# Cemetery Oversight Task Force

# Report and Recommendations to Governor Pat Quinn

# September 15, 2009

GOVERNOR PAT QUINN
STATE OF ILLINOIS

Cemetery Oversight
Task Force

***Members***

**Patricia Brown Holmes**
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**Dr. Damon Arnold**
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**Michael Kotzin**

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**Andrea Zopp**

September 15, 2009

Dear Governor Quinn:

It has been a little more than two months since the people of this State first heard allegations that workers at the Burr Oak Cemetery desecrated and vandalized hundreds of graves in a scheme to resell burial plots to unsuspecting members of the public. On July 16, 2009, you responded to this situation by issuing Executive Order 16 and establishing the Cemetery Oversight Task Force. The Executive Order recognizes that the tragic events at Burr Oak Cemetery have highlighted a deficiency in our current mechanisms for regulating and overseeing the operation and management of cemeteries and, in particular, the care and handling of human remains. In order to establish an effective system to protect the people of this State and their loved ones, you ordered the Task Force to examine the circumstances surrounding the events at Burr Oak Cemetery; conduct a comprehensive review of pertinent Illinois laws and the laws of other states; and recommend what policies, laws, rules, and regulations should be implemented to ensure the respectful and humane treatment of the deceased. This Report is respectfully submitted in discharge of our duties.

Over the course of the past two months, the Task Force studied the laws of Illinois and a number of other states, listened to the testimony of many of the State's most knowledgeable and influential leaders in the cemetery, funeral, and embalming industries, and heard from many members of the public affected by the tragedy at Burr Oak Cemetery. Despite the diversity of the viewpoints and testimony presented to the Task Force, and the variety of legislative approaches to the regulation of the death care industry, this Report is submitted with the unanimous endorsement of the Task Force members.

While the purpose of the Task Force has been to recommend legislation to better protect and serve the people of Illinois, the mission has also been a very personal one. Some of the members of the Task Force, including its Chairperson, have family members who are interred at Burr Oak Cemetery, and all of its members know people with family at Burr Oak Cemetery. It has indeed been our special honor and privilege to serve this State. The members are confident that the work of this Task Force will contribute to the enactment of legislation that will significantly strengthen the regulations governing the operation and management of cemeteries, and help ensure that a tragedy of the magnitude that occurred at the Burr Oak Cemetery never happens again in the State of Illinois.

Respectfully submitted,

Patricia Brown Holmes, Chair
Cemetery Oversight Task Force
State of Illinois

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Dr. Byron Brazier, Pastor, Apostolic Church of God

Mr. H. August Cage, President and Director of Cage Memorial Chapel in Chicago

Mr. Willie F. Carter, Owner of Restvale Cemetery, Alsip, Illinois

Mr. Lester N. Coney, Executive Vice President, Office of the Chairman, Mesirow Financial

Mr. Michael Kotzin, Executive Vice President, Jewish United Fund/Jewish Federation of Metropolitan Chicago

Mr. William McNary, Co-Executive Director of Citizen Action/Illinois

Mr. Dalitso Sulamoyo, President and CEO, Illinois Community Action Association

Ms. Andrea L. Zopp, Executive Vice President and General Counsel, Exelon Corporation

**Legislative Ombudspersons**

Senator Emil Jones III, 14th Senate District

Senator Randy Hultgren, 48th Senate District

Representative Dan Brady, 88th House District

Representative Monique Davis, 27th House District

Representative Ken Dunkin, 5th House District

**Cemetery Oversight Task Force**

**Schedule of Meetings**

July 23, 2009
1st Open Meeting
Chicago, Thompson Center, Room 16-503
2:00 – 4:00 p.m.

August 6, 2009
2nd Open Meeting
Chicago, Julian High School, 10330 S. Elizabeth Street
5:30 – 7:30 p.m.

August 13, 2009
3rd Open Meeting
Michael J. Bilandic Building, 160 N. LaSalle Street, Room C-500
2:00 – 4:00 p.m.

August 18, 2009
4th Open Meeting
Springfield, DCEO Auditorium, 1st Floor, 620 E. Adams Street
2:00 – 4:00 p.m.

August 27, 2009
5th Open Meeting
Chicago, Thompson Center, Room 16-503
2:00 – 4:00 p.m.

September 10, 2009
6th Open Meeting
Chicago, Thompson Center, Room 16-503
2:00 – 4:00 p.m.

September 15, 2009
Presentation of Task Force Report
Chicago, Thompson Center, Room 16-503
10:30 – 12:00 p.m.

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## EXECUTIVE SUMMARY

On July 16, 2009, in the wake of appalling reports that graves had been desecrated and bodies unearthed at Burr Oak Cemetery, Governor Pat Quinn signed an Executive Order forming the Cemetery Oversight Task Force. The Executive Order called for the Task Force to conduct a comprehensive review of "the circumstances surrounding the recent tragic events at Burr Oak Cemetery" and to "provide detailed recommendations on what policies, laws, rules and regulations should be implemented" to prevent a reoccurrence of those events. The Task Force was asked to examine the management of cemeteries; to recommend ways in which the regulations governing cemeteries, funeral directors, and embalmers could be strengthened; and to propose new consumer protection laws.

The testimony and evidence presented to the Task Force during the past two months reflect a systemic failure of oversight and regulation of the cemetery industry in this State. The Task Force has concluded that although there are a number of laws in Illinois that address various aspects of the death care industry, a regulatory disjunction exists with respect to the operation and management of cemeteries. The Task Force has concluded that there is a direct connection between the hodgepodge of regulations governing the death industry and the deteriorated condition of Burr Oak Cemetery and other cemeteries. The Task Force also believes it is likely that the lack of regulatory oversight was a contributing factor to the criminal scheme that allegedly unfolded at Burr Oak Cemetery. It is the primary finding of this Task Force that without legislative reform and increased oversight of cemetery operations, the events that occurred at Burr Oak and other cemeteries in this State will continue to occur, and the same types of tragic stories the public has already heard too many times will continue to be told.

Based upon the foregoing, and as more fully set forth in the Report, the findings and recommendations of the Task Force fall into the following three categories:

### RECOMMENDATION NO. 1: CONSOLIDATION OF REGULATORY AUTHORITY OF FUNERAL AND BURIAL PRACTICES INTO THE DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

Illinois' regulation of the death care industry is currently divided between two state agencies. The Department of Financial and Professional Regulation (the "Department") has jurisdiction over funeral directors and embalmers, while the Comptroller has jurisdiction over most other aspects of the for-profit death care industry, including laws relating to pre-need cemetery and funeral purchases, cemetery care funds, the protection of cemetery property, cemetery associations, and crematories. This segmentation of duties and responsibilities is confusing to the consumer of cemetery and funeral products and services and thwarts the uniform and effective application of laws and regulations.

The Task Force recommends that funeral and burial practices be regulated by and placed under the jurisdiction of the Department. This Recommendation is in keeping with the second Recommendation discussed below finding that the practice of cemetery operation in the State is a profession affecting the health, safety, and welfare of the citizens of the State, and should be accordingly subject to regulation and control by the Department. The Department has been entrusted with the regulation of professions and occupations and has the highest level of

expertise with respect to the licensure and regulation of occupations. The Task Force believes it is critical that a uniform system of oversight and regulation be established under the jurisdiction of the Department.

### RECOMMENDATION NO. 2: ENACTMENT OF CEMETERY OVERSIGHT ACT

The Task Force finds that the practice of cemetery management and operation in the State of Illinois affects the public health, safety, and well-being of its citizens, and should be subject to regulation and control in the public interest. It is the recommendation of the Task Force that legislation be adopted requiring that cemetery management operations be treated as a profession and that only qualified persons should be authorized to own, operate, or work in a cemetery in the State of Illinois. Accordingly, it is the recommendation of the Task Force that the General Assembly consider the adoption of new legislation – a Cemetery Oversight Act – providing for the licensure of cemetery managers and the registration of cemetery employees.

### RECOMMENDATION NO. 3: AMENDMENT AND CONSOLIDATION OF EXISTING STATUTES

The Task Force recommends that the General Assembly amend and consolidate various statutes for the purpose of: (1) bringing them under the jurisdiction of the Department and creating a uniform system of oversight and regulation; (2) strengthening the licensing and regulatory requirements in those statutes; and (3) creating new consumer protections.

# I. ESTABLISHMENT AND CONDUCT OF COMMISSION

## A. Initial Reports of Possible Criminal Activities at Burr Oak Cemetery

In early July 2009, reports first appeared in the media of horrific events taking place in the historic Burr Oak Cemetery in the suburb of Alsip, Illinois ("Burr Oak Cemetery" or the "Cemetery"). According to reports that appeared in the print and broadcast media, it was alleged that workers at the Burr Oak Cemetery had, over a period of several years, unearthed hundreds of corpses and then dumped them in a weeded area in the Cemetery or double-stacked them in existing graves. The empty burial plots were then allegedly resold to members of the public who had no knowledge that the graves were being reused.

The response to these shocking allegations was immediate and occurred on several fronts. The State's Attorney and Sheriff's Office launched a criminal investigation, which has resulted in the indictment of four individuals charged with, among other offenses, the desecration of graves for the purpose of re-selling those graves. United States Congressman Bobby Rush convened a hearing to consider whether there should be federal oversight of the death care industry. And, as detailed below, Governor Pat Quinn issued an Executive Order establishing the Cemetery Oversight Task Force ("Task Force").

## B. Executive Order Establishing Cemetery Oversight Task Force

On July 16, 2009, in order to ensure that activities of the type which allegedly took place at Burr Oak Cemetery do not happen again in our State, Governor Pat Quinn issued Executive Order 16, which established the Task Force as an independent body.

The Executive Order noted that the recent tragic events at Burr Oak Cemetery have highlighted a deficiency in our State's current mechanisms for regulating and overseeing the operation and management of cemeteries, and stated that the people of our State demand proper care and handling for the disposition of human remains. The Governor determined that the establishment of the Task Force would contribute towards establishing an effective system to protect the people of our State and ordered the Task Force, by September 15, 2009, to conduct a comprehensive review of the following:

1) Illinois' present structural arrangement for regulating cemeteries, funeral directors, and embalmers compared to the manner in which other States arrange their regulatory framework;

2) The substance of Illinois' laws and regulations governing cemeteries, funeral directors, and embalmers compared to other States, with a view to recommending for implementation in Illinois the best practices;

3) The circumstances surrounding the recent tragic events at Burr Oak Cemetery; and

4) The extent to which similar tragedies have occurred or could occur elsewhere.

The Executive Order required the Task Force to submit a report ("Report") of its findings to the Governor and to the Secretary of the Department of Financial and Professional Regulation, and to set forth detailed recommendations on what policies, laws, rules, and regulations should be implemented to ensure that the manner in which care for the deceased is provided is humane and respectful. Governor Quinn required that the Report include recommendations as to (a) how and by what governmental entity the finances of cemeteries and the conduct of cemetery personnel should be regulated; and (b) whether regulations governing funeral directors, embalmers, and crematoria can or should be strengthened. A copy of the Executive Order is included in the Appendix to this Report, Vol. I, Ex. 1.[1]

Governor Quinn appointed the Honorable Patricia Brown Holmes (ret.), currently a partner at Schiff Hardin LLP and formerly an Associate Judge at the Circuit Court of Cook County, as Chairperson of the Task Force. Governor Quinn also appointed the following members to the Task Force:

- Brent E. Adams, Acting Secretary of the Illinois Department of Financial and Professional Regulation;
- Damon T. Arnold, M.D., M.P.H., Director of the Illinois Department of Public Health;
- Dr. Byron Brazier, Pastor of the Apostolic Church of God;
- H. August Cage, the President and Director of Cage Memorial Chapel in Chicago;
- Willie E. Carter, the owner of Restvale Cemetery in Alsip;
- Lester N. Coney, Executive Vice President, Office of the Chairman, of Mesirow Financial;
- Michael Kotzin, Executive Vice President with the Jewish United Fund/Jewish Federation of Metropolitan Chicago;
- William McNary, Co-Executive Director of Citizen Action/Illinois;
- Dalitso Sulamoyo, President and CEO, Illinois Community Action Association; and
- Andrea L. Zopp, Executive Vice President and General Counsel, Exelon Corporation.

Further information about each of these individuals is included in the Appendix to this Report, Vol. I, Ex. 2.

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[1] The Appendix to this Report consists of fourteen volumes. Citations to the Appendix are contained throughout this Report in the following form: App., Vol. _____, Ex. _____, p. _____.

Pursuant to the Executive Order, the following State Senators and Representatives were appointed by the Senate and House leadership to serve as legislative ombudspersons to the Task Force on matters of policy and legislation: Senator Emil Jones III (14th Senate District), Senator Randy Hultgren (48th Senate District), Representative Dan Brady (88th House District), Representative Monique Davis (27th House District) and Representative Ken Dunkin (5th House District). Each legislative ombudsperson served the Task Force in an *ex-officio*, non-voting capacity.

In accordance with the Executive Order, the Task Force has examined the management of and laws pertaining to the death care industry, with a focus on for-profit cemeteries. This Report details the findings of the Task Force and sets forth recommendations for legislation that the Task Force believes is necessary to help prevent atrocities such as those that allegedly occurred at the Burr Oak Cemetery from happening again in this State.

## C. Task Force Proceedings

### 1. Analysis of Applicable Laws and Policies

The staff of the Task Force analyzed the applicable laws of Illinois, as well as the laws of selected States pertaining to the death care industry. In all, the staff found that at least thirty-seven Illinois statutes (or portions of statutes) contain provisions germane to the death care industry. All of these statutes and associated regulations may be found in Volume IV of the Appendix. A detailed summary of the Illinois statutes determined to be most essential to the mission of the Task Force is contained in Section IV below, and consists of the following:

(a) Funeral Directors and Embalmers Licensing Code, 225 ILCS 41/1-1;

(b) Illinois Funeral or Burial Funds Act, 225 ILCS 45/1;

(c) Illinois Pre-Need Cemetery Sales Act, 815 ILCS 390/1;

(d) Cemetery Care Act, 760 ILCS 100/1;

(e) Cemetery Protection Act, 765 ILCS 835/0.001;

(f) Cemetery Association Act, 805 ILCS 320/0.01; and

(g) Crematory Regulation Act, 410 ILCS 18/1

The staff also reviewed the pertinent laws and regulations of the following States: California, Florida, Georgia, Hawaii, New York, Texas, Louisiana and Ohio. The first six States were the subject of a report on the death care industry issued by the United States General Accounting Office ("GAO") in August 2003, in response to a Congressional request for information. Four of these six States (California, Florida, Georgia, and Hawaii) were selected as "case studies" by the GAO because of media reports of desecration of graves and human remains and other types of mismanagement at cemeteries and crematories in those States. New York and Texas were selected by the GAO because of the comparatively large populations in those States. (*See* GAO Report, App., Vol. I, Ex. 14.) With an eye towards establishing the "best practices" in

the death care industry, the Task Force determined that it would be useful to re-examine the laws of these states six years after the issuance of the GAO report. The staff also reviewed the laws of two additional states, Louisiana and Ohio, both of which were referred to during the course of the proceedings of the Task Force. The laws and regulations of these eight states may be found in Volumes V through XII of the Appendix, and a summary of the pertinent laws is set forth in Section V of this Report.

### 2. Public Comments

Immediately after the Task Force was established, it implemented a website (http://cemeterytaskforce.il.gov) to provide the public with Task Force related information and to enable members of the public to post comments for consideration by the Task Force.

### 3. Public Meetings

Between July 23 and September 10, 2009, the Task Force held six public meetings, all of which were subject to the Open Meetings Act, 5 ILCS 120/1. A seventh meeting was scheduled for September 15, 2009, for the purpose of issuing this Report. The meetings consisted principally of testimony from fact and expert witnesses, and discussion among Task Force members concerning prospective reforms to the State's laws and regulations governing the cemetery, funeral director, and embalming industries. The Task Force heard testimony from, among other persons, Attorney General Lisa Madigan, Comptroller Dan Hynes, Cook County Sheriff Tom Dart, the Reverend Jesse Jackson, legal counsel to the Illinois Cemetery and Funeral Home Association, funeral home directors, cemeterians, State legislators, and members of the public affected by the tragedy at the Burr Oak Cemetery. Although the Task Force did not have the authority to subpoena witnesses, a total of thirty-eight witnesses voluntarily appeared before the Task Force to provide testimony in these public meetings. The Task Force did not have the authority to administer oaths, and, as such, the testimony was not sworn. The meetings were audio recorded, video-taped, and transcribed by court reporters. A list of the witnesses and the dates of their testimony is provided in Volume I, Exhibit 3 of the Appendix. The transcripts, agendas, video-tapes, and audio recordings of the meetings are posted on the website of the Task Force. The transcript and agendas are also provided in Volumes II and III of the Appendix to this Report.

### 4. Investigative Work.

Pursuant to the Executive Order, the Acting Secretary of the Department ordered all funeral directors and embalmers licensed by the Department to conduct an audit of all of their books and records and to submit to the Department copies of those books and records relating to business transactions with Burr Oak Cemetery over the past five years for the purpose of investigating potential malfeasance. This confidential investigation is separate from and not included in the Task Force proceedings, and is accordingly not discussed in this Report.

## II. CIRCUMSTANCES SURROUNDING THE EVENTS AT THE BURR OAK CEMETERY

### A. Overview of Illinois Cemeteries

According to the Illinois Cemetery and Funeral Home Association ("ICFHA"), there are approximately 14,000 cemeteries in the State of Illinois.[2] Approximately 6,600 have some type of management, and only 800 are privately operated. App., Vol. I, Ex. 6, p. 3. Most of the cemeteries in Illinois consist of small family burial grounds on farms or small rural cemeteries that have no active management. App., Vol. II, Ex. 2, p. 21.

The Burr Oak Cemetery is currently owned by Perpetua Holdings, and is one of the cemeteries in Illinois that is under active, private management. The Burr Oak Cemetery began operating in 1927, and is the final resting place of tens of thousands of individuals, including civil rights icon Emmett Till, blues legend Dinah Washington, and heavyweight boxing champion Ezzard Charles. It is the final resting place of thousands of soldiers, mothers, fathers, sisters, brothers, husbands, wives, role models, and mentors and heroes of all kinds. App., Vol. II, Ex. 2, p. 46; Ex. 4, pp. 63-64.

Mr. Tony Burroughs, who is associated with the recently formed Chicago Burr Oak Cemetery Historical Preservation Society, testified that the Burr Oak Cemetery was founded under the historic circumstances of racism and that the first burial was performed under armed guard. He noted that the cemetery holds the remains of many historic figures in American history, and that "the story of this uniquely black cemetery reflects the heritage, the struggles, the faith, and the achievements of African Americans, not only in Chicago but beyond Chicago and around the world." App., Vol. II, Ex. 4, pp. 63-64.

### B. The Conditions at the Burr Oak Cemetery

The Executive Order directed the Task Force to conduct a comprehensive review of the circumstances surrounding the recent tragic events at the Burr Oak Cemetery, and it has made every effort to carry out this duty. It should be noted, however, that the fact finding capabilities of the Task Force were constrained because of the pending investigation concerning the alleged criminal activities at the Burr Oak Cemetery and the critical importance of not interfering with the ongoing criminal proceeding. Thus, the Task Force was unable to interview various individuals who may have the most direct knowledge of the events that occurred at Burr Oak. Likewise, public officials involved in the investigation were limited as to the amount of information they could disclose to the public at this time. Notwithstanding these limitations, the Task Force was very fortunate to receive the testimony of Sheriff Tom Dart, who has been involved in this matter from the first reports of alleged criminal activity at the Cemetery. To the

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[2] As set forth in its July 2009 report submitted to the Task Force, ICFHA is an Illinois nonprofit trade association whose members consist primarily of companies that engage in the cemetery, funeral home, and crematory industry businesses. ICFHA was established in 1928 and currently has over 300 members in the industry that range from very small family run businesses, municipal cemeteries, religious cemeteries, and other non-profit cemeteries to multi-unit regional companies and subsidiaries of national companies. IDFHA presents educational programs and information for its members, non-members, and consumers. App., Vol. I, Ex. 6, p. 1.

extent permitted by the pending criminal investigation, Sheriff Dart described what he and his colleagues in the Sheriff's Office discovered at Burr Oak Cemetery.

**Sheriff Tom Dart**

The Burr Oak Cemetery investigation began during the first few days of July 2009 after Perpetua Holdings contacted the Alsip Police Department to report possible financial crimes at the Cemetery. The Village of Alsip asked the Sheriff's Department to handle the case, and it was accepted by the financial crimes unit of the Sheriff's Office. Although the Sheriff's Office originally thought it was investigating a financial crime, it quickly learned that this was not the case. App., Vol. II, Ex. 4, pp. 11, 24, 26.

Sheriff Dart informed the Task Force that the alleged criminal scheme to unearth bodies and re-sell burial plots appears to have been in place for at least four or five years. The evidence indicates that those responsible for the alleged criminal conduct have netted anywhere from $100,000 to $500,000. Sheriff Dart testified that the number of graves that were illegally disturbed may never be known, and that the public may never have complete closure on that issue. He testified that since the beginning of the investigation, the Sheriff's Office and other agencies, including the Cook County State's Attorney's Office, the F.B.I., and numerous county departments (such as the highway department, facilities department, and forestry department) have been at the Cemetery virtually 24 hours each day collecting evidence and securing the crime scene. The Sheriff's Office has collected approximately 1,200 pieces of evidence, most of which are human remains. The evidence gathering process is nearing completion and the Sheriff's Office is confident that the evidence it has recovered will help lead to the convictions of the defendants in the criminal case. App., Vol. II, Ex. 4, pp. 10, 12.

Currently, four suspects have been arrested for their involvement in the alleged criminal conduct at Burr Oak Cemetery. They have been charged with illegally unearthing existing graves and reselling the plots to unsuspecting individuals who came to Burr Oak to bury their family members. The specific charges filed against these four individuals include theft, removal of gravestones or markers, desecration of human remains, removal of remains of multiple deceased human beings from the burial ground, and conspiracy to dismember multiple human bodies. App., Vol. II, Ex. 4, p. 11.

Sheriff Dart testified that his Office attempted to maintain the operations of the Cemetery, but that it was next to impossible to do so because of the terrible physical condition of the Cemetery and the inadequate record keeping at the Cemetery. It was also necessary to close the Cemetery because it was the location of an expanding crime scene. App., Vol. II, Ex. 4, pp. 12-13.

The Sheriff's Office has launched an effort to improve the conditions at the Cemetery and to make the Cemetery more presentable so that it can be reopened. The Office has cleaned virtually every headstone at the Cemetery, including some headstones that had been buried for years, if not decades. App., Vol. II, Ex. 4, pp. 12-13.

The Sheriff's Office also photographed every headstone in the Cemetery, which Sheriff Dart noted was an incredibly time-consuming process. Sheriff Dart testified that shortly there

would be a complete list of approximately 42,000 headstones available on the Sheriff's website, so that individuals can attempt to look up their loved ones. As of the date Sheriff Dart testified (August 6, 2009), there were approximately 10,000 headstones on the website. App., Vol. II, Ex. 4, p. 13.

Sheriff Dart further testified that his office has begun to put together a database, which it hopes to have completed soon, of all of the records that are at the Cemetery. The database will be used for criminal investigation purposes, and will also be shared with the receiver so that the receiver can more expeditiously reopen the Cemetery. Sheriff Dart noted, however, that he could not attest to the quality or veracity of these records. He expressed the hope that the Cemetery could be re-opened by mid-September. App., Vol. II, Ex. 4, pp. 13-14, 51.

