

**STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
BUREAU OF COMMERCIAL SERVICES LICENSING DIVISION
BOARD OF EXAMINERS IN MORTUARY SCIENCE**

COMMITTEE OF THE WHOLE MEETING MINUTES

October 11, 2007, 10:00 a.m.

In accordance with the Open Meetings Act, 1976 PA 267, as amended, the Board of Examiners in Mortuary Science, due to the lack of a quorum, met as a Committee of the Whole on October 11, 2007, at the Department of Labor & Economic Growth, Bureau of Commercial Services, 2501 Woodlake Circle, Room 1, Okemos, Michigan.

CALL TO ORDER

The board meeting could not take place without a quorum. The meeting of the Committee of the Whole was called to order by Vice-Chairperson Akins at 10:30 a.m.

Present:	David Akins Thomas Lynch Thomas L. Starks Christine S. Daggett	Vice-Chairperson Professional Member Professional Member Professional Member
Absent:	John E. Desmond Stephen R. Kemp Dr. Donald J. Duford Ida I. DeHaas	Professional Member Professional Member Public Member Public Member
Staff:	Ann Millben Allison Cosgrove Rita Burnett Archie Millben William Wilhelm Barrington Carr Thomas M. Byrne Foye Longworth Amy A. Shell	Licensing Administrator Assistant Licensing Administrator Secretary Director of Enforcement Compliance/Legal Unit Enforcement Division Testing & Education, Manager Testing & Education staff Policy Analyst
Visitors:	Dana Douglass Elizabeth Smalley Rodney Wakeman Thomas Morris	MFDA MFDA Wakeman Funeral Home William Sullivan & Son Funeral Home

ADDITIONS TO OR DELETIONS FROM AGENDA

Ms. Millben distributed a memo to board members to be added as a discussion item under staff reports.

APPROVAL OF MINUTES FROM MEETING HELD NOVEMBER 28, 2006

MOTION: Mr. Starks moved to recommend approval of the minutes from the November 28, 2006 meeting. Mr. Lynch seconded with the recommendation that Dr. Duford have an opportunity to review them before they are formally approved, and the motion passed unanimously.

PUBLIC COMMENT

Mr. Rodney Wakeman asked what the normal amount of time would be between a person passing the examination and being issued a license to begin working. He knew of some instances in his district where applicants had passed the examination but then waited a length of time before receiving the licenses. Ms. Cosgrove asked whether there were special circumstances involved and he replied that he was not familiar enough with the cases to know. It was possible that they had passed the state examination, but not the national.

Ms. Cosgrove explained that she normally receives the passing scores from PSI less than a week after the examinations and she looks at them once a week. It is possible that it could be as long as two or three weeks before she would see the scores and issue the licenses, but a month would be abnormally long. Sometimes she is waiting for the national scores or there is a difficulty getting the scores from the exam vendor. She couldn't say what the problem was with the instances he mentioned without more information, but normally the license is issued in less than a month if the applicant has met all the requirements.

Ms. Cosgrove also noted that there had been a glitch in the system between the Department staff and the new exam vendor that caused some major delays with receiving the exam scores, but that it had been discovered and fixed.

STAFF REPORTS

Testing and Education

Mr. Longworth stated that there had been 27 candidates for the examination since March, and 19 passed, eight failed. He noted that those who passed would not receive the licenses until they also pass the national examination. In order to take the national examination, they must have already taken the required education and performed the required services. They can sit for the Michigan examination even if they have failed the national, but cannot get the Michigan licenses until they pass both.

Resident Trainee License Renewals

Ms. Millben read the memo she had earlier distributed to board members so that visitors at the meeting would be aware of the issues discussed. The problem arose because Rule 23(4) provides that "A resident trainee license shall not be renewed more than two times." The Department received applications from at least two Resident Trainees who wished to become re-licensed to continue training and education, but they were ineligible to renew, having already renewed twice. These were new applications to a different sponsoring mortuary science licensee.

