

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

BOARD MEETING MINUTES

November 28, 2006, 10:00 a.m.

In accordance with the Open Meetings Act, 1976 PA 267, as amended, the Board of Examiners in Mortuary Science met in Regular Session on November 28, 2006, at the Department of Labor & Economic Growth, Bureau of Commercial Services, 2501 Woodlake Circle, Room 1, Okemos, Michigan.

CALL TO ORDER

The business meeting was called to order by Chairperson Doll at 10:05 a.m.

Present:	Harold Doll David Akins Stephen R. Kemp Rev. Donald J. Duford Ida I. DeHaas	Chairperson Vice-Chairperson Professional Member Public Member Public Member
Absent:	John E. Desmond Martin Hollebeek Thomas Lynch	Professional Member Professional Member Professional Member
Staff:	Jean M. Boven Ann Millben Allison Cosgrove Rita Burnett Archie Millben Stephen Gobbo Kimberly Breitmeyer William Wilhelm Barrington Carr Thomas M. Byrne Foye Longworth	Director of Licensing Licensing Administrator Assistant Licensing Administrator Secretary Director of Enforcement Compliance/Legal Unit Manager Compliance/Legal Unit Compliance/Legal Unit Enforcement Division Testing & Education, Manager Testing & Education staff
Visitors:	Nicole Benedict Kevin McCabe Tim Lynch Sr.	MFDA Visitor Visitor

ADDITIONS TO OR DELETIONS FROM AGENDA

None.

APPROVAL OF MINUTES FROM MEETING HELD JUNE 1, 2006

MOTION: Mr. Akins moved to approve the minutes from the June 1, 2006 meeting. Ms. DeHaas seconded and the motion passed unanimously.

PUBLIC COMMENT

Mr. Lynch requested to address the Board. He expressed dissatisfaction regarding a Department investigation initiated based upon a letter of concern from a family he assisted. Based upon the contents of the packet provided to the Department by Mr. Lynch, a complaint file was opened. Though subsequently resolved, Mr. Lynch expressed his frustration with the fact that this appears on his license record. Mr. Lynch also advised the Board that he had been attempting to get a response from the current Cemetery Commissioner, Andrew Metcalf, regarding several issues. He was provided with information regarding the Department organization and other Department managers he could contact.

Mr. McCabe requested to address the Board. He expressed several concerns regarding the Enforcement Division's processes and his past contacts with the Licensing Division. He brought to the Board's attention his concern regarding the recent press coverage of a cemetery and prepaid contracts. He also reiterated the content of a meeting in which the definition of full-time in the industry was discussed with Licensing Division staff.

STIPULATION

Gilbert Purse Funeral Home, License No. 4502-003043, Complaint No. 91007

During discussion Mr. Akins noted that the Stipulation called for a fine to be paid within 90 days. He considered that it should have been within 30 days.

Motion: Mr. Akins moved to accept the Stipulation, which stated that (1) Respondent shall pay a \$3,000 fine within 90 days of the date of the mailing of the Final Order, (2) that the amount of the fine shall increase to \$5,000 if Respondent fails to pay the \$3,000 fine within 90 days or if Respondent fails to abide by the additional terms of this Stipulation, (3) Respondent shall be in compliance with all statutory and rule requirements concerning the operation of its funeral establishment within 90 days of the date of the mailing of the Final Order, (4) Respondent shall provide to the Department, within 90 days of the mailing of the Final Order, the following proofs: (A) Report a change in ownership of the funeral establishment in accordance with MCL 339.1806(3); (B) Truth in advertising, specifically using the name of the funeral establishment as it is licensed in compliance with 1991 AACCS, R 339.18941(1)(b); (C) Use printed materials for the funeral establishment that clearly identify the establishment's manager, state the positions of all persons named in such materials, and identify all persons licensed under 1980 PA 299 in compliance with 1991, AACCS, R 339, 18941(3) &(4) and (5) failure to comply with the terms of this Stipulation shall result in the revocation of Respondent's license and no application for licensure, relicensure, reinstatement or renewal shall be considered until all terms and conditions of the Stipulation and/or other final orders have been fully complied with. Rev. Duford seconded and the motion passed unanimously.

STAFF REPORTS

Examination Vendor

Ms. Millben introduced Mr. Byrne, Testing & Education Unit manager, and Mr. Longworth, Testing & Education Unit staff. Mr. Byrne stated that the mortuary science examination previously administered by Department staff, but that all of the Department-administered examinations would now be administered by a contract vendor. He added that the new vendor is Professional Services LLC (PSI). He noted that for the first quarter of 2007, the examinations would still be administered in Okemos by the Department staff, but eventually there would be five examination sites available in different areas of the state.

