

Testimony of G. V. Ayers, Bureau Chief
Cemetery and Funeral Bureau
Department of Consumer Affairs
State of California

Mr. Chairman and Members of the Committee: It is my privilege to appear before you today to speak about funeral, burial and preneed sales practices.

The 225,000 deaths each year in California represent approximately 9.6 percent of the deaths in the United States. (For 1998, California's 225,450 deaths comprised 9.6% of all deaths in the U.S. California's death rate of 6.7% is below the over all U.S. death rate of 8.7%). At some point, virtually every one of these deaths, are handled by one or more of the licensees of the Cemetery and Funeral Bureau. California is somewhat unique, in that it regulates virtually every component of the licensed funeral and cemetery industries through this single regulatory entity.

You have asked me describe how both industries came to be regulated by one agency - the Cemetery and Funeral Bureau; the responsibilities and jurisdiction of the bureau; how states can better regulate these industries; and how consumer awareness and protection can be improved.

1. A genesis of the Department of Consumer Affairs' Cemetery and Funeral Bureau, focusing on how the two industries came to be regulated under one office.

In 1993, the California Cemetery Board and the California Board of Funeral Directors and Embalmers came under close scrutiny by the State Legislature. At that time, these semi-autonomous licensing boards regulated the industries under the general umbrella of the California Department of Consumer Affairs (Department). The Legislature convened hearings in which these two separate boards, and others, were reviewed with a view toward improving efficiency, eliminating duplicative functions, and eliminating regulatory agencies which no longer serve the public's need.

The Legislature received testimony from industry and the boards who argued that there was a great deal of difference between the cemetery and funeral industries. The legislative background report states the issues well:

In objecting to a merger, the Funeral and Cemetery industries stress their differences. Funeral and embalming services are viewed as "short term" in that they generally provide one time services immediately following death, while cemetery services are viewed as "long term" and ongoing. In addition, the funeral and embalming industry involves the care and reparation of dead bodies, while the cemetery industry involves the disposal of dead bodies and care of memorial sites. Cemeteries also involve large capital investments in real estate which mortuaries do not necessarily require.

However, much of what the cemetery industry provides to the consumer is in reality "short term" service - burial, grave closing, marker placement. In addition, a great number of licensees hold licenses in both industries. Because the close relationship of the industries is more compelling than their differences, a combining of the two boards seems likely to best protect the consumer.

The final legislative report found the boards' investigation and enforcement activities to be ineffective and non-existent and recommended that licensure for the death industry be transferred to a bureau under the director of the Department of Consumer Affairs.

The following year, 1994, reform legislation was introduced which proposed to eliminate the two boards

and transfer their functions to a bureau under the director of the Department of Consumer Affairs.

That bill was lobbied heavily by both industries and members of the two boards, and as a result, died on the last night of the Legislative Session.

In 1995, agreement was reached with industry on legislation to merge the two boards into a single board. However, that legislation was derailed by the discovery in Southern California of what appeared to be serious crimes committed at various cemeteries under the board's jurisdiction. Urgency legislation was enacted to transfer both regulatory programs to the Department. The Department then consolidated the resources of both boards into the Cemetery and Funeral Programs. Since that time, January 1996, the state's cemetery and funeral industries have been regulated by a single state regulatory agency - the Cemetery and Funeral Program.

As a side note, a January 1996 report by the State Auditor found illegal and improper activities by two employees of the former Cemetery Board. The violations cited in the report included the illegal receipt of funds and violations of fiduciary duties.

Effective January 1, 2000, a change in statute changed the name from "Program" to "Bureau." In addition, the State Administration has articulated a policy to move the regulatory scheme into a more traditional bureau structure where enforcement, mediation, and licensing functions are centralized under a bureau chief.

2. A detailed description of the Cemetery and Funeral Bureau's responsibilities and jurisdiction.

The Cemetery and Funeral Bureau regulates nearly every aspect of the licensed cemetery and funeral industries. The bureau licenses and regulates some 890 funeral establishments, 190 cemeteries, and 170 crematories. The bureau individually licenses approximately 2,000 funeral directors, 3,400 embalmers, 1,300 apprentice embalmers, 250 cemetery brokers, 2,000 cemetery salespersons, and 200 cremated remains disposers. The bureau oversees funeral preneed trust funds, cemetery endowment care trust funds and special care trust funds. The bureau does not regulate insurance-based funeral preneeds, nor does it regulate the 1,200 religious, fraternal and public cemeteries.

The bureau's mediation and enforcement function addresses all consumer complaints against licensees. For fiscal year 98-99, the bureau received 558 complaints - 374 funeral and 184 cemetery. Although complaints may be mediated between disputing parties, those that appear to be violations of the law are referred to enforcement for possible investigation and disciplinary action.

The bureau conducted 376 investigations, inspected 472 businesses for compliance, issued 242 warning and violation letters, and issued 104 citations. The bureau takes administrative action through the State Attorney General's Office, and works with local District Attorneys in criminal actions. From 1996 to 1999, the bureau revoked 19 licenses and placed 26 licenses on probation.

