VIRGINIA BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Department of Health Professions
Perimeter Center
9960 Mayland Drive, Henrico VA 23233-1463
Board Room 2, Second Floor
May 9, 2014 at 8:30 a.m.

Regulatory/Legislative Committee Meeting

AGENDA

CALL TO ORDER

REGULATORY

- Promulgation of regulations regarding standards for cremation – **Tab 1**

DISCUSSION

- Surface Transportation – **Tab 2 – Bob Oman, Chair**
- Virtual Funeral Homes – **Tab 3 – Chris Vincent, Chair**

Tab 1

DRAFT LANGUAGE FOR PROPOSED REGULATIONS

18VAC65-20-436. Standards for registered crematories or funeral establishments relating to cremation.

A. Authorization to cremate.

1.
2. The cremation authorization form, whether initiated by a crematory or by a funeral home arranging a cremation, shall include an attestation of visual identification of the deceased from a viewing of the remains or a photograph signed by the person making the identification. The identification shall occur while the body is under the care of a funeral home or crematory or when a representative of the funeral home or crematory is able to physically attach the identification to the remains as required by 18VAC65-20-436 C 3. The identification attestation shall either be given on the cremation authorization form or on an identification form attached to the cremation authorization form.

3. In the event visual identification is not feasible, a crematory or a funeral home arranging cremation may use other positive identification of the deceased as a prerequisite for cremation, pursuant to § 54.1-2818.1 of the Code of Virginia.

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CURRENT REGULATIONS:

18VAC65-20-436. Standards for registered crematories or funeral establishments relating to cremation.

A. Authorization to cremate.

1. In accordance with § 54.1-2818.1 of the Code of Virginia, a crematory shall require a cremation authorization form executed in person or electronically in a manner that provides a copy of an original signature of the next-of-kin or his representative, who may be any person designated to make arrangements for the decedent's burial or the disposition of his remains pursuant to § 54.1-2825, an agent named in an advance directive pursuant to § 54.1-2984, or a sheriff, upon court order, if no next-of-kin, designated person or agent is available.

2. The cremation authorization form shall include an attestation of visual identification of the deceased from a viewing of the remains or a photograph signed by the person making the identification. The identification attestation shall either be given on the cremation authorization form or on an identification form attached to the cremation authorization form.

3. In the event visual identification is not feasible, a crematory may use other positive identification of the deceased as a prerequisite for cremation, pursuant to § 54.1-2818.1 of the Code of Virginia.

4. In accordance with § 54.1-2818.1 of the Code of Virginia, a crematory shall require a cremation authorization form executed in person or electronically in a manner that

provides a copy of an original signature of the next-of-kin or his representative, who may be any person designated to make arrangements for the decedent's burial or the disposition of his remains pursuant to § 54.1-2825, an agent named in an advance directive pursuant to § 54.1-2984, or a sheriff, upon court order, if no next-of-kin, designated person or agent is available.

5. The cremation authorization form shall include an attestation of visual identification of the deceased from a viewing of the remains or a photograph signed by the person making the identification. The identification attestation shall either be given on the cremation authorization form or on an identification form attached to the cremation authorization form.

6. In the event visual identification is not feasible, a crematory may use other positive identification of the deceased as a prerequisite for cremation, pursuant to § 54.1-2818.1 of the Code of Virginia.

B. Standards for cremation. The following standards shall be required for every crematory:

1. Every crematory shall provide evidence at the time of an inspection of a permit to operate issued by the Department of Environmental Quality (DEQ).

2. A crematory shall not knowingly cremate a body with a pacemaker, defibrillator or other potentially hazardous implant in place.

3. A crematory shall not cremate the human remains of more than one person simultaneously in the same retort, unless the crematory has received specific written authorization to do so from the person signing the cremation authorization form.

4. A crematory shall not cremate nonhuman remains in a retort permitted by DEQ for cremation of human remains.

5. Whenever a crematory is unable to cremate the remains within 24 hours upon taking custody thereof, the crematory shall maintain the remains in refrigeration at approximately 40 degrees Fahrenheit or less, unless the remains have been embalmed.

