

CFB Advocate

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CONTACT US:

Cemetery and Funeral Bureau

1625 North Market Blvd.
Suite S-208
Sacramento, CA 95834

Tel (916) 574-7870
Fax (916) 928-7988
www.cfb.ca.gov
E-mail cfb@dca.ca.gov

or

Department of Consumer Affairs
Consumer Information Center
(800) 952-5210

Advisory Committee meeting recap

The Cemetery and Funeral Bureau held an Advisory Committee meeting on June 7, 2012, in Sacramento. The meeting was attended by a mix of licensees and consumer advocates, as well as the Advisory Committee members and Department of Consumer Affairs staff. Below is a recap of the meeting, with brackets containing information that has been updated since the meeting was held.

Bureau Chief Lisa M. Moore called the meeting to order at approximately 10:05 a.m. and welcomed those in attendance. Advisory Committee members in attendance were Merrill Mefford, Fredrick Belt, Phyllis Montero, Robert Mull, and John Resich. (Cheryll Moore and Caroline Flanders were absent.) Ms. Moore thanked the Committee members for agreeing to serve a second term on the Advisory Committee and informed them that she expected this Committee to be a less formal, more interactive one that participated even between meetings, as the Bureau needs their expertise as demonstrated by Phyllis Montero and Cheryll Moore assisting in the development of the Bureau's new brochure, *Peace of Mind*. Ms. Moore then discussed various staffing vacancies within the Bureau, including the Deputy Chief position that she vacated when she was appointed Bureau Chief [now filled by Joy Korstjens], and the recent retirement of Mary Hintemeyer in the Licensing Unit [replaced by Audrey Larkin].

Following the opening remarks by Ms. Moore was a briefing on the status of Cemetery Maintenance Standards (proposed Section 2333 of Division 23, Title 16 of the California Code of Regulations). Ms. Korstjens explained the informal process that led to the current proposed regulatory language for cemetery maintenance standards; i.e., the meetings beginning with the previous Advisory Committee, the March 2011 workshop, the May 2011 focus group, followed by the presentation of that redrafted language to the current Advisory Committee in June 2011, all of which led up to the publication of the final language in the Office of Administrative Law (OAL) California Regulatory Notice Register on April 13, 2012.

Ms. Moore thanked everyone for participating in the informal process that led to the final language filed with OAL. Ms. Korstjens deferred to Gary

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Summary of 2012 legislation

The following legislation will take effect January 1, 2013, unless otherwise noted.

Senate Bill 323 Vargas (Chapter 419, Statutes of 2012 – effective January 1, 2014) California Revised Uniform Limited Liability Company Act

Repeals the current Beverly-Killea Limited Liability Company Act as of January 1, 2014, and replaces it with the California Revised Uniform Limited Liability Company Act, which relates to the formation and operation of limited liability companies. (Change specific to the Bureau is in cemetery law: Business and Professions Code Section 9653.6 (b) from Corporations Code Section 17375 to Section 17701.04.)

SB 661 Lieu (Chapter 354, Statutes of 2012)

Makes it a crime for a person to picket or protest one hour before and one hour after a funeral except for one private property. (Adds Penal Code Section 594.37.)

SB 1099 Wright (Chapter 295, Statutes of 2012)

Unless a good cause is provided, or a later date is prescribed, instead of taking effect 30 days after filing with Secretary of State, regulation or repeal now takes effect on a quarterly basis: January 1 (filed September 1 to November 30), April 1 (filed December 1 to February 29), July 1 (filed March 1 to May 31), October 1 (filed June 1 to August 31); Internet posting requirements added. (Amends Government Code Sections 11343, 11343.4, 11344, and Health & Safety Code Section 116064).

SB 1131 La Malfa (Chapter 65, Statutes of 2012)

Allows for a limited amount of nonresident interments in the Cottonwood Cemetery District in Shasta County, the Anderson Cemetery District

in Shasta County, and the Silveyville Cemetery District in Solano County with the payment of a nonresident fee. (Amends Health and Safety Code 9063.9.)

AB 374 Hill (Chapter 364, Statutes of 2012)

Allows an applicant to proceed with the assignment of a funeral establishment license by requesting approval from the Bureau to post and maintain a bond in an amount equal to 50 percent greater than the corpus of the trust guaranteeing the payment of any shortages in the establishment's trust funds in the absence of an unqualified audit due to estate matters or litigation. (Amends Business and Professions Code Section 7630.)

