

WEST VIRGINIA LEGISLATURE
Performance Evaluation and Research Division

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John Sylvia
Director

September 17, 2017

The Honorable Ed Gaunch
Room 217W, Bldg. 1
1900 Kanawha Blvd. E.
Charleston, WV 25305

The Honorable Gary G. Howell
Room 213E, Bldg. 1
1900 Kanawha Blvd. E.
Charleston, WV 25305

Dear Chairmen:

This letter-report is in response to your request that the Performance Evaluation and Research Division (PERD) review the Board of Funeral Service Examiners (Board) to determine why Mr. Chad Harding, an active licensee and former President of the Board, was able to maintain his license despite a federal court's default judgment against him wherein the plaintiff had asserted he had committed fraudulent acts by materially submitting false death claims for over 100 preneed contract beneficiaries in excess of \$900,000. Below are the findings and conclusions of our review regarding this case, including a time line of significant events.

The Board Has Sufficient Authority to Timely Address Fraudulent Activities of Its Licensees.

An area in which licensees of the Board can harm the public involves preneed funeral contract violations.¹ The Board has authority to address such violations by imposing sanctions on licensees including probation, suspension and license revocation. The Board's authority to revoke

¹ Preneed funeral contracts are the arrangement and payment of funeral services and goods made while the beneficiary is still living. This payment is to be put in a trust which will accrue interest or a life insurance policy until the beneficiary's death.

or suspend a license when the public is at risk is clearly indicated in W.Va. Code §30-1-8(e) by stating:

... a board is authorized to suspend or revoke a certificate, license, registration or authority prior to a hearing if the person's continuation in practice constitutes an immediate danger to the public.

In addition, the powers of the Board as indicated in W.Va. Code §30-6-5 state that the Board may:

Investigate alleged violations of the provisions of this article and the rules promulgated hereunder, and orders and final decisions of the board; and conduct hearings upon charges calling for the discipline of a licensee or revocation or suspension of a license.

These Code cites indicate that the Board has the authority to act appropriately and in a timely manner when it becomes aware that a violation has occurred by a licensee and a risk is posed to the public. The Board is required to act first and foremost in the interest of the public as stated in W.Va. Code §30-1-1a:

*The Legislature hereby finds and declares that as a matter of public policy the practice of the professions referred to in this chapter is a privilege and is not a natural right of individuals. **The fundamental purpose of licensure and registration is to protect the public, and any license, registration, certificate or other authorization to practice issued pursuant to this chapter is a revocable privilege.** (emphasis added)*

The Board Allowed 13 Months to Elapse from the Time It Became Aware of Fraudulent Activities Before It Initiated Disciplinary Action Against Mr. Harding, and an Additional 10 Months Before the Board Suspended His License.

In August 2015, the Board obtained a copy of the complaint the insurance company filed in federal court against licensee and ex-president of the Board Chad Harding alleging fraud. Furthermore, in September 2015 the West Virginia Attorney General's Office made the determination that it had sufficient evidence against Mr. Harding to file an injunction and related relief in Kanawha County Circuit Court. Despite knowledge of these actions, the Board did not respond immediately. Instead, as will be described below, **the Board waited 13 months before it initiated disciplinary action against Mr. Harding.**

After reviewing the Board's meeting minutes, PERD finds that the Board first began discussing the actions of Mr. Harding in March 2016. At that time, the Board's assigned Assistant Attorney General addressed the Board by stating that the Board could not take disciplinary action against Mr. Harding without a complaint setting forth a violation of the funeral service laws. However, as cited previously, W. Va. Code §30-1-8(e) allows licensing boards to suspend a license

prior to a hearing if a licensee constitutes an immediate threat to the public. Additionally, the Board's Legislative Rules allow it to institute charges against a licensee or registrant. CRS Rule §6-4-3.2.4 provides as follows:

Charges may be instituted against any licensee or registrant, by the Board when reasonable cause exists for believing that the licensee or registrant, may have engaged in conduct or be in such condition that the license should be suspended, revoked, or otherwise disciplined for one or more grounds set forth in W. Va. Code §30-6-1 et seq. or this rule. Charges may be based upon information received by a verified written complaint filed with the Board and further information gathered by the Board in the process of investigating the complaint. Charges may also be based upon information received solely through investigative activities undertaken by the Board.