Sheriff Dart testified that the condition of the Cemetery, beyond the criminal aspect of the events that occurred there, was horrific. He provided a DVD to the Task Force, which shows the condition of the Cemetery when the Sheriff's Office launched its investigation. Sheriff Dart testified that the poor condition of the Cemetery predated the alleged criminal activities:

> This is how the condition was, and the condition were gravestones covered by grass for decades; other ones that had been tipped over; other ones that are missing; tremendous holes in the ground, in some cases looking inside of vaults where you could look down and see the remains of individuals that had been there for quite some time.
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> * * *
>
> [T]he condition of the cemetery that we saw was atrocious, and beyond the criminal side of it, how anybody could suggest that that had been monitored or watched is a fabrication. They couldn't have. I mean, these – anybody who would get out of your car and walk, you would be in danger of falling in holes, and unfortunately, a lot of these holes lead down into vaults, and in some of the vaults, there weren't necessarily caskets, so you might be able to see human remains.
>
> So there are – there's no hesitation in saying that the oversight did not exist. Whether or not there's something on the books that allows for it, that I'm not clear of. All I know is that there was no question that there was no oversight of what was going on as far as the conditions out there.

App., Vol. II, Ex. 4, pp. 15-16, 22-23.

**Members of the Public**

Several members of the public also testified with respect to the circumstances at Burr Oak Cemetery. A number of people testified that the headstones of their loved ones were moved without the consent of the family. Thus, for example, Ms. Alice Henry testified that her son was

buried at Burr Oak in 1976, and that in 1982 his headstone was moved to another gravesite without the family's permission. To this day, she is not sure where her son is buried and has been taking care of two graves for 27 years. Mr. Kublai Toure testified that when he went to visit his parents at the Cemetery, he could not find his father and still does not know if he is there. Although he located his mother's burial spot, he is not sure if she is still buried there. Mr. Robert Stanbeary testified that he saw his father's tombstone in a pile of tombstones. Ms. Danetta Newman testified that her father's headstone was moved and she does not know if he is at the location where he was originally buried or is in a different section of the Cemetery. Similarly, Ms. Anna Calvin testified that her father's headstone was moved without the permission of the family. Ms. Deloris Burnam reported that her brother discovered a skull at the Cemetery, and testified that her sister's headstone is not located in the place where she was buried. App., Vol. II, Ex. 4, pp. 97-99, 100-101, 103-105, 108-112, App., Vol. II, Ex. 6, pp. 15-16.

Edward Boone testified that he is a representative of the newly created watchdog group *The Friends of Burr Oak Cemetery*, and that his involvement with the Cemetery began in 1994 when his father passed away. On the day of his father's funeral, he noticed that conditions around the Cemetery were not good and requested that his father be buried in another plot. Mr. Boone's mother died in 2008. During the service, he and his family noted that her vault and casket were very close to the surface. He contacted the State Comptroller's Office and was informed that there was nothing they could do. The Village of Alsip initially responded that they could not do anything, but subsequently fined the Cemetery for not burying his mother at the correct depth. On July 11, 2009, his mother was exhumed and properly reburied. During the exhumation process, Mr. Boone and his family noticed flooding at the top and around the sides of the concrete box. Since Mr. Boone's father was buried in 1994, he has visited the Cemetery an average of four or five times a year and found deplorable conditions, including massive flooding and large potholes. App., Vol. III, Ex. 4, pp. 94-97, 101-103.

Ms. D'Anne Elizabeth Burley testified that when her mother died in 1984, she did not bury her at the Burr Oak Cemetery because of the poor condition of the Cemetery at that time. She expressed the opinion that the black community has been ignored not only with respect to the horrific conditions at the Burr Oak Cemetery, but also with respect to law enforcement issues in general. App., Vol. III, Ex. 4, pp. 104, 106.

**Perpetua Holdings**

During the public meetings, many questions were raised by members of the Task Force and the public with respect to the role of Perpetua Holdings, the owner of the Burr Oak Cemetery. Inquiries were made as to whether Perpetua Holdings is being investigated in connection with the criminal proceeding, and whether the Task Force could compel the testimony of Perpetua Holdings representatives. Sheriff Dart stated that he could not speak to specifics of the criminal investigation, but testified that whenever the Sheriff's Office obtains evidence with respect to criminal activities it follows that evidence wherever (and to whomever) it may lead. App., Vol. II, Ex. 4, pp. 58-59. Chairperson Holmes noted that the Task Force does not have the authority to subpoena witnesses, but she and the other Task Force members agreed to send a letter to Perpetua Holdings asking a representative of the company to testify. She noted that because individuals at Perpetua Holdings may be potential suspects in a criminal

investigation, they may exercise their right not to say anything in public. There was, in fact, no testimony from any of Perpetua Holdings' representatives during the Task Force proceedings. Perpetua's representative indicated that due to the impending legal proceedings they would be unable to participate. App., Vol. II, Ex. 6, pp. 24-25; August 19, 2009 letter from Chairperson Holmes to Perpetua Holdings, App., Vol. I, Ex. 5

**Roman Szabelski**

Mr. Roman Szabelski is the receiver for Burr Oak Cemetery and updated the Task Force as to the current status of the Cemetery. He testified that on Monday, August 24, 2009, the Court ordered $50,000 to be released to the receiver from the income care fund (also referred to as the Perpetua Holdings care fund) for the reopening of Burr Oak Cemetery. He has asked for the release of an additional $450,000 to address flooding, road repairs, sewer repairs, and fence installations. The income care fund is currently $1.4 million. Mr. Szabelski hopes that $500,000 will be sufficient to do what needs to be done, and leave the Cemetery with a care fund for the future. He noted that he is not closing the door to requesting more funds, because every day he finds a little bit more that needs to be accomplished at the Cemetery. App., Vol. III, Ex. 4, pp. 108-110, 112-113.

**Tony Burroughs**

Looking to the future, the Task Force heard from Tony Burroughs that the Chicago Burr Oak Cemetery Historical Society was formed by family members of those buried in the Cemetery, community members, cultural leaders, and government and civil organizations. The purpose of the Historical Society is to preserve the Cemetery as well as honor and interpret the traditions, history, and contributions of the African Americans who are laid to rest at Burr Oak. The Historical Society has been meeting with representatives from the Cook County Sheriff's Department and the Burr Oak receiver on a regular basis, and is developing plans to preserve and memorialize Burr Oak Cemetery and the African Americans who are buried there. App., Vol. II, Ex. 4, pp. 64-65.

### C. Testimony and Discussion of the Relationship between Illinois' Regulatory Mechanisms and the Events at Burr Oak Cemetery

There was significant testimony and comment regarding the adequacy of the State's current mechanisms for regulating and overseeing the operation and management of cemeteries. Some suggested that the Illinois statutes and regulations currently in place are or should have been sufficient to address the type of situation that occurred at Burr Oak Cemetery, and that the key issue is enforcement of those statutes. Others suggested that new legislation and regulations are necessary to protect the public from a reoccurrence of the activities which allegedly took place at the Burr Oak Cemetery. A summary of the key testimony and commentary on this issue is provided below.

Representative Dan Brady, who served as one of the legislative ombudspersons to the Task Force, discussed with the Task Force the fact that he is a licensed funeral director and embalmer, as well as the former McLean County coroner. He is also a member of the Funeral and Burial Pre-Arrangement Investigative Task Force. Representative Brady noted that he

previously introduced legislation which was not adopted (House Bill 815), which proposed that individual sellers of pre-need and at-need services be licensed, and that 100% of the moneys deposited in trust for pre-need funeral and/or burial services be required to stay in trust and not allowed for other uses in the funeral or cemetery industry. He then moved forward with House Resolution 177, which created the Funeral and Burial Pre-Arrangement Investigative Task Force.[3] App., Vol. II, Ex. 2, pp. 9- 10.

Representative Brady brought with him California's regulations of the death care industry and suggested that the Task Force examine the California requirements pertaining to testing, continuing education, and licensure in the cemetery industry. Representative Brady stated that in his opinion, the regulation of the cemetery industry should be transferred from the Comptroller's office to the Department of Professional Regulation because of the Department's knowledge of licensure, testing, and continuing education, as well as its ability to enforce the law and assess penalties. App., Vol. II, Ex. 2, pp. 11, 13.

**Harvey Lapin**

Harvey Lapin, the General Counsel for the ICFHA, testified at length as to the regulatory framework in Illinois and stated that there are many existing laws which apply to the Burr Oak Cemetery situation. In this regard, Mr. Lapin noted that Section 1 of the Cemetery Protection Act provides that any person who willfully destroys or damages the remains of a deceased human being by desecration of human remains is guilty of a Class 3 felony; that any person who willfully removes any portion of the remains of a deceased human being from the cemetery is guilty of a Class 4 felony; and that any person who defaces or vandalizes or removes a grave marker or memorial is guilty of a Class 4 up to a Class 2 felony, depending on the number of memorials defaced or removed. App., Vol. II, Ex. 2, p. 18.

Mr. Lapin further testified that other laws in Illinois were violated. He observed that the Cemetery Care Act, which is under the Comptroller's jurisdiction, provides that anybody who is licensed as a care cemetery must deposit a certain percentage of any lots sold into the care fund. He testified that it was his understanding that no deposits were put into the care fund in connection with the resold graves, and that the Burr Oak Cemetery did not put any deposits in their care fund in the year 2007. Mr. Lapin also testified that the Pre-Need Cemetery Sales Act requires that a certain amount be deposited in the trust fund, and that the Burr Oak Cemetery is subject to and may not have complied with the requirements of that law. Mr. Lapin further noted that the general criminal laws of the State governing theft, theft by deception, and consumer fraud and deceptive practices may also be applicable to the Burr Oak situation. App., Vol. II, Ex. 2, pp. 19-20.

Task Force members Andrea Zopp and Dalitso Sulamoyo asked Mr. Lapin whether the ICFHA had any views or recommendations with respect to gaps in the current regulatory

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[3] During the proceedings, there was a great deal of discussion and testimony regarding the sale of pre-need services. Consistent with the Governor's amendatory veto of Senate Bill 1682, however, the Task Force recommends that any changes to the Illinois Pre-Need Cemetery Sales Act be considered after suggestions are made by the Funeral or Burial Pre-Arrangement Task Force. This Task Force will take appropriate heed to the future findings and recommendations of the Funeral or Burial Pre-Arrangement Task Force.

scheme. Mr. Lapin noted that the Cemetery Care Act presently requires that the licensee file an annual report with the Comptroller's office, indicating the amount that the licensee has deposited into its funds and the amount of money that it has expended at the cemetery. He also observed that the Comptroller's office is required under the law to go to the cemetery and audit the cemeteries, except for small funds under $250,000. If the Comptroller finds that there is a problem, it has the authority under the law to order a second tier audit, which is done by an outside accountant at the expense of the licensee. If there is an improper expenditure, the Comptroller can require the cemetery to pay it back to the fund. Mr. Lapin testified that he is aware of cemeteries, including Burr Oak, where the Comptroller has taken over the cemetery and had a receiver appointed. Mr. Lapin also noted that the alleged criminal acts committed at Burr Oak appear to be covered by the Cemetery Protection Act. App., Vol. II, Ex. 2, pp. 22-27.

With respect to Representative Brady's position favoring the licensing of individuals as well as entities, Mr. Lapin noted that under existing Illinois law the entity is wholly responsible for its people and will pay a penalty if its salespeople violate the law. Mr. Lapin further testified that the ICFHA opposed House Bill 815 because it did not feel that cemetery personnel should be required to go to mortuary school for two years and get a license in order to sell cemetery property. Mr. Lapin said that the ICFHA is not opposed to the principle of cemetery workers being licensed and giving oversight to the Department, but does not feel such licensure is necessary if the entity is covered by the law. App., Vol. II, Ex. 2, pp. 24- 26.

In response to a question about penalties from Representative Monique Davis, Mr. Lapin testified that he did not believe a Class 3 felony was sufficient punishment for the alleged crimes committed at Burr Oak Cemetery, and agreed with her that a Class X felony would be a more fitting penalty. App., Vol. II, Ex. 2, pp. 30-31.

Mr. Lapin addressed double or multiple burials in one burial site, and explained that cemeteries that provide that type of arrangement differ in their practices. Some of them insist that the family come out to the cemetery and see exactly what they are buying, and require the purchasers to acknowledge what they are buying. Others will let the funeral director handle this issue. He testified that most cemeteries require a form to be signed, and that the majority of states permit multiple burials in one site. Mr. Lapin testified that the ICFHA has a recommended form which discloses to the consumer exactly what they are purchasing. Based upon a suggestion from AARP, the form contains bigger type than that which normally appears on a contract. App., Vol. II, Ex. 2, pp. 27-28, 30-32.

Representative Davis questioned Mr. Lapin about the advisability of legislation she helped prepare requiring the location of each buried body to be recorded with the Recorder of Deeds, and requiring the cemetery to display each such plat location. Mr. Lapin testified that the Cemetery Care Act already requires cemeteries to have such a plat. The ICFHA's concern with the proposed legislation is that it would have required a cemetery to file with the Recorder's office every time it sold a space or buried somebody, and the fees for filing with the Recorder's office ($25 for the first five pages and an additional amount for each subsequent page) would have been exorbitant for large cemeteries. Although the ICFHA is not against the proposal, it wants to work out something that makes more sense and is not going to put everybody out of business. Mr. Lapin noted that until 1996, the burial permit contained the location and space numbers of the graves. Subsequently, the Department changed its regulations and this

information was dropped from the permit. Representative Davis noted that perhaps the requirement should be brought back. App., Vol. II, Ex. 2, pp. 33-34. *See also* form of burial permit from the 1990s containing specific location information, App., Vol. I, Ex. 8.

Representative Brady asked Mr. Lapin about the efficacy of licensure for the entity when the owners live out of state. Mr. Lapin testified that the entity that is licensed is the entity in the state, that the Comptroller's office has power under the law to require the out-of-state corporation to appear and participate, and that such entities have consented to be under the jurisdiction of the Comptroller's office. He also noted that the Comptroller's office can impose a series of fines and penalties on the out-of-state entity for infractions of the employees for whom they are responsible. He further stated that many businesses in the country are owned by out-of-state entities that have employees that deal with the public on a day-to-day basis, but that those employees do not have licenses. App., Vol. II, Ex. 2, pp. 35-37.

Mr. Lapin testified that even though modern cemeteries do have some consistency in operations, there is not a standard operational system that guides the running of every cemetery. Mr. Lapin explained that there are different kinds of cemeteries: large and small religious cemeteries, large and small municipal cemeteries, fraternal cemeteries, and private cemeteries. He testified that any form of standard legislation requiring information systems, plot management, and licensing would have to be studied very carefully because of the different economies of these cemeteries. He testified that if standards are imposed on some of the cemeteries that cannot be complied with economically, those cemeteries will be abandoned and become part of either the State's problem or the municipality's problem. Mr. Lapin stated that this has already happened in the State of Illinois. He suggested that different standards should apply to different types of cemeteries, and noted that other states have categorized cemeteries by different styles and types. App., Vol. II, Ex. 2, pp. 37-40.

Mr. Lapin further testified that the for-profit cemeteries would not necessarily be classified differently than the non-profit cemeteries. He stated that some of the non-profit cemeteries actively market and sell cemetery spaces and products, and that he did not think it would be fair to give them a competitive advantage over the private cemeteries by creating a different category. Mr. Lapin noted that the ICFHA had not yet had a chance to meet, but might be able to provide further recommendations to the Task Force. App., Vol. II, Ex. 2, pp. 40-41.

In response to a question regarding allegations that the bodies at Burr Oak Cemetery were dug up for cash payments, Mr. Lapin testified that although he does not know what happened at Burr Oak, it is not abnormal for the industry to request payment at the time of services, because it is very difficult to collect a bill after funeral or cemetery services have been provided. App., Vol. II, Ex. 2, pp. 44-45.

Task Force member McNary asked Mr. Lapin for his recommendations with respect to restoring Burr Oak Cemetery as a place of beauty and honor. Mr. Lapin testified that he believes that is already in process, and that a very well respected member of the industry who is used to operating a multi-unit cemetery under the Archdiocese in Chicago has been appointed as the receiver. Mr. Lapin testified that from what he has seen, the receiver is taking some good steps, getting the records organized, and will soon get the maintenance of the Burr Oak Cemetery under way. Mr. Lapin noted that the Cemetery has funds, is not out of business, and is not bankrupt,

and that it is a question of devoting the funds to the proper places. Mr. Lapin also stated that the ICFHA is willing to assist the receiver, including sending maintenance people and equipment to help clean up the cemetery. App., Vol. II, Ex. 2, pp. 46-47.

In response to a question from Task Force member Brent Adams, Mr. Lapin testified that the Cemetery Care Act contains a definition of maintenance and provides what maintenance should be performed by a cemetery. Under the Care Act, the maintenance is performed to the extent of the income received from the care fund. He noted that most cemeteries supplement their maintenance with income from other sources, such as the sale of graves. Mr. Lapin stated that the theory of a care fund came from New York, and the concept was that a percentage of each space sold would be put in an endowment fund. It was estimated that over the life of a cemetery the endowment fund would eventually get to a size where the income would be sufficient to take care of the cemetery when it had no more spaces to sell. Mr. Lapin noted that cemetery care funds, like everybody else's funds, are currently down and the income is less. To the extent that there is income, however, the cemetery has to provide care as provided in the Cemetery Care Act. If the cemetery does not spend the money as defined in the Care Act, then the Comptroller has the authority to do something about it. Mr. Lapin further testified that Illinois Comptrollers have taken disciplinary action with respect to the care of cemetery grounds. App., Vol. II, Ex. 2, pp. 47-48.

Task Force member Zopp requested that the ICFHA give the Task Force some guidance about how various types of cemeteries should be categorized, so that the Task Force could better measure the cost and potential impacts of a regulatory scheme on the members of the ICFHA and some of the people who operate cemeteries. Ms. Zopp noted that the Task Force is very sensitive to not layering on a regulatory scheme that is going to be so costly that it cannot be effective. App., Vol. II, Ex. 2, pp. 48-49.

Mr. Lapin testified that it is not common in Illinois for plots to be sold on a limited lease term of twenty or thirty years, although it is an option with some of the cemeteries in the Chicago area and in the State. He noted that in most other countries such an arrangement is common and that spaces are leased for a period of twenty years with a right of renewal. He stated that all of the European countries have that system in place. The ICFHA has a form that they recommend to their members for use in such circumstances. Mr. Lapin would have no problem with a uniform disclosure and consent form with respect to these types of lease arrangements for cemetery plots. App., Vol. II, Ex. 2, pp. 53- 55.

Mr. Lapin testified that the ICFHA has two meetings a year, and conducts continuing education as part of those meetings, which qualifies for the funeral director's license. The ICFHA also conducts a crematory operator's certified course almost every month. The crematory program is certified by the Comptroller's office, which supervises the Crematory Regulation Act. The ICFHA tries to have programs related to cemetery operations, but each cemetery has its own sale methods, its own products and services, and conducts its own training courses for their people. Mr. Lapin agreed to supply the Task Force with the ICFHA's forms and manual. App., Vol. II, Ex. 2, pp. 56-57. Mr. Lapin subsequently provided these materials to the Task Force, which may be found in Volume XIV of the Appendix. In addition, during Mr. Lapin's second appearance before the Task Force on September 10, 2009, he provided the Task

Force with the formal recommendations of ICHFA, which are contained in Volume I, Exhibit 7, of the Appendix.

**The Reverend Jesse Jackson, Charles Childs, Spencer Leak, Jr., and Senator Howard Brookins, Sr.**

The Reverend Jesse Jackson testified that there is a history of black burial grounds being desecrated and that the Burr Oak situation strikes home as being part of an historical pattern of desecrating the grave sites of blacks. App., Vol. II, Ex. 2, p. 60.

The Reverend Jackson, together with funeral directors Charles Childs (A.A. Rayner & Sons Modern Funeral Service), Spencer Leak, Jr. (Leak and Sons Funeral Home), and Senator Howard Brookins, Sr. (Brookins Funeral Home), testified that there is a need to create a level playing field between the funeral industry, which is heavily regulated, and the cemetery industry, which is not. App., Vol. II, Ex. 2, pp. 61-62, 67-71, 77-78, 85. As stated by Reverend Jackson: "Bottom line is the funeral directors are regulated, cemeteries are not regulated. That's a fundamental distinction." App., Vol. II, Ex. 2, p. 70.

In response to a question by Chairperson Holmes, Mr. Leak agreed that cemeteries ought to be regulated in the same manner and possibly by the same agency as funeral directors to bring about fair play. He also testified that there should be a licensed funeral director at casket stores selling caskets, and noted that casket stores are not currently regulated by the Department. App., Vol. II, Ex. 2, pp. 70, 72.

Senator Brookins noted that unlike trust funds held by funeral directors, which cannot be used for anything other than a funeral service, cemeteries can use their trust funds for other businesses, such as building and buying other cemeteries. He testified that there is not an even playing field as between the cemetery industry and the funeral industry. App., Vol. II, Ex. 2, p. 85.

Mr. Childs testified that there is not currently a universal information system which would inform funeral directors as to whether a plot has been taken in a cemetery, but that such a database would be helpful. App., Vol. II, Ex. 2, p. 88.

Task Force member Dr. Arnold noted that over the last year the Illinois Department of Public Health has been moving to a statewide electronic death registry system that should be in place within the next few months and stated that the Department is looking into having cemeteries comply with the death registry system. Mr. Childs noted that essentially all funeral homes are currently computerized because they are required to participate in the electronic death registration system. App., Vol. II, Ex. 2, pp. 81-82, 84.

Mr. Childs (who testified twice before the Task Force) engaged in an extensive discussion with Task Force members Carter, Holmes, Brazier, Brady, and Davis as to whether families should be required to visit the cemetery to select a grave. Mr. Childs testified that while, as a funeral director, he strongly encouraged families to visit the cemetery and select the grave, he did not believe that families should be required to do so. He noted that some families prefer to make arrangements with the funeral home and that some families just cannot make it to the cemetery because they are grief stricken or disabled. There was a general consensus that it

may be helpful to have families acknowledge in writing that the funeral home advised them it is in their best interest to go to the cemetery and personally inspect the grave site, but that the family has elected not to do so. It was pointed out by Dr. Brazier that such an option should be reviewed very carefully to ensure that the consumer is fully aware of what he or she is signing. App., Vol. III, Ex. 4, pp. 16-27.

**Sheriff Tom Dart**

In the course of his testimony, Sheriff Dart noted that existing Illinois laws address the criminal aspect of the events that allegedly took place at Burr Oak Cemetery. He also testified, however, that "in the course of our investigation it has not been lost upon us that there is a tremendous need for legislative changes in the area of cemeteries," and expressed the view that there is "virtually no regulation of cemeteries in the state." App., Vol. II, Ex. 4, pp. 14, 21-22. In response to a question from Mr. McNary as to "how did this happen," Sheriff Dart stated that:

> I think that it happened because nobody's watching, nobody's watching, and the thing that has troubled a lot of us as we've gone through this is that it has led us to question activities elsewhere, too, that this, you know, has a criminal element to it that has been well documented as it pertains to Burr Oak, but there are other issues as well – as well at other locations that all scream out the same thing: that when no one is watching, there are people that will do things that they would otherwise not do.

App., Vol. II, Ex. 4, pp. 39-40.

Sheriff Dart made several suggestions to the Task Force as to how to strengthen regulatory oversight of cemeteries. He recommended requiring cemeteries to provide the State with plats of survey listing all of the burial plots, the names of people that are either in such plots or have purchased them, and cross-referencing these records with death certificates. He testified that such regulations would go a long way towards preventing abuses such as the type that took place at the Burr Oak Cemetery. He also suggested expanding the Crime Victims Compensation Act so that individuals who have been victimized by this tragedy can receive compensation. He further suggested that a monetary cap be placed on certain services and merchandise so that vendors would not be able to take advantage of vulnerable individuals who have just suffered the loss of a loved one. App., Vol. II, Ex. 4, pp. 29-35.

Sheriff Dart further recommended that cemeteries be required to maintain up-to-date databases. He noted that some of the papers the Sheriff's Office found were located in the basement in a condemned building and that all of the records (assuming that those papers are in fact Cemetery records) had congealed into one solid block. App., Vol. II, Ex. 4. p. 48.