Mr. Longworth stated that the state jurisprudence examination would be changing, but the national portion would not change. He added that several licensed professions with a low volume of applicants will now be administered by same vendor as the large volume professions (PSI). He considered that a low-volume profession was one that had 300 or less applicants per year. He noted that mortuary science has about 60-80 per year.

Mr. Longworth stated that the examinations would be computer-based and candidates will be provided on-site scoring by the second quarter. The exams will continue to have the same item bank of questions and test specifications for the first year. The new vendor will be doing a job analysis to look at what is happening in the industry, so as to determine what the content should be on the examination. He noted that by August of 2008 the examination will go through a very strenuous review, which is looking at all the laws and rules and what activities are being performed in the industry now to determine what should be done with the exam content. Board members will be receiving a survey that they should complete and send back. Mr. Akins asked who would be receiving the responses. Mr. Longworth replied that the Department staff would receive them and work with PSI on the exam items.

Mr. Byrne stated that the new examination vendor offered testing sites at other locations, not just Okemos. Mr. Longworth mentioned Marquette, Southfield, Gaylord-area and Grand Rapids as other possible future sites. Mr. Akins asked about the cost of the examination. Mr. Longworth replied that it would be about the same.

Ms. Millben asked how often the examinations would be administered. Mr. Longworth replied that they would be offered quarterly, which is as often as the item bank would support. Right now the exams are on set dates. As they move to computer-based, he hoped that it would move a window, rather than a set date, and they could take it once during that three-month period. He added that by August of 2008 the new computer-based examinations should be finished and in place.

Statistics

Ms. Millben introduced herself to Board members as the licensing administrator for five professions: real estate, collection agencies, prepaid, vehicle protection product warrantors, ski area safety, carnival-amusement safety and now mortuary science. She also introduced Allison Cosgrove, assistant licensing administrator, and Rita Burnett, the board secretary. She noted that currently there are 76 trainees for mortuary-science, 2,127 licensees, 742 funeral homes, and three funeral directors for a total of 2,948. There are also 569 registered prepaid funeral providers.

Mr. Akins asked if the 569 prepaid funeral providers included at least some cemeteries. Ms. Cosgrove responded that she was still gaining knowledge about this area, but would find out the correct answer. It appeared to her that cemeteries can be licensed under the pre-need, but mortuary science directors or trainees wouldn't be under pre-need. Ms. Millben suggested that the board members could also receive a list of the 569 registered prepaid funeral providers.

Department Complaint Process – Enforcement Division

Mr. Millben, Director of Enforcement, explained the Department's complaint process. He stated that the Enforcement Division handles regulation activities for all thirty professions. There are approximately 4,000 complaints filed per year, and he has a staff of fifty people, thirteen of which are field investigators. Also included in his staff are the inspectors that inspect carnival rides and ski lifts.

When the Enforcement Division receives an allegation, staff process the raw allegations to make a determination whether or not the Department has jurisdiction and whether it could constitute a violation of the law. If so, an investigation is opened and given a complaint number, and at that point it becomes a matter of public record. There is nothing in the system to prevent anyone from filing a complaint against any licensee, which would generate a complaint number. That appears to be an unfortunate aspect of the system, but required for tracking purposes. Once an investigation is open, it is evaluated and a conclusion is drawn as to whether the statute has been violated.

An investigator contacts all parties involved, taking statements and collecting documents. If the allegations are not substantiated, the file is closed. If they are substantiated, a Formal Complaint is filed. When the staff talks about a complaint, that is a Formal Complaint that Mr. Millben signs. Once a Formal Complaint is filed, it goes through administrative process that could result in evidence being heard before an administrative law judge in a formal hearing setting. The Formal Complaint will either result in a Stipulation or a Hearing Report that the Board then reviews for action.

Mr. Millben stated that it is not a perfect system, but no judicial system is perfect. Situations sometimes develop with extenuating circumstances that show that an investigation should be stopped. They attempt to comply with those situations. There is no provision in the system to wipe anyone's record completely clean. Anyone who accepts the privilege of being licensed in Michigan also accepts the responsibility that at any time any citizen for any reason can file a complaint against that license. The issue is not whether or not a complaint has been filed, but the outcome.