The bureau conducts unannounced inspections of about 200 of California's 890 funeral establishments each year. The bureau also inspects funeral establishments upon initial licensure and change of location, and requires preneed trust fund audits upon change of ownership. The law also requires annual inspection of all licensed crematories.

The bureau has oversight of funeral preneed trust funds and cemetery endowment care funds and special care funds. Licensees file annual reports with the bureau, and the bureau may audit trust funds to ensure compliance with the laws, verify accounting and investing practices, and identify shortages. Audits may

be initiated based upon the review of the report, failure to file the report, consumer complaints, or if it is believed the funds are not in compliance or are in jeopardy.

Since 1996, bureau audits of cemetery trust funds have identified some \$4.2 million in trust fund violations. The bureau has additionally participated in actions resulting in six criminal convictions, and the California Board of Accountancy has taken disciplinary action against a CPA for actions identified by bureau auditors.

The review of annual cemetery trust reports and licensing applications has resulted in \$1.3 million being repaid to trust funds.

When there is cause to believe that endowment care funds may be lost or injured, the bureau may take possession of the funds. The bureau then acts as conservator of the trust funds, and manages them to ensure that they are maintained in perpetuity for the care of the associated properties. Currently, the bureau holds three conservatorships.

On the funeral side, in 1999, the bureau ordered a Los Angeles funeral establishment to restore more than \$1.6 million to consumer preneed trust accounts. The establishment's former owner was previously sentenced to two years in prison, and a co-conspirator received a one year sentence. The bureau also provided assistance in Ventura County's prosecution and conviction of a former funeral establishment owner for fraudulently selling preneed policies to 88 victims.

Crematories are separately licensed by the bureau, however a cemetery may operate a crematory under its certificate of authority without separate licensing. There are some 74 separately licensed crematories, and 98 operate under a certificate of authority.

3. Suggestions as to how other states can better regulate these industries.

Because death ultimately touches every one of us, a state's regulatory scheme should be structured to assure protection from fraud, deceitful business practices, and an undisturbed final resting place. Although wide differences may be noted in the two related industries, their close relationship is more compelling than their differences. We believe there are distinct advantages to looking at both the cemetery and funeral industries with the same regulatory eye.

Anecdotally, we have found that what the consumer (or even the bureau staff) views as a funeral home complaint, sometimes ends up as a cremation, or cemetery complaint. Conversely, what might appear to be a cemetery or cremation complaint can, in reality, be a funeral home complaint. In such cases, separate regulatory bodies obscure the consumer's access to help, and the consumer may give up in frustration and live with the harm. For regulators, such cases cause double efforts in addressing consumer complaints, and in the worst, results in complaints not being addressed at all.

A single regulator makes sense in other regulatory activities. It makes sense that one regulator could inspect both a funeral establishment and a crematory when they are at the same location or are owned by the same owner. When a cemetery is inspected, it makes sense to have the ability to also look at the funeral establishment operated by the same owner, and often on the grounds of the same cemetery.

In overseeing trust funds, licensees who violate cemetery trust fund laws, are likely to violate funeral preneed laws, and those who violate funeral preneed laws are likely to violate cemetery trust fund laws.

Similarly, trust fund violations can point toward other practice abuses on either the cemetery or funeral

side. Violations in handling human remains or interments, can also indicate problems with trust funds. Some of the bureau's most significant cases in recent years, likely would not, or could not, have been pursued, had the industries been separately regulated. In a January 1998 inspection at a Los Angeles crematory, bureau field representatives found numerous violations in handling human remains. The bureau obtained an Interim Suspension Order (ISO) against the crematory and the three funeral establishment cremation services -- all under common ownership. The businesses, which held more than 40,000 preneed funeral accounts, were eventually required to be sold to new independent owners.

In July 1998, the bureau obtained an ISO against five funeral establishments and a cemetery/crematory in Contra Costa County. Bureau representatives found numerous violations including delivering cremated remains to families, when in fact, the uncremated bodies were still held in refrigeration. The bureau revoked the owner's eight licenses.

Last week, the owner of a San Bruno funeral establishment, stipulated to revocation of the funeral establishment license, and surrender of his cremated remains disposer registration. As part of the agreement, the owner withdrew additional applications for a crematory license, and a funeral establishment license. Had the two industries been separately regulated, it is likely that the crematory license would have been approved.

Unified regulation appears reasonable from a consumer standpoint as well. When consumers can address questions and complaints, and receive information and guidance from a single office, consumer protection can be arguably enhanced.

Market Integration of the funeral and cemetery industries also points toward unified regulatory oversight. Market integration occurs through direct competition, vertical, and horizontal ownership.

Integration through Direct Competition - Traditionally funeral establishments provided the goods and services related to the funeral ceremony, and cemeteries provided goods and services related to the burial plot. Today many of the goods and services offered by funeral homes can be purchased through cemeteries, creating direct competition. For instance, vaults, which most cemeteries require to prevent graves from settling, can usually be purchased through a funeral home or a cemetery.