Sheriff Dart also testified that further regulation should be considered with respect to how deep any individual should be buried and how close together people can be buried. He suggested that thought be given to the regulation of potter's fields and the burial of indigents. He noted that because of the way some of these types of burials are conducted, bones and remains arise to the surface rather readily. He agreed with Task Force member H. Augustus Cage that it might be

a good idea to set up a special task force to focus exclusively on this issue. He also concurred with Mr. Cage's observation that some of the least maintained cemeteries appear to be those in which there is a predominance of African Americans and indigents. App., Vol. II, Ex. 4, pp. 43-45, 53-58.

**Tony Burroughs**

Tony Burroughs, who testified on behalf of the Chicago Burr Oak Historical Preservation Society, recommended that cemeteries be federally regulated by the Federal Trade Commission.[4] Mr. Burroughs also advocated adding grave and lot numbers to death certificates, and requiring cemetery owners to give copies of records to families. He suggested that information regarding short term burials be included in large print on cemetery contracts and that cemeteries be required to explain to families the limitations of such burials. Mr. Burroughs also recommended that if a burial is for a short term, such information be included on the death certificate so that it is understood by the State, the vital records department, the family, and the cemetery that this is not a permanent grave. Mr. Burroughs also noted (as did Sheriff Dart) that perhaps half of the interments in Burr Oak do not have grave markers. He recommended that every unmarked grave receive some type of marker and that the cemetery be required to place some type of marker on the grave if the family cannot afford to do so. App., Vol. II, Ex. 4, pp. 66-67, 69-71.

**LuAnn Johnson**

LuAnn Johnson, the Executive Director of Oak Ridge Cemetery in Springfield, Illinois, testified extensively as to issues governing the management of cemeteries. Ms. Johnson noted that the municipally-owned Oak Ridge Cemetery is 154 years old and is one of only two or three government cemeteries in the country that is self-supporting. Oak Ridge has the distinction of being the largest cemetery in Illinois, the second most visited cemetery in the country after Arlington National Cemetery, and the final resting place of Abraham Lincoln. App., Vol. III, Ex. 2, p. 44; *see also* historic death registry of Oak Ridge Cemetery, reflecting burial of Abraham Lincoln, App., Vol. I, Ex. 9.

Ms. Johnson is also the President of the Alliance of Illinois Cemeterians, which was founded ten years ago to provide training and education to smaller cemeteries in the State. Ms. Johnson provided the Task Force with a booklet prepared by the Alliance and containing forms and information with respect to proper cemetery management. Some of the materials provided by Ms. Johnson are part of a PowerPoint program that the Alliance refers to as Cemetery 101, a presentation that she and Gregory Vogele, Superintendent of Chippiannock Cemetery, give throughout this State and in neighboring states. The forms provided by Ms. Johnson include a copy of an interment sheet from Oak Ridge (which includes information as to who approved the grave, laid out the grave, and closed the grave), and forms of pre-need contracts from Chippiannock Cemetery and Oak Ridge Cemetery. App., Vol. III, Ex. 2, pp. 45-48; *see also* booklet provided by Ms. Johnson to the Task Force at App., Vol. I, Ex. 10.

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[4] The question as to whether Illinois cemeteries should be federally regulated is not within the purview of this Task Force.

Ms. Johnson explained to the Task Force that graves are not sold, interment rights are sold. In other words, people do not own cemetery property; they own the right of interment. Ms. Johnson testified that before a person is buried at Oak Ridge, a signed authorization is required to actually bury the body and a separate authorization is needed from the owner of the interment right. The two authorizations are sometimes, but not always, from the same person. While some cemeteries such as Oak Ridge allow double depth burials, this also requires written permission from the family. App., Vol. III, Ex. 2, pp. 49, 55-57.

Ms. Johnson stated that it is not the funeral director's role to operate the cemetery and that the cemetery should have the management in place to operate itself. She testified that the family should always come to the cemetery to sign the forms, look at the graves, and choose a grave. After a burial, the cemetery must make sure that any person returning to the cemetery to order a memorial or headstone is authorized to make that purchase. App., Vol. III, Ex. 2, pp. 50-51.

Ms. Johnson also testified that the Alliance has prepared, in the event of a natural or man-made disaster, a pandemic disaster reciprocal agreement. Accordingly, if any of the member cemeteries of the Alliance have a disaster, they can make one phone call and seek assistance from other members. Although the Burr Oak Cemetery is not a member of the Alliance, Ms. Johnson testified that she is taking some of her employees and equipment to assist with the situation at Burr Oak Cemetery. App., Vol. III, Ex. 2, pp. 52-54, 58-59.

During her testimony, Ms. Johnson expressed concern with respect to the uniform application of new regulatory standards to all cemeteries in the State. In response to Dr. Arnold's question as to whether there should be some minimal standard of care for people operating a cemetery, Ms. Johnson stated that while it would be wonderful to have such standards, they cannot be enforced immediately. By way of example, Ms. Johnson pointed out that a person overseeing the cemetery in a small township may be paid $500 a year. Such individuals often care for the cemetery out of their love for that cemetery and many times the oversight of a cemetery is passed down from generation to generation. If that cemetery manager is required to immediately comply with new standards, he or she may be intimidated and walk away from the cemetery, causing someone with no knowledge and training to possibly take over the job. Ms. Johnson recommended that any new regulations be allowed to "evolve" with respect to such cemeteries, so that new people can be trained over time. App., Vol. III, Ex. 2, pp. 64-65.

Likewise, in response to a question from Mr. McNary, Ms. Johnson testified that while most cemeteries have cemetery maps, she was not sure if it would be realistic in this economy to require all cemeteries to survey their property in a standard way and to index the survey maps against the sales for plots. App., Vol. III, Ex. 2, pp. 73-74.

Ms. Johnson also stated that while she had no objection to existing laws distinguishing between for-profit and not-for-profit cemeteries, she would have no problem with additional oversight of not-for-profit cemeteries – if such oversight was feasible. App., Vol. III, Ex. 2, p. 74.

Ms. Johnson testified that she believes the various professions should be treated alike and that out-of-state ownership of cemeteries should be allowed. In response to a question from Chairperson Holmes as to whether an out-of-state owner should be required to have some type of indemnity insurance, Ms. Johnson agreed that there should be accountability and that the ownership of the cemetery should be known. App., Vol. III, Ex., 2, pp. 76-77.

In response to a question from Representative Brady, Ms. Johnson testified that as a cemetery manager, she is not required to be licensed by the State and is not required to take any continuing education. App., Vol. III, Ex. 2, pp. 68- 69.

**Gregory Vogele**

Mr. Vogele is the manager of Chippiannock Cemetery and has been in the industry for forty-plus years. App., Vol. III, Ex. 2, pp. 78-79.

Mr. Vogele testified that, formerly, the information on burial permits included the block, section, and grave number. He noted that with today's electronic filing, it would seem very simple to again include that information on the permit. Mr. Vogele noted that if such information is provided, the State should not be allowed to purge those records (as it sometimes does with old records), but should be required to keep them for as long as the cemetery exists. App., Vol. III, Ex. 2, p. 80.

With respect to establishing a uniform system of care, Mr. Vogele pointed out that cemeteries are unique because they were all created in their own time period under different expectations, different sets of laws, and different standards. He testified that: "[y]ou can't make all cemeteries under one umbrella, it just won't work, although cemeteries have the challenge of adapting to meet a community's expectations at the time they're existing." App., Vol. III, Ex. 2, p. 84. Mr. Vogele further noted that under current statutes, a cemetery is obligated to provide care to the extent that the revenue generated by its funds can cover such care, and that it may be difficult to require a cemetery to provide more care than it is financially able to afford. App., Vol. III, Ex. 2, pp. 86-87.

In response to a question from Representative Brady, Mr. Vogele explained that cemeteries and other entities that are licensed to sell pre-need cemetery merchandise are required to put $5 of each pre-need contract into a Cemetery Consumer Protection Fund under the jurisdiction of the Comptroller so that people can get what they paid for in the event the cemetery's own funds disappear. Mr. Vogele testified that the required deposits into the Consumer Protection Fund are enforced through audits from the Comptroller's Office. He noted that there is not a similar consumer protection fund in the Funeral and Burial Funds Act. App., Vol. III, Ex. 2, pp. 88-89.

**Frank Price**

Frank Price, a volunteer with AARP, testified that AARP has been involved in the death care industry for several years. He noted that 1.8 million citizens in Illinois are members of AARP and that AARP's interest in funeral and burial sales is related to the fact that these are some of the most expensive purchases an older consumer may make in his or her lifetime. App., Vol. III, Ex. 2, p. 94.

Mr. Price stated that AARP had several recommendations for consideration by the Task Force. First, he urged the Task Force to end the segmentation of State regulations of the death care industry and to enforce the various laws spread across the State agencies in a coordinated manner to assure that there are not regulatory gaps in the oversight of cemeteries, funeral homes, and pre-need plans. Second, AARP wants consumer protections to be improved to ensure that Illinois families are treated fairly and get what they paid for when they purchase services or merchandise from cemeteries, funeral homes, casket stores, and monument dealers. Third, AARP wants assurance that the Illinois Cemetery Protection Act and other Illinois cemetery acts are enforced to ensure proper maintenance of burial spaces and disposition of remains. Fourth, AARP recommends that regulations be promulgated requiring newly established cemeteries to create escrow accounts for the purpose of insuring income is available for the continued upkeep and maintenance of a cemetery. Finally, AARP recommends better uniformity in record-keeping to track burial sites in all Illinois cemeteries. App., Vol. III, Ex. 2, p. 94-95.

**Wayne Straza**

Wayne Straza testified that, from 1994 to 1998, he was the Director of the Cemetery Care and Burial Trust Section in the Office of the Comptroller. Currently, he is Chief of the Enforcement Administration with the Department of Professional Regulation. He testified that "if the lawns are not kept," and "if graves are left open," those "are indications the trust funds are not being properly utilized. . ." App., Vol. III, Ex. 4, pp. 27-28.

During Mr. Straza's tenure as Director of the Illinois cemetery division under the Comptroller, there were approximately 40 individuals on his staff. The cemetery division received hundreds of complaints a year, most of which were related to the maintenance of a cemetery or the fact that a consumer was not delivered a headstone or monument in a timely manner. Prior to conducting an audit, his auditors were told to make a cursory exam of the cemetery property because a cemetery in poor condition is an indicator of problems at the cemetery. Mr. Straza testified that both cemetery maintenance and oversight of the trust funds fall under the jurisdiction of the Comptroller. App., Vol. III, Ex. 4, pp. 30-33.

Representative Davis noted her understanding that the Burr Oak Cemetery did not turn in any money to the Comptroller in 2007 and asked Mr. Straza to comment on that situation. Mr. Straza responded that this would be a basic indicator of some type of fraud taking place. He noted that where there is an ongoing business entity with many burials taking place, it is "more than a red flag" if no money is turned into the Comptroller. App., Vol. III, Ex. 4, pp. 35-36.

In response to a question from Task Force member Michael Kotzin as to how to evaluate which need is greater – more enforcement or more regulation – Mr. Straza indicated that he agreed with the need for some additional regulation, but emphasized that there is certainly a need for greater enforcement. He also stated that if additional legislation is enacted, he hopes the State will receive the necessary funding and personnel to implement the legislative mandates. App., Vol. III, Ex. 4, pp. 40-41.

In response to Representative Davis' question as to whether there should be some type of mandatory reporting system for cemetery abuses, similar to that used for suspected sex abuse cases, Mr. Straza responded that he thinks there are enough laws in place that highlight and

outline what needs to be done. He also noted that some problems are contractual issues, not law enforcement issues, and that it could be difficult to define an appropriate line of demarcation between the two types of issues. App., Vol. III, Ex. 4, pp. 45-46.

**Lou Rago**

Lou Rago, of Rago Brothers Funeral Home, recommended to the Task Force that the location of the grave be included on the death certificate. He also recommended that legislation be enacted requiring pre-need trust funds to stay in trust until the funeral director or cemeterian delivers the goods. He stated that there is nothing wrong with multiple interments and explained that some cemeteries do not have them because the water table will not allow for such burials. He recommended enacting legislation requiring that owners of cemeteries be residents of the State of Illinois and expressed the opinion that out-of-state corporations are more concerned with "their net profit at the end of the day," rather than the care of the dead. App., Vol. III, Ex. 4, pp. 56-58, 61-62.

Mr. Rago testified that the law requires a signed, itemized statement of goods and services for every grave that is sold and every service that is provided by cemeterians. The cemeteries owned by his family accept checks and do not require cash for the provision of goods and services. App., Vol. III, Ex. 4, pp. 74-77.

**Ronald Bauer**

Ronald Bauer is the President of RB & Associates Land Surveyors Incorporated, and provided testimony as to how to create a geographical information system ("GIS")" – a computer program which can be used to capture, store, analyze, and manage all kinds of data for cemeteries. Mr. Bauer testified that the system "provides a user-friendly way to require and maintain pertinent information such as location, names, dates, and family information to reduce time and ultimately cost of any record keeping." App., Vol. III, Ex. 4, pp. 77, 79-80.

The GIS can be implemented in stages and is based on the creation of a base map, which is compiled from recorded cemetery plats or other wall maps. If those are not available, a survey would probably be required to locate the boundaries and all of the lots, streets, and alleys in the cemetery. The completed survey can be used to create a plat for recording in the Recorder's Office and a wall map for the public to view. App., Vol. III, Ex. 4, pp. 80-81.

A database is also created using available records and information. The database allows a search by name and also includes GPS coordinates which enable a person with a handheld GPS device to walk to the gravesite. The database includes information about the deceased person and that person's family. App., Vol. III, Ex. 4, pp. 81-83.

The GIS can generate customized reports, and can include information such as photos and obituaries. Data can be password protected so that it cannot be changed without proper authorization. The final product can be made available on the Internet. The overall cost for implementing the system could be approximately $40,000 to $50,000; if it is implemented in stages the yearly cost would be approximately $15,000. App., Vol. III, Ex. 4, pp. 83-85, 91.

A copy of the materials submitted by Mr. Bauer to the Task Force in connection with his testimony may be found in the Appendix at Volume I, Ex. 11.

**Attorney General Lisa Madigan**

Attorney General Lisa Madigan testified that her office responded to the tragic events at Burr Oak Cemetery by filing in the circuit court of Cook County a lawsuit on behalf of the people of the State of Illinois and the Comptroller against Perpetua Holdings of Illinois, the corporate owner of Burr Oak Cemetery (and the Cedar Park Cemetery). The lawsuit charges that Burr Oak defrauded consumers and violated the Cemetery Care Act, the Pre-Need Cemetery Sales Act, and the Funeral or Burial Funds Act. The suit alleges that the employees of Burr Oak Cemetery took payments from consumers for cemetery plots and burial services, falsely promised that the deceased would be buried with dignity and their plots maintained, and then violated those promises by desecrating gravesites and remains and failing to place into trust the funds received for the care of cemetery plots and for future burials. The goal of the suit is to recover money for the families who have been defrauded, and for the repair of the Cemetery. Pursuant to the suit, the Court appointed Roman Szabelski as the receiver of the Burr Oak Cemetery. The Cemetery is still considered to be an active crime scene. App., Vol. III, Ex. 6, pp. 9-12.

Although Burr Oak Cemetery represents the most egregious cemetery case that the Office of the Attorney General ("AG") has handled, it is involved in other cemetery and funeral home matters. One way the AG becomes involved in such matters through the filing of consumer fraud complaints. In 2008, the AG received a total 33,335 consumer complaints; the average number of complaints received by the AG regarding cemeteries, funeral homes, and monument companies is 70 per year. In the case of cemeteries, the most frequent calls are about the upkeep of gravesites and maintenance, and issues with respect to pre-need contracts. The complaints about funeral homes are based on the failure of the funeral home to provide promised services, the quality of the products or services, or confusion about the cost of services. The AG works with consumers to mediate and resolve the disputes and sometimes files lawsuits. The information about consumer complaints is passed on to the Comptroller's Office so it can work with the consumers and take any appropriate regulatory actions. App., Vol. III, Ex. 6, pp. 12-14.

The second way the AG becomes involved in these types of cases is through referrals from the Comptroller's Office. In the lawsuits filed as a result of those referrals, the AG seeks to prevent the cemetery or funeral company from engaging in further business in Illinois. It usually seeks an order preventing the cemetery or the funeral home from using money held in trust accounts, and often seeks the appointment of a receiver to oversee the cemetery or the funeral home, protect the funds, and recover consumers' trust fund moneys. App., Vol. III, Ex. 6, p. 14.

Attorney General Madigan stated that there are four additional lawsuits against cemeteries across the State of Illinois based on referrals from the Comptroller's Office. She testified that the AG did not receive complaints or a specific request from Comptroller Hynes' office to look into the activities of Burr Oak Cemetery. App., Vol. III, Ex. 6, pp. 41-42.

Attorney General Madigan offered the following five recommendations as to how to strengthen the process for regulating the industry and protecting Illinois consumers. First, the cemetery industry should be subject to comprehensive regulation, including licensing, inspections, training, and maintenance standards. Second, there should be transparency in the ownership and control of cemeteries so that the appropriate entity can be held responsible when something goes wrong. Third, consumer protections should be enhanced, and consumers of cemetery goods and services should receive clear, large print disclosures that assist them in understanding the terms of their pre-need or at-need contracts. Fourth, plot numbers and identifying information should be recorded either on the death certificate or on publicly available maps and plats. Fifth, the Crime Victims Compensation Law should be amended to ensure that families whose loved ones' remains have been disturbed can afford to rebury them appropriately. App., Vol. III, Ex. 6, pp. 15-18.

Attorney General Madigan testified that she does not think families should be required to visit the cemetery and make burial arrangements, but that they should be strongly encouraged to do so. She also observed that whistle blower protections are probably vital in this circumstance to provide protection for people who wish to come forward and tell authorities about what is occurring. Attorney General Madigan stated that civil penalties should arguably be enhanced, depending on the circumstances. She noted, however, that sometimes money cannot be found to assess additional penalties. App., Vol. III, Ex 6, pp. 26-27, 32-33, 43-44.

Attorney General Madigan noted that the AG would have jurisdiction of cemetery owners whether or not they are residents of the State, since they are doing business in the State of Illinois. Requiring transparency with respect to ownership and control lessens the concern with respect to this issue, and there may be legal complications with a requirement that cemetery owners be residents of the State. Attorney General Madigan noted that requiring cemetery owners to carry insurance or establish an escrow account to cover situations such as Burr Oak might make burials more expensive because the cost will be passed along to the consumer. If the amount is *de minimis*, however, this is something the Task Force should probably consider. App., Vol. III, Ex., 6, pp. 48-50.

**Comptroller Dan Hynes**

Comptroller Dan Hynes testified that his office has "limited legal authority over cemeteries," and specifically focuses on consumer funds accepted by the cemetery that are held in trust with trust earnings to be used for the care of the cemetery. The Comptroller also licenses funeral homes and cemeteries that sell pre-need arrangements in advance of death. The pre-need funds are held in trust until needed to cover funeral and cemetery costs at the time of death, and the Comptroller requires annual financial reporting and conducts audits to ensure financial compliance. Local government, religious, and fraternal cemeteries register with the Comptroller's Office but are not licensed or audited by the Office because they are exempt under State law. Comptroller Hynes concluded that "in Illinois the Office of the State's Chief Fiscal Officer has a limited role in overseeing entrustment at a limited number of cemeteries and funeral homes." App., Vol. III, Ex. 6, pp. 53-54.

Comptroller Hynes further testified that there is a "regulatory vacuum" in Illinois, in that there is no regulation of most at-need sales, no real regulation of cemetery maintenance or

operations, and at best minimal oversight of non-trust fund record keeping. He stated that when he was elected Comptroller a decade ago, he held hearings around the state about cemetery and funeral home issues, and that the most common complaint was inadequate or poor maintenance. He testified that when he proposed legislative reforms to address concerns about the death care industry, he included a minimum maintenance standard which did not make it through the legislative process, largely because of the influence of the death care industry at the state capital. Controller Hynes testified that although his office was able to successfully expand some consumer protections in the limited areas of pre-need sales, care fund entrustment, and crematories, his bills were watered down through industry lobbying and other reform bills were opposed and killed by industry opposition. App., Vol. III, Ex.6, pp. 55-56.

Comptroller Hynes testified that this past spring he proposed and the General Assembly passed legislation to further strengthen trust fund regulation by requiring that all trust funds be held by an independent trustee, but that the Governor recently issued an amendatory veto of that legislation to change the effective date from January 1, 2010 to January 31, 2010. Comptroller Hynes urged the Task Force to recommend the reforms included in the legislation he put forward in July in the wake of the Burr Oak tragedy. Comptroller Hynes testified that the specific reforms in that legislation include licensing and continuing education of cemeterians and salespeople, mandatory recording of the purchase of cemetery plots and of burials, minimum maintenance standards for a cemetery, crime victims compensation, and enhanced criminal penalties to address the criminal actions perpetrated at Burr Oak as well as an adequate reimbursement for public aid burials. Comptroller Hynes also described various matters in which the Office of the Comptroller has exercised its regulatory authority. App., Vol. III, Ex. 6, pp. 56-58.

Comptroller Hynes stated that he hoped the Burr Oak tragedy would result in reform of the death care industry, much as other tragedies in American history have led to improved conditions and standards. App., Vol. III, Ex. 6, pp. 64-65.

Comptroller Hynes testified that in the cemetery division of his office there are nine auditors and about eight people who work on the administrative side. Representative Ken Dunkin stated that under the Cemetery Care Act, the Comptroller's Office has sole authority over the care and maintenance of graves, lots, plots, cemeteries, and mausoleums, and asked Comptroller Hynes how his staff missed the atrocities in the Burr Oak Cemetery. Comptroller Hynes responded that the role of the Comptroller's Office is to audit the trust funds of cemeteries and funeral homes that have pre-need or perpetual care arrangements. He further testified that when a trust fund is created for perpetual care under the Cemetery Care Act, the cemetery is allowed to use only the interest in the care fund for maintenance, and not the principal. In response to Chairperson Holmes' question as to how the Comptroller's Office monitors a cemetery's use of the interest for maintenance purposes, Comptroller Hynes stated that his Office looks at the expenditures that are for maintenance as well as the cemetery's overall expenditures. He testified that the cemetery has to show they are using operation revenue and not principal for the maintenance of the cemetery. App., Vol. III, Ex., 6, pp. 67-71.

Continuing his testimony, Comptroller Hynes stated that the language in the Cemetery Care Act that defines "care" makes it clear to cemetery owners how they can and cannot use interest income. Comptroller Hynes testified that the statute "does not say that there is a duty of

care for cemeteries. And it certainly does not say that the comptroller is responsible for policing and monitoring and regulating the operation and maintenance of cemeteries. In fact the problem is that there is nobody policing, monitoring, and regulating the operations of cemeteries and the proper burial of human remains."[5] App., Vol. III, Ex. 6, p. 73.

In response to this testimony, Representative Dunkin stated that: "That's why this task force is situated the way it is by way of default because your agency quite frankly was asleep at the wheel. You dropped the ball." Representative Dunkin then informed that Task Force that on September 9 he filed a House Resolution asking for a performance audit and review of the staff in the Comptroller's Office to find out what they were doing, who was supervising them, what kind of management training they received, and "how we came up to this atrocity that's so unique in its kind at this level to this extent in the history of the State of Illinois under your watch." App., Vol. III, Ex.6, pp. 73, 76.

Mr. Hynes called these allegations "baseless," and responded that his Office has "authority over the trust fund activity of a limited number of cemeteries and funerals," and that "[t]here are thousands and thousands of cemeteries that don't have a license and are not regulated by anybody" because the industry is so powerful. He stated that the suggestion the Comptroller's Office is "by default the police for all cemeteries in this state is wrong and untrue." He testified that the Comptroller's Office took immediate action with respect to the situation at Burr Oak, and immediately moved to revoke its license and put the Cemetery into receivership. He further testified that the trust funds at Burr Oak are full and intact and in the hands of the receiver. App., Vol. III, Ex. 6, pp. 76, 78-79.

