

ATTACHMENT B

Results-Based Accountability

Assessment of

**Regulation of Embalmers, Funeral Directors
and Funeral Homes**

Prepared By

**Legislative Program Review and Investigations Committee
Per C.G.S. Sec. 2c-4**

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| RESULTS-BASED ACCOUNTABILITY FRAMEWORK: REGULATION OF HEALTH PROFESSIONALS | | | | |
|---|--|--|---|--|
| POPULATION LEVEL ACCOUNTABILITY | | | | |
| QUALITY OF LIFE RESULTS STATEMENT: “All Connecticut residents experience good physical, mental and economic health, safety and welfare through the regulation of health professionals.” | | | | |
| KEY INDICATORS of Progress Toward Population Level Results | | | | |
| Indicator 1: Physical health and safety <i>Percent of time clients unharmed by a licensed professional</i> | Indicator 2: Emotional well-being <i>Rate with which consumers are treated fairly and with dignity</i> | Indicator 3: Economic welfare <i>Percent of time clients have trouble-free financial transactions with licensed professional</i> | | |
| PARTNERS CONTRIBUTING TO RESULTS STATEMENT | | | | |
| CT General Assembly Congress Governor State Agencies: DPH, DCP, OAG Municipalities | Federal Agencies: FDA, FTC, OSHA Boards and Commissions Medical personnel and other Professionals/Practitioners Better Business Bureau Advocacy groups | Educational and Health Care Institutions Businesses Colleges, training institutions producing professionals Professional associations | | |
| MAIN STATE STRATEGIES FOR ACHIEVING RESULTS STATEMENT | | | | |
| Ensure minimum level of compliance with licensure and regulations | Ensure safe and sanitary conditions at regulated facilities and businesses | Enforce fair and honest financial practices | Investigate and resolve complaints | |
| AGENCY AND PROGRAM LEVEL ACCOUNTABILITY | | | | |
| AGENCY AND BOARD CONTRIBUTIONS TO RESULTS STATEMENT: MAIN ROLES AND RELATED MAJOR PROGRAMS | | | | |
| Set and apply standards for trained and competent practitioners | Protect public from the spread of disease, risk and physical injury by licensed professionals | Safeguard the public from negligent and unscrupulous professional practices | Protect public from economic harm by professionals in the field | Establish and implement processing for complaints about services received by the professional |
| <ul style="list-style-type: none"> DPH license processing and setting standards | <ul style="list-style-type: none"> DPH facilities inspections DPH licensing examinations DPH continuing education requirements | <ul style="list-style-type: none"> DPH complaint investigation DPH/board hearing process and sanctioning | <ul style="list-style-type: none"> DCP investigation of unscrupulous business practices DPH sanctioning of licensed individuals | <ul style="list-style-type: none"> DPH complaint receipt and investigation DPH/board hearing process and sanctioning |
| PROGRAM LEVEL PERFORMANCE MEASURES: REGULATION OF PROFESSIONS | | | | |
| <ul style="list-style-type: none"> DPH and any associated Boards are in full compliance with relevant statutory and regulatory requirements Efforts are made to prevent and detect any negative impact on the physical health of consumers caused by the actions of the licensed professionals Unscrupulous practitioners are removed or monitored to limit further complaints Efforts are made to prevent, detect, and resolve financial fraud or dishonesty All complaints regarding deceptive practices are successfully resolved | | | | |

**RBA PROGRAM PERFORMANCE REPORT CARD:
REGULATION OF EMBALMERS, FUNERAL DIRECTORS, AND FUNERAL HOMES**

Contributes to the Quality of Life Results Statement:

All Connecticut residents experience good physical, mental and economic health, safety and welfare through the regulation of health professionals.

Main Contribution: The regulation of embalmers, funeral directors, and funeral homes helps protect public health from illness spread through the deceased, safeguard the emotional well-being of consumers by ensuring the deceased’s descendants are treated fairly and with dignity, and economic welfare through the enforcement of fair and honest financial practices.

PROGRAM BACKGROUND

- In 1903, the CT Board of Examiners of Embalmers was established with responsibility for licensure of embalmers and other regulatory powers.
- In 1977, embalmer, funeral director, and funeral home licensing and other regulatory powers were transferred from the Board to the DPH.
- DPH is responsible for initial and renewal of licenses and receiving and investigating complaints pertaining to the quality of services provided. There is one full-time DPH inspector/investigator who is assigned solely to inspecting all funeral homes annually, and investigating complaints against embalmers, funeral directors, and funeral homes.
- While DPH investigates complaints pertaining to quality of services, DCP investigates complaints relating to business practices, such as pre-need funeral service contract issues.