C. Handling of human remains.

1. Human remains shall be transported to a crematory in a cremation container and shall not be removed from the container unless the crematory has been provided with written instructions to the contrary by the person who signed the authorization form. A cremation container shall substantially meet all the following standards:

a. Be composed of readily combustible materials suitable for cremation;

b. Be able to be closed in order to provide complete covering for the human remains;

c. Be resistant to leakage or spillage; and

d. Be rigid enough for handling with ease.

2. No crematory shall require that human remains be placed in a casket before cremation nor shall it require that the cremains be placed in a cremation urn, cremation vault or receptacle designed to permanently encase the cremains after cremation. Cremated remains shall be placed in a plastic bag inside a rigid container provided by the crematory or by the next-of-kin for return to the funeral establishment or to the next-of-kin. If cremated remains are placed in a biodegradable container, a biodegradable bag shall be used. If placed in a container designed for scattering, the cremated remains may be placed directly into the container if the next-of-kin so authorized in writing.

3. The identification of the decedent shall be physically attached to the remains and appropriate identification placed on the exterior of the cremation container. The crematory operator shall verify the identification on the remains with the identification attached to the cremation container and with the identification attached to the cremation authorization. The crematory operator shall also verify the identification of the cremains and place evidence of such verification in the cremation record.

D. Recordkeeping. A crematory shall maintain the records of cremation for a period of three years from the date of the cremation that indicate the name of the decedent, the date and time of the receipt of the body, and the date and time of the cremation and shall include:

1. The cremation authorization form signed by the person authorized by law to dispose of the remains and the form on which the next-of-kin or the person authorized by § 54.1-2818.1 to make the identification has made a visual identification of the deceased or evidence of positive identification, if visual identification is not feasible;

2. The permission form from the medical examiner;

3. The DEQ permit number of the retort used for the cremation and the name of the retort operator; and

5. The form verifying the release of the cremains, including date and time of release, the name of the person and the entity to whom the cremains were released and the name of the decedent.

Tab 2

The Conference – Model Practice Act

Section 304. Qualifications for Other Licenses:

Transporter License

The *regulatory authority* may adopt rules under this section including permit application procedures and the proper procedures for the removal, handling, and transportation of dead human bodies. The *regulatory authority* shall have the authority to inspect any place or premises that the business of removing or transporting a dead human body is carried out and shall also have the right of inspection of any vehicle and equipment used by a permittee for the removal or transportation of a dead human body. Any person or private business that transports dead human bodies in this state shall apply for and receive a registration as a transporter. Individuals eligible to receive a permit under this section for the transportation or removal of a dead human body, shall:

a. be at least 21 years of age;
b. be graduate of high school or high school equivalency diploma;
c. possess and maintain a valid driver's license issued by this state/province and provide proof of all liability insurance required for the registration of any vehicle in which the person intends to engage in the business of the removal or transportation of a dead human body;
d. affirmatively state under oath that the person has read and understands the statutes and rules relating to the removal and transportation of dead human bodies and any guidelines as may be adopted by the *regulatory authority*;
e. received training in compliance with standards of the Occupational Safety and Health Administration (OSHA) for universal precautions and blood-borne pathogens;
f. be of good moral character and provide three notarized written character references on a form prescribed by the *regulatory authority*, one of which must be from a licensed funeral director in good standing.
e. successful completion of a background check

Transporter businesses shall employ individuals who meet the criteria outlined in the above section. A business or individual holding a transporter's license shall not store dead human bodies awaiting transportation, but shall be limited to transporting dead human bodies from the place of death to a funeral service establishment or medical examiner/coroner's facility, from funeral service establishment to funeral service establishment and from funeral service establishment to place of shipment.

A transporter's license does not entitle the business or any of its employees to engage in the practice of funeral directing, embalming or arranging for the final disposition of dead human bodies or to hold itself out as a business used in the care or preparation for final disposition of dead human bodies.