In response to Representative Dunkin's questions as to whether Comptroller Hynes would work with him on the performance review audit, Mr. Hynes stated that the auditor general does a compliance audit of the Comptroller's Office every two years, that there has not been a material finding in the cemetery care division since 1999 or 2000, and that those findings related to crematories before they were subject to regulation. He further testified that the legislature has the prerogative to ask the auditor general for a special audit to be conducted, and if the legislature wants to do that and the auditor general agrees, the Comptroller's Office will certainly comply. App., Vol. III, Ex. 6, p. 79.

Representative Brady asked Comptroller Hynes about the trust problems Burr Oak had in 2007. Representative Brady also noted that in testimony before the Consumer Protection Joint House and Senate Committee on July 30, 2009, Ms. Peg Roth (the Assistant Comptroller), had stated that there were twelve inspections made by the Comptroller's Office in 2009 and that the last audit inspection occurred on May 22, 2009. Representative Brady asked Comptroller Hynes if the people from his office at the cemetery "ever got out of the car and looked at anything around the cemetery?" App., Vol. III, Ex. pp. 84-86;

Comptroller Hynes responded that in addition to the auditor who audits the books of Burr Oak, which are kept at the Cedar Park Cemetery, his office did go to Burr Oak Cemetery and

[5] As discussed in Section IV below, however, the relevant statutory provisions in the Cemetery Care Act suggest that there is a duty of care imposed on cemetery authorities holding care funds to properly maintain their property. *See also* testimony of Vicki Hand discussed below.

"looked at the grounds, cemetery grounds, as did thousands of people visiting loved ones as did others." App., Vol. III, Ex. 6, p. 86, 102. It was unclear to members of the Task Force why Comptroller Hynes' inspectors visited Burr Oak twelve times to audit books and records that were admittedly kept at Cedar Park Cemetery, especially given Comptroller Hynes' repeated assertions of "limited authority."

Comptroller Hynes further testified that his Office has nine auditors and over 800 cemeteries and has to do annual auditing. With respect to Burr Oak Cemetery, he testified that the Cemetery made some late deposits into the trust fund, and that his office confronted the Cemetery about it and checked with them quarterly to make sure the deposits were made. Comptroller Hynes further testified that those deposits were in fact made, and that "for all of the horrible discoveries that were uncovered at Burr Oak, the one thing that was not out of line was their trust fund. Their trust fund was intact, was in whole, and that's because of the auditing that we did." App., Vol. III, Ex. 6, pp. 86-87.

In response to a question from Chairperson Holmes as to how the Comptroller's Office ensured that Burr Oak was paying the correct amount in arrears, Comptroller Hynes stated that during the audit his office tracks the sales and makes sure that for every sale the correct percentage is put into the care or pre-need fund and it looks at the bank records to certify that. In response to her question as to whether the audit was "all paper" as "opposed to going out to the cemetery eyeballing anything that they were doing," Comptroller Hynes responded: "Well, exactly. I mean, our role is to audit the pre-need sales and the perpetual care fund, not at-need sales and not certainly – certainly not the method of burial and how to handle bodies and so forth." App., Vol. III, Ex. 6, pp. 101-102.

Representative Davis asked Comptroller Hynes whether it is "a major red flag" when funds don't come in on a regular basis if a cemetery is burying people. Comptroller Hynes noted that one of the allegations in the Burr Oak lawsuit is that the burials were conducted as "off the book" cash sales. He further noted that these sales were at-need sales, which is not really what his Office regulates or audits. App., Vol. III, Ex. 6, pp. 105-106.

In response to Task Force member Zopp's question as to Comptroller Hynes' recommendations, he testified that while there may be some need to consolidate different divisions and departments, there is most of all a need to cooperate and communicate and work on a coordinated basis. He also stated that cemeteries, like funeral homes, should be licensed by the Department of Professional Regulation and that the license should include an adherence to a code of conduct, training and certification, and continuing education. He testified that he was not sure if a state agency could be given sole responsibility for inspecting and monitoring every cemetery in the state, and that it would be very difficult to centralize the inspection of the 7,000-plus cemeteries in the state under one state agency. App., Vol. III, Ex. 6, pp. 121-124.

Comptroller Hynes also recommended that a separate contract be executed at the cemetery in addition to the contract executed with the funeral home. Comptroller Hynes testified that it would be a good idea for cemeterians to allow individuals to pay for services with some form of direct payment other than cash, such as a cashier's check or money order. App., Vol. III, Ex. 6, p. 132-133.

Chairperson Holmes noted that the Comptroller's Office complied with the request of the Task Force for information and that it is available on the website. App., Vol. III, Ex. 6, p. 133-134. The information provided by the Comptroller's Office is also included in Volume XIII of the Appendix to this Report; the letter from the Task Force requesting this information is in Volume I, Exhibit 4.

**Father Patrick Pollard**

Father Patrick Pollard, the director of the Catholic Cemeteries for the Archdiocese in Chicago, together with Robert Gillian of the Catholic Conference of Illinois, testified before the Task Force with respect to the death care practices of the Catholic cemeteries in Illinois. Father Pollard testified that there are 448 Catholic cemeteries in Illinois, and 46 Catholic cemeteries in the Archdiocese of Chicago. The Chicago Archdiocese annually buries 17,000 persons, which makes it the largest Catholic cemetery system in the United States. App., Vol. III, Ex. 6, pp. 154-155.

Father Pollard testified that there are several things the Catholic cemetery system in Illinois does which are religion neutral, such as laying out cemetery ground, cutting the grass, taking care of the trees, trimming around the stones, and digging the graves. The Archdiocese tries to describe to the public everything that it does, including providing a price list which is reviewed and issued on July 1 of every year. App., Vol. III, Ex. 6, pp. 156-157.

Through the Catholic Cemetery Conference, of which Father Pollard is currently the national President, there is a certification program for those who run the cemeteries. He is a Certified Catholic Cemetery Executive, a designation which is earned with a point system for issuing publications, attending conferences, seminars, and continuing education. The certification is lost if one leaves the cemetery field. App., Vol. III, Ex. 6, p. 158.

Father Pollard stated that all employees hired in the six diocese in the State of Illinois, must submit to a criminal background check. App., Vol. III, Ex. 6, p. 160.

Although religious cemeteries are exempt from regulation in Illinois, the cemeteries under the jurisdiction of the Archdiocese follow the regulatory guidelines and sometimes go beyond the guidelines. With respect to Task Force member McNary's question as to whether there is any public policy justification for exempt cemeteries (such as religious, fraternal, and municipal cemeteries), Father Pollard noted that as part of "our mission in ministry, we have tried to make burial affordable to the people of our faith communities. And so I would be hesitant and cautious if we were going to add more to the burial costs." App., Vol. III, Ex. 6, pp. 171.

The numbering system employed by each of the cemeteries for burials utilizes a metal tag for both full body burials and for cremated remains. Father Pollard testified that the Catholic cemeteries perform double depth burials where the ground allows for such burials. App., Vol. III, Ex. 6, pp. 166-167, 173.

Father Pollard noted that there may be two situations where a cemetery is considered "full." One situation is where all of the graves and crypts are sold, but there is space available in those graves and crypts for future burials. The second situation occurs when all the burials in a

cemetery are completed. Accordingly, even if a cemetery is closed for sales, it may still be open for burials. App., Vol. III, Ex. 6, pp.174-176.

Father Pollard further testified that "term graves" (graves for a period of 20, 25, or 30 years) came to the United States from Europe, where there is very little land and term graves were common practice. The last of the term graves in the Catholic cemeteries ceased to exist in 1968. Because term graves were unusual in the context of the American experience, the other term graves in the cemeteries were never turned over, and were allowed to remain. App., Vol. III, Ex. 6, p. 177.

Father Pollard further testified that some cemeteries have used the expression "term grave" to describe situations where graves were sold for less money to a family that could not afford the grave, and there was a "gentleman's understanding" that the sale was for a term. Usually, the families would eventually pay the full cost of the grave and put a marker on it. The Catholic cemeteries try to treat all burials the same, and spread out charity burials throughout the cemeteries so that no one knows where they are and people can be buried with dignity. App., Vol. III, Ex. 6, pp. 178-179.

The grave spaces in the cemeteries under the jurisdiction of the Archdiocese of Chicago are three feet by eight feet. In some Catholic cemeteries in the State the size of the grave space may vary a bit and be forty inches by eight feet. All of the veterans administration cemeteries such as the Abraham Lincoln Cemetery and Arlington Cemetery are, by statute, five feet by ten feet, which is not necessary unless you have an exceptionally large casket. App., Vol. III, Ex. 6, p. 182.

The materials submitted by Father Pollard to the Task Force in connection with his testimony is contained in Volume I of the Appendix, Exhibit 12.

**Vicki Hand**

Vicki Hand, the Treasurer of the Illinois Cemetery and Funeral Home Association, read from a portion of the Cemetery Care Act that appears to establish a duty of care for cemeteries. Ms. Hand testified that with respect to cemetery property maintained by a cemetery care fund, the Cemetery Care Act provides that a cemetery authority shall be responsible for the performance of the care and maintenance of the cemetery property it owns. App., Vol. III, Ex. 6, p. 189.

## III. THE EXTENT TO WHICH SIMILAR TRAGEDIES HAVE OCCURRED OR COULD OCCUR ELSEWHERE

As discussed in Section V.A below, it is clear that the same type of horrifying activity that allegedly took place at the Burr Oak Cemetery has also occurred in other states. Sheriff Dart testified that an incident in Florida approximately four or five years ago had many similarities to the activities which occurred at Burr Oak. App., Vol. II, Ex. 2, pp. 51-52. In fact, it was the prevalence of such activities that led to proposed (although ultimately unsuccessful) Congressional legislation increasing federal oversight of the state death care industry[6] and that prompted the GAO to undertake the comprehensive survey discussed above. App., Vol. I, Ex. 14.

Moreover, as discussed below, the Task Force heard testimony suggesting that some of the activities which occurred at the Burr Oak Cemetery may also be occurring in other Illinois cemeteries. The testimony and evidence presented during the public meetings led the Task Force to conclude that the tragic activities that occurred at the Burr Oak Cemetery are likely occurring in other cemeteries in Illinois, although perhaps not on the massive scale as appears to have been the case at Burr Oak. With respect to the deteriorated condition of the Burr Oak Cemetery, the evidence was clear that similar conditions exist in cemeteries throughout the State of Illinois. It is the finding of the Task Force that without legislative reform and increased oversight of for-profit cemetery operations, such deplorable conditions will persist and the types of criminal activities alleged to have occurred at Burr Oak are likely to occur again in our State.

**Rayfel Harrison**

Mr. Rayfel Harrison testified that, in 2006, he went to the Homewood Memorial Gardens Cemetery to pay homage to his mother. He testified that he saw the same thing that has been found at Burr Oak: headstones removed, tarp covering up graves, and open graves with caskets showing. He testified that he was informed (it is not clear by whom) that the director (presumably of the cemetery) would periodically order the ground "reseeded" – apparently a euphemism to describe what was happening at the cemetery. He also testified that he was unable to find his brother's grave, even though he knew its exact location. He further stated that he was informed another individual went to the cemetery on Father's Day and found a leg sticking out of the grave. App., Vol. II. Ex. 2, pp. 91- 93.

**Matthew O'Shea**

Matthew O'Shea, the aldermanic assistant to Virginia Rugai, Alderman of the 19th Ward, testified that there are serious problems at Mount Hope Cemetery, located at 11500 South Fairfield Avenue in unincorporated Cook County. He noted that the cemetery only accepts cash for burials, not credit cards or checks. He stated that there have been incidents at the cemetery during which shots were fired as rival gang members buried their loved ones. He informed the Task Force that the portion of 115th Street from Western Avenue to Kedzie Avenue is sometimes completely blocked off because as many as five processions are attempting to get into the

[6] As noted, Congressman Bobby Rush has, in response to the activities at Burr Oak Cemetery, again raised the question as to whether there should be federal oversight of the death care industry.

cemetery at one entry point and that arrests have been made on the site. Mr. O'Shea further testified that the police response to these incidents is not timely and that when he called the owner of the cemetery to alert him to these problems, the response from the owner was "what's the big deal?" App., Vol. II, Ex. 6, pp. 7-9.

Mr. O'Shea stated that the alderwoman's office has received several hundred complaints from the community about the cemetery, stemming from the activity around the cemetery. He testified that he has personally driven the cemetery and that "it's in shambles." He described the poor condition of the cemetery as including unkempt graves, grass in some areas over a foot long, plastic decorations strewn about the cemetery (which he believes to be two or three years old) and concrete boxes piled up alongside the road at various locations throughout the cemetery. Mr. O'Shea provided the Task Force with a petition signed by more than 300 community residents demanding that something be done about the condition of Mount Hope Cemetery. App., Vol. II, Ex. 6, pp. 12-14.

**Sheriff Tom Dart**

Sheriff Dart testified that since the Burr Oak situation occurred, he has received a great deal of information and complaints about a lot of cemeteries. Although Sheriff Dart could not offer specific comments as to any particular complaint, he stated that his Office is attempting to pursue every lead on every complaint. The cemeteries Sheriff Dart is investigating include Cedar Park, which is under the same management as Burr Oak and which has accordingly been a cause of concern to members of the Task Force. Sheriff Dart's testimony indicated that there is a distinction between the conditions at the two cemeteries, but that his Office is nevertheless continuing to investigate Cedar Park. App., Vol. II, Ex. 4, pp. 35-37.

**Representative Thomas Holbrook and Mayor Mark Eckert**

State Representative Thomas Holbrook and Belleville Mayor Mark Eckert testified that Mount Hope Cemetery in Belleville is currently under federal indictment and is also the subject of a State investigation. Mount Hope Cemetery is one of two cemeteries owned by a California company called Forever. Both cemeteries were formerly church cemeteries, but are currently private cemeteries under the jurisdiction of the Comptroller. App., Vol. III, Ex. 2, pp. 10-43.

Mayor Eckert testified that it became clear last May that the Mount Hope Cemetery was unattended and had not been cared for. Mayor Eckert brought photos of the cemetery showing trash piled up, fallen tree limbs, and grass three or four feet high. He stated that the condition of the graves and property is deplorable and has many people in West Belleville upset and concerned. Mayor Eckert noted that it would be extremely expensive for the City to assume the cost of maintaining the cemetery. App., Vol. III, Ex. 2, pp. 21-25, 32.

**Sonja Washington**

Sonja Washington testified that in 1998 she called the Office of Comptroller Dan Hynes and told him of problems that she saw in her cemetery, Mount Glenwood South, and that she "was hung up on." App., Vol. III, Ex. 6, pp. 136.

Ms. Washington testified that the condition of the cemetery included tattered flags in the veterans section and a crumbling monument. She also testified that she reported the condition of the cemetery to Lisa Madigan, Lieutenant Governor Quinn, and Governor Blagojevich. Mr. Foley from the Comptroller's Office talked to her and said they were going to take care of it. App., Vol. III, Ex. 6, pp. 137, 141-142.

Ms. Washington indicated that the cemetery is still in poor condition, and stated that a group of nine people filed suit in federal court. Subsequently, the group established a committee to protect historical Mount Glenwood Cemetery, which was joined by Glenwood West and Steger. App., Vol. III, Ex. 6, pp.143-145.

In response to Ms. Washington's testimony, the Comptroller's Office submitted a letter to the Task Force signed by Percy Lucina, Director of Cemetery Care and Burial Trust. The letter states that: "The Illinois Office of the Comptroller has never and would never hang up on any citizen of Illinois. Moreover, we have met with Sonja Washington and her group twice, in November 2004 and again in November 2006. These meetings led to our introduction of Senate Bill 482 in the spring of 2005. This bill requires cemeteries to provide contracts for at-need consumers." App., Vol. III, Ex. 6, pp. 192-193; *see also* letter from Comptroller's Office, App. Vol. I, Exhibit 13.

## IV. OVERVIEW OF ILLINOIS LAWS AND REGULATIONS

In Illinois, the primary responsibility for overseeing and regulating the death care industry is lodged in two state agencies. The Department is responsible for regulating funeral directors and embalmers, by virtue of the administration and enforcement of the Funeral Directors and Embalmers Licensing Code. (A copy of the Funeral Code and regulations implemented by the Code may be found in the Appendix, Vol. IV, Ex. 1.) Within the Department, the Funeral Directors and Embalmers Licensing and Disciplinary Board also has various responsibilities under the Funeral Code.

The Office of Comptroller has jurisdiction over private, non-religious cemeteries, the administration and enforcement of laws relating to pre-need cemetery and funeral purchases and oversees trust funds established to ensure delivery of services and merchandise purchased by consumers on a pre-need basis. The following six laws are under the jurisdiction of the Comptroller: The Illinois Funeral or Burial Funds Act, the Pre-Need Cemetery Sales Act, the Cemetery Care Act, the Cemetery Protection Act, the Cemetery Association Act, and the Crematory Regulation Act. (*See* App., Vol. IV, Exs. 2-8, respectively.) Many of the duties and responsibilities assigned by statute to the Comptroller are assigned to the Department of Cemetery Care and Burial Trust within the Comptroller's Office.

Each of the statutes referred to above is discussed below.

### A. Funeral Directors and Embalmers

#### 1. Funeral Directors and Embalmers Licensing Code

##### a. Regulatory Structure

The practice of funeral directing and embalming is regulated as a profession in Illinois by the Department and is governed by the provisions of the Funeral Directors and Embalmers Licensing Code, 225 ILCS 41/1-1 (the "Funeral Code").

The Funeral Code creates a Funeral Directors and Embalmers Licensing and Disciplinary Board consisting of seven persons, six of whom must be licensed to practice funeral directing and embalming in the State and one of whom must be a knowledgeable public member. 225 ILCS 41/15-5. The Department may seek the advice and recommendations of the Board on any matter relating to the administration and enforcement of the Funeral Code. *Id.*

The Rules implementing the Funeral Code are found at 68 Admin. Code. Ch. VII(1), Subch. B 1250. *See also* http://www.idfpr.com/dpr/WHO/fundir.asp, the Department's website for funeral directors and embalmers.

### b. Substantive Provisions

#### (1) License Requirements

The Funeral Code provides that it is unlawful for any person to practice or attempt to practice funeral directing and embalming without being licensed by the Department. 225 ILCS 41/10-5. The Code sets forth specific requirements for licensure. 225 ILCS 41/10-10.

Each license issued under the Funeral Code must be renewed biennially with proof of continuing education and with general ongoing compliance with the Code. 68 Admin. Code, Ch. VII(1), Subch. B 1250.200(a) and 1250.220(a)(1).

#### (2) Enforcement Mechanisms

##### (a) Inspections

The Funeral Code provides that the Department must conduct regular inspections of all funeral establishments to determine compliance with the provisions of the Code. 225 ILCS 41/15-15.

##### (b) Investigation

The Department may, upon its own motion, and must, upon a verified complaint in writing setting forth the relevant facts, investigate the action of any person holding or claiming to hold a license under the Funeral Code. 225 ILCS 41/15-15. Before refusing to issue or renew a license and before suspending, revoking, or taking any other disciplinary action with respect to a license, the licensee must be afforded notice and a hearing (unless the Secretary of the Department finds that the continuation of practice by the licensee would constitute an imminent danger to the public). *Id.* All final administrative decisions of the Department are subject to judicial review under the Administrative Review Law, 735 ILCS 5/3-101; 225 ILCS 41/15-35.

##### (c) Civil and Criminal Proceeding; Penalties

There are a variety of judicial enforcement mechanisms available to the Department for violations of the Act. The Director of the Department may, through the Attorney General of the State of Illinois or the State's Attorney of any county in the State of Illinois, apply for an injunction in the Circuit Court to enjoin any person who has not been issued a license or whose license has been suspended or revoked, or whose license has not been renewed, from practicing funeral directing and embalming. 225 ILCS 41/15-45(a). Any person or entity that practices funeral directing and embalming without a license is subject to the payment of a civil penalty of up to $10,000. The Department also has the authority to issue cease and desist orders. 225 ILCS 41/15- 45(c)(1).

##### (d) Disciplinary Proceedings

The Funeral Code lists 31 acts that constitute violations for which the Department may refuse to issue a license, revoke a license, suspend a license, or take other disciplinary action. 225 ILCS 15-75(b)(1)-(31). These acts include, but are not limited to, obtaining or attempting to

obtain a license by fraud or misrepresentation; conviction of a felony or misdemeanor; violation of the laws of Illinois relating to the funeral, burial, or disposal of remains; paying money for the securing of business or for obtaining authority to dispose of any deceased human body; incompetence or untrustworthiness; false or misleading advertising; selling burial contracts or policies in a manner that violates Illinois law; and engaging in unethical or unprofessional conduct of a character likely to deceive, defraud, or harm the public. *Id.*

### 2. Illinois Funeral or Burial Funds Act

Consistent with the Governor's amendatory veto of Senate Bill 1682, the Task Force recommends that any changes to the Illinois Funeral or Burial Funds Act must be considered after suggestions are made by the Funeral or Burial Pre-Arrangement Task Force. This Task Force will take appropriate heed to the future findings and recommendations of the Funeral or Burial Pre-Arrangement Task Force.

## B. Cemeteries

### 1. Illinois Pre-Need Cemetery Sales Act

Consistent with the Governor's amendatory veto of Senate Bill 1682, the Task Force recommends that any changes to the Illinois Pre-Need Cemetery Sales Act must be considered after suggestions are made by the Funeral or Burial Pre-Arrangement Task Force. This Task Force will take appropriate heed to the future findings and recommendations of the Funeral or Burial Pre-Arrangement Task Force.

### 2. Cemetery Care Act

#### a. Regulatory Structure

The Cemetery Care Act, 760 ILCS 100/1 ("Care Act') applies to cemeteries that are privately operated and that hold in trust funds for the maintenance of the cemetery and of the lots, graves, crypts, niches, family mausoleums, memorials, and markers therein. These funds are defined by the Act as "care funds." 760 ILCS 100/2. Although every cemetery authority[7] is required to register with the Comptroller under the Care Act, only privately operated cemeteries[8] accepting care funds are required to secure a license from the Comptroller. 760 ILCS 100/7, 8.

As reflected herein, there was spirited debate at the Task Force hearings as to the scope of the Comptroller's authority. Comptroller Hynes characterized his authority as "limited." App., Vol. III, Ex. 6, pp. 53. The Task Force concurs that the Act does not give the Comptroller (or any other regulator) authority with respect to cemetery employees. As noted below,

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[7] A cemetery authority is defined as "any person, firm, corporation, trustee, partnership, association, or municipality owning, operating, controlling or managing a cemetery or holding lands for burial grounds or burial purposes in this State." 760 ILCS 100/2.

[8] A privately operated cemetery is defined as "any entity that offers interment rights, entombment rights, or inurnments rights, other than a fraternal, municipal, State, federal or religious cemetery of a family burying ground." 760 ILCS 100/2.

however, the Act gives the Comptroller the authority to revoke a license if "[t]he licensee has violated any provision of this Act or any regulation or direction made by the Comptroller under this Act. . . ." 760 ILCS 100/15(b), and also includes provisions that go beyond a cemetery authority's fiduciary responsibilities. Further, the Act gives the Comptroller "free access to the office and place of business." 760 ILCS 100/14. The Task Force, therefore, considers the Cemetery Act and the Comptroller's powers comprehensive with respect to persons and entities that are covered by the Act.

### b. Substantive Provisions

#### (1) Powers and Duties of Cemetery Authorities

The Cemetery Care Act states that with respect to cemetery property maintained by care funds, a cemetery authority "shall be responsible for the performance of . . . the care and maintenance of the cemetery property it owns; and . . . the opening and closing of all graves. . . ." 760 ILCS 100/2a(a). The term "care" is specifically defined to include the cutting and trimming of lawns, shrubs, and trees at reasonable intervals; keeping in repair the drains, water lines, roads, buildings, fences, and other structures; maintenance of machinery, tools, and equipment for such care; compensation of employees, payment of insurance premiums, and reasonable payments for employee's pension and other benefit plans; and, to the extent surplus income from the care fund is available, the payment of overhead expenses necessary for such purposes and for maintaining necessary records of lot ownership, transfers, and burials. 760 ILCS 100/ 2. Thus, the Act establishes a duty of care for cemetery authorities with care funds used to maintain cemetery property.

