

# 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, L yndon 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 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 staff. 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* was 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: "is in good standing and that state's licensing requirements are substantially equivalent to Vermont's. This involves reciprocity for funeral home rembalms."

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 amendment of 26 V.S.A. Section 1273: WRITING OF FUNERAL DIRECTOR AGREEMENTS. Mr. Guare pointed out that the term "funeral director" in 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: Strikethrough 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-needs 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.ElectionofFuneralBoardOfficersfor2008-2009Mr.Coffinmovedthefollowingslate:Chairman,PaulGuare;ViceChairman,PeterBeck,andSecretary,LyndonMann.Mr.BeckproposedthatheremainasSecretaryandthemotionwasamendedtothe

following:PaulGuare,Chairman,JohnCoffin,ViceChairman,andPeterBeck,Secretary.MotionandamendmentweresecondedbyLyndonMannandthevote wasunanimous.

DiscussionItemse.-- limitingcontinuingeducationcoursehours andf.-- contractsforpre-paidfuneral arrangements,werepostponeduntilthenextmeeting.

7OtherDiscussion: Mr.DanVincent,theinvestigatorfortheBoardofFuneralServices,hadsomeconcernshe wishedtosharewiththeBoard.Thefirstinvolved whichrecordsneededtobekeptbycrematories,specifically the *BurialTransit* ,whichthelawstateswillbefiledwiththetown clerk.Mr.Guarefeltstronglythatthe crematoryshouldkeepacopyofthe *burialtransit* togetherwiththerequired *AuthoritytoCremate* andthe *MedicalExaminersPermit* ,whileotherBoardMemberswerelessconcerned.

TheseconditemhadtodowithcertainpracticesMr.Vincenthaddiscoveredduringhisinspectionsdealingwith ritualsperformedatthefuneralhomebycertainreligiousgroups.Awiderangingdiscussionfollowed andMr. VincentwasofferedtheopinionsofindividualBoardMembers.Theconsensuswasthattheprofessional funeral directorneededtousehisbestduediligenceinmattersdealingwithrestrictedportionsofhisestablishmentwhile attemptingtoaccommodatecertainclients.

ReinstatementrequestfromPaulGendron:

BoardMemberLyndonMannrecusedhimselffromthesession.

Mr.PaulGendronhadappealedanOrderoftheBoardofFuneralServicesdenyingreinstatementofarevoked license.TheAppellateOfficerorderedthematterremandedtotheBoardofFuneralServiceswithinstructionsto enterfindingsthatreferencerecordevidencethat adequatelyexplainsthebasisofitsdecisiontodenylicense reinstatementtoMr.Gendron.UpontheadviceoftheBoard'sCounsel,KevinLeahy,theBoardvotedto reinstateMr.Gendron'slicensewithqualifications .TheBoard'sOrderwillbewrittenandsentmyMr. Leahy.

10.Adjournment: Themeetingadjournedat1:47PM

11.NextMeeting: March2,2009

Submitted,

PeterJ.Beck,Secretary