AB 1225 Committee on Veterans Affairs (Chapter 774, Statutes of 2012)

Requires any person or entity, except a municipal corporation, who owns or controls a cemetery with veterans' commemorative property [monument, headstone, marker, memorial, plaque, statue, vase, urn, flag holder, badge, or shield] to petition the county Superior Court prior to selling, trading, or transferring any or all of said veterans' commemorative property. Sales of new veterans' commemorative property preneed or at need not prohibited. (Adds Health and Safety Code Sections 8122, 8123, 8124.)

AB 1588 Atkins (Chapter 742, Statutes of 2012)

If a licensee or registrant is called to active duty in the U.S. Armed Forces or California National Guard while his or her license is current, the renewal fees for the period of their active duty service will be waived upon receipt of substantiating written documentation, including notifying the Bureau within 60 days of receiving his or her notice of discharge. Licensee or registrant may not practice in any activities outside military service requiring a

license during the waiver period. (Adds Business and Professions Code Section 114.3.)

**AB 1777 Ma
(Chapter 79, Statutes of 2012)**

Cremated remains may be transferred from a durable container into a scattering urn [closed container containing cremated remains that will dissolve and release its contents within four hours of being placed at sea] no more than seven days before scattering the cremated remains at sea from a boat. (Adds Health and Safety Code Section 7117.1.)

**AB 1806 Cook
(Chapter 722, Statutes OF 2012)**

Requires county public administrator to determine if referred unclaimed remains are those of a veteran or his or her dependent and if so, to work with the county veterans service officer (if necessary) to obtain information related to their service, and report such information to the Department of Veterans Affairs; the Department will create and maintain a list of the unclaimed remains which will be available to

representatives of veterans' remains organizations. (Adds Sections 951.5, 955 to Military and Veterans Code.)

**AB 1904 Block
(Chapter 399, Statutes OF 2012)**

Requires the expedited licensure of an applicant currently licensed in another state who supplies satisfactory evidence that they are the spouse or domestic partner of an active duty Armed Forces member officially stationed in California. (Adds Business and Professions Code Section 115.5.)

**AB 2570 Hill
(Chapter 561, Statutes of 2012)**

Prohibits a Department of Consumer Affairs (DCA) licensee from including a provision in a civil settlement preventing the opposing party from contacting, filing a complaint with, or cooperating with DCA, or requiring them to withdraw a complaint already filed. (Adds Business and Professions Code Section 143.5.)

Licensees must pay taxes or risk losing their license

As of July 1, 2012, the Cemetery and Funeral Bureau is required to suspend a license, certificate, or registration if a licensee owes taxes to the Franchise Tax Board (FTB) or the State Board of Equalization (BOE) and appears on either agency's certified lists of top 500 tax delinquencies over \$100,000.

Once a licensee is placed on a certified list, he or she has 90 days from the issuance of a "Preliminary Notice of the Intent to Suspend" to either pay all the taxes owed or enter into a payment installment program. A licensee who fails to pay the taxes owed or enter into

a payment plan will, have his or her license suspended until the Cemetery and Funeral Bureau receives a release from the FTB or BOE.

The FTB list can be viewed online at:
https://www.ftb.ca.gov/aboutFTB/Delinquent_Taxpayers.shtml.

The BOE's certified list can be viewed at:
www.boe.ca.gov/cgi-bin/deliq.cgi.

If you believe you are on either list in error, please call the FTB at (888) 426-8555 or the BOE at (916) 323-8624.



Advisory Committee meeting recap *continued*

Duke of DCA's Legal Affairs Office, who took over the discussion and referred to the OAL Rulemaking Process Flow Chart [available on the Bureau's Web site www.cfb.ca.gov under "Proposed Regulations"] for information on how the regulatory process works now that formal rulemaking has begun, and emphasized that the language stands as is once the formal rulemaking process starts.

Mr. Duke stated the regulatory hearing on July 12, 2012, was the time for stakeholders to provide verbal or written comments on the proposed language. After that, the Bureau Chief and the Director of Consumer Affairs would consider all comments prior to filing with OAL, after which OAL has six weeks to approve or reject, although usually OAL will notify the Bureau if there is a problem and then the Bureau can issue a 15-day Notice and fix it.

After OAL approval, proposed regulation would be filed with the Secretary of State and then become regulation 30 days after that. Ms. Moore commented that the process has been somewhat lengthy and challenging, but that the Bureau plans to go forward with any future regulation packages in the same manner.