A privately owned or operated cemetery must make available for inspection, and upon reasonable request produce, a copy of its rules and regulations and its current prices of interment, inurnment, or entombment rights. 760 ILCS/2a(b). It may, from time to time, survey and subdivide the land in its cemetery required for burial purposes and file in its office a map delineating the lots or plots, avenues, paths, alleys, and walks and their respective designations. 760 ILCS/2a(c). The cemetery authority must open the map to public inspection, and may make available a copy of the map upon written request and payment of reasonable photocopy fees. The Comptroller may waive any or all of these requirements for good cause shown. (In fact, however, the Care Act does not appear in any event to require such surveys; the language used in the statute is permissive, not mandatory.) *Id.*

A privately owned or operated cemetery must also keep a record of every interment, entombment, and inurnment in the cemetery. The record must include the deceased's name, age, and date of burial, when these particulars can be conveniently obtained, and the lot, plot, or section where the human remains are interred, entombed, or inurned. The record is open to public inspection and a copy must be made available upon written request and payment of reasonable copy costs. A privately owned cemetery must also provide access to the cemetery under the cemetery authority's reasonable rules and regulations. 760 ILCS 100/2a, (d), (e).

### (2) Acceptance and Deposit of Care Funds

The Care Act authorizes privately owned or operated cemetery authorities to accept gifts and contributions and to establish a trust fund to hold such moneys in perpetuity for the care of its cemetery, or for the care of any lot, grave, crypt, or niche in the cemetery, or for the special care of any lot, grave, crypt or niche, family mausoleum, memorial, marker, or monument in its cemetery. 760 ILCS 100/3.

The cemetery authority acts as the trustee of all amounts received for care until they have been deposited into the trust fund. 760 ILCS 100/3. The cemetery authority may continue to be the trustee of all amounts received for care up to the amount of $500,000, but must retain an independent trustee for any amount of care funds held in trust in excess of $500,000. *Id.* The trustee, in making investments and managing the fund, must exercise the judgment and care under the circumstances them prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. *Id.* Except upon written approval of the Comptroller, no loan or investment of any care funds can be made to any officer or party owning 10% or more of the cemetery authority or on any real estate in which any officer or party owning 10% or more of the authority has any financial interest. 760 ILCS 100/3a.

Whenever a privately owned cemetery receives care funds in connection with the sale of an interment right, entombment right, or inurnment right, the cemetery authority must execute and deliver to such person a written instrument specifically stating the nature and extent of the care to be furnished, that such care shall be furnished only insofar as the net income derived from the amount deposited in trust will permit, and that not less than the amounts specified in the Care Act will be set aside and deposited in trust. 760 ILCS 100/4. The deposit must be made no later than 30 days after the close of the month in which the cemetery authority gave away for an imputed value[9] or received the final payment on the purchase price of interment rights, entombment rights, or inurnment rights, or received the final payment for the general or special care of a lot, grave, crypt, niche, family mausoleum, memorial, marker or monument. *Id.* Such amounts must be held in trust in perpetuity for the specific purposes stated in the written instrument. *Id.* The trust authorized by the Care Act is a single purpose trust fund and is held for the general benefit of the lot owners. *Id.*

### (3) Licensing

Privately operated cemeteries need a license from the Comptroller in order to accept the care funds authorized by the Act. 760 ILCS 100/7. The license is required whether the cemetery authority is serving as trustee of the care funds or whether the care funds are held by an independent trustee. *Id.*

When the care funds exceed $15,000, applications must be accompanied by a fidelity bond or irrevocable, unconditional letter of credit equal to 10% of the care funds. *Id.* Although

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[9] "Imputed value" is defined as the retail price of comparable rights within the same or similar area of the cemetery. 760 ILCS 100/2.

the first $15,000 is not considered in computing the amount of the bond, the bond cannot be in an amount less than $1,000. *Id.*

Upon receipt of an application for a license, the Comptroller must issue a license unless it determines that the applicant has: (1) made any misrepresentations or false statements; (2) is insolvent; (3) is or has been using practices in the conducting of the cemetery business that work or tend to work a fraud; (4) has refused to furnish or give pertinent data to the Comptroller; (5) has failed to notify the Comptroller with respect to any material facts required in the application; (6) has failed to satisfy any enforceable judgment entered by the circuit court in civil proceedings against the applicant; (7) has conducted or is about to conduct its business in a fraudulent manner, has been convicted of a felony or misdemeanor of which an essential element is fraud, has been involved in any civil litigation in which a judgment has been entered against him based on fraud, has been convicted of any theft-related offense, has failed to comply with the requirements of the Care Act, has demonstrated a pattern of improperly failing to honor a contract with a consumer, or (8) has ever had a license involving cemeteries or funeral homes revoked, suspended, or refused to be issued in Illinois or elsewhere. 760 ILCS 100/ 10(a)-(h). No application for a license can be denied without a hearing. 760 ILCS 100/10(i).

The Comptroller may revoke any license if he finds that the licensee has failed to make the annual report, maintain the required bond, or comply with an order, decision, or finding of the Comptroller. 760 ILCS 100/15(a). The Comptroller may also revoke a license if "[t]he licensee has violated any provision of this Act or any regulation or direction made by the Comptroller under this Act. . . ." 760 ILCS 100/15(b). Finally, revocation is authorized if any fact or condition exists which would constitute grounds for denying an application for a new license. 760 ILCS 100/ 15(c).

Whenever a license is revoked by the Comptroller he must apply to the circuit court for a receiver to administer the care funds of the licensee. 760 ILCS 15.1. No license can be revoked until the licensee has had at least ten days' notice of a hearing thereon and an opportunity to be heard. 760 ILCS 15.4.

The license remains in full force and effect until it is surrendered by the licensee or revoked by the Comptroller and does not need to be renewed. 760 ILCS 100/10.

**(4) <u>Enforcement Mechanisms</u>**

**(a) <u>Annual Report</u>**

Every licensee must prepare a written report as of the end of the preceding calendar year or fiscal year showing: (1) the amount of the principal of the care funds held in trust by the trustee of the care funds at the beginning of such year and in addition thereto all moneys or property received during such year through sales or gifts; (2) the securities in which such care funds are invested and the cash on hand as of the date of the report; (3) the income received from such care funds; (4) the expenditures made from said income; and (5) the number of interments made during the preceding calendar year, or fiscal year, as the case may be. 760 ILCS 100/12.

### (b) Investigations

The Comptroller may conduct an investigation if it appears to him that a person has engaged in or is about to engage in any practice declared to be unlawful under the Cemetery Care Act. 760 ILCS 100/11.1. The Comptroller may: (1) require filing of written reports; (2) the examination of persons under oath; (3) the examination of books and records of the licensee; and (4) the production of records. *Id.*

The Comptroller may at any time investigate the cemetery business of every licensee with respect to its care funds. 760 ILCS 100/14. The Comptroller is required to examine at least annually every licensee who holds $250,000 or more in its care funds. *Id.* For that purpose, the Comptroller has "free access to the offices and places of business and to such records of all licensees and trustees of the care funds . . . as shall relate to the acceptance, use, and investment of care funds." *Id.* The Comptroller may require the attendance of and examine under oath all persons whose testimony he may require relative to such business. *Id.* The cost of an initial examination is borne by the cemetery authority if it has $10,000 or more in such funds; otherwise, it is borne by the Comptroller. *Id.* The charge made by the Comptroller is based upon the total amount of care funds held by the cemetery authority. *Id.*

### (c) Audit

The Comptroller may order additional audits or examinations for the following reasons: (1) material and unverified changes or fluctuations in trust balances; (2) the licensee changing trustees more than twice in any twelve month period; (3) any withdrawals or attempted withdrawals from the trust in violation of the Act; or (4) failure to maintain or produce documentation required by the Act for deposits into trust accounts or trust investment activities. 760 ILCS 100/14.

### (d) Civil and Criminal Proceedings; Penalties

The Comptroller has the authority to issue a cease and desist order directing the discontinuance of any illegal, unsafe, or unauthorized practices, including improper administration of the care funds. 760 ILCS 100/16. The Comptroller may also apply to the circuit court to prevent any disbursement or expenditures by the licensee. *Id.*

Anyone who intentionally fails to deposit the required amounts into a trust provided for in the Care Act, or who intentionally and improperly withdraws or uses trust funds for his or her own benefit, or otherwise intentionally violates any provision of the Care Act shall be guilty of a Class 4 felony. 760 ILCS 100/24. After notice and a hearing, the Comptroller may order such person to forfeit and pay to the State of Illinois a sum not to exceed $5,000 for each violation. *Id.* Finally, the Comptroller may bring a civil action to enjoin any violation or threatened violation of the Care Act. *Id.*

### (e) Abandoned or Neglected Cemeteries

The Care Act also provides that the Comptroller may administer a program for the purpose of cleaning up abandoned or neglected cemeteries located in Illinois. 760 ILCS 100/26.

Administration of this program may include the Comptroller's issuance of grants for that purpose to units of local government, school districts, and not-for-profit associations. *Id.*

### 3. Cemetery Protection Act

#### a. Regulatory Structure

The Cemetery Protection Act, 765 ILCS 835/0.001, ("Protection Act") contains various regulations designed to protect and secure cemetery property.

The Protection Act authorizes the cemetery authority to make rules and regulations for the government of the cemetery, the violation of which is punishable by a fine of not less than $100 or more than $500. 765 ILCS 835/2. The cemetery authority is also authorized to appoint policemen to protect the cemetery and preserve order therein. 765 ILCS 835/3.

The cemetery authority may fund the protection of cemeteries by setting aside a portion of the moneys received from the sale of interment, entombment, or inurnment rights and putting those moneys in a trust fund. 765 ILCS 835/4. Moneys received by gift or bequest and designated for such purposes must also be kept in a trust fund and used for such purposes. Privately operated cemeteries' directors or managing officers and trustees of public cemeteries must comply with the provisions of the Cemetery Care Act. 765 ILCS 835/5, 8.

#### b. Substantive Provisions

##### (1) Criminal Proceedings; Penalties

The Act sets forth criminal penalties for those who desecrate human remains or vandalize the cemetery grounds. 765 ILCS 835/1.

##### (2) Encroachment

Whenever a cemetery authority becomes aware that there is an encroachment on interment, entombment, or inurnment rights, it may correct the encroachment and relocate the item (such as a marker or casket) to its proper place. 765 ILCS 14.5(a). Notice of the corrective action must be given to the owner of any affected interment, inurnment, or entombment rights within the time period and in accordance with the procedures specified in the Cemetery Protection Act. 765 ILCS 14.5(b)-(d).

##### (3) Abandonment

The Cemetery Protection Act provides for the determination of abandonment of a cemetery interment right, entombment right, or inurnment right and the disposition of the abandoned right. 765 ILCS 835/9.

### 4. Cemetery Association Act

#### a. Regulatory Structure

The Cemetery Association Act, 805 ILCS 320/0.01, allows six or more persons to petition the Secretary of State and form a cemetery association. 805 ILCS 320/1. The certificate of organization must be recorded in the County Recorder's office. 805 ILCS 320/2. The Act provides for the appointment of a board of trustees and for the association to own, rent, acquire, and manage land for cemetery purposes. See 805 ILCS 320/4-5.

#### b. Substantive Provisions

The cemetery association may divide into lots any land that is a suitable size for burial lots. If this occurs, the association must record a plat of same in the Recorder's Office. 805 ILCS 320/6. The cemetery association then has the right to sell to any person a lot or lots in the cemetery for burial purposes only and to convey such lot by a proper deed of conveyance. *Id.*

The board of trustees must annually prepare and file with the State Comptroller the report required to be filed by a licensee under the Cemetery Care Act. 805 ILCS 320/5, 10.

## C. Crematories: Crematory Regulation Act

#### a. Regulatory Structure

The Crematory Regulation Act, 410 ILCS 18/1, ("Crematory Act") requires any entity that operates a crematory and performs cremations must be licensed by the Comptroller. *See* 410 ILCS 18/10(a), (d), (g)(5). A crematory must obtain all necessary licenses and permits from the Illinois Department of Health, the federal Department of Health and Human Services, and the Illinois and federal Environmental Protection Agencies. 410 ILCS 18/10(b).

#### b. Substantive Provisions

##### (1) Licensing

Licenses are not transferable or assignable without the express written consent of the Comptroller. 410 ILCS 18/13(b). A license remains in full force and effect until it has been surrendered, suspended, or revoked in accordance with the Crematory Act. 410 ILCS 18/ 13(c). A transfer of more than 50% of the ownership of an entity licensed under the Crematory Act is deemed an attempted license assignment and requires the Comptroller's consent.

The Comptroller may refuse to issue a license or may suspend or revoke a license if the applicant or licensee: (1) has made any representation or false statement in connection with an application, (2) has been engaged in business practices that work a fraud, (3) has refused to give information required under the Crematory Act, (4) has conducted or is about to conduct any cremation business in a fraudulent manner (or if any person listed in the application has conducted or is about to conduct any cremation business in a fraudulent manner or has been convicted of any felony or misdemeanor an essential element of which is fraud); (5) has failed to

make the required annual report or has failed to comply with an order of the Comptroller, or (6) has violated any provision of the Crematory Act. 410 ILCS 18/11.

Before refusing to issue, suspending, or revoking a license under the Crematory Act, the Comptroller must hold a hearing to determine whether the applicant for a license or the licensee is entitled to hold such a license. 410 ILCS 18/ 62.10(b).

Any person affected by a final administrative decision of the Comptroller may have the decision reviewed by the Circuit Court under the provisions of the Administrative Review Law. 410 ILCS 18/62.20(a).

A person may not perform a cremation service unless he or she has completed training in performing cremation services and received certification by a program recognized by the Comptroller. 410 ILCS 18/22.

A crematory authority cannot cremate human remains until it has received a cremation authorization form containing the information detailed in the Crematory Act and a burial transit permit indicating that the human remains are to be cremated. 410 ILCS 18/ 20(a)(1), (2).

The crematory authority must furnish a receipt to the person who delivers human remains and must also deliver a receipt to the person who subsequently receives the cremated remains. The crematory must retain copies of these receipts in its permanent records. 410 ILCS 18/25(a), (b). The crematory authority must also maintain a permanent record of each cremation that took place at its facility as well as records of all cremated remains disposed of by the crematory authority. 410 ILCS 18/ 25(c), (d).

**(2) <u>Enforcement Mechanisms</u>**

**(a) <u>Annual Report</u>**

Each crematory authority must file an annual report with the Comptroller. 410 ILCS 18/10(e). The report must contain an affidavit that the cremation device is in proper operating condition, the total number of all cremations performed at the crematory during the past year, and attestation by the licensee that all applicable permits and certifications are valid. *Id.*

**(b) <u>Inspection</u>**

The Comptroller may inspect crematory records at the crematory authority's place of business for the purpose of reviewing the licensee's compliance with the Crematory Act. 410 ILCS 18/10(g)(1).

**(c) <u>Investigation</u>**

The Comptroller may start an investigation if he has good cause to believe that a person has engaged in, is engaging in, or is about to engage in any practice in violation of the Act. 410 ILCS 18/62. The Comptroller may (1) require the person to file a written report, (2) examine persons under oath, (3) examine books and records of the licensee, and (4) require the production of records. *Id.*

The Comptroller must make an investigation upon discovering facts that, if proved, would constitute grounds for refusal, suspension, or revocation of a license under the Cemetery Act. 410 ILCS 18/ 62.10(a).

### (d) Civil and Criminal Proceedings, Penalties

Performing cremations without receipt of a cremation authorization form or signing a form with knowledge that the form contains false or incorrect information are Class 4 felonies. 410 ILCS 18/55. A violation of any cremation procedure set forth in the Crematory Regulation Act is also a Class 4 felony. *Id.* Holding oneself out to the public as a crematory authority without being licensed or performing a cremation service without completing a training program are both Class A misdemeanors. *Id.* A person who knowingly acts without proper legal authority and who willfully and knowingly destroys or damages the remains of a deceased human being or who desecrates human remains is guilty of a Class 3 felony. *Id.* A violation of any other provision of the Crematory Act is a Class B misdemeanor. *Id.*

## V. OVERVIEW OF OTHER STATES' LAWS

The Task Force was charged with reviewing the structural framework and substantive provisions of the laws of other states, with the goal of recommending for implementation in Illinois the "best practices" of those states. In discharging this duty, the Task Force found very useful a report prepared by the GAO in August 2003, entitled "Death Care Industry: Regulation Varies Across States And By Industry Segment" (the "GAO Report"). A copy of the GAO Report may be found in the Appendix, Vol. I, Ex. 14.

The preparation of the GAO Report was prompted by concerns similar to those that resulted in the preparation of this Report. As stated in the GAO Report: "Media reports of desecration of graves and human remains and other types of mismanagement at cemeteries and crematories have inspired debate regarding whether the federal government should take on a greater role in regulating the death care industry, that is, the array of providers of federal and cemetery goods and services, such as funeral directors, embalmers, crematory operators, cemetery operators, sellers of pre-need funeral plans, and third party sellers of funeral goods."[10] App., Vol. I, Ex. 14, p. 1. The GAO Report notes that in November 2002, bills were introduced in Congress that, if enacted, would have provided: (1) federal funding to states that agreed to comply with newly established federal standards for regulating the death care industry and (2) expanded the Federal Trade Commission's role in protecting consumers and arranging death care transactions. Although the bills did not pass, the GAO Report was prepared in response to a Congressional request for information on the structures used by states for regulating the death care industry, and the mechanisms used by states for enforcing their regulations. *Id.*

The GAO sent out surveys to each of the states to gather information and gathered more specific information from California, Florida, Georgia, Hawaii, New York, and Texas. The first four states were selected by the GAO for closer scrutiny because of media reports of desecration of graves and human remains and other types of mismanagement at cemeteries and crematories in those states. New York and Texas were selected because they represented states with comparatively large populations. *Id.*, App., Vol. I, Ex. 14, p. 2.

Most of the states surveyed provided information to the GAO. In general, the GAO found that the states vary in their approach to regulating the various components of the death care industry. It found that 29 states have more than one state entity that are responsible for regulating the five segments of the death care industry (which it categorized as funeral homes, crematories, cemeteries, pre-need sales of funeral plans, and third party sales of funeral goods), and that 21 states relied on one state entity for regulating the death care industry. App., Vol. I, Ex. 14, p. 5.

The GAO found that the mechanisms used by the states to enforce their regulations also varied. The mechanisms employed by the states included licensing or registering business and practitioners, inspecting facilities, and taking enforcement actions against those individuals or businesses that violate state rules or regulations. App., Vol. I, Ex. 14, p. 5.

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[10] "Third party sellers of funeral goods" refers primarily to retailers that are not affiliated with a funeral home or cemetery that sells caskets and other funeral-related products.

Subsequent to the GAO report, California, Florida, and Hawaii enacted various legislative changes to their death care statutes. The statutory scheme in New York remained basically the same, as did that in Texas (although in 2003, Texas transferred the authority to license and regulate cemeteries and crematories from the Department of Health to the Texas Funeral Service Commission). Georgia's most recent overhaul of its death care industry regulations occurred in 2000.

The Task Force determined that it would be instructive to look at the current state laws and regulations in the same six states that were used as case studies by the GAO, with the goal of identifying possible "best practices" that may have emerged in some of these states in response to the findings contained in the GAO Report. The Task Force also looked at the laws in Ohio, based upon comments made by Representative Brady during his testimony. App., Vol. II, Ex. 2, p. 12.

The Task Force recommends that several aspects of Florida's regulation of its death care industry be emulated in the new legislation, including:

- The death care industry in Florida is consolidated in the Department of Financial Services. Within the Department, the Board of Funeral, Cemetery, and Consumer Services controls the licensure of all of the individuals and institutions that comprise Florida's death care industry.

- For every internment or inurnment at a Florida cemetery, the cemetery authority is required to place on the outer burial container a tag or permanent identifying marker listing the name of the decedent, the date of birth, and the date of death.

- All cemeteries exempted from regulation in Florida must submit to an investigation and mediation procedure by the Board in the event of a consumer complaint. First, the exempt cemetery must make every effort to resolve a consumer complaint on its own accord. If those efforts fail, the exempt cemetery must advise the consumer of the right to seek investigation and mediation by the Board. The Board may then conduct an onsite investigation and facilitate face-to-face mediation with the parties. If all attempts to resolve the consumer complaint fail, the cemetery is subject to proceedings for penalties and discipline.

- The Board is authorized to adopt rules that permit the issuance of citations. These citations are issued to an offending licensee and contain a brief factual statement, the sections of the law allegedly violated, and the penalty imposed. The citations clearly state that the licensee may choose, in lieu of accepting the citation, to request a hearing. If the licensee does not dispute the matter in the citation with the Board within 30 days after the citation is served, the citation becomes a final order and shall constitutes discipline.

The following is a general summary of the laws and regulations in these eight states. Although the Task Force has attempted to set forth the basic structure of each state's regulation of the death care industry, the summary is not comprehensive because the statutes and

regulations relevant to each state's death care industry are too voluminous to be condensed into this Report. The complete text of the laws and regulations reviewed by the staff of the Task Force are, however, included in the Appendix. (*See* Appendix, Vol. V (California); Vol. VI (Florida); Vol VII (Georgia); Vol. VIII (Hawaii); Vol IX (Louisiana); Vol. X (New York); Vol. XI (Ohio); and Vol. XII (Texas).

## A. California

### 1. Regulatory Structure

The Cemetery and Funeral Bureau (the "Bureau") within the California Department of Consumer Affairs regulates funeral establishments, funeral directors, embalmers, cemeteries, cemetery managers, crematories, and crematory managers. The Bureau regulates the sales of pre-need funeral plans, but only those that are sold by funeral homes that place the sales revenue in trust. California does not regulate third party sales of funeral goods.

### 2. Substantive Provisions and Enforcement Mechanisms

#### a. Funeral Homes, Funeral Directors, and Embalmers

The Funeral Directors and Embalmers Act, Cal. Bus. & Prof. Code §§ 7600-7746, sets forth the primary requirements for funeral establishments, funeral directors, and embalmers. It also authorizes the Bureau to promulgate and enforce rules and regulations pertaining to: "(a) the practice of embalming; (b) the business of a funeral director; (c) the sanitary conditions of places where such practice or business is conducted with particular regard to plumbing, sewage, ventilation and equipment; (d) specifying conditions for approval of funeral establishments for apprentices and for approval of embalming schools; (e) the scope of examinations; (f) carrying out generally the various provisions of this chapter for the protection of the peace, health, safety, welfare and morals of the public." *Id.* at § 7606. Accordingly, relevant regulations can be found in Cal. Code Regs. tit. 16, §§ 1200-1291. Additional requirements can be found in the California Health and Safety Code.

California requires that funeral establishments, funeral directors, and embalmers be licensed by the Bureau. A funeral establishment must renew its license annually. Cal. Bus. & Prof. Code § 7725. To obtain a funeral director's license, an applicant must be least 18 years old, must pass a criminal background check, must have an associate's degree or its equivalent, and must pass a state examination. *Id.* at §§ 7619, 7622. To qualify for an embalmer's license, an applicant must be over 18 years of age, must pass the criminal background check, and must have the requisite education, including a two-year apprenticeship and at least one year at an accredited embalming school. *Id.* at § 7643. In addition, an applicant for an embalmer's license must pass the Bureau's examination which is offered at least once annually. *Id.* at §§ 7646-47. An embalmer's apprentice must register with the Bureau. *Id.* at § 7661.

California also requires that persons employed by a licensed funeral establishment who consult with the family or representative of a family of a deceased person for the purposes of arranging funeral services receive documented training and instruction regarding the regulations pertaining to the duties of a funeral director. A written outline describing the training program

must be maintained in the funeral establishment and must be available for inspection and comment by the Bureau. Cal. Bus. & Prof. Code § 7635.

