

MINUTES
South Carolina Board of Funeral Service
(Work Session) Board Meeting

10:00 a.m., Friday, May 2, 2014
Synergy Business Park
110 Centerview Drive, Kingstree Building Room 108
Columbia, South Carolina

Friday, May 2, 2014

1. Meeting Called to Order

Thomas E. Baker, II, of Kershaw, President, called the special called meeting of the SC Board of Funeral Service to order at 10:23 a.m. Other Board members present for the meeting included: Wallace McKnight, Jr., Vice President, of Andrews; Charlie Bradford Evans, of Abbeville, Secretary; Michelle Cooper, of Moncks Corner; William B. Horton, Jr., of Kingstree; John L. Petty, III, of Landrum; Jeffrey K. Temples, of Columbia; and, Marcus Brown of Anderson.

Staff members participating in the meeting included: Doris Cubitt, Administrator; Mary League, Advice Counsel, Office of Advice Counsel; Ernest Adams, Inspector, Office of Investigations and Enforcement; Buddy Poole, Inspector, Office of Investigations and Enforcement; and, Amy Holleman, Administrative Assistant.

Members of the public attending the meeting were Tiffany Gibson of the South Carolina Department of Consumer Affairs; Lou Ann Pyatt of the South Carolina Morticians Association; Mike Squires of the South Carolina Funeral Directors Association; and, Gere Fulton of the Funeral Consumers Alliance

a. Public Notice

Mr. Baker announced that public notice of this meeting was properly posted at the SC Board of Funeral Service office, Synergy Business Park, Kingstree Building, and provided to all requesting persons, organizations, and news media in compliance with Section 30-4-80 of the South Carolina Freedom of Information Act.

2. Introduction of Board Members and Persons Attending the Meeting

Board members, staff, and members of the public attending the Board meeting introduced themselves.

3. Approval of Excused Absences

Mark O'Steen; was granted excused absence.

MOTION

Mr. Horton made a motion that the Board approve Mr. O'Steen's absence. Mr. Evans seconded the motion, which carried unanimously.

4. Discussion Items

Ms. Cubitt told the Board members that the topics on the agenda are all very broad so that the Board members may discuss all aspects of an issue

A. Dr. Gere Fulton – Funeral Consumers Alliance

1. General Price Lists – Columbia 2014
2. Embalming
3. Direct Cremation

Dr. Fulton presented his findings and suggestions to the Board. A copy of that presentation is attached to these meeting minutes.

Mr. Horton let Dr. Horton know that, while the Board members understand some of the things he is saying about the General Price List (GPL) language, particularly, “if relevant,” in regards to cremation, the Board does not have the authority to override the Federal Trade Commission’s (FTC) rules; therefore, the Board cannot require the licensees in South Carolina to use language other than the language included in the Funeral Rule.

B. Apprenticeships

1. Preceptors

Board members discussed the possibility of requiring a preceptor perform a minimum number of services per year in order to have an apprentice to make sure they are able to meet their cases during their two year apprenticeship. They came to the conclusion that it was up to the apprentice to make sure they work for a firm with enough business for the apprentice to meet their requirements, and Mr. Temples also noted that apprentices must work 35 hours a week, and a firm doing too few cases to support a full-time apprentice cannot have an apprentice.

Board members discussed the inspection process and verifying apprenticeships and preceptors during inspections.

Board members discussed the possibility of a preceptor training program. Mr. Adams reminded the Board that Skip Mikell put together a proposal for the Board in the past. Mr. Horton suggest the Board work on guidelines for preceptors and require them sign an affidavit swearing that they read these guidelines as part of the apprentice’s application. Mr. Horton asked that Mr. Adams bring copies of Mr. Mikell’s past proposal to the next Board meeting.