Mr. Akins asked whether the disposition of it remains a matter of public record, even if a file is closed or dismissed. Mr. Millben agreed and noted that only Formal Complaints appear on the website. If a person called in or contacted the Enforcement Division as to whether a complaint had ever been filed, the answer would be that a complaint was filed, but dismissed. Ms. Millben noted that making a clear distinction between an allegation, which is an investigation, versus a Formal Complaint that substantiates a violation of the statute. Just investigating an allegation and does not carry as much weight as a Formal Complaint. Mr. Millben added that a web page identifies anything that rises to the Formal Complaint level. It does not contain information about allegations against a licensee. The Department considers it an allegation until Mr. Millben signs the Formal Complaint, detailing the Department's findings.

Mr. Doll asked whether an allegation is cleared from a licensee's record. Mr. Millben replied that of the 4,000 allegations filed, five hundred or less proceed to a Formal Complaint. Of those 4,000 cases that are opened, they all have case numbers and are all tracked. The Enforcement staff are held responsible for their time spent on cases and therefore the allegation is not eliminated completely. There is a record by the tracking number that a certain employee worked on a certain file for a certain length of time. If anyone asked for any reason, they would be told there was an investigation, but it was dismissed for lack of proof.

Mr. Millben added that this impacts all of the boards. He noted that some licensees would like to have an impeccable record, but he compared this to a criminal situation where a person is not arrested, but they are detained. There exists a record of the detention.

Mr. Millben stated that the Enforcement Division is divided into three areas. One is the Ski Area Safety and Carnival-Amusement unit, which he referred to earlier. The other two are investigation and formal complaints. He introduced Mr. Carr, who is in charge of the investigation unit, and Mr. Gobbo, who handles everything after the Formal Complaint is generated through the process to their resolution.

Mr. Akins asked about Paradise Funeral Home. Mr. Gobbo replied that the Formal Complaint had been mailed first class to the address on record based on the Hearing Report. He stated that the Hearing Report was made part of the Final Order, so the Final Order is based on that. He noted that the Board had deviated from the recommendation of the Administrative Law Judge. Mr. Akins asked if the complaint was also against the licensed manager and Mr. Carr responded in the affirmative. Mr. Akins stated that he wanted to follow the proper procedure when coordinating efforts with the Wayne County Sheriff's office. According to the Wayne County Sheriff's office the business was still operating without a license and asked if there was a way to stop them. Mr. Carr responded that he was not aware of that and asked for copies of the information Mr. Akins had received from the Wayne County Sheriff.

Mr. Gobbo stated that the Department still has a case pending against the manager. Even though this Final Order references the manager, it's based on the original complaint. The board chose to increase the penalties up to the maximum of \$10,000 per violation. Mr. Akins asked if the manager/licensee could pay the \$10,000 fine and submit an application for an establishment license again. Mr. Gobbo replied that the board revoked the establishment's license, which means that even if they pay the fine, they must come back before the board before another license could be issued. He added that the pending case may eventually come before this Board and that it would not be appropriate to further discuss the pending case because the Board may have another opportunity to impose a penalty. If there is no substance to the allegations, the file would be closed.

Mr. Akins asked if the same funeral home sent an application with different name and a new manager, whether they could get a license again. Mr. Gobbo replied yes, given those circumstances. Mr. Akins asked whether there were open complaints. Mr. Carr replied that there were currently 32 open complaints for funeral home establishments and managers. He noted that 45 new complaints were filed in 2004, with 44 cases closed and one Formal Complaint issued. There were 53 new complaints filed in 2005, with 51 cases closed and 4 Formal Complaints issued. There were 35 new complaints filed in 2006, with 39 closed and 4 Formal Complaints issued.

In response to an inquiry regarding the volume of complaints, Mr. Gobbo noted that there were 2,000 complaints per year filed against builders and that is the majority of what the staff works on in terms of stipulations and hearings. He advised that very few complaints are regarded as high priority. Everyone contends that their complaint is high priority. If there is a high risk to public health and safety and/or high media scrutiny or political interest in a case, those cases receive more attention. A higher priority is given to possible damage to a live person than to a dead body being moved, unless there is a public health risk involved. If there is a situation where a building may fall down, that is a higher priority in that a living person could be hurt or killed. Whether or not a case is high priority is based on the facts of each situation. Mr. Millben added that assigning priorities is in conjunction with all of the circumstances at that time. There are only 13 investigators, so what was high priority yesterday may not be high priority, depending on what has happened that day. The sheer number of complaints alone may out prioritize a previous high priority.

