



Funeral Consumers Alliance of Eastern Massachusetts

Protecting a
consumers right
to choose a
dignified,
meaningful,
affordable funeral

Serving Eastern and Central Massachusetts

Annual Meeting, all are welcome

Saturday October 22, 2005 ~ Mount Auburn Cemetery
580 Mount Auburn Street, Cambridge, MA

12:30 Tour of the Crematory ~ 1:00 Meeting

Choosing Your Path:

How Massachusetts Residents can Take Control of their Medical Care, Estate Plans, and Funeral Arrangements.

About three years ago, Mark Bernardin began to notice how often his wife, a social worker at a Massachusetts hospital, came home with sad and upsetting stories about patients and families who discovered too late that they had either failed to make important end of life planning decisions or that their planning was ineffective. In response to this problem Mark and his brother, Peter, both attorneys, wrote *Choosing Your Path: How Massachusetts Residents can Take Control of their Medical Care, Estate Plans, and Funeral Arrangements*. In addition to helpful forms and contact information for government agencies and private organizations, *Choosing Your Path* contains a wealth of state-specific information about living wills, health care proxies, medical rights,

estate planning, and funeral arrangements.

Whether you want to plan a funeral with the assistance of a funeral director or whether you want to care for your own dead, *Choosing Your Path* explains your rights and options as a consumer of funeral goods and services in Massachusetts. The book is available at independent bookstores across the state, Borders, Barnes & Noble, and we will have copies for sale at our annual meeting in October.

Annual Meeting

Our speaker this year is Mark Bernardin, author of *Choosing Your Path: How Massachusetts Residents can Take Control of their Medical Care, Estate Plans, and Funeral Arrangements*.

Medical Examiner Viewing

The law in Massachusetts says:

“A medical examiner or forensic investigator...shall...view the body and make personal inquiry concerning the cause and manner of death of any person whose body is intended for cremation or burial at sea and shall authorize such cremation or burial at sea only when no further examination or judicial inquiry concerning such death is necessary.”

For this authorization the fee is now \$75, payable to the Commonwealth, it was \$50, payable to cash. The phrase “or forensic investigator” is also new. The then Chief Medical Examiner, Dr. Richard Evans, was quoted in the Boston Globe as saying of cremation viewing, “If the intent was to find murders that otherwise would go undetected, it's ridiculous. A quarter of the time you get a body in a coffin in a suit with the mouth wired shut. I don't think they are necessary.

Continued to page 8

Meet Your Board Members

Daniel J. Evans

Dan was born in Marblehead, MA in 1947, and has lived in a number of Massachusetts locations. Dan attended Boston University and holds a BA degree from the BU College of Arts and Sciences and an MBA degree from the BU School of Management. He also is a Certified Management Accountant with an MS degree from Bentley College in Waltham and serves on the board of the Institute of Management Accountants, Route 128 Chapter. Dan has worked in financial, information systems and management positions in manufacturing, health care and banking organizations. Currently, he conducts an independent consulting practice in management assistance and strategy development for small and medium sized businesses in all industries, (except the funeral industry).

Dan has been married to Angelika (Angie) Evans for 33 years and they have two adult daughters.

Dan became a member of the Funeral Consumers' Alliance in 1999 as a result of concern about industry abuse of poorly informed consumers, and his wish to become better-informed. Dan became a board member in 2005

Byron Blanchard

Dr. George Richardson put out a

call for help in 1992. He was one of the founders of the Memorial Society in 1962 and had an active hand in running it for all those years. By 1992 all his helpers had disappeared and he was left doing everything himself. That couldn't go on.

I had been a member for twenty years or so and had attended a few annual meetings. At the 1992 meeting called by George, I volunteered to be Treasurer.

In 1995 Jan Buhrman alerted us that funeral industry regulators were putting out deliberate disinformation about the law. They had gotten both us and the Dept of Public Health to believe them. I was outraged. So started my activist phase, which continues. I have attended almost all meetings of the Board of Registration since 1997.

The others who stepped forward to help in 1992 had all gradually disappeared. Last spring I sent out a call for help, which was answered. I am no longer an officer or director. I do attend some meetings with the new directors, who have matters well in hand.

I am a retired electronic engineer. VHF and microwave amateur radio is a continuing interest; my call is N1EKV.

Judith Lorei

Judith joined the FCAEM Board this year. She has been a member for

the past six years. Judith has been interested in funeral service for as long as she can remember.