Ms. Moore stated that the issue of the Web site revision was placed before the Advisory Committee members last year, but that the Bureau only received one suggestion and it wasn't something we could implement with the current computer system used by DCA. When the Bureau converts to the new BreEZe computer system in 2013, functionality will be improved. However, the Bureau is aware that the Web site could be more user friendly in the meantime, and it is something that Ms. Korstjens and Richard Hernandez are working on; the new Web site is slated to be finished in August [extended to the fall due to staffing constraints].

As far as the newsletter, the *CFB Advocate*, formerly titled *The Tolling Bell*, Ms. Moore reminded those in attendance that the publication can be found on the Web site and was the first of the Bureau's publications

to get a new look. Due to staffing cutbacks, the newsletter is now only published twice a year, but that also keeps the content meaningful. Ms. Moore asked that attendees give feedback on the articles and let the Bureau know what they would like to read in future editions. Although the Bureau cannot afford to print and mail the newsletter to interested parties, alerts regarding its publication are sent via e-mail to subscribers of the Bureau's List Serve, which anyone can sign up for on the Bureau's Web site. Ms. Korstjens asked attendees to e-mail her directly with any article ideas and feedback as she is the primary editor/author of the *CFB Advocate*.

Mr. Duke then shared with the Advisory Committee members the letter addressed to them from Christine Williams regarding the proposed cemetery maintenance standards, which would be addressed in the formal rulemaking process.

Next was a discussion of proposed changes to funeral regulations in accordance with the Bureau's Strategic Plan. Ms. Moore reviewed the history of the Bureau's interest in revising the regulations. She revealed that the concept began with several of her predecessors, followed by another working group, and that the recommendations that came out of those meetings were broken into separate packages for ease of processing, beginning with the Section 100 changes (changes that are without regulatory effect, meaning they are nonsubstantive and technical in nature) that were completed in fall 2011. The Bureau is now moving onto the regulatory packages we are referring to as "General" and "Enforcement" [viewable on the Bureau's Web site].

In addition to the amendment and/or repeal of those existing funeral regulations, the Bureau is drafting the regulations for Limited Liability Companies (LLC) on the cemetery side [also on the Bureau's Web site]. The Bureau is planning to hold an all-day workshop on August 16 to discuss all three proposed regulation packages with stakeholders. Ms. Korstjens stated that the general package included such diverse regulations topics as sanitation, removal vehicles,

the Authorization for Disposition With or Without Embalming form, etc., and that the enforcement package included the cite-and-fine sections and the continuing education regulations, which were originally included in the Section 100 changes but which OAL rejected, stating they needed to go through the formal rulemaking process instead. Mr. Duke mentioned that the Department of Finance and the State and Consumer Services Agency also must review the Bureau's proposed regulations before they can be submitted to OAL, which adds to the amount of time it takes to complete any regulatory package.

Ms. Moore began the discussion of revisions to the *Consumer Guide to Funeral and Cemetery Purchases* by stating that statutes on both the funeral and cemetery side state that the Bureau needs to work with industry to develop and/or revise the *Consumer Guide to Funeral and Cemetery Purchases*, and that the changes made in 2010 were nonsubstantive and related to contact information only. Advisory Committee member John Resich agreed to take the lead in working with the other Advisory Committee members on this project, as well as making sure that the information gets out to industry and other stakeholders, and report back at the next meeting. It was suggested that industry not only be notified when a new revision was published, but also informed on how to handle old stock, and that perhaps it would be best to have new editions of the consumer guide published in January to coincide with the effective date of the new laws.

Ms. Moore briefly explained that the next discussion issue, noncompliance in industry practices, was placed on the Bureau's Strategic Plan 2011-2014 by her predecessor [Bev Augustine] and that the topic was intended to solicit comments on areas of noncompliance the Bureau needs to look at. The only issue raised by an audience member was related to standardization of the General Price List, so that it was easier to tell if it was in compliance with the FTC Funeral Rule; essentially proposed that a template be created, especially in the delineation of services.

During the portion of the meeting devoted to public comment on items not on the agenda, Marjorie Bridges of the Funeral Consumers Alliance made several comments based upon telephone calls she had received, including the general lack of knowledge on the part of many attorneys on funeral and cemetery law, to which Mr. Duke responded that, yes, it is a specialty field. Ms. Bridges also felt that the process for home/farm burial needed to be easier, which Mr. Duke advised would need a statutory change, and various attendees related their experiences with the issue. Ms. Bridges continued by stating the majority of her calls are from people who cannot afford a funeral, and she was contemplating the necessary steps to starting a nonprofit organization to help people with funding.

