

FUNERAL CONSUMER SOCIETY OF COLORADO

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POSITION PAPER ON COLORADO REGULATION OF THE DEATH-CARE INDUSTRY

We are submitting this position paper regarding regulation of the death care industry and in particular HB 08-1123 introduced by Rep. Debbie Stafford. We met with a representative of the Department of Regulatory Agencies last November regarding the issue. We appreciate the opportunity to make our views known.

The Funeral Consumer Society of Colorado (FCSC) is a Colorado non-profit corporation. We are an unpaid, all-volunteer group, originally incorporated in 1963. We support consumer rights in regard to funerals. We primarily provide educational materials and information to the public, and we provide our members with optional access to complete funeral packages at fixed, reasonable prices through our contracted funeral providers. This is not done through prepaid plans or binding commitments, but merely agreements that our contracted providers will offer low, fair, published prices and will not pressure our members to buy more services than they want. We have approximately 5000 active members, and we are affiliated with the Funeral Consumers Alliance, a national organization.

FCSC hears few complaints about the death-care industry in Colorado, but this could be misleading. Our members are generally well educated about the funeral business and thus more likely to avoid problems and less likely to be taken advantage of. Most complaints we do hear are about pre-need contracts, both for funerals and for cemeteries. Perhaps people are nearly always satisfied and have few complaints, but another possibility is simply that people don't know where to lodge complaints. When people are already emotionally drained by a death in the family, they don't want the added stress and frustration of trying to find out how and where to complain.

Without licensing, Colorado lacks any central office or registry to receive complaints. Different categories of complaints, such as mishandling of a corpse, misappropriation of funds from a pre-need contract, and others, go to different agencies. Some may be criminal violations, others civil actions. If no central office compiles complaints, then funeral homes and crematories could show a pattern of impropriety that would be difficult, if not impossible, to detect in a timely fashion. And, without licensing, there is little or no recourse against bad operators except lawsuits by individuals. Even if a suit puts a bad operator out of business, there is nothing to stop him from simply reopening a business under another name. The recent criminal prosecution and conviction of Neva Nolan is a rare exception. While consumers with grievances may complain to the Colorado Funeral Directors Association (CFDA), the CFDA is a voluntary industry trade group and many death-care businesses are not members.

We believe that the principal focus of any legislation on this issue should be on consumer protection, primarily safeguarding the emotional and financial welfare of the surviving family. We believe that reinstating licensing and limited regulation of the Colorado death care industry is desirable, but with this caveat: In many states the

regulatory system effectively serves to protect the industry and not consumers. That should not be allowed to happen in Colorado.

While HB08-1123 appropriately addresses some issues we believe should be raised, it goes much too far in certain regards. Some of its provisions are clearly designed to protect the industry from potential new competition, not protect consumers.

A good example is the proposed requirement that to be licensed, a cremationist must have practiced a minimum of 500 hours and cremated a minimum of 100 bodies. That requirement is absurd and does nothing to protect consumers. It merely makes it very difficult for someone new to enter the business. Once a very few bodies have been cremated to demonstrate knowledge of how to operate the equipment properly, cremating more bodies simply will not make an operator more qualified. The consumer issues are whether cremains are kept separated (not commingled with cremains from other bodies) and identified properly, period. Those are ethical and record keeping issues and do not require cremating 100 bodies, or even 10 bodies. The cremation retort is essentially a small industrial furnace, with an on-off switch or buttons. Prevention of commingling simply requires that after each body is cremated, the cremains be removed from the retort and place in a container. The container should be properly labeled. Classroom instruction on ethics and record keeping are what protects the consumer, not the number of bodies cremated.

It appears that a person who wishes to open an independent crematory must also qualify as a mortuary science practitioner, which would require a mortuary science degree and 2000 hours of experience in addition to requiring cremation of 100 bodies. This is also an absurdity for someone who wants to operate only a crematory where funeral services are not provided and embalming is not required. Again, this is not consumer protection, and is indeed anti-consumer by greatly restricting competition..

Regulation should have three main goals: (1) to prevent incompetent or unscrupulous businesses from operating in Colorado; (2) to uphold any agreements made between the death-care provider and the surviving family (or the deceased, in the case of a pre-need contract); and (3) to ensure that the deceased body is handled in accordance with Colorado law.

We believe that funeral providers and crematories should be licensed. By this we don't mean that they must meet special qualifications (except for embalmers). We mean licensing in the sense of business registration, with a license being required so that its revocation would shut down a substandard business. Licensing requirements would set minimal standards that must be met and maintained, for the sole purpose of protecting consumers.

We are very concerned that any regulation might adversely impact competition. The licensing process must not be onerous, erecting unnecessary barriers to entering the profession that would result in higher prices paid by consumers (which we are strongly against). Any licensing requirements and standards should be limited and reasonable, and should not discourage any competent, reasonably qualified person from setting up a funeral or crematory business. Our objective is strictly to weed out the incompetent and the unscrupulous, not to inhibit competition.

We generally oppose specific educational requirements, except for embalmers. Embalmers need certain skills, and therefore should be licensed, or at least certified, as individuals. The requirements could be met by education, experience, or a combination, with provisions for grandfathering after some form of demonstration of competence.