REGULATION OF EMBALMERS, FUNERAL DIRECTORS, AND FUNERAL HOMES PERFORMANCE SUMMARY

Five key measures of performance for public health-related regulation are highlighted below, followed by separate discussions of four areas – licensure; complaints and sanctioning; public, physical, and financial safety; and board functioning. Within each, two of the three RBA program performance questions –How much did we do? and How well did we do it?– are answered. The final section answers the key, third question: Is anyone better off?

| KEY MEASURES | STATUS | CURRENT DATA |
|---|--------|---|
| 1. The Board and DPH are in full compliance with relevant statutory and regulatory requirements | + | <ul style="list-style-type: none"> • The Board has complied with its activity-related statutory and regulatory requirements. <ul style="list-style-type: none"> ○ In 2010, the Board met the required four times, and held hearings (two). ○ In 2010, the Board imposed sanctions (seven times). • But because the Board has been awaiting the governor’s appointment of a public member since June 2011, it is out of compliance with the requirement that one-third of its members be public. • DPH has complied with all statutory and regulatory requirements to license, inspect and investigate embalmers, funeral directors and funeral homes. <ul style="list-style-type: none"> ○ 828 embalmers and 59 funeral directors were licensed in 2010. ○ 295 funeral homes were licensed that same year. ○ 69 complaints against embalmers, funeral directors and funeral homes were investigated from 2009-2011. |

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| <p>2. Efforts are made to prevent and detect any negative impact on the physical health of consumers caused by the actions of the licensed professionals</p> | <p>+</p> | <ul style="list-style-type: none"> • Licensure requirements and processes are intended to prevent public health incidents. <ul style="list-style-type: none"> ○ Personnel licensure has a continuing education requirement that specifically involves the importance of and methods for maintaining sanitary conditions and preventing the spread of communicable disease. ○ Facility licensure involves annual DPH inspections, which focus on assessing whether sanitary conditions and procedures are used. When necessary, sanctioning / plans are implemented to bring the facility up to an acceptable condition. • There is some indication that although communicable illnesses can be spread from the deceased to funeral home personnel, serious public health incidents are rare. Within Connecticut, there do not appear to have been any recorded or reported incidents. |
| <p>3. Unscrupulous practitioners are removed or monitored to limit further complaints</p> | <p>+</p> | <ul style="list-style-type: none"> • Due to DPH and actions of Board, during 2008-2011: 20 incompetent and negligent/unscrupulous embalmers and/or funeral directors, and 12 funeral homes, were removed or otherwise sanctioned, thereby increasing potential for peace of mind. • These actions were taken due to such harmful acts as: mixing up two bodies and cremating the wrong body, delaying embalming the deceased resulting in a gross disfiguration, reselling top-tier coffins that were already bought by families, and switching coffins after families had left the grave. |
| <p>4. Efforts are made to prevent, detect, and resolve financial fraud or dishonesty</p> | <p>+</p> | <ul style="list-style-type: none"> • Pre-need funeral service contracts are examined as part of the annual DPH funeral home inspection and any suspected irregularities forwarded to DCP. • DCP investigates approximately eight consumer complaints annually related to funeral home business practices, and also investigates and handles pre-need funeral service contract problems found through the DPH funeral home inspection. • DCP investigations can result in the restoration of funds to consumers (e.g., recent investigations of four incidences benefited 27 customers). • When financial malfeasance involves licensed practitioners, DPH and the Board become involved and handle licensure-related penalties, if any. • To help the consumer be as informed as possible, DCP prepared a fact sheet on pre-need funeral service contracts for the public and funeral industry; PRI staff recommends this fact sheet be shared with every potential pre-need funeral service contract customer. • To ensure that practitioners are knowledgeable about the requirements of pre-need funeral service contracts and the maintaining of funds in escrow accounts, there are pre-need funeral service contract courses available to practitioners as part of continuing education requirements. |

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| <p>5. All complaints regarding deceptive practices are successfully resolved</p> | <p>+</p> | <ul style="list-style-type: none"> • All DPH-processed complaints are investigated or dismissed. In FY 10, for example: <ul style="list-style-type: none"> ○ 18 of the 20 complaints received (90%) were investigated. ○ 6 of the 20 complaints were closed as of November 1, 2011 (30%). • All complaints received by the DPH Practitioner Licensing & Investigations Section are prioritized by level of immediate threat of the situation to public health and safety. Section staff is required to investigate complaints within specific timeframes. • Target timeframes within which to resolve DPH-processed complaints are not met at least 70% of the time. • A review of 19 DCP-processed complaints received during a two-year period (10/1/09-10/03/11) found: <ul style="list-style-type: none"> ○ 84% were closed as of 10/24/11. ○ The median amount of time it took to resolve the 16 closed cases was approximately three months. • Consumers may not be aware that depending on the nature of the problem, complaints are handled by either DPH or DCP; PRI staff recommends clarifying this matter on the departments' websites. |
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LICENSURE

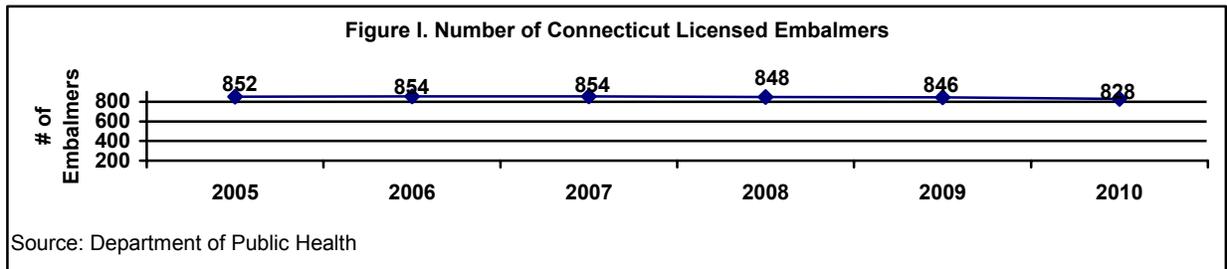
In 2010, the Department of Public Health oversaw the licensure of embalmers and funeral directors. The agency held licensing exams and also inspected and certified funeral homes. Continuing education is required for embalmer and funeral director licensure renewal.

