

ATTACHMENT A

Connecticut Sunset Law

Performance Audit

of

**Board of Examiners of Embalmers
and Funeral Directors**

Prepared By

**Legislative Program Review and Investigations
Committee**

Per C.G.S. Sec. 2c-4

February 22, 2012

Committee Staff on Project
Miriam P. Kluger, Principal Analyst

Legislative Program Review and Investigations Committee
Connecticut General Assembly
State Capitol Room 506
Hartford, CT 06106

(860) 240-0300

Email: pri@cga.ct.gov Web: www.cga.ct.gov/pri/index.htm

What Is the Connecticut Sunset Law?

The Connecticut sunset law is contained in the Connecticut statutes and sets out a list of 75 specifically named entities or programs that will automatically terminate on a date certain (i.e., sunset) unless the legislature specifically acts to re-establish each one. Enacted in 1977 as part of a larger government reorganization effort¹, the Connecticut sunset law is based on two statutory findings made at the time:

- “There has been a proliferation of governmental entities and programs, which has occurred without sufficient legislative oversight or regulatory accountability”
- “There is a need for periodic comprehensive review of certain entities and programs, and for the termination and modification of those which did not significantly benefit the public health, safety, or welfare.”

Review Process

The law sets out a review process for each entity or program prior to its automatic termination date that includes:

- a ***PRI performance audit*** that is guided by, but not limited to, statutory criteria;
- a ***PRI written report*** (submitted to the Government Administration and Elections Committee (GAE) and the General Assembly) addressing the criteria, summarizing the PRI performance audit findings, and making recommendations based on those findings to abolish, reestablish, modify, or consolidate the specific entity or program under review;
- a ***GAE public hearing***, and the authority for GAE to recommend to the General Assembly that the entity or program be modified, consolidated with another entity or program or re-established.

If the outcome of the review process is a recommendation to continue an entity or program, with or without modifications, the only way for the entity or program to continue is if the General Assembly agrees and passes explicit legislation re-establishing the entity or program. If the review process recommendation is to terminate, and the General Assembly agrees, it does not need to act at all.

¹ P.A. 77-614 State Government Reorganization

Review Criteria

Two sets of criteria guide the sunset review process. The first set of criteria is to help determine **whether there is a public need for the continued existence of the entity or program**; the legislature is to consider, among other things:

1. whether termination of the entity or program would significantly endanger public health, safety or welfare;
2. whether the public could be adequately protected by another statute, entity or program, or by a less restrictive method of regulation;
3. whether the entity or program produces any direct or indirect increase in cost of goods or services, and if so, whether public benefits attributable to the entity or program outweigh the public burden of the increase in cost; and
4. whether the effective operation of the entity or program is impeded by existing statutes, regulations or policies, including budgetary and personnel policies.

The second set of criteria is to help determine **whether a regulatory entity or program serves the general public, and not merely the persons regulated**; the legislature is to consider, among other things:

1. the extent to which qualified applicants have been permitted to engage in any profession, occupation, trade, or activity regulated by the entity or program;
2. the extent to which the governmental entity involved has complied with federal and state affirmative action requirements;
3. the extent to which the governmental entity involved has recommended statutory changes which would benefit the public as opposed to the persons regulated;
4. the extent to which the governmental entity involved has encouraged public participation in the formulation of its regulations and policies; and
5. the manner in which the governmental entity involved has processed and resolved public complaints concerning persons subject to regulation.

Responsibility of Entity/Program Subject to Review

According to the sunset law, each listed entity or program “shall have the burden of demonstrating a public need for the reestablishment of the entity or program” and “shall also have the burden of demonstrating that it served the public interest and not merely the interests of the persons regulated.”

The Board of Examiners of Embalmers and Funeral Directors (the Board) is one of 75 entities or programs currently on the sunset list. Because it is one of the items included in the first year of the five-year cycle, it will terminate July 1, 2013 unless re-established by the General Assembly.

The Board's Current Regulatory Role Is Largely Limited to Enforcing Licensing Requirements for Embalmers and Funeral Directors.

When PRI reviewed the Board during the first sunset cycle in 1979, it was still a largely independent entity with significant direct control over the regulation of all aspects of embalmers, funeral directors, and funeral homes. Now, DPH has the major role in regulating embalmers and funeral directors. The Board has a much more circumscribed role to: hear and decide matters concerning license suspension or revocation; adjudicate complaints filed against licensed embalmers and funeral directors; and impose sanctions where appropriate. The Board also provides advice and assistance to DPH.

Taking a broader view, the current sunset review considers the underlying need for the DPH regulatory program within which the Board operates—if there is a reason to license and otherwise regulate embalmers, funeral directors, and funeral homes—then, secondarily there is a reason to evaluate the need for the Board. Thus, need for regulation of embalmers, funeral directors, and funeral homes overall and then, specifically the need for the Board, are addressed.

Both the Department of Public Health and the Board of Examiners of Embalmers and Funeral Directors responded to survey questions based on the two sets of criteria. Interviews, attendance at board meetings and hearings, and record reviews rounded out the information used to address the criteria in this report. A summary profile of the board is presented as background for this sunset review.

BOARD OF EXAMINERS OF EMBALMERS AND FUNERAL DIRECTORS PROFILE	
ENTITY:	Connecticut Board of Examiners of Embalmers and Funeral Directors
STATUTORY REFERENCE:	C.G.S. 20-207 to 20-233, inclusive
ESTABLISHED:	1903 established CT Board of Examiners of Embalmers; 1903 began licensure of embalmers; 1941 began licensure of funeral directors; 1951 began CT Board of Examiners of Embalmers and Funeral Directors
ORGANIZATION LOCATION:	Department of Public Health
DUTIES OF BOARD:	<ol style="list-style-type: none"> 1. hear and decide matters concerning suspension or revocation of licensure 2. adjudicate complaints filed against practitioners 3. impose sanctions where appropriate
REGULATIONS:	The Commissioner of Public Health, with advice and assistance from the board, shall from time to time adopt regulations for the purpose of carrying out the board's duties.
PRACTICE DEFINED:	Funeral directing entails the business of providing funeral services, handling and transporting bodies, and maintaining an establishment for funeral services. Embalmers are responsible for the injection of fluid into the corpse for the purpose of preservation.
STAFF:	<ul style="list-style-type: none"> • The DPH Office of Practitioner Licensing and Certification in the Bureau of Healthcare Systems carries out licensing functions • There is DPH liaison to the board • One full-time inspector and investigator
BUDGET:	Approximately \$117,385 (in FY 11)
NUMBER OF MEETINGS:	<ul style="list-style-type: none"> • at least once per calendar quarter and at other times as the chair deems necessary • special meeting held at the request of a majority of board • Board met four times in 2010
NUMBER OF ACTIVE LICENSES IN 2010:	<ul style="list-style-type: none"> • 828 Embalmers • 19 Embalmer Apprentices • 59 Funeral Directors • 295 Funeral Homes
FEES:	<ul style="list-style-type: none"> • Initial Application Fee: \$210 • Renewal Application Fee: \$110 • Reinstatement Fee: \$210
REVENUE GENERATED IN FY 11:	<ul style="list-style-type: none"> • Approximately \$182,960: <ul style="list-style-type: none"> • From licensing: \$163,960 • From fines: \$19,000
EXAMINATIONS:	Offered six times per year by DPH
COMPLAINTS:	<ul style="list-style-type: none"> • 69 complaints against embalmers, funeral directors and funeral homes investigated 2009-2011.

PART 1: Public Need

Is There a Public Need to Continue Regulating Embalmers, Funeral Directors, and Funeral Homes through Licensing, or the Board?

Criteria #1. Would the termination of embalmer, funeral director and funeral home regulation significantly endanger public health, safety or welfare?

