ORIGINAL

MISSOURI STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS

CHAPTER 436 LEGISLATION MEETING

MISSOURI COUNCIL OF SCHOOL ADMINISTRATORS
3550 AMAZONAS DRIVE
JEFFERSON CITY, MISSOURI 65109

JULY 8, 2008
9:45 A.M. - 4:30 P.M.

1 CHAIRMAN: First of all, I would like
2 to welcome everybody here today. And I, the
3 Board, the legislators, we really appreciate
4 everybody that's here taking the time out of
5 their day, their businesses to come in and
6 help work this 436 legislation. First of all,
7 I'd like to call the meeting to order. I
8 call the roll: Martin Vernon?
9 MR. VERNON: Here.
10 CHAIRMAN: Gary Fraker?
11 MR. FRAKER: Here.
12 CHAIRMAN: Todd Mahn?
13 MR. MAHN: Here.
14 CHAIRMAN: John McCulloch?
15 MR. McCULLOCH: Here.
16 CHAIRMAN: Joy Gerstein?
17 MS. GERSTEIN: Here.
18 CHAIRMAN: And I'm going to ask for a
19 motion to approve the agenda.
20 MR. FRAKER: I make the motion.
21 CHAIRMAN: Okay. Gary. Todd?
22 MR. MAHN: Second.
23 CHAIRMAN: Okay. Martin?
24 MR. VERNON: Yes.
25 CHAIRMAN: Joy?

1 MS. GERSTEIN: Yes.
2 CHAIRMAN: And John?
3 MR. McCULLOCH: Yes.
4 CHAIRMAN: Okay. All right. Well,
5 anyway, again, I'd like to welcome everybody
6 here today. I'd like to take the opportunity
7 to thank Senator Scott and Representative
8 Wasson for the opportunity to meet and conduct
9 this meeting over 436. I'd like to recognize
10 Representative Meadows here who has been a big
11 part of trying to revise 436 over the years.
12 And at this time, I'd like to have David
13 Broeker, the Division Director of Professional
14 Registration make a few comments.
15 MR. BROEKER: Thank you, Jim. Good
16 morning to everybody. I want to say right up
17 front thank you ever so much to all of you
18 who are willing to participate in this
19 activity that's going to stretch over a
20 four-day period. I appreciate very much your
21 willingness to do this. I'm very gratified to
22 each and every one of you and, again, my
23 appreciation for your willingness to spend the
24 time to work on this very important subject.
25 As you are all aware, the funeral preneed

1 industry has recently been a topic of
2 discussion across the country and, in
3 particular, in the state of Missouri. The
4 preneed industry and Chapter 436 has also been
5 a concern for the Board of Embalmers and
6 Funeral Directors for several years. At the
7 end of the last legislative session, Senate
8 Bill 788 was passed which established the
9 joint committee on preneed funeral contracts.
10 The joint committee will consist of fourteen
11 members, seven members from the House of
12 Representatives and seven members from the
13 Senate. It is our understanding that the goal
14 of the joint legislative committee will be to
15 review some of the preneed concerns and to
16 look at whether legislative changes are
17 necessary. In a recent meeting, Senator
18 Delbert Scott and Representative Jay Wasson
19 invited individuals from different aspects of
20 the preneed industry to review Chapter 436 and
21 to help identify areas in Chapter 436 where
22 change may be needed. It is our understanding
23 that these suggestions will be presented to
24 the joint committee to review when the joint
25 committee convenes after August 28th. August

1 28th is the date that the law goes into effect
2 which created this committee. The Board of
3 Embalmers and Funeral Directors was asked to
4 take the lead on this task; specifically, the
5 Board was asked to assist in organizing a
6 meeting with representatives from the various
7 sectors of the preneed industry including
8 consumer groups, representatives from
9 insurance, funeral directors, preneed sellers,
10 and the various regulators. The goal today
11 and through these meetings is to (1) identify
12 areas of common agreement, and (2) formulate
13 some suggested language for the joint
14 committee to review. This is an unprecedented
15 opportunity for all of the preneed industry to
16 come together with State regulators to provide
17 some suggestions for the joint legislative
18 committee to review. From my many years in
19 state government, an opportunity like this
20 doesn't present itself every legislative
21 session, and we especially want to thank
22 Senator Delbert Scott and Representative Jay
23 Wasson for their invitation and for allowing
24 the Board to assist with this process. This
25 is really an opportunity for all of you to

1 have a positive impact on an issue that
2 affects a lot of people. As with anything, I
3 am sure there are not going to be -- we are
4 not going to be able to agree on absolutely
5 everything; however, I would encourage you to
6 take advantage of this truly rare opportunity
7 and to make a good-faith attempt to provide
8 some strong guidance for the joint legislative
9 committee and perhaps the general assembly, as
10 well. Quite frankly, it appears that a
11 preneed proposal will most likely be
12 introduced this session either with or without
13 this group's participation. Of course, it
14 would be good and we would prefer for this to
15 happen with all of your participation. We
16 have some aggressive time frames. Cooperation
17 will be the key to getting this done. We
18 have no idea what will happen with the
19 legislative process after you finish meeting
20 and develop your suggestions. There are no
21 guarantees that what this group develops will
22 actually be enacted by the general assembly;
23 however, by working together, you'll at least
24 have a chance to provide some suggestions from
25 the people who are actually going to be

1 affected by any change to Chapter 436. Also,
2 you'll have the opportunity to at least
3 present something for the joint legislative
4 committee to actually review in its work. I
5 also want to mention about the relationship
6 with the legislative committee. Senator
7 Delbert Scott called a meeting of members of
8 the Board of Embalmers and Funeral Directors
9 and several of us from the Division of
10 Professional Registration. Senator Scott's
11 committee -- Senator Scott, himself, and the
12 members of his committee have worked very well
13 with the Division and the various boards of
14 the Division, certainly, in the last two
15 years. The same is true with the House of
16 Representatives. Representative Jay Wasson,
17 who was also in attendance at that meeting, he
18 and his committee have worked extremely well
19 with the Division over the last couple years
20 on all matters coming before the 39 boards and
21 commissions that we have in the Division.
22 We're also very pleased to have Representative
23 Meadows with us today who is serving in this
24 roundtable discussion with the rest of you,
25 and he has always been most helpful and very

1 helpful to the Division, to its various
2 boards. We've always appreciated his advice
3 throughout our time of working with you, and
4 thank you very much.
5 REPRESENTATIVE MEADOWS: Thank you
6 very much, Dave.
7 MR. BROEKER: Again, I encourage all
8 of you to work together. Thank you for your
9 time, and I truly mean that, for being willing
10 to participate in this process; it's a very
11 important one, and we have a lot to gain by
12 working together. Thank you, again.
13 CHAIRMAN: Okay. And before we get to
14 Connie Clarkston, I would like to start over
15 here with Jim on the end, and would you stand
16 up and introduce yourself and who you
17 represent and what part of the state.
18 (The members introduce themselves.)
19 CHAIRMAN: All right. Gentlemen,
20 ladies, we appreciate everybody. A couple
21 reminders here. This is recorded, so any
22 comments that you make, do not be ludicrous.
23 And then, also, your cell phones, if you can
24 put them at least on vibrate, and if you take
25 a call, please step out of the room. And,