2. Definitions

The Board members discussed the meaning of full-time employment, and Mr. Evans included outside employment with this discussion. Full-time is defined as 35 hours a week. How can a person work full-time during the normal business hours at a funeral home and full-time somewhere else as well? Do we need to add “normal business” hours to the statute or regulations? Mr. Brown told the Board that he is sure there are people who are saying that they are working full-time at the funeral home and are not doing it when they have full-time jobs elsewhere, but he has had people work for him and get their hours in even though they had full-time employment elsewhere.

Do employees have to be paid? Oklahoma requires payroll records as part of the inspection process. Can an employee be a person without compensation? Will federal law allow a person to be an employee and not be paid? Ms. League pointed out that a volunteer is not an employee. Mr. Temples pointed out workers’ compensation issues and liability issues if you have a non-employee or not paid

person injured in the funeral home. Mr. Brown pointed out that some funeral homes do not pay apprentices.

Ms. Cubitt reminded the Board members that they set a policy at the last Board meeting which said that apprentices must be paid at least minimum wage.

Mr. Horton asked that Ms. Cubitt research the federal definition of employee for the next Board meeting.

3. Deadlines

The Board members feel that the 30 days after the quarter's end deadline is non-negotiable and that it is the apprentice's responsibility to make sure that we have their reports in our office.

Board members requested that we add, in bold print, a line to the quarterly reporting form that says "We strongly suggest that all quarterly reporting forms be mailed to the Board certified with return receipt. Quarterly Reports received more than 30 days past the end of a quarter will not be accepted."

4. Outside Employment

Mr. Evans would like to see these go back to the Board Administrator, but he understands that the situations are different in most cases that come before the Board. Mr. Temples said that we should require work schedules for all apprentice applications.

The manager and the preceptor must sign off on time records. Preceptor and manager must sign apprentice applications. Manager and preceptor are both responsible.

The work schedule must accompany quarterly report, and the schedule must be signed.

C. Criminal Backgrounds

1. Student Permits

We currently have no authority to deny a student permit based on a felony conviction. Is it fair to allow a person with a felony conviction to permit for school when they will be denied a license later due to their felony conviction? Currently, student applicants come before the Board, and the Board members let them know that they probably will not be able to license later because of the felony on their record.

2. Apprenticeship Permits

3. Definitions

4. Federal Bureau of Investigations (FBI) Background Checks

Past discussions concluded that the Board would like to require student permit applicants and apprentice applicants be held to the same standards and face the same restrictions in regards to criminal backgrounds, especially felony convictions, as applicants for a license as a funeral director and/or embalmer. They also discussed an FBI background check requirement in the past, which the Board favored. These things were included in proposed legislation that has not passed at

this time. Ms. Cubitt informed the Board members that they needed to decide whether or not they wanted to submit the legislation again.

D. Clarification of Section 40-19-235 – Licensure requirements of applicant holding valid license in another state

Ms. Cubitt asked the Board to clarify “engaged in the licensed practice of funeral service” for staff. Mr. Horton believes this means that they must be both licensed and actively involved in the practice of funeral service not just be licensed.

E. Authorities Given to Board Administrator

The Board had expressed a desire to grant the Board Administrator more authority in the past regarding apprentices. Ms. Cubitt said that she was willing to take on more authority only if the Board provides her with guidelines.

Mr. Baker suggested the Board provide Ms. Cubitt with a list of criteria for apprentices, even with full-time employment on the side, and Mr. Evans said that he would like to see these guidelines published on the Board’s website.

Ms. Cubitt told the Board that the applicants she denies can appeal before the Board, and if they do so, the Board needs to be consistent with the decisions they make.

Mr. Baker added that he also believes Ms. Cubitt should have the authority to approve an application for a crematory being added to an already existing parent facility.

Mr. Baker suggested that the Board establish a committee of three people to come up with guidelines to submit to the full Board for approval. Once the full Board approves the guidelines, they will go to the Board Administrator to use when approving or denying applicants for apprentices.

F. Unclaimed Bodies

Unclaimed bodies are currently addressed on a county by county basis.

G. Scope of Practice

We need to “beef up” 40-19-110. There are times when we need to charge people for unprofessional conduct, but there is nothing in Section 40-19-110 to give the Agency the authority to do so.