Key Findings for:	
Overall Embalmer, Funeral Director and Funeral Home Regulation	
	<ul style="list-style-type: none"> The public does not have the capability and experience to select and assess the quality of embalmers, funeral directors, and funeral homes
	<ul style="list-style-type: none"> The mental health of mourners could be threatened at a vulnerable time as demonstrated by instances (complaints) where the embalmer and funeral director did not adhere to licensure requirements
	<ul style="list-style-type: none"> Sanitary safeguards to prevent the spread of communicable diseases contracted from corpses would no longer be in place to protect the health of the embalmer and public
	<ul style="list-style-type: none"> The welfare of the public would be threatened by allowing embalmers and funeral directors (and funeral homes) who had lost their licenses due to imposed sanctions for such reasons as incompetence, to re-enter (re-open) the profession
Board of Examiners of Embalmers and Funeral Directors	
	<ul style="list-style-type: none"> The department reports successfully maintaining public health, safety and welfare in more than 50 other health professional licensure categories without the benefit of boards or commissions
	<ul style="list-style-type: none"> The board reports that its professional and public members provide a unique and combined ability to hear and fully understand issues involving both public health and safety, grief, and consumer protection issues that are unique to the funeral industry
	<ul style="list-style-type: none"> The DPH board liaison noted that board members generally ask questions that may not necessarily be posed by a hearing officer in a non-board profession case, particularly for cases concerning standards of care
	<ul style="list-style-type: none"> Without the board, consultation with professionals could be required in certain instances, potentially extending the time before disciplinary action was taken, and potentially exposing the public to unscrupulous individuals for a longer period of time

Discussion of Criteria #1 Key Findings

Consumer knowledge. In a previous assessment of whether practitioners need to be regulated,² the PRI committee considered whether it would be reasonable to expect that consumers have the capability to assess and assume the risks. In its response to the PRI Sunset Survey, the Board noted that the public is not always able to judge the quality of the service.

² *Sunset Review Process in Connecticut*. Legislative Program Review & Investigations Committee, December 1998.

Further, at this vulnerable time, the family member or other person handling the arrangements, is open to being taken advantage of; they do not have access to the embalming room or how the body is stored or embalmed; they trust that the correct body or ashes are taken care of; and that the deceased will be prepared for viewing in an acceptable manner.

Others are stopped from experiencing the same problems when the licenses of problematic embalmers, funeral directors and/or funeral homes are revoked, surrendered, or agreed not to be renewed. Without licensure (regulation), former embalmers and funeral directors who are no longer licensed (due to revocation, voluntary surrender, etc.) would be able to re-enter the profession, and thus, the public would no longer be protected from these practitioners who had previously evidenced harm to the public.

Period of time when regulation was not being fully implemented. In addition to funeral home inspections, the inspector also investigated complaints against embalmers and funeral directors. The department had a part-time funeral home inspector who retired in 1989. For more than a decade, until a widely publicized incident³ led to the 2002 hiring of the current funeral home inspector, funeral homes were not being inspected annually as required (C.G.S. Sec. 20-222). While complaints were still being investigated, regular inspections did not occur during this time period. Therefore, the period prior to the hiring of the current funeral home inspector offers insight into how the funeral industry might function without the current level of regulation. Table 1 highlights some of the differences that could occur in a less regulated situation.

Table 1. Complaint Handling Before and After Funeral Home Inspector Hired		
Complaint Factor	1998-2000 No inspector/ less regulated time	2002-2004 Inspector/more regulated time
	Dismissed Complaints	
Number of complaints	14	14
Plan of correction required as condition of complaint dismissal	0	5
# of complaints brought forward by DPH	1	4
	Consent Orders	
Number of consent orders	5	12
Reprimand	3	2
Probation Imposed	2	2
Median Probation (in months)	12	42
Civil Penalty Imposed	3	5
Median Civil Penalty	\$1,500	\$5,000
Revocation	0	2
Voluntary Surrender/Agreed Not to Renew License	1	6
Source: PRI staff analysis.		

³ Police discovered five decomposed bodies more than three years old at the Wade Funeral Home in New Haven.

As can be seen, plans of correction were required as a condition of complaint dismissal when there was an inspector. Consent orders were more than twice as prevalent as were civil penalties--and at higher amounts, when there was an inspector. Additionally, licenses were more likely to be revoked or voluntarily surrendered (or agreed not to be renewed) when there was an inspector. These more frequent and serious sanctions may act as both a deterrent for other professionals as well as help protect the public health, safety and welfare from these currently unscrupulous practitioners.

Sanitary safeguards. Licensed embalmers and funeral directors are required to follow certain sanitary standards. The sanitary standards are in place to deter the spread of disease from dead human bodies by requiring the use of specific safeguards in the handling of corpses. There is the potential for public health to be endangered by the threat of communicable diseases. There have been instances of embalmers being exposed and subsequently becoming infected with communicable diseases that can then be spread to others. There are documented cases of embalmers and funeral home technicians becoming infected with HIV, tuberculosis, and Hepatitis B from a cadaver (see Table 2 for more detailed information). Lastly, P.A. 07-104, An Act Concerning Funerals, requires embalmers and funeral directors, regardless of whether the death is due to a communicable disease, to take appropriate measures to ensure that the body is not a public health threat.

Table 2. Incidence of Communicable Diseases Among Embalmers, Funeral Directors and Related Personnel

- Turner et al (1989) undertook a survey of 133 embalmers who worked in eastern Massachusetts. They found the seropositivity rate of hepatitis B virus (13%) was approximately twice that of a blood donor comparison group. Embalmers who did not routinely wear gloves were almost 10 times more likely to have serologic markers of hepatitis B virus infection than those who did.
- McKenna et al (1996) analyzed occupational information collected on all patients with clinically active tuberculosis in 29 U.S. states from 1984 to 1985. Information on employment and occupation was ascertained for 9,534 (working age) tuberculosis patients. The overall rate of tuberculosis in the study area was 8.4 per 100,000 persons, which was slightly lower than national rate of 9.3 per 100,000 persons. However, elevated rates were observed for funeral directors, inhalation therapists, lower paid health care workers, and farm workers.
- The Centers for Disease Control and Prevention (CDC)⁴ investigated cases of HIV infection in healthcare personnel without identified risk factors. In coordination with state health department HIV surveillance staff, they found one documented case and two possible cases from 1981-2010 for embalmers and morgue technicians. In their report, the CDC noted that, because of the voluntary nature of the reporting system, there is likely underreporting of cases, and the relatively low numbers of documented and possible cases may not reflect the true numbers of cases in the United States.

⁴ CDC, Surveillance of Occupationally Acquired HIV/AIDS in Healthcare Personnel, as of December 2010 (Updated May, 2011).

Emotional well-being. Mental health, considered part of the definition of health,⁵ could be impacted by the termination of licensure (regulation) of embalmers and funeral directors. During a naturally stressful time, mourners rely on embalmers and funeral directors to appropriately handle funeral arrangements and preparation of the body. As instances where embalmers and funeral directors did not adhere to the requirements for their profession demonstrate, mourners report experiencing significant distress.

Assessment of board. DPH reported that, in instances where a regulated profession does not have a board, experts are asked to review cases and provide their opinions gratis. The length of time to resolve a complaint against a professional can take additional time as opposed to those professions who have a ready-made panel of professionals on standby to hear the complaint case. As is the case with all professional boards under DPH, the Board of Examiners of Embalmers and Funeral Directors serves without any compensation. The board, while not a prerequisite to regulating the profession/industry, does appear to provide a value-added service gratis, particularly for the processing of complaints.

Since June 2011, the Board has had a vacant position for a public board member. Vacant positions are also found for other occupational boards. A recent Connecticut Auditors' Report on the Department of Public Health for the Fiscal Years ended June 30, 2006 and 2007, for example, found the following condition, "Due to vacancies, the membership of 10 boards did not meet the requirements for the number of licensed practitioners and public members."

