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~ A Federation of Nonprofit Funeral Consumer Information Societies ~

January 3, 2006

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**Sent by email to Becky Dunn, Executive Director, Missouri State Board of Embalmers and Funeral Directors
 To be followed up by signed paper copy via USPS**

To: The Missouri Board of Embalmers and Funeral Directors

Dear Board Members and Staff,

Thank you for forwarding the agenda to us that included several proposed regulatory changes. As consumer advocates who support fair regulations that protect families from unscrupulous sales practices and that preserve their rights to make meaningful and affordable funeral choices, we hope you will consider the following comments. We strongly support some of the proposed regulations; we have serious concerns about others and ask that you amend them.

We'll reproduce the proposed regulations with our suggested deletions in ~~strike through~~, and our suggested additions in **bold type**. Beneath these, we'll summarize our concerns. If these aren't clear, we'd be happy to give you more detailed comments.

Proposed New Rule:

(18) The following shall be considered the practice of funeral directing for which a licensee is required, unless otherwise provided by statute or regulation:

(A) Entering into a contract, **for compensation**, with a person having the right to control the disposition of a dead human body for the following services:
 Removal of a dead human body, arrangements for final disposition, supervision of visitation and memorial ceremonies, grave attendance, cremation, embalming, care and preparation of the dead human body, shipment and transportation of a dead human body;
 and

(B) Preparing, other than by embalming, a dead human body for final disposition, supervising visitation and memorial ceremonies, grave attendance,

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cremation, and preparation of the dead human body for shipment and transportation.

~~(C) Whether a fee is charged shall not be dispositive in determining whether one is engaged in the practice of funeral directing.~~

We respect and appreciate the Board's mandate to regulate the commercial performance of funeral service so that it's fair and ethical to grieving families. But we believe the Legislature's intent was for the Board's role to be limited to the commercial performance of funeral service, not the oversight of freely exchanged services or the performance of religious customs. This proposed regulation however, would improperly limit individual and religious choices. By enlarging the Board's authority to include regulation of funeral services even in the absence of monetary exchange, this regulation would:

- Prohibit religious congregations and churches from performing traditional duties of caring for the dead. Many religious communities — notably the Amish, and Jewish and Muslim congregations — have religious mandates to care for their dead. These often include ritual washing and preparation of bodies and the supervision of ceremonies and burials.
- Put trusted family friends, associates of the family, or others at risk of prosecution if they perform these very personal duties for free to help the family. Even though another of the Board's proposed regulations clearly shows that families may perform these duties, Missouri law recognizes kin (or a person designated as one's next of kin in a written instrument) as those who may take custody and control of the body. If a family were to invite their next-door neighbor, their pastor, their congregation, or a close family friend to help them perform these final rites, this proposed regulation would put those persons at risk of legal trouble.

We're sure it was not the Board's intention to limit private family decisions in this way, and we believe our suggested amendments would give the Board the necessary scope to regulate the business of funeral directing while preserving individual, family, and religious liberties.

Proposed New Rule:

A. No person shall be deemed to be engaged in the practice of funeral directing if one arranges for the disposition of the dead human body of a member of one's own family, **or if that person is assisting a family in performing the disposition at the family's request and without compensation. Membership organizations, including, but not limited to, churches, synagogues, mosques or other religious congregations, or fraternal societies, may assist families in performing private funerals for deceased members at the request of the family and without compensation.**

B. One's own family shall be considered any family member within the third degree of consanguinity (by blood) or affinity (by marriage) as set forth in Missouri law, including: grandparents, parents, spouses, children, in-laws, aunts, uncles, first cousins, nieces, nephews, brothers and sisters. A person designated in writing as next of kin pursuant to Section 194.119, RSMo, shall also be considered as one's family for the purposes of this rule.