Ms. Cubitt gave the Board some examples from other states, including embalming offenses, tissue sales, and embalming logs.

H. Inspections

The Board discussed adding citation and fine authority for the Board’s inspectors when they find violations. This authority must be promulgated.

The Board asked that Mr. Adams and Mr. Poole provide them a list with common violations they find while inspecting.

I. Right of Disposition

There is no legal status for a common-law spouse in the state of South Carolina.

The priority right of disposition is addressed in the cremation law, and Mr. Horton believes this would apply to burial as well.

J. Notes from Conferences

1. Putting Pictures on licenses helps with unlicensed practice

Some states find that having photographs on licenses helps with unlicensed practice. Ms. Cubitt would have to look into the IT capabilities at the Agency. Some licensing areas, like Cosmetology, require licensees to put their own photographs on their licenses, but there are a lot of issues with that method as people change the photos as they pass the licenses around. We would want a system where we print the photograph on the license.

2. Requiring community service for violations

3. Apprentices must have a copy of the death certificates and obituary for each case on their quarterly reporting form

Some states, while spot-checking reports, find that apprentices report cases for persons with names who have not died.

4. Vendors must be paid

Some states require funeral homes pay vendors within a certain number of days.

Ms. Cubitt asked the Board if they would like for Amy Holleman to attend a Death Care Regulators training conference. The Board answered that they would support the training, and Ms. Cubitt told them that it would be on the next Board meeting agenda for official approval.

Ms. Cubitt reported to the Board that she ordered 500 copies of the Funeral Rule from the FTC, and Mr. Adams and Mr. Poole will take them to funeral homes when they go out on inspections. Board members reiterated that they will not or cannot change the way funeral homes write their GPLs unless the FTC changes their rules.

Executive Session

MOTION

Mr. Horton made a motion that the Board enter into executive session for legal advice. Mr. Petty seconded the motion, which carried unanimously.

Return to Public Session

MOTION

Mr. Horton made a motion that the Board return to public session. Mr. Temples seconded the motion, which carried unanimously.

Mr. Baker noted, for the record, that no votes were taken during executive session.

5. Public Comments (No Vote May Be Taken)

No public comments at this time.

6. Adjournment

MOTION

At 1:50 p.m., Mr. Evans made a motion the Board adjourn. Mr. McKnight seconded the motion, which carried unanimously.

The next meeting of the SC Board of Funeral Service is scheduled for August 28, 2014.

Attachment

The Mission and Concerns of the Funeral Consumers Alliance of South Carolina

Presented to the South Carolina Board of Funeral Service

Gere B. Fulton, Ph. D., J. D.

President, Board of Directors

May 2, 2014

“Those who cannot remember history are doomed to repeat it.” George Santayana

Good morning, Mr. President, members of the Board, and staff. My name is Gere Fulton and I'm here this morning representing the Funeral Consumers Alliance of South Carolina, but before I present some of our concerns about regulation of the funeral industry I'd like to tell you something about our organization and myself. I will leave a hard copy of my remarks with Ms. Cubitt and will make a digital copy available to her as well.

Introduction

The funeral consumer's movement was started in Washington in the late 1930s and grew into a national organization with affiliates across the country. The Funeral Consumers Alliance of South Carolina was incorporated as an eleemosynary non-profit in 1993 and is one of nearly 100 affiliates of the Funeral Consumers Alliance, which is headquartered in Burlington, Vermont. We are run by an all-volunteer Board of Directors and supported entirely by contributions from the public. Our mission is to provide education and advocacy for prospective purchasers of funeral goods and services. We do this by providing the public with information about the comparative cost of various funeral goods and services among providers and by analyzing general price lists (GPLs) for compliance with federal regulations, i.e., the Federal Trade Commission's Funeral Rule, first passed in 1984 and amended ten years later.