1 now, I'm going to let Connie Clarkston, the
2 Division of Budget and Legislation, and she
3 works for the Division of Professional
4 Registration, she's going to lay down, what,
5 the rules, I guess, of the game, so anyway.
6 We've got to play by the rules.
7 MS. CLARKSTON: Thank you, Jim. As
8 David stated, we have been given a unique
9 opportunity by the members of the joint
10 committee, Senator Scott and Representative
11 Wasson. During the 2008 legislative session,
12 two house bills were introduced to address
13 changes to Chapter 436. I just want to go
14 through a little bit of history so that we
15 kind of can get to where we are today. As
16 part of the legislative process, the Division
17 of Professional Registration, as any state
18 agency, is asked by oversight to provide
19 fiscal impact so that they can provide to the
20 members of the general assembly what it's
21 going to cost a state agency to implement a
22 bill. At that same time, the Division is
23 often asked what impact it has to the
24 industry, do we agree with the language, is
25 there any tweaks that we need, et cetera, et

1 cetera. With the two house bills that were
2 introduced, one by Representative Meadows and
3 one by Representative Kuessner, we were asked
4 the same question: How does this impact your
5 Board? How does it impact your industry? The
6 Board started looking at those legislative
7 proposals at their April 7th, 2008, meeting,
8 and due to the gravity of the preneed issues,
9 the Board held additional meetings to gather
10 information from the industry. May of you
11 were present at those meetings. A draft from
12 those meetings was then presented to Senator
13 Scott and Representative Wasson. From that
14 draft, the Board was requested to provide a
15 list of five priorities in hopes of passing
16 something in that short period of time before
17 session ended. It's important for us to
18 understand today that, obviously, we didn't
19 get anything through session that close to the
20 end, so the charge for the joint committee is
21 to come up with a draft for the members of
22 the general assembly for next year. We've
23 been asked to participate in that. It's
24 important to understand that the draft coming
25 from this group today is not a Board proposal.

1 It is a proposal that will represent
2 common-ground agreements that the industry,
3 consumer groups, the Board, the Division and
4 other State regulators believe we can agree on
5 with notes on areas that are unsolved so the
6 general assembly has a starting place to
7 begin. Because we're on such short time
8 frames, we have kind of tried to come up with
9 an organized fashion of how to deal with the
10 comments, the input from the committee, and
11 those in the audience. We will introduce the
12 topic, relevant background information will be
13 then provided. Committee member, those seated
14 at the table, will have dialogue. Committee
15 members, in order to be recognized, you will
16 see the red cards in front of you. To try to
17 help the chairman remember who is wanting to
18 speak, if you will place your red card in
19 front of your name placard, Jim will recognize
20 you. Once the committee dialogue is
21 completed, the public will be given 15 minutes
22 of dialogue or comments to provide to the
23 committee. We ask that each individual limit
24 their comments to two minutes. We will have a
25 timer, so when you hear "time," you need to

1 stop. In order to facilitate getting all of
2 your comments, we have developed a comment
3 sheet that you found outside. You may not
4 have enough time to provide all your comments
5 during your two minutes of time. We encourage
6 you to write your comments down and submit
7 those, as well. On that form, there is an
8 e-mail address; it is my e-mail. We ask that
9 you either write your comments on the comment
10 sheet or provide them electronically to me.
11 Please do not send those to the Board office.
12 My staff is trying to help facilitate this
13 process for the Board, so in order to do that,
14 if all comments come to me, those will be
15 shared with the Board, as well as committee
16 members. At the end of this discussion --
17 that includes the discussion of the membership
18 at the table, as well as the public comments
19 being received -- a consensus vote of the
20 group will be taken. Kim and I will then go
21 back to the office tomorrow and draft the
22 language and we'll share the review draft with
23 all of you after the third meeting. That
24 gives us time to get through the topics, make
25 the adjustments that are needed, and have one

final document, hopefully, ready by the fourth meeting. The last meeting of the review committee will be utilized to review the final documents to be submitted to the joint committee. If, at any point, you would like to submit a comment after a vote has been taken by the review committee, whether you are a member or not, we ask that the comment be submitted on the comment sheet or to the e-mail address provided. Again, we thank you for your time and participation, and appreciate your cooperation as we move through this process.

CHAIRMAN: Thank you, Connie. I appreciate it. Connie, would you introduce your staff over here. I think you brought all your --

MS. CLARKSTON: Yes.

CHAIRMAN: She's the timekeeper.

MS. CLARKSTON: ~~Dorothy~~ Darcie Rehagen, and she will be calling time as we go through the process, and everybody knows Lori.

CHAIRMAN: Lori Hayes, our investigator. I'm going to turn this over to Kim and she's going to be the facilitator and

1 to discuss and bring up the topics. So, here
2 we go, and we're going to take this thing and
3 throw it away.
4 MS. DUNN: While they're moving that,
5 everyone, there is a committee sign-up sheet
6 and there's an audience sign-up sheet. Those
7 are very important for us to have because
8 that's our communication with you throughout
9 this entire process. And, also, just to
10 remind anyone that speaks, please make sure
11 you pronounce your name clearly and loudly for
12 the court reporter. Just to remind you of the
13 agenda, we'll break at noon, lunch on your
14 own. We'll all come back here at 1:30. Rest
15 rooms outside, refreshments. If you have any
16 questions, Lori is available during the day.
17 CHAIRMAN: Okay, Kim.
18 MS. GRINSTON: Okay. Well, I have the
19 distinct pleasure of trying to help structure
20 some of the discussion. I want to reiterate
21 some of what Connie said previously. Our
22 understanding is that we are going to be
23 working on identifying the common grounds that
24 you, the review committee, may be able to
25 agree on. Our goal is not, at least for the

1 first two or three sessions, to actually be
2 drafting language at the table. Our goal is
3 -- the thought was that we could set the frame
4 first, then we could go ahead and decorate the
5 house. If we can just talk about the general
6 concepts and what this review committee's
7 consensus is on the general concepts, once we
8 hear that, Connie, myself, staff, and some
9 other people will go back, actually work on
10 putting the words on paper, and then submit
11 that back out to you all for you all to
12 review. I think that's probably a more
13 orderly process than actually, you know,
14 dealing with "may" to "shall" at this table
15 because I know that there are a lot of issues
16 that we need to discuss. Looking at the
17 background, we thought it was important that
18 we first deal or address or tackle the basic
19 questions of 436. I think everybody can write
20 a book, and many of you have been in many of
21 the Board meetings for years discussing a lot
22 of the issues with Chapter 436, but I think
23 they are all suggestions that we have heard.
24 We'd like to ask that, for purposes of our
25 organization, that we stick to the topics that