I. HOW MUCH DID WE DO?

Performance Measure 1: Number of Licenses Issued

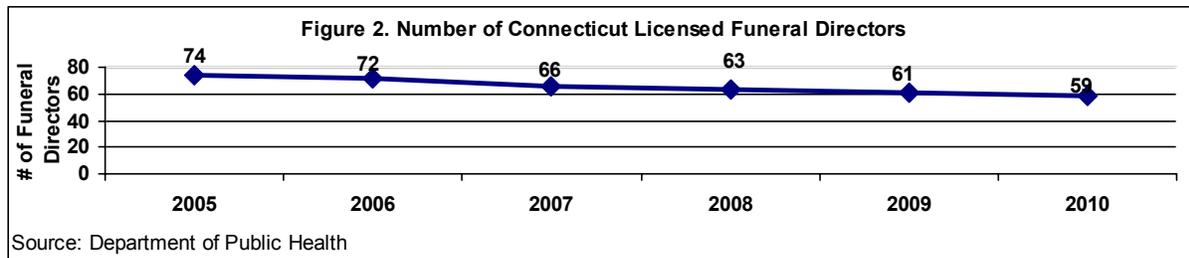
For embalmers:

- DPH licensed 828 embalmers in 2010 (Figure 1).
- There were 22 applications for new embalmer licenses in FY 11.



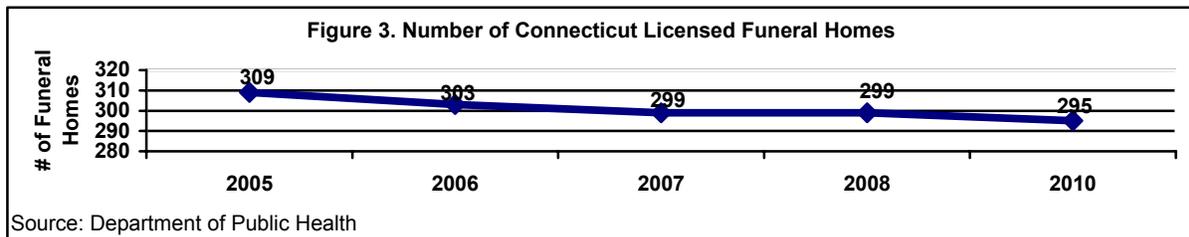
For funeral directors:

- DPH licensed 59 funeral directors in 2010 (Figure 2).
- There was 1 application for a new funeral director license in FY 11.



For funeral homes inspected and certified by DPH:

- DPH inspected and certified 295 funeral homes in 2010 (Figure 3).
- There were 8 applications for new funeral home certificates in FY 11.



Trend: The number of licenses newly issued or renewed each year has declined substantially for funeral directors and less so for embalmers. The number of funeral homes licensed or re-licensed has dropped slightly.

Performance Measure 2: Number of Licensure Exams Held Annually

- By statute, DPH is required to hold licensure exams for embalmers and funeral directors at least twice per year.
- On a regular basis, DPH offers required exams six times per year.

II. HOW WELL DID WE DO IT?

Performance Measure 3: Percent of Trained and Competent Applicants Who Received Licenses

- Embalmer and funeral director licenses are only granted to applicants who have successfully completed the education, apprenticeship and examination requirements.
- In FY 09:
 - 100% of the 20 embalmer applicants met the embalmer licensing requirements and were licensed.
 - 100% of the 3 funeral director applicants met the funeral director licensing requirements and were licensed.

Performance Measure 4: Presence of a Requirement for Continuing Education

- Continuing education is intended to ensure that practitioners maintain competency and keep up-to-date and knowledgeable about changes in their profession's field.
- Continuing education is required to renew embalmer and funeral director licenses.
- At least six hours of continuing education must be completed during a two-year period.
 - Two of the hours have to be in the area of federal and state laws.
 - Four of the hours must be in areas related to the licensee's practice, such as pre-need funeral service contracts and sanitation and infection control.

Performance Measure 5: DPH Application Processing Time

- On average, in 2010, it took 6-9 months for new applicants to become licensed.
- DPH and the Board reported the licensing process was conducted in a timely fashion.
- Processing time depended primarily on when education, apprenticeship and exam requirements were completed by the applicant.

Story Behind the Data

There have been a relatively steady number of licensed embalmers during the past five years. On the other hand, there has been a 20 percent decrease in the number of licensed funeral directors. Because licensed embalmers may also act as funeral directors, the decline in the number of funeral directors licensed or re-licensed per year – coupled with nearly a steady number of embalmers who received or renewed licensure – has not impacted the state's funeral

industry. It has, however, led to a slightly lower workload, in this particular area, for the DPH staff who process license applications. The decline in the number of funeral homes has been at least partially caused by consolidation and retirements of funeral directors.

DPH exceeded the minimum statutory requirement for offering exams to embalmers and funeral director licensing applicants. By DPH offering exams three times as often as statutorily required, the applicant waiting period for test-taking is reduced. According to DPH, there is minimal cost incurred to administer the licensing exam six times as opposed to the required minimum two times annually.

Data on the numbers of licensed personnel and facilities are reported annually in DPH's publication, "Total Active Licenses." To assess trends, data from each year's separate report must be compiled manually.

Action to Turn the Curve

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.