As a result, the auditors further noted the effect that, Boards that do not have a full complement of participating members may not benefit from the intended representation of various public and private sector groups. In their report, the auditors stated the cause of this situation—not considered a significant deficiency--was due to the Governor's office not replacing members in a timely manner. In the current instance of the public member vacancy for the Board of Examiners of Embalmers and Funeral Directors, DPH notified the Governor's Office of the vacancy six months ago, on the same day the resignation letter was received by the Board (June 27, 2011).

Although there are requirements about board member representation of public and professional members, there are not requirements for representation at hearings to consider sanctioning professionals. DPH does not specifically track attendance at hearings. Hearing testimony is transcribed and available to all board members, and if a board member has missed a hearing date, he/she is expected to read the transcripts and exhibits before voting on a final decision. However, lack of attendance at the hearing prevents the opportunity to question witnesses. Having at least one public board member and one professional board member present at the hearing provides that opportunity and reinforces the importance of having this representation on boards. This is consistent with the Connecticut Medical Examining Board medical hearing panel requirement to represent the profession and public, and have all panel members present to hear any evidence (C.G.S. Sec. 20-8a(i)).

⁵ The World Health Organization defines health as a "...state of complete physical, mental and social well-being and not merely the absence of disease or infirmity." From September 2010 Fact sheet, "Mental health: strengthening our response." (www.who.int/mediacentre/factsheets/fs220/en/)

Criteria #2. Would the public be adequately protected by another statute, entity or program, or by a less restrictive method of regulation?

Key Findings for:	
Overall Embalmer, Funeral Director and Funeral Home Regulation	
	<ul style="list-style-type: none"> Although there are consumer protection statutes, crematory requirements, and municipality-related statutes, these other statutes would not fully protect the public with the requirements and safeguards contained in C.G.S. Sec. 20-207 through 20-233
	<ul style="list-style-type: none"> The public would—and does now--have recourse for complaints related to pre-need funeral service and other contractual issues through the Department of Consumer Protection (DCP); however, DCP does not regularly review funeral home contracts—their investigations are prompted by particular complaints. Thus, annual funeral home inspections (which include reviewing pre-need funeral service contracts) currently performed by DPH, would be lost as a deterrent to such problems as well as an avenue for DCP to become aware of potential pre-need funeral service contract irregularities
	<ul style="list-style-type: none"> The public would not have readily available recourse for complaints unrelated to business practices, such as incompetence and negligence issues; claims would need to be filed in court
	<ul style="list-style-type: none"> A less restrictive method of regulation, such as registration or certification, would not adequately protect the public from practitioners lacking training and educational requirements who entered the field. Inadequate job performance could be detriment of mourners, practitioners, and the public
Board of Examiners of Embalmers and Funeral Directors	
	<ul style="list-style-type: none"> As discussed under criteria #1, the department reports successfully maintaining public health, safety and welfare in more than 50 other health professional licensure categories without the benefit of a board
	<ul style="list-style-type: none"> The board reports that its professional and public members provide a unique and combined ability to hear and fully understand issues involving both public health and safety, grief, and consumer protection issues that are unique to the funeral industry
	<ul style="list-style-type: none"> The DPH board liaison noted that board members generally ask questions that may not necessarily be posed by a hearing officer in a non-board profession case, particularly for cases concerning standards of care

Discussion of Criteria #2 Key Findings

Consumer protection. Certain consumer protection statutes⁶ address funeral service contract requirements, including escrow accounts for pre-need funeral service contracts. There are statutes pertaining to crematory requirements (C.G.S. Sec. 19a-320 thru 19a-324). There are municipality-related statutes regarding death certificates, disposal and removal of bodies, and removal, transit and burial permits found in C.G.S. Sec. 7-62 thru 7-71). However, none of these

⁶ C.G.S. Sec. 42-200 thru 42-207

statutes encompass the requirements contained in C.G.S. Sec. 20-207 thru 20-233, such as credential requirements, restrictions on who may embalm, care and dispose of bodies. Annual funeral home inspections, record-keeping and reporting requirements, and grounds for disciplinary actions are also not contained anywhere else in the statutes.

Complaint investigation relating to embalmers, funeral directors and funeral homes, is shared across DPH and the Department of Consumer Protection (DCP). DPH is prohibited from regulating business practices of health-related professions, although DCP is authorized to do so. Violations of the provisions of the funeral service contracts statutes (C.G.S. Sec. 42-200 through 42-207) are considered unfair or deceptive trade practices and are investigated by DCP under the Connecticut Unfair Trade Practices Act. However, DCP does not currently audit funeral contracts and reports that it would not have the personnel to do so.

Pre-need funeral service contracts. A number of states have established pre-need funeral service contract guaranty funds (Table 3). These funds are available to reimburse consumers for pre-need funeral service contracts when funds were misdirected away from escrow accounts (i.e., to reimburse a consumer for funds lost in a pre-need funeral service contract due to malfeasance by a funeral home.).

Table 3. States with Pre-Need Guaranty Funeral Funds	
State	Funding Source for Pre-Need Funeral and Burial Agreements
Florida	<ul style="list-style-type: none"> • for each contract of \$1,500 or less, \$2.50; • for each contract in excess of \$1,500, \$5.00 (If bond used, \$5.00 for each contract of \$1,500 or less; • \$10.00 for each contract over \$1,500
Indiana	<ul style="list-style-type: none"> • each seller deposits \$2.50 per contract under \$1,000 or • \$5 per contract of at least \$1,000
Kentucky	<ul style="list-style-type: none"> • cemetery pre-need; \$5 for every contract with a gross sales price of \$500 or less, • and \$10 for each contract with a gross sales price of over \$500
North Carolina	<ul style="list-style-type: none"> • funded by \$2 per contract
Oregon	<ul style="list-style-type: none"> • the seller pays \$5 per contract
Texas	<ul style="list-style-type: none"> • the seller pays not more than \$1 per unmaturred prepaid funeral benefits contract sold during each calendar year
Vermont	<ul style="list-style-type: none"> • the funeral establishment pays \$6 per funeral, burial, or disposition
West Virginia	<ul style="list-style-type: none"> • the buyer pays \$20 per contract to the seller, who forwards the monies to the fund • forty percent of this fund is placed in Pre-need Guarantee Fund
Source: Preneed Funeral and Burial Agreements: A Summary of State Statutes, AARP Public Policy Institute, December 1999.	

Beyond business practices, there are also other complaints from consumers relating to such issues as incompetence and negligence. Complaints also arise from annual funeral home inspections performed by DPH. The loss of annual funeral home inspections could be seen as a loss of a deterrent to some funeral homes acting in an incompetent and negligent manner as well as an avenue for DCP to become aware of potential pre-need funeral service contract irregularities. In a review of information provided by DPH on 20 complaints the department received during 2001-2006, 30 percent were classified as business practice type complaints, with others placed into such categories as incompetence/negligence (35 percent), fraud/deceit (15 percent), and professional ethics (10 percent). With the narrowness of focus on complaints handled by consumer protection, there would be no readily available recourse for the remainder of the complaints. Currently, DPH and DCP work together to cross-refer cases arising from complaints or inspections. The Office of the Attorney General also receives complaints and becomes involved when issues fall under the Connecticut Unfair Trade Practices Act.

Oversight by DCP or DPH. Embalment, cremation and other funeral-related services make these professions distinctly different from trades that fall under the auspices of DCP for purposes of consumer protection, such as electricians, propane dealers, and architects.

Traditionally, prevention of the spread of disease is more often considered under the auspices of the state health department as opposed to the consumer protection department. Of the six New England states, only one (Massachusetts) regulates embalmers and funeral directors under its consumer protection agency, while three states (Connecticut, New Hampshire, and Rhode Island) regulate it under its health department (Maine and Vermont regulate it under professional regulation departments).

