



Funeral Consumers Alliance, Inc.

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BY US MAIL AND EMAIL

Ron Martin, President
Oregon Funeral Directors Association
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Dear Mr. Martin:

I'm writing to respond to your President's Message in the September/October issue of the Oregon Funeral Directors Association's (OFDA) newsletter, *The Communicator*. In your column, you describe the June, 2006 Funeral Consumers Alliance of Oregon newsletter as circulating a "vicious LIE [capitals in the original]" about alleged proposals by the OFDA to change the nature and composition of the Oregon Mortuary and Cemetery Board through the state legislature.

I understand you also included your President's Message in an undated letter to the Oregon Mortuary and Cemetery Board, which that office received on September 26, 2006. In that letter, you suggested the state board might "investigate the F.C.A. and the person or people responsible for feeding them this false information." Before I examine your points in detail below, please note the state board has no regulatory or investigative power over the Funeral Consumers Alliance of Oregon, as the FCAO is a nonprofit consumer organization, not a funeral service licensee. Furthermore, there is no need for any investigation. All of the documents FCAO used in support of its position, including legislative testimony by your association's Executive Director, are public documents easily and legally obtained under Oregon's open records laws, which may be found in the Oregon Revised Statutes, Title 19, Chapter 192.

It is necessary to correct the ways in which your President's Message column misrepresents the position of the Funeral Consumers Alliance of Oregon, and the ways in which your column denies OFDA policy suggestions made by your own staff. Contrary to your assertion that FCAO is disseminating "vicious lie[s]" about the OFDA, the FCAO's criticism of OFDA's policy proposals is drawn directly from statements made by your own Executive Director, Mark Stehn, to the Joint Legislative and Audit Committee (JLAC). The documentary record of Mr. Stehn's remarks supports our interpretation of OFDA's policy suggestions.

Your column begins:

There is a vicious LIE about the Oregon Funeral Directors Association being circulated by the Funeral Consumers Alliance of Oregon (FCA). The circulation being posted on their website as well as mailed to members is asking for 1000 letters to Oregon Legislators. The flyer states that O.F.D.A. is planning to create a bill that would:

1. Eliminate two public members from the (State) Board.

Officers: Joyce Homan - President, Norma Beerweiler - Vice President, Marie Lorz - Secretary, Ken Stoner - Treasurer
Directors: Harriett Bartnick, Jim Bates, Marjorie Bridges, David Morrison, Laurie Powsner
Staff: Joshua Slocum - Executive Director, Sherry Swett - Administrator, Leda Nutting - Administrative Assistant

Protecting a consumer's right to choose a meaningful, dignified, and affordable funeral since 1963

2. Eliminate two positions from the Board's six member staff.
3. Resolve complaints in Oregon Funeral Directors Association's Ethics and Mediation Committee.
4. Have a retired funeral director as Director of the Board and the single inspector for the Board.
5. Not all complaints would be investigated.

Along with these false accusations, the flyer continues that this would clearly let the fox into the hen house. It finishes with suggested statements to include in your letters. In the 7 years I have sat on the O.F.D.A. Board, there has never been any hint of such a bill being introduced by the O.F.D.A. . . .”

In fact, the OFDA has not only hinted at their desire for such a bill, but your Executive Director, Mark Stehn, openly suggested such legislative changes to the Oregon Legislature on March 30, 2006. While you did accurately reproduce the five items FCAO printed in its newsletter, your denial of their veracity and your characterization of them as “vicious lie[s]” is wholly inaccurate.

Since Mr. Stehn's testimony was submitted on letterhead from the Oregon Funeral Directors Association, one can only assume it represents the wishes and policy positions of OFDA. In this testimony, Mr. Stehn alleges that funeral directors have been discontented with the regulatory actions of the Oregon Mortuary and Cemetery Board; he calls the attitude of licensees toward the Board as “overwhelmingly negative.” He then criticizes what he believes are the too-stringent complaint investigations by the Board, which he blames for an alleged “backlog” of complaints. He then suggests the Board's investigatory process is too labor-intensive. Then, Mr. Stehn suggests a different model for the Board, which would reduce the number of Board members and staff.