COMPLAINTS & SANCTIONING

The public, professionals, and state agencies may register complaints against embalmers, funeral directors, and funeral homes. Complaint investigation is shared across DPH and the Department of Consumer Protection (DCP). DPH investigates and makes recommendations about complaints regarding the quality of service provided, while DCP investigates and makes recommendations about those concerning business practices, such as pre-need funeral service contract issues.

When complaints regarding business practices involve licensed personnel, DCP may issue cease and desist orders, order restitution, and enter into consent agreements, while the Board (within DPH) may sanction the professional including license revocation, suspension, probation, and civil fines. Violations might also be uncovered during a DPH inspection of a funeral home, which occurs annually for every home.

I. HOW MUCH DID WE DO?

Performance Measure 1: Number of Complaints Received by DPH

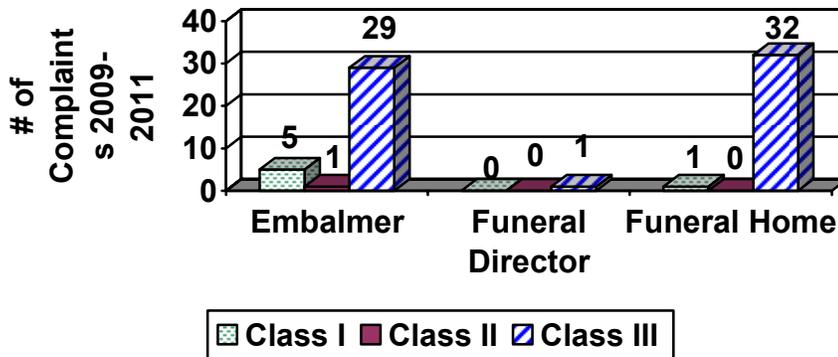
- DPH received and processed 69 complaints against embalmers, funeral directors and funeral homes from 2009-2011. Of 20 complaints DPH received during 2001-2006, issues pertained primarily to:
 - incompetence/negligence (35%);
 - business practice (30%);
 - fraud/deceit (15%); and
 - professional ethics (10%).

Performance Measure 2: Severity of Complaints Received by DPH

- Since 2009 to the present, of the 69 complaints against embalmers, funeral directors, and funeral homes, DPH staff have classified:
 - six (9%) at the highest priority level (Class 1);
 - one (1%) at the middle level (Class 2); and
 - 62 (90%) at the lowest level (Class 3) (see Figure 4).¹

¹ 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.

Figure 4. Severity of Complaints Against Embalmers, Funeral Directors and Funeral Homes



Performance Measure 3: Number of Complaints Closed by DCP

- DCP processed 19 complaints during a recent two-year period (October 2009-October 2011). Of 11 closed cases, issues pertained primarily to:
 - pre-need funeral service contract funds not being deposited into escrow accounts (4 complaints);
 - parties with pre-need funeral service contracts complained of overcharges (2 complaints); and
 - others complaining about high prices and billing practices (3 complaints).

II. HOW WELL DID WE DO IT?

Performance Measure 4: Timeliness of DPH Processing of Dismissed Complaints

- DPH guidelines state that Class 1 categorized investigations are to be “...completed as quickly as possible, but within ninety (90) days unless the PHSM [Public Health Services Manager] determines that an extended investigation is necessary and there is no threat to the public health and safety.”
 - The department guidelines further state that the goal is to complete Class 2 and Class 3 investigations within 180 days.
- Overall, DPH does not maintain reports on complaint processing time by classification.
- DPH does not retain records on complaint processing time for cases that are resolved by consent order; however, such information is retained for cases that are dismissed.

- For 20 complaints lodged during 2001-2006 and subsequently dismissed (i.e., did not receive a hearing before the Board or result in consent order)²:
 - Half the complaints were opened for DPH investigation within eight calendar days or less.
 - Investigations ranged from two weeks to 1.5 years.³
 - Disposition letters were often sent to the complainant and respondent on the same day the complaint was resolved.

This process and median timeframes is shown in Figure 5.

