

**Office of Professional Regulation**  
**National Life Building North Fl 2, Montpelier, VT**

**VERMONT BOARD OF FUNERAL SERVICES**

UNAPPROVED MINUTES OF MEETING SEPTEMBER 1, 2009

Board Members Present: Paul Guare, Ercel Harvey, John Coffin, Lyndon Mann, Peter Beck

Staff Members Present: Rita Knapp, Unit Administrator; Kevin Leahy, Legal Counsel; Dan Vincent, OPR Inspector; Judith Griffen, Admin. Ass't.

Public Attendees: Lucien Hayes, President VFDA; Gregory Camp, Executive Director, VFDA;

The Continuing Education Subcommittee of the Board, made up of Paul Guare, Lyndon Mann and Peter Beck, met prior to the regular Board Meeting to review forty-six (46) submitted courses for re-licensing credit. The Subcommittee approved 20 courses and denied approval to 26 courses. The list of approved and denied dated Sept. 1, 2009 becomes a part of these minutes.

At the conclusion of the Subcommittee meeting, there ensued a long discussion involving other Board members and Rita Knapp, Administrator concerning how the Board might better handle the large number of request for course approvals. The 46 considered at this meeting was probably an average number for the Subcommittee to consider at each of its meetings. Currently Judith Griffen notifies the course providers as to approval or disapproval of the courses they have submitted and licensees then must check with the course provider as to whether or not a course they might like to take has been approved by the Vermont Board for credit. The Office of Professional Regulations does not keep or post a list of approved courses. And courses for re-licensing must be re-submitted to the OPR each year for approval.

It was agreed that Administrator Knapp, VFDA Executive Director Greg Camp and Board Member Peter Beck would meet to discuss possible alternatives to the cumbersome method currently employed in reviewing and posting courses for re-licensing. No date was set for the meeting.

1. Chairman Guare called the regular meeting of the Board to order at 9:22 AM
2. With a motion by John Coffin, seconded by Lyndon Mann, the Minutes of the meeting of August 4, 2009 submitted by Board Member Peter Beck were approved without corrections.
3. Administrator Rita Knapp presented the Board a review of the Status of Cases under investigation. There are 16 cases in various stages of investigation or pending closing reports. There were no questions from the Board Members.
4. Disciplinary Action: None

5. Concluded Reports: Administrator Knapp presented the Board with two Closing Reports. After the Board Members read the report on Case File # FS09-0608 (old designation) – 2008-205 (current designation) Peter Beck moved to accept the recommendations. The motion was seconded by Lyndon Mann and the vote by the Board to accept was unanimous. Following the reading of the report on Case File # 2008-203, Lyndon Mann moved to accept its recommendations and the motion was seconded by Ercel Harvey. The vote to accept was unanimous.

At this time Chairman Guare indicated he wished to move to agenda item 7 d, election of Board officers. He then nominated John Coffin as Chairman, Lyndon Mann as Vice Chairman and Peter Beck as Secretary. The nominations were seconded by Lyndon Mann and since there were no other nominations, a vote was taken and it was unanimous for the slate. Mr. Guare handed over the gavel to Mr. Coffin who took over the chairmanship at 9:45 AM. His first order of business was to thank Paul Guare for his years serving as Chairman.

6. Applications: James Kennedy application for embalmer. Following the Board's review of Mr. Kennedy's application, test results and other information, Lyndon Mann moved to approve his application for a Vermont Embalmer's license pending completion of his practicum. Mr. Beck seconded the motion and the vote was unanimous.

7. Discussion Items: Item C-- As an attachment to the Minutes of the August 4, 2009, Peter Beck addressed a suggestion concerning the collection or non-collection of \$6.00 for each funeral or disposition to fund the Vt. Funeral Services Trust Account. His suggestion was to amend Board Rule 7.2 C which states, "An establishment shall disclose the per disposition assessment on the general price list," and add to the end of that rule, "during years in which the fee is being collected." Legal Counsel, Kevin Leahy indicated that indeed such action could be taken by the Board. Mr. Beck then made his suggestion a motion. However Mr. Guare suggested that a simpler solution would be to remove rule 7.2 C in its entirety since the \$6.00 fee is assessed annually of funeral directors and crematory operators when the fund is below \$200,000.00, which it has not been in several years. The \$6.00 fee does not need to be on the General Price List since when it is being assessed, it is more correctly seen as part of a provider's overhead. Mr. Beck then withdrew his motion in favor of Mr. Guare's suggestion to rescind Board Rule 7.2 C altogether. However, no new motion was made. Inspector Vincent was made aware of the Board's intentions to change the rule.