Ms. Millben explained the procedure in other professions wherein an applicant does not meet the criteria for licensure. She noted that the Department denies the applications of these applicants, after which they have the opportunity to appeal before the board. The board then reviews and votes on them on a case-by-case basis considering the rationale provided by the applicant. This board could follow the same procedure, or they could determine that the public would be best served by having these individuals continue their training and education toward eventual full licensure, and the Department could simply look at them as new applicants and issue another Resident Trainee license. Ms. Millben stated that the Department staff was asking for the board's guidance on how the Department could look at these and future applications for re-licensure in these circumstances.

Ms. Millben and Ms. Cosgrove explained the difference between re-licensure and renewal. The term "renewal" is a statutory term regarding a current, active license for which an application is received to renew it. For Mortuary Science the statutory limitation is twice for Resident Trainee licenses. Once the trainee has renewed an active license twice, they can no longer renew it by law, so to become licensed again, they re-licensing, not renewing. In other professions, licensees can then submit a re-licensure application after meeting the re-licensure requirements. The previous staff considered that renewal and re-licensure were the same and only allowed the trainee two licenses total.

Mr. Akins invited the resident trainee to speak to the board. Mr. Morris explained his circumstances, in that he was working towards his education requirements and had been licensed as a resident trainee from 2002 until January of 2007. He is currently studying at American Academy McCallister Institute in New York and is set to graduate in April 2008. He was asking for an extension of his resident trainee license through 2008 so he could continue to practice his technical skills. He would also like to continue his involvement with the National Funeral Directors Association, the Michigan Funeral Directors Association and the Michigan Embalmers Society while completing his education towards his goal of full licensure.

Mr. Akins asked why he had been unable to complete the training if he had been licensed from 2002 to 2007. Mr. Morris responded that he had not been licensed continuously during those years, but had taken some time off. He had been working full-time while trying to complete the courses, as he alone was completely responsible for all of his living and education expenses. He had found it difficult at times to both work full-time and go to school full-time. He was currently in his third semester at mortuary school and had only one more semester in order to graduate. He had been licensed as a resident trainee under Sullivan and under Lynch & Sons.

Mr. Lynch asked about the process required to be licensed. A person may satisfy the resident trainee requirements and that license lapses; then they finish the education requirements, then pass the examination to become licensed. He asked if there is a requirement for these to be satisfied in a continuous time period. Ms. Cosgrove replied that there is not. Mr. Morris had completed his resident training and as soon as his education and testing requirements are satisfied, he would receive his license. He had already completed all of the cases, details and duties that a funeral director performs. The reason he would like to have his resident trainee license active again is so that he may work in the embalming room. Without the license he can work in other areas of the business, but not in the embalming room.

Mr. Morrison replied in the affirmative and noted that in April he would be taking labs in embalming and restorative art in his school and he would like to keep his technical skills fresh while he is completing his education and testing requirements. He considered that having the credentials of being licensed was valuable, and since he was enrolled in mortuary school full-time working towards graduation, he is asking for the license in good faith.

Mr. Starks noted that an employee with a resident trainee license would be supervised and the Department would have the authority to impose sanctions if there were a violation. If not licensed, there would be nothing to enforce. He would be breaking the law by participating in unlicensed activity, but the Department cannot sanction unlicensed activity. Only the local county prosecutor could do that, and in the past prosecutors have declined to do so. Mr. Starks added that there is a shortage of good, qualified people in the industry and considered that the board should be in favor of extended training by allowing them to continue with the resident trainee licenses, rather than telling them that they need to find another type of job.

Mr. Lynch stated that he had known Mr. Morris for years and was aware of his situation. Mr. Morris had worked for his brother's funeral home. He noted that Mr. Morris was no longer working for his brother because his license permitting him to work in the preparation room lapsed. He considered that the board and industry wanted to avoid having people renew their trainee licenses over and over again under different sponsors, essentially working as trade embalmers, but never working toward completing all requirements and receiving a funeral director's license.

Mr. Starks noted that the board and industry might be seeing this problem again in the future, as the resident trainee license will only last between two and three years, depending on when the initial license was issued, but the education requirements take much longer. If an individual decides to get a trainee license right out of high school, that license will expire long before they can finish their education. He was struggling with the rule, because of the disparity between the length of time required for the education and the two year restriction for the trainee license renewals.

