

Cemetery and Funeral Bureau
Advisory Committee Meeting Minutes

Thursday, May 21, 2019

Department of Consumer Affairs
1625 North Market Boulevard, El Dorado Room – N 220
Sacramento, CA 95834

Advisory Committee Members:

Christopher Donhost
Nichol Montague
Patrick Collins
Jean Okuye

Absent Advisory Committee Members:

Maria Mangini
Jeanne Clark
Nickolas Marinelli

Guest Attendees:

Jerry Desmond
GV Ayers
Steve Schacht
Darin Drabing
Anne Schillig
Kurtis Ming

Cemetery and Funeral Bureau (CFB or Bureau) Staff: Gina Chiaverini Sanchez, Bureau Chief; Cheryl Jenkins, Program Operations Supervisor; and Monica Tagas, Enforcement Analyst.

Department of Consumer Affairs Staff: Jason Hurtado, Staff Counsel and Rose Turner, Legislative Analyst.

1. Introduction and Opening Remarks

Bureau Chief Gina Sanchez called the meeting to order at approximately 10:00 a.m. welcoming those in attendance. Ms. Sanchez gave a brief introduction as the newly appointed CFB Chief effective February 20, 2019. Ms. Sanchez replaces former Bureau Chief Lisa Moore, who retired last year. Ms. Sanchez also introduced Bureau staff.

Ms. Sanchez asked the Advisory Committee Members (Committee) to introduce themselves and give some brief background about who they are and what they do. Ms. Sanchez thanked the members for their time and commitment to the industry.

Ms. Sanchez spoke to CFBs mission which advocates consumer protection and licensee compliance through proactive education and consistent interpretation and application of the laws that govern the death care industry.

Ms. Sanchez indicated that the CFB is not statutorily mandated to have this Committee but does so because it provides a forum for both consumers and licensees to provide input on funeral and cemetery-related issues.

Ms. Sanchez indicated this is a “working committee” and participation and discussion of agenda items is encouraged. Ms. Sanchez requested the Committee email her future industry-related agenda topics.

2. Update on Bureau Activities: Sunset Review, Strategic Plan; Staffing; Annual Trust Reports; Credit Card Payments for License Renewal; Examination Development; Legislation.

Sunset Review

Ms. Sanchez reported the CFB underwent its legislative sunset review in 2018. The Joint Legislative Sunset Review Oversight Committee reviewed CFB operations at the March 5, 2019 hearing where she testified as the newly appointed Chief. Ms. Sanchez stated the Sunset Report and attachments are posted on the CFB website. Ms. Sanchez asked the Committee and the public members if they had any comments or questions. No comments or questions were made.

Public Member, Jerry Desmond, Executive Vice President of the Cemetery and Mortuary Association, stated he attended the Joint Legislative Sunset Review Oversight Committee and expressed his support for the extension and continuation of the CFB as it provides a vital service for consumer protection.

Strategic Plan

Ms. Sanchez reported that in May 2019, CFB adopted its 2019 - 2023 Strategic Plan. Ms. Sanchez reported the CFB is in the process of posting the Strategic Plan on its website. The Strategic Plan identifies goals and objectives to continue achieving its mission of consumer protection; and also focuses on consumer education, consistent interpretation of the Cemetery and Funeral Act and continuing our progress on implementing new information technology software. Ms. Sanchez asked the Committee and the public members if they had any comments or questions. No comments or questions were made.

Staffing

Ms. Sanchez indicated the CFB is currently recruiting for an Associate Governmental Program Analyst in the Licensing Unit and expects to start recruiting for a Staff Services Analyst in the Enforcement Unit in the next month.

Annual Trust Reports

Ms. Sanchez reported that as of May 1, 2019, 1,092 funeral establishments were required to submit an Annual Trust Report. As of today, (May 21, 2019) 57 percent of the funeral establishments are in compliance. The Audit Unit will be working diligently to get all licensees in compliance.

Ms. Sanchez stated that there are 191 cemeteries that must report on their endowment and special care trust funds each year. These reports are due June 1st of each year unless the CFB has approved a fiscal year reporting period in lieu of a calendar year. Ms. Sanchez stated she expects this to be a re-occurring topic as a public reminder to the CFB licensees to submit their reports as it assists the CFB in its fiduciary oversight responsibility in assuring consumer trust funds are protected. Ms. Sanchez asked the Committee and the public members if they had any comments or questions on Annual Trust Reports or any other previous topics discussed.