Certification or registration. If a less restrictive method of regulation were adopted, such as registration or certification of embalmers and funeral directors, then those not professionally schooled would be able to enter the profession. If certification replaced licensing, for example, and the voluntary certification requirements were similar to the current mandatory licensing requirements, then consumers could choose certified businesses and get the benefit of professionally schooled practitioners. This would assume a certain level of awareness and time to research funeral services for vulnerable consumers in mourning. Additionally, those whose licenses were revoked would be able to come back into the profession. Also, statutes that require only a licensed embalmer/funeral director to act would be eliminated from the books, such as:

- transferring the dead;
- signing a death certificate;
- meeting hospital and cemetery requirements of only a licensed person transferring/burying a body; and
- entering into pre-need/pre-funded funeral service contracts.

These potential changes would appear to work against protecting public health, safety and welfare.

In August 2011, DPH announced plans to stop licensing and regulating funeral homes and embalmers and funeral directors, and eliminate the funeral home inspector position as part of a proposed \$20 million budget cut. Following concerns about this change from the Board of Examiners of Embalmers and Funeral Directors, the Connecticut Funeral Directors Association and others, DPH reversed this decision within five days of its announcement.

Assessment of board. It is uncertain what advantage would be gained by eliminating the Board of Examiners of Embalmers and Funeral Directors. There is little to no expense to the department or public, and readily available expertise to draw upon for the processing of complaints.

Criteria #3: Does the regulation of embalmers, funeral directors, and funeral homes have the effect of increasing the cost of goods or services to the public either directly or indirectly?

Key Findings for:	
Overall Embalmer, Funeral Director and Funeral Home Regulation	
	<ul style="list-style-type: none"> The out-of-pocket costs that newly licensed embalmers and funeral directors might pass along to the public is \$610 for testing and licensure application fees
	<ul style="list-style-type: none"> The out-of-pocket costs that newly opened funeral homes might pass along to the public is \$375 for the mandatory initial inspection certificate
	<ul style="list-style-type: none"> The out-of-pocket costs to renew an embalmer or funeral director license that might be passed along to the public is \$210-\$330 for the continuing education requirement and licensure renewal fee
	<ul style="list-style-type: none"> The out-of-pocket costs to renew a funeral home certificate that might be passed along to the public is \$190
	<ul style="list-style-type: none"> Indirect costs for educational expenses, depending on how the applicant fulfilled the training requirement, might be passed along to the public
	<ul style="list-style-type: none"> The licensing program may have an indirect effect of increasing the cost of goods and services in that mandated contract formats and money-back trial period contracts may be passed on to the public; however, these same requirements are mandated at the federal level (16 C.F.R. Part 453)
Board of Examiners of Embalmers and Funeral Directors	
	<ul style="list-style-type: none"> The board is made up of volunteers
	<ul style="list-style-type: none"> Board members receive no compensation, including reimbursement for travel expenses

Discussion of Criteria #3 Key Findings

Licensure expenses. The expenses and revenue identified by the Department of Public Health for the regulation of embalmers, funeral directors, and funeral homes are shown in Table 4.

- The testing fees for the national exam go directly to the national company (DPH doesn't handle this money at all)
- There is no fee for the state written exam for embalmers and funeral directors
- There is no fee for the state practical exam for embalmers and funeral directors

Additionally, as specified in C.G.S. Sec. 20-219a, licensed embalmers and funeral directors are required to complete at least six hours of continuing education annually. According to a Board member and DPH staff member, continuing education costs range from \$50 to \$150, with an estimated average cost of \$100. This relatively modest expense is unlikely to significantly impact funeral costs for the consumer.

On the sunset questionnaire completed by DPH, the agency noted that it does not maintain data that would demonstrate the effect that licensing has on the costs of goods or services to the public.

Assessment of board. The board does not appear to contribute, either directly or indirectly, to costs charged to the public by embalmers, funeral directors, and funeral homes

Table 4. Expenses Incurred to License Embalmers, Funeral Directors, and Funeral Homes	
Expenses Incurred by New Licensure/Certificate Applicants	Amount
New license application fee for:	
Embalmers	\$210
Funeral Directors	\$210
Funeral Homes	\$375
Testing fee for national board exam	\$400
Testing fee for state written exam	\$0
Testing fee for practical exam	\$0
TOTAL EXPENSES	\$375-\$610
Expenses Incurred by Renewing Licensure/Certificate Applicants	
License renewal application fee for:	
Embalmers	\$110
Funeral Directors	\$230
Funeral Homes	\$190
Continuing education (for embalmers and funeral directors)	\$100
TOTAL EXPENSES	\$190-\$330
Expenses Incurred by DPH	
Salary for 1 full time DPH staff person to conduct funeral home inspections and investigations of embalmers and funeral directors	\$75,416
Estimated personnel costs associated with licensure of embalmers, funeral directors and funeral homes	\$9,815
Printing documents and postage	\$30,654
Estimated personnel costs associated with hearing officer's time and board liaison's support of the board	\$1,500
TOTAL EXPENSES	\$117,385
Revenue Collected by DPH in FY 11	
<i>From New Applications For:</i>	
Embalmers (22 @ \$210 per application)	\$4,620
Funeral Directors (1 @ \$210 per application)	\$210
Funeral Home Certificates (8 @ \$375 per application)	\$3,000
<i>From License/Certificate Renewals For:</i>	
Embalmers (791 @ \$110 per renewal)	\$87,010
Funeral Directors (56 @ \$230 per renewal)	\$12,880
Funeral Home Inspection Certificates (296 @ \$190 per renewal)	\$56,240
<i>From Civil Penalties:</i>	\$19,000
TOTAL REVENUE	\$182,960
Source: DPH.	

Criteria #4: Is the effective operation of regulating embalmers, funeral directors, and funeral homes impeded by existing statutes, regulations or policies, including budgetary and personnel policies?

Key Findings for:	
Overall Embalmer, Funeral Director and Funeral Home Regulation	
	<ul style="list-style-type: none"> • There are no overall budgetary, personnel or other policy-related barriers to effectiveness of DPH in the regulation of embalmers and funeral directors; however, the department noted that limited resources impact the ability to be more proactive in its enforcement activities and in educating the public/consumers and license holders about current laws and regulations
	<ul style="list-style-type: none"> • Unlike other DPH-licensed professions, embalmers and funeral directors have a fulltime funeral home inspector and investigator
	<ul style="list-style-type: none"> • DPH staff believes regulations are needed to further clarify statutory requirements
Board of Examiners of Embalmers and Funeral Directors	
	<ul style="list-style-type: none"> • There were no budgetary, personnel or other policy-related barriers identified relating to board effectiveness

Discussion of Criteria #4 Key Findings

Overall regulation. In interviews with staff, DPH responded that the licensing program was not impeded by existing statutes, regulations or policies, including budgetary and personnel policies. The fulltime funeral home inspector and investigator was highlighted, a position that is not found in other professions under the aegis of the department.

In an effort to improve an already satisfactory program, DPH staff believes that regulations are needed to further clarify statutory requirements related to funeral homes. The regulations would address issues including--but not limited to--a definition for “funeral service,” and specific requirements related to funeral home inspection certificates (e.g., physical plant requirements, instruments/supplies, compliance with OSHA, etc.).

Public Need and Level of Regulation Conclusion

Continue Licensure

Based on a review of the four criteria, *the available evidence suggests there is a public need for continuing licensure of embalmers, funeral directors, and funeral homes* in order to help protect the mental health of mourners and potential physical health threatened by the spread of communicable diseases should sanitary safeguards be eliminated. It is further suggested that a less restrictive method of regulation would not adequately protect the public from practitioners lacking training and educational requirements. Further, the licensure requirements contribute negligible expense to the professional, making it unlikely that they significantly impact the cost to the public. The development of regulations pertaining to funeral homes would further enhance the department's ability to regulate funeral homes.