1 are listed. The Board is not here today to
2 speak about any specific licensee or any
3 specific issues. This is really a
4 collaborative effort, and we will help you all
5 formulate and pull together the ideas that we
6 hear coming from the review committee. Having
7 said that, I do want to clarify, the Board
8 members are all here today. They are seated
9 here today as an open meeting because State
10 law says that when we have the entire Board
11 together, we do need to post it as an open
12 meeting that is open to the public; however,
13 they are going to be participating as
14 committee members of the draft. My
15 understanding is that the suggestions that
16 come together today are not -- we are not
17 formulating a Board proposal, we are pulling
18 together, again, a consensus draft. What this
19 review committee comes up with, my
20 understanding, is going to be presented to the
21 Board officially in its August meeting, so
22 you'll hear Board members making comments
23 today. They are Board members, but they are
24 going to be participating as practitioners, as
25 members of the public, who have an interest in

1 Chapter 436. Are there any questions for me
2 or for the chairman before, I guess, we start
3 working? I think the best thing to do is
4 just to pull up our sleeves and it's going to
5 be an interesting day. Does everyone have a
6 copy of the agenda with the specific topics?
7 It should have a July 8th, 2008, list.
8 MS. DUNN: It looks like this. It was
9 on the table out front. And we also provided
10 a copy of Chapter 436.
11 MS. GRINSTON: The other thing that
12 was on the table that I do want to just
13 comment on very briefly, we did the survey.
14 For everyone who returned the survey, we do
15 appreciate it. What we tried to do is pull
16 some of the survey results to look at what you
17 all ranked as top priority, what are high
18 priorities, low priorities, moderate
19 priorities, just as a guideline for the
20 committee to see. We did a very rough and
21 raw draft of some of those findings. There is
22 a more professional Excel draft that we have
23 done, and we are going to be giving some more
24 data and some more percentages on what the
25 results were that the Board received on the

1 survey probably at the next meeting, if not
2 later on today. But that's just a rough draft
3 just as an FYI, and I think it probably will
4 help better as we pull those percentages and
5 things together for you to look at at a later
6 date.
7 MS. CLARKSTON: The comment sheets are
8 also available on the front table when you
9 came in. One thing that will help us in the
10 office when you send in a comment, if you will
11 put the agenda topic. And if you look at
12 your agenda, it starts with general
13 administration, preneeds, and so forth. So,
14 if you can identify your agenda topic and then
15 the number under that topic so that it's easy
16 for us to connect your comment with the
17 portion for the draft that would be affected.
18 MS. GRINSTON: Having said that, I
19 think we -- I was thinking about this last
20 night. I think it may be a good idea that we
21 do a little bit of rearranging. I think at
22 the top of our agenda, we have some general
23 administration items, and it talks about the
24 repertory authority over Chapter 436. But I
25 think before we have that discussion, it will

1 probably be a good idea for this review
2 committee to address the question or the issue
3 of who should be allowed to sell and/or be
4 involved in the preneed industry. I think
5 that that is a basic fundamental question that
6 will have an effect on who is going to
7 regulate it, and I think that question
8 probably needs to be answered first. Having
9 said that, let's look at topic item #3 on this
10 agenda, "Allowing/prohibiting third-party
11 sellers." I think that the suggestion -- and
12 as another point of clarification, a lot of
13 the suggestions that you see as the topic
14 points are not suggestions of the Board.
15 Again, we tried to compile all of the
16 suggestions that we have gotten in from every
17 sector of the preneed industry over the years
18 -- most recent years. One of the questions
19 that we had was a basic question is: Who
20 should be registered or allowed to sell
21 preneed in the state of Missouri? I think
22 that that question probably will then help us
23 answer -- or you all answer the later question
24 of who needs to regulate it. And so, having
25 said that, Mr. Chairman, we would like to open

1 up the floor for discussion on that issue,
2 again, looking at the consensus of the group
3 on who should be registered or authorized to
4 sell preneed in the state of Missouri.
5 Nobody. Okay.
6 REPRESENTATIVE MEADOWS: I might as
7 well jump right in. I'm not going to be
8 bashful. What I would like to just say --
9 this is Representative Tim Meadows, for the
10 record. Personally speaking as an outsider
11 looking in this, I think wherever we start or
12 however it should go, anyone wishing to sell
13 preneed in the state of Missouri should have
14 -- be licensed to where we can find out,
15 follow the bouncing ball to see who is out
16 here selling preneed. And, also, I think that
17 they should have to go through the State Board
18 of Embalmers and Funeral Directors, that they
19 should have to take a test on Chapter 436,
20 that they should be in the know on what's
21 going on, and they should be licensed by the
22 State Board of Funeral Directors and
23 Embalmers. With that, I'll rest.
24 CHAIRMAN: Any other comments? Don?
25 MR. OTTO: Don Otto, Missouri Funeral

1 Directors and Embalmers Association. For a
2 number of years, we supported the concept of
3 anybody that physically is dealing with the
4 public, particularly selling preneed, should
5 have some type of license. The form of that
6 license might be open for discussion, whether
7 it's, you know, this type of license or that
8 type of license. But to have something that
9 the State of Missouri can discipline if that
10 person violates the rules, we have felt for a
11 long time, is important.
12 MS. GRINSTON: And may I broaden the
13 discussion just a little bit, because I think
14 in addition to who should sell on behalf of a
15 preneed seller, I think this committee should
16 also -- or the suggestion was that you all
17 review what entities should be allowed to sell
18 preneed. Right now, we have a system where we
19 have insurance companies that are selling
20 insurance-funded preneed plans. We have
21 third-party seller, which for anyone who may
22 not understand that term, that is someone
23 selling preneed that is open or available to
24 anyone else other than a captive funeral home
25 or funeral establishment. Preneed sellers may

1 be a funeral establishment who are selling for
2 themselves, and we just consider them a
3 preneed seller. A third-party seller would be
4 another entity that is separate from that
5 establishment whose policies may be used or
6 provided for by one or more other preneed
7 providers. And so, I think that a very
8 fundamental question is: What entities? What
9 is the committee's thoughts on what entities
10 should be listed and/or allowed to sell as an
11 entity in the state of Missouri?
12 CHAIRMAN: That's okay. Go ahead,
13 George.
14 MR. CLINE: Thank you. My name is
15 George Cline, and I'm with Kutis Funeral Home
16 in St. Louis. And just so you know, we are
17 family owned, operated; we have been for 100
18 years. We do exclusively trusts, we don't do
19 any insurance, and we are partial to preneed
20 providers being licensed funeral directors and
21 being -- have their offices here in the state
22 of Missouri.
23 CHAIRMAN: Bill?
24 MR. STALTER: I think one of the
25 questions, though, that we'll eventually get