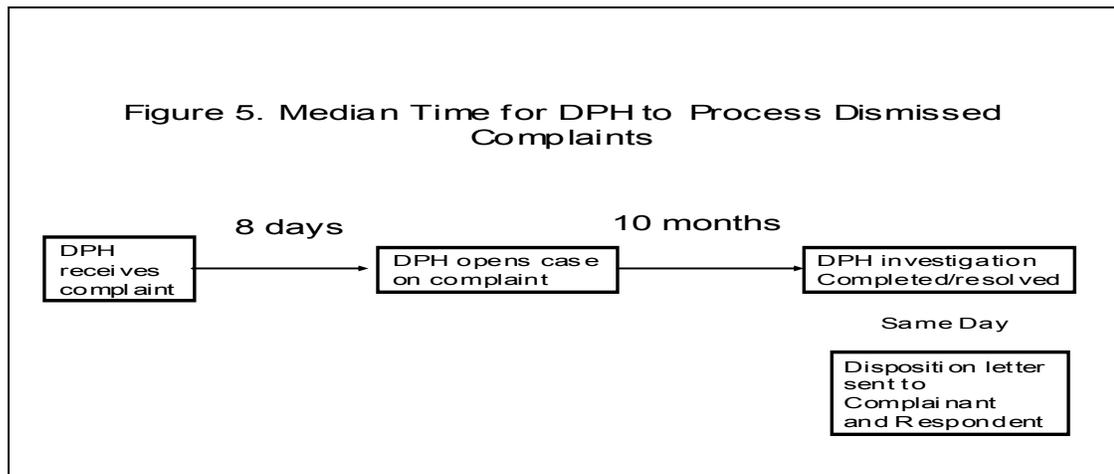
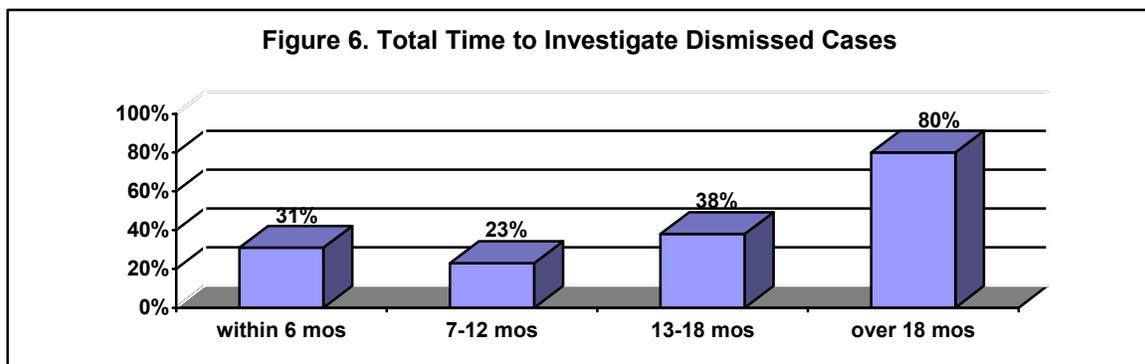


Figure 6 shows the total time to process the 20 dismissed complaints.



² DPH was unable to provide detailed information on timeframes for complaints that were resolved by consent order.

³ The 1.5-year-long complaint investigation was a fraud and deception complaint brought by the Department of Social Services.

- Approximately two-thirds of the complaints take longer than the six month maximum standard established by DPH.
- This data indicates that many of the complaints are not investigated in a timely manner.

Performance Measure 5: Timeliness of DCP Investigations

The Department of Consumer Protection (DCP) received 19 complaints during the two-year period (10/1/09-10/03/11):

- 16 of the 19 cases were closed as of October 24, 2011 (84%);
- the median amount of time it took to resolve the 16 closed cases was approximately three months; and
- the range for the 16 cases was as short as zero--two were closed on the same day they were received—to as long as approximately 18 months for four of the cases.

Performance Measure 6: Percent of Consumers Understanding How to File a Complaint

- 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.

Story Behind the Data

The departments of public health and consumer protection have separate systems for handling complaints related to the funeral service industry. There is natural overlap of some cases, as the business practice complaints registered with DCP often contain improper actions by a licensed professional, who may only be sanctioned by DPH.

Consumers may not be aware that, depending on the nature of the problem, complaints are handled by either DPH or DCP. The DPH website, for example, does not direct consumers to DCP to complain about pre-need funeral service contracts. Visitors to the DCP website, on the other hand, are informed that funeral homes are licensed and regulated by the State Department of Public Health. However, the DCP website then provides brief information on funeral service contracts, escrow accounts, cancellation of contracts, irrevocable funeral contracts, and revocable funeral contracts, and 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.

Because DPH does not monitor and report on complaint processing time by classification, it is difficult to assess whether complaints are investigated within the DPH guidelines for Class 1, 2, and 3 complaints.

Action to Turn the Curve

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.

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.

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.

PUBLIC, PHYSICAL, AND FINANCIAL SAFETY

Licensure requires certain sanitary conditions be met that are intended to prevent the spread of communicable diseases from dead bodies. The required maintenance of pre-need funeral service contract funds in escrow accounts assures that set-aside funds will be available when needed.⁴

I. HOW MUCH DID WE DO?

Prevention of Spread of Communicable Disease from Dead Bodies

The licensure of embalmers and funeral directors requires adherence to certain sanitary standards. The 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 dead bodies.

To reinforce the need to take measures to prevent the spread of communicable diseases by dead bodies, 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.

Performance Measure 1: Percent of Time Unsanitary Funeral Home Conditions are Brought up to Public Health Standards

- Sanitary conditions intended to prevent the spread of communicable diseases are assessed annually as part of the DPH inspection of all 295 funeral homes.
 - DPH reports that there have been very few sanitation concerns in recent years, with most of these issues addressed in the first year after inspections resumed.
 - Unsanitary conditions are either remedied at the time they are pointed out by the inspector or corrected by the time a follow-up visit by the inspector occurs.
 - In rare instances of non-compliance, DPH would issue a violation letter.

II. HOW WELL DID WE DO IT?

Performance Measure 2: Incidents of communicable disease spread from a corpse to a live person

- There is no information available on the incidence of communicable diseases being spread from a corpse to a live person in Connecticut.

⁴ Pre-need funeral service contracts are legal agreements whereby the consumer pays for funeral services, property, and/or merchandise in advance of the time when it is actually needed. The advance payments are kept in escrow accounts until such time as they are needed.

