

Cemetery & Funeral Bureau Advisory Committee Meeting Minutes

Thursday, November 15, 2012

Department of Consumer Affairs
1625 North Market Boulevard, Trinity Room
Sacramento, CA 95834

Advisory Committee Members:

Fredrick Belt
Merrill Mefford
Cheryll Moore
Robert Mull
John Resich

Guests:

Jerry Desmond, Jr.	James Draper
Bob LaPerriere	Chris Micheli
Gerard Reinert	Joyce Estes
Mark Matthews	Robert Caughlan
George Prather	Jane Hillhanse
Chris Donhost	Candace Hopkins
Steve Schacht	Jerrigrace Lyons
Cari Leversee	Bob Achermann
John T. Kunst	Vicki Kunst
Eric Lindstrom	Sharon Ponciano
Marjorie Bridges	R.A. Ruhkala Burks

Cemetery & Funeral Bureau Staff: Lisa M. Moore, Bureau Chief; Joy Korstjens, Deputy Chief; Chip Bane, Supervising Governmental Auditor; Richard Hernandez, Administrative Assistant

DCA Staff: Gary Duke, Legal Counsel

1. Introduction and Opening Remarks

Bureau Chief Lisa M. Moore called the meeting to order at approximately 10:05 a.m. and welcomed those in attendance. She commented that the attendance was greater than expected, and apologized for the small room. She then thanked the Advisory Committee Members for volunteering to serve and for being in attendance, and asked them to introduce themselves. Advisory Committee Members in attendance consisted of: John Resich, Merrill Mefford, Robert Mull, Fredrick Belt, and Cheryll Moore. (Advisory Committee Members Phyllis Montero and Caroline Flanders were regretfully unable to attend the meeting). Bureau staff members Chip Bane, Joy Korstjens, and Richard Hernandez introduced themselves, as did DCA Legal Counsel Gary Duke. Ms. Moore emphasized that she considers the Advisory Committee to be a working committee and that their input and interaction in the meeting was both expected and appreciated. She then updated those in attendance on current Bureau staffing levels, including the employment of part-time Licensing Analyst Audrey Larkin to replace retired employee Mary Hintemeyer, and the ongoing recruitment efforts to fill the Legislative Analyst position vacated by Joy Korstjens and the efforts to fill a part-time Auditor I position and a permanent/intermittent General Auditor II position.

2. Status of Cemetery Maintenance Standards (proposed Section 2333 of Division 23, Title 16 of the California Code of Regulations)

Ms. Moore began the discussion of the Cemetery Maintenance Standards regulation by stating that it had been a long time in coming. She then deferred to Deputy Chief Joy Korstjens to explain the process. Ms. Korstjens then described the process undertaken as illustrated by the Office of Administrative Law (OAL) Rulemaking Process Flow Chart [available on the Bureau's Web site www.cfb.ca.gov]. Ms. Korstjens proudly stated that the Cemetery Maintenance Standards formal rulemaking package had been approved by OAL and filed with the Secretary of State on November 13, 2012 and therefore California Code of Regulations (CCR) Section 2333 would become effective 30 days after filing. She stated the Bureau's intention to send out a mailing regarding the adoption of the new regulation to all Certificate of Authority (COA) licensees and relayed the Bureau's intention to make 2013 more about education and compliance with the new regulation than enforcement. Ms. Moore reiterated that the Bureau intended to focus on education and compliance rather than playing the "gotcha" card, but that egregious violations would not be ignored.

3. Discussion of Proposed Regulations for Limited Liability Companies (LLC) in accordance with SB 1225 (Harman, Chapter 114, Statutes of 2008)

Ms. Moore asked the audience members to introduce themselves [audience members who wanted their names recorded are listed as "Guests" on the first page of the minutes]. Ms. Moore then began discussing the proposed Limited Liability Companies (LLC) regulations process undertaken by the Bureau thus far. She stated that the August 16, 2012 Workshop that led to the current draft under review was noticed to over 1,200 individuals and businesses (all COA and funeral establishment licensees, the Interested Parties list and the ListServe), but that the Workshop didn't have a large attendance. The only change suggested to the proposed regulatory language presented was to CCR Section 2326.5 (c) and that was to change the existing language of 60 mile radius to 60 mile driving distance in regard to sharing of managers. Ms. Korstjens stated the Bureau's intention with the LLC regulations was to keep things as uncomplicated as possible by utilizing the already existing application and regulations, amending them as necessary to be able to keep the same application already in use and adding boxes where necessary to distinguish between a LLC and a standard corporation. The proposed language format was then explained: strikethrough is deletion, underline and italics is addition, and regular text is already existing language. Both Ms. Moore and Ms. Korstjens reiterated that the Bureau was looking to streamline, clarify, and make relevant the regulations whenever possible, whether they were new regulations on the cemetery side or existing regulations on the funeral side. Ms. Moore specifically mentioned one of her priorities when she became Chief earlier in the year was to focus on getting caught up on the required regulations (i.e. Cemetery Maintenance Standards SB 1490 Ducheny, Chapter 401, Statutes of 2006 and LLC SB 1225 Harman, Chapter 114, Statutes of 2008). She asked those in attendance for any further comments on the proposed LLC regulations, as nothing has been suggested other than the one change, and that wasn't really related to the new LLC language. Advisory Committee Member Fred Belt questioned the wisdom of expending so much effort on LLC regulations that appeared to benefit so few, if any; Ms. Moore explained that the Bureau did not sponsor the legislation that became law, and that once the