The Funeral Directors and Embalmers Act sets forth several disclosure requirements. For example, it provides that a funeral director must provide a printed price list upon beginning discussion of prices for funeral goods and services offered. Cal. Bus. & Prof. Code § 7685. It also requires that the first page of the contract list the contact information for the Department of Consumer Affairs, Cemetery and Funeral Bureau. *Id.* at § 7685.3. In addition, a funeral establishment must display the Bureau's consumer guide and must provide a copy of it prior to drafting a contract for funeral services. *Id.* at § 7685.5. Prior to drafting the contract, the funeral establishment must also disclose whether or not the funeral establishment has a pre-need agreement on behalf of the deceased *Id.* at § 7685.6.

The grounds for disciplinary action against all licensees are set forth in Sections 7691 through 7707 of the Funeral Directors and Embalmers Act. These grounds include using profane, indecent, or obscene language in the course of the preparation for burial or during the funeral service or burial; solicitation, after a death or while death is impending; misrepresentation or fraud; and use of a previously used casket. *Id.* If a default has been entered or the licensee has been tried at a formal hearing and found guilty, the Bureau may impose any of the following penalties: "(a) suspension of the disciplinary order; (b) reproval, public or private; (c) probation; (d) suspension of the right to practice; (e) revocation of the right to practice; and (f) such other penalties as the Bureau deems fit." *Id.* at § 7690. Additionally, a person may be found guilty of a misdemeanor for the acts set forth in Sections 7715-7718.5, and may be punished by imprisonment in the county jail for not more than six months, or by a fine not exceeding $1,000, or both. *Id.* at § 7719. Also, a licensee who fails to perform its duty to inter within a reasonable time is guilty of a misdemeanor that shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding $10,000, or both that imprisonment and fine. Cal. Health & Safety Code § 7103.

**b. <u>Crematory and Crematory Operators</u>**

California's cemeteries and crematories are regulated under the Cemetery Act, Cal. Bus. & Prof. Code §§ 9600-9789. Additional regulations can also be found in Cal. Code Regs. tit. 16, §§ 2300-2390 and in the California Health and Safety Code.

A crematory must be licensed by the Bureau and must be operated by a licensed crematory manager. Cal. Bus. & Prof. Code §§ 9780, 9787. To obtain a license, a crematory manager must be at least 18 years old, must possess a high school diploma or equivalent, and must be a resident of California. *Id.* at § 9787.3. In addition, the applicant must pass a written examination to be licensed by the Bureau. *Id.* at § 9787. See also Cal. Health & Safety Code § 8347 regarding crematory licensee instruction and training. Cremating human remains without a license is a misdemeanor. Cal. Bus. & Prof. Code § 9788. Each cremation constitutes a separate violation. *Id.*

Cremated human remains disposers must also be registered with the Bureau. Cal. Bus. & Prof. Code § 9740. Persons who scatter remains without valid registration or who fail to follow specific written instructions with regard to scattering remains are guilty of a misdemeanor. *Id.* at

§§ 9748, 9749. Any cremated remains disposer who stores cremated remains in a reckless manner that results in loss of all or part of the cremated remains or an inability to individually identify the cremated remains is guilty of a public offense punishable by jail not exceeding one year or by a fine not to exceed $5,000. *Id.* at § 9749.3.

Crematory operators must provide a printed list of prices for cremation and storage, cremation containers, cremated remains containers and urns, and requirements for cremation containers for anyone who asks. Cal. Health & Safety Code § 8346.5. A crematory shall supply the Bureau's contact information in writing with any sales contract. Cal. Bus. & Prof. Code § 9662.

Crematory operators must keep records of all remains cremated, including the name of each deceased person, place of death, date of interment, and name and address of the funeral director. Cal. Health & Safety Code § 8110. A crematory must keep records of all cremations performed, including the name of the funeral director, name of the deceased, date of cremation, name of cremation chamber operator, details regarding processing the cremated remains as provided by statute. Cal. Health & Safety Code § 8343. Crematories must also have a system for identifying cremated remains. Cal. Health & Safety Code § 8344.

The Bureau shall conduct at least one unannounced inspection of each licensed crematory annually. Cal. Bus. & Prof. Code § 9720.

### c. Cemeteries and Cemetery Operators

Section 9003 of the California Health & Safety Code provides the authority for the organization of public cemetery districts.[11] Districts are governed by a Board of Trustees. Districts may own, operate, improve, and maintain cemeteries and provide interment services. Cal. Health & Safety Code § 9040. Districts have exclusive jurisdiction and control over the maintenance and management of any cemetery it owns. *Id.* Districts are authorized to sell interment rights in their cemeteries, columbariums, and mausoleums. Cal. Health & Safety Code § 9049. Districts are also authorized to sell "accessory and replacement objects that are necessary or convenient to interments" which include burial vaults and flower vases, but exclude monuments or markers. Cal. Health & Safety Code § 9053. Districts are required to provide for regular audits of its accounts, records and endowment care fund. Cal. Health & Safety Code § 9079.

The Cemetery Act provides requirements pertaining to private cemeteries and cemetery managers. Religious cemeteries, public cemeteries, and cemeteries on any private or fraternal burial park not exceeding 10 acres in area, and established prior to September 19, 1939, are not subject to the Cemetery Act. Cal. Bus. & Prof. Code § 9609. Section 8300 of the Health and Safety Code sets forth the powers of a private cemetery authority.

The owner or operator of a private cemetery must apply for a certificate of authority. Cal. Bus. & Prof. Code § 9715. See also Cal. Code Regs. tit. 16, § 2326 for application

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[11] The provisions of the California Health and Safety Code authorizing and pertaining to public cemetery districts were added pursuant to 2003 Cal. Stat. 57 and were effective as of January 1, 2004.

requirements. The cemetery must be operated by a licensed cemetery manager. Cal. Bus. & Prof. Code § 9723. To be licensed, the cemetery manager must be at least 18 years of age, must have a high school diploma or its equivalent, must pass a criminal background check, must be a resident of California, and must pass the Bureau's written examination. *Id.* at §§ 9715.1, 9723.1.

Cemetery brokers and cemetery salespersons must be licensed by the Bureau. Cal. Bus. & Prof. Code § 9676. Any person acting as a cemetery broker or salesperson without a license or advertising is guilty of a misdemeanor. *Id.* at § 9681. Advertising the sale or exchange of cemetery property without a license is a misdemeanor punishable by a fine of up to $5,000 if the offender is a corporation. *Id.* at § 9686. The Bureau may temporarily suspend or permanently revoke a license for failure to disclose that the cemetery broker or salesperson is acting as such. *Id.* at § 9685.

All cemetery authority contracts must be in writing and must meet the statutory disclosure requirements which include disclosing the total contract price, terms of payment, itemized statement of charges, charges for an interment plot, charges for a monument marker, and identifying the space and location sold. Cal. Health & Safety Code § 8277. A cemetery authority shall supply the Bureau's contact information in writing with any sales contract. *Id.* at § 9662. A cemetery authority must also provide a copy of the Bureau's consumer guide prior to drafting a contract for cemetery goods or services. *Id.* at § 9663. A purchaser may cancel the contract without penalty within five calendar days. Cal. Health & Safety Code § 8278.

Cemetery authorities must keep records regarding the ownership and transfer of all plots in the cemetery. Cal. Health & Safety Code § 8331. Cemetery authorities must keep records of all remains interred on the premises, including the name of each deceased person, place of death, date of interment, and name and address of the funeral director. Cal. Health & Safety Code § 8110. Section 8113.1 of the Health and Safety Code provides the minimum coverage requirements over vaults, caskets, and cremated remains and in cases of consensual double burial. Cemeteries are liable for the costs of reburial if any remains are improperly interred. Cal. Health & Safety Code § 8113.4. Unless there is express written permission of the person entitled to control the remains, no person shall knowingly or willfully inter the remains of more than one body in a single plot, or place a casket or other human remains in an already occupied grave. Violation of this law constitutes a crime punishable with jail or prison time depending on the number of violations. Cal. Health & Safety Code § 8113.5.

Each cemetery authority must file an annual endowment care fund report as described in Section 9650 of the Cemetery Act. A cemetery may be fined for failure to submit a report. Cal. Bus. & Prof. Code § 9650.4. The Bureau shall examine the endowment care funds of a cemetery authority at least once every five years. *Id.* at § 9652. The Bureau may take action if it finds that endowment care funds have been invested in violation of the Health and Safety Code. *Id.* at § 9656.

The Bureau shall also conduct at least one unannounced inspection of each licensed cemetery annually. Cal. Bus. & Prof. Code § 9722.

The Bureau may suspend or revoke a cemetery licensee's license or a cemetery's certificate of authority for unprofessional conduct as set forth in Section 9725 of the Cemetery Act or for any of the acts set forth in Sections 9726 and 9727 of the Cemetery Act.

## B. Florida

### 1. Regulatory Structure

In 2004, Florida passed the Florida Funeral, Cemetery, and Consumer Services Act, (the "Act") which reworked the state's regulation of the death care industry. Fla. Stat. Ann. § 497.001. The Act became effective October 1, 2005. The legislature passed the Act to establish "minimum qualifications for entry into the professions and occupations of embalming, funeral directing, cremation, direct disposition, and monument sales; to regulate such activities; and to provide for swift and effective discipline for those practitioners who violate the law." Fla. Stat. Ann. § 497.002[12]

Two entities regulate the death care industry in Florida, (1) The Board of Funeral, Cemetery, and Consumer Services (the "Board') within the Department of Financial Services and (2) the Department of Financial Services (the "Department").

The Board controls the licensure of all the individuals and institutions that comprise Florida's death care industry. The Board issues at least seventeen different licenses: (1) embalmer apprentice, (2) embalmer intern, (3) funeral director intern, (4) funeral director, (5) funeral director and embalmer, (6) direct disposer, (7) monument establishment sales agent, (8) preneed sales agent, (9) funeral establishment, (10) centralized embalming facility, (11) refrigeration facility, (12) direct disposal facility, (13) monument establishment, (14) cinerator facility, (15) removal services, (16) preneed sales business; and (17) cemetery. Fla. Stat. Ann. § 497.141(12)(a)-(c). The Board also approves pre-need contracts and possesses the authority to discipline licensees. Fla. Stat. Ann. § 497.103. The Board consists of 10 members; nine are appointed by the governor and the tenth is the State Health Office or her or his designee. Fla. Stat. Ann. § 497.101(1)-(2). The Act sets fourth detailed rules for the composition of the board; six of the appointed members must participate in different aspects of the death care industry and three must be unbiased consumers. Fla. Stat. Ann. § 497.101(2). Board members serve four year terms save for the State Health Officer, who holds the position while in office. Fla. Stat. Ann. § 497.101(3).

The Department retains right to determine who gets investigated, the nature of the investigation, and the authority to prosecute those who violate the law. The Department of Financial Services also has sole authority to seek administrative or judicial enforcement of Board orders. Fla. Stat. Ann. § 497.103(2)(k).

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[12] The Act itself does not explain the motivation behind the changes to Florida's death care industry, but it appears that violations at cemeteries owned by Menorah Gardens contributed to the legislative push. Linda Kleindienst, *Funeral Industry Seeks Tough Laws Because of Scandals in Two States, Cemetery Operators Want More Oversight of Grave-Sites Sales and Sizes*, Orlando Sentinel, Jan. 14. 2003, at B5. Menorah Gardens stands accused of instructing employees to dig up graves and discard the remains in wooded areas to make room for new bodies. Joe Brogan and Joel Engelhardt, *Remains Found on Cemetery Borders*, Palm Beach Post, April 19, 2002, at A1.

The Act sets fourth a complex disciplinary procedure. Before it can initiate a complaint, the Department must present the incriminating evidence to the Board at a probable cause hearing. Fla. Stat. Ann. § 497.153(2)(a). The Department can file the complaint if a majority of the Board concludes that there is probable cause to continue. Fla. Stat. Ann. § 497.153(3)(e). And even if the Board does not believe probable cause exists, the Department can override the Board's decision and proceed with the complaint. Fla. Stat. Ann. § 497.153(3)(b). If the complaint goes forward, evidence against the accused is presented to an Administrative Law Judge. Fla. Stat. Ann. § 497.153(4)(d). The administrative law judge makes a recommendation, which the Department presents to the Board for final action. *Id.* The Board can impose a wide variety of penalties. Fla. Stat. Ann. § 497.153(5)(a)(1)-(8).

The Department prepares and the board approves all written license examinations. Fla. Stat. Ann. § 497.144(1) and (2).

The Department must investigate "all complaints directly or indirectly alleging violation of any provision of [the Act] or rules adopted pursuant to this chapter." Fla. Stat. Ann. § 497.149 § (1)(a). The Department may, but does not have to, investigate license applicants. *Id.*

The Department may make unannounced inspections. Fla. Stat. Ann. § 497.149(2)(a).

Florida exempts certain cemeteries from licensure and full scale regulation, but the exempted institutions must still follow certain rules to resolve consumer complaints. Exempted cemeteries in excess of five acres must submit to an investigation and mediation procedure by the Department in the event of a consumer complaint. Fla. Stat. Ann. § 497.260(3).

### 2. Enforcement Mechanisms

#### a. Funeral Directors, Funeral Establishment, and Embalming

Embalmers, funeral directors, funeral establishments, removal services, refrigeration facilities, and centralized embalming facilities operated independently of funeral establishments must be licensed to operate in the state. Fla. Stat. Ann. § 497.365(1); Fla. Stat. Ann. § 497.385.

Licenses for funeral directing, embalming, and funeral establishments expire every two years. Fla. Stat. Ann. § 497.380(5)

An embalmer must "[c]omplete a course in mortuary science approved by the licensing authority." Fla. Stat. Ann. § 497.368(a)(4). An embalmer must also pass an examination and complete a 1-year internship under a licensed embalmer. Fla. Stat. Ann. § 497.368(2)(a)-(b).

A funeral director must hold an associate's degree and have completed a one year course in mortuary science. Fla. Stat. Ann. § 497.373(2). A funeral director must also pass an examination and complete a one year internship under a licensed funeral director. Fla. Stat. Ann. § 497.373(2)(a)-(b).

The Board must inspect each licensed funeral establishment once per year. Fla. Admin. Code Ann. r. 69K-21.002(3).

### b. Crematories and Crematory Operators

Direct disposition establishments and crematories must be licensed to operate in the state. Fla. Stat. Ann. § 497.604(1); Fla. Stat. Ann. § 497.606(1). Direct disposers must also be individually licensed. Fla. Stat. Ann. § 497.602(1).

Direct disposer licenses and licenses for direct disposition establishments and crematories expire every two years. Fla. Stat. Ann. § 497.603(2); Fla. Stat. Ann. § 497.604(6); Fla. Stat. Ann. § 497.606(6).

Each crematory must be inspected annually. Fla. Stat. Ann. § 497.606(j).

### c. Cemeteries and Cemetery Operators

A person may not operate a cemetery without a license. Fla. Stat. Ann. § 497.263(1). Licenses are not assignable or transferrable. Fla. Stat. Ann. § 497.264(1).

Cemetery licenses must be renewed annually. § 497.265(2).

The Act exempts some cemeteries from licensure and full-scale regulation, but the exempted institutions must still follow certain rules to resolve consumer complaints. Fla. Stat. Ann. § 497.260. Exempted cemeteries in excess of five acres must submit to an "investigation and mediation procedure by the [D]epartment in the event of consumer complaint." Fla. Stat. Ann. § 497.260(a)-(f).

Each cemetery must set up a care and maintenance trust fund. Fla. Stat. Ann. § 497.266(1).

Each cemetery company must keep records "showing the date of burial and the name of the person buried, together with lot, plot, and space in which the burial was made." Fla. Stat. Ann. § 497.275(1).

The Board must inspect each licensed cemetery once per year. Fla. Admin. Code Ann. r. 69k-6.006.

## C. Georgia

### 1. Regulatory Structure

Georgia has centralized the regulation of the death care industry in the Office of the Secretary of State.[13] The Georgia State Board of Funeral Service (the "BFS"), within the Secretary of State's office, regulates the practice of embalming and funeral directing and the care and disposition of dead human bodies. Ga. Code Ann. § 43-18-23. The Georgia State Board of Cemeterians (the "SBC"), within the Secretary of State's Office, regulates cemetery owners and

[13] Georgia last overhauled death care industry regulations in 2000 with the passage of the Georgia Cemetery and Funeral Services Act of 2000. The constitutionality of the Act was upheld by the 11th Circuit in 2003.

operators, sellers of burial or funeral merchandise or burial services, and sellers of pre-need burial or funeral merchandise or pre-need burial services. Ga. Code Ann. § 10-14-1. The Secretary of State regulates perpetual care trust funds and pre-need escrow funds and accounts. Ga. Code Ann. § 10-14-3.1.

The SBC enforces the Georgia Cemetery and Funeral Services Act of 2000 ("GCFS") ( except for the GCFS's regulations related to perpetual care trust funds and pre-need escrow funds and accounts). Ga. Code Ann. § 43-8B-4; Ga. Code Ann. § 43-8B-7(4); Ga. Code Ann. § 10-14-3.1. The SBC consists of seven members appointed by the governor. Ga. Code Ann. § 43-8B-5(a). Six members must be practicing cemeterians with at least five years experience; the seventh member must have no connection to the cemetery profession. *Id.*

The BFS enforces the Georgia Funeral Service Law. Ga. Code Ann. § 43-18-23(1)-(8). The BFS consists of seven members appointed by the governor. Ga. Code Ann. § 43-18-21(a). Six members must be practicing funeral directors and embalmers with at least five years experience; the seventh member must have no connection to the funeral service industry. *Id.*

### 2. Substantive Provisions and Enforcement Mechanisms

#### a. Funeral Homes, Funeral Directors, and Embalmers

All funeral establishments (funeral homes), funeral directors, and embalmers must hold a license to operate in the state. Ga. Code Ann. § 43-18-70(a). There were 693 licensed funeral establishments, 1,972 licensed funeral directors, and 1,758 licensed embalmers as of August 3, 2009. http://www.sos.georgia.gov/plb/funeral.

Prospective funeral directors and embalmers must pass both a national and state examination, have a degree in mortuary science, and serve an apprenticeship of 3,120 hours over an 18-month period. Ga. Code Ann. § 43-18-41(a)-(d); Ga. Code Ann. § 43-18-50(a)-(c).

Licenses for funeral establishments, funeral directors, and embalmers expire every two years. Ga. Code Ann. § 43-18-43(a).

The BFS employs two inspectors that devote 100 percent of their time to inspecting funeral establishments for compliance with Georgia state law and board rules. http://www.sos.georgia.gov/plb/funeral. The board must inspect each licensed funeral establishment at least once per year. Ga. Code Ann. § 43-18-75(a).

If the BFS determines that a funeral establishment violated the law, it may revoke or suspend the establishment's license, it may put the establishment on probation, or it may impose a fine. Ga. Code Ann. § 43-18-75(b). In June 2009, the board took disciplinary action against three funeral establishments. The board fined two homes $50 for sanitary violations; it placed a third establishment on probation for three for three years and imposed a $1000 fine. http://www.sos.georgia.gov/plbnews/Funeral/default.htm.

### b. Crematories and Crematory Operators

All crematories must hold a license to operate in the state. Ga. Code Ann. § 43-18-71(a); Ga. Code Ann. § 43-18-72(a)(1)."[14] Each crematory must designate a licensed funeral director to be in "full an continuous charge" of the crematory. Ga. Code Ann. § 43-18-71(a). There were 75 licensed crematories as of August 3, 2009. http://www.sos.georgia.gov/plb/funeral.

Crematory licenses expire every two years. Ga. Code Ann. § 43-18-73(a).

Crematories must be inspected at least once a year. Ga. Code Ann. § 43-18-75(a). The same two inspectors who conduct inspections of funeral establishments conduct inspections of crematories. http://www.sos.georgia.gov/plb/funeral/.

### c. Cemeteries and Cemetery Operators

Cemetery owners must register with the state. Ga. Code Ann. § 10-14-4(b)(1); Ga. Code Ann. § 10-14-17(7.1). If an individual owns more than one cemetery, she must submit a separate registration application for each cemetery owned. Ga. Code. Ann. § 10-14-4(b)(1). Exempt from registration are governmentally owned cemeteries, fraternal cemeteries, and cemeteries owned and operated by churches, synagogues, or communities, and family burial plots. Ga. Code Ann. § 10-14-17(7.1); Ga. Code Ann. § 10-14-3(8).

Cemetery registrations must be renewed every year. Ga. Code Ann. § 10-14-4(d).

Georgia law does not require regular cemetery inspections. The Secretary of State has statutory authority to investigate potential violations of the GCFS or of the rules and regulations promulgated by Secretary of State or the SBC. Ga. Code Ann. § 10-14-15(a)(1).

Georgia employs "three investigative analysts (inspectors) who spend 25 percent of their time inspecting cemeteries." The investigative analysts use a checklist and look at such things as whether price lists, certificates, and sales material are properly posted, and the general condition of the cemetery. The investigative analysts also review financial statements and documents." GAO Report, p. 36.

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[14] A "crematory" means "any place where cremation is performed, other than a hospital, clinic, laboratory, or other facility authorized by the Department of Community Health for such purposes." Georgia amended the definition of "crematory" in May 2002. Ga. Code Ann. § 43-18-1. Prior to the amendment, a "crematory" was defined as "any place that is owned by a funeral director or funeral establishment where cremation is performed, and which is open to the public other than a hospital, clinic, laboratory, or other facility authorized by the Department of Human Resources for such purposes." In early 2002, investigators from the U.S. EPA discovered 339 uncremated bodies on the property of Tri-State Crematory in Noble, Georgia. The Tri-State Crematory was not subject to inspection by the Board of Funeral Service because it was not owned by a funeral director or a funeral establishment. The legislature modified the definition of "crematory" so that facilities such a Tri-State would be subject to yearly inspection by the BFS.

## D. Hawaii

### 1. Regulatory Structure

In Hawaii, regulation of the death industry is divided between the Department of Health and the Department of Commerce and Consumer Affairs (the "DCCA"). The Department of Health regulates funeral homes with embalming rooms and embalmers. The DCCA regulates cemeteries and pre-need sales of funeral plans. Hawaii does not regulate crematories, crematory operators, or third party sales of funeral goods.

### 2. Substantive Provisions and Enforcement Mechanisms

#### a. Funeral Homes, Funeral Directors, and Embalmers

A mortuary (i.e. a funeral home that performs embalmings) must be licensed by the Director of the Department of Health. Haw. Code R. § 11-22-3(c). A mortuary must employ a licensed embalmer on a full-time basis. *Id.* To operate as an embalmer in Hawaii, a person must be licensed by the Director of the Department of Health as an embalmer or registered as an apprentice embalmer. Haw. Code R. § 11-22-4. See Haw. Rev. Stat. § 469-4 for the requirements to be a registered apprentice embalmer.

To qualify for a license as an embalmer, undertaker or funeral director, a person must be over 18 years old, be of good moral character, and must pay a fee and pass an examination. Rev. Stat. § 469-1. Each licensed embalmer, undertaker or funeral director, must renew their license by registering with the Department of Health and paying the renewal fee between July 1 and 10 of each year. Haw. Rev. Stat. § 469-3.

The Department of Health may revoke a license upon proof of violation of any rule or regulation of the Department. Haw. Rev. Stat. § 469-6. Any person who practices as an embalmer or undertaker without being registered with the Department of Health shall be fined not less than $50 nor more than $250 or imprisoned not less than 30 days nor more than 90 days, or both. Haw. Rev. Stat. § 469-8.

#### b. Crematory and Crematory Operators

Hawaii does not regulate crematories or crematory operators.