We applaud the Board's recognition that families do, in fact, have the statutory right to care for their own dead without the use of a funeral director. This "right of sepulcher" is outlined in RSMo 194.119, and

includes the right to "custody, control, and disposition of human remains . . ." We thank the Board for moving to repeal its previous regulation that erroneously required the presence of a funeral director for every disposition. But the above proposal, like the one before it, could limit a family's right to request ritual help from a church or fraternal organization in which the decedent or family is a member. Our suggested additions would clarify that such arrangements (done without monetary compensation) are allowed. Our suggested language may seem unusual, but statutes in at least two other states recognize the right of religious communities to care for their own dead, a truly American right if there ever were one.

Among the Tennessee laws governing commercial funeral service, one finds in Tennessee Code Annotated, 62-5-102:

"Nothing herein shall be constituted to prevent or interfere with the ceremonies, customs, religious rites, or religion of any people, denomination, or sect, or to prevent or interfere with any religious denomination, or sect, or to prevent or interfere with any religious denomination, sect, any body composed of persons of a denomination, or to prevent or interfere with any church or synagogue from having its committee or committees prepare human bodies for burial or to families, friends, or neighbors of deceased persons who prepare and bury their dead without charge."

Mississippi Code 73-11-63 added nearly identical language in 2002:

"In addition, nothing in this chapter shall be construed to prevent or interfere with the ceremonies, customs, religious rites, or religion of any people, denomination, or sect, or to prevent or interfere with any religious denomination, or sect, or to prevent or interfere with any religious denomination, sect, any body composed of persons of a denomination, or to prevent or interfere with any church or synagogue from having its committee or committees prepare human bodies for burial or to families, friends, or neighbors of deceased persons who prepare and bury their dead without charge."

Proposed New Rule:

No funeral director or funeral establishment license shall be required for any person engaged in the business of simply providing burial receptacles for the dead including caskets, urns, vaults, and other similar merchandise.

We support the above proposal enthusiastically.

Proposed New Rule:

(6) No dead human body shall be cremated without a signed and dated authorization to cremate. This authorization may be given by the following methods:

1. Any individual may execute a written authorization to cremate his or her own body upon death. This authorization, to be valid, must not have been revoked prior to death, and may be contained in any writing which is dated and signed by the decedent and at least two witnesses who are present at the time the authorization to cremate is signed. One witness may be the funeral director assisting with the pre-death planning.

2. If the decedent executed no authorization to cremate, before death, the authorization to cremate shall be executed by the next of kin, as defined in section 194.119.2, RSMo. The authorization to cremate shall be dated and signed by the next of kin, the funeral director making the arrangements for disposition, and one witness. The next of kin may not execute the written authorization to cremate prior to the death of the decedent.

3. For purposes of this rule regarding authorization of cremation, the term next of kin shall include any person having legal authority to control the disposition of the body including, but not limited to, the holder of a valid power of attorney with specific authority to control disposition of the dead body.

This is a wonderful proposal that follows the wise course of more than 25 states that have amended their rules in the past 5 - 10 years in a similar way. Such rules are a boon to families and to funeral directors. They give the deceased the right to make his own legally binding wishes, they provide a way to clearly resolve disputes over funeral arrangements, and they shield funeral directors from unfair liability arising from being caught in the middle of a family feud.

We also think it would be a good idea for the Board or its Staff to distribute to its licensees a short letter summarizing the “right of sepulcher.” We have found that many well-meaning funeral directors in states with similar laws are unaware of them or are confused about what they mean. As such, some funeral homes have refused to honor legally valid directives for disposition, because they mistakenly believe that the signature of the **blood** next of kin (or the signatures of **all** the kin) is required. While these funeral directors do so for fear of liability, they are actually **creating liability for themselves** by denying an authorized person his legal right to choose final disposition.

Thank you very much for your attention to our proposals. We ask that you continue to correspond with us as these issues develop, and we look forward to working with you to improve regulations for the benefit of Missouri families and funeral service.

Sincerely,

Joshua Slocum
Executive Director
Funeral Consumers Alliance Inc.

Bev McGill
President, Funeral Consumers Alliance of Greater Kansas City