Governor signed the bill into law, the Bureau was tasked with creating the necessary regulations. Gary Duke stated that California was somewhat tardy in enacting LLC laws, as that form of business entity was very popular on the East Coast and that many of those companies wanted to expand into California now. It was clarified that the LLC regulations were required by Business and Professions Code Sections 9653.5 and 9653.6 [available on the Bureau's Web site www.cfb.ca.gov]. Ms. Moore reiterated that the LLC regulations are still draft language and that there will continue to be opportunity for comment as the Bureau moves through the rulemaking process.

4. Continued Discussion of Proposed Changes to Funeral Regulations from August 16, 2012 Workshop

Ms. Moore let attendees know that the discussion would start with the package called "Enforcement" [CCR Sections 1240, 1241, 1242, 1246, 1280, 1281, 1282, 1283, 1284, 1285, 1286, 1287, 1288, 1289, 1290, 1291]. Ms. Moore turned the discussion over to Ms. Korstjens after stating that no one suggested changes to the language at the August 16, 2012 Workshop. Ms. Korstjens explained that the Bureau wants to follow the example of various Boards and Bureaus within DCA that modified their citation fine tables by taking certain factors into consideration when determining fine amounts. This will allow the Bureau more discretion on fines based upon essential factors such as gravity of violation and history of previous violations vs. what's mandated by a table, and that more accurately reflects the Bureau's policy of progressive discipline. An audience member questioned who made citation and fine determinations, and Ms. Moore clarified that it was management in Sacramento, not the field staff, and that a comprehensive review process was followed, as well as the licensee being afforded multiple appeal processes after the issuance of a citation. Mr. Duke stated that a citation is not a disciplinary action, it is an enforcement action and basically is a prod for the licensee to do the right thing. A discussion ensued regarding whether or not the LLC regulations from Agenda item #3 applied only to COA's, and whether cemeteries had similar citation and fine regulations. Ms. Moore and Ms. Korstjens expressed that the existing cemetery regulations were similar and also needed "clean-up" as was currently being done on the funeral side, but that staffing and resources were limited and therefore it would take some time to make cemetery 'mirror' funeral. Ms. Korstjens then continued the review of the "Enforcement" package by stating that the Continuing Education (CE) regulations were being repealed because the program was never enacted due to the underlying statute being repealed. Based upon an audience member question, Ms. Moore clarified that CE is not the same as the educational requirements and testing necessary to receive a license.

The discussion then turned to the Funeral "General" package [CCR Sections 1209, 1214, 1216, 1221, 1255, 1258, 1258.1, 1258.2, 1258.3, and 1258.4]. Ms. Moore stated that this package was also reviewed at the August 16th Workshop, and that several changes were suggested by attendees at that event and incorporated into the draft now being presented. An audience member questioned why Section 1204 was not included, and Ms. Korstjens explained that the Bureau's goal was to review and update all sections of the funeral regulations, but to make the task easier they were broken down into packages and that 1204 would be included in the future Funeral "Licensing" package. A discussion of the language in 1209 led to the wording "registered to the funeral establishment" being changed to "under the operation and control of the funeral

establishment". A suggestion that the form name "Exhibit 1" in 1214 be removed led to the move of the form name to the bottom of the form in a smaller font to be less obtrusive. It was also deemed more appropriate for the "do/do not" portion of the form to be after the description of embalming, and that "I understand that embalming is not required by law" to be in bold. There were no changes suggested to 1216, 1221, or 1255. For 1258, it was decided to retitle it "Notice regarding casket disclaimer" and to change the disclaimer to "There is no evidence that any casket represented as having protective features, including a gasket, will preserve human remains." No changes to 1258.1 were suggested after explaining that "light, medium, or dark" were being removed because they were subjective, price ranges were being streamlined into either all caskets or all alternative containers, and the definitions being added came directly from Federal law. It was suggested that the wording in 1258.2 be changed from "conceal a rental casket insert" to "conceal an insert". No changes were suggested for 1258.3 or 1258.4. A discussion arose regarding whether or not a funeral establishment was required by law to keep a preneed "wish list" i.e. where no money has changed hands, and it was determined it was not required for the funeral establishment to keep the "wish list" but if they did have one on file, 1258.4 required them to provide it to the responsible party.