- National data from the Centers for Disease Control and Prevention CDC⁵ confirms that the spread of communicable disease by dead bodies is possible, but occurs rarely.
 - Embalmers and funeral home technicians have occasionally become infected with HIV, tuberculosis, and Hepatitis B from a cadaver.⁶

Performance Measure 3: Percent of Pre-Need Funeral Service Contract Funds Maintained in Escrow Accounts

In 1985, Connecticut passed a law allowing licensed embalmers and funeral directors to sell pre-need funeral service contracts (P.A. 85-376). The funds given to the funeral home (up to \$5,400 for irrevocable contracts, and unlimited for revocable contracts (unless the beneficiary is a Title XIX recipient)) must be put in a secure escrow account, with the account interest helping to fund the future need.

- No state agency maintains specific information on the number of pre-need funeral service contracts in Connecticut.
- The Board estimates that there is approximately \$400 million in these funds, and their popularity is increasing.
- Of four closed DCP cases involving misuse of pre-need funeral service contract funds:
 - three cases were successfully resolved, with \$92,001 in funds restored to 27 individual accounts; and
 - one case resulted in a loss of \$3,600 for the consumer.
 - DCP could not recover the misappropriated funds due to the death of embalmer and passage of too much time.

Story Behind the Data

One strategy employed to reinforce the need for and techniques to maintain sanitary conditions, is through the continuing education requirements. Four of the six hours must be in areas related to the licensee’s practice, including sanitation and infection control.

As the data suggests, the spread of communicable diseases from corpses to the living occurs rarely. It is unknown, however, if this low incidence is the direct result of implemented sanitary precautions or the minimal threat of spread of disease in this manner--regardless of sanitary precautions taken.

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

⁵ CDC, Surveillance of Occupationally Acquired HIV/AIDS in Healthcare Personnel, as of December 2010 (Updated May, 2011).

⁶ From 1981-2010, there was one documented case and two possible cases of embalmers and morgue technicians--without identified risk factors--contracting HIV from dead human bodies.

exploitation.”⁷ One way to decrease the potential risk of such an occurrence is to have a knowledgeable consumer. 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.

Additionally, there are pre-need funeral service contract courses available to practitioners as part of continuing education requirements for embalmer and funeral director licensure renewal.

Because DCP does not proactively inspect pre-need funeral service contracts to uncover irregularities, discovery of violations relies primarily on direct consumer complaints and information from DPH that was uncovered by the DPH funeral home inspector during his examination of a sample of pre-need funeral service contracts.

Action to Turn the Curve

Just as requirements pertaining to price and information disclosure are made in order to have an informed consumer, DCP has prepared a fact sheet for consumers to explain pre-need funeral service contracts. 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.

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 contracts and maintaining funds in escrow accounts by preparing a similar document for those in the funeral industry.

Beyond providing the fact sheet on funeral service contracts on the DCP website, 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.

⁷ 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.

BOARD FUNCTIONING

The Board of Examiners of Embalmers and Funeral Directors is composed of five volunteer members appointed by the Governor. Three of the Board members must be actively licensed and practicing embalmers and two must be members of the public.

One way to remove unscrupulous practitioners or provide greater oversight is through revoking practitioner licenses or other sanctioning measures such as probation and civil fines. The Board hears and decides matters concerning suspension or revocation of licensure, adjudicates complaints filed against practitioners, and imposes sanctions where appropriate.

Sanctions are contained in consent orders that must be approved by the Board following either a negotiated settlement (between practitioner and DPH) or Board hearing. Sanctions imposed range from reprimands to license revocation. Civil penalties may also be imposed.

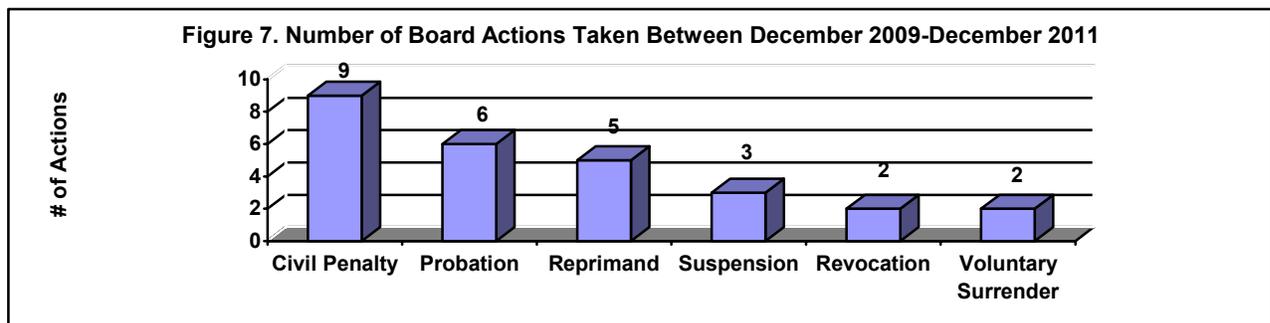
I. HOW MUCH DID WE DO?