Committee Member, Nichol Montague, asked if newly hired CFB staff will be familiar with the day to day operations of a funeral home or cemetery because at times CFB staff are unable to answer her questions.

Ms. Sanchez indicated CFB sets criteria for the recruitment of the Associate Governmental Program Analyst (AGPA) and Staff Services Analyst (SSA) positions.

As for CFB staff unable to answer her questions, Ms. Sanchez encouraged that if anyone calling CFB finds that their questions are not answered, or if there is conflicting information from CFB staff, have the call elevated to the next level, a supervisor, manager or even herself.

Committee Member, Christopher Donhost, asked about Annual Trust Reports, is having 470 funeral establishments out of compliance average or typical? Ms. Sanchez reported having a 10 percent increase in compliance from last year and hopes to see another increase in the next fiscal year.

Committee Member, Patrick Collins asked what happens next with the funeral establishments out of compliance? Ms. Sanchez indicated that CFB practices “progressive discipline” in an attempt to bring licensees into compliance with its laws and regulations. The initial violation is given a warning prior to an administrative citation being issued. Eventually, unresolved violations may lead to administrative actions, including license revocation. Ms. Sanchez asked the Committee and the public members if they had any comments or questions. No comments or questions were made.

Credit Card Payment for License Renewal

Ms. Sanchez reported that effective June 4, 2019, the CFB will be accepting credit cards as a form of payment for license renewal for all license categories. Licensees that are within 90 days of their expiration date will have the opportunity to pay online. This is available for all licensees who are renewing one renewal cycle and, if applicable, one delinquent fee (multiple renewal cycles will have to pay via check/money order mailed to the CFB). Specific to the Cremated Remains Disposer, the renewal payment will be accepted online; however, the expiration date will not roll forward until the required Cremated Remains Disposer Annual Report is received by CFB. Ms. Sanchez asked the Committee and the public members if they had any comments or questions. No comments or questions were made.

Examination Development

Ms. Jenkins led the discussion on this subject. Ms. Jenkins stated the CFB continuously works on examination development for the five different examinations the CFB administers; funeral director, embalmer, crematory manager, cemetery manager, and cemetery broker. The CFB works with the Department’s Office of Professional Examination Services (OPES) to conduct the exam development. Each fiscal year the CFB moves to a different examination development. Last year, the CFB worked on the crematory manager examination which was completed in February 2019 and will be released soon. Currently, CFB is working on the cemetery manager examination.

Ms. Jenkins indicated the next examination development due is for the cemetery broker and an Occupational Analysis for this examination development is also due. Ms. Jenkins indicated that the CFB has in the past had a difficult time getting participants for the cemetery manager, crematory manager and cemetery broker. CFB has obtained approval to increase the honorarium to \$250 per day for all participants. In addition to the honorarium, the participant receives reimbursement for their travel expenses. Ms. Jenkins asked the Committee and the public members if they had any comments or questions regarding Exam Development. No comments or questions were made.

Legislation

Ms. Jenkins reported on Legislation for this past year. Three bills were chaptered.

Assembly Bill 2138 (AB 2138), Chiu, this bill has a delayed implementation, effective July 1, 2020. This bill restricts the discretion of programs within the Department of Consumer Affairs when using prior criminal history as grounds for licensing determinations and establishing prohibitions relating to denial, suspension and revocation of licensure. Under this bill programs may not use acts involving dishonesty, fraud, or deceit that did not result in a conviction as the basis for denial of a licensure. Other revisions include, the adoption of a seven-year limitation on convictions and the CFB can no longer consider any conviction that was dismissed or expunged. This bill requires the CFB to develop criteria for determining whether a crime is substantially related to the qualifications, functions, or duties of the profession. The bill requires the CFB to track data related to licensure denials, publish information on the CFB's website and annually submit a report to Legislature. AB 2138 affects all boards and bureaus within the Department of Consumer Affairs and as such all boards and bureaus, including CFB, are implementing regulations.