As demonstrated by the experience during which full regulation of embalmers, funeral directors, and funeral homes was not occurring, such level of regulation is needed to protect the public health, safety, and welfare of Connecticut residents. Therefore, **PRI staff recommends:**

The regulation at the licensure level of embalmers, funeral directors, and funeral homes should be continued.

Continue Board

The department reports successfully maintaining public health, safety and welfare in more than 50 other health professional licensure categories without the benefit of boards or commissions. It is uncertain, however, what advantage would be gained by eliminating the Board of Examiners of Embalmers and Funeral Directors. There is little to no expense to the department or public, and readily available expertise to draw upon for the processing of complaints. A potential downside would be increasing the time to resolve some complaints, exposing the public to unscrupulous practitioners for a longer period of time. *Evidence exists that the Board provides a value-added service to DPH in its regulation of embalmers, funeral directors and funeral homes, and plays a role in protecting public health, safety and welfare.*

The board, while not a prerequisite to regulating the profession/industry, does appear to provide a value-added service gratis, particularly for the processing of complaints. Therefore, **PRI staff recommends:**

The Board of Examiners of Embalmers and Funeral Directors shall be reestablished.

PART 2: Service to Public

Does the Regulation through Licensure of Embalmers, Funeral Directors, and Funeral Homes Serve the General Public, and Not Merely the Persons Regulated

A second set of five criteria spelled out in statute assess whether the regulatory entity or program serves the general public, and not merely the persons regulated. Part 2 would only be considered if it had been determined via Part 1 that there was a public need for any level of regulation. The available evidence to assess the licensure of embalmers, funeral directors, and funeral homes against each of the criteria is now described.

Criteria #1: To what extent have qualified applicants been permitted to engage in the embalmer, funeral director, and funeral home business?

Key Findings for:	
Overall Embalmer, Funeral Director and Funeral Home Regulation	
	The average length of time for DPH to process licenses is 6-9 months, with the process driven by the speed with which the applicant completes training, tests, and submits required paperwork
	DPH offers tests relatively frequently to reduce applicant waiting periods for exams
	During FY 09, there were 20 applications received for embalmer licensure, and all 20 applicants (100%) were granted licenses
	During FY 09, there were three applications for funeral director licensure, and all three applicants (100%) were granted licenses
Board of Examiners of Embalmers and Funeral Directors	
	The Board is not involved in the initial licensure of applicants; however, the Board approves or denies reinstatement applications
	The Board sets the requirements for applicants wishing to return to the profession.
	Over the past five years (2007-2011), there were six applications for licensure reinstatement, and 83% were granted reinstatement after fulfilling the requirements set by the Board

Discussion of Criteria #1 Key Findings

Licensure applicants. Although the statute (CGS Sec. 20-217(b)) requires exams to be scheduled at least twice a year, DPH schedules them six times per year, thereby reducing the waiting period for applicants. Given the granting of licenses to all applicants during the year examined, evidence suggests that qualified applicants have been permitted to engage in the profession.

Statutory changes over the years have made it easier for applicants to engage in the profession, such as reducing the practical training requirement from two years to one year (P.A. 88-163) and deleted the requirement that the principals (owners) be licensed as embalmers or funeral directors (P.A. 95-271).

Assessment of board. As a condition of licensure reinstatement, the Board will typically require applicants to successfully pass the state written exam, state practical exam, and become compliant with continuing education requirements.

Criteria #2: To what extent has DPH or the Board complied with federal and state affirmative action requirements?

Key Findings for:	
Overall Embalmer, Funeral Director and Funeral Home Regulation	
	There are no specific federal affirmative action requirements for the licensing of embalmers and funeral directors
	There are no specific state affirmative action requirements for the licensing of embalmers and funeral directors
	DPH does not recruit individuals to apply for licensure or to engage in any profession
Board of Examiners of Embalmers and Funeral Directors	
	There are no specific federal affirmative action requirements for the licensing of embalmers and funeral directors
	There are no specific state affirmative action requirements for the licensing of embalmers and funeral directors

Discussion of Criteria #2 Key Findings

There does not appear to be any evidence that affirmative action requirements, if applicable, have been violated.

Criteria #3: To what extent has DPH or the Board recommended statutory changes which would benefit the public as opposed to the persons regulated?

Key Findings for:	
Overall Embalmer, Funeral Director and Funeral Home Regulation	
	<ul style="list-style-type: none">• DPH reports that it has not developed any additional changes to the statutes or regulations governing the licensure or investigation activities related to this profession within the past five years
Board of Examiners of Embalmers and Funeral Directors	
	<ul style="list-style-type: none">• Made continuing education requirements mandatory

Assessment of board. The Board supported making continuing education requirements mandatory, making sure the course content is consistent with recommendations of the Academy of Funeral Services. P.A. 07-104, An Act Concerning Funerals, requires that two hours of the six required hours of continuing education for licensed embalmers and funeral directors address state and federal laws on funeral services, including applicable Federal Trade Commission regulations.

Criteria #4: To what extent has DPH or the Board encouraged public participation in the formulation of their regulations and policies?

Key Findings for:	
Overall Embalmer, Funeral Director and Funeral Home Regulation	
	<ul style="list-style-type: none"> • DPH reports that it has not developed any new policies or regulations regarding embalmers and funeral directors
	<ul style="list-style-type: none"> • In general, any time regulatory changes are proposed, the department solicits feedback from interested stakeholders including the Board, regulated professionals and their membership organizations, and the public
Board of Examiners of Embalmers and Funeral Directors	
	<ul style="list-style-type: none"> • Two of the five Board members are members of the public
	<ul style="list-style-type: none"> • Board meetings have an “Open Forum” agenda item, providing up to 30 minutes for members of the public and others to speak before the Board and ask questions

Assessment of board. The two public members of the Board fulfill the statutory requirement that not less than one-third of the members of each board and commission within the Executive branch are members of the public (CGS Sec. 4-9a(b)). Examples of topics discussed during the Open Forum portion of the Board meeting include: requirements for holding rooms for deceased in convalescent homes; use of permission slips allowing mortuary students to be involved in the embalming process; and continuing education programs offered by particular colleges and associations.

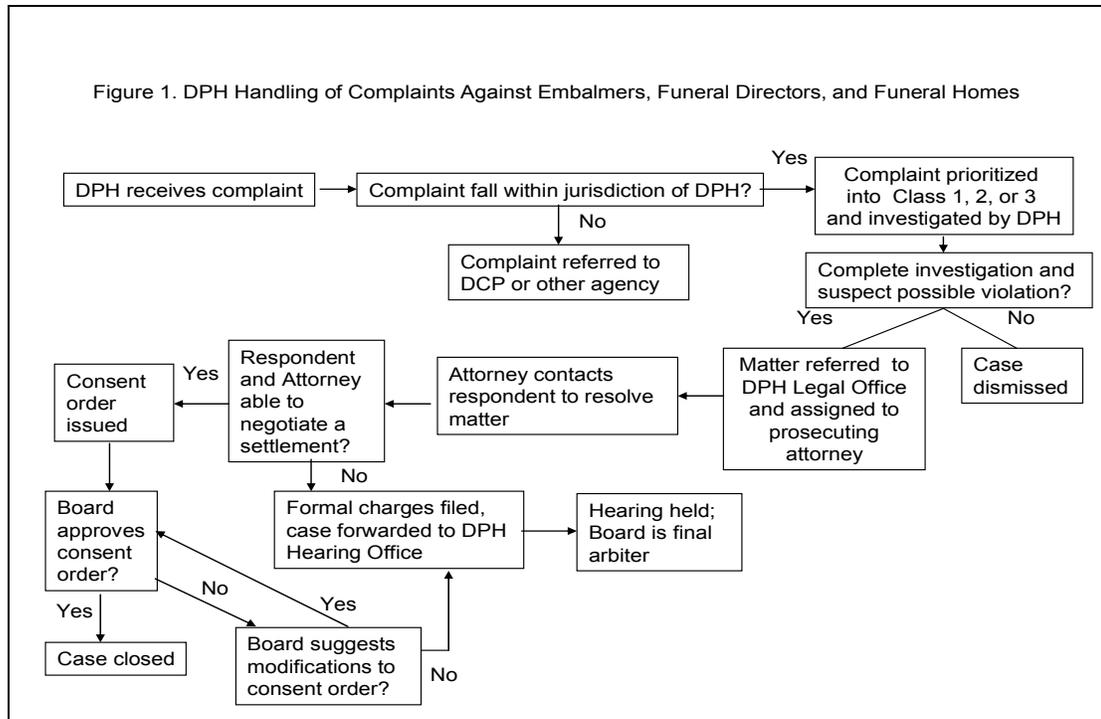
Criteria #5. How has DPH and the Board processed and resolved public complaints concerning persons subject to regulation?

