

Vermont Board of Funeral Service

National Life Building North FL2
Montpelier, VT 05620-3402

Approved Minutes

January 13, 2009 at 9:00 a.m.

Members Present: Paul Guare, Chair, John Coffin, Lyndon Mann, Peter Beck

Staff Present: Rita Knapp, Kevin Leahy, Esq., Chris Winters, Judith Griffen, Investigator, Daniel Vincent.

Visitors: James Johnston, Gregory Camp, Lucien Hayes, Chris

1. The meeting was called to order at 9:24 AM by Chairman Paul Guare
 2. Mr. Coffin made the motion to approve the minutes of the meeting of November 5, 2008. Mr. Mann seconded. Mr. Beck offered a correction noting that James Curley had not been in attendance at that meeting. Minutes were accepted as corrected.
 3. Status of Cases: At the encouragement of Chairman Guare, Rita Knapp, OPR Administrator, presented the Board with a summary of Funeral Board Cases. With the exception of one case, for which the investigation report has been completed, the other 12 pending cases have yet to be investigated. Mr. Beck again repeated his concern that the extended time frame for completing an investigation does not best serve the consumer nor the professional against whom the complaint has been filed. Ms. Knapp acknowledged this and again explained that there has been turnover with the department's investigators, thereby slowing the process.
 4. Deliberative Session--Paul Gendron. This session, which was continued from the Funeral Board's Meeting of November 5, 2008, was rescheduled to the end of the meeting to accommodate the staff and visitors.
 5. There were no Concluded Reports.
 6. There were no Applications.
 7. Discussion Items:
 - a. Summer Study and the resulting OPR BILL, PROVISIONS RELATING TO FUNERAL SERVICES: Since Mr. Winters had yet to join the meeting, the discussion was initially led by Kevin Leahy and Rita Knapp. AOPR Bill Draft had been e-mailed to Board Members together with their agendas. It proposes repealing the following Sections of Chapter 17 of Title 26 dealing with Embalmers: 931, 932, 933, 934, 951, 953, 991, 992, 993, 994, 995, 996, 997, and 998. Most of these provisions would be incorporated into another section of 26 VSA.
- The longest discussions surrounded the proposed changes to Title 26, Chapter 17, Section 951--Qualifications of members of the board of funeral service. The idea that was suggested by Mr. Winters in his Dec. 10, 2008 Memorandum to *Funeral Services Interested Parties* that "There was also consensus (among attendees) that a change to the structure of the Board was not necessary, other than formally requiring some crematory representation through an existing funeral director member." could cause more difficulty than first anticipated. Mr. Coffin and others present pointed out that with only six crematories in the State, there are a very few

Vermont Funeral Directors with crematory experience, possibly as few as ten. Mandating the selection of one of these would severely limit the Governor's choices for future Board appointees. Both Mr. Leahy and Ms. Knapp urged the Board to support the proposed change. After a long discussion, Mr. Beck moved to keep the Funeral Board make-up as it is currently defined in Title 26, Chapter 17, Section 951. The motion was seconded by Mr. Mann. After considerably more discussion, a vote on the motion was called by Chairman Guare and the vote by the Board was unanimous.

On page 8 of the e-mailed OPR BILL DRAFT 2009, lines 11, 12, & 13, Mr. Beck pointed out to the Board Members and staff that the proposed wording could result in only two members of the Board making decisions. The proposed wording read, "A majority of members present shall constitute a quorum for the transaction of business." Mr. Leahy acknowledged the error and indicated it would be corrected. The wording should remain as written in Title 3, Chapter 5, Section 132. Board quorums.

Mr. Chris Winters, Director joined the meeting at about this time.

On page 11, lines 17-20 of the e-mailed OPR BILL DRAFT 2009, it was suggested that the remainder of the sentence following the word "state" in line 19 be deleted and the following inserted: "using good standing and that state's licensing requirements are substantially equivalent to Vermont's. This involves reciprocity for funeral home balancers."

Mr. Guare pointed out that the same language should apply to page 10, lines 17-20 of the e-mailed OPR BILL DRAFT 2009 as it applies to funeral directors from other states. The Board Members concurred.