Assembly Bill AB 2750 (AB 2750), Obernolte. This bill became effective January 1, 2019. This bill authorized the conservator of a person or estate the right to obtain certified copy of a death record from state and local registrars and county recorders. It also clarifies that an agent or employee of a funeral establishment can obtain records if doing so on behalf of the authorized person.

Senate Bill 1480 (SB 1480), Hill, this bill is a non-substantive technical change. This bill amends several Health and Safety Code sections. It removes references to Chapter 19, previously known as the Cemetery Act. The current Cemetery and Funeral Act is found in Chapter 12.

Ms. Jenkins asked the Committee and the public members if they had any comments or questions regarding the chaptered Bills. No comments or questions were made.

Ms. Jenkins reported that the CFB is monitoring the following Legislation (not yet chaptered).

Assembly Bill 795 (AB 795), Irwin, this bill will modify the requirements to convert the endowment care fund from a net income distribution method to a unitrust distribution method. It requires the compensation of the trustee to be reasonable and meet specified requirements based on the net fair market value of the endowment care fund. This bill follows AB 926 (Irwin, Chapter 750, Statutes of 2017), which authorizes a cemetery authority to apply to CFB for approval to convert its endowment care fund from a net income distribution method to a unitrust distribution method. CFB is currently working on a regulatory package, which will be discussed later as part of an Agenda item.

Senate Bill 606, (SB 606), Glazer, this bill is the CFB Sunset Bill which proposes to extend the CFB operation date to January 2024. In addition, if there are any action items that come out of CFB sunset report, they will be made part of this Bill.

Ms. Jenkins indicated that the CFB would continue monitoring Legislation, as it is early in the session and bills may be added, deleted or amended. Ms. Jenkins asked the Committee and the public members if they had any comments or questions regarding the non-chaptered Bills. No comments or questions were made.

3. Business Modernization Plan

Ms. Sanchez led the discussion on this agenda item. Ms. Sanchez stated that Business Modernization Plan also known as “BizMod” is the new information technology platform for the Department. The CFB currently uses a legacy system to track its applications and licensee information, some of which is linked to the Department’s search page and enforcement information. CFB will begin exploring platforms that will allow applicants to pay online for more than just renewal but for all licensing applications. It will also offer applicants the ability to check the status of application and will allow a significant streamlining opportunity for work performed in-house.

Committee Member, Christopher Donhost, asked if the field inspections would be done electronically as opposed to written reports as done previously? Ms. Sanchez indicated she is not opposed to exploring this idea. Ms. Sanchez asked the Committee and the public members if they had any comments or questions regarding the Business Modernization Plan. No comments or questions were made.

4. Review (Draft Language) Rulemaking Files

Ms. Jenkins led the discussion on the rulemaking file for AB 2138, Substantially Related Criteria for Convictions. Ms. Jenkins indicated that even though the CFB’s practice acts were previously merged, the CFB is still required to prepare two separate rulemaking files. Ms. Jenkins provided an overview of the proposed changes to the regulatory language, which was made available to the Committee and members of the public. Ms. Jenkins asked the Committee and the public members if they had any comments or questions regarding this rulemaking file.

Committee Members, Christopher Donhost, Patrick Collins and Jean Okuye had a discussion regarding the new substantially related criteria for convictions pursuant to AB 2138. The Committee Members raised the following questions: Will the seven-year limitation apply to any and all criminal convictions? Will the individual applicant, or the principals of a business be affected? Why is there similarity in the California Code of Regulation (CCR) sections 2331(a)(1-5) to 2331(b)(1-6)? Does the Bureau have statistical information about license revocation that can be shared with the Committee?

Ms. Jenkins responded to the committees’ questions regarding the seven-year limitation, CFB will be using the specified criteria pursuant to AB 2138 before denying or issuing a license. Ms. Jenkins stated that in the past four fiscal years, the CFB has denied fifteen licenses. Ms. Jenkins indicated that all applicants individuals and/or principals are affected. As for the similarities, the CFB is currently working with the CFB’s legal counsel for final approval of the proposed language. Revocation information will be emailed to the Committee.

Public Member, GV Ayers, with Gentle Rivers Consulting, asked what the estimated time frame for these regulations is and when will the notice be filed. Ms. Jenkins indicated the regulation is being reviewed by CFB’s legal unit. Once approved the notice will be submitted to the Office of Administrative Law which will begin the 45-day public comment period. The implementation date is July 1, 2020. Ms. Jenkins asked the Committee and the public members if they had any additional comments or questions regarding this discussion. No other comments or questions were made.