I am a retired university professor with a background in public health and law. I have taught courses on law and ethics of end-of-life care for more than 40 years for undergraduate students, healthcare professionals, and most recently, to third-year medical students at the University of South Carolina Medical School, where I have an appointment as Professor of Clinical Internal Medicine. I have been volunteering with the Funeral Consumers Alliance since 1976, serving as president of two affiliates, one in Northwest Ohio and the other here in South Carolina. I also served two terms on the national Board by chairing the Legal Committee and serving one term as President. I've conducted dozens of pricing practices surveys since the FTC's Funeral Rule became effective, the last nine of these here; I'm currently doing the analysis of the data for our tenth survey and expect to present that to you at your next meeting. I believe this is the eleventh time I've appeared before this Board since 2001.

The Funeral Rule was promulgated to “level the playing field” between the sellers and buyers of funeral goods and services. It changed the landscape by requiring funeral homes to give prospective purchasers a list of prices for the 17 most commonly purchased goods and

services in the form of a General Price List (GPL). This made it possible for consumers to gather and compare prices and for the Funeral Consumers Alliance to monitor the industry's compliance with the Funeral Rule.

We conducted our first funeral pricing practices survey in 2001. Since then we have completed 10 additional surveys; this is our seventh survey of the Greater Columbia area. Our other surveys were done in Charleston (2) and the Spartanburg/Greenville area (Upstate).

In 2012, the date of our last survey of the Greater Columbia area, we wrote that “[w]e are pleased to report that this is the first of our surveys in which we have found no *significant* violations of the Funeral Rule.” There were, however, some problems which could have been regarded as probable violations. Since the incidence of violations among licensees was recently reported by the Board as 47 percent, we are inclined to attribute one of the reasons for what we reported for Columbia as being due to the steady oversight—along with regular reporting to the BFS—that we have been providing here over the past 13 years.

I’m planning to talk with you this morning about three concerns that I addressed to your administrator, Doris Cubitt, in a letter of February 17, 2013. Two of them involve the language found in many of the GPLs that we’ve looked at over the past 13 years and the third is raised in regard to a practice that seems to have taken root relatively recently. In addition to these, I will be presenting our position on the recommendation from the Governor’s Task Force on Regulatory Review and concerns about the on-going problem with licensees’ violations of the Funeral Rule. I will begin with that.

In preparing for a meeting with Mss. Cubitt, League, and Beeson on January 6 of this year, I realized that I have been dealing with these issues longer than any of them and, perhaps, that may be true for the Board as well. Consequently, it may be helpful if I begin with a brief history of this problem.

Violations of the Funeral Rule

When we completed our first survey of pricing practices in the Greater Columbia area, in 2001, we presented our findings at a press release held in the School of Public Health at USC. When the **State** newspaper reported on the survey, in which we identified the problem of non-compliance, they quoted the BFS President, Larry Hendrix, as saying that his group had found “...most funeral homes to be following federal regulations for pricing lists,” that the Board inspects funeral homes “about once a year” and that the pricing list is “...one of the key items inspectors check.” (June 5, 2001)

Unfortunately, Mr. Hendrix had not seen a copy of our report at the time of his comments, and did not respond to my letter in which I offered to send him one. When, on August 16, 2001, I presented the report to this Board and identified GPLs with inappropriate dates, missing information, and handling fees, it was met with a mixture of indifference and mild hostility.

In that report and those that followed in 2003 (Columbia), 2005 (Columbia), 2007 (Columbia), we found non-compliance rates ranging between 20 to 40 percent. After the 2005 report was presented to the Board, the minutes reflect that Mr. Mikell asked the staff to send a copy of the FTC sample GPL to every firm so that the firm has something to go by. Mr. Alvey, then the administrator, noted that "...the staff is implementing an online renewal process and that the GPL forms normally required for renewal will not be required. The staff is exploring ways to conduct a survey after the renewals are complete to check for compliance." (Minutes of June 9, 2005)

Those same minutes also reflect the creation of a Compliance Committee on which Mr. Mikell and Mr. Pennington were appointed to serve. They began by looking at a small "sample" of GPLs and concluded, curiously, that "...SC firms may fall within the 20% probability of failure rate but *the types of failures indicate a more serious problem.*" [emphasis added] They recommended that the Board should use part of the August Work Day to discuss the Preliminary GPL Review and to *adopt a Corrective Action Plan.*" They further recommended that the GPLs from each of the licensees should be reviewed.