Mr. Carr stated that there seemed to be two scenarios regarding the resident trainee license. In one situation the applicant obtained the skills with the intent to complete the education, pass the examination and obtain a funeral director's license. In the other, the applicant wanted to obtain the skills, but then just work as a trade embalmer without ever completing the other requirements to become a funeral director. He did not consider that the intent of the law was to allow for an individual to work in the industry without completing all of the requirements to become a funeral director. Once they have acquired the minimum skill level, there is no other reason to have a resident trainee license and he sees no reason for the Department to grant an extension. He considered that the shortage in the industry of skilled people must be remedied by having more licensed funeral directors, not by having more licensed trainees. Mr. Lynch agreed that there are two issues, the licensing issue and the employment problem. He also agreed that his understanding is there's no desire to create another sub-license type.

Ms. Millben reminded board members that the rule's restriction to two renewals is an administrative rule, not statute. At some point in the past, a previous board chose to offer further clarification of the statute by adding the rule that imposed the renewal limit of twice. If the board was revisiting other rules they might wish to update or change, they could also look at this. As the industry changes, they could update it to three or only one or possibly consider eliminating it.

Ms. Millben stated that the Department staff had hoped for some guidance from the board, who are the professionals, in regards to Mr. Morris' situation and future similar applications. She suggested that if such an individual applied, the staff could deny the application, but the person could appeal the denial before the board, and the board could review each application on a case-by-case basis to decide whether to grant the license or uphold the denial. She added that the staff would like to act in a manner most in accordance with the statute and rules that protects the public, but also takes into consideration the individual applicant's circumstances and promote what is good for the industry and the profession.

Mr. Starks recommended that if the only component not allowing the applicant to complete all the requirements was education, but the applicant is taking the classes and working towards graduation, that the applicant is permitted to re-license as a resident trainee. Ms. Millben suggested that a criteria be established that if applicants are applying for a third renewal or term as a resident trainee, and they can prove that they are still in mortuary school, taking classes and making strides towards their degree, the Department would look favorably at their applications. If they just wanted the license so they could continue to work, the requests would not be granted.

Mr. Lynch agreed that progress needed to be made towards the goal of obtaining the funeral director's license. He considered that the Department staff needs to be able to approve the license in some cases. He noted that times are changing and a young person may change professions during his life time, which was not possible for older generations, and the board will have to handle this problem in the future. In the meantime, he considered Ms. Millben's approach to the problem to be a valid one. Mr. Akins stated that there are parameters already defined and he considered that applicants have a duty to try to perform within that time period. If they are unable to do so, they would then have the opportunity to appear before the board to ask for an extension.

Ms. Millben stated that in Mr. Morris' case, he could apply for a relicensure. The Department would deny the application. Then Mr. Morris could appear before the board, explain his circumstances, present evidence, and appeal the denial. At that point the board could consider his appeal rationale and vote. It would not be a blanket policy change, but a case-by-case decision by the board. Ms. Millben reiterated that other boards deal with denied applications in that manner and gave an example of how the real estate board handled broker applicants who were denied for lack of experience in real estate as three full-time years are required. She considered that it is within the board's authority to look at denied applications and render a decision based on knowledge of the industry.

Mr. Starks was concerned about making an applicant wait for board meetings, as the board has not been meeting very often and did not have a quorum for this meeting. He considered it too long to ask an applicant to wait for an answer if they have to appear before the board.

Mr. Lynch noted that as there was not a quorum at this meeting, the board could not make a decision regarding Mr. Morris' situation. He added that in the past the board had been involved with rule changes that seemed simple, but turned out to be very complex. He recommended that Vice-Chairperson Akins contact the Michigan Funeral Directors Association and seek some directive as to what the professional consequences might be in this situation, so that at the next board meeting where there is a quorum, they could give Ms. Millben the guidance she is asking for that would be in the legal authority of the board.