Here are portions of Mr. Stehn's testimony to the JLAC on March 30:

The Mortuary and Cemetery Board has hundreds of open cases, some dating back many years without resolution. We feel this is a failure and a disservice to the public as well as the licensees. The cause of this backlog has to do with the procedures in place and how the Board handles inquiries. All issues whether they are just misunderstandings as most are, or a violation of law, are fully investigated. Taking many man hours [sic (man-hours)] then being passed on to a sub-committee before being presented to the full Board for a decision even if they could be resolved by a simple phone call to bring the two parties together [sic]. This procedure is at the discretion of the board and staff.¹

We have researched the make-up of other professional boards in Oregon and have found that most are made up of people from within the profession that the Board is regulating. We also looked at other funeral boards in neighboring states and found the same to be true. The licensing board in The State of Washington has what we feel is a good working model. They regulate more funeral homes, more cemeteries, and run a continuing education program, while performing yearly audits of the funeral and cemetery trust accounts and they do all of this with less staff than Oregon currently has. You will find the Washington model in your packet.

An example of a more typical board as suggested in budget note #1 might be; one embalmer, one funeral service practitioner and one crematory operator as well as two representatives from cemeteries, one for-profit and one non-profit, and two public members. Also, the inspector/investigator should be someone with a working knowledge of the profession, maybe a retired funeral director or cemeterian.

The Oregon Funeral Directors Association feels that if the Board followed the directions in budget note #2, and narrowed the scope of their regulation, and worked to resolve issues in a timely manner, that the staffing levels could be reduced by two.”

Let us examine your column, and FCAO's remarks, and compare them with the documentary record:

¹ 1. Mr. Stehn is incorrect. The Oregon Revised Statutes give health regulatory boards and staff no such discretion. ORS 676.165 **requires** investigative staff to “collect evidence and interview witnesses and [to] make a report to the board. The investigator shall have all investigatory powers possessed by the board.”

A. “The flyer states that O.F.D.A. is planning to create a bill that would. . .”

Response: No, it does not. The FCA newsletter states, “Oregon Funeral Directors Association has floated a plan that will be a bill in the 2007 legislature.” OFDA clearly did float such a plan through the Executive Director Stehn's testimony before the JLAC. I would agree, however, that this sentence is poorly worded. I spoke with Chuck Roberts, a former board member of the FCAO, who wrote this portion of the newsletter. We agreed it is impossible to know what proposals will and will not become bills before the legislature introduces them.

B. “Eliminate two public members from the Board”

Response: The Oregon Revised Statutes, Chapter 692.285, requires that four of the 11 members of the State Board be “representatives of the public.” Mr. Stehn's suggestion of “a more typical board” that would include “two public members” would, in fact, reduce the number of public members by two.

C. “Eliminate two positions from the Board's six-member staff”

Response: Mr. Stehn's testimony to the JLAC suggests “that the staffing levels could be reduced by two” with changes in the Board's current staff structure.

D. “Resolve complaints in Oregon Funeral Directors Association's Ethics and Mediation Committee”

Response: Mr. Stehn testified that OFDA is upset at having been rebuffed by the Board when, “In the past, we have offered to be a resource or option for The Board to use and have been rejected by them. We provide this service [the Ethics and Mediation Committee] at no cost to everyone involved.” You, Mr. Martin, reaffirm this desire in your column, which states, “Our suggestion to the State board is that if a complaint is clearly not a violation of law such as someone getting a flat tire on the way to the cemetery and showing up late . . . that the State Board refer them to our ethics committee. . .”

Perhaps the OFDA is unaware that if the Oregon Mortuary and Cemetery Board were to refer such complaints to an outside party, it would be breaking the law. Oregon Revised Statute 676.175 requires health regulatory boards to “keep confidential and not disclose to the public any information obtained by the board as part of an investigation of a licensee or applicant, including complaints concerning licensee or applicant conduct and information permitting the identification of complainants, licensees or applicants.”

Had the state board acceded to OFDA's request to act as a mediator on complaints, state board members and staff could have been prosecuted for violating confidentiality laws. For Mr. Stehn to have failed to acknowledge this in his testimony to the legislature was dishonest and misleading.

E. “Have a retired funeral director as Director of the Board and the single inspector for the Board.”

Response: Mr. Stehn testified to JLAC that, “Also, the inspector/investigator should be someone with a working knowledge of the profession, maybe a retired funeral director or cemeterian.” He also recommended the board and staff structure of the Washington Board of Funeral Directors and Embalmers. The director from the department of licensing currently serving the Washington Board is a funeral director.