When, on March 6 of the following year, I was finally able to obtain a report on that review, I was informed that the Board found 88 percent of the GPLs to be in violation of the Funeral Rule, a much higher figure than the "20% probability of failure rate" predicted by the Compliance Committee. I was also informed that, as a result of the Board's intervention, 97% of the GPLs were currently compliant; on April 24, 2006, I learned from then-administrator Randy Bryant, that the compliance rate had increased to 100%. (E-mail)

In the Board's minutes of October 5, 2006, Carl Pennington was "...pleased to report that it [Compliance Committee] believes the industry is in compliance with the GPL requirements at this time and *the Board is ready to be challenged on this issue.*" (page 4, emphasis added)

That challenge came in the form of our 2007 survey of funeral homes in Greater Columbia among which we found a 57 percent rate of non-compliance. Our report included the names of the funeral homes in violation and the specific violation, or violations, they had committed.

In 2010, after our 5th survey of the Greater Columbia area, I was interviewed by Eva Moore, a reporter for the *Free Times*. Our report had found a 30 percent rate of non-compliance and, at my suggestion, Ms. Moore interviewed Ernest Adams, one of the Board's inspectors and a Past-President of the BFS, for his reaction. He was quoted as saying "...the new report isn't anything serious. People can still trust funeral homes." He went on to say "For the most part, funeral homes are very reputable; just like anything else, you may have a bad apple [but M]ost funeral homes realize if they break the law, their substantial investment would be nullified."

Mr. Adams went on to say that the 30 percent non-compliance rate for the Midlands found in the Funeral Consumer [sic] Alliance report is higher than what he finds in his statewide inspections; *"he thinks the rate is probably closer to 15 percent."* [emphasis added]

When I mentioned Mr. Adams' comment to Ms. Cubitt she told me there was "a policy" which forbade staff from talking with members of the media, intimating that Ms. Moore was not reporting accurately.

It was in this article that I first learned that Mr. Adams was also serving as the president of the National Funeral Directors and Morticians Association, a trade organization, which was clearly a conflict of interests. I called this to Ms. Cubitt's attention and, when she failed to act on my complaint, I wrote to Catherine Templeton, then Director of the Department. Ms. Templeton instructed Mr. Adams to resign from both his office and his membership.

It was because of Mr. Adams' statement about what he believed to be the rate of non-compliance to be that I wrote to Eddie Nelson, then President of the Board, asking for a copy of the plan which had purportedly been developed by the Board's Compliance Committee. (letter of March 21, 2011) When, over a period of several months and despite repeated contacts, Mr. Nelson failed to respond to my inquiries, I took my request to Ms. Cubitt. She also failed to provide the information. It was then that I contacted, first, the Office of the Secretary of State (letter of September 23, 2011) and, finally, Director Templeton. (letter of October 20, 2011) The minutes of the Board's meeting on September 25, 2011 (a transcript) show Mr. Nelson presented the letter—7 months after it has been received by him. What followed was a strange and rather disrespectful discussion beginning on page 32 and ending on page 36 of the transcript. I was never shown the courtesy of an acknowledgement that the letter had been presented; I discovered it when reading the transcript months later.

Because the Board chose to ignore my request for a copy of the Compliance Plan that had allegedly been developed in 2005, I took my request to Director Templeton. She, evidently, referred the request back to the Board and in a letter dated December 14, 2011, then-President Michelle Cooper, wrote that the Board "...does not enforce federal laws and as such may not discipline a licensee for violations of a federal law absent a prior final enforcement action by the federal government."

