

(Unapproved)

VERMONT BOARD OF FUNERAL SERVICES

MINUTES OF MEETING JUNE 9, 2009

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

Staff Present: Judith Griffen, Admin. Ass't., Amy Carlson, OPR Chief Investigator, Greg Meyer, Prosecutor, Dan Vincent, OPR Inspector, Jeff Jones, OPR Investigator, Kevin Leahy, Staff Attorney.

Visitors: Greg Camp, Executive Dir., VFDA, Lucien Hayes, Pres., VFDA.

1. The Continuing Education Committee made up of Paul Guare, Lyndon Mann, and Peter Beck, met at 8:30 to review and approve/disapprove submitted courses. The list of course approved and disapproved is attached to the minutes.
2. Chairman Guare opened the meeting at 8:50. The minutes of the meeting of May 5, 2009 were approved on a motion by Peter Beck, seconded by Lyndon Mann.
3. Status of Cases: There were no updates presented.
4. Disciplinary Actions: None
5. Concluded Reports: None
6. Applications: Two applications to be acted on were moved to the end of the meeting to be discussed in Executive Session.
7. Discussion Items: To accommodate the staff present, Chairman Guare moved to item 7 c. Complaint Process and invited Chief Investigator Amy Carlson and Prosecutor Greg Meyer to discuss this item with the Board.

Ms. Carlson informed the Board that complaints concerning professional misconduct come into the office by phone, letter or e-mail and may even be anonymous. Initial screening is conducted by the Unit Administrator in consultation with a Board member. Mr. Mann interjected that consultation with the board does not happen with the Funeral Board. If an investigation is deemed warranted, an investigator is assigned to fact find. The investigative report upon completion is submitted to the Unit Administrator and an Investigative Committee is formed made up of the Investigator, the Unit Admin., a prosecutor and a member of the Board.

Mr. Beck asked whether or not a process is in place or is contemplated to handle complaints which are a result of a "he said, she said" type of misunderstanding prior to the entering the formal process outlined. The short answer was "no" due to the requirements of rules and law in place. Mr. Beck indicated that it was his understanding in speaking with past

members of the Board that many complaints were resolved by the Board itself by bringing together the professional involved and the complainant. If this is no longer possible, had an ombudsman type of approach ever been considered? Again, the answer was "no."

Mr. Coffin asked what the target time for resolution of complaints is from the investigator's point. Ms. Carlson responded that about two years ago there was a marked increase in the number of complaints filed while at a time when there was a considerable turnover in the staff of the OPR. The goal of her office is to have all investigations completed within 200 days. If an investigation goes longer than that, they go to "cases supervision" which requires that the investigator assigned meet monthly with Ms. Carlson. Currently there are 7 of 160 investigations in case supervision. The majority of investigations are completed within 90 days.

Mr. Meyers said that if a decision is made to prosecute, some cases are pushed to the top on their merits especially if public safety or well being is involved. Although a complaint form is available on-line, complaints may be filed anonymously and Investigator Jeff Jones indicated that complaints from nurses or pharmacies might involve issues of wrong doing by the complainant's supervisor or employer.

Board Member Arcel Harvey asked if complainant severely confront a funeral director directly? Mr. Meyer responded that yes that does happen but the resolution is not usually what the complainant wanted and that at times the complainant may be seeking assistance with future civil litigation against the professional involved.

Chairman Guare spoke of his frustration with the lack of Board involvement in the investigative process. This frustration has been echoed by other Board members at this and other meetings. Kevin Leahy, Staff Attorney, urged Board Members to call their Unit Administrator prior to Board meetings and request information on how many cases have been opened and assigned. Mr. Guare said that this information was an integral part of the Board's function and should be readily available to assigned members of the Board. A lengthy discussion followed with suggestions that the Chief Investigator's Office as well as the Prosecutor's Office was always willing to provide information on cases to which they have been assigned.

Mr. Guare summarized the discussion by saying that better communications is needed between the Funeral Board and its Unit Administrator.

Mr. Coffin asked how members of the Board can vote on Closing Reports when they have had no information? Mr. Leahy said that individual Board members have a right to know the information upon which the Closing Report was made. However, even if the Board Member

doesn't sign-off on the Closing Report, and if the recommendation is to dismiss, the charge will still be dismissed.

7b. Discussion on the Vermont Funeral Directors Association's and Mr. Guare's Contracts for Prepaid Funeral Arrangements: Chairman Guare began the discussion stating that the problem is that everyone is not offering "Preneed, Prearranged, Preplanned, or Prepaid" Funerals in the same manner. The VFDA has a contract, drawn up by Robert Covey, Esq., and reviewed by Scott Gilligan, Esq. It was the hope that this contract would be approved by the State Board and highly recommended as the document to be used by Vermont Funeral Directors. This has not been done. Dan Vincent, Inspector for the OPR, stated there are a wide variety of misunderstandings among funeral directors in regard to various State Rules and Laws and the contract that they enter into with clients.

Mr. Guare's suggested contract contains a section which speaks to a glaring problem he perceives, namely that if the buyer in arranging a pre-need contract has not selected any specific funeral goods and/or services, the Itemized Statement of Funeral Goods and Services shall have conspicuously marked thereon, "No Goods or Services Selected," as opposed to the current practice by some funeral directors of estimating the cost on that sheet. He further stated that the task at hand is to create a contract that will reflect the conditions consumers expect today in a prepaid funeral arrangement.

There was considerable discussion, initiated by Inspector Dan Vincent, in which he stated that his inspections of contracts currently in use are done according to Vermont State Board of Funeral Services Rule 6, "Prepaid Funeral Arrangements," Rule 5.4, "FTC Rules," and applicable State Statutes. Mr. Guare pointed out that when the current rules and laws regarding prepaid funeral arrangements were being considered, there was no testimony taken from key players and what the Board and VFDA is now trying to do is to correct this situation.

Greg Camp of VFDA said that the driving force behind their recommended contract is the improvement of communication between consumers and the funeral directors while working toward informing and protecting the consumer.

Mr. Leahy stated that the current State Board Rules enable change but that he has concerns that the FTC rules may not allow the "futures" selling of goods and services by funeral directors.

Mr. Beck proposed that rather than having this same discussion all over again at some distant point in the future, the Board and interested parties continue working at a July '09 meeting toward a contract that can be recommended to all Vermont funeral directors while at the same time reviewing Board Rule changes that may be necessary. It was agreed that the Board will meet again on July 14, 2009 to continue this effort.

Mr. Leahy stated he will have reviewed current applicable rules and be ready with recommended changes by next month. Mr. Guare will email to the parties a copy of the Massachusetts law from which he gathered pertinent suggestions for this Contract.

Mr. Coffin offered a specific suggestion for Mr. Guare's contract. On page 3, under E. REVOCATION STATUS: To the IRREVOCABLE wording, add the TRANSFER provisions found on page 5 with an additional item, #4. "*Purchaser's preference.*" He also suggested that a transfer could not be in opposition to any existing Advanced Directions.

6. APPLICATIONS: At this time, 12:05, the Board went into Executive Session to discuss two applications. They came out of Executive session at 12:20 and on a motion by Mr. Beck, seconded by Ms. Harvey, the applications of Nicholas Whitcomb and Kenneth White were approved with stipulations.

10. The meeting was adjourned at 12:30

Submitted by Peter Beck, Secretary