1 to is, are we going to restrict preneed
2 selling to licensed funeral directors, or will
3 we allow other non, you know, funeral-home
4 type of entities to be sellers. And, you
5 know, when -- (inaudible) -- everybody will
6 point to NPS, but the fact is, I mean, there's
7 a lot of entities that serve the industry as a
8 nonlicensed funeral home. I mean, the state
9 associations -- most of the state associations
10 are third-party sellers from state to state.
11 And the reason -- I mean, that is a -- I
12 guess, bring it together, assets that --
13 (inaudible) -- for the funeral homes. I mean,
14 if you try to say that it's -- you're going
15 to limit sales to licensed funeral directors,
16 there are a lot of smaller entities that
17 really are dependant upon an outside
18 organization. So, then it gets down to how do
19 you license this third-party seller and not
20 restrict or restrain the trade to entities
21 that do comply with the law.
22 MS. GRINSTON: And, Bill, I'm going to
23 expand the question, not just how, but who is
24 eligible for licensure? Will it be only
25 insurance companies, and I'm talking about the

1 consensus of this group. Your thoughts on
2 should it just be insurance companies that are
3 selling preneed as a preneed seller? Should
4 it only be third-party sellers, or should it
5 be restricted to funeral establishments only
6 as a preneed seller? I think that is the
7 bigger question when we talk about entities.
8 Who are we looking at? Insurance companies
9 only? Are we looking at, again, third-party
10 sellers only? Or are we looking at the hybrid
11 mix that we have now where we have third-party
12 sellers in Missouri, we have sellers who are
13 funeral establishments, and then we have
14 sellers who are -- well, insurance companies
15 who are also selling preneed plans.
16 MR. McCULLOCH: John McCulloch. I
17 want to back on Representative Meadows'
18 comment. There is accountability for the
19 counselors now. It falls under the sellers,
20 and the seller is totally responsible for what
21 that counselor does. So, if the counselor
22 goes out and steals money or does something
23 incorrectly, the seller is going to be
24 responsible for that. So, these counselors
25 aren't just running around and no one is

1 responsible for them. Just a reminder of that.
2 MS. EULER: One thing that I've seen
3 in other types of licensing situations outside
4 of this industry is a situation where -- and
5 real estate comes to mind -- where you have a
6 license for the broker who would be, John,
7 like your organization, and then you have
8 licenses for the agents so that there is some
9 individual accountability for the people out
10 on the streets. And -- because one of the
11 things I think we need to think about is who
12 is actually having the customer contact and
13 where does the accountability need to lie.
14 And for most people, if you've got your own
15 license on the line, your own livelihood on
16 the line, I think most people are more likely
17 to be more concerned about that than if their
18 boss' livelihood is on the line because they
19 will get another job somewhere else.
20 MR. McCULLOCH: You know, the folks on
21 the Board can talk to this, but I don't think
22 we have problems with counselors. That's not
23 where our problems lie. I think that's a real
24 minor point in this discussion.
25 MS. EULER: While we're looking at

1 Chapter 436, I think it makes sense to keep an
2 open mind and look at everything instead of
3 just focusing on where the problems are right
4 now, because where the problems are right now
5 may not be where the problems are next week.
6 CHAIRMAN: True. Darlene?
7 MS. RUSSELL: I think Martin was first.
8 CHAIRMAN: Okay. Martin?
9 MR. VERNON: I think I lost my train of
10 thought. Part of the thing, and somebody
11 touched on it just a while ago, is in the
12 licensing thing, I think, we're just sharing
13 personal opinions now, we've got to be
14 sensitive to the fact that to mandate, that
15 you have to be licensed, and the licensed
16 funeral director cannot be required, if I said
17 that correctly, to sell his own merchandise in
18 his own funeral home. So, we have to be a
19 little careful there with the FTC and what
20 that we would be looking at in that way. And
21 you were asking about the hybrid mix.
22 Personal opinion, again, you know, the wheel,
23 other than people that don't play by the
24 rules, is okay. There is nothing really wrong
25 with the wheel. It works well, so that's just

1 a personal opinion.
2 CHAIRMAN: Darlene?
3 MS. RUSSELL: I agree with what Sharon
4 was speaking on about accountability
5 personally, that everyone who sells a product
6 should have some accountability. I'm a
7 licensed life-insurance producer; I have
8 accountability. I'm a licensed funeral
9 director; there's accountability. Having
10 someone out there that could be representing
11 -- you know, who knows what their background
12 is, and talking to consumers. Some type of
13 registration, I think, so the Board knows who
14 these individuals are out there, not so much
15 really licensing, but at least some type of
16 registration so that they have a personal
17 stake in it, as well.
18 CHAIRMAN: Okay. Representative, did
19 you have another --
20 REPRESENTATIVE MEADOWS: I was just
21 going to say, I sit between two -- great minds
22 think alike, but I strongly concur with both
23 of these two ladies, just as a follow-up.
24 Thank you, Mr. Chairman.
25 MS. GRINSTON: May I go back to

1 Martin's wheel. When you look at the
2 entities, again, going back to the main
3 entities, because I understand that there are
4 people selling them for them. Am I hearing no
5 concerns right now with this group with the
6 current process of allowing insurance
7 companies to sell preneed plans, allowing
8 third-party sellers to operate, allowing
9 funeral establishments to operate as their own
10 sellers -- that system? Now, the regulation
11 of that probably is what we will discuss later
12 on today. But for right now, am I hearing
13 that the consensus of the group is that the
14 system that allows all three of those entities
15 to operate and sell preneed in Missouri is not
16 something that you all are interested in
17 seeing changed?
18 CHAIRMAN: Sharon?
19 MS. EULER: Sharon Euler with the AG's
20 office. I think that 436 needs to be
21 clarified from an enforcement point of view in
22 that there are some people in the state who
23 will strongly say that insurance-funded
24 preneed contracts do not fall under Chapter
25 436. There are some people -- and it's just

1 not clear. Some people say, well, 436 only
2 applies to trusted contracts. I'm not doing
3 -- I don't have a trust, I'm not doing that,
4 so I don't fall under 436, simply because it's
5 not clear. So, what I hear you asking is:
6 How should the definition of preneed contracts
7 be formulated in Missouri as to funding?
8 MS. GRINSTON: No. I'm asking who
9 should be out there selling. I'm asking if
10 I'm selling a preneed plan, who should be the
11 person authorized to sell preneed in the state
12 of Missouri? And I'll just ask it blankly:
13 Should we be allowing or prohibiting
14 third-party sellers? That's the question, I
15 think, that we probably need to look at first,
16 and then possibly look at clarifying what it
17 is that you're selling and whether you're
18 under 436. But who should be under that
19 umbrella?
20 MR. VERNON: I'll just reiterate
21 again. My funeral home wants to do all three.
22 MS. GRINSTON: Got it.
23 MR. MEIERHOFFER: Michael Meierhoffer.
24 We have used all three at one point or not.
25 But my concern is there are a lot of people

1 that can't do it on their own and will need
2 third-party administrators or third-part
3 sellers. That is -- I think the consumer
4 needs that. The question is: Can they
5 operate effectively and honestly, and that's
6 what we're all about.
7 CHAIRMAN: Darlene?
8 MS. RUSSELL: Mike, I agree with you
9 that there's a need for third-party sellers,
10 also, but I do believe that we probably would
11 need to look, Kim, at the possibility of
12 having a tougher regulation; no different than
13 an insurance company who is examined annually,
14 there should be a little bit more stringent
15 requirements for a preneed seller who, you
16 know, when they reach a certain amount, they
17 have all these consumers' funds, that they
18 have more accountability regarding exams.
19 CHAIRMAN: Don?
20 MR. OTTO: I would just note, you
21 know, what Mike said. Not only is there some
22 funeral homes could not do preneed without a
23 preneed seller -- and, again, I know you don't
24 want to get into specifics here. But there's
25 been a number of instances over the four years