In 1999, she left her job as a manager at a Boston Career Center, enrolled in the Funeral Institute of the Northeast and worked as a funeral director/embalmer apprentice at a funeral home in Greater Boston. While she felt called to the work, she left the industry primarily because she had a difficult time trying to reconcile the conflicted relationship between money and death that currently exists in the funeral business. She learned a great deal in her short stint behind the wheel of a hearse and brings that knowledge and passion for death ritual to the FCAEM.

Judith has a Masters degree in theology and works as an independent consultant doing training, program design and research in the area of workforce development. She monitors the telephone line for the FCAEM and conducts workshops with board member, Nancy Accola on *Caring For Your Own Dead*.

Nancy Accola

Nancy brings a variety of skills to her work at FCAEM. She has a law degree and practiced as an environmental lawyer in the 70s. She was a school administrator at the Waldorf School in Lexington, MA while her daughter was a student there. Later, she returned to school and received a

master's degree in Art Therapy. She worked as a therapist at Westborough State Hospital. She is an artist and a poet with a strong interest in spirituality and consciousness. She has been a hospice volunteer. It was her dabbling in astrology that led to her discovery that there was a lot of "death emphasis" in her astrological chart which sparked an interest in educating people on their death care options. She has most recently been offering workshops with Judith on *Caring for Your Own Dead*.

Jan Buhrman

Jan has been a board member since 1992 when she attended a Memorial Society board meeting and asked the board to help find the law in Massachusetts which said that it was illegal for people to care for their own dead. Jan had cared for her mother and when it was time to bury her, she was told by a local funeral home that only licensed funeral directors could care for the dead. Byron Blanchard researched the law and found that indeed it is legal for other persons to care for their own dead. Jan has helped folks bury their own on Martha's Vineyard and most recently, helped several families with private burials on their private land. Jan holds a master's degree in Library Science and Education and is a caterer on Martha's Vineyard. She is married to Richard Osness, a carpenter and builder of his mother in-law's casket. They have two sons, Oliver and Oren.

Regulatory and FCA History Website

From the Desk of Byron Blanchard

Over the last decade, while trying to understand how the funeral industry is regulated in Massachusetts, I have collected several file drawers full of documents. I had also inherited the old (pre-1992) Memorial Society files. I have been justifiably criticized for not sharing what I have discovered.

In 2003 the Funeral Board started drafting a major revision to the 1992 regulations governing pre-need funeral contracts. I attended almost all the meetings and got copies of each of the preliminary draft documents. So how were those who were unable to attend the meetings going to find out what was going on? The Division of Professional Licensure chose to make no mention at all of this subject on their web site. So I decided if they wouldn't do it, I would. I had never created a web page, but am fairly computer-literate and have several books on HTML and the Internet. Our national federation, Funeral Consumers Alliance, graciously offered to host the material on their Legislative Watch page at their funerals.org website. Over the course of the year-long drafting process, I posted all the drafts and written comments. Many interested persons viewed the material.

In 2004, I started digging into the funeral trust and funeral insurance issues. Web hosting has

become much less expensive, so I set up a separate site, fcaemass.org, on which to post the documents that I found. That way I could tell people, via email, what I had found without having to send them enormous email attachments. Instead I could just include a link to the referenced document. That has worked well.

This year I retired as Treasurer of the Society. What to do with the boxes of old files? I got a nice sheet-fed scanner and set to work. Newsletters since 1976 and financial reports since 1980 are posted as are the 1962 documents founding our corporation.

I expect to have the main index or welcome page working by the time you read this. Take a look. The full URL is <http://fcaemass.org/>

Suggestions or contributions of material are welcomed; send them to [<b.e.blanchard@verizon.net>](mailto:b.e.blanchard@verizon.net), or call me at 781-862-6314.

Byron's Call for Help

Most of the legal regulatory framework for the funeral industry in Massachusetts dates from a century ago. It is time for major revision to the statutes. If anyone is interested in working on this, please contact Byron Blanchard at **781-862-6314**. Byron's strengths are in research. Help with lobbying will be necessary if anything is to actually change.

The Division of Professional Licensure is stonewalling on a number of Byron's public records requests. The only recourse is litigation. Some pro bono legal assistance would be much appreciated.