Tab 3

March 2014 Responses from "The Conference" regarding Virtual Funeral Homes:

The Oregon Mortuary & Cemetery Board has not had a lot of experience with 'virtual' funeral homes. The online ads we see appear to 'mimic' a funeral establishment, but when looking further, they are websites advertising advance funeral planning, These websites are typically sponsored/designed by insurance agents who market life insurance policies for funeral plans, or by preneed salespersons who sell trust-funded prearrangements for undelivered funeral or cemetery goods and services.

While we don't regulate the insurance producers, we do license the individual preneed salespersons, and they must be employed by a certified provider (typically an Oregon licensed funeral home or cemetery).

Lynne Nelson Direct Phone: **(971) 673-1503**
Education & Compliance Manager, OMCB
800 NE Oregon St. Suite 430
Portland OR 97232

From: Chandler, Letricia R (KBEFD) [mailto:LetriciaR.Chandler@ky.gov]
Sent: Friday, March 21, 2014 8:52 AM
To: Member Services Manager
Subject: RE: Membership Question - Virtual Funeral Homes

We do not have virtual funeral homes here in KY. No updates at this time.

From: Smith, Mack [BOMA] [mailto:mack.smith@ksbma.ks.gov]
Sent: Friday, March 21, 2014 7:18 AM
To: 'Member Services Manager'
Subject: RE: Membership Question - Virtual Funeral Homes

We continue to license virtual and all funeral homes—requiring that they have a specific location that is licensed, inspected and regulated by the Board.

Mack Smith, Executive Secretary
Kansas State Board of Mortuary Arts
700 SW Jackson St., Suite 904
Topeka, KS 66603-3733
telephone: (785) 296-3980
fax: (785) 296-0891
email: mack.smith@ksbma.ks.gov
web site: http://www.kansas.gov/ksbma/

From: Rudy Thomas [mailto:rudy.thomas@azfuneralboard.us]
Sent: Friday, March 21, 2014 7:03 AM
To: Member Services Manager
Subject: Re: Membership Question - Virtual Funeral Homes

No not at this time.

From: Deborah H. Orecki [mailto:dho01@health.state.ny.us]
Sent: Thursday, March 20, 2014 3:43 PM
To: Member Services Manager
Subject: Re: Membership Question - Virtual Funeral Homes

No.

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Sent: Thursday, March 20, 2014 11:34 AM
To: Member Services Manager
Subject: Re: Membership Question - Virtual Funeral Homes

In Maryland, we have a RESTRICTED FUNERAL ESTABLISHMENT LICENSE, operating out of a full service establishment. That office can be arrangements only or perhaps arrangements and viewing, whatever the Board licenses for.

From: WV Board of Funeral Service Examiners [mailto:wvfuneralboard@hotmail.com]
Sent: Thursday, March 20, 2014 11:44 AM
To: Member Services Manager
Subject: RE: Membership Question - Virtual Funeral Homes

This is not permitted under WV Law.

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From: DOL INT Funerals [mailto:FUNERALS@DOL.WA.GOV]
Sent: Thursday, March 20, 2014 12:17 PM
To: Member Services Manager
Subject: RE: Membership Question - Virtual Funeral Homes

In Washington the criteria to open a funeral establishment they have to have a physical business location and a designated licensed funeral director for that location. They may also have complete at need and preneed online.

Jeanne Todd
Program Coordinator
Funeral/Cemetery Office
Business and Professions
(360) 664-1555

From: Professional Licensing [mailto:proflic@rushmore.com]
Sent: Thursday, March 20, 2014 12:20 PM
To: 'Member Services Manager'
Subject: RE: Membership Question - Virtual Funeral Homes

South Dakota has not had any experience with virtual funeral homes yet.

From: Moore, Lisa@DCA [mailto:Lisa.Moore@dca.ca.gov]
Sent: Thursday, March 20, 2014 12:33 PM
To: 'Member Services Manager'
Subject: RE: Membership Question - Virtual Funeral Homes

In California, any location where funeral arrangements are made must be licensed as a funeral establishment. The "office" can be separate from the storage and preparation rooms, but it is still part of the licensed funeral establishment. Preparation and storage can be located off-site or shared with another funeral establishment when certain requirements are met.

