the Board of Funeral Services Licensing Administrator the authority to approve or disapprove candidates for Removal Licenses AND that candidates for Removal Licenses who hold current certification as EMS/EMT personnel be approved as Removal Personnel based on those Certifications. The motion was seconded by Mary Alice Bisbee and passed unanimously.
3. **Education Committee Report:** Education committee reviewed 37 courses. 35 where approved and 2 denied. See <http://vtprofessionals.org/opr1/funeral/ce.asp>
4. **Case Manager's Report:** Terry Gray reported on the current case load for the Funeral Board. Currently the board has seven (7) cases pending. Two (2) are under investigation. One (1) is pending a closing report. Three (3) are pending charges and one (1) in intake.
5. **Concluded Reports:** None
6. **Applications:** None
7. **Hearing-** Appeal Hearing was held for Roger St. Hilaire Jr. Mr. St. Hilaire was preliminarily denied his Funeral Director's license on November 12, 2013 for lack of educational requirements. See the attached Decision and Order on Preliminary Denial.
8. **Old Business:**

-Director, Chris Winters met with the board to discuss the budget impact on future fees. Discussion of remaining a Board and increasing fees for the licensees or to convert the current Board structure into an Advisory profession and keep the current licensure fees the same.

Motion made by Mary Alice Bisbee to dissolve the current Board of Funeral Service and create the profession as an advisory level with 3 members, two licensees and one public member to be appointed as representation of the Advisory. This motion was not seconded. Motion failed with a 4-1 vote. Mary Alice Bisbee with the only yes vote.

Motion made by Larry Gile to accept the new fee structure:

Funeral Directors and Embalmers, current renewal fees of \$300.00 will be \$450.00
Funeral and Crematory Establishments, currently is \$540.00 will be \$900.00
Removal Personnel, currently is \$85.00 will be \$125.00

Seconded by Robert Covey. Motion carries with Mary Alice Bisbee abstaining.

Motion made by Robert Covey to identify the proposed fees for Limited License for Funeral Establishments will be \$900.00 and for all Crematory Personnel the fee will \$125.00 Seconded by Larry Gile. Motion carries 4-1 vote with Mary Alice Bisbee voted against.

8. **Inspection Report** –Daniel Vincent, Inspector

-Reviewed 2 inspection reports with the board. Dan Vincent's inspections revealed that one facility was using the recommended contract which should be replaced with the Mandatory Preneed Contract and the second establishment was not properly identifying the responsible party or purchaser for the authorizing party.

10. **New Business:** None

11. **Public Comment:** None

12. **Meeting Adjourned:** Meeting adjourned at 1:00pm

Respectfully Submitted,

Danielle Rubalcaba

Licensing Board Specialist

2014 Scheduled Meetings:

January 14th, 2014

March 11th, 2014

May 13th, 2014

July 8th, 2014

September 9th, 2014

November 18th, 2014

STATE OF VERMONT
SECRETARY OF STATE
OFFICE OF PROFESSIONAL REGULATION
BOARD OF FUNERAL SERVICES

In Re:)
Roger A. St. Hilaire, Jr.)
License Applicant)

DECISION AND ORDER ON PRELIMINARY DENIAL

Board Members Participating:

Lyndon Mann, Chair
Robert Covey
Larry Gile
Mary Alice Bisbee
Peter Beck

Appearances:

Applicant: Roger A. St. Hilaire

Presiding Officer: Colin R. Benjamin

Board Authority and Background

The Vermont Board of Funeral Service has jurisdiction to grant and deny applications for licensure pursuant to 26 V.S.A. §§ 1212(b)(5) and 1252; the Board of Funeral Service Rules; and the Rules of the Office of Professional Regulation.

On November 12, 2013, the Board issued a preliminary denial of the applicant's application for licensure as a funeral director based on his failure to meet the educational requirements for a funeral director set forth in 26 V.S.A. §1252(a)(1)(A). The applicant filed a timely appeal on December 3, 2013 and requested a hearing.

The Board of Funeral Service held a hearing in the above matter on December 10, 2013 at the Office of Professional Regulation Conference Room in Montpelier, Vermont pursuant to 3 V.S.A. § 129(e).

Findings of Fact

1. On or about November 7, 2013, the Board received from the applicant an application for licensure as a funeral director.
2. The applicant disclosed and stipulated to the Board that he does not meet the educational requirements for a funeral director set forth in 26 V.S.A. §1252(a)(1)(A).
3. The educational requirements for a funeral director set forth in 26 V.S.A. §1252(a)(1)(A) became effective on July 1, 2009.
4. The applicant was eligible to sit for the applicable examination for licensure as a funeral director prior to July 1, 2009. The only examination required for licensure as a funeral director at that time was the Vermont laws and rules examination.
5. The applicant took and failed the examination for licensure as a funeral director on or about June 24, 2009.
6. Subsequent to his taking the examination but prior to July 1, 2009, the applicant was informed and was led to believe that the applicant was not eligible to retake the examination.
7. Despite the misinformation received by the applicant, Board of Funeral Service policy in effect on July 1, 2009 allowed an applicant to retake the Vermont laws and rules examination once within 30 days of failing the same.
8. As a result of being informed that he was not eligible to retake the examination, the applicant did not do so.

Conclusions

The Board concludes that the applicant has established the elements of equitable estoppel on the above facts. *See Town of Victory v. State*, 174 Vt. 539, 540, 814 A.2d 369, 372 (2002) (mem.); *Vermont Structural Steel v. State*, 153 Vt. 67, 74, 569 A.2d 1066, 1070 (1989). The applicant has established that he was erroneously informed that he could not sit for the examination again within 30 days, and that the applicant's reliance on the information was reasonable. The Board further concludes that despite the effective date of the educational requirements for a funeral director set forth in 26 V.S.A. §1252(a)(1)(A), the applicant's right to sit for the examination without meeting the educational requirements vested prior to that effective date and the applicant should have been given one more opportunity to take the examination required at that time. The applicant relied to his detriment on the information he was given.

The applicant has met his burden to show that the preliminary denial should be reversed.

3 V.S.A. §129(e). Based on the above and the applicant's testimony at the hearing he requested, the Board issues the following order.

Order

WHEREFORE, the preliminary denial of licensure is REVERSED and the applicant shall be allowed to take the current Vermont laws and rules examination no later than January 31, 2014. Should the applicant fail the examination, he will not be allowed to retake it and will be subject to all current qualifications for licensure. As the Vermont laws and rules examination was the only examination necessary for licensure as a funeral director on June 24, 2009, it will be the only applicable and necessary examination for licensing in this matter should the applicant pass it.

APPEAL RIGHTS

This is a final administrative determination by the Vermont Board of Funeral Service.

A party aggrieved by a final decision of a board may appeal this decision by filing a written Notice of Appeal with the Director of the Office of Professional Regulation, Vermont Secretary of State, 89 Main Street, FL3 Montpelier, VT 05620-3402 within 30 days of the entry of this Order.

If an appeal is filed, the Director of the Office of Professional Regulation shall assign the case to an appellate officer. The review shall be conducted on the basis of the record created before the board. In cases of alleged irregularities in procedure before the board, not shown in the record, proof on that issue may be taken by the appellate officer. 3 V.S.A. §§ 129(d) and 130a.

Board of Funeral Service

By: Lyndon Mann
Lyndon Mann, Chair

Dated: 12/11/2013

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 12/13/13