Crematory Scandal

By Byron Blanchard

You have probably read of the troubles of Bayview Crematory in New Hampshire. It was operated by Derek Wallace, a funeral home owner in Lawrence, and served mostly Massachusetts funeral homes. Wallace claimed to be cremating 2000 bodies per year. He offered a package price of around \$200 including pickup of the body from the funeral home and return of the cremated remains. The price was the same as that of the lowest priced Massachusetts crematory for cremation alone, which didn't include transportation. That was a good deal for funeral homes using Bayview, but since they didn't deliver the bodies to the crematory they claim that they were unaware of how it was run.

Commonwealth Cremation Service of Boston and Cremation Society of Massachusetts of Quincy are among those who used Bayview for all or most of their cremations.

While seeking documents at the crematory concerning medical examiner fraud, the investigators found multiple problems. Two bodies were being cremated together, one badly decomposed body was found in a broken freezer, etc. The crematory is closed and New Hampshire has filed criminal charges against Wallace, three medical examiners, and an employee who transported bodies and operated the crematory. Several lawsuits have been filed against Wallace,

the crematory, and funeral directors which used Bayview crematory. Stay tuned.

Derek Wallace cut corners in other aspects of funeral service also. In 2004 the Board of Registration suspended his registration for multiple violations. Among the violations were mishandling of pre-need funeral contract funds, and refusing to continue with the funeral when the casket was purchased from a casket retailer instead of the funeral home. One of the charges was owning and operating Bayview crematory, a technical violation Massachusetts regulations banning a funeral director from being in any other death-related business. The operational troubles at Bayview were not then known. Wallace's appeal of the suspension in District Court is still pending so he is still in business.

New Hampshire inspects a crematory only once when it is opened. But Wallace didn't even have that inspection, which his new crematory, in 1997, would certainly have passed. Several newspaper stories about Bayview blamed medical examiners for not properly supervising the crematory operations. But medical examiners don't have that duty under New Hampshire or Massachusetts law.

Crematories in Massachusetts aren't regulated or inspected either, but their ownership, location, and method of operation lend some (but certainly not complete) confidence that it won't happen here. Here crematories can only be located in and

run by cemeteries, and they can't transport bodies. Since funeral home personnel deliver the bodies to the crematory they can see how the crematory is run. You can, by appointment, visit any crematory for a tour.

Survivors customarily witness burials, even when there is no formal funeral service. It is strange that, in this country, cremation is very seldom witnessed. In England and in the Netherlands people regularly go to the crematory, just as here they go to the cemetery for a burial. All crematories we know of permit the witnessing of the start of the cremation. If you have any doubt at all that your dead relative or friend will be properly cremated, go and witness it! Many of the crematories are quite grand, e.g. Mount Auburn Cemetery, while others are more utilitarian. All are in cemeteries. What happened at Bayview crematory couldn't have happened if survivors went there to witness the cremations.

Western Massachusetts FCA reported that most of the crematories in their part of the state refuse to deal with people who wish to care for their own dead. FCA refers people to two crematories in Vermont which welcome such business. As far as we know, all crematories in eastern and central parts of the state accept bodies from those caring for their own dead. A slight amendment to an existing statute, M.G.L. 114:5A, would be the easiest way to prohibit such discrimination.

Burials On Private Land

If you look, they're easy enough to find: small, family burial grounds scattered across the state, reminders of a time when it was not uncommon for families to bury their loved ones on their own land. Although it rarely happens today, Massachusetts law still allows the owner of property within the state to bury members of his family on that land. If a client asked me to facilitate such a burial, I would certainly help, but would first ask him to consider the long-term ramifications, both for the value of the land and for the care of the graves.

However, for those who find comfort in the idea of burying their loved ones on the family estate, the process is manageable, much more so if you are able to plan ahead. Massachusetts law allows your local Board of Health (the "Board") to regulate burials on private land, and you will certainly want to find out if your town has any such regulations in place. But remember, in most towns the folks who work at the Board will have never heard of anyone burying a loved one on private land and may, in fact, believe the practice is contrary to state law. Accordingly, I would recommend following these steps, in roughly the order presented:

1. Locate a couple of possible burial sites before getting the Board involved. As discussed below, the sites you choose should be high and dry.