1 that I've been around that because there was a
2 preneed seller, when a funeral home ceased
3 operations, the funds were still there for the
4 consumer. And a number of instances -- a
5 couple instances where the funeral home was
6 doing both their own and -- they were acting
7 as their own seller and they had a third-party
8 seller; they were doing both. And when that
9 entity ceased operations, the consumers that
10 had their funds in the third-party seller got
11 their funerals. The consumers that had their
12 funds in the funeral home's own personal
13 account at the bank lost everything. So,
14 there is -- there's an additional advantage to
15 a third-party seller with that, as well.
16 MR. STROUD: Could I -- Mr. Chairman?
17 CHAIRMAN: Yeah. I think we've got the
18 discussion here. Real quick, I think
19 everybody's consensus probably is all three.
20 Now, we're going to open it up to -- you go
21 ahead, Larry. Larry, state your full name and
22 your prison sentence.
23 MR. STROUD: Larry Stroud, Adams
24 Funeral Home, Ozark and Nixa, Missouri; also
25 president of the MFDEA. What we're after

1 here, to me, is pretty simple. It doesn't
2 have to be complicated. Number one, we want
3 to see how much we're going to put in trust.
4 That's number one. We're not here to deprive
5 anyone of a livelihood. That is not our
6 objective here. We're penalizing ourselves
7 because of a company who defrauded us, not
8 only the consumer, but the funeral home
9 itself. We just need to cut to the chase and
10 not make it such a complicated issue that
11 we're all wrapped up in this thing that it's
12 ridiculous. We want safeguards for -- and I
13 don't know whether a license for a preneed
14 seller is the answer to that at all. I've
15 got a great guy that works for me, he sells
16 preneed. We don't make house calls; they come
17 to the funeral home. He could write up a
18 contract just as simple as anybody. What
19 we've got to do is trust -- put our money
20 into a trust or whatever we're going to do
21 with it and make sure it's safeguarded. I
22 think that everybody is interested in
23 safeguarding our monies in the long haul,
24 whether it's 80 percent, 90 percent, or 100
25 percent. I just feel very strongly about

1 this. I don't care what kind of procedure we
2 end up with as long as it's safe -- as long
3 as it's safe, and that's what we're out here
4 for is a safe environment for not only the
5 consumer, but the funeral-home operator. And
6 when I put my trust into a third-party seller,
7 I expect him to honor his commitments, not
8 only to me, but to my consumer, and that's
9 what I expect. John McCulloch was a good
10 example. I know John fulfills his obligations
11 every day. It only takes one crook to ruin
12 this whole thing for all of us here. And
13 Senator Meadows -- I mean, Representative
14 Meadows is a prime example; he's trying to
15 protect the consumer, as well as the funeral
16 home.
17 MS. REHAGEN: Time.
18 CHAIRMAN: Time, Larry.
19 MR. STROUD: Excuse me. I'll get off
20 my rant. I could talk for 20 minutes on this.
21 CHAIRMAN: Now, folks, the topic of
22 discussion is, like, all three methods of
23 funding.
24 MR. KRAUS: I'm Jerry Kraus with
25 Homesteader's Life Company. What we feel

1 works best from a national standpoint is to
2 look at this from a dual-transaction
3 standpoint and realize that the insurance
4 transaction is beyond the authority of the
5 Board, so let's focus on the preneed
6 transaction, the funeral contract. As far as
7 licensure there, we feel it's best to license
8 the establishment that makes the contract with
9 the consumer and subrogate below that license
10 any third-party seller. So, if you license
11 the establishment to do the transaction and
12 then you let them subcontract that authority
13 and you keep track of the registration of
14 those persons as you deem appropriate. So,
15 you have the funeral establishments at the
16 top, third-party sellers or independent
17 operators representing funeral directors under
18 that license.
19 CHAIRMAN: Anybody else?
20 MR. BENNETT: I'm Bill Bennett from
21 Britton-Bennett in Steelville. My concern
22 here, after 36 years, I would like to have
23 some kind of -- I agree with what he said,
24 but even the person underneath our funeral
25 home or a third party have some kind of

1 limited-liability license that is registered
2 so even if he leaves my funeral home and goes
3 to yours, we can still track him or her and
4 see if there's any things they do wrong, and
5 there is some consumer protection.
6 CHAIRMAN: So, members of the
7 committee, the consensus is that we want all
8 three types of funding methods?
9 MS. GRINSTON: Sellers.
10 CHAIRMAN: Sellers. Well, you've got
11 sellers and insurance.
12 UNIDENTIFIED: And funeral homes as
13 sellers.
14 MS. GRINSTON: And then funeral homes.
15 So, is the understanding of the group -- and,
16 Mr. Chairman, if we could take a vote on this.
17 Is it my understanding that no one -- that as
18 a consensus, that you guys don't see a problem
19 with the current persons or the people
20 authorized to sell preneed in the state of
21 Missouri? And the system of an insurance
22 company selling a preneed plan, a third-party
23 seller, or a funeral establishment selling
24 under its own seller's license, that that is
25 something that when we talk about legislative

1 changes, that we don't think we need to
2 change, just that basic framework. Regulation
3 and who sells for them aside, I think that's
4 going to be our next question, but that
5 general question is: Am I understanding -- I
6 guess we can vote.
7 CHAIRMAN: Okay. All in favor. All
8 oppose.
9 (Unanimous voice vote for approval.)
10 CHAIRMAN: Okay.
11 MS. GRINSTON: Now that that first
12 question is answered, because, again, I think
13 it's fundamental that if we still have this
14 three-party system, if you will, now, I think
15 the next question would be number -- I think
16 that takes care of #3 and #4 on our agenda,
17 and I think now we move to #5, which is a
18 broader question: The licensing and
19 registration of people selling on behalf of a
20 preneed seller or a registered preneed seller,
21 and I think that question, one of the
22 suggestions that was presented to the Board is
23 that that person should be restricted to
24 either insurance agents only, funeral
25 directors only, or be given some type of

1 license. And so, I would like to open that
2 for discussion, even though I think we've
3 already discussed it previously, but that
4 issue for discussion.
5 MR. VERNON: Take a straw poll on all
6 three. Who should be insurance licensed, who
7 should be --
8 CHAIRMAN: Go ahead, Don.
9 MR. OTTO: I would just like to throw
10 out there, just for those who don't -- aren't
11 aware of it, that there is already what's
12 called a limited funeral-director's license
13 under Chapter 333. To get the limited
14 funeral-director's license, you have to pass a
15 test. About half of that test is on Chapter
16 436. The other half of that test is on what
17 you are and are not allowed to do as a
18 funeral director -- making a funeral,
19 providing a funeral, arranging a funeral. So,
20 in addition to the full-blown
21 funeral-director's license and the full-blown
22 embalmer's license, we have under Chapter 333,
23 and then also the insurance license, there is
24 the limited funeral-director's license that is
25 available. And, again, what you have to do to