#### c. Cemeteries and Cemetery Operators

Hawaii requires that each cemetery authority file a written certificate of dedication in the Office of the Bureau of Conveyances (the "Bureau") or Assistant Registrar of the Land Court (the "Registrar") that dedicates the property exclusively to cemetery purposes. Haw. Rev. Stat. § 441-2. Each cemetery authority must make a map that uniquely identifies each plot and must file that map with the Bureau or Registrar. Haw. Rev. Stat. § 441-3.[15] The cemetery authority

[15] Effective July 1, 2007, this provision was amended to require that (1) each plot be uniquely identified, (2) each cemetery file the required map or plat with the Bureau or Registrar, (3) each cemetery maintain a permanent and publicly available record regarding persons buried in the cemetery and the locations of their remains. 2007 Haw. Sess. Laws 188.

must also maintain "a permanent, accurate record of the identity of each person whose remains are located in the cemetery, together with the corresponding unique identifier that indicates the location of the person's remains within the cemetery." *Id.* A cemetery authority must be able to timely respond to inquiries from the public or the DCCA regarding the location of a person's remains within the cemetery. *Id.*

### E. Louisiana

#### 1. Regulatory Structure

The Louisiana Cemetery Board, within the office of the governor, (the "Cemetery Board") regulates cemeteries. The Louisiana State Board of Embalmers and Funeral Directors (the "Funeral Board"), within the Department of Health and Hospitals, regulates funeral homes, funeral directors, embalmers, crematories, and sales of pre-need funeral contracts.

The Cemetery Board consists of seven members appointed by the governor. La. Rev. Stat. Ann. § 8:61(A). Five of the members must have five consecutive years of active cemetery administrative experience and must hold a managerial position with a cemetery while they serve on the Cemetery Board. La. Rev. Stat. Ann. § 8:62. The governor has the power to appoint the other two members at large. Id.

The Funeral Board consists of nine members appointed by the governor. La. Rev. Stat. Ann. § 37:832(1). Four of the members must be licensed embalmers with five years of embalming experience. La. Rev. Stat. Ann. § 832(B)(1). Four of the members must be funeral directors with five years of funeral directing experience. Id. The ninth and final member must be over sixty years of age and have no connection to the death care industry. La. Rev. Stat. Ann. § 832(B)(2). Members of the Funeral Board serve four years terms. La. Rev. Stat. Ann. § 832(C).

#### 2. Enforcement Mechanisms

##### a. Funeral Homes, Funeral Directors, and Embalmers

Funeral directors and embalmers must be licensed to operate in the state. La. Rev. Stat. Ann. § 37:848(A); La. Rev. Stat. Ann. § 37:848(D).[16] Funeral director licenses and combined funeral director and embalmer licenses expire on December 31 each year. La. Admin. Code tit. 46, § 701(A).

To obtain a funeral director's license, one must have completed thirty semester hours at an accredited college or university and have served as an apprentice in Louisiana for at least one year. La. Rev. Stat. Ann. § 37:842(A)(3)-(4). One must also pass an examination conducted by the Funeral Board. La. Rev. Stat. Ann. § 37:842(A)(6). The qualifying exam must test the applicant's knowledge of the following topics—(1) sociology/funeral history, (2) psychology, (3) funeral directing, (4) business law, (5) funeral service law, (6) funeral service merchandising,

[16] The Louisiana statute governing the funeral directing and embalming professions uses the words "license" and "certificate" interchangeably. La. Rev. Stat. Ann. § 37:831(14).

and (7) accounting/computers. La. Admin. Code tit. 46, § 503(1)-(7). The Funeral Board may also test on "any other subjects [it] deems necessary." La. Admin. Code tit. 46, § 503(9).

To obtain a combined funeral directing and embalming license, one must complete an embalming course at an accredited school and pass an examination on embalming conducted by the Funeral Board, in addition to the internship and examination requirements for a funeral director's license. La. Rev. Stat. Ann. § 37:842(B)(3)-(4). The examination "shall be...written and/or oral" and it must cover the "subjects defined in courses required by the American Board of Funeral Service Education and laws, rules and regulations of the state of Louisiana, together with any such other subjects as the [Funeral Board] may deem necessary." La. Admin. Code tit. 46, § 505.

To renew their licenses, "embalmers and/or funeral directors" must "complete a minimum of four hours of approved continuing education" each year. La. Admin. Code tit. 46, § 709 (E)(1).

Any establishment conducting the business of funeral directing or embalming must be licensed to operate in the state. La. Rev. Stat. Ann. § 37:842(D). To obtain a license, the establishment must show that all funeral directing or embalming activities are conducted by licensed individuals. La. Rev. Stat. Ann. § 37(D)(1)-(2). The establishment must also meet Louisiana's requirements "with respect to licensed personnel, interns, embalming facilities for the sanitation, disinfection, and preparation of the human body, adequate buildings, display rooms, furnishings, or equipment..." La. Rev. Stat. Ann. § 37.842(D)(3). Establishment licenses expire on December 31 each year. La. Admin. Code tit. 46, § 701(A).

**b. <u>Crematory and Crematory Operators</u>**

Crematories and crematory operators must be licensed by the Funeral Board to operate in the state. La. Rev. Stat. Ann. § 37:871(A).

The Funeral Board issues two different types of cremation licenses. An individual can obtain a license to operate a "crematory retort," and an entity can obtain a license as a crematory authority. La. Rev. Stat. Ann. § 37:872-73. A licensed crematory retort operator is an "individual who is authorized...by the [Funeral] board to operate the retort and perform the cremation process." La. Rev. Stat. Ann. § 37:831(25). A "crematory authority" is "the legal entity which is licensed by the [Funeral Board] to operate a crematory." La. Rev. Stat. Ann. § 37:831(24).

To obtain a license to operate a crematory retort, one must, among other things, possess a high school diploma and one must complete an approved training course. La. Rev. Stat. Ann. § 37:872(B).

To obtain a crematory authority license, an entity must certify that "all cremations are performed by a licensed crematory retort operator" and the entity must demonstrate "that the crematory meets all the requirements established by the [Funeral Board]...." La. Rev. Stat. Ann. § 37:873(B).

Licenses to operate a crematory retort and crematory authority licenses must be renewed each year. La. Rev. Stat. Ann. § 37:874(A)-(B).

Louisiana statutes provide detailed rules on who may authorize a cremation, proper cremation procedures, and appropriate care for cremation residue. La. Rev. Stat. Ann. § 37:876-880.

#### c. Cemeteries and Cemetery Operators

Only authorized corporations can operate cemeteries or transact business of a cemetery in Louisiana. La. Rev. Stat. Ann. § 8:201. The Cemetery Board issues certificates of authority. La. Rev. Stat. Ann. § 8:70-72.

One must posses a license from the Cemetery Board to "engage in the business of a cemetery sales organization or a cemetery management organization." La. Rev. Stat. Ann. § 9:401. A "cemetery sales organization" is "any legal entity contracting as an independent contractor with a cemetery authority to conduct sales of...cemetery spaces...and/or cemetery products." La. Rev. Stat. Ann. §8:1(11). A "cemetery sales organization" is "any legal entity contracting as an independent contractor with a cemetery authority to manage a cemetery...." La. Rev. Stat. Ann. § 8:1(13).

Louisiana's cemetery regulations do not apply to "family burial grounds, fraternal cemeteries, municipal cemeteries, community cemeteries, state cemeteries, federal cemeteries, or religious cemeteries that do not sell cemetery spaces...." La. Rev. Stat. Ann. § 8:78(B). The cemetery regulations also do not apply to "community cemeteries owned and operated by nonprofit corporations in existence prior to January 1, 2007, whose officers and directors serve on a voluntary basis without compensation for their services." La. Rev. Stat. Ann. §8.78(C).

The Cemetery Board can request that the attorney general place a cemetery in receivership if the cemetery becomes insolvent or if the cemetery violates Louisiana law. La. Rev. Stat. Ann. § 8:69.2.

Louisiana statutes provide specific penalties for opening graves, stealing bodies, and mutilating or disinterring human remains. La. Rev. Stat. Ann. § 8:653-4.

### F. New York

#### 1. Regulatory Structure

Within the New York State Department of Health, there is a funeral directing advisory board (the "Funeral Board") consisting of ten members who are appointed by the Commissioner of Health. N.Y. Pub. Health Law § 3402. The composition of the Funeral Board is as follows: "three shall be representatives of consumer interests, having no pecuniary interest, affiliation or other association, direct or indirect, other than as consumers, with any business affecting the disposal or burial of deceased human beings, as the commissioner shall determine, six shall be licensed funeral directors, undertakers or embalmers in this state, having been actually engaged in the practice of funeral directing, undertaking or embalming, as the case may be, for at least

five years prior to appointment and one member shall be an officer, director or employee of a cemetery corporation." The Funeral Board meets at least once every three months.

There is also a Cemetery Board within the Division of Cemeteries in the Department of State, comprised of the Secretary of State, the Attorney General and the Commissioner of Health. N.Y. Not-for-Profit Corp. Law § 1504. The Cemetery Board appoints the Director of the Division of Cemeteries and may adopt rules and enforce its orders. See also the Rules of Procedure of the State Cemetery Board. N.Y. Comp. Codes R. & Regs. tit. 19, § 200.

### 2. Substantive Provisions and Enforcement Mechanisms

#### a. Funeral Homes, Funeral Directors, and Embalmers

Only a registered funeral firm may operate, or engage in the business and practice of funeral directing. N.Y. Pub. Health Law § 3428. To operate in New York, a funeral firm must be owned or managed by a duly licensed funeral director or undertaker. N.Y. Pub. Health Law § 3441.

All funeral directors, undertakers and embalmers must be licensed. N.Y. Pub. Health Law § 3420. To be licensed as a funeral director, an applicant must pass a funeral directing examination prepared or approved by the Department of Health. In addition, an applicant must be a U.S. citizen or legal alien, be of "good moral character", and must have satisfactorily completed a college level course of study in funeral service. An applicant must also serve one year as a registered resident and must pass a second examination before becoming licensed. N.Y. Pub. Health Law § 3421. See also N.Y. Comp. Codes R. & Regs. tit. 10, §§ 77.1 to 77.4 for more details on the required educational training and examinations.

Funeral directors, undertakers, embalmers and funeral firm operators must also register with the state, pay the required registration fee, and file the required report on a biennial basis. N.Y. Pub. Health Law § 3428. Every person who renews a certificate of registration must also file a certification that he or she has met their continuing education requirements. N.Y. Pub. Health Law § 3429.

At the time funeral arrangements are made, funeral directors and funeral firms must provide a written statement showing the total price of the funeral, including an itemized list of the services and merchandise to be furnished and the cash advances and expenditures to be advanced. N.Y. Pub. Health Law § 3440-a; N.Y. Comp. Codes R. & Regs. tit. 10, §§ 78-79.

The Commissioner of Health may revoke or suspend any license of a funeral director, undertaker or embalmer or any certificate of registration of such firm, for activities including but not limited to violating any rule pertaining to the practice of funeral directing, embalming, or vital statistics, being convicted of a crime, practicing fraud, deceit or misrepresentation in his business, being "an habitual drunkard", or wrongfully transferring his license or certificate of registration, or failing to keep pre-need sales money in trust as required. N.Y. Pub. Health Law § 3450. See also N.Y. Comp. Codes R. & Regs. tit. 10, § 77.12. In addition, funeral directors, undertakers or embalmers who violate these law may be liable for a maximum civil penalty of one thousand dollars, suspension or revocation of license, or other disciplinary action, and may also be found guilty of a misdemeanor. N.Y. Pub. Health Law § 3456.

### b. Crematory and Crematory Operators

A cemetery corporation must seek approval to operate a crematory and must abide by the duties and obligations required by statute with regard to maintenance and privacy, the cremation process, identification of deceased human beings, ceremonial casket cremation disclosure, and the processing and disposition of cremains. N.Y. Not-for-Profit Corp Law. § 1505-a. Persons who conduct the cremation process must be certified by an organization approved by the Division of Cemeteries and must renew that certification every 5 years. N.Y. Not-for-Profit Corp. Law § 1505(a).

All crematories are subject to inspection by the Division of Cemeteries. N.Y. Not-for-Profit Corp. Law § 1503.

### c. Cemeteries and Cemetery Operators

The Cemetery Board must approve every certificate of incorporation of a cemetery corporation. *GAO Report*, p. 42. All cemeteries are required to be not-for-profit corporations. *Id.* In addition, cemetery corporations are prohibited from engaging in the various activities with funeral entities, including commingling funds, authorizing control of its business, or cross-marketing goods or services. N.Y. Not-for-Profit Corp. Law § 1506-a.

Cemeteries must establish and maintain both current and permanent maintenance funds for the maintenance and preservation of the cemetery. N.Y. Not-for-Profit Corp. Law § 1507. Cemeteries may also charge a reasonable fixed charge for perpetual care of any lot, which shall be held in a perpetual care fund. *Id.*

Each cemetery corporation must file an annual report with the Cemetery Board. N.Y. Not-for-Profit Corp. Law § 1508. A cemetery corporation's rules, regulations and original charges for services shall not become effective unless and until approved by the Cemetery Board. N.Y. Not-for-Profit Corp. Law § 1509. A cemetery corporation is responsible for the following the duties set forth by statute, including posting and distribution of rules, regulations, charges and prices, maintaining a survey or map of the cemetery, and maintaining records of burials or cremations. N.Y. Not-for-Profit Corp. Law § 1510. More specifically, the directors of cemetery corporations must fix and determine the prices of the burial lots, plots or parts thereof, and keep a plainly printed copy of the price schedules conspicuously posted in each corporate office, open at all reasonable times to inspection, and shall file a price schedule w Cemetery Board. N.Y. Not-for-Profit Corp. Law § 1513. The instrument that conveys the burial lot shall include the actual amount paid and a description showing the dimensions of the property conveyed, and the plot number, section and block number as they appear on the cemetery map. Before any burial occurs or, if all the bodies have been lawfully removed, the lot owner may re-sell the lot subject to the prior approval of the Cemetery Board. *Id.* However, re-sale for financial profit is prohibited. N.Y. Gen. Bus. Law § 450

Cemetery corporations are prohibited from selling monuments, not including flush bronze markers. N.Y. Not-for-Profit Corp. Law § 1516.

## G. Ohio

### 1. Regulatory Structure

Four entities regulate the Ohio death care industry, (1) the board of embalmers and funeral directors (the "Funeral Board"), (2) the division of real estate within the department of commerce, (3) the crematory review board (the "Crematory Board"), and (4) the cemetery dispute resolution commission (the "Cemetery Commission").

The Funeral Board licenses embalmers, funeral directors, funeral homes, embalming facilities, and crematory facilities.[17] Ohio Rev. Code Ann. § 4717.04(A)(1); Ohio Rev. Code Ann. § 4717.04(A)(7)-(11). The Funeral Board consists of seven members appointed by the governor. Ohio Rev. Code Ann. § 4717.02(A). Five Funeral Board members must "be licensed embalmers and practicing funeral directors, each with at least ten consecutive years of experience" in Ohio. *Id.* Two Funeral Board members "shall represent the general public; at least one of these members shall be at least sixty years of age." *Id.* Funeral Board members serve five year terms. Ohio Rev. Code Ann. § 4717.02(B).

The division of real estate in the department of commerce is responsible for cemetery registration. Ohio Rev. Code Ann. § 4767.02(B)(1)-(9).

The Crematory Board conducts adjudicative hearings on potential crematory violations at the Funeral Board's request. Ohio Rev. Code Ann. § 4717.03(E).[18] The Crematory Board consists of seven members; three members are members of the Funeral Board and three members are members of the Cemetery Commission. O.R.C. § 4717.03(D). These six members "shall designate, by a majority vote, one person who is not affiliated with a cemetery or a funeral home" to serve on the Crematory Board. *Id.*

The Cemetery Commission investigates complaints filed against cemetery owners and operators. Ohio Rev. Code Ann. § 4767.06(A)(2)-(4); Ohio Rev. Code Ann. § 4767.07(A). The Cemetery Commission may refer cases to the Ohio attorney general for further disciplinary action. Ohio Rev. Code Ann. § 4767.08(2). The Cemetery Commission consists of nine members appointed by the governor: one member must be "the management authority of a municipal township, or union cemetery;" four members must be "employed in a management position by a cemetery company or a cemetery association;" two members must be "employed in a management position by a cemetery that is owned or operated by a religious, fraternal, or benevolent society;" two members, "at least one of whom shall be at least 65 years old, shall be representatives of the public with no financial interest in the death care industry." Ohio Rev. Code Ann. § 4767.05(A)(1)-(4). Each member, "except for the two members who represent the

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[17] The Funeral Board, Crematory Board, and the Cemetery Commission were created by an act passed in 1998 entitled "Embalmers and Funeral Directors—Crematories—Regulation"). 1998 Ohio Laws 163.

[18] The Crematory Board submits "a written report and advisory recommendations, and a written transcripts of its proceedings, to the [Funeral Board]." Ohio Rev. Code Ann. § 4717.03(E)(4). The Funeral Board determines the final disposition of the matter. *Id.*

public, shall...have...a minimum of five consecutive years experience in the active administration and management of a cemetery" in Ohio. Ohio Rev. Code Ann. § 4767.05(A)(4).

### 2. Substantive Provisions and Enforcement Mechanisms

#### a. Funeral Homes, Funeral Directors, Embalmers

One must hold a license to practicing embalming and funeral directing in the state. Ohio Rev. Code Ann. § 4717.13(A)(1)-(2). One must also hold a license to operate a funeral home or an embalming facility. Ohio Rev. Code Ann. § 4717.13(5) and (7).

Licenses to embalm, to operate an embalming facility, to funeral direct, and to operate a funeral home expire on December 31st of every even numbered year. Ohio Rev. Code Ann. § 4717.08(A).

To obtain an embalmer's license, one must (1) hold a bachelor's degree, (2) complete an approved mortuary science program, (3) complete a one year apprenticeship, and (4) pass a written examination. Ohio Rev. Code Ann. § 4717.05(A)(3)-(6). To obtain a funeral director's license, one must satisfy all of the requirements for an embalmer's license. Ohio Rev. Code Ann. § 4717.05(C)(1). One must also complete a one-year funeral directing apprenticeship and a written examination. Ohio Rev. Code Ann. § 4717.05(C)(3)-(4).

Embalmers and funeral directors must complete 42 hours of continuing education courses every two years. Ohio Rev. Code Ann. § 4717.09(A).

Ohio does not require regular inspections of funeral homes and embalming facilities. However, Funeral Board inspectors "may enter the premises, establishment, office, or place of business of any embalmer...[or] funeral director." Ohio Rev. Code Ann. § 4717.03(C).

#### b. Crematories and Crematory Operators

One must hold a license to operate a crematory facility in the state. Ohio Rev. Code Ann. § 4717.13(A)(8). A crematory cannot cremate a body until it receives a "cremation authorization form." Ohio Rev. Code Ann. § 4717.23(A)(3); Ohio Rev. Code Ann. § 4717.24.

Licenses to operate crematories expire on December 31st of every even numbered year. Ohio Rev. Code Ann. § 4717.08(A).

Ohio does not require regular inspections of crematories. However, Funeral Board inspectors "may enter the premises, establishment, office, or place of business of any operator of....a crematory facility..." Ohio Rev. Code Ann. § 4717.03(C).

#### c. Cemeteries and Cemetery Operators

All cemetery owners or operators must be registered to operate in the state. Ohio Rev. Code Ann. § 4767.02(A). The statute exempts from registration only family cemeteries and cemeteries in "which there have been no interments during the previous twenty-five calendar years." *Id.*; Ohio Rev. Code Ann. § 4767.02(C). To register, a cemetery owner or operator must

pay a nominal fee and submit the required documentation. Ohio Rev. Code Ann. § 4767.03(A)-(B); Ohio Rev. Code Ann. § 4767.04(A).

Cemetery registrations expire each year on June 30. Ohio Rev. Code Ann. § 4767.03(C).

Each cemetery must register every agent or independent contractor authorized to sell interment rights at the cemetery. Ohio Rev. Code Ann. § 4767.031(A). The registration process consists solely of providing the names of the agents or independent contractors to the division of real estate. *Id.*

One cannot operate a cemetery without an endowment care trust. Ohio Rev. Code Ann. § 1721.21(B). Family cemeteries and cemeteries owned and operated by "churches, religious societies, established fraternal organizations, municipal corporations" and state and national cemeteries are exempt from this requirement. Ohio Rev. Code Ann. § 1721.21(H).

Ohio does not require regular inspections of cemeteries.

## H. Texas

### 1. Regulatory Structure

The Texas Funeral Service Commission (the "TFSC") licenses and regulates funeral establishments, commercial embalmers establishments, funeral directors, embalmers, cemeteries and crematories. Tex. Occ. Code Ann. § 651.004; Tex. Occ. Code Ann. § 651.151.[19]

The TFSC consists of seven members appointed by the governor. Tex. Occ. Code Ann. § 651.051. Two of the members must hold licenses for both funeral directing and embalming. Tex. Occ. Code Ann. § 651.051(1). One member must be a registered cemetery owner. Tex. Occ. Code Ann. § 651.051(2). The other four members cannot be licensed or registered to sell goods or perform services in the death care industry. Tex. Occ. Code Ann. § 651.051(3). Each member of the commission must complete a training program before they can vote in the TFSC. Tex. Occ. Code Ann. § 651.0511(a)-(b). Registered lobbyists and trade association employees cannot serve as members of the TFSC. Tex. Occ. Code Ann. § 651.053(a)-(c).

The Texas Department of Banking issues permits to individuals who sell prepaid funeral services or merchandise. Tex. Admin. Code § 201.15(b)(2).

### 2. Substantive Provisions and Enforcement Mechanisms

#### a. Funeral Homes, Funeral Directors, and Embalmers

Funeral establishments and commercial embalmers establishments must be licensed by the TFSC. Tex. Code Ann. §651.351 (a); Tex. Code Ann. § 651.352(b). Licenses for funeral

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[19] In 2003, Texas transferred the authority to license and regulate cemeteries and crematories from the department of health to the TFSC. 2003 Tex., See. Law Serv. Ch. 562.

establishments and commercial embalmers establishments last for one year. Tex. Admin. Code § 203.4(b)(3).

TFSC inspectors must conduct an unannounced inspection of each licensed funeral establishment at least once every two years. Tex. Occ. Code Ann. § 651.157(a); Tex. Admin. Code § 201(a)(2). If an inspector finds a violation, the TFSC must inspect the funeral establishment annually until it determines that the establishment is free of violations. Tex. Occ. Code Ann. § 651.157(b). The TFSC must also inspect a funeral establishment if it receives a complaint regarding the establishment. Tex. Admin. Code Ann. §203.31(a)(2). Inspections proceed according to a prepared checklist which looks for such things as "whether the embalming room has proper supplies and equipment, licenses are current and properly displayed, price lists are available, and adequate numbers of caskets are displayed." GAO Report, p. 45.

There are approximately 1,300 licensed funeral establishments in Texas. GAO Report, p. 44. The TFSC employs two inspectors who spend approximately 90 percent of their time inspecting funeral establishments. *Id.*

All funeral directors and embalmers must be licensed to operate in the state. Tex. Occ. Code Ann. § 651.251(a)-(b).

To receive an embalmer's license or a funeral director's license, one must first obtain a provisional license from the TFSC. Tex. Occ. Code Ann. § 651.23(4). The TFSC must issue a provisional funeral directing or embalmer's license to an applicant who has graduated from an approved mortuary science program and who works under the personal supervision of a licensed funeral director or embalmer. Tex. Occ. Code Ann.§ 651.302(a)-(b); Tex. Occ. Code Ann § 651.303(a)-(f). The provisional license program must last a minimum of 12 months and cannot exceed two years unless the applicant qualifies for a hardship exemption. Tex. Occ. Code Ann. § 651.303(c); Tex. Occ. Code Ann. § 651.305(e). An applicant must pass two written examinations in addition to her fulfillment of the provisional license program. One is a national examination that tests core professional competencies and the second is an examination crafted by the TFSC to test the applicant's knowledge of state law. Tex. Occ. Code Ann. § 651.253(5); Tex. Occ. Code Ann. § 651.255; Tex. Occ. Code Ann. § 651.256.

The Texas Funeral Service Commission may also issue provisional licenses to funeral director's and embalmer's who hold licenses in other jurisdictions. Tex. Occ. Code Ann. § 651.2595(a).