After I challenged Ms. Cooper on her understanding of the Funeral Rule and its enforcement by referring her to §40-19-110 of the South Carolina Code of Laws (letter of January 18, 2012), she acknowledged that "...any complaint or complaints you or anyone else files will be investigated and may result in a formal complaint from LLR's prosecution staff and a disciplinary hearing." (letter of January 20, 2012)

I never did receive a copy of the Corrective Action Plan that I had asked for in my letter to Mr. Nelson, but I finally learned in an e-mail from Holly Beeson, Counsel to the Office of Communications and Governmental Affairs, forwarded by Lesia Kudelka on March 27 of this year, that the Board never developed a formal "plan of action." The "plan" was "...to instruct the inspectors to review the GPL every time they inspected a funeral home." (E-mail of March 27, 2014)

That brings us to the most recent chapter in this seemingly endless effort to control the problem of Funeral Rule violations, the Board's July 23, 2013 review of the GPLs of all of South Carolina's funeral homes, in which they found a 47 percent incidence of Funeral Rule violations.

While that is a considerable improvement on what was found when the previous review was conducted in 2005, it is hard to reconcile this with Mr. Bryant's statement shortly thereafter that there was 100 percent compliance with the Funeral Rule and Mr. Adam's assertion to the Free Times that he felt the rate of non-compliance "...is probably closer to 15 percent."

And, if the Board's two inspectors were directed to inspect the General Price List every time they do an inspection of a funeral home, and they inspect every funeral home in the state at least once each year, then how can those discrepancies be accounted for? Was the compliance incidence in 2006 really 100 percent and fell to 47 percent by 2013? And if the inspectors were doing their jobs by examining the GPLs at every visit, how did the incidence of violations show up as 47 percent in the latest review? How is it that Mr. Adams could believe that the rate of non-compliance was "...closer to 15 percent" and be off by more than 32 percentage points, an error of more than 200 percent? And why hasn't the Board's Compliance Committee done a much better job of monitoring this. A reading of the Board's minutes over the past eight years will show that this has been an inactive Committee. The most common entry in the minutes is "This committee had no report." And finally, what is the current Board planning to do to correct this problem?

The FCASC has offered repeatedly to assist the Board in developing a strategy to address this on-going problem. We would do this as a service to the people of South Carolina at no cost to the Board, but we have never been invited to do so. The offer is still on the table.

Recommendation of the Governor's Task Force on Regulatory Review

As you know from your telephone conference on January 21 of this year, Governor Nikki Haley issued an executive order on February 12, 2013 establishing a Regulatory Review Task Force. Each of the state agencies was charged with reviewing their regulations to see which might be eliminated in order to improve the business climate by reducing government involvement in business and professional activities that stifle entrepreneurship, small business creation, and economic growth. The Governor also invited "stakeholders" to submit recommendations and the FCASC did so in a letter to Director Pisarik on May 5, 2013. Our letter was one of two that addressed the regulation of retail casket sales. Both were forwarded to the Task Force and appear in the appendix of their report.

The Task Force reviewed the materials submitted by the various boards and agencies and then held a series of public hearings around the state. I testified before the Committee at their hearing in Columbia on July 12 of last year. Several days ago I asked Ms. Cubitt to send you a copy of my testimony so that I wouldn't have to spend time on those details this morning. The essence of my testimony was that the Board has created a barrier to trade without demonstrating a legitimate state interest in doing so, that the Board had imposed criteria on licensing that were arbitrary and capricious, that they had imposed burdens on the intrastate sale of caskets that do not apply to interstate sales, and they are unable to provide a compelling interest for such discrimination.

As you know from your conference on January 21, the Task Force agreed with this and recommended that the Board's regulation of retail casket sales should be discontinued. The

Board's reaction was to reject the recommendation by a unanimous vote taken without being provided with any argument in support of the recommendation in a meeting that lasted less than an hour. According to the minutes, much of the information that was presented was irrelevant to the question at hand. It was rather stunning to learn that the Board, in general, was so unaware of the Task Force.