Advisory Committee member Robert Mull related how Orange County, where he is employed with the Public Administrator's office, is inundated with indigent cases. He emphasized that the term "indigent" was not limited to the homeless, but included many seniors and others with limited incomes. Several audience members related their experiences with similar cases, as well as custody and duty of internment issues. Mr. Mull also recommended Ms. Bridges and others familiarize themselves with the Unforgettables Foundation, a nonprofit organization that helps low-income families pay for final arrangements for children, as well as the repatriation services offered by the Mexican Consulate for deceased Mexican citizens. Mention was also made of a new Funeral Consumers Alliance group, the FCA of Southern California, consisting of Orange, Los Angeles, Ventura, and Santa Barbara counties.

Ms. Moore asked members if they were willing to meet again on November 15, 2012. It was agreed that was acceptable, and that the time and location would be announced later. On behalf of the Advisory Committee, Mr. Mull congratulated Ms. Moore on her appointment as Bureau Chief. As there were no other comments, the meeting was adjourned at approximately noon.



Funeral establishments must post price list on their Web site

Funeral establishments maintaining a Web site need to be aware of the provisions of Senate Bill 658 (Negrete McLeod, Chapter 386, Statutes of 2011, effective January 1, 2013). The law states that licensed funeral establishments that maintain a Web site shall:

1) Post on their Web site the list of funeral goods and services that are required to be included in the establishment's General Price List (GPL), pursuant to Federal rule, and include a statement that the GPL is available upon request;

AND

2) Information posted pursuant to paragraph one (1) above shall be provided by a link from the home page of the Web site;

OR

3) Post on their Web site home page the words "price information" or a similar statement that includes the word "price" with a link to the establishment's GPL.

The full text of the bill, which changed Business and Professions (B&P) Code Section 7685, can be found at www.leginfo.ca.gov by clicking on "Bill Information" and then searching by bill number. Below is the amended version of B&P 7685, which can also be found on the Bureau's Web site www.cfb.ca.gov under "Laws/Regs":

- (a)(1) Every funeral director shall provide to any person, upon beginning discussion of prices or of the funeral goods and services offered, a written or printed list containing, but not necessarily limited to, the price for professional services offered, which may include the funeral director's services, the preparation of the body, the use of facilities, and the use of automotive equipment. All services included in this price or prices shall be enumerated. The funeral director shall also provide a statement on that list that gives the price range for all caskets offered for sale.
- (2) The list shall also include a statement indicating that the survivor of the deceased who is handling the funeral arrangements, or the responsible party,

is entitled to receive, prior to the drafting of any contract, a copy of any preneed agreement that has been signed and paid for, in full or in part, by or on behalf of the deceased, and that is in the possession of the funeral establishment.

- (3) *The funeral director shall also provide a written statement or list that, at a minimum, specifically identifies a particular casket or caskets by price and by thickness of metal, or type of wood, or other construction, interior and color, in addition to other casket identification requirements under Part 453 of Title 16 of the Code of Federal Regulations and any subsequent version of this regulation, when a request for specific information on a casket or caskets is made in person by any individual. Prices of caskets and other identifying features such as thickness of metal, or type of wood, or other construction, interior and color, in addition to other casket identification requirements required to be given over the telephone by Part 453 of Title 16 of the Code of Federal Regulations and any subsequent version of this regulation, shall be provided over the telephone, if requested.*
- (b)(1) *Each licensed funeral establishment that maintains an Internet Web site shall post on its Internet Web site the list of funeral goods and services that are required to be included in the establishment's general price list, pursuant to federal rule, and a statement that the general price list is available upon request.*
- (2) *Information posted pursuant to paragraph (1) shall be provided by a link from the home page of the Internet Web site.*
- (3) *An establishment that posts on its Internet Web site home page the words "price information" or a similar phrase that includes the word "price," with a link that leads to the establishment's general price list, need not comply with paragraphs (1) or (2).*
- (4) *Nothing in this subdivision shall be construed to affect an establishment's obligations under federal or state law effective prior to January 1, 2013.*
- (5) *This subdivision shall become operative on January 1, 2013.*

National Cemeteries date back to Civil War times

By Audrey Larkin

The Civil War (1861-1865) was a devastating time of human loss and grief. This monumental period of American history marked the first time the country had ever seen such a vast loss of human life. This event created a need for a respectable burial option for those who served. The individuals who served are gone but not forgotten, thanks to the national cemeteries created in the wake of that war that are now historic landmarks enjoyed by all who have an interest in learning about this piece of American history.