Performance Measure 1: Number of Board Meetings

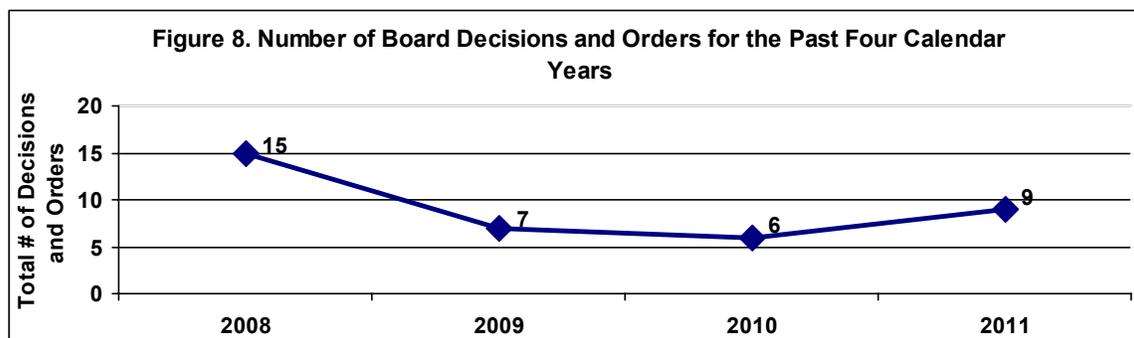
- There were four Board meetings in calendar year 2010.
- The Board held an average of two hearings per year in calendar years 2009 and 2010.

Performance Measure 2: Number of Board Actions Taken

- There were 27 Board actions taken between December 2009-December 2011 (Figure 7):
 - civil penalties ranged from \$500 to \$20,000 and had a median of \$2,500;
 - probationary periods ranged from 12 months to 4.5 years and had a median of 12 months; and
 - the Board imposed sanctions (e.g., license revocations, civil penalties) an average of 7-8 times annually in 2009-2010.



- In the past four calendar years, the Board annually made between 6 and 15 decisions (including denial of consent order or motion for summary suspension) and orders (such as board actions described in Figure 7) (Figure 8).



II. HOW WELL DID WE DO IT?

Performance Measure 3: Board Met At Least Once Each Calendar Quarter

- The Board statutorily must meet at least once per calendar quarter, and did so in 2010.
- Between four and five members were present at each Board meeting (90% attendance rate)

Performance Measure 4: Board Composition Complies With Statute

- Board members are appointed by the Governor.
- One of its two public member slots has been vacant since June 2011. Consequently, the board is out of compliance with the requirement that at least one-third of its members be public.

Performance Measure 5: Incidence of Sanctioning to Remove Unscrupulous/Incompetent Practitioners

- From December 2009-December 2011, **licenses were revoked, suspended or voluntarily surrendered** five times for embalmers and two times for funeral homes.
- These actions were taken due to such harmful acts as:
 - mixing up two bodies and cremating the wrong body, delaying embalming the deceased resulting in a gross disfiguration,
 - reselling top-tier coffins that were already bought by families, and
 - switching coffins after families had left the grave site

Examples of the types of complaints that led to sanctioning embalmers and funeral directors are shown in Appendix A.

Story Behind the Data

Since June 27, 2011 when DPH notified the Governor's Office of the vacancy, the Board has been without one public board member. A recent Connecticut Auditors' Report on DPH for the Fiscal Years ended June 30, 2006 and 2007, found 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.

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.

Action to Turn the Curve

To ensure that vacancies are filled in a timely manner, **PRI staff makes the following no-cost recommendation:**

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

To ensure there is adequate representation at Board hearings, **PRI staff recommends:**

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

III. IS ANYONE BETTER OFF?

Consumers are better off dealing with trained and competent (i.e., licensed) embalmers, funeral directors, and funeral homes, with the vast majority of funerals and cremations handled without complaint. By both requiring annual funeral home inspections and investigating complaints, negligent and unscrupulous practitioners are more likely to be removed from the field through license revocation, probation, fines and other sanctions. This increases the likelihood that mourners will be treated fairly and with dignity, consumers will have confidence that any funds in pre-need funeral service contract escrow accounts are protected.

The ability to appropriately sanction embalmers, funeral directors, and funeral homes is enhanced by having sanctions determined by a board, a group of expert professionals and members representing the public's interest. The efforts of both DPH and DCP in investigating pre-need funeral service contract complaints increases the odds that diverted pre-need funeral service contract funds are restored to the appropriate escrow accounts, making the consumers better off than if the investigation and resulting actions had not occurred.

Regulation Protects the Public from Negligent and Unscrupulous Embalmers/Funeral Directors/Funeral Homes

Performance Measure 1: Percent of Deaths Handled Without Complaint

- Information is not available on the percent of deaths handled annually without complaint.
- The approximately 828 licensed embalmers, 59 funeral directors, and 295 funeral homes handle as many as approximately 29,000 deaths annually.
- However, of the approximately 887 licensed embalmers and funeral directors, there have been no revocations, suspensions or other disciplinary actions taken against 866 of them (98%) during the last three calendar years (between February 2008-December 2011⁸).
- Also, of the approximately 295 funeral homes, there have been no revocations, suspensions or other disciplinary actions taken against 284 of them (96%).

Performance Measure 2: Frequency of Sanctioning Before and After Funeral Home Inspectors Hired to Annually Inspect all Homes

- Funeral homes are required to be inspected annually by the DPH funeral home inspector (CGS 20-222).⁹
- For a period of time, from approximately 1989-2001, there was no DPH staff person specifically assigned to funeral home inspections/investigations due to the retirement in 1989 of the state's part-time funeral home inspector.

⁸ DPH Board of Examiners of Embalmers and Funeral Directors website page on "Embalmer, Funeral Director, Funeral Home Discipline" (http://www.ct.gov/dph/cwp/view.asp?a=3143&q=388896&dphNav_GID=1830)

⁹ Inspections include: all facilities including general facilities, embalming and preparation facilities; forms in use; and pre-need funeral service contract and escrow accounts and agents.