At this point, Chairman Coffin allotted time to the Mr. Hayes and Mr. Camp to bring any items they might have to the Board's attention. Mr. Hayes indicated that as President of the VFDA, he had received a call from a member who objected to the OPR Inspector copying files which contained privileged information such as social security numbers. Inspector Vincent agreed that any confidential information which happened to be on forms he needed, would be kept in confidence or deleted on his copy. A second item which Mr. Hayes wanted to bring up was, on the advice of Administrator Knapp, halted since such a case might end up the subject of an investigation and the Board would need to maintain its impartiality.

7 – b: PRE-PAID FUNERAL CONTRACT. Before continuing the discussion of its last two meetings, Chairman Coffin called on Inspector Dan Vincent who had gathered some information from the Federal Trade Commission. Mr. Vincent spoke with Greg Trigullis at the FTC and the gist of their conversation, for our purposes, was that funereal directors could not hold un-itemized money from a consumer for future goods or services. This information spoke directly to Mr. Guare's concern stated in his draft of the proposed Pre-Need Contract under # III. Specific Contract Provisions, that—"If a buyer has not selected any specific funeral goods and/or services....." After considerable discussion during which several relevant points were raised on all sides, it was decided to strike that wording and concentrate on developing at this time only a Pre-Arranged Funeral Contract with goods and services selected which might be recommended to Vermont Funeral Directors and which complied with all pertinent Vermont Statutes and Funeral Board Rules.

At this point, Mr. Beck distributed, with the approval of the Chair, a draft of the original VFDA's contract on which he had made the additions and deletions agreed upon at the previous two Board meeting.

There was considerable discussion about the "Guaranteed vs. Non-Guaranteed" provisions and the "Revocable and Irrevocable" clauses. Mr. Beck read to the Board comments from Funeral Director Chris Palermo in Waterbury in which he stated his objections to Guaranteed Contracts. The Board's consensus was that whether or not a contract was guaranteed or not was a business decision between the parties and that in most cases it was the consumer who would favor the guaranteed contract.

Mr. Beck also shared thoughts from Funeral Director Robert Covey concerning the wording of Section V, DECLARATION OF TRUST. Mr. Covey was concerned that the Trustee of the Escrow Funds had no legal obligation to both advise and seek written approval from the purchaser prior to changing an Escrow Agent. In the discussion that followed, it was pointed out that under Vermont Funeral Services Board Rule 6.5 (D) the Trustee (Funeral Director) has the fiduciary responsibility of protecting the funds when prudent and necessary. The language implies transfer only under emergency circumstances when the funds are in jeopardy. Certainly the purchaser should be informed of any transfers, but if the Trustee had to seek the purchaser's consent and consent was withheld, the Trustee could not perform his fiduciary responsibility. *(Secretary's Note: Although not brought up at the meeting, OPR Director Chris Winters has pointed out the 3 V.S.A. § 129a defines and prohibits "unprofessional conduct" by a person licensed by the Secretary of State. Section 129a(a)(12) includes, as unprofessional conduct, the exercise of undue influence on or taking improper advantage of a person using professional services, or promoting the sale of services or goods in a manner which exploits a person for the financial gain of the licensee or a third party. Specific to rollovers of escrow accounts, a funeral director is in the position to influence and take improper advantage of a vulnerable client, and using clients' prepaid funds for his or her own financial gain in the form of a commission [when a transfer is not prudent or necessary] violates this statute.)*

The Board did decide to add under Section V, DECLARATION OF TRUST, item "D" concerning terms and conditions, (See the attached copy of the CONTRACT FOR PREPAID FUNERAL ARRANGEMENT.)

Discussed on the Cancellation section of the ***Contract for Pre-Paid Funeral Arrangement*** had been raised at previous meeting by Mr. Guare. It was his feelings that an oversight or omission by the Escrow Agent in not notifying the purchaser of the establishment of an escrow account within 20 days should not be reason to cancel a contract between the Funeral Director and the purchaser. Mr. Beck countered that the section was a consumer protection item to guarantee that the funeral director deposited any monies paid by the purchaser into an escrow account in a timely fashion. Mr. Coffin thought that payments for Pre-Paid Funeral Contracts should be made out to the Escrow Agent and not the Funeral Director. A compromise was arrived at by striking the 20 *business* day time limit and increasing it to simply 40 days.