Lisa M. Moore, Chief
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www.cfb.ca.gov

From: Information [mailto:info@okfuneral.com]
Sent: Thursday, March 20, 2014 12:21 PM
To: 'Member Services Manager'
Subject: RE: Membership Question - Virtual Funeral Homes

Oklahoma has no experience with virtual funeral homes

From: Cyrus, Kevin (DCRA) [mailto:kevin.cyrus@dc.gov]
Sent: Thursday, March 20, 2014 1:21 PM
To: Member Services Manager
Subject: RE: Membership Question - Virtual Funeral Homes

There are no virtual funeral homes in Washington, DC, to my knowledge.

Kevin Cyrus
Education Liaison Specialist
Occupational & Professional Licensing Administration
(202) 442-4339 Direct
(202) 442-4320 Main

From: Peter Burke [mailto:pmburke@ncbfs.org]
Sent: Thursday, March 20, 2014 11:18 AM
To: 'Member Services Manager'
Subject: RE: Membership Question - Virtual Funeral Homes

NC has a category that we call "Unaffiliated." It's a funeral establishment permit for an individual without a brick & mortar building. Basically, they run their funeral homes out of their cars. They are required to comply with all state and federal rules and regulations except of course those related to the building itself. They will meet with families usually in their homes (the family's home, not the licensee's – that's a no-no), or perhaps at church or some other facility. Visitations and services are in churches, fellowship halls, graveside, wherever. A LOT of the work they do are direct cremations or cremations with memorial services. If they are funeral service licensees who do their own embalming, they are required to tell us which facility they are embalming at (maybe at a trade embalming facility or sometimes a funeral home); if they are funeral director licensee (can't embalm) they must identify who is doing their embalming for them (usually a trade service). They are not permitted to sell pre-need – that's the biggest difference. They are required to be inspected just like a funeral establishment is; they need to bring all of their records to the Board office in Raleigh or the inspector will arrange to meet with them in a common public area (town hall, library etc.). Most of the folks that have this type of permit (there are 16 active permits at this time) eventually go on to start their own funeral homes once they have established professional roots in an area.

Peter M. Burke, CFSP
Executive Director
NC Board of Funeral Service
1033 Wade Ave., Suite 108
Raleigh, NC 27605
919-733-9380 (phone)

From: Cordero, Janine [mailto:Janine.Cordero@po.state.ct.us]
Sent: Thursday, March 20, 2014 11:08 AM
To: 'Services@theconferenceonline.org'
Subject: FW: Question

Both the Department of Public Health and the Board of Examiners for Embalmers & Funeral Directors have taken the position that there cannot be an office located outside of the licensed funeral home that's established for the sole purpose of meeting with families to discuss and make arrangements. Therefore, in Connecticut this type of "virtual office" would not be allowed under our current statutes.

From: Amy Goode [mailto:Amy.Goode@arkansas.gov]
Sent: Thursday, March 20, 2014 11:08 AM
To: Member Services Manager
Subject: RE: Membership Question - Virtual Funeral Homes

Currently Arkansas does not have anything by definition concerning virtual funeral homes. However, the branch establishments of locations 40 miles or less away may use it (branch location) for that purpose. WE do not require by law that establishments have a chapel area. The branch establishment does not have to meet the min. requirement for caskets. The Board is currently working on rule changes and some requirements will hopefully change.

Amy S. Goode
Executive Secretary
AR Burial Association Board

AR State Board of Embalmers & Funeral Directors
www.arkansas.gov/fdemb
501-682-0574

From: Board [mailto:nvfuneralboard@sbcglobal.net]
Sent: Thursday, March 20, 2014 11:00 AM
To: Member Services Manager
Subject: Re: Membership Question - Virtual Funeral Homes

Nevada has a limited Establishment license that is for direct cremation and immediate burial only.

They do not have a prep room. They are typically located in storefronts.

Diane Shaffer
Executive Director
Nevada Funeral and Cemetery Services Board
702-290-5366