I addressed these issues in a letter to Ms. Cubitt on April 14 and earlier this week, along with a copy of my Task Force testimony, asked that each of you be provided with a copy in advance of this meeting. Since that letter presents a defense of the recommendation in detail, I will not do so at this time. However, because it is clear from the record that your vote was taken without a reasonable understanding of the matter, I am asking that you review the information that is now before you and reconsider your decision.

Misleading Language in the GPLs

The next two items were in a letter to Ms. Cubitt (February 27, 2013) that was presented to at the Board's meeting on July 23, 2013. I believe that it resulted in some changes being made on the website, but since we're seeing this in many of the GPLs that we're currently reviewing, I'm asking that you revisit this to see if you can up with a plan that is more in harmony with both the letter and the intent of the Funeral Rule.

Embalming

The first iteration of the Funeral Rule was published in 1984. Having worked with the staff at the FTC over the years, including as recently as one week ago, it is clear that some of the verbiage that was in the original guidelines—and is still there—has some shortcomings. In the 1980s and earlier, it was not uncommon for states to require embalming, believing that it was a public health matter. Since then there has been an abandonment of that belief and today it is the rare jurisdiction that requires embalming of the dead. While the FTC's Guide to Complying with the Funeral Rule includes a sample that hedges the issue by stating "Except in certain special cases, embalming is not required by law," it also states that "You do not need to include the phrase 'except in certain special cases,' if state or local law in the area where you do business does not require embalming under **any** circumstances." [emphasis in original] South Carolina is one of those jurisdictions. There are **no** requirements for embalming here. None.

The Department of Health and Environmental Control, which has included language in their regulations that would require "...that dead bodies shipped by common carrier be embalmed if their condition permits," (Regulation 61-19 §28) reported to the Task Force that they would be removing all references to embalming because "[t]he Department's in-house healthcare providers indicate there is no public health necessity for embalming." (DHEC Recommendations to Regulatory Review Task Force, p. 8)

Such being the case, the only purpose served by putting this language in the GPL is to create an impression that there **might be** some justification for requiring embalming. Since the Funeral Rule prohibits the use of misleading and/or deceptive statements, we simply ask that you inform your licensees of this and ask that they revise their GPLs accordingly. We do not believe

that this message will effectively reach all of your licensees by posting in on the website. The website now contains the following language:

Q. In regards to General Price Lists (GPL), the Federal Trade Commission (FTC) guidelines include “embalming if required by law.” Since embalming is not required by South Carolina Law, how do I handle this when discussing funeral plans with families?

A. While South Carolina law does not require embalming and you cannot tell your customers that they are required to embalm, you may make recommendations to your customers as it suits the customer’s needs. For example, if someone passes away on a Sunday and does not plan to have the funeral right away, they may want to embalm the deceased as a means of delaying decomposition until the time for the service if refrigeration is not available.

In a February 17, 2013 letter, I wrote to Ms. Cubitt that our concern is with the “except in certain special cases” language in a state where there are *no* “special cases” requiring embalming. The language simply does not belong in the GPL. We suggested that the following be considered: “Embalming, though not required by law, may be chosen as a way of delaying the process of decomposition to extend the period between death and disposition of the body.”

When I met with Ms. Cubitt, as well as Ms. Beeson and Ms. League, on January 6 of this year, she told me that she had spoken with Craig Tregullis, the administrator of the Funeral Rule at the Federal Trade Commission and, in spite of the language in the guidelines to the contrary, he had told her that the “...except in certain special cases” language is required to be in the GPL. On January 7, 2014 I forwarded an e-mail from Mr. Tregullis in which he said that he had some recollection of making that statement, he realized that he had been in error; the statement in the guide—that the language is *not required* in a jurisdiction such as South Carolina where there are *no* circumstances under which embalming is required—is correct.