See also CSR Rule §6-4-2.1 (allowing any individual to file a complaint against a licensee or registrant).

In the case of Mr. Harding, the Board had obtained a copy on August 24, 2015, of the complaint the insurance company filed in federal court against the licensee. While the Legislative Auditor deems this to be a sufficient investigation to warrant action, there was then no indication of any further Board action until the Board's meeting minutes of March 2016. Those meeting minutes make no mention that the Board had taken any further action during the interim seven months.

Time-line of the Chad Harding Case – Complaint 2016-D-002:

August 19, 2015:

Homesteaders Life Company (an insurance company from the State of Iowa) filed a complaint against the licensee in the United States District Court for the Southern District of West Virginia. The complaint indicates that Mr. Harding committed fraud against 111 consumers that had preneed policies with the company by filing false death claims and claims of providing funeral services prior to the actual death of preneed funeral contract beneficiaries and receiving over \$900,000 from these false claims.

August 27, 2015:

The West Virginia Attorney General's Office of Consumer Protection Preneed Funeral Unit conducted an audit of the preneed contract accounts held by Mr. Harding, and discovered multiple violations of the West Virginia Consumer Credit and Protection Act and the West Virginia Preneed Funeral Contracts Act. The audit revealed that over one-hundred death claims were made and paid to Mr. Harding prior to the deaths of any of the preneed contract beneficiaries. In addition, Mr. Harding failed to disclose to the Attorney General's Preneed Unit withdrawals of funds belonging to the consumers as required by law.

August 8, 2016:

A federal judge ruled judgement in favor of Homesteaders Life Company and against Mr. Harding and his wife in the amount of approximately \$2.8 million for treble damages because the judge found Mr. Harding had violated the Racketeer Influenced and Corrupt Organizations Act (RICO Act) which provided for triple damages.

October 11, 2016:

The Attorney General's Office filed a motion in circuit court to permanently disallow Mr. Harding from selling preneed funeral products of services in West Virginia.

The Board Initiates Disciplinary Action Against Mr. Harding

September 30, 2016:

The Board of Funeral Service Examiners first contacted Mr. Harding via letter regarding charges against him.

November 28, 2016:

The Board sent a letter to formally advise Mr. Harding that there was probable cause to believe that he had engaged in conduct, practices, and acts that violate the West Virginia Funeral Service Act. Along with the letter, Mr. Harding was provided with a Statement of Charges and Amended Notice of Hearing which was set for January 30, 2017. Mr. Harding filed a motion to reschedule the hearing and was later rescheduled for March 22, 2017.

December 22, 2016:

Mr. Harding filed petition for a Writ of Prohibition against the Board in Kanawha County Circuit Court in an attempt to stop the Board's disciplinary action against him. The Board filed a motion to dismiss Mr. Harding's petition on January 18, 2017. In that motion, the Board's attorney recognizes that at a previous court hearing for the Writ of Prohibition, Mr. Harding stated that "he will suffer irreparable harm if the disciplinary hearing is allowed to proceed." Later in March of 2017, the court granted the Board's motion to dismiss Mr. Harding's Writ of Prohibition.

February 7, 2017:

Mr. Harding and the Attorney General's Office reached a settlement. Previously, a local business man paid the \$2.8 million settlement owed by Mr. Harding to the Homesteaders Life Company, essentially covering the amounts owed to the preneed contract beneficiaries. The settlement between the Attorney General and Mr. Harding indicates that any funeral-related businesses owned or operated by Mr. Harding or his wife shall permanently refrain from and are permanently barred from selling preneed funeral services or accepting payment of any kind for funeral services prior to the death for the person for whom the services are intended in the State of West Virginia. In addition, Mr. Harding

agreed to pay \$25,000 to reimburse the State of West Virginia for the cost of the investigation.