5. Discussion of Revisions to the Consumer Guide to Funeral and Cemetery Purchases

Ms. Moore began the discussion by informing attendees that the initial review of the Consumer Guide to Funeral and Cemetery Purchases (Consumer Guide) was assigned to the Advisory Committee Members at the June 7, 2012 Advisory Committee Meeting. Advisory Committee Member John Resich agreed to take the lead in working with the other Advisory Committee Members on the project, so Ms. Moore asked him to speak on the topic. Mr. Resich shared that after the June meeting, he asked the Cemetery Association, individual funeral establishments and cemeteries, and several individuals who had a death in the family in the last year for their opinion(s) of the Consumer Guide. Specifically, he asked for comments on what could be more helpful and meaningful. Suggestions gathered included expanding and moving the section regarding the jurisdiction of the Bureau and clarifying who has the right to make death care decisions. Ms. Moore thanked the Committee Members for their work and stated that the Bureau would be looking at the Consumer Guide for law and regulation changes and incorporating those as well. An audience member questioned the wording in the home death care paragraph, and Ms. Moore said the Bureau would look at the law and try to incorporate the exact language in the revised Consumer Guide; she hoped that a draft version would be available for review at the next Advisory Committee Meeting in late February/early March 2013.

6. Discussion of Revisions to the Pre-need Q&A Pamphlet

Ms. Moore reminded the audience that the Bureau welcomed suggested changes to the publications under review via email and/or facsimile, but asked that they remember in the case of the Pre-need Q&A Pamphlet that it is designed to be an introduction to the topic, not to cover the subject in depth. As a one page pamphlet, the publication cannot list everything on the subject of pre-need arrangements, and the topics covered are expanded upon in the Consumer Guide and on the Bureau's Web site. Therefore, the Bureau wants to make sure the essentials are covered and that the necessary

information is updated and relevant; for example, the Bureau received a suggestion that the term “memorial society” is outdated and should be removed and/or replaced.

7. Public Comment on Items Not on Agenda

George Prather introduced himself and asked if a cemetery was required by law to collect more than the minimum amount for endowment care [\$70] on a niche that had space for four cremated remains interments. Ms. Moore responded that the law [Health & Safety Code Section 8738] specifies “each niche” not “per each interment of cremated remains”, and reminded Mr. Prather that \$70 is the minimum, but that the cemetery can charge more to ensure the future adequacy of the endowment care fund. Cari Leversee enquired how the provisions of SB 658 related to General Price List information being posted on a funeral establishment’s Web site was going to be enforced. Ms. Moore told Ms. Leversee that a funeral establishment is not required to have a Web site, but if they do have one, the Bureau will spend 2013 educating licensees on the requirements and seeking compliance with the law, just as the Bureau is planning to do with the new cemetery maintenance standards regulation. Vicki Kunst asked a question related to the policy on filing a death certificate electronically, to which Mr. Duke replied that function is not under the Bureau’s jurisdiction, and Ms. Moore referred Ms. Kunst to the Department of Public Health www.cdph.ca.gov for more information. Advisory Committee Member Cheryl Moore asked for an update on the California Master Trust lawsuit, and Mr. Duke stated that the Bureau could not comment on pending litigation. Advisory Committee Member Robert Mull presented letters of appreciation to Bureau Chief Lisa Moore and Bureau Field Representative Daniel Redmond from the Public Administrators, Public Guardian, & Public Conservators Association in thanks for the presentation Mr. Redmond gave at their Fall Conference. Ms. Leversee asked if the Bureau’s Web site was still in the process of being updated, to which Ms. Moore replied that yes, it was, but because the Department of Consumer Affairs is in the process of upgrading their legacy databases to the BreEZe system, many resources and personnel have been redirected to that project, leading to a delay in updating the Bureau’s Web site.

8. Future Meetings

Ms. Moore stated that she would like to have one more meeting with the current Advisory Committee Members prior to the expiration of their terms on March 30, 2013. She asked members if they would prefer to meet on one of three dates: Wednesday, February 27, 2013, Thursday, February 28, 2013, or Tuesday, March 5, 2013. It was agreed that the members would consult their respective schedules and that the exact time and location would be announced later.

9. Adjournment

Ms. Moore thanked everyone for attending. Due to the agenda items taking longer than anticipated, the meeting was adjourned around 12:30 p.m.