Cremation

The problem that we’re seeing with the way direct cremation is described in the GPLs can also be traced, in part, to the original language in the FTC’s Guide. In our 2010 Report, we stated that of the 26 GPLs that we reviewed, 11 included the cost of cremation, 6 didn’t mention if it was included or not, 1 stated that it was not included, and 8 said that it was “*included, if relevant.*”

We have been raising this question before this Board for years: What does the phrase “if relevant” when applied to a direct cremation mean? We have yet to encounter a funeral director who has been able to answer it. The act of cremating the body is always relevant to a direct cremation. The language, like that of embalming, can be traced back to the FTC’s *Guide to Complying with the Funeral Rule*, but they too now recognize the need for changing this. In an e-mail that I recently sent to Ms. Cubitt, the previously-mentioned Mr. Tregillius said that while it could not be changed in the *Guide* until the current supply had been depleted, he would see if the online information could be changed immediately.

Although I can find nothing in the Board's recent minutes to indicate that this has been discussed, at the December 12, 2013 meeting Ms. Cubitt announced that this would be addressed in the FAQ section of the website and that notice would be sent to all licensees. The language that has been chosen is as follows:

Q. The Federal Trade Commission (FTC) guidelines for General Price Lists (GPL) include a line that says, "cremation if relevant," under the line for direct cremation charges. What is the "cremation if relevant" line for?

A. If you own your own crematory, you should put all of your charges in the direct cremation line, but some funeral homes send their cremation cases out to crematories since they do not have their own. For funeral homes that must outsource cremations, you may want to add the cost of the cremation in the "cremation if relevant" line.

After discussing this in a meeting with Ms. Cubitt on January 6, 2013, I wrote to her expressing our appreciation for this attempt at clarification (both for the benefit of consumers and funeral homes as well, since they will be competing with other funeral homes in the cremation marketplace), but suggesting that this could be improved by simply directing licensees to include cremation in the cost and remove the "if relevant" language from the GPL.

Whether they own the crematory or "outsource" the cremation, all providers know the cost of the cremation—and the charge that they want to pass on to the consumer—when they are preparing their GPL. In the unusual event where a consumer might prefer to use a different crematory, then the licensee can explain to the consumer that there will be a different cost.

In addition to this, the direction that the cost of cremation might be added "...in the 'cremation if relevant' line is likely to introduce more confusion to your licensees since ***none of the GPLs in the FTC models have such a line.***

Finally, a provider should not be allowed to list a direct cremation without including ***all*** costs. To do otherwise is a *prima facie* example of a misleading trade practice.

Logos Placed with Obituaries

We have been observing the growing trend for funeral homes to place their logos at the bottom of obituaries and wondering if the cost of doing so is being passed along to the consumer. This question was first posed to Ms. Cubitt in our letter of February 17, 2013. We explained how the state regulatory agencies in Texas and New Jersey were dealing with this, growing out of abuses in those states.

Although, as with our concerns about embalming and cremation (see above), we have been unable to find anything in the minutes where this has been discussed, but this too has since been addressed in the FAQ section of the website.

Q. When I prepare obituaries, can I include our funeral home's logo?

A. Yes, you may include the funeral home's logo in obituaries, but the funeral home must pay for the portion of the obituary containing the logo.

We believe that this fails to protect consumers from exploitation. As is well recognized, many consumers are under great stress at the time of the funeral and it should not be left to the funeral director to decide whether to disclose this information or even to “back out” the cost of the logo from the bill from the newspaper(s). I have personally spoken with several of the funeral directors whose businesses have been placing logos with obituaries and every one of them has agreed that it would be reasonable to require the *consent of the consumer* as a condition precedent. I will gladly provide the Board with the names of those funeral directors if requested.

We feel that there should be a line on the Statement of Goods and Services Selected (SGSS), preferably under Cash Advance Items, where the consumer should acknowledge that they have given permission for this, along with the cost of the logo. The consumer must be given an opportunity to reject the appearance of the logo if desired.

Conclusion

In conclusion, there is no reason that the Board and the FCASC should be adversaries when it comes to serving the residents of South Carolina. We stand ready and eager to work with you protecting the funeral consumers of South Carolina by enforcing both the letter and the spirit of the law reflected in the Funeral Rule.

Thank you for making this time available.