Key Findings for:	
Overall Embalmer, Funeral Director and Funeral Home Regulation	
	<ul style="list-style-type: none"> • DPH is mandated to investigate complaints against licensed embalmers and funeral directors who are alleged to have violated statutes, regulations and standards governing the profession
	<ul style="list-style-type: none"> • Complaints are investigated by the practitioner investigator within the DPH Practitioner Investigations area, who is a licensed embalmer
	<ul style="list-style-type: none"> • Complaints are prioritized (Class 1, 2, 3) based on their potential threat to public health and safety
	<ul style="list-style-type: none"> • Investigations that conclude there is possible cause to suspect a violation are referred to the Legal Office
	<ul style="list-style-type: none"> • Cases are then resolved in an office conference or through a Board hearing
	<ul style="list-style-type: none"> • Two-thirds of the investigations take longer to complete than called for by DPH guidelines
Board of Examiners of Embalmers and Funeral Directors	
	<ul style="list-style-type: none"> • The Board has held two hearings during each of the last two years regarding charges filed against embalmers and/or funeral homes
	<ul style="list-style-type: none"> • During the past two years, the Board has imposed sanctions 27 times including reprimands, probation, suspension, revocation, and imposed civil penalties

Cause for disciplinary action. As specified in CGS Sec. 20-227, disciplinary action may be taken in the following instances:

- (1) fraud/deceit in attempting to obtain licensure etc.
- (2) violation of statute or regulation
- (3) crime conviction related to embalming/funeral directing in CT
- (4) incompetency, negligence, misconduct
- (5) violation of or noncompliance with chapter provisions or rules
- (6) fraud/deceit regarding license/certificate etc. once awarded by DPH
- (7) involvement with embalming or funeral directing by an unlicensed person
- (8) physical or mental illness, emotional disorder or loss of motor skill (e.g., deterioration due to aging)
- (9) alcohol or substance abuse

Complaint handling process. Figure 1 shows how DPH handles complaints against embalmers, funeral directors, and funeral homes. With approximately 20 complaints received annually, it is estimated that 10 percent may actually get to the administrative hearing step, i.e., the board.



As part of the investigative process, DPH obtains records, interviews relevant parties, and requests a response to the allegations from the respondent. Expert consultant opinions may be sought when necessary. If determined that a violation has occurred, then the department pursues disciplinary action. More detailed information on DPH’s investigatory and hearing process are found in a consumer guide on the agency’s website.⁷

Since 2009 to the present, DPH has processed 69 complaints against embalmers, funeral directors, and funeral homes. The Department provides consumers with a link to access a printable complaint form that may be completed and mailed to DPH. Consumers are also given the option of contacting the DPH Practitioner Investigations Unit by telephone, email or fax. Unlike the Better Business Bureau, for example, there is currently no way to complete the complaint form online.

Timeliness. PRI staff reviewed information that was available for 20 complaints lodged during 2001-2006 and subsequently dismissed (i.e., did not receive a hearing before the Board). The timeliness of processing the cases is reflected in Figure 2.

As shown, half the complaints were opened within eight calendar days or less. Following investigations that ranged from two weeks to 1.5 years,⁸ disposition letters were then often sent to the complainant and respondent on the same day the complaint was resolved.

⁷ Consumer Guide to the Department of Public Health’s Investigation and Hearing Process (http://www.ct.gov/dph/lib/dph/facility_licensing_and_investigations/pdf/consumer_guide.pdf)

⁸ The 1.5-year-long complaint investigation was a fraud and deception complaint brought by the Department of Social Services.

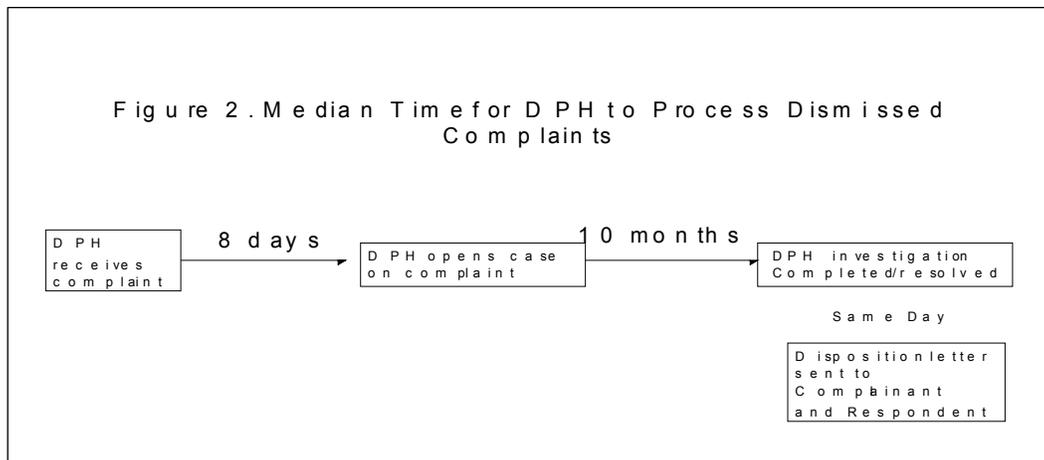


Figure 3 shows the time to complete investigations, regardless of the priority level (Class 1-3) assigned to the complaint.⁹ Approximately two-thirds of the complaints take longer than the six month maximum standard established by DPH, suggesting that many of the complaints are not investigated in a timely manner. Overall, DPH does not maintain reports on complaint processing time by classification.