Ms. Sanchez led the discussion on the rulemaking file for Assembly Bill 926 (AB 926), (Irwin, Chapter 750, Status of 2017), Unitrust Distribution Method for Endowment Care Trust Funds. Ms. Sanchez indicated that the CFB Supervising Auditor, David Edwards, was unable to be

present Ms. Sanchez reported AB 926 authorizes the CFB to approve qualified cemetery endowment care fund to move from a net income distribution method to a unitrust distribution method. Ms. Sanchez provided an overview of the full text. The draft regulatory language for the conversion to a unitrust distribution method, and the draft application were made available to the Committee and members of the public. Ms. Sanchez asked the Committee and the public members if they had any comments or questions regarding this rulemaking file.

Committee Member Patrick Collins led a discussion on the benefit of a net income distribution method, the number of applicants expected to apply to the unitrust distribution method, and if the work could be absorbed. Ms. Sanchez responded that there are limited cemeteries with a sufficient endowment care fund as the Endowment Care Fund Sufficiency Study has previously shown, and sufficient CFB staff will be allocated for the endowment care fund conversion.

Ms. Jenkins led the discussion on the rulemaking file for Assembly Bill 967 (AB 967), (Gloria, Chapter 846, Status of 2017), Alkaline Hydrolysis. It has a delayed implementation of July 1, 2020. This bill requires CFB to license and regulate hydrolysis facilities and hydrolysis facility managers. This allows alkaline hydrolysis to be a new form of disposition in California. The draft regulatory language for alkaline hydrolysis was made available to the Committee and the members of the public. Ms. Jenkins asked the Committee and the public members if they had any comments or questions regarding this regulatory package.

Committee Member Christopher Donhost asked if CFB is working with the California Department of Public Health regarding this method of disposition. Ms. Jenkins indicated the CFB's Legislative Analyst has reached out to this department.

Committee Member Patrick Collins asked why the regulatory fee is so much higher. Ms. Jenkins indicated that CFB conducted a Fee Study in 2016, which concluded that CFB's application fees were insufficient to fully cover the cost of processing the application. CFB eventually will seek a fee increase, but for now CFB is setting the alkaline hydrolysis application fee to fully cover the cost of processing the hydrolysis facility application.

Ms. Sanchez reported the CFB's Fee Study Report is available on CFB's website.

Ms. Jenkins asked the Committee and the public members if they had any comments or questions regarding this regulatory package.

Public Member GV Ayers with Gentle Rivers Consulting asked what the timeframe for this regulation package is and is it effective July 1, 2020.

Mr. Ayers also asked if the hydrolysis facility manager would be required to hold a separate or different license from that of a licensed crematory manager and what about certification. Ms. Jenkins indicated that the manager designated to manage the hydrolysis facility, must hold a crematory manager license. As for the certification required, the licensed crematory manager must demonstrate having received training from the manufacturer of the hydrolysis chamber, having knowledge in the operation of the hydrolysis chamber, before receiving the CFB certification required to be assigned as a hydrolysis facility manager, and as a designated manager of the hydrolysis facility would be expected to ensure all the laws and regulations are in compliance. Ms. Jenkins asked the Committee and the public members if they had any additional comments or questions regarding this regulatory package. No other comments or questions were received.

5. Proposed November 2019 Meeting Dates

The Committee agreed to Wednesday, November 13, 2019.

6. Public Comment on Items Not on Agenda

Ms. Sanchez asked if there was anyone who would like to make public comments about items not on the agenda.

Public Member, Kurtis Ming, Consumer Investigative Reporter for CBS 13 News in Sacramento made public comment. Mr. Ming made comment regarding an unlicensed practitioner.

Ms. Sanchez thanked Mr. Ming for his comments. Unfortunately, CFB cannot engage in comments on items not on the Meeting Agenda. However, Ms. Sanchez indicated CFB investigates all complaints and protects consumer identity whether anonymous or not.

Ms. Sanchez asked if there was anyone else who would like to make public comments about items not on the agenda. No other comments were received.

7. Adjournment

At 11:31am, Ms. Sanchez adjourned the meeting and thanked everyone for coming.