

Regulatory Board Evaluation

**Board of Funeral
Service Examiners**

The Board Is in Compliance With
Most Chapter 30 Provisions



November 2006
PE 06-23-396

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John Sylvia
Director

November 14, 2006

The Honorable Edwin J. Bowman
State Senate
129 West Circle Drive
Weirton, West Virginia 26062

The Honorable J.D. Beane
House of Delegates
Building 1, Room E-213
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0470

Dear Chairs:

Pursuant to the West Virginia Sunset Law, we are transmitting a Regulatory Board Evaluation of the Board of Funeral Service Examiners, which will be presented to the Joint Committee on Government Operations on Tuesday, November 14, 2006. The issue covered herein is "The Board Is in Compliance With Most Chapter 30 Provisions."

We transmitted a draft copy of the report to the West Virginia Board of Funeral Service Examiners on October 23, 2006. The West Virginia Board of Funeral Service Examiners opted not to have an exit conference. We received the agency response on October 27, 2006.

Let me know if you have any questions.

Sincerely,

Handwritten signature of John Sylvia in blue ink.
John Sylvia

JS/tlc

Joint Committee on Government and Finance

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Executive Summary

Issue 1: The Board Is in Compliance With Most Chapter 30 Provisions.

The Board is in compliance with most Chapter 30 requirements. However, the Board's register as provided is incomplete. It does not contain all of the information required by WV Code §30-1-12. The documents provided do not include all applicants, educational backgrounds of licensees, whether applicants were rejected or granted license and the date of this action, as well as any subsequent renewals, suspensions, or revocations of licenses. The Board has stated that all of this information is available in separate databases and can be provided upon request.

The Board follows due process when investigating complaints. Cases are resolved in a timely manner. The Board is financially self-sufficient. The Board successfully maintains continuing education requirements. The Board is accessible to the public through its office as well as its website.

The Board is currently operating with a vacancy in its membership. The seat of crematory operator has been vacant since the former member's resignation in March 2006. A list of candidates has been sent to the Governor's office. The Governor has yet to appoint a new member.

Recommendation

1. *The Legislative Auditor recommends that the Board of Funeral Service Examiners should reorganize its databases to bring its register in compliance with WVC §30-1-12.*

Review Objective, Scope and Methodology

Objective

This Regulatory Board Evaluation is required and authorized by West Virginia Sunset Law, Chapter 4, Article 10, of the West Virginia Code, as amended. The objective of this evaluation was to monitor the Board of Funeral Service Examiners' compliance with Chapter 30 regulations. This includes assessing if the Board is financially self-sufficient and whether public accessibility and complaint resolution are in compliance with Chapter 30 requirements.

Scope

The scope of this report is from calendar year 2003 to June 2006.

Methodology

The methodology of this evaluation included reviewing Chapter 30 provisions and other applicable statutes, Board documents and records, interviews with the Board's Executive Director and internet research. Every aspect of this review complied with Generally Accepted Government Auditing Standards (GAGAS).

Issue 1

The Board Is in Compliance With Most Chapter 30 Provisions.

Issue Summary

The Board's register of applicants, as provided, did not contain all of the information required by code. The Board has stated that all of the required information is available upon request, but in separate databases.

The Board of Funeral Service Examiners is in compliance with most provisions of Chapter 30. However, the Board's register of applicants, as provided, did not contain all of the information required by code. The Board has stated that all of the required information is available upon request, but in separate databases. The Board has also stated that licenses that have been revoked are removed from its database. License revocations are required to be included in a board's register according to WVC §30-1-12.

The Board is currently operating with a vacancy in its membership. The seat of crematory operator has been vacant since the former member's resignation in March 2006. A list of candidates has been sent to the Governor's office. The Governor has yet to appoint a new member.

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The Board is operating with a vacancy in its membership. The crematory operator's seat has been vacant since the former member's resignation in March 2006.

The Board of Funeral Service Examiners Is in Compliance With the Following Chapter 30 Provisions:

- A representative of the Board has attended the orientation conference provided by the State Auditor's Office (WVC §30-1-2a);
- An official seal has been adopted (WVC §30-1-4);
- The Board meets at least once annually (WVC §30-1-5a);
- Rules have been promulgated specifying the investigation and resolution procedure of all complaints (WVC §30-1-8h);
- The Board is financially self-sufficient in carrying out its responsibilities (WVC §30-1-6c)

The Board's register is missing some information.

- The Board submits annual reports to the Governor and Legislature (WVC §30-1-12b);
- The Board has established continuing education requirements (WVC §30-1-7a);
- The Board maintains records of its proceedings (WVC §30-1-12a);
- The Board maintains a roster of all licensees (WVC §30-1-13);
- The Board is listed in the state government section of the Charleston area telephone book (WVC §30-1-12c).

The Board's Register of Applicants Is Incomplete

The Board's register is missing some information. WVC §30-1-12 requires a licensing board's register to include:

- all applicants for licensure;
- the date of application;
- name, age, date, address, and educational qualifications of all applicants;
- whether an examination was required;
- whether the applicant was rejected or granted licensure and the date of this action;
- the license or registration number;
- all renewals of licenses, as well as any suspension or revocation thereof.