Mr. Lynch agreed with Mr. Stark's position that well-trained, qualified individuals, who may be assets to the profession, could be disqualified from having an interim license and from working in the industry because of timing. He considered that unfortunate, but that it was outside the authority of this board unless the rules change. However, he would not like to change the rule without first finding out if there is a real need for the change.

Ms. Daggett asked if there was not also a burden on the licensed sponsor of the trainee to see that the trainee was achieving the necessary tasks to complete their training in a timely manner. Ms. Cosgrove replied that Mr. Morris had done that. Ms. Daggett noted that then in his case the relicensure was a matter of whether he could still perform in the embalming room, not a matter of having time to complete his training.

Mr. Starks added that another aspect of this situation has to do with the education now being available online. Mr. Morris had been taking the classes online, which had taken two years. Taking the classes in mortuary science school takes nine months to a year. Board members agreed that with the recent changes there needed to be more study done on rule changes, and that they could not give Ms. Millben guidance on how to approach these types of applicants at this meeting.

Enforcement Division

Mr. Carr introduced himself as the Bureau employee who supervises staff who handles complaint investigations. He did not bring statistical data, but reported that they do not have much activity with regard to allegations and complaints of violations of the statute and rules for mortuary science, compared to the number of complaints they get for other professions.

He noted that the board, the Michigan Funeral Director's Association and the industry have been concerned for many years about reports that a facility was operating near Benton Harbor without a license. A number of investigations had been performed and the Department determined that there was some merit to these reports and issued a "cease and desist" order to that facility. The reports have been that there is a funeral establishment in Michigan City, Indiana that has been working with an individual in the Benton Harbor facility to contract for services. Some of the activities would have been in direct violation of the mortuary science statute, but there was no direct, conclusive evidence to prove it. An application was received to license the facility in Benton Harbor. At almost the same time that the investigation was completed, the license application was also completed. Within a week of the "cease and desist" order being issued, a license to the facility was issued. So the objectives of the investigation were accomplished, in that the facility now has a license to operate legally as a funeral establishment. There is no provision in the statute that prohibits someone from becoming licensed because they were previously violating the law with unlicensed activity. Once licensed, they came into compliance.

Mr. Carr added that he knew of another matter that is of interest to the board, but he is unable to comment on it. There is currently an open, ongoing investigation of the Paradise Funeral Home in Detroit, and it could eventually come before the board, so he will not discuss it.

ITEMS FOR CONSIDERATION FROM BOARD MEMBERS

Mr. Akins asked Mr. Millben if the cemetery matter had been resolved. Mr. Millben replied that it had never been handled as an Enforcement Division matter. There has always been a Cemetery Commissioner who handled that aspect and he was unable to address those concerns. A new Commissioner was appointed, Mr. Metcalf, and he has handled it directly himself.

Mr. Akin asked if there was a cemetery commission or board. Mr. Millben replied that there is just a Commissioner. Mr. Akins commented that he found it unusual that the Department operates without a board, even though it is so directly tied to the mortuary science industry, which does have a board. He understood that there was a rule against being in both the funeral business and the cemetery business, but he expressed his opinion that there should have been a representative from the mortuary science board at those meetings as a consultant.

ELECTION OF OFFICERS

Due to the lack of a quorum, an election of officers was not held. Mr. Lynch noted from the board minutes from the previous meeting in November 2006, where there was a quorum, the board had declined to hold elections due to his absence. He wanted to recommend that the board proceed with elections, even if he is absent for some reason. He considered that Mr. Akin was doing an admirable job as vice-chairperson and should continue as chairperson.

NEXT MEETING DATE

The next regularly scheduled meeting of the Board of Examiners in Mortuary Science will be held on March 6, 2008 at 10:00 a.m.

ADJOURNMENT

There being no further business to be brought before the board, the meeting was adjourned at 11:50 a.m.

MOTION: Mr. Starks moved to adjourn the meeting. Ms. Daggett seconded and the motion passed unanimously.

David Akins /s/
David Akins, Vice-Chairperson

03-06-08
Date

Ann Millben /s/
Ann Millben, Licensing Administrator

03-06-08
Date