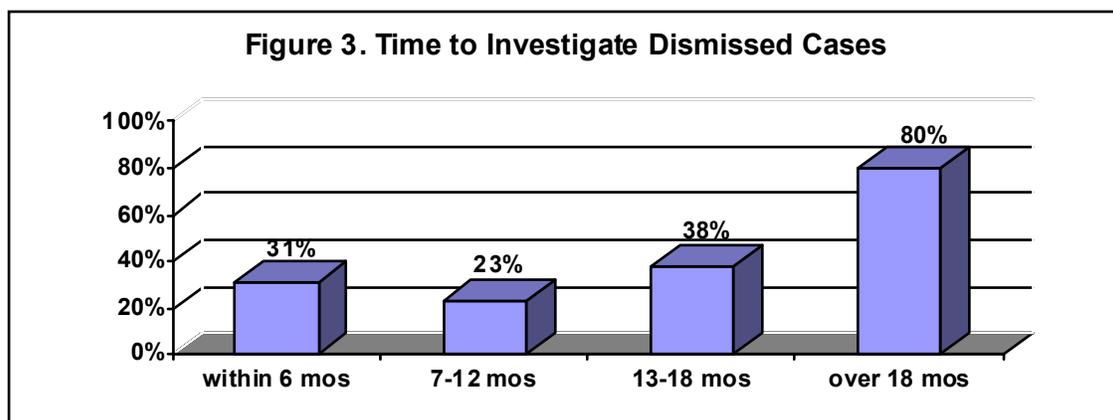
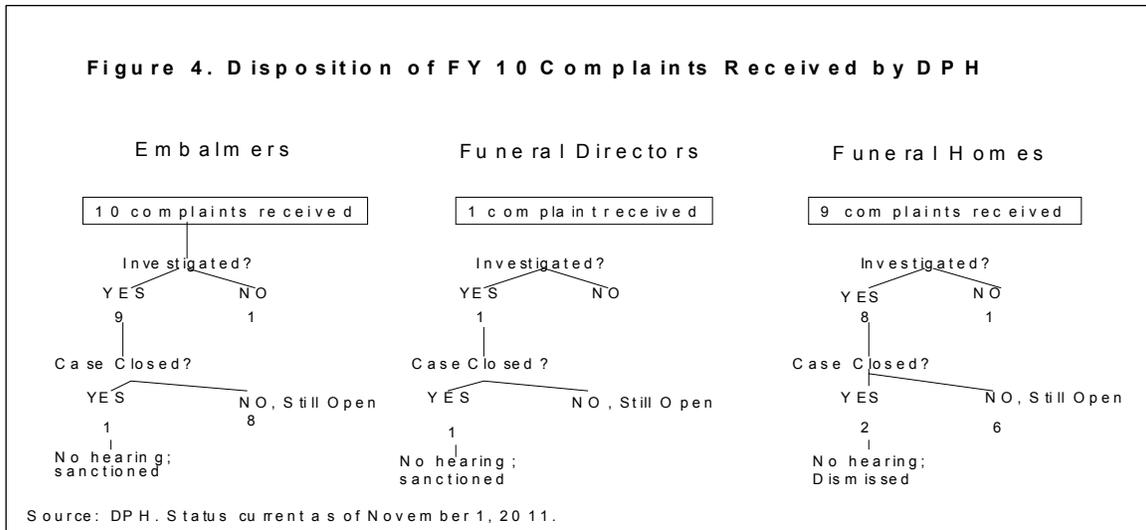


Figure 4 provides information on complaints that were processed by DPH more recently, in FY 10. Although there are more complaints received for embalmers as compared with funeral directors, there are also many more licensed embalmers than funeral directors (828 vs. 59 in December 2010). Of the 20 complaints received in FY 10, 18 were investigated (90%) and 2 dismissed. Following the investigation, four cases were closed without hearings: two were closed without action (i.e., dismissed); and two were sanctioned through consent order (i.e., negotiated agreement between DPH and the licensee that is presented to the Board for approval).

⁹ Class 1 complaints require immediate action or response because the situation poses an immediate threat to public health and safety. Class 1 complaints include cases associated with patient death, practitioner impairment, sexual misconduct, or infection control issues. Class 2 complaints have direct or indirect impact on quality of care, quality of life, or public health and safety. Class 3 complaints appear to be violations of standards of practice, laws or regulations such as failure to release records, patient confidentiality, failure to complete physician profile, etc.



No detailed information was available on the dates complaints were received, investigated, etc. Conservatively assuming that the 20 FY 10 complaints were received on June 30, 2010, the last day of the fiscal year, 14 complaints (70%) remained open at least 16 months. As previously noted by DPH, resources and availability of consultants may increase the timeline.

Consumer perspective. Information is not readily available on the percent of consumers understanding how to file a complaint. Both DCP and DPH have their complaint forms online.

Consumers may not be aware that, depending on the nature of the problem, complaints are handled by either DPH or DCP. As noted earlier in the report, while DPH investigates complaints against licensed embalmers, funeral directors, and funeral homes, DCP investigates suspected unfair trade practices, such as pre-need funeral service contract complaints.

Visitors to the DCP website are informed that funeral homes are licensed and regulated by the State Department of Public Health. However, the DCP website provides brief information on funeral service contracts, escrow accounts, cancellation of contracts, irrevocable funeral contracts, and revocable funeral contracts. It does not state that complaints related to these topics are handled by DCP rather than DPH.

Of the 11 DCP cases closed during 2009-2011 for which information was available, three of the four complaints pertaining to pre-need funeral service contracts were brought to the attention of DCP by DPH, rather than directly from a consumer.

DCP and DPH are aware of the overlap in handling of complaints pertaining to embalmers, funeral directors, and funeral homes. Consistent with some overlap in regulation of the funeral industry, there is an “elicense” lookup tool that is accessible on both the DPH and DCP websites, and includes licensee information on funeral homes, funeral directors and embalmers.

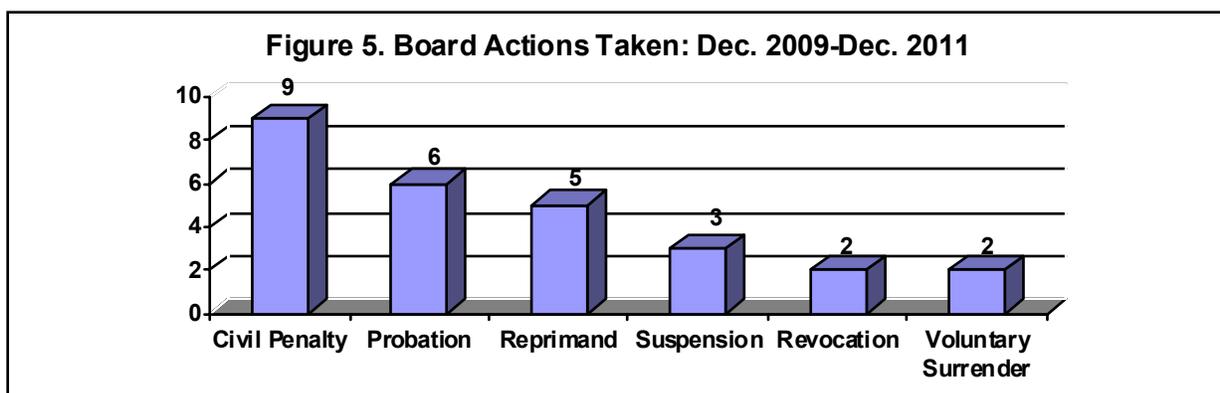
The DPH website does not direct consumers to DCP to complain about pre-need funeral service contracts.

Pre-need funeral service contracts. Many of the individuals entering into pre-need funeral service contracts are considered frail and vulnerable elderly at risk for being taken advantage of by unscrupulous practitioners. The Federal Trade Commission, for example, in its investigation of funeral services has determined that the consumer of funeral services “is often vulnerable and susceptible to exploitation.”¹⁰ One way to decrease the potential risk of such an occurrence is to have a knowledgeable consumer. Just as requirements pertaining to price and information disclosure are made in order to have an informed consumer, DCP prepared a fact sheet for consumers that explain pre-need funeral service contracts to consumers. Not all consumers with pre-need funeral service contracts understand, for example, that annual statements from the escrow account agent must be sent to the consumer, and therefore are not able to recognize that there is a problem should they not receive the annual statement. Also, because not all pre-need funeral service contract accounts are audited, it is possible that there are more cases of diverted funds that are yet to be restored.

To decrease any confusion on the part of the funeral industry, DCP has also taken steps to ensure that practitioners are knowledgeable about the requirements of pre-need funeral service contracts and maintaining funds in escrow accounts by preparing a similar document for those in the funeral industry.

Assessment of board. PRI staff examined the actions of the Board regarding complaints during the past two years. Because the analysis was based on summary information contained in Board minutes, no information was available on the timeliness of processing complaints. However, PRI staff observed the scheduling of hearings to occur in a timely manner (for example, within two weeks of hearing request).