The Board's register is missing the following information:

- The Board's register as provided lists all *licensees*, not all *applicants*;

-
- whether an applicant was granted licensure or rejected and the date of this action;
 - all renewals of the license and any suspensions or revocations of licensure.

The Board has stated that all of this information is available either in separate databases or in an individual's file. However if a license is revoked, the individual is removed from the database altogether.

The Board Investigates and Resolves Complaints With Due Process

The Board received an average of 16 complaints per year from FY 2003 to 2005.

The Board accepts complaints in writing or by telephone. An official complaint form can be obtained from the Board's website. Licensees who have complaints against them are notified in writing within 10 days of the complaint's receipt. However, the Board may decide not to inform licensees of a complaint or investigation if they feel evidence may be compromised. If the allegation is serious, an investigation will begin immediately. Otherwise, a complaint committee consisting of two board members meets quarterly to assess the validity of each complaint. Valid complaints are then brought before the Board to be assigned to investigation. The investigations can last several months. The more serious investigations resulted in two cases of embezzlement and practicing without a license.

The Board received an average of 16 complaints per year from FY 2003 to 2005 (see Table 1). Most complaints are brought by consumers. Complainants also include funeral directors, employees and the Board itself among others. Unprofessionalism or misconduct is the most common topic of complaint. Other subjects of complaint include the failure to provide price lists, overcharging, continuing education requirements and preneed issues. Complaints are often dismissed or closed for lack of evidence or probable cause. Some complaints do not fall under the Board's jurisdiction and are referred to the Attorney General's Office.

Table 1
Complaints Filed, FY 2003-2006

Fiscal Year	# of Complaints	Disciplinary Actions	Case Closed/Dismissed
2003	13	4	9
2004	15	5	10
2005	19	2	17
2006*	8	0	1
Total	55	11	37

Data Source: West Virginia Board of Funeral Service Examiners Complaint Log
*As of April 20, 2006; 7 cases still pending.

The average time from complaint acknowledgment to resolution was 179 days.

Most Complaints Are Resolved in a Timely Manner

There were 32 of a total 48 complaints that could be accurately measured from 2003 to 2005 (see Table 2). The average time from complaint acknowledgment to resolution was 179 days. Two complaints in the over 251 days column of Table 2 could not be precisely measured and were not factored into the average. Two complaints that were included took more than two years to resolve. The average resolution time without these outliers is 130 days. The median of measurable resolution length is 127.5 days.

Table 2
Number of Days to Complaint Resolution

Year	N/A*	1-50	51-100	101-150	151-250	251+	Total
2003	2	1	1	2	2	5	13
2004	0	3	7	2	4	0	16
2005	11	0	1	6	1	0	19
Total	13	4	9	10	7	5	48

Data Source: West Virginia Board of Funeral Service Examiners Complaint Log
*The resolution of these complaints could not be accurately measured with the information provided.

The Board Is Financially Self-Sufficient

The Board of Funeral Service Examiners appears financially stable and consistent.

The Board of Funeral Service Examiners is financially self-sufficient as required by WVC §30-1-6. As shown in Table 3 the Board had an end of year balance of \$83,215.31 in fiscal year 2005. The board has averaged a positive balance of \$84,049.22 at the end of fiscal years 2003 to 2005. The Board receives a majority of its revenue from licensing and exam fees. Any fines that are assessed are deposited into the General Revenue Fund. There was a \$27,281.57 (23%) increase in expenditures from FY 2004 to FY 2005. According to the Board this increase is attributed to the hiring of two new employees in 2005. Otherwise, the Board of Funeral Service Examiners appears financially stable and consistent.

Each licensee must complete three hours of general funeral service education and four hours of occupational safety education every two years.

Table 3 West Virginia Board of Funeral Service Examiners Budget FY 2003-2006			
Fiscal Year	Actual Revenue	Actual Expenses	EOY Balance
2003	\$181,120.00	\$120,636.75	\$72,913.02
2004	\$143,222.72	\$120,116.42	\$96,019.32
2005	\$134,593.98	\$147,397.99	\$83,215.31
2006*	\$75,172.25	\$132,623.06	N/A
<i>Data Source: West Virginia Board of Funeral Service Examiners Annual Reports and FIMS documents.</i> * As of May 31, 2006			

The Board requires different criteria for crematory operators in regards to continuing education. Crematory operators must obtain continuing education when the operator is to begin using new equipment. The Board will also make a determination as to when industry regulations have changed enough to warrant continuing education.

The Board Maintains Continuing Education Requirements

The Board requires continuing education for all licensed funeral directors and embalmers as required by WVC §30-1-7a. Each licensee must complete three hours of general funeral service education and four hours of occupational safety education every two years. Completion of these continuing education hours is a prerequisite for license renewal. Licensees may also obtain one hour of continuing education credit for attending a board meeting.

The Board requires different criteria for crematory operators in regards to continuing education. Crematory operators must obtain continuing education when the operator is to begin using new equipment. The Board will also make a determination as to when industry regulations have changed enough to warrant continuing education. At such time, crematory operators will have nine months from notification to complete

training. Otherwise, the Board does not require crematory operators to fulfill any mandatory continuing education.