2. Contact the Board, tell them of your plans, and invite them to inspect the site. Develop a good working relationship with your contact person and ask her to explain any relevant regulations. It is possible that your town may have adopted a bylaw prohibiting or severely restricting burials on private land. In the absence of such a bylaw, however, if the Board rejects your plan without good cause, or because they think such burials are not allowed under state law, you can try walking them, oh so pleasantly, through the relevant law on this issue, primarily Massachusetts General Laws Chapter 114, Sections 34, 35 and 37. If that doesn't work, you may want to retain the services of a local attorney who knows the town or city government (i.e., the people).

3. At this point, you (or the Board) should also contact one of the four Regional Directors of the Department of Environmental Protection ("DEP"), either in Worcester, Springfield, Lakeville, or Boston (The Boston office is scheduled to move to Wilmington in or around October, 2005). As with the Board, you should work with your contact, welcome her input, and follow her recommendations. If the DEP determines that water runoff or ground drainage from your chosen site will enter a water supply, or a tributary of a water supply, you must get written permission from the DEP

to use the site or select a different site.

4. Consider how you will dig the grave, whether heavy equipment will be required, and how you will get the equipment to the site.

5. If you plan on caring for your own dead, you will need to perform all of the tasks customarily carried out by the funeral director. See *Choosing Your Path: How Massachusetts Residents Can Take Control of their Medical Care, Estate Plans, and Funeral Arrangements*, and the Web Site of the Funeral Consumers Alliance.

6. When burying your loved one, follow any regulations promulgated by the Board for such matters as the depth of the grave. If the Board offers no guidance, experts recommend covering the grave with no less than two feet of earth.

7. If you have grand plans for a vault or tomb that will be wholly or in part above the ground, be aware that it must be constructed in a manner that satisfies Massachusetts law. See Massachusetts General Laws Chapter 114, Section 43M. If you follow these steps, your arrangements should proceed smoothly.

**Please visit us at
<http://fcaemass.org/>**

Funeral Prepay Pitfalls

Prepaying a funeral home for your funeral can be a poor and sometimes risky investment. The only situation in which we recommend prepayment is when you need to shelter assets when applying for government benefits such as Medicaid, Mass Health, SSI, etc. Those programs have draconian limits on assets you can retain, but an irrevocable pre-need funeral contract can be a “non-countable asset,” permitting you to fund as elaborate and expensive funeral as you wish. We have made the same recommendation in earlier newsletters, but now make it even more emphatically.

Putting aside money for your eventual funeral can be a good idea, even if you aren't likely to go on Medicaid. But don't invest that money via a funeral home. The investment products offered by funeral homes have severe disadvantages. Funeral trusts look and act like mutual funds, but without the disclosure and accountability. They also have an extra layer of expense, even when the underlying investment is a mutual fund. They don't have to offer the prospectus and detailed annual report that you get with any mutual fund. One, New England Funeral Trust (Cambridge Trust, trustee), does offer, on request, an audited annual report. Cooperative Funeral Fund Inc (Wachovia Bank, N.A., trustee) offers an un-audited report and the trustee bank will not confirm any

details, saying only that it does have such a trust account. T.D. BankNorth says it doesn't have to provide an annual report. All the funeral trusts do send you an annual I.R.S. form reporting the income for tax purposes. We don't have information on the dozen or so locally-chartered banks also offering funeral trusts.

Life insurance sold by funeral homes is a strange product. It is mostly single-pay whole life, which means you make only one premium payment and they pay the specified death benefit when you die. The premium is almost equal to the initial death benefit, only 0.5% to 5% less, typically. The death benefit may grow, but only at the discretion of the company -- there are no promises. So far this sounds sort of like a deferred annuity, but they either have a guaranteed growth rate (a fixed deferred annuity), or are invested in a specific mutual fund (a variable deferred annuity). Some deferred annuities have early surrender charges of more than 10%, which the Mass Securities Division considers excessive.

But the surrender charges for funeral life insurance can be enormously greater than 10%. We reported in an earlier newsletter on a case of such insurance purchased by a 45-year old woman. She surrendered it after nine years; the surrender charge was 42%. An 83-year old woman purchased such insurance last year at a premium of 99.5% of the initial death benefit and an initial surrender charge of 20%, only tapering to zero

at age 100. We advised her to cancel during the “free look” period for a full refund of the premium, which she did.