1 get that license is to take a test, like
2 Representative Meadows indicated. About half
3 of it is on Chapter 436, and almost the rest
4 of the half is what you can and can't do as a
5 funeral home -- all things, it sounds like,
6 somebody selling a preneed plan ought to know.
7 CHAIRMAN: Darlene?
8 MS. RUSSELL: I concur about what
9 Representative Meadows had said earlier about
10 insurance companies are already -- the people
11 that sell insurance are already licensed
12 insurance producers. People -- most of the
13 people that work in funeral homes that sell
14 preneed are usually dual licensed as funeral
15 directors, also. I think some type of
16 registration, so the Board knows who these
17 individuals are, is important. Just a small
18 test on Chapter 436, as well as the
19 registration fee, and, you know, a background
20 check, you know, just like you do when you get
21 a funeral-director's license or an insurance
22 license. Have you ever been convicted of a
23 felony -- you know, knowing who is out there.
24 So, those are my suggestions.
25 CHAIRMAN: Sharon?

1 MS. EULER: I'm going to echo what
2 Darlene was saying in that I think that with
3 the differences in how a preneed works, I
4 think it's important to keep 436 and 333
5 separate so that you don't -- because Don's
6 suggestion of using the 333 limited license is
7 a good idea, but I'm concerned about
8 intermixing the two statutes in that way. And
9 I don't see any reason why we couldn't put
10 language in that would give requirements for
11 licensure just like we have for any other
12 license. You can't sell preneed if you've
13 been convicted of a felony. You can't sell
14 preneed if you've been convicted of a crime
15 involving stealing money from poor folks or
16 old people or vulnerable people. You can't
17 sell if you're of bad moral character; you
18 know, that long litany of things. I don't see
19 why we couldn't do that for preneed because
20 right now, anybody can sell preneed. I mean,
21 I know of one instance where a guy stole a
22 couple million dollars from a bunch of farmers
23 in mid-Missouri and he was selling preneed.
24 MS. GRINSTON: And just to add to
25 that, some of the states do require -- their

1 requirements are you have to be 18, you can't
2 be convicted of a felony, and then you have to
3 get an agent -- they have different things
4 that they call them, but a license from the
5 Board. I just wanted to echo what Sharon
6 said. But that theme is consistent in some of
7 the other states.
8 CHAIRMAN: Representative?
9 REPRESENTATIVE MEADOWS: Yes. This is
10 a follow-up with what Don was saying. I just
11 think some -- when you're out there selling,
12 you should know that the business, you should
13 know the industry, and you should be -- there
14 are needs to, because you folks are the State
15 board. I want to give you guys the
16 opportunity and the wherewithal to know who's
17 out there doing this. I feel that you guys
18 need to be, and all future boards associated
19 with the State, they need to know what's going
20 on out there. And if you don't have no clear
21 path to that, you, right now, probably
22 couldn't tell me who is out there selling all
23 these different preneeds. You probably don't
24 even know. That's why it's important, I think
25 there needs to be some type of accountability

1 and some type of registration on these folks.
2 CHAIRMAN: Yes?
3 MS. BOHRER: And I just wanted to say
4 with respect to the insurance-license
5 component, anybody that is selling life
6 insurance tied to a preneed contract would
7 already have to have a life-insurance
8 contract. There is nothing in the
9 life-insurance testing protocol that taps into
10 436 and the preneed rules and regulations.
11 So, solely having a life-insurance contract --
12 or license would not prepare someone to sell
13 preneed necessarily.
14 MS. EULER: That's a good point.
15 MS. GRINSTON: Good point. So, I'm
16 hearing three things; that if -- yes, that
17 people selling for a preneed seller -- the
18 counselors, if you will -- should be licensed
19 as something with a regulatory entity, that
20 they should -- we should be checking for
21 felony or criminal convictions, and that there
22 should be some type of 436 test. Those three
23 things -- are there other things to add to
24 that, or are there other suggestions?
25 CHAIRMAN: All right. Todd?

1 MR. MAHN: Well, I don't know how --
2 you know, how you can sit here and really
3 argue about more education, you know. How can
4 you ever have enough education about anything?
5 And it's not a topic, but it's a whole other
6 subject in this state, you know, about
7 continuing ed. But, you know, just something
8 I've done, and I don't see why it's such a
9 big deal, but I had a meeting with both of my
10 salesladies before coming up here and
11 instructed them both, but they are to get --
12 become apprentice funeral directors, bottom
13 line. It's now part of my internal
14 requirement at my funeral home. I said we're
15 going to take the lead on this and if it
16 becomes something that everybody has to do,
17 then we're already ahead of the game, but if
18 it doesn't, it doesn't, and I don't really
19 care. It's just something that we're going to
20 do. But, I mean, how complicated is it? I
21 mean, you know, if they can be an apprentice
22 funeral director and still sell preneeds, you
23 know -- it's not that expensive. I just -- I
24 don't understand why this is such a big deal
25 or such a problem to even argue over requiring

1 somebody to have additional education on
2 something that's so complex and important.
3 CHAIRMAN: All right. Members of the
4 industry?
5 MR. KRAUS: Jerry Kraus,
6 Homesteader's. What we find works best is the
7 Board licensing the entity, the funeral home,
8 allowing the funeral home to authorize
9 third-party sellers underneath that permit,
10 and any licensing requirements -- prelicensing
11 requirements or educational requirements be
12 imposed on that license, keeping in mind that
13 these people may or may not be selling
14 insurance. And remember to separate the
15 insurance transaction. The insurance company
16 is already doing criminal-history checks on
17 its people, so there is some control on that
18 side. If you want to impose a similar
19 standard on the preneed licensee, the person
20 who is doing the preneed transaction, that
21 could also be appropriate, but keep it on the
22 funeral-transaction side.
23 CHAIRMAN: Yeah. What you're saying
24 is you're already licensed and carry a license.
25 MR. KRAUS: Don't require it of the

1 insurance agent --
2 CHAIRMAN: Right. To have another --
3 MR. KRAUSE: -- require it of the
4 person doing the preneed contract.
5 CHAIRMAN: Yes.
6 MR. STYGAR: I'm a little confused
7 about the issue here. We're talking who is
8 selling preneed contracts. We didn't have a
9 problem with who was selling preneed contracts
10 -- I mean, the individuals. The problem was,
11 as Don had outlined in that last meeting: Who
12 is responsible for the big money? You know,
13 if the insurance company is responsible to the
14 consumer, is the funeral director responsible?
15 Is the bank trust officer responsible? You
16 know, that was the big issue. I mean, we --
17 like the gentleman said, anybody can sell the
18 preneed product, and I don't mean anybody, and
19 we can license that person. But it's once all
20 that money goes in the account and a funeral
21 director goes out of business or that company,
22 like NPS went out of business, who is
23 responsible to who on that money? We had --
24 you know, we're out holding the bag because
25 the consumer, whether we're responsible or