ITEMS FOR CONSIDERATION FROM BOARD MEMBERS

Rev. Duford asked the status of the complaint against Paradise Funeral Home. At the board meeting six months ago a fine was assessed. He asked if it was paid and if Paradise is still operating. Ms. Millben distributed a copy of the Final Order to the board members. Mr. Akins stated he had received phone calls from people who brought to his attention that this firm is still operating. Mr. Gobbo told him that they were waiting until the Final Order was presented and added that there wasn't much that the Enforcement Division could do. Mr. Akins contacted the Wayne County Exec's Office and the Wayne County Sheriff's office to see what they could do to stop them from operating. He asked Ms. Jolicoeur to write to the City of Detroit, asking them to stop allowing this funeral home from filing death certificates, but they are still allowing it.

Mr. Akins also stated that the issue arose as to how to tie the licensee or manager to the complaint. He thought Mr. Carr was going to give the board an update on that issue. Rev. Duford stated that Martin Lynch asked that at the meeting in August that was canceled, that a complaint be filed against the license holder. Mr. Akins agreed that as a board and Department, that was the only method of getting the funeral home to stop operating. If they could not file death certificates or get bodies released to them, they would have to stop. He considered it more practical to work with Wayne County and City of Detroit officials.

Ms. Millben noted that if the license has been revoked and they continue to practice, it is a misdemeanor and the local county prosecutor can take action. Mr. Akins stated that they do not have a license presently as an establishment, but they are still operating. Rev. Duford added that in the complaint that was filed, they did not have any licenses. Ms. Millben responded that there could be an open complaint of which she was unaware.

Ms. DeHaas asked if the Department had the ability to stop this funeral home. Mr. Akins expressed the board's frustration that a funeral home is operating without a license, but the Department can do nothing to stop it from operating. People call him to ask about it and all he can tell him is that he'll bring it up at the next meeting. He considered that a consumer would get hurt and all the board members would be in the newspaper as not doing their job of protecting the public. He understood that there is an administrative procedure to follow. Ms. Boven added that what an enforcement action would do is take a license away, but if they are unlicensed, there isn't anything else the Enforcement Division can do.

Ms. DeHaas asked why the Department could not lock the building, so people could not go into it. Ms. Boven responded that the Department can only do what is in the law and the law does not provide for that. Unlicensed activity has been a very hot issue for many years. Some legislation was introduced that would make it a felony, so that the prosecutors could go after them. It is currently a misdemeanor, but the Department cannot prosecute, as they are an administrative agency, without law enforcement powers.

Rev. Duford asked whether the Attorney General's Office could do anything. Ms. Millben replied that it is possible for a group to go through the court system to get injunctive relief against unlicensed activity. She noted that the Michigan Association of Realtors went as a group action and stopped some unlicensed activity. Rev. Duford stated that he is a licensed professional counselor and renews his license every two years. He determined that he need not renew it as it appears no follow-up will occur.

Ms. Boven replied that his professional counselor's license is under the health code and that would be a felony. The Public Health Code is an entirely different law. Rev. Duford replied that new laws needed to be enacted regarding funeral homes. He considered these problems to be very serious things. Ms. Boven agreed that they are serious, but noted that the Department does not have the power to enact any laws. The Department staff has worked with anyone sponsoring legislation and has been vocal in their support. Rev. Duford stated that he would be glad to form a committee to work with the Senate and House to enact new laws.

Mr. Akins stated that he had been on a committee attempting to work with the Senate and House regarding the law. He explained that it is an exercise in frustration. His wife is a public policy person, so he understands how the process works. Rev. Duford reiterated that he would like to get some legislation started. Mr. Akins noted that there would be a new legislature after January and perhaps something could be started.

ELECTION OF OFFICERS

Motion: After discussion, Rev. Duford moved to postpone the elections until the next board meeting, as three of the board members were not present. Mr. Kemp seconded and the motion passed. Mr. Akins and Mr. Doll voted no.

NEXT MEETING DATE

The next regularly scheduled meeting of the Board of Examiners in Mortuary Science will be held on March 1, 2007 at 10:00 a.m.

ADJOURNMENT

There being no further business to be brought before the Board, the meeting was adjourned at 11:55 a.m.

David Akins /s/
David Akins, Vice-Chairperson

03/06/08
Date

Ann Millben /s/
Ann Millben, Licensing Administrator

03/06/08
Date