February 24, 2017:

The Board requested to have Mr. Harding's disciplinary hearing rescheduled due to the hearing examiner having a medical issue. The hearing was rescheduled for April 13, 2017. Mr. Harding later motioned to have the hearing rescheduled again; with no disagreement from the Board the hearing was scheduled for July 25, 2017.

June 16, 2017:

The attorney for Mr. Harding sent a letter to the Board containing a settlement offer where he would agree to be placed on a six-month probation period for his funeral director and crematory licenses as well as paying a fine of \$10,000. The settlement would nullify the need for a disciplinary hearing.

June 26, 2017:

As the Board prepared for the July 25, 2017 hearing, its attorney sent out subpoenas for individuals to service as witnesses at the hearing which included Mr. Harding, a Homestead Life Company representative, and the Attorney General's Preneed Auditor. The hearing would be open to the public.

The Governor appointed four new board members whose appointments would be effective July 1, 2017. Additionally, the Governor appointed the Board's former citizen member to a crematory operator member position.

July 5, 2017:

At the Board's scheduled meeting, the Board discussed the offer of settlement received from Mr. Harding's attorney. The Board voted in favor of having its attorney further discuss with Mr. Harding's attorney the parameters of the settlement.

July 11, 2017:

Mr. Harding's attorney sent another letter to the board including an updated offer of settlement where Mr. Harding would be willing to have his funeral director and crematory licenses suspended for six-months and then be placed on probation for another six-months as well as paying \$25,000 for the Board's legal fees. On this same day, a Board staff member contacted the Secretary of State's Office to request a special meeting for July 14, 2017 with the purpose being to discuss the proposed settlement offer. However, the requested date of the meeting did not meet the Open Government Meetings Act requirement of providing the Secretary of State's Office five business days' notice prior to a special meeting. As a result, the Board requested that the Secretary of State's Office change the meeting notice to an emergency meeting notice.

July 14, 2017:

At the Board's recently scheduled emergency meeting, the issue of conflicts of interest was brought to attention by the Board's attorney. Board members were asked if they had any business relationships with Mr. Harding or social relationships like attending the same church. One member stated the he had a business relationship with Mr. Harding, but did not believe it to be a conflict of interest. No Board members recused themselves from voting on issues dealing with Mr. Harding due to a conflict of interest. After several deliberations, the Board voted 3-2 to accept Mr. Harding's settlement proposal. Subsequently, the need for a disciplinary hearing was eliminated.

July 19, 2017:

The Board entered into a Consent Agreement with Mr. Harding which mirrored the conditions listed in his settlement offer.

Three Board Members Resigned Because of How the Board Handled the Harding Case

July 20, 2017:

The Board president resigned and stated in his resignation letter:

The decision made at the teleconference call on Friday, July 14, 2017 I feel that we let our Profession down being more concerned about legal fees than we were with WV Funeral Service Act WV Code 30-6-1.

Doing this we let a man embezzle close to a million dollars set his own fate. I was compelled to sign the consent agreement and order as president of the WV Board of Funeral Service Examiners against my better judgment.

July 25, 2017:

Another Board member sent in his resignation letter, which stated:

I serve at the will and pleasure of the people of the State of West Virginia and our Governor with the understanding of (at least in part) the protection of the public, as a very important facet of my service. This protection is not just for the public health but for the integrity of the profession, which is for the public's protection as well, we are mandated to oversee.

Recent actions have caused me to question my involvement with this body, and I feel I can no longer serve in the capacity for which I was appointed. The integrity of any profession, especially one as sensitive as funeral service, is only as good as the ethical, moral, and legal underpinnings that hold it together. Recent actions will undermine the integrity, in my opinion (and I suspect others share it as well), weaken the Board's authority in these types of matters.

A third resignation occurred as a result of the Board's actions against Mr. Harding; however, the Board member did not include a statement expanding on why he chose to resign.