Funeral life insurance sold since 1992 is almost entirely group life insurance. A master group policy is issued (delivered, in insurance-speak) to a group. You, as a member of that group, are issued a certificate of insurance under that group policy. Massachusetts permits a group policy to be delivered only to traditional groups, such as employers or labor unions; which a funeral life insurance owners group is not. So they deliver the group policy in a more-permissive state. Now they can sell a certificate of coverage with no questions asked by Massachusetts regulators. Group life insurance is specifically exempted from the pre-sale disclosure requirements that apply to regular life insurance. The only regulation by Massachusetts is that both the company and its salesmen must be licensed. For the leading writer of funeral life insurance in the state, Forethought Life Assurance Co., the holder of a certificate of insurance cannot even find out the identity of the group, except by examining the group policy at their home office in Indiana!

Group life insurance by a fraternal benefit society is a better deal. We know of only one active here, American Canadian Association of Manchester, NH. Its premium rates are significantly lower than those of the commercial funeral life insurance

companies. Surrender charges are less, but still large.

For those who can qualify, regular life insurance (not sold by funeral homes), either conventional or single-payment, can be an excellent investment. If it is conventional life insurance (periodic payments forever) be sure that it can be converted to paid-up. Then if you have to go on Medicaid you could convert and then assign the paid-up insurance to fund your funeral.

Life insurance does have one advantage. The Massachusetts Life & Health Insurance Guaranty Association protects you against failure of the insurance company. Funeral trusts have no such safety net, except for those which invest in bank CDs, which are FDIC insured. Thus, if you do need to prepay your funeral to satisfy Medicaid requirements then, and only then, either funeral life insurance or a funeral trust invested in bank CDs are OK. The surrender charge for insurance is irrelevant if you can't ever surrender it.

If, against our advice, you do prepay in a non-Medicaid situation, be sure that the contract is revocable and that the money goes into a funeral trust, not life insurance.

Please visit us at
<http://fcaemass.org/>

Enforcement

by Byron Blanchard

The Board of Registration in Embalming and Funeral Directing (Board) is nominally in charge of regulating the funeral industry in Massachusetts. But its parent organization, Division of Professional Licensure (DPL), is really in charge. DPL employs and supervises all staff. The Board has no voice in staff selection and only slight say concerning priorities. DPL investigates and decides what investigative results are presented to the Board for disciplinary decisions. The actions and priorities of the DPL can be quite strange.

Regulations concerning pre-need funeral contracts were significantly

strengthened in 1992. They said where the money was to be deposited and required annual reporting to the purchasers. But those regulations were never enforced. If they had been, the losses probably wouldn't have happened or at least would have been discovered sooner.

The 2004 mandate to deposit the money with a bank having fiduciary responsibility is still not enforced. DPL response to my written complaints about the above matters got the preposterous response that "It is necessary for you to identify specific funeral homes and licensees for this to be in an acceptable format." DPL has the pre-need annual reports with that data, but won't consult them. See fcaemass.org for all the gory details.

Please consider additional support of the FCAEM.
The one-time membership fee covers only a portion
of our expenses. Your inclusion of a tax-deductible
contribution is greatly appreciated.

Contributions:

- \$5 \$15 \$25 \$40 \$60 \$100
 Other _____

Thank you for your consideration



***Funeral Consumers Alliance
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Medical Examiner... from page one

Opinions differ on whether the cremation viewings are necessary.” They are unlikely to be eliminated, since the \$75 is a nice revenue source.

We have heard that, while the body is usually viewed, “personal inquiry concerning the cause and manner of death” almost never happens. Perhaps it is time for the law to require documentation detailing the results of the inquiry, with random audits of compliance.

New Hampshire law is very similar. The recent Bayview Crematory problems were accidentally discovered during an investigation into fraud by medical examiners. Two New Hampshire medical examiners and one from Massachusetts have been charged with providing signed cremation authorizations without ever seeing the body.

Directions to the Annual Meeting

From the west: Take Rte. 2, this becomes Fresh Pond Parkway, to Brattle Street. Turn right. The cemetery is on you left just after Brattle St. joins Mt. Auburn St.

From the Mass Pike or downtown Boston: Take Storrow Drive west. After crossing Eliot bridge to Cambridge, bear right, then left onto Fresh Pond Parkway. Bear left onto Mt. Auburn St.

Public transportation: Ride the #71 bus from Harvard Square. It runs every 12 minutes and the ride is about 10 minutes. It has a stop opposite the cemetery.

Our speaker this year is Mark Bernardin, author of *Choosing Your Path: How Massachusetts Residents can Take Control of their Medical Care, Estate Plans, and Funeral Arrangements.*