There was also considerable discussion concerning the proposed amending of 26 V.S.A. Section 1273: WRITING AGREEMENTS. Mr. Guare pointed out that the term "funeral director" on line 9, page 17 of the OPR BILL DRAFT 2009 should be changed to "funeral home." It was his contention that only funeral homes, as opposed to funeral directors, can provide the services being outlined in written agreements. It was also pointed out that in other states, salesmen working for funeral directors were actively selling pre-paid funeral services. After discussion, it was the consensus of those attending the Board Meeting that whereas Mr. Guare's concerns are real and his possible solution may be an answer, the unintended consequences are not all yet known and perhaps the changes should not be introduced into this year's OPR BILL until further study. This assessment, offered by Mr. Winters, was accepted by the Board.

A similar rationale was offered to the additional wording proposed on page 19, lines 12-16 under Section 1274 of 26 V.S.A. -- TRANSFER OF CONTRACTS AND ASSETS. The paragraph was an attempt to address the Board's and Staff's concerns with full disclosure and transparency involving the transfer of assets from one investment vehicle to another. However, during a lengthy discussion, it was agreed that among other potential problems, the wording might interfere with the fiduciary responsibility of a fund's trustee. It was agreed by the Board that additional study was needed and that section was deleted from this year's OPR Bill.

The final change agreed to concerning the 2009 OPR Bill was on page 20, lines 11 and 12 under 26 V.S.A. Section 1277 SUSPICIOUS CASES: Striketh the words "... local health officer or a majority of the board of selectmen...." and insert the words "... Office of the Medical Examiner...."

7b. ACA Assurance Company: Mr. Winters informed the Board of the pending investigation of the Assurance Company, ACA. That company had come out of "rehabilitation" in New Hampshire but is now back in. OPR staff is in the process of determining what impact the company's financial state may have on Vermont consumers. Mr. Beck reminded the Board that the company has "written down" the policies sold by 25%. It was pointed out by Mr. Coffin that this did not affect those Vermonters who had purchased pre-need packages with ACA, since that 25% write down would be made up by the funeral director offering the services. Mr. Winters stated that thus far, no Vermont consumer had lost money as a result of ACA's financial difficulties.

7c. Election of Funeral Board Officers for 2008-2009 Mr. Coffin moved the following slate: Chairman, Paul Guare; Vice Chairman, Peter Beck, and Secretary, Lyndon Mann. Mr. Beck proposed that the remain as Secretary and the motion was amended to the

following: Paul Guare, Chairman, John Coffin, Vice Chairman, and Peter Beck, Secretary. Motion and amendment were seconded by Lyndon Mann and the vote was unanimous.

Discussion Item se.-- limiting continuing education course hours and f.-- contracts for pre-paid funeral arrangements, were postponed until the next meeting.

7 Other Discussion: Mr. Dan Vincent, the investigator for the Board of Funeral Services, had some concerns she wished to share with the Board. The first involved which records needed to be kept by crematories, specifically the *Burial Transit*, which the law states will be filed with the town clerk. Mr. Guare felt strongly that the crematory should keep a copy of the *burial transit* together with the required *Authority to Cremate* and the *Medical Examiners Permit*, while other Board Members were less concerned.

These second item had to do with certain practices Mr. Vincent had discovered during his inspections dealing with rituals performed at the funeral home by certain religious groups. A wider ranging discussion followed and Mr. Vincent was offered the opinion of individual Board Members. The consensus was that the professional funeral directors needed to use his best due diligence in matters dealing with restricted portions of his establishment while attempting to accommodate certain clients.

Reinstatement request from Paul Gendron:

Board Member Lyndon Mann recused himself from the session.

Mr. Paul Gendron had appealed an Order of the Board of Funeral Services denying reinstatement of a revoked license. The Appellate Officer ordered the matter remanded to the Board of Funeral Services within strict instructions to enter findings that reference recorded evidence that adequately explain the basis of its decision to deny license reinstatement to Mr. Gendron. Upon the advice of the Board's Counsel, Kevin Leahy, the Board voted to reinstate Mr. Gendron's license with qualifications. The Board's Order will be written and sent to Mr. Leahy.

10. Adjournment: The meeting adjourned at 1:47 PM

11. Next Meeting: March 2, 2009

Submitted,

Peter J. Beck, Secretary