The Board May Have Violated the Open Governmental Meetings Act by Having an Emergency Meeting to Settle Harding Case

The Board may have violated the Open Governmental Meetings Act by having an emergency board meeting to settle the case with Mr. Harding 11-days prior to the scheduled disciplinary hearing. According to the West Virginia Ethics Commission, an "emergency meeting" involves an unexpected situation or sudden occurrence of a serious nature, such as an event that threatens public health or safety. The Ethics Commission recommends that when in doubt as to what constitutes an emergency, consider what consequences could occur if the governing body does not act immediately. If it can wait days without significant adverse consequences, then a special meeting should be called instead.

Since April 2017, the Board had been planning to conduct its disciplinary hearing for Mr. Harding on July 25, 2017. The Board had taken the time and effort to subpoena witnesses and appoint a Hearing Examiner for that hearing. However, on July 11, 2017 the Board chose to call for an emergency meeting for July 14, 2017 with the stated purpose being to "discuss proposed settlement in Harding matter." It is not clear what adverse consequences could have occurred by maintaining the original scheduled July 25, 2017 disciplinary hearing. The stated purpose for the Board's emergency meeting does not appear to meet the Ethics Commission's definition for an "emergency meeting."

The Board Asserts It Only Finds Out By Chance of Embezzlement By Funeral Directors.

In the Board's response to this letter-report it stated that until the Attorney General completes his investigation and enters into a consent agreement or institutes litigation the matters are considered confidential. This echoes statements made to PERD during the exit conference with the Board. The Board asserted that the Attorney General's Office told it that the Attorney General would not inform the Board when the Attorney General identified preneed funeral contract violations. As a result, the Legislative Auditor asked the Attorney General if this was an accurate statement. The Attorney General responded (see enclosed letter from Attorney General),

No, this is not an accurate statement. No such statement has ever been made. . . .

According to the Board, the Attorney General will not provide identified preneed funeral contract violations for fear it may not get its money. The Attorney General disputes such a position. As stated in the Attorney General's letter,

No, this statement is not accurate. This has never been the position of this office.

It is the Legislative Auditor's position that it is the Board's responsibility to act to protect the public when it becomes aware of possible violations of the law. Thus, whether the Board becomes aware by chance or by a duly filed complaint it should take prompt appropriate action regardless of any other entity.

The Board Has a History of Untimely and Lenient Responses to Fraudulent Activities of Licensees

Recent history (2012-2014) reveals that the Board has been lenient and accommodating to licensees who had committed fraudulent actions and violations of the Funeral Service Examiner's Act. PERD's review identified three such cases. In one case, the Board delayed acting on a complaint dealing with preneed fraud for 16-months. The Board claimed that the delay was due to investigations being conducted by the Attorney General's Office and local law enforcement that had to be completed. It was determined that a licensee who was entrusted with preneed funds spent the funds for personal use. However, the licensee, knowing that he was under investigation, repaid the funds to the consumer prior to the completion of the investigations. Since the licensee repaid the money, the Attorney General's Office did not pursue further action. Ultimately, the Board determined that the licensee did not act in a professional manner and that he acted in a willful departure from accepted standards of professional conduct. However, the Board voted unanimously to reprimand the licensee by advising that in the future such conduct will result in disciplinary action.

Another example deals with a licensee who initially had his license placed on probation for six-months for failing to present a correct copy of a death certificate and refusing to present a completed one as required by law. However, eight-months prior to being placed on probation, the Attorney General's Office filed a complaint against the licensee followed by an Agreed Preliminary Injunction Order two weeks later where the licensee agreed to a barring of further sales of preneed funeral contracts until the action was resolved; this was the same time the Board had received its complaint against the licensee regarding failing to provide a correct death certificate. Ultimately, the licensee was barred permanently by the Attorney General's Office from selling or being the provider of preneed contracts in West Virginia and was ordered to pay a \$72,151 settlement. Although the licensee had a complaint filed against him by the Attorney General's Office stating that he had violated the Consumer Credit and Protection Act and the Preneed Funeral Contracts Act before the Board had received its complaint regarding the incomplete death certificate, the Board determined that a six-month probation period was a sufficient disciplinary action. Recently, a Board staff person acknowledged to PERD that the Board probably should have "taken the license."