- Compared to when there were no inspections, the more recent period when there were funeral home inspectors (Table 1) shows that:
 - Consent orders were more than twice as prevalent.
 - Civil penalties were imposed more often and at higher amounts.
 - Licenses were more likely to be revoked or voluntarily surrendered.

| Table 1. DPH 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 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. | | |

Performance Measure 3: Number of Times Pre-Need Funeral Service Contract Funds Were Restored After Inappropriately Being Diverted From Secure Escrow Accounts

- DCP investigates approximately eight consumer complaints annually related to funeral home business practices.
- Of three recently closed cases, \$92,001 in pre-need funeral service contract funds for 27 individuals had been diverted, and following DCP complaint investigation, were properly deposited into escrow accounts (One additional case for \$3,600 could not be corrected due to the death of embalmer and passage of too much time).

Story Behind the Data:

In 2001, local police discovered five bodies that had been decomposing for more than three years in a funeral home garage. Two full-time inspectors were subsequently hired in 2002 to fill investigator positions that had remained vacant for more than a decade. In comparing complaint handling before and after a funeral home inspector was hired, it is clear that the

presence of funeral home inspectors is associated with more required plans of correction, consent orders, civil penalties, and most importantly, revocation or voluntary surrender of licenses. Thus, this position is critical to the regulation of the funeral industry, and a vacancy in this position could have a direct impact on the public health, safety and welfare by failure to remove or otherwise sanction negligent and unscrupulous practitioners.

As is the case with all professional boards under DPH, the Board of Examiners of Embalmers and Funeral Directors serves without any compensation. DPH reported that, in instances where a 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. Further, 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. The board is a useful, no/low-cost asset to the regulation of embalmers and funeral directors.

DCP currently maintains five guaranty funds.¹⁰ 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. 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 service contract guaranty fund, established and administered by DCP.

DPH staff believes the current regulations pertaining to funeral homes are somewhat limited.¹¹ The current regulations do not, for example, define “funeral service” or specify requirements related to funeral home inspection certificates.

Overall, DPH doesn’t collect and retain complaint handling data on a regular basis. Thus, information on classification of type of complaint and time to process complaints is unavailable. Lacking this information makes trend analyses--an integral part of RBA--not possible.

¹⁰ 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.

¹¹ Current regulations cover employment of student embalmers and funeral directors, display of licenses, certificates, and signs, serving food or drink, mandatory disclosures, and cash advanced billing.

Actions to Turn the Curve

To maintain the level of regulation needed to protect the public health, safety, and welfare of Connecticut residents, **PRI staff recommends:**

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

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.

To address potential misdirection of pre-need funeral service contract funds away from the appropriate escrow account and provide peace of mind to those purchasing such contracts, **PRI staff recommends:**

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

DPH staff believes the regulatory program for embalmers, funeral directors, and funeral homes would be improved by an expansion of the current DPH regulations. 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.

APPENDIX A

| Complaints Against Embalmers/Funeral Directors/Funeral Homes Processed by DPH | | |
|--|---|--|
| Year Resolved, Type of Case | Issue | Outcome |
| Complaint #1 (2011) | Funeral home had unlicensed persons embalming human remains; exceeded the number of apprentice embalmers permitted; offered, sold and/or delivered goods and services not listed on the general price list; told families they would provide goods and/or services, that were not actually supplied; improper billing; submission of inaccurate death certificates; failure to obtain removal, transit and burial permits in a timely manner; and stole money and other valuables from homes of the deceased. | Embalmer voluntarily surrendered license; Superior Court judge sentenced embalmer to eight months in prison, and to pay almost \$63,000 in restitution to victims's families, and to state agencies he double-billed |
| Complaint #2 (2010) incompetence/ negligence | Funeral Director incorrectly identified remains, leading to embalming, preparing and casketing of the misidentified human remains; remains of one decedent incorrectly displayed at the wake; and remains of other decedent incorrectly cremated. | Funeral Director put on probation for 1 year, reprimanded, and fined \$2,000 |
| Complaint #3 (2010) incompetence/ negligence | Embalmer failed to provide two families with itemized list of services and merchandise purchased and used; funeral home delayed burying cremains for more than 18 months in one case; and funeral home delayed installing grave markers for three years in one case. | Embalmer reprimanded and fined \$2,000 |
| Complaint #4 (2010) illegal conduct; substance abuse/drug related | Embalmer has history of substance abuse, including the abuse of alcohol | Embalmer placed on probation for four years with requirements to receive therapy, urine screens, attend support group meetings |
| Complaint #5 (2009) | Embalmer entered into pre-need funeral service contracts but failed to appoint required escrow agent for each contract and deposit funds into escrow accounts | Embalmer's license revoked and fined \$20,000 |
| Complaint #6 (2009) Scope of practice | Embalmer buried deceased prior to filing the death certificate and obtaining a burial, removal and transit permit | Embalmer reprimanded and fined \$2,000 |
| Complaint #7 (2009) professional ethics | DPH investigator was inspecting funeral home and found remains had been refrigerated, and had not been wrapped, disinfected, or embalmed for at least five months; and delayed filing death certificate and securing removal, burial, and transit permit | Funeral home fined \$25,000 and licensed embalmer put on probation for 1 year |
| Complaint #8 (2008) Incompetence/ negligence | Embalmer cremated body prior to obtaining a cremation permit | Embalmer reprimanded, fined \$2,000, put on probation for 1 year |
| Source: DPH electronic license look-up (November 4, 2011). | | |