Funeral directors and embalmers must renew their licenses every two years. Tex. Admin. Code § 203.26(b)(3). To receive a renewal, a funeral director or embalmer must complete 16 hours of continuing education course covering ethics, law updates, and vital statistics requirements and regulations within the two year period. Tex. Occ. Code Ann. § 651.266; Tex. Admin. Code § 203.30(f).

### b. <u>Crematory and Crematory Operators</u>

A person may not operate a crematory in Texas unless the owner or operator of the crematory holds a crematory establishment license issued by the TFSC. Tex. Occ. Code Ann. § 651.656(a).

To obtain a crematory establishment license, one must either hold a funeral establishment or commercial embalmers establishment license or one must own or operate a perpetual care cemetery. Tex. Occ. Code Ann. § 651.656(b)(1)-(2). A prospective licensee must also prove that she has been trained and certified by an approved organization, such as the Cremation Association of North America. Tex. Code Ann. § 651.657(a)(3).

Crematory licenses in Texas expire after one year. Tex. Occ. Code Ann. § 205.3(d). The license may be renewed by filing with the TFSC a renewal application accompanied by the renewal fee and Crematory Annual Report. Tex. Occ. Code Ann. § 205.3(e)

Each licensed crematory must be inspected every two years by a TFSC agent. Tex. Occ. Code Ann. § 651.157(a). If the agent finds a violation, TFSC must inspect the crematory annually until it determines that the crematory complies with all applicable laws and regulations. Tex. Occ. Code Ann. § 651.157(b).

### c. Cemeteries and Cemetery Operators

Cemeteries must be licensed by the by the TFSC. Tex. Occ. Code Ann. § 651.353(a). Certain cemeteries, such as family cemeteries, not for profit associations of plot owners, religious cemeteries, and public cemeteries, are exempt from this requirement. Tex. Occ. Code Ann. § 651.353(d)(1)-(4).

Cemetery licenses last for one year and are automatically renewed by the TFSC's timely receipt of the renewal fee. Tex. Admin. Code Ann. § 205(1)(c).

Each licensed cemetery must be inspected every two years by an TFSC agent. Tex. Occ. Code Ann. § 651.157(a). If the agent finds a violation, the TFSC must inspect the funeral establishment annually until it determines that the cemetery complies with all applicable laws and regulations. Tex. Occ. Code Ann. § 651.157(b). This inspection regime does not apply to perpetual care cemeteries, which are regulated by the Banking Department of Texas. Tex. Occ. Code Ann. § 651.1571(a); Tex. Health & Safety Code Ann. § 712.001.

## VI. FINDINGS AND RECOMMENDATIONS

The citizens of this State have a legitimate expectation that their loved ones will be treated with the same dignity and respect in death as they are entitled to in life and that State government should protect those rights. Based upon its review of Illinois laws and regulations, the laws and regulations of other states, the records and other documents submitted to the Task Force, and, most of all, the compelling testimony regarding the tragic circumstances at Burr Oak Cemetery and other cemeteries in the State, it is the finding of the Task Force that there has been a systemic failure of oversight and regulation of the for-profit cemetery industry in this State.

The Task Force finds that existing laws in the State of Illinois do not provide adequate protection for the care, handling, and disposition of human remains or for the preservation of final resting places. The Task Force has concluded that there is a direct connection between the regulatory disjunction concerning the death care industry and the deteriorated condition of Burr Oak Cemetery and other cemeteries, and believes it is likely that the lack of regulatory oversight was a contributing factor to the criminal scheme that allegedly unfolded at Burr Oak Cemetery. It is the primary finding of this Task Force that without legislative reform and increased oversight of cemetery operations, the events that occurred at Burr Oak and other cemeteries in this State will continue to occur and the same types of tragic stories the public has already heard too many times will continue to be told. Accordingly, it is the recommendation of the Task Force that new legislation be adopted by the General Assembly to assure that the dignity of deceased persons is respected without reference to ethnic origins, cultural backgrounds, or religious affiliations.

The Task Force also makes the following specific findings regarding proposed legislation:

- Illinois' regulation of the death care industry is currently divided between two state agencies. The Department of Financial and Professional Regulation has jurisdiction over funeral directors and embalmers, while the Comptroller has jurisdiction over most other aspects of the for-profit death care industry, including laws relating to pre-need cemetery and funeral purchases, cemetery care funds, the protection of cemetery property, cemetery associations, and crematories. This segmentation of duties and responsibilities is confusing to the consumer of cemetery and funeral products and services and thwarts the uniform and effective application of laws and regulations. In the proposed legislation, regulatory authority of funeral and burial practices should be consolidated into the Department, which possesses the necessary expertise and capability to oversee the State's death care industry.

- The management and operation of cemeteries is critically important to the public interest, but there is currently no licensure requirement for the operation of a cemetery. Although a license is required for privately operated cemeteries accepting care funds and for any individuals or entities engaged in the sale of pre-need services and merchandise, there is insufficient regulation of those individuals and entities who actually oversee and manage the day-to-day operations of the cemeteries. This regulatory weakness has contributed to the

deterioration of the physical condition of the Burr Oak Cemetery and other cemeteries and may have indirectly contributed to the commission of the alleged activities at Burr Oak, which are the subject of a pending criminal proceeding. Proposed legislation should establish the profession of cemetery manager and regulate this new profession through licensure and other enforcement mechanisms.

- There are no rules or regulations governing the qualifications of cemetery employees. This regulatory gap should be addressed by the proposed legislation.

- The enforcement mechanisms set forth in the various statutes (such as annual reports, investigations, audits, inspections, and the institution of administrative and judicial proceedings) are similar, but not uniform. There is also some variation in the fee structure of the various statutes. The proposed legislation should standardize the applicable enforcement mechanisms.

- There is no requirement that burial permits contain specific information as to the location of the deceased (although such information was required prior to 1996). The proposed legislation should set forth requirements for the preparation and filing of plats of survey, and insure that they are made available to the public. The proposed legislation should also reinstate the requirement that burial permits include explicit information as to the location of the deceased and any other relevant information deemed appropriate.

- There are currently no laws or regulations governing limited terms of rights of interment (*i.e.* short term burials for periods of 20 or 30 years) or multiple depth burials. The proposed legislation should require specific notice and disclosure provisions to be included in every contract providing for such burials.

- At the request of individuals and families, funeral directors often handle the arrangements for selecting and purchasing graves, even though the cemetery authority and individual (or family) are ultimately responsible for grave selection. The role of the funeral director and the cemeterian should be clarified in the proposed legislation. The funeral director should be required to inform families that it is in their best interests to visit the cemetery and select a grave, although it is in their discretion whether to do so. Although the family may ask the funeral director to assist with the necessary arrangements, it should be explained that the ultimate responsibility for the grave site selection process remains with the family and the cemetery. The contract entered into with the funeral director should include an acknowledgment from the family that these options have been explained to them. Likewise, the contract between the cemetery and consumer providing for the selection and purchase of a grave should contain similar disclosure requirements. Rules should be promulgated for the purpose of setting forth specific, unambiguous language on this topic for inclusion in the contract between the funeral director and the consumer and between the cemetery authority and the consumer.

- The proposed legislation should provide that employees who provide information to the government or a law enforcement agency should be protected from retaliation by his or her employer, if the employee has reasonable cause to believe that the information discloses a violation of the laws or regulations governing the death care industry.

- All persons, regardless of economic status, are entitled to be buried with dignity and respect. The proposed legislation should include provisions that anticipate the needs of cemeteries when burying persons of limited means. Legislation should allow for a reasonable fee within a specified period of time.

- The Department of Vital Records is implementing a new electronic death registration system, which will allow physicians, coroners, medical examiners, and funeral directors to electronically compile necessary death information, which can then be sent to local registrars for the creation of a death certificate. The Department of Financial and Professional Regulation should have a separate electronic database for recording decedent-specific entombment, interment, and inurnment tracking data. The system should require cemeteries to submit the information to the Department.

- Many cemeteries are owned by entities that are incorporated in other states. The proposed legislation should require that all contracts entered into by any cemetery in this State disclose the owners of the cemetery (including the name, address, telephone number, and registered agent of all principals and operators).

- The proposed legislation should include a requirement that certain cemeteries operating in the State of Illinois be required to maintain some form of indemnity insurance or bond for the benefit of Illinois consumers and to pay any fees or fines due to or imposed by the Department.

- A number of cemeteries, especially those serving minority populations, require consumers to purchase services and merchandise with cash and do not accept other forms of payment. The proposed legislation should prohibit this practice of accepting only cash payment. Other forms of payment should be permitted (*e.g.*, cashier's checks, money orders, and credit or debit cards).

- The Task Force acknowledges that application of a uniform set of standards to all cemeteries, regardless of size and type, may create or exacerbate problems at some of these cemeteries. Accordingly, the General Assembly should review the basis for which the following categories of cemeteries may be exempt from the new legislation: religious cemeteries, fraternal cemeteries, municipal cemeteries, State or federal cemeteries, and family burial grounds. The basis upon which exemption is granted may need to change to include the size of the cemetery, the activity level at the cemetery, or other factors.

- The Crime Victims Compensation Act does not currently provide compensation to individuals whose family members have suffered as a consequence of the

desecration and dismemberment of a loved one. This should be corrected in the proposed legislation, including any necessary provisions for funding.

The Task Force's detailed conclusions and recommendations for legislative reform are set forth below.

**RECOMMENDATION NO. 1: CONSOLIDATION OF REGULATORY AUTHORITY OF FUNERAL AND BURIAL PRACTICES INTO THE DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION**

The Task Force recommends that funeral and burial practices be regulated by and placed under the jurisdiction of the Department of Financial and Professional Regulation. This recommendation is in keeping with the Task Force's further recommendation discussed below that the practice of cemetery management and operation in the State is a profession affecting the health, safety, and welfare of the citizens of the State and should be subject to regulation and control by the Department. The Department has been entrusted with the regulation of professions and occupations and is the agency with the highest level of expertise with respect to the licensure and regulation of occupations. The Task Force believes it is critical that a uniform system of oversight and regulation be established under the jurisdiction of the Department.

**RECOMMENDATION NUMBER 2: ENACTMENT OF CEMETERY OVERSIGHT ACT**

The Task Force recommends that the General Assembly consider the adoption of new legislation – a Cemetery Oversight Act – providing for the licensure of cemetery managers and ensuring that only qualified persons are authorized to own or operate a cemetery in this State.

The Task Force further recommends that the existing Cemetery Care Act be consolidated into the proposed Cemetery Oversight Act. The Task Force concludes that proper cemetery care and cemetery management are inextricably intertwined and should be regulated in a uniform and consistent manner. The proposed Cemetery Oversight Act should create a unified license for a cemetery authority to operate a cemetery and to have care and maintenance trusts. The cemetery authority should also be required to have a licensed cemetery manager and to register each employee with the Department.

It is the Task Force's recommendation that the following provisions be included in the proposed Cemetery Care Act (hereinafter referred to in this section as the "Act"):

**(1) <u>Establishment of the Profession of Cemetery Manager</u>**

Except for the exempt cemeteries described below, no person should be allowed to operate a cemetery in Illinois unless that person has received a license from the Department as a cemetery manager. A "cemetery manager" should include any person engaged in or conducting, or holding himself or herself out as engaged in those activities involved in, or incidental to the maintaining, operating, or improving a licensed cemetery, the interring of human remains, and the care, preservation, and embellishment of cemetery property.

### (2) Exemptions

Similar to the Florida model, the Act should consider exempting religious, municipal or other cemeteries deemed appropriate to exempt, but the exempted institutions should still follow certain rules to resolve consumer complaints. Exempted cemeteries should submit to an investigation and mediation procedure by the Department in the event of a consumer complaint.

Cemeteries claiming an exemption should be required to apply to the Department for exempt status.

### (3) Power and Duties of the Department

The Task Force recommends that the Department be given the power to: license owners, managers, and employees of cemeteries, including any necessary examinations to ascertain the qualifications and fitness of applicants; investigate and audit a licensee's records, care funds, or any other aspects of cemetery operation as the Department deems appropriate; investigate any and all unlicensed activity; enforce the Act by refusing to issue licenses and disciplining licensees; and provide regulatory transparency by maintaining rosters of the names and addresses of all licensees and all persons whose licenses have been disciplined.

### (4) Licensing Provisions

The Task Force concludes that licensure requirements for cemetery managers and cemetery authorities are critical to the effective oversight and regulation of cemetery operations and management. The Task Force concludes that registration requirements for cemetery employees are also essential for the effective regulation of cemetery operations.

Therefore, the Task Force recommends that an application for licensure as a cemetery authority be accompanied by a fidelity bond in an amount required by rule. The application bond shall provide ample protection for the care funds held for the benefit of the cemetery. All applications should contain the information that, in the judgment of the Department, will enable the Department to pass on the qualifications of the applicant for an exemption from licensure or for a license to practice as a cemetery authority, manager, or other license or registration as set by rule.

The Task Force recommends that a person or entity be qualified for licensure if the person or entity meets the qualifications typical of the Department's existing regulatory model for licensure of business owners and employees. The standards should also take into consideration prevailing practices and ethics in the cemetery profession and applicable provisions of the Cemetery Care Act.

All licenses under the Act should have expiration dates and renewal periods established by rule to police the profession.

### (5) Examination

The Task Force recommends that an applicant for a cemetery manager license be required to take an examination. The Department should have the authority to employ

consultants for the purpose of preparing and conducting examinations. Further, the Department should have the authority to adopt or recognize, in part or in whole, examinations prepared, administered, or graded by other organizations that are determined appropriate to measure the qualifications of an applicant for licensure.

**(6) Continuing Education**

The Task Force recommends that the Department promulgate rules of continuing education for persons holding a cemetery manager license under the Act. The continuing education requirement should also apply to any person seeking renewal or restoration of a license under the Act.

**(7) Disclosure of Ownership**

The Task Force recommends that the Act require disclosure of the ownership (name, address, telephone number, and registered agent of all principals and operators) of all cemeteries in any contracts for services.

**(8) Insurance**

The Task Force recommends that the Act require certain cemeteries operating in the State of Illinois to maintain some form of indemnity insurance or bond for the benefit of Illinois consumers or their families in the event of malfeasance or other mismanagement by the cemetery owner or its employees and for the payment of any expenses, fees, or fines due or to be levied by the Department.

**(9) Department's Limited Authority over Exempt Cemeteries**

The Task Force recommends that the Act impose a tiered system of oversight of exempt cemeteries. Exempt cemeteries that conduct a minimum number of burials per year as set by rule shall be required to submit an annual report and will be subject to Department investigation, mediation, and complaint procedures in response to a consumer complaint. Exempt cemeteries not meeting the minimum number of annual burials shall only be subject to Department investigation, mediation, and complaint procedures in response to a consumer complaint.

**(10) Burial Plots**

There are currently no laws or regulations governing limited terms of rights of internment (*i.e.* short term burials) or multiple depth burials. The Task Force recommends that the Act set forth specific notice requirements for all such burial terms and conditions.

**(11) No Cash Requirement**

The Task Force recommends that the Act prohibit cemeterians and funeral directors from requiring that services and merchandise be paid for only in cash. Other forms of direct payment should be permitted (*e.g.* cashier's checks, money orders, and credit and debit cards).

### (12) Consumer Protections for Purchasers of Burial Plots/Graves

The Task Force recommends that the Act clarify the role of the funeral director and the cemeterian. The funeral director should be required to inform individuals and families that it is in their best interests to visit the cemetery and select a burial plot/grave, although it is in their discretion whether to do so. Although the individual or family may ask the funeral director to assist with the necessary arrangements, it should be explained that the ultimate responsibility for the burial plot/grave site selection process remains with the consumer and the cemetery. The contract entered into with the funeral director should include an acknowledgment from the consumer that these options have been explained to them. The Act should provide similar disclosure and consumer protection requirements for the contract between the cemetery and the consumer (or his or her agent) providing for the purchase of a burial plot/grave. Rules should be promulgated for the purpose of setting forth specific, unambiguous language on this topic for inclusion in the contract between the funeral director and the consumer and the cemetery and the consumer.

### (13) Whistleblower Protections

The Task Force recommends that the Act provide specific protections for cemetery or funeral home employees who provide information to the government or a law enforcement agency, when such employee has reasonable cause to believe that the information discloses a violation of the Act or other laws or regulations governing the death care industry. The Act should expressly prohibit employers from retaliating against any employee who discloses such information to government or law enforcement authorities.

### (14) Burials of Indigent Persons

The Task Force recommends that the legislature review existing policies, practices, procedures, and payment methods for burials of indigent persons and enact appropriate legislation and promulgate rules and regulations governing same. The proposed legislation should include provisions that anticipate the needs of cemeteries when burying persons of limited means and allow for payment of reasonable fees within a specified period of time.

### (15) Plats of Survey

The Task Force recommends that the proposed Act set forth requirements for the preparation and recording of plats of survey, and insure that they are made available to the public. The proposed legislation should also reinstate the requirement that burial permits include explicit information as to the location of the deceased and any other relevant information deemed appropriate.

### (16) Administration and Enforcement

The Task Force recommends that the following provisions be adopted for the administration and enforcement of the proposed Act:

### A. Maintenance and Records

The provisions already set forth in the Cemetery Care Act and any applicable best practices discussed in Section V should be incorporated in the Cemetery Oversight Act.

### B. Transfer of License

The Task Force recommends that licenses issued by the Department not be transferable or assignable.

### C. Grounds for Disciplinary Action

The Task Force recommends that all applicants, licensees, and unlicensed practitioners be subject to disciplinary action. The grounds for discipline should be modeled on the Department's existing practice acts and also take into consideration applicable provisions of the Cemetery Care Act and the best practices discussed in Section V.

### D. Cease and Desist

The Task Force recommends that the Secretary of the Department be authorized to issue a cease and desist order to any licensee, or other person doing business without the required license, when in the opinion of the Secretary, the licensee, or other person, is violating or is about to violate any provision of the Act or any rule or requirement imposed in writing by the Department as a condition of granting any authorization permitted by the Act.

### E. Denial of License

The Task Force recommends that the Department be given the authority to deny licensure when deemed appropriate and promulgate rules affording the applicant the opportunity to request a hearing on the denial.

### F. Inspections, Investigations, Hearings

The Task Force recommends that the Department be given the authority to inspect each licensed cemetery after a complaint or by random audit. The Department should have authority at any time to investigate the actions of any applicant or of any person or persons rendering or offering to render cemetery authority, cemetery manager, or registered cemetery employee services or any person holding or claiming to hold any such license. The Department should have the authority typical to existing practice acts regarding investigation, inspections, and compliance with the Act.

The Department should have the authority to impose discipline typical in its existing administrative hearing or settlement provisions.

The Department should follow administrative procedures typical of its existing acts in order to provide ample due process and transparency.

### G. Receivership

The Task Force recommends that in the event a cemetery authority license is suspended or revoked, the Department be given authority to apply to the circuit court of the county wherein such licensee is located for a receiver to administer the care funds of such licensee or to operate the cemetery.

### H. Abandoned or Neglected Cemeteries; Clean-Up

The Task Force recommends that the Department administer the program currently provided for under the Cemetery Care Act for the purpose of cleaning up abandoned or neglected cemeteries located in Illinois.

### I. Inactive Status

The Task Force recommends that licensed cemetery managers and registered cemetery employees be allowed to place their license on inactive status; however, licensed cemetery authorities should not be permitted to place their license on inactive status. The Department should promulgate provisions for dissolution of a cemetery or its transfer or sale.

### J. Criminal Penalties, Civil Action and Civil Penalties

The Task Force recommends that the Cemetery Oversight Act provide for enhanced criminal penalties for violations of the Act. Further, the proposed legislation should provide the Department with the authority to bring a civil action in the county of residence of the licensee or any other person to enjoin any violation or threatened violation of the Act. In addition to any other penalty provided by law, the Task Force recommends that any person who violates the Act should pay a civil penalty to the Department.

### K. Transition from Office of the Comptroller

Before regulatory authority transfers to the Department, the Task Force recommends that funds be specifically appropriated for the Department to hire an external auditor to determine the amount of resources – both financial and staff – that would be necessary to transition the regulatory authority and to properly implement the Act. The auditor would also make recommendations regarding the timing and manner by which the regulatory authority would be transferred to the Department. It would be critical, during such a delicate time, that the transition be conducted thoughtfully, not hastily.

## RECOMMENDATION NUMBER 3: AMENDMENT AND CONSOLIDATION OF EXISTING STATUTES

The Task Force also recommends that the General Assembly amend and consolidate various existing statutes for the purpose of: (1) bringing them under the jurisdiction of the Department and creating a uniform system of oversight and regulation, (2) strengthening the licensing requirements in those statutes, and (3) creating new consumer protections. In this regard, the Task Force recommends as follows:

### (1) Cemetery Care Act

For the reasons discussed above, the Task Force recommends that the Cemetery Care Act be consolidated into the proposed Cemetery Oversight Act.

### (2) Cemetery Association Act

The Cemetery Association Act references both the Comptroller and the Cemetery Care Act in several places and also sets forth various duties and responsibilities involving the Comptroller. The Task Force recommends that the Act be amended to place it under the jurisdiction of the Department rather than the Comptroller and to reflect any changes resulting from the proposed amendments to the Cemetery Care Act and its consolidation into the Cemetery Oversight Act.

### (3) Pre-Need Cemetery Sales Act and Illinois Funeral Or Burial Funds Act

Consistent with the Governor's amendatory veto of Senate Bill 1682, the Task Force recommends that any changes to the two Illinois Pre-Need Acts be considered after suggestions are made by the Funeral or Burial Pre-Arrangement Task Force. This Task Force will take appropriate heed to the future findings and recommendations of the Funeral or Burial Pre-Arrangement Task Force

### (4) Crematory Regulation Act

The Task Force recommends that the regulatory powers currently exercised by the Comptroller be transferred to the Department. The Task Force also recommends that the Act be amended to provide for a license expiration and renewal process similar to those contained in other practice acts. Further, consideration should be given to increasing the fees provided for in the statute and to provide for those by rule. The provisions of the Act providing for disciplinary actions should be expanded and further detail should be provided with respect to the notice and hearing process.

### (5) Funeral Directors and Embalmers Licensing Code

The Task Force recommends that, only after the proposed Cemetery Oversight Act is enacted, the Funeral Code be modified, if appropriate, to make it consistent with the new legislation. A possible modification would include requiring a funeral director to supervise the actual burial. Secretary Adams has requested that the Funeral Directors and Embalmers Licensing and Disciplinary Board consider this modification at its next Board meeting on September 22, 2009.

### (6) Vital Records Act

The Task Force recommends that the Vital Records Act be amended to provide that the report of death filed by a funeral director include the place of disposition of a dead human body. If the place of disposition is a cemetery, the report of death should include the lot, plot, or section where the human remains are interred, entombed, or inurned in that cemetery. The record of

death transmitted to the county clerk should contain the place of disposition, which should include the lot, plot, or section where the human remains are interred, entombed, or inurned if the place of disposition is a cemetery.

The Task Force recommends that the Department of Financial and Professional Regulation be given the authority to develop or procure an electronic database for recording decedent-specific entombment, interment, and inurnment tracking data. The Department should obtain appropriate information for this database from the cemeteries. This uniform database should allow the Department to verify location of human remains in the State of Illinois and to monitor cemeteries' activities. A real-time, electronic mechanism of enforcement would be a powerful tool to help prevent tragedies like Burr Oak.

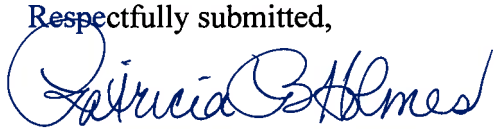
### (7) Crime Victims Compensation Act

The Task Force recommends that the definition of "crime of violence" in the Crime Victims Compensation Act be amended to include relatives of a deceased person whose body is dismembered in violation of the Criminal Code. The amendment should include a definition of the term "relative" and any necessary provisions for funding.

## VII. CONCLUSION

We, the members of the Cemetery Oversight Task Force, respectfully request that your Honor, the Governor of the State of Illinois, give all due consideration to the findings, conclusions, and recommendations set forth in this Report, and take all action you deem necessary and appropriate in accordance therewith.

Respectfully submitted,



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