The Board Is Accessible to the Public

The Board promotes public accessibility as required by WVC §30-1-12. The Board is listed in the state government section of the Charleston Area telephone book. The Board occupies an office that is generally open to the public 40 hours per week. The Board maintains a website with the office address and other contact information including a downloadable complaint form.

The Board is Operating With A Vacancy

The Board is currently operating with a vacancy in its membership. WVC §30-6-4 requires that the Board consist of seven members. The membership must include five licensed funeral directors and embalmers, one certified crematory operator, and one lay member. The seat of crematory operator is presently vacant. The seat has been vacant since March 2006 due to the resignation of a previous board member whose term was to expire June 30, 2006. A list of qualified candidates to fill the vacancy has been sent to the Governor's Office. The Governor's Office has yet to appoint the vacancy.

The Board should improve its record keeping methods so that all of the required information for the register is available on one format.

Conclusion

The Board of Funeral Services Examiners is in compliance with most provisions of Chapter 30. The Board should improve its record keeping methods so that all of the required information for the register is available on one format. The Board maintains records of most required information for its register. However, the information is spread among different databases and is not available as one organized register. There is concern that records of license revocations is not readily available because of their removal from the database. The Board has been operating with a vacancy in its membership since March 2006. A list of qualified candidates to fill the vacancy has been sent to the Governor's Office.

Recommendation

1. *The Legislative Auditor recommends that the Board of Funeral Service Examiners should reorganize its databases to bring its register in compliance with WVC §30-1-12.*

Appendix A: Transmittal Letter

WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610
(304) 347-4890
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John Sylvia
Director

October 23, 2006

Constance Sloan, Executive Director
West Virginia Board of Funeral Service Examiners
179 Summers Street, Suite 305
Charleston, WV 25301

Dear Ms. Sloan:

This is to transmit a draft copy of the second installment of the Regulatory Board Evaluation of the Board of Funeral Service Examiners. This report is scheduled to be presented during the November 13 through 15, 2006 interim meeting of the Joint Committee on Government Operations. We will inform you of the exact time and location once the information becomes available. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions the committee may have.

If you would like to schedule an exit conference to discuss any concerns you may have with the report, please notify us between October 23, 2006 and October 30, 2006. We need your written response by noon on Wednesday November 1, 2006, in order for it to be included in the final report. If your agency intends to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at 340-3192 by Thursday, November 9, 2006 to make arrangements.

We request that your personnel not disclose the report to anyone not affiliated with your agency. Thank you for your cooperation.

Sincerely,

A handwritten signature in cursive script that reads "Brian Armentrout".

Brian Armentrout
Research Manager

Joint Committee on Government and Finance

Appendix B: Agency Response

Ben F. Williams , President

Raymond S. Tomassene, Secretary

Constance Sloan, Executive Director



John L. Atilli
A. Craig Rotruck
John S. Stump
Stephen T. Varner

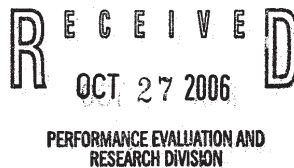
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STATE OF WEST VIRGINIA
Board of Funeral Service Examiners
179 Summers Street, Suite 305
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wvfuneralboard@hotmail.com
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October 27, 2006

Mr. Brian Armentrout
Research Manager
WV Legislature PERD
Building 1, Room W-314
State Capitol Complex
Charleston, WV 25305-0610



Dear Mr. Armentrout:

I have distributed the draft copy of the Regulatory Board Evaluation to all Board Members. I am in agreement with your assessment that our database does not contain some of the information required in Chapter 30. I have previously discussed revision of the data base with the Board and we had already planned on doing a revision sometime after the first of next year.

I believe two of the items you list as missing from the database are, in fact, included. With the exception of reciprocals from Pennsylvania, everyone is required to pass the National Board exam prior to taking the WV exam. The current database has a column for National and WV exam scores and if there is information missing in those columns, we simply need to update the database.

The current data base also has columns for information relating to colleges attended and mortuary colleges attended. If some of that information is missing, again, we need to update the database.

I am not sure whether we can get all the information into one database or whether we would need to split the databases into "applicant" and "licensee." Quite frankly, we have very few applicants who are rejected and those are rejected usually because they do not meet the educational requirements.

I have no idea how we can fit in "all renewals." The data base gives the initial date licensed and the most current licensing year. If the license expires, is canceled or revoked, it is so noted in the first left hand column under the heading "license expires". Additional information relating to revocation of suspension is noted in the far right column. We will stop the practice of removing a person from the register who has been revoked.

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There is no additional information that our Board wishes to distribute to the Committee members.

As I previously advised you, the Board will be meeting on Tuesday, November 14 and Wednesday, November 15, 2006 at 1:00 p.m. each day. If at all possible, we would like to be on the agenda for Monday, November 13, 2006 at any time convenient to the Committee or, in the alternative, either of the mornings of November 14 and 15.

Thank you for your courtesy and kindness during this audit process.

Sincerely,



Constance Sloan
Executive Director

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cc: All Board Members