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# Funeral Consumers Alliance of E. Mass. The Memorial Society, Inc.

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Newsletter

November 2003

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## Annual Meeting

Saturday, November 22, 2003, 1:15 P.M.

National Heritage Museum

33 Marrett Rd., Lexington, MA

Joshua Slocum, the new Executive Director of Funeral Consumers Alliance, will be our speaker. Before joining the FCA staff in 2002, he was a reporter for The (Lynchburg) News & Advance in Virginia, where he earned a 1st-place award for Business and Financial Writing from the Virginia Press Association, and a shared 1st-place award for Journalism in the Field of Law and Justice from the Virginia Bar Association. He is Lisa Carlson's successor as Executive Director of FCA.

His topic will be "National Issues facing the Funeral Consumer Movement."

The National Heritage Museum has several interesting exhibitions in progress. You could come early (it opens at 10:00 a.m.), view the exhibitions, and have lunch at the new Heritage Cafe in the lobby. Museum information is available on the internet at <[www.monh.org](http://www.monh.org)>.

MBTA Bus service is available from Alewife Station and from Arlington Heights. The 62/76 Bus leaves Alewife at 9:10, 10:20, 11:30, and 12:40, reaches Arlington Heights about ten minutes later, and the Museum in about twenty minutes. Return buses leave at 2:30, 3:30, 4:30, and 5:30.

## Last Year's Newsletter and Other Organizational Difficulties

The 2002 newsletter and annual meeting didn't happen. During the year John Van Dusen resigned as President, Paula Blanchard resigned as Clerk, and Larry O'Brien moved to Maine. Jan Buhrman Osnoss stepped in as President and Byron Blanchard assumed the Clerk role while continuing as Treasurer. George Richardson agreed to continue as a Director (he is one of the founders of the Society in 1961!).

So now Byron Blanchard is in a situation similar to the one George Richardson faced in 1992, when he was running the Society mostly by himself from his home in Nahant.

Dr. Richardson in 1992 sent out a mailing asking for help. New officers and directors came forward and things ran rather well for several years.

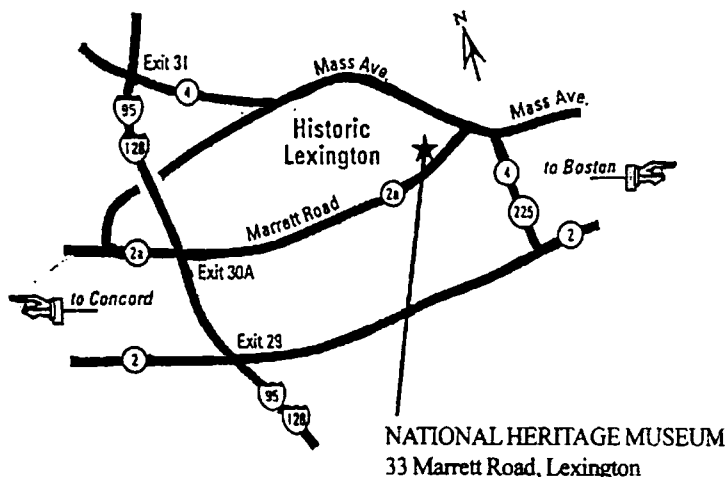
Susan Twist took over most of the clerical work handling membership records and producing the newsletter. When her health started to fail in the late 1990's Byron Blanchard gradually took over her tasks. Paula Blanchard kept the meeting minutes and shared telephone duty with John Van Dusen. Several directors moved or resigned. In 1997 Byron Blanchard started to monitor the regulatory process by attending all the meetings of the Board of Registration, which he continues to do. It got to be too much. The October 2001 Newsletter asked for help. No response.

In 2002 John Van Dusen found he couldn't continue with telephone duty. Paula Blanchard's work with Grey2KUSA Education Fund took more and more time, leading to her resignation from Memorial Society activities.

Thus we ask again for people who can help to come forward and meet with the directors and officers either at lunch before the annual meeting or just after the meeting. A phone call in advance would be appreciated.

Jan Buhrman 508-645-9068

Byron Blanchard 7781-862-6314



## Preneed Funeral Contract Regulations Update

The Board of Registration has been working since January on revisions to the regulations governing preneed (prepaid) funeral contracts. A draft of proposed new regulations were published in July and went to public hearings in September. Fine tuning of the draft is under way now and, with luck, the final regulations may well issue early next year.