F. “Not all complaints would be investigated.”

Response: Mr. Stehn testified to JLAC that the state board would work better if it “narrowed their scope of regulation, and worked to resolve issues in a timely manner . . .” In an earlier portion of his testimony, Mr. Stehn complained that the Board's thorough investigation process was the cause of an alleged backlog, and that the board could simply direct staff to resolve complaints with “a simple phone call to bring the two parties together.” Either Mr. Stehn is unaware of the fact that the Oregon Revised Statute 676.165 **requires** the board to conduct the sort of thorough investigation it currently performs, or he is suggesting the legislature change the law to allow for a laxer investigatory process.

G. “Along with these false accusations, the flyer continues that this would clearly let the fox into the hen house.”

Response: Yes, the FCAO newsletter does characterize OFDA's proposals as inviting the fox into the hen house. I wholeheartedly support and reiterate that statement.

Conclusion

Mr. Martin, I cannot square your characterization of FCAO's newsletter as a “vicious LIE” with the plain written record of testimony given to the Joint Legislative Audit Committee by OFDA Executive Director Mark Stehn. It strains credibility to believe Mr. Stehn was merely suggesting these changes to Oregon law in passing, with no intention of conveying OFDA's desire for a bill that would accomplish them. One might suspect OFDA is trying to accomplish its legislative objectives while attempting to maintain plausible deniability after those objectives were publicly noted and criticized.

Your organization and mine may disagree on policy, but that does not give OFDA license to impugn the credibility of the Funeral Consumers Alliance through dishonest characterizations, and by denying the clear intent of your organization's legislative testimony. I demand that you retract your characterization of the Funeral Consumers Alliance's material as a “vicious LIE” in your newsletter, and that you forward that retraction to every party who received your President's Message column.

I have been aware for some time of OFDA's dissatisfaction with the Oregon Mortuary and Cemetery Board. I have read many public documents — letters to the board and staff from state lawmakers, among others — accusing the Board and its staff of confrontational, retaliatory behavior against licensees. If these allegations are true, they would indeed call for a remedy. But however provocative these allegations may be, I have seen no specific evidence: no names, dates, or descriptions of these alleged unfair practices. The only accusations I have seen have been broad in their scope, without any documentation to support them. Perhaps you would be willing to share with the public the details of these alleged instances of misconduct.

If there is a problem with the state regulatory board (and that remains to be demonstrated), the solution is not to reduce the number of public members on the board. And if there is a backlog of complaints, I cannot see how reducing the number of investigatory staff would solve this problem.

OFDA's testimony suggests changes to the state board and staff structure that can be characterized as an attempt at “regulatory capture,” a term economists use to describe the co-optation of government regulators by the very group in need of regulation. Mr. Stehn is correct: many other state boards are almost wholly dominated by those in the funeral and cemetery business. But because a system is common does mean it is wise. In those states where licensees dominate boards, the tendency to brush consumer complaints under the rug is alarmingly common. In Kentucky, the system of licensee domination of the state funeral board is so corrupt that the one “public” member of the funeral board is married to a part-time funeral home worker, in apparent violation of state law barring the public member from having any interest in the business he is regulating.

Licensee domination of regulatory boards is also detrimental to the licensees themselves. Many funeral directors around the country have complained of the tendency of power to concentrate in the hands of well-connected licensees who sit on state boards, and also on the boards of trade associations. These funeral directors have complained they cannot get a fair hearing, and that competitors have unfairly penalized them by abusing their position as state regulators.

The public and the licensees deserve better. It is necessary to have a balanced board composed of licensees who can offer their expertise as well as disinterested public members. Industry domination only leads to actual or perceived instances of corruption and cronyism disguised as consumer protection.

Funeral Consumers Alliance of Oregon would be quite willing to correspond or meet with OFDA to discuss matters of contention. But FCA will vigorously and publicly oppose any attempts to weaken the regulatory oversight of the funeral industry in Oregon. We will not tolerate OFDA or any other organization slandering our credibility in the dishonest fashion demonstrated by your most recent newsletter.

I look forward to your swift response to this letter.

Sincerely,

Joshua Slocum
Executive Director
Funeral Consumers Alliance, Inc.

and

Kathie Erickson
President
Funeral Consumers Alliance of Oregon

cc: Oregon Mortuary and Cemetery Board
Peter Korn, Reporter, Portland Tribune
Oregon State Public Interest Research Group
AARP, Oregon Chapter