There should be an exemption from licensing for families and religious groups doing their own funerals, although registration of such groups could be required. The qualifying test would be one of compensation: as long as the person acting as a funeral provider receives no compensation for services performed, that person should be exempt from paying fees.

We support four principal concepts governing the inspection, supervision and appropriate sanctioning of the death-care industry:

(1) There should be a single, centralized agency with a system for accepting, recording and investigating complaints. We strongly urge that this agency accept and deal with all complaints regarding funeral homes, crematories, body handling and storage, cemeteries, and pre-need contracts. Only then can there be an accurate picture of consumer complaints. The agency should prepare a brochure describing consumer rights and recourse, and death-care providers should be required to provide the brochure to all customers when a contract is signed. Such a system would be an essential resource for the state's and citizens' review of the death-care industry. All complaints, investigation records and resolutions should be easily accessible public records (perhaps excepting complaints determined to be frivolous). Of course, death-care providers must have the right to provide a written response to any complaint filed against them.

(2) The agency must have the legal authority and duty to diligently investigate all complaints and to conduct routine inspections without prior notice. Every death-care provider should be inspected periodically, but randomly.

(3) The agency must have both the authority and the duty to sanction violators, to levy fines and other penalties for significant violations, and to revoke licenses in appropriate cases. Such penalizing authority is the most practical way of motivating those death-care providers who are not operating in the best interests of their customers.

(4) All death-care providers should be required to renew licenses annually, and submit annual reports that summarize services performed and list all complaints and their resolutions.

Licensing would allow enforcement of basic standards and requirements, shut down bad operators and keep them out. Unannounced random inspections would help ensure compliance.

Regulation without a means of evaluation and enforcement is worthless. Given the current budget crisis the State faces, one minimal-expense method of protecting consumers and overseeing the industry could be to set up an ombudsman with the authority and duty to handle complaints, sanction offenders, and inspect facilities unannounced and randomly.

If a full regulatory scheme is desired, we recommend the New York statutes as a model. If a funeral board is set up, it should have at least one knowledgeable member from the funeral industry, but must be controlled by a voting majority of consumer representatives, not from the industry being regulated. An industry-dominated board would be worse than no board at all because of self-protection and anti-competition tendencies. This has been proven repeatedly in other states.

The Funeral Consumer Society of Colorado is ready, willing and able to work with legislators and participate in drafting and reviewing any proposed bills and amendments dealing with regulation of the death-care industry. We look forward to the opportunity to be involved.

APPENDIX

Here is a sampling of egregious cases that demonstrate a need for regulation of death-care providers: ("Death to Dust" is a book by Dr. Kenneth Iserson, (2d ed. 2001).

In Noble, Georgia, in 2002, authorities discovered a crematory operator who was not cremating bodies. Because his retort was apparently not working, the operator simply accepted corpses with payment and then placed the bodies in different locations on his extensive, rural property. At last count, the authorities had discovered 339 uncremated, decaying corpses. (Various news reports).

In Carson, California, a funeral director was committing fraud on his customers. He and his cohorts accepted money in return for promising to bury or entomb the deceased. However, immediately after the funeral services, the operators plucked as many as 150,000 bodies from their caskets and buried them in a mass grave. (Death to Dust, p. 676).

In Florida, a man had arranged for his own disposition with a funeral provider. The man wished to be cremated, but he expressly stated that he did not want his ashes scattered at sea. However, the funeral provider lost track of sets of ashes, and the man's ashes were later scattered at sea. A court awarded the widow \$500,000 in damages. (Death to Dust, p. 325).

In California, a funeral provider dismembered his corpses, sold the body parts and then did multiple simultaneous cremations. He is reportedly now trying to become a funeral provider in Arizona. (from "Chop Shop", by Kathy Braidhill).

In Lake Elsinore, California, another funeral home and crematory owner allegedly sold human remains and body parts to medical research centers instead of burying or cremating them, as he was paid to do. He was arrested on multiple charges of embezzlement, mutilation of human remains and falsifying death certificates. (from the Denver Post)

In Colorado, a funeral operator in Colorado Springs was sentenced to prison for defrauding buyers of pre-need services and for mishandling of cremains. (Denver Post, Rocky Mountain News)

Q: Didn't all but one of these abuses occur in states where the death-care industry is regulated?

A: Yes.

Q: So regulation did not prevent these abuses?

A: Obviously not, but it may have deterred others from doing the same, and adequately enforced, it should have caught these incidents much earlier.

Q: So why should we have regulation in Colorado?

A: Because under current law, we don't even have a way to track complaints that might lead to an early discovery of such abuses. For all the State knows, something like this might be happening here now.

Q: And why should Colorado license death-care businesses?

A: Because under current law, when the perpetrators mentioned above get out of prison, they can all move to Colorado and legally start new death-care businesses. Colorado would not even be aware of their backgrounds, would have no way to prevent them from opening businesses here even if aware, and would have no way of tracking their performance. Colorado is wide-open and ripe for abuse by the unscrupulous and the incompetent.

Q: Shouldn't strict qualifications be required for death-care providers in Colorado?

A. Certain qualifications should be required, for example requiring the passing of an examination. But education and experience requirements should be limited to what protects the consumer, not restricting competition by making it overly difficult to open a business. Extensive experience requirements do not teach ethics, which is critical to consumer protection. Experience is essential for embalmers, who need to learn the art by doing, not studying, but not to most other aspects of operating a death-care business.