Figure 5 shows the 27 actions taken during December 2009-December 2011. There were five instances where the Board disagreed with the Consent Order. In three of those cases, for example, the Board denied the motion for summary suspension because the allegations did not rise to the level of immediate threat to public safety or welfare. In another instance the consent order was denied with a recommendation that the proposed order be modified to require a period of monitoring for at least one year.



¹⁰ Funeral Industry Practices Final Staff Report to the Federal Trade Commission and Proposed Trade Regulation Rule (16 CFR Part 453), Bureau of Consumer Protection, June 1978.

Service to Public Conclusion

Licensing supports the general public

Qualified applicants are not barred from entering the profession, nor does there appear to be any evidence that affirmative action requirements, if applicable, have been violated. The amount of time needed to close/dispose of dismissed complaints averaged 10 months, with a range of two weeks to 1.5 years. While the public might be better served if complaints could be resolved more quickly, there is no indication from DPH that embalmer, funeral director, or funeral home cases take any longer to process than complaints against other professionals under the auspices of the department. *Evidence suggests that licensing supports the general public as opposed to the persons regulated.*

The Board supports the general public

The Board is not involved in the entry of applicants into the profession. Further, during 2007-2011, five of six applicants for licensure reinstatement were accepted by the Board. There also does not appear to be any evidence that affirmative action requirements, if applicable, have been violated.

The Board has supported making continuing education requirements mandatory, specifying that two of the six hours be spent in education about state and federal laws on funeral services, including applicable Federal Trade Commission regulations. The Board encourages public participation through its Open Forums held at each Board meeting. There is further participation by the public in that two of the Board members represent the public as opposed to the profession. Lastly, through hearings and consent orders, the Board processes and resolves public complaints. One-third of the consent orders presented to the Board by the department are rejected (5 of 14 consent orders), suggesting that the Board is not simply a rubber stamp. *There is no evidence to suggest that the Board serves the persons regulated as opposed to the general public.*

While it is recommended to continue licensing embalmers, funeral directors, and funeral homes, and continue the Board in its quasi-judicial role, several suggested modifications to this regulatory area are suggested in the next section.

Recommended Modifications

Overall Embalmer, Funeral Director and Funeral Home Regulation

Expand current regulations. The current regulations pertaining to embalmers and funeral directors are limited to clarifying employment of student embalmers and funeral directors, display of licenses, certificates, and signs, serving food or drink, mandatory disclosures, and cash advanced billing (R.C.S.A. Sec. 20-211). There are also regulations pertaining to preparation, transportation, reporting, and care of bodies dead of a communicable disease (R.C.S.A. Sec. 19a-36). DPH staff recommends expanding the current regulations to clarify statutory requirements related to funeral homes. Therefore, **PRI staff recommends:**

DPH shall expand the current regulations pertaining to funeral homes to address issues including but not limited to a definition for “funeral service” and specific requirements related to funeral home inspection certificates.

DPH licensure report. Data on the number of licensed embalmers, funeral directors, and funeral homes is reported annually as part of the DPH report, “Total Active Licenses.” To assess trends, data from each year’s separate report must be compiled manually. By having columns for each of the years on the same report, viewers can see trends over time for the number of licensed embalmers, funeral directors, and funeral homes—as well as the 87 other categories of licensed professions. To improve the ease of acquiring (and therefore analyzing) multi-year data on licenses, **PRI staff recommends:**

DPH’s report, “Total Active Licenses,” be formatted to include data from each of the past five years.

DPH monitoring of timeliness of complaint processing. Despite department guidelines on the time to process complaints according to the severity of the complaint (i.e., Class 1, 2 or 3), DPH does not maintain reports on complaint processing time by classification. To assess whether complaints are addressed in a timely fashion, **PRI staff recommends that:**

DPH should consider developing a system to monitor timeliness of complaint processing for all cases, with the ability to assess whether complaints are investigated within the DPH guidelines for Class 1, 2, and 3 complaints.

DCP website. The DCP website could reduce consumer confusion by clarifying that consumer complaints regarding pre-need funeral service contracts are handled by DCP. Therefore, **PRI staff makes the following no-cost recommendation:**

Specifically state on the DCP website that DCP handles consumer complaints about pre-need funeral service contracts. Other complaints related to services received from embalmers, funeral directors and funeral homes are handled by DPH.

DPH website. The DPH website could also reduce consumer confusion by providing the same information so that complainants are clear as to where to register their complaints. Therefore, **PRI staff makes the following no-cost recommendation:**

Specifically state on the DPH website that DPH handles complaints related to services received by from embalmers, funeral directors and funeral homes. Complaints about pre-need funeral service contracts are handled by DCP.

Pre-need funeral service contracts fact sheet. PRI staff believes the consumer fact sheet on pre-need funeral service contracts will help to better inform consumers. Beyond having the fact sheet on the DCP website, the DPH and DSS websites should make consumers aware of the fact sheet for consumers on funeral service contracts. Therefore, **PRI staff makes the following no-cost recommendation:**

DPH and DSS should make consumers aware of the pre-need funeral service contracts fact sheet by providing a link to the document on the DCP website.

Beyond providing the fact sheet on pre-need funeral service contracts on agency websites, another avenue for receipt of the information would be directly from the funeral directors and embalmers. Therefore, **PRI staff makes the following low-cost recommendation:**

Funeral directors and embalmers shall distribute paper copies of the DCP pre-need funeral service contracts fact sheet to customers considering or purchasing such a contract.

When inspecting the funeral, the DPH inspector can then check that the paper copies are available for distribution to future customers.

Pre-need funeral service contract guaranty fund. DCP currently maintains five guaranty funds.¹¹ The DCP website explains that, through these special funds, DCP is sometimes able to offer repayment to consumers who have been financially damaged as a result of some problem transaction. The funds to provide this compensation come from a small allocation from the required annual registration fees for the associated businesses.

A similar arrangement can be established for restoration of diverted pre-need funeral service contract funds. As described earlier, at least eight other states currently have pre-need funeral service contract guaranty funds. These funds would be available to reimburse consumers for pre-need funeral service contracts when funds were misdirected away from escrow accounts (i.e., reimburse consumers for funds lost in a pre-need funeral service contract due to malfeasance by a funeral home.). Ten dollars each from the \$110 embalmer license renewal fee and \$230 funeral director license renewal fee could be transferred into the pre-need funeral

¹¹ The current five DCP guaranty funds are the Home Improvement Guaranty Fund, New Home Construction Guaranty Fund, Real Estate Guaranty Fund, Health Club Guaranty Fund, and Itinerant Vendor Guaranty Fund.

service contract guaranty fund, established and administered by DCP. Therefore, **PRI staff recommends:**

A Pre-need Funeral Service Contract Guaranty Fund shall be established and managed by DCP.

Board of Examiners of Embalmers and Funeral Directors

Board member vacancy. The Board of Examiners of Embalmers and Funeral Directors is required to have five members, two of whom are members of the public, and three of whom are actively licensed and practicing embalmers. DPH notified the Governor's Office of a public board member vacancy the day it received the letter of resignation. More than six months have passed since the Governor's Office was notified of the vacancy; however, it has not yet been filled. As the state auditors pointed out, boards without a full complement of participating members may not benefit from the intended representation of various public and private sector groups. Therefore, **PRI staff makes the following no-cost recommendation:**

DPH Commissioner should request of the Governor's Office the anticipated timeframes for the filling of DPH board and commission vacancies

Board attendance requirement. There are no requirements for board member attendance at board hearings. Because the perspective of the public and the professional was considered important to the work of the board, there should be representation of these two viewpoints at board hearings. Therefore, **PRI staff recommends:**

At least one public board member and one professional board member shall be present at DPH board hearings