The present regulations, from 1992, were the first ones ever adopted. They were the result of scandals in the 1980's. Paula Gold, then Secretary of Consumer Affairs, appointed an Advisory Committee on Pre-need Funeral Planning. Dr. George Richardson was a member, along with thirteen others. That committee published its report in 1989 and the Board of Registration adopted most of its recommendations in its regulation, 239 CMR 4.00, effective in 1992.

Over the years the Board of Registration gained experience and found that most of the problems occurred when the funeral establishment was the named trustee of a trust account. When the money was held by a third-party trustee such as a bank there have been very few problems. Contract forms have also been a problem, as some have been so complex and obscure as to leave the purchaser with little idea what he actually agreed to.

Under the proposed regulations the money will have to go to either a funeral trust account or insurance. The trustee of the trust account must be a banking institution or trust company in Massachusetts, not the funeral establishment. This will make it much harder to steal the money.

Contracts will have to be written on standard forms prescribed by the Board of Registration. They will be in simple language and large type. North Carolina's standard contract forms will be an example.

A number of other changes are included in the proposed regulation. The discretionary 10% administrative fee that some funeral establishments charged on funeral trust accounts will be prohibited; all the money must go into the trust. Record keeping requirements are enhanced and purchasers will be able to order copies of records instead of having to visit in person to examine them at the funeral establishment.

Areas of the regulation that still need work are:

- 1) Existing contracts - which of the new requirements apply, if any?
- 2) Presale disclosure of insurance contract terms and details - both existing and proposed regulation say only to "make all the disclosures required by the Massachusetts Division of Insurance." DOI regulations

totally exempt group life insurance from *any* disclosure requirements.

The discussions leading to the revisions have been open and cooperative. Both the Memorial Society and the Mass. Funeral Directors Assoc. (MFDA) took part. MFDA offered much constructive help, even submitting a suggested redraft of some sections for greater clarity, and raising discussion points on practical details. The MFDA attitude was at all times pro-consumer.

The proposed regulation and all written comments received are posted on the FCA web site <http://www.funerals.org/legwatch.htm#MA> along with links to the existing regulations and statutes. The proposed regulations are not even mentioned on the Board of Registration web site, but that is another story.

All in all the revisions are a great step forward.

## Organ Donation

We reported in a previous newsletter that New England Organ Bank kept their next-of-kin consent form secret. Their Medical Director, Dr. Francis Delmonico, told our 1999 annual meeting that the form was to be shown to next-of-kin only in the presence of NEOB-trained counselors. NEOB has since relented and furnished us a copy of the form, which seems quite innocuous. We'll post it on our web site.

It is still NEOB policy to accept donations only from next-of-kin. NEOB has the right under the law to decline any donation and they do decline perfectly legal and proper donations by the decedent. They treat donations by the decedent as only advice to next-of-kin. This contrasts with the situation for whole-body donation to a medical school where donations are accepted only from the decedent.

NEOB says that "acting against family wishes could, in fact, decrease donation." But they don't ask family whether they *object* to the decedent's written donation, instead NEOB *declines* the decedent's donation and solicits a donation by the next-of-kin. In either the organ donation situation or the whole-body donation to medical school the next-of-kin can easily block the donation. In the medical school case all it takes is failure to notify the medical school of the death. But to say that a perfectly legal and proper donation by the decedent will always be declined seems like a kind of fraud.

NEOB has responded to the above criticism by introducing a new donor card that doesn't any more say "I give:... This is a legal document under the Uniform Anatomical Gift Act...". Instead it says "I have spoken to my family about organ and tissue donation. ... I wish to donate the following: ..."

Tissue donation as distinct from organ donation is a business with enormous profit potential. Our national federation Funeral Consumers Alliance is urging national action to curb abuses in this area. For details see their web site <http://www.funerals.org/UAGA.htm>.

## How the Funeral Industry is Regulated

As with most things in state government, the regulation of the funeral industry is more complicated than it looks. The Board of Registration in Embalming and Funeral Directing consists of four funeral directors and one consumer member. They are unpaid, appointed by the Governor, and meet two afternoons each month. They seem to be truly motivated to see that the industry behaves. They clearly aren't in it for the money!

Support staff are employed by the Division of Professional Licensure (DPL), not by the Board. In the Division are 29 boards regulating 40 occupations with 330,000 total licensees. There are only 2100 licensees and 700 establishments under this Board, 0.6% of the total. The Executive Director and Recording Secretary each serve eight boards, Board Counsel serves fifteen. In such a situation it is not humanly possible for staff to have much mastery of details of any one of their boards.