Camp Sumter/Andersonville Prison – Andersonville, Georgia

This prison once held nearly 45,000 Union soldiers, making it one of the largest Confederate prisons in the war. It now has more than 13,000 interments and a park for visitors to explore a vital piece of American history. The site also hosts a National Prisoner of War Museum and is considered a memorial site for all American prisoners of war. The museum has stories, artifacts, and graphics that explain prisoner of war experiences. The park is open year around and visitors may tour via an audio tour that explores both the cemetery and prison.

Gettysburg National Military Park – Gettysburg, Pennsylvania

The Battle of Gettysburg was one of the most significant points of the Civil War and occurred at a time when the nation was at a turning point. The Union victory came not without great loss.

The town of Gettysburg was filled with wounded soldiers and to meet the demand, Camp Letterman General Hospital was established. However, at the end of the battle, the number of graves was so high that residents became concerned about their poor condition. The residents advocated for the purchase of the battlefield to be used as the “Soldiers’ National Cemetery.” On November 19, 1863, the cemetery was dedicated to the men who died in Gettysburg. By 1895 the cemetery was converted to a National Military Park and remains a national landmark for those who wish to honor the lives lost in the war. A walking tour of the cemetery is available, and many other events are available in the park such as customized tours, youth campgrounds, self-guided auto tours, and saloon-style refreshments.

Fredericksburg and Spotsylvania National Military Park – Fredericksburg, Virginia

Four pivotal battles occurred on these grounds in 18 months during the Civil War, resulting in more than 100,000 men killed, many of whom are buried in unknown graves. This site is the second largest military park in the world and consists of four battlefields and five historic structures. Visitor attractions in addition to the cemetery include a 7-mile trail, Old Salem Church, and a historic plantation home.

Source: National Park Service Web site <http://www.nps.gov/index.htm>

New addition to Bureau staff

In August, the Bureau welcomed Audrey Larkin as its newest Licensing Analyst. Audrey is enthusiastic about protecting consumers and has experience working at the Department of Mental Health and the Department of Managed Health Care. She is attending California State University, Sacramento, to obtain her master’s degree in school psychology. In her spare time, she likes to read, cook vegetarian meals, and be tormented by her three cats.



Workshop held to discuss rulemaking topics

The Bureau held a one-day workshop on August 16, 2012, to discuss three separate proposed rulemaking topics.

The morning session dealt with proposed regulations to be added to Division 23 of Title 16 of the California Code of Regulations (CCR) for Limited Liability Companies (LLC) in accordance with Senate Bill 1225 (Harman, Chapter 114, Statutes of 2008). Very little comment from attendees was received on this topic, other than the suggestion to change “radius” to “driving distance” in CCR Section 2326.5.

For ease of reference and for processing purposes, the Bureau identified the funeral regulation packages as general and enforcement. The first half of the afternoon focused on the amendments proposed to the existing general funeral regulations (Division 12 of Title 16 of the California Code of Regulations Sections 1209, 1214, 1216, 1221, 1255, 1258, 1258.1, 1258.2, 1258.3, and 1258.4). Section

1258 gathered the most comments, particularly over the use of the phrase “sealing device.” The consensus was that “sealing device” should be replaced by “gasket” in (b) and that the scientific disclaimer should be reworded to “There is no scientific or other evidence that any casket will preserve human remains.” It was also agreed that Section 1258 could be repealed and its reworded language moved to Section 1258.1.

The second half of the afternoon session centered on the amendments proposed to the existing enforcement funeral regulations (Division 12 of Title 16 of the California Code of Regulations Sections 1240, 1241, 1242, 1246, 1280, 1281, 1282, 1283, 1284, 1285, 1286, 1287, 1288, 1289, 1290, 1291). Attendees had no requested changes to the proposed language.

The proposed regulations will also be open for discussion at the Bureau’s next Advisory Committee meeting on November 15, 2012.

Disciplinary Actions

Below are the Cemetery and Funeral Bureau enforcement actions from April - August 2012. Publicly releasable administrative actions are viewable in the licensing record accessed through the Web site’s “License Verification” feature under ‘Disciplinary Actions’ for the individual/business named below. Please contact Bureau staff at (916) 574-7870 with any questions.

LICENSEE/APPLICANT	CASE #	DECISION TYPE	DECISION	EFFECTIVE DATE
Luis F. Ortiz ACC CES 43218, 41781, 41431	A1 2011 27	ADP DEC	REVOCAION	6.18.12
Daniel A. Mandel Petition to Revoke Probation FDR 2703	A1 2011 27	ADP DEC	REVOCAION	6.18.12

ACC= Accusation
SOI= Statement of Issues

ADP DEC= Adopted Decision
Stip Settle= Stipulated Settlement

CITE= Citation

PET REINSTATE= Petition Reinstatement