The third case PERD identified dealt with a licensee who embezzled preneed money and subsequently fled the state. After the Board notified the licensee of the charges against him and that it would meet to decide on whether to proceed with a formal revocation of his license, the Board and licensee verbally agreed to enter into a consent agreement where he would surrender his license. However, the licensee never signed the agreement and fled the state. When the Board gained knowledge of the licensee's location a year later, it again sent a letter asking the licensee if he wished to enter into a consent agreement or proceed with a formal hearing. Instead of taking

immediate action to revoke his license, the Board waited on the licensee to return the consent agreement. The licensee never returned the agreement and the Board allowed his license to expire. A funeral director's license is valid for two years before renewal is required. Although the Board had reason to revoke or suspend this license, its inaction enabled the licensee to possess an active license until the time it expired; potentially placing the public at risk. These examples illustrate that when the Board is faced with a case where a licensee is acting in a fraudulent manner, the Board either accommodates the licensee, or it waits for other law enforcement agencies to take disciplinary action rather than utilize its own statutory authority to protect the public.

Conclusion

In the Chad Harding case, the Legislative Auditor finds that the Board acted to protect the interest of one of its licensees more than the safety of the public. The Board could have exercised its statutory authority to take disciplinary action against Mr. Harding, such as suspend or revoke his funeral director license, as early as August 2015 because he posed an immediate risk to the public. At the very least the Board could have further exercised the authority it had pursuant to its legislative rule §6-4-3.2.4 and further investigated the violations Homesteaders Life Company had asserted Chad Haring had committed. It is also reasonable to maintain that the Board should have taken immediate action against Mr. Harding upon the federal judge's \$2.8 million judgement in favor of Homesteaders Life Company in August 2016.

Moreover, the 10-month proceedings to suspend Mr. Harding's license for 6 months appear accommodating to Mr. Harding, and the Board imposed the disciplinary actions as dictated by the licensee. The Board improperly called for an emergency meeting 11 days prior to Mr. Harding's scheduled disciplinary hearing to agree to a settlement that would allow Mr. Harding to eventually retain his funeral director and crematory licenses. It also appears that the Board allowed Mr. Harding to intimidate it with court costs and dictate the outcome of this case. The board president's resignation letter further supports this conclusion. It is the opinion of the Legislative Auditor that the Board chose to give preference to the licensee rather than to the interest of the public.

Consumers of funeral services and goods are often in a distraught emotional state when making these high cost transactions. The evidence demonstrates a relatively high risk of dishonest business practices by unprofessional funeral service providers. Given the history of this Board and the most recent case of Mr. Chad Harding, the Legislative Auditor concludes that the Legislature should consider terminating the Board and placing the regulatory function under another health-related state agency such as the Department of Health and Human Resources' Bureau for Public Health. If termination is not implemented, consideration should be given to reconstitute the current board membership by replacing them with new members. The Legislature should also consider requiring two citizen members to this Board and that the definition for citizen member requires that they have and had no working affiliation with the funeral service industry. Currently, there is only one citizen member on the Board, who has had no working affiliation with the funeral service industry; however, previous citizen members have worked for a funeral home.

I hope this addresses your inquiry regarding how the Board handled the discipline of Mr. Harding who had committed fraud. If there are any further questions that you have in this area, we are always available to assist you.

Sincerely,

A handwritten signature in blue ink that reads "John Sylvia". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

John Sylvia

Sally Scott Atilli , President
David Deal, Secretary



Sally Scott Atilli
David Deal
Ronald A. McVey
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September 11, 2017



John Sylvia, Director
WV Legislature PERD
Building 1, Room W-314
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Charleston, WV 25305

RE: Draft of Audit report dated September 17, 2017

Dear Mr. Sylvia:

Thank you for meeting with us on Friday, September 8, 2017, to discuss the concerns of the current Board relating to your audit report.