The final item of discussion concerned a question raised at a previous meeting dealing with the impact of an ***Advanced Directive*** on a ***Contract for Pre-Paid Funeral Arrangement***. Attorney Leahy distributed to the Board a copy of VSA Title 18: Health—Chapter 231: *Advance Directives for Health Care and Dispositions, Section 9712, "Obligations of funeral directors, crematory operators, cemetery officials, procurement organizations and individuals appointed to arrange for disposition of the principal's remains."* This spoke directly to the questions previously raised by members of the Board and the public at the meetings.

The next regular Meeting of the Board will be October 6, 2009 at 9:00 AM

Attention was called to the VFDA Meeting to be held in Rutland on September 22, 2009.

The meeting was adjourned at 12:05 PM.

Respectfully submitted,

Peter J. Beck, Secretary

# Funeral Service Board Education Committee

## Courses for Review

September 1, 2009—8:30 a.m.

### a. National Funeral Directors Association

- Reconstructive Techniques for Facial Repair Trauma for 4 hours— **approved**
- Cremation Litigation for 1 hour— **approved**
- Prepare for the New Employment Regulations for 2 hours— **denied**
- Innovate Your Workplace for Greater Satisfaction for 2 hours— **denied**
- Stress: The Spice of Life or the Kiss of Death for 1 hour— **denied**
- Does Formaldehyde Cause Cancer: How the NFDAs Form aldehyde BMP scan Protect you for 2 hours— **approved**
- Event Marketing that Drives Funeral Business for 2 hours— **denied**
- Marketing Your Cemetery to Today's Customer for 1 hour— **denied**
- Contemporary Mortuary Cosmetology for 2 hours— **approved**
- Embracing Technology to Bring Total Service to the Families You Serve for 2 hours— **approved**
- Green Funeral Home is More than Burial for 2 hours— **approved**
- Wanted: Jurors for the Wrongful Dismissal Trial of the Century for 2 hours— **denied**
- Are You an Aardbalm User? For 2 hours— **approved**
- Navigating the New TSA Known Shipper Requirements for 2 hours— **denied**
- Strategies for Raising Revenues and Decreasing Expenses for 2 hours— **denied**
- Welcome to Wikiville: The New Internet for Your Funeral Home for 2 hours— **approved**
- Opening Session: Boom! Be a Player. Think Big, Act Bold. Own Your Success at Work for 1 hour— **denied**
- A Review of the World's First Commercial Resomarium for 1 hour— **approved**
- Burying a Child: Funeral Director's Work With the Bereaved for 2 hours— **approved**
- Simple and Practical Best Practice Ideas of Leading Funeral Homes for 1 hour— **denied**
- How to Prevent Debt from Becoming Uncollectable for 1 hour— **denied**
- Strategic Budgeting in Today's Economy for 1 hour— **denied**
- Advance Cremation Arranging for 2 hours— **denied**
- Conversation Café: Finance Ideas for 2 hours— **denied**
- Conversation Café: Gadgets and Gizmos for 1 hour— **denied**
- Conversation Café: It isn't Easy Being Green for 2 hours— **denied**
- Arlington National Cemetery: Past Present and Future for 1 hour— **approved**
- Ethical Thinking in Today's World for 1 hour— **approved**
- Insurance 101 for 1 hour— **denied**
- Funeral Packages for 1 hour— **approved**
- OSHA 101—Overview for 2 hours— **approved**
- Preparation Room Extremes for 1 hour— **approved**
- Recession-Friendly Ideas to Accelerate Innovation in Your Firm for 1 hour— **denied**
- With the Pus to Cremate: Five Reasons to Encourage Viewing and Ritual for the Deceased for 2 hours— **approved**
- Customer Loyalty Is Not Built from 30,000 Feet for 2 hours— **denied**
- Pet Death Care: Replace the Earnings Lost to Cremation for 2 hours— **denied**
- The Science of Shopping: How Your Product Can Sell Itself for 2 hours— **denied**
- Closing Session: Taking Chance for 1 hour— **denied**
- Exhibits for 1 hour— **denied**
- Certified Preplanning Consultant—Pastracll for 8 hours— **denied**

### b. APEX Continuing Education Solutions

- Sexual Harassment in the Workplace for 3 hours— **approved**
- Funeral Rituals and Mental Health for 3 hours— **approved**
- Telephone Inquiry Manual for Funeral Homes for 2 hours— **denied**
- Creative Marketing Ideas for Funeral Homes for 1 hour— **denied**
- Infant Embalming Techniques for 3 hours— **approved**
- Understanding HIV and AIDS for 2 hours— **approved**