1 not, are going to come back to us and say,
2 "Hey, I want my funeral," you know. We're
3 trying to find out, well, is the bank going to
4 cover this stuff that was in a trust, you
5 know? Is the insurance company that they put
6 their money with, is that going to cover us?
7 I mean, do you understand what I'm saying?
8 CHAIRMAN: Right. Kim, do you want to
9 address that?
10 MS. GRINSTON: Well, I do, and I do
11 want to maybe make a suggestion because, of
12 course, we can't avoid the elephant in the
13 room. There are some things going on in the
14 preneed industry that have made the news. We
15 all know what's going on. But I think that
16 the invitation that this committee has been
17 given is broader than just that entity. I
18 think we are looking at 436 as a whole.
19 Right now, a 14-year-old can sell preneed if
20 they wanted to. Right now, I could sell
21 preneed from death row if I wanted to,
22 assuming I could make the phone call. But I
23 think the issue and the question is, you all
24 know the difficulties we have had getting into
25 436. You all know that rumors, "Don't open

1 436. It's going to open a can of worms. If
2 you do, you know, it'll be an explosion." We
3 have had an invitation to go into 436 and look
4 at some of those issues outside of just what's
5 happening in the media right now, but look at
6 the issues that have been before the Board.
7 If someone is convicted of stealing, and I'm
8 going to use Sharon's example, $10 million
9 from, you know, an insurance company or from
10 farmers. They can come to this Board tomorrow
11 and say, "Now, let me sell preneed," and this
12 Board would have to say, "Go for it." And
13 so, I think as we look -- I would encourage
14 everybody to think globally and not just, you
15 know, at -- of course, again, it's the -- I
16 understand it is -- that what's going on now
17 is a big issue, but let's look at this problem
18 and step back and really look at do you need
19 -- and this is not a recommendation. Should
20 we be registering and/or licensing persons
21 selling on behalf of a third-party seller, and
22 I do appreciate the concerns about insurance
23 sales.
24 CHAIRMAN: That's a good point. Okay.
25 There's a recommendation -- go ahead, John,

1 real quick, and then we'll --
2 MR. McCULLOCH: John McCulloch. Just
3 to explain really what happens, you can -- you
4 all are kind of talking about and I would like
5 to discuss it with you. But, really, what
6 happens is, we don't hire anyone unless the
7 funeral home says they're okay, so that's the
8 first thing. We do our own background checks
9 on the people. We're responsible for them.
10 If they steal any money, they -- you know,
11 we're the ones that have to make good on it.
12 So, really, you're going after a little --
13 these little counselors out here and you're
14 just adding costs to a business is all you're
15 doing. Yeah, we can get people in the field
16 faster. Talk to these insurance people and
17 see how much it takes to get someone licensed
18 and up and going. It's a huge cost. There
19 is no need for all that. The funeral homes
20 know who's out there selling the preneed.
21 They hold me responsible for them. If they do
22 anything wrong, I find out about it
23 immediately and then they're gone. So, that's
24 what happens in the real world.
25 CHAIRMAN: Joy?

1 MS. GERSTEIN: Two comments to make.
2 The lady representing the insurance board --
3 CHAIRMAN: Linda.
4 MS. GERSTEIN: -- did you tell me that
5 even though someone has a license to sell
6 insurance, it does not qualify them -- it has
7 nothing to do with selling preneeds; is that
8 what you said?
9 MS. BOHRER: I'm telling you there is
10 no testing criteria on the life-insurance
11 license that is targeted to their knowledge of
12 preneed law. That is not a component of an
13 insurance-license testing.
14 MS. GERSTEIN: Great. Thank you.
15 Now, a discussion follows what I wanted to
16 comment about. What I see that we're here
17 for, it's wonderful that we're saying that
18 right now we don't have to worry about it or
19 we don't need to put that in writing because
20 we all know what we're doing. We all know
21 what we're doing today, but what about
22 tomorrow? What about a new company coming in?
23 What's not in writing you can't hold as being
24 an item that we need to restrict, and that's
25 what we're doing today. We're trying to

1 define what needs to be required so that ten
2 years from now, eight years, five years,
3 somebody can pick this up and say this is what
4 we can do, this is what you cannot do. So,
5 it's not an argument of dealing with what's
6 happened with their money, it's that we need
7 to clean this up. We need to get it
8 clarified what is going to be required. And
9 not -- it's not saying, like you're saying,
10 you know what your people are doing, but John
11 Smith over here might not know what his people
12 are doing. We need to have something to
13 clarify as to what we can do.
14 MR. McCULLOCH: It is clarified. The
15 seller is responsible for them. It's there
16 now. They're responsible for it. We have a
17 situation that happened in one of the
18 communities. The funeral director was the
19 seller for us, stole the money. We made good
20 on all those contracts. We're making good on
21 them as they -- we're responsible for them.
22 What more can you do? If the counselor --
23 MS. GERSTEIN: What if your seller was
24 not --
25 MR. McCULLOCH: -- the counselor can't

1 do anything. In fact, she's in jail, so what
2 are you going to do?
3 MS. GERSTEIN: Go ahead, Kim.
4 MS. GRINSTON: John, what happens if a
5 counselor -- let's just say a counselor steals
6 from APS, and then decides to go from APS and
7 move to ABC-123, and sell for them, as well.
8 And how do you handle counselors who may be
9 bad?
10 MR. McCULLOCH: We tell each other. We
11 communicate with ourselves and say this is a
12 bad one, don't hire them.
13 CHAIRMAN: Yeah, but what if they came
14 to an individual funeral home and said, "Oh, I
15 want to work for you," and we have no clue;
16 we're not in your system?
17 MR. McCULLOCH: Well, you need to
18 check them out and find out where they've
19 been. And if you can find out from them and
20 do like we do, do background checks, but find
21 out where they have worked. And if they have
22 sold preneed and if you find out they've
23 worked for us, call me, and we'll tell you,
24 you know, stay away from this person.
25 CHAIRMAN: Okay.