Our first concern was the Audit finding that the Board should have acted under WV Code §30-1-8(e) which states, in part, that the Board "is authorized to suspend or revoke a certificate, license, registration or authority prior to a hearing if the person's continuation in practice constitutes an immediate danger to the public. (Emphasis added.)

As we advised you, and as pointed out in your report on page 2, our Board attorney stated that we could not take disciplinary action without a complaint setting forth a violation of the funeral service laws. It has been the advice of previous attorneys assigned to the Board that in matters involving criminal actions that we should wait for a conviction and then proceed to suspend a license. We now find ourselves being chastised for failing to act according to the interpretation of your attorneys when our attorneys have advised to the contrary.

Further, our attorney advised us that we had one year from the date we began legal proceedings to resolve the matter in order to be in compliance with the ruling of the WV Supreme Court of Appeals.

At the July 5, 2017 Board meeting, the Board's attorney made a general presentation about the case and what had transpired over the past year with regard to the litigation and the costs incurred by the Board. He stated that he had received from the respondent's attorney a settlement offer and the Board should go into Executive Session to discuss the same. The Board

authorized the attorney to make a counter offer and outlined their starting point as well as their bottom line for negotiation. A counter offer was made by the respondent and the Board's attorney stated we should enter into settlement negotiations and a date was set for the same.

The notice of the meeting for the negotiations was sent to the Secretary of State as a SPECIAL MEETING, however, we received a call from that office stating there were no more Special Meeting notices and the notice appeared as an EMERGENCY NOTICE. However, the language of the notice very clearly said it was a Special Meeting.

Prior to the negotiations meeting, the lobby group for the WV funeral directors sent a letter to the Board President (Ira Handley), the Governor and the Attorney General, contesting the appointment of 3 of the new members. One member was categorized a "non practicing funeral director," one purportedly had a business relationship with the respondent and another was a member of a church with over 2000 members where the respondent was known to attend. It should be noted that one member of the board, other than the new member, was also non practicing, and there have been several past members who would fall into that category, however, they all hold active licenses and could practice if they wished to do so. Further, three members of the Board were members of the group opposing the new appointments and one also had a business relationship with the respondent which he never disclosed while taking part in decisions relating to the respondent. The issue of the possible conflict with the new member who had a business relationship was addressed in open meeting and found to be baseless; the church issue had been previously addressed to the Ethics Commission informally and it appeared that there were no grounds to disqualify that member.

The Board Attorney took considerable time prior to the commencement of the negotiations to outline the fees incurred to date which totaled approximately \$25,000. He outlined the fees that would be incurred if the hearing were to take place. Those fees would have been in the neighborhood of \$50,000 and the final outcome of the hearing was not guaranteed and if adverse to the respondent would in all likelihood be appealed to the Circuit Court and on up resulting in an exorbitant expense to the Board.

The negotiations took approximately four hours and resulted in the settlement as outlined in your report.

The Board members who resigned were members of or had close ties with the lobby group who contested the appointment of the new membership.

As to the three cases cited in your report, please be advised:

In case #1, the complainant was a patient at Weston State Hospital, having been committed there by court order. His complaint dealt with preneed issues and possible criminal conduct. A copy of his complaint was sent to the Attorney General's preneed division and later to the Wood County Sheriff, the State Police in Wood County, the Parkersburg City Police and the Wood County Prosecutor. All declined to prosecute or investigate the matter as they deemed the complainant not a "credible witness".

The Attorney General did investigate and enter into a consent agreement but only insofar as registering preneed contracts and filing death benefit reports. They made no findings or record relating to the complainant. Informally, they had the funeral director allow the transfer of the preneed contract to another funeral home and told the funeral director to refund moneys he spent for his personal use. (The funeral director had a POA and stated he had been requested to cash in the travelers checks that were the subject of the complaint.)