The new (June 2003) Investigator is only shared with one other board and is a Registered Funeral Director and Registered Embalmer. His industry background is both a plus and a minus. It is a plus is that he is familiar with the business and its practices. That same familiarity means that he already knows many of the other licensees and may have preconceived opinions. There is also a possible conflict of interest because he is registered by this Board; the Maryland Attorney General ruled that it would be a conflict of interest for their funeral board investigator to be a person registered by the board. The Massachusetts Board had formally asked DPL management to assign an investigator who was not a registered person. DPL said in response that it wasn't the Board's choice to make. Fortunately the new investigator seems to be working out OK so far, but this history shows the enormous disconnect between the Board and DPL management.

So how well does the system work? A valid consumer complaint usually results in some satisfaction for the consumer, such as a refund, an apology, the correction of an error, etc. The Board gets no credit on the record for the concessions it extracts from a licensee in settling most such complaints; the case is just marked Dismissed, with no

mention of the concessions or corrections. This is clearly unfair to the Board.

The Board rarely penalizes a registrant or establishment. One reason is that the only penalties available are to suspend or revoke registration or place under probation. Those are appropriate for only the most serious cases and require the due process steps of written formal charges and a formal public hearing similar to a trial. The ability to levy administrative penalty analogous to a traffic ticket would be a valuable addition to the Board's authority.

In providing consumer information the DPL does very poorly. Consider their web site. There is a section for this Board. You would like to know if a funeral establishment you are considering is legally registered and whether it has been the subject of complaints; you are out of luck. When you try to look up funeral establishment you get "The Commonwealth of Massachusetts does not license businesses under this board." But the same web page offers the forms to register a funeral establishment. One explanation was "that establishments are registered, not licensed," but so are individuals, and they are listed.

In disciplinary cases the Board combines roles that in criminal law are separate. The Board decides whether to prosecute -- the role of the District Attorney or Attorney General. Then they decide on the guilt of the defendant and the penalty -- the role of a judge or jury. Many states have separated the roles by having the cases heard by an independent administrative law judge or magistrate. The present system is a burden on Board members and is unfair to defendants.

Sometimes the Board disregards due process entirely. They have refused for more than a year to renew John D. Caron's registration as an Embalmer without any formal charges or public hearing. Penalty first, charges and trial later or never! The amazing thing is that the Board Counsel told them that it was OK to do this. Counsel also said that Mr. Caron could only appeal the decision in court after the Board served him with a certain special form of notice. That notice has not been given.

Funeral Consumers Alliance of Eastern Mass.  
The Memorial Society, Inc.  
66 Marlborough St.  
Boston, MA 02116

Annual Meeting Notice  
November 22, 2003, 1:15 p.m.  
National Heritage Museum  
Lexington, MA

## Help Us

Here are some things that an interested member could do to help:

- \* Pick up the mail at 66 Marlborough St.
- \* Attend and tape record Board of Registration meetings when Byron Blanchard can't attend them.
- \* Do a mini price survey in their area.
- \* Research local cemeteries.
- \* Send in copies of preneed funeral contracts.
- \* Become a Director.

## Money

We are not asking for contributions this year. Because of the record low interest rates both the income on our reserve account and the income of many of our members is dramatically lower. It seems to make sense to use the reserve to pay our current expenses rather than ask for contributions now. We thank those whose generous past contributions have made this possible, and rest assured we will resume begging when economic conditions turn around

## Pet Crematories

After the sad death of the Blanchards' five-year-old blue female greyhound Angie we were faced with the decision where to have her body cremated.

The vet had literature from Pet Memorial Park in Foxboro. After the crematory scandal in Noble, Georgia, it seemed wise to inspect the crematory. The response to a telephoned request to do so was met with the response that it was absolutely not allowed. They also said that the cremation couldn't take place for several weeks, but that in the interim the body would be kept in the freezer. Another red flag was the statement in their brochure that "we have devised a system which assures that only your pet's ashes will be returned to you..." Note it doesn't say your pet will be individually cremated.

Pleasant Mountain Pet Rest and Crematorium in Plymouth said that of course I could inspect their crematory. I made an appointment for the next day and went with Angie's body. The facility was immaculately clean and neat and Angie's body was immediately and individually cremated. Her cremated remains were placed in a simple cedar box and mailed to us the next day.