Vertical Integration - Providers of funeral and cemetery goods and services become more vertically integrated by the acquisition of funeral establishments and cemeteries by a single owner. In some cases the funeral establishment is located on the grounds of the cemetery and in other cases, one owner holds multiple funeral homes and cemeteries in the same geographic area. This enables the industry to offer "one-stop shopping" to consumers, and establish strategic pricing policies to maximize profits by increasing prices.

Horizontal Integration - The industry is also experiencing horizontal integration as an owner purchases multiple competitors in close proximity. The clustering of these facilities allows the owner to benefit from economies of scale. The close proximity of businesses allows the owner to pool resources, reducing overhead and increasing profits.

Because of market integration, it seems likely that owners may well be positioning themselves to shift the provision of goods and services toward the regulatory scheme that best suits their purposes. For example, a funeral establishment owner may shift the sale of funeral goods to a cemetery under common ownership in an effort to avoid the more stringent price list and disclosure requirements of state and federal funeral law, and in an effort to avoid more restrictive state trust fund requirements. The owner may additionally shift the sale of those goods to, what may be, an unregulated casket store also under

the same ownership.

With a shift in how goods and services are provided due to market integration, it would seem to follow that consumer protection issues, and moreover, the potential for consumer harm, follows the flow of how goods and services are provided. As the trend moves away from the traditional stand alone funeral establishment and the stand alone cemetery, and toward greater market integration, it is reasonable that greater consumer protection can be provided by a single regulatory oversight of both industries.

4. Suggestions for improving consumer awareness and protection where the funeral and cemetery industries are concerned.

It is estimated that as many as 68 percent of those that died in California in 1998 did not pre-plan any of their funeral or cemetery arrangements. That fact indicates that people do not want to address the subject.

In 1977, Consumer Reports wrote: "many bereaved survivors who come to funeral homes are emotionally vulnerable and not in a proper mental state to arrive at important decisions in a calm or rational way." This statement is still relevant today, because in the twenty-three years since those words were written, those basic facts have not changed.

Consumer Reports further wrote, "the funeral transaction is the most inequitable one imaginable. The (funeral director) is calm and collected, familiar with all the facts surrounding death, accustomed to dealing with survivors, and there for one purpose: to sell funeral goods and services for a profit. Buyers, on the other hand, are often totally at a loss to know what to do." This leaves consumers vulnerable in a number of ways.

Regulators can promote consumer awareness through basic consumer information. Information that provides accurate, usable explanations about consumer rights and options in nontechnical terms is an essential part of consumer awareness and education. In 1998, California enacted legislation requiring funeral establishments and cemeteries under the bureau's jurisdiction to make the bureau publication, *Consumer Guide to Funeral and Cemetery Purchases*, available to consumers.

Providing consumers with basic market integration information can additionally enhance consumer choice and awareness.

Yet, on a basic level, consumer reluctance to address cemetery and funeral arrangements will not be reversed by consumer guides and information. Many consumers will only want the information when they critically need it - when a loved one dies, or when they have a complaint against a licensee. It is important, therefore, that regulators not only provide information, but perhaps, more importantly, promote awareness of how consumers can access the information when they need it. The promotion of toll free telephone numbers (DCA 1-800-952-5210) and Internet addresses (www.dca.ca.gov/cemetery) where consumer information can be accessed is extremely important in providing information to consumers when they need it.

Regulators can also provide greater consumer protection by becoming watchdog agencies, rather than being completely complaint driven.

Because of the seemingly secretive and often private nature of the funeral and burial process, violations of law often are not readily apparent to consumers; and when they are apparent, consumers may be emotionally unwilling to file complaints. Therefore, regulators must take a proactive approach by

conducting unannounced inspections and audits, and, when violations are found, taking appropriate disciplinary actions.

Many of the significant disciplinary actions that the bureau has taken in recent years were discovered by bureau field representatives in proactive inspections, or in following up on what might otherwise be considered unrelated consumer issues.

A final note - on March 27, some two weeks ago, the Cemetery and Funeral Bureau obtained an Interim Suspension Order against Woodlawn Cemetery Association, in the City of Compton, near Los Angeles. In mid-February, a bureau field representative, at the cemetery on an unrelated matter, conducted an inspection of the grounds and found indications of significant violations. The bureau began an immediate investigation which resulted in the current administrative action. Under the authority of the ISO, the bureau has shut down the operations of the cemetery in order to complete a cleanup of the grounds and conduct a thorough investigation. In three days following the closure, the Department of Consumer Affairs' Consumer Information Center (our 800 number) received 2,200 calls from consumers. Bureau staff endeavored to return all calls within 24 hours, and was largely successful. In addition, the bureau set up temporary offices in the Compton City Hall to meet with consumers who have family members buried in the cemetery. The bureau answered basic consumer questions, and gathered information about who they are and how they can be contacted if the grave of their family member is affected by the findings. Over four days the bureau staff met with over 400 people.

These events emphasize the often delicate nature of cemetery and funeral regulation and the need for a proactive stance by regulators in finding and addressing violations, and providing essential information and support to consumers when they need it the most.