Because of the complainant's questionable mental status, the Board also felt that they didn't have a credible witness in order to proceed but did reprimand the funeral director for his actions.

Case #2. The Attorney General's office obtained an injunction and later a judgment against a local funeral home. After the Board found out about the matter, it attempted to do an investigation and bring charges. (Again, please note that we were acting in compliance with the advice of our Board attorney that we could not act on the statute cited above.)

We collected what evidence we could and contacted the Charleston PD to do a criminal investigation. After a few weeks we called CPD and was advised that they had contacted the Attorney General's Office and were advised by Chris Hedges, the attorney for preneed, that they wanted our investigation "put on the back burner" as they were worried that if we acted on the funeral director's license the State would not get its money. This office contacted the prosecutor who initially said he could not prosecute because there wasn't evidence to substantiate fraud. We called his attention to the statute dealing with misappropriation/embezzlement of preneed funds and he then asked us to have CPD send him the grand jury report. When we contacted the officer involved, we were advised that he had shredded the file.

We were advised informally by the Attorney General's office that because IRS and state agencies had tied up the assets of the funeral home/funeral director that they had entered into a repayment agreement with the funeral director. A check with that office last week indicates that he is still making payments of \$500 a month.

Case #3. We first became aware of this case when we read in the newspaper that the funeral director was being sued by the Attorney General. We obtained a copy of the complaint and subsequently contacted the funeral director regarding surrender of his license. He stated that he would sign and we sent him the Consent Agreement. However, he did not sign the Agreement and fled the State. A year later he attempted to renew his license and requested a letter of good standing so he could reciprocate to South Carolina. He was contacted and told he could not renew nor would we send a letter of good standing. We also sent him, again, a Consent Agreement to sign which he did not. We contacted the SC Board, furnished them with the information relating to this embezzlement and his license was flagged in that state.

After getting a new address for him we contacted the Attorney General's office so that they could move forward with their default judgment.

We attempted to have the funeral director criminally prosecuted in Monroe County, as did the Insurance Company involved, however, the entire State Police detachment recused themselves from investigating the matter as they were all friends with him: the Prosecuting

Attorney and Circuit Judge likewise recused themselves and even the Special Prosecutor recused himself. Later an investigator from the Insurance Commission came to this office to review our file and said that he was on his way to South Carolina to interview the funeral director. He took a copy of the Agreement to give to the funeral director. We received no response.

The funeral director has now been indicted in Federal Court on 2 counts of wire fraud totaling a little over \$6000. We have talked with the Probation Office who states that it is possible that the Federal Prosecutor will require the funeral director to sign the Agreement. Please note, the funeral director does not have a current license and cannot be licensed anywhere else.

We would like to point out that we only find out by chance of embezzlement by funeral directors. Unless the embezzlement becomes known to the public through the media, we are never informed of the matter. Until such time as the Attorney General completes his investigation and enters into a Consent Agreement or institutes litigations, those matters are considered confidential.

The Legislature should note that current Board members were just appointed July 1, 2017, and had limited input in the Harding decision. Further, from the start of their terms they were contacted inappropriately by members of the lobby group and one brazenly advised a new member that "they wanted him [Harding] to lose his license". Another Board member was threatened with expulsion from the Masonic Lodge because of his vote.

The Board is currently comprised of three funeral directors and one consumer/citizen member with three more members to be appointed. The Board agrees that additional citizen members, as defined in your letter, would be beneficial and, in fact, suggests 3 citizen members. The Board would also urge that no more than 2 funeral director members of the Board be a member of the Funeral Directors Association in order to ensure that those funeral directors who come before the Board and who are not members of that group are given a fair and impartial review and that favoritism is not shown to those who are Association members. Under the past Board makeup that was not possible.

The Board is still perplexed about the Legislative Auditor's interpretation of WV Code §30-1-8(e) which is in direct conflict with the advice and direction of our Board Attorney. As the past Board acted in accordance with its Attorney's advice and guidance, the Board feels that it has been unfairly criticized regarding how this case was handled.

Sincerely,


Regina J. Anderson
Executive Director



State of West Virginia
Office of the Attorney General

Patrick Morrissey
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September 15, 2017

LEGISLATIVE MANAGER

Mr. John Sylvia
West Virginia Legislature
Performance Evaluation and Research Division
Building 1, Room, W-314
Charleston, WV 25305

SEP 15 2017

RECEIVED

Dear Mr. Sylvia:

We provide this letter in response to your letters of August 30 and September 11, 2017, in which you requested the Office of the Attorney General provide certain information relating to the interplay of violations of the Consumer Credit Protection Act and/or the Preneed Funeral Contracts Act and the licensing of funeral directors by the Board of Funeral Service Examiners (the "Board"). As always, the Office appreciates and welcomes the opportunity to provide information to the Legislative Auditor so that the most accurate reports can be generated at the conclusion of his inquiries.

Based upon your letters it appears that the genesis of this inquiry is the situation involving Mr. Harding, and his license with the Board, that has unfolded recently. At the outset we want to ensure that a potential misunderstanding regarding the background of this inquiry is clarified. Specifically, Mr. Harding was never "found to be in violation" of the Consumer Credit Protection Act or the Preneed Funeral Contracts Act. Rather those suspected violations were resolved through a settlement with Mr. Harding.

While the Office does not have a formal policy requiring the notification of the Board when an individual or business is found in violation of the Consumer Credit Protection Act or the Preneed Funeral Contracts Act, it brings matters to the attention of the Board as appropriate and dictated by the facts. Indeed, there are several interrelated considerations when looking at if such a mandatory notification by the Office should, or even could, occur.

First, a review of the relevant statutes and regulations dictates that no entity, even the person or business found in violation of the relevant Acts, must notify the Board.

Mr. John Sylvia
September 15, 2017
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Second, the Office of the Attorney General's preneed division is the regulating entity that provides certifications that allow individuals to engage in the sale of preneed funeral contracts. Importantly, those certifications are a separate and distinct certification from the licenses issued by the Board. As a result, if the Office investigates, prosecutes, or otherwise resolves complaints against a certificate holder under the Preneed Funeral Contracts Act, and especially if a judicial finding of a violation is made, the potential impact of that resolution or finding is known by the government entity specifically charged with regulating the sale of preneed funeral contracts.

Third, the Consumer Credit Protection Act may be enforced by not only our Office but by private suit. As a result, it is possible that an individual licensed by the Board could be found in violation of the Consumer Credit Protection Act in a legal proceeding where the Office is not a party and has no knowledge of the suit.

Taking these considerations together, the Office is not always in the best position to provide such notification to the Board if an individual is found in violation of the Consumer Credit Protection Act or the Preneed Funeral Contracts Act.

In response to your questions posed in the September 11, 2017, letter:

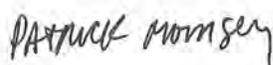
1. The Board indicated that it requested from Doug Davis, the Consumer Protection Division Director, to inform the Board when it had determined a violation of the Preneed Funeral Contracts Act by a licensee. According to the Board, Mr. Davis indicated that the Consumer Protection Division would not inform the Board of preneed funeral contract violations. Is this an accurate statement?

No, this is not an accurate statement. No such statement has ever been made. Although Mr. Davis has never been the Director of the Consumer Protection Division, in April 2013, he did indicate to the Executive Director and to Connie Sloan that our office would provide a copy of any civil suit filed over allegations related to Preneed Funeral Contracts Act. Further, attorneys and staff within the Office have regular contact with members and staff of the Board as well as their counsel to discuss preneed issues, including, discussions leading up to the Board's hearing against Mr. Harding.

2. The Board indicated that the Attorney General's Office is reluctant to share information with the Board due to fear that the Board's discipline of a licensee could result in the Preneed Act violator being unable to pay Attorney General fees and/or remuneration to other interested parties. Is this an accurate statement?

No, this statement is not accurate. This has never been the position of this office.

Sincerely,



Patrick Morrissey