1 MR. McCULLOCH: But that's not who's
2 causing the problems, guys.
3 CHAIRMAN: Jo?
4 MS. WALKER: As a consumer and
5 representing seniors, I do not think that
6 would be acceptable to have them -- there
7 should be some way to track these people going
8 from one to another, whether it be
9 registration, licensure, or whatever. There
10 needs to be some way to track these people.
11 MR. McCULLOCH: Do we have a lot of
12 complaints about counselors?
13 MS. GRINSTON: Yes. And I'm going to
14 speak from --
15 MR. McCULLOCH: Well, when we look at
16 those reports, they're not.
17 MS. GRINSTON: Because we have -- what
18 they'll say in a complaint is, the person who
19 sold this to me said this, and then we have
20 no idea who may have sold it. We have
21 actually had to ask, "Who was in there selling
22 this plan? Who told them this?" We've had
23 people tell them in preneed that vaults are
24 required by law in the state of Missouri.
25 "Who told you that?" And then they'll say,

1 "Well, the guy who's worked for the company."
2 "Well, what's his name?" And when we have
3 someone who may be just, let's say, a bad
4 apple who is working for a seller or who may
5 be working for a funeral home that's a seller,
6 if that person, again, steals $10 million a
7 day -- I'm going to even take it outside of
8 stealing money. Let's say that person
9 assaults someone in their home while selling
10 the preneed contract. There is nothing that
11 any entity in the state of Missouri can do
12 right now to address that situation other than
13 to say, "Third-party sellers, we hope that you
14 guys are checking it or will do something or
15 will help us somehow." If -- and, again, I'm
16 going to use this example, because this
17 actually came up in one of our licensing
18 entities, not this Board, what happens if
19 someone is sexually assaulted by a counselor?
20 Is there anybody who can go in and say,
21 "Counselor, you're out of there. You're not
22 selling for anybody anymore," officially on
23 behalf of the State?
24 CHAIRMAN: Sharon?
25 MS. EULER: I would also like to add

1 that from a consumer-protection point of view,
2 having a license offers a bright-line standard
3 for people. We get a lot of calls into our
4 office about questions, like, "How do I know
5 whether this person is legit or not? Somebody
6 knocked on my door. How do I know if they're
7 a legitimate business or not?" If the person
8 actually doing the selling has a license,
9 that's a bright-line test, and we can tell
10 people who call into our office, "Before you
11 buy a preneed plan, check to make sure they
12 have a license." Because while there are a
13 lot of reputable people in this state selling
14 preneed, there are also a lot of people who
15 aren't reputable. And the problem is, is that
16 when we've got one of those people, we have no
17 authority to take action. And then this Board
18 gets the phone calls, "Why did you allow this
19 to happen," when the Board has got no
20 authority to do anything about it.
21 CHAIRMAN: Okay. We're going to take
22 two more. Martin?
23 MR. VERNON: I just want to bring it
24 to the real world, as John was doing a while
25 ago. Being a Board member, I don't recall

1 ever dealing with a complaint about a
2 counselor up to this point, but I haven't been
3 here that long. How many times, Becky, has it
4 really been that a counselor has been
5 complained against?
6 MS. DUNN: It's within -- probably -- I
7 probably can't reveal how many right now.
8 MR. VERNON: But a lot or not so many?
9 MS. GRINSTON: You mean a complaint
10 against the person who sold them the plan?
11 MR. VERNON: Yeah.
12 MS. GRINSTON: The person in the room?
13 MR. VERNON: The person we're trying
14 to put a license to.
15 MS. GRINSTON: Have we seen complaints
16 about someone who has had a complaint with the
17 person who sold them the preneed plan?
18 MR. VERNON: As long as I've been on
19 this Board, no.
20 MR. McCULLOCH: Plus, typically, what
21 happens is, when you go into a home as a
22 preneed counselor and someone is questioning
23 if you are legit or who you are or are you
24 really doing what you're supposed to be doing,
25 they call the funeral director right there.

1 They call the funeral director and say, "Hey,
2 there's a guy here by the name of John
3 McCulloch. He's trying to sell me this
4 preneed program. Do you have a man out here
5 doing this?" And they'll describe me, and
6 that's kind of the process that happens there.
7 CHAIRMAN: Jim?
8 MR. MOODY: You know, I think there's
9 two levels here. I think one is, you know,
10 if you're a felon or something like that where
11 there's a public record of it. That's really
12 straightforward and that's not unreasonable to
13 check that. In other areas of government,
14 there are disqualification lists -- in the
15 long-term-care industry, there's an employee
16 disqualification list. However, there is a
17 very cumbersome administrative process that
18 gets you on that list. And I think,
19 ultimately, on a lot of these issues, when you
20 get to the bottom line, it's what are your
21 fees going to be for administration. And, at
22 some point here, do you make the fee so high
23 that you simply -- you know, I think that we
24 have said that we kind of want to keep the
25 current structure. The level of fees simply

1 drive people out of business because it's so
2 expensive to do business. So, I don't think
3 you have to reinvent the wheel. I mean, there
4 are, obviously, ways that you have
5 disqualification lists, but I will tell that
6 they're pretty expensive, and whether the
7 industry is going to want to pay for that.
8 MS. GRINSTON: And I think that when
9 we talk -- you're talking about
10 disqualification lists as opposed to a
11 license. I think sometimes we think a license
12 -- the process for funeral directors to get
13 licensed and embalmers, I know you guys go
14 through tests and school and everything else.
15 But some of the boards within the Division for
16 people who are out there doing certain things
17 that just need to be -- so for tracking
18 purposes, they come to the entity, they pay a
19 fee, they file an application, they get a
20 license in hand or something that is not
21 essentially burdensome. But what I'm hearing
22 Martin and John say is that it is not your
23 interest to have anybody -- you don't see a
24 regulatory need to track the people selling on
25 behalf of a preneed seller, that, right now,

1 you believe that the third-party sellers are
2 taking care of the people working for them,
3 and you would prefer that the State not get
4 involved in monitoring or qualifying or
5 licensing or tracking those people, allow the
6 third-party sellers to work it out between
7 themselves.
8 MR. McCULLOCH: Because I'm
9 responsible for them and I'm taking
10 responsibility for them. Is that not true?
11 MS. GRINSTON: I think as a seller,
12 yes. I think the answer is yes, but I think
13 the Board -- I think that the other side of
14 the discussion is being able to hold the
15 person responsible, as well, so that if I'm
16 out there lying to a consumer about what a
17 funeral plan is, that not only can I go back
18 to you, but I can also go to that person and
19 say, "And you stop it, as well." And what
20 I'm hearing you say is, let the seller stop
21 it, that you don't believe it's necessary for
22 the State to be involved or have anything --
23 exercise any control over those persons
24 because their employers should be doing that.
25 MR. McCULLOCH: Because we're not

1 having any problems. That's the whole point.
2 If we were having this huge outcry, that is --
3 this is not the problem that we have in front
4 of us, I don't think.
5 CHAIRMAN: Well, I'm going to make a
6 statement here. Does anybody remember when
7 NPS, which we're not supposed to go back and
8 talk about, sold the generic plan with
9 counselors? The generic plan; they came out
10 in your town, had a counselor, said it was
11 good at any funeral home, put you down, dah,
12 dah, dah, dah. Okay. Now, are you supposed
13 to service that plan, because, you know, you
14 may not have been contracted with for that
15 particular plan that they were selling. So,
16 who should have been licensed? If you had a
17 counselor was selling, they would know that
18 you could sell for that funeral home or you
19 couldn't.
20 UNIDENTIFIED: If I didn't notify the
21 Board in 30 days, I have to honor it.
22 CHAIRMAN: Right.
23 UNIDENTIFIED: That's 436.
24 CHAIRMAN: Yeah. But how -- if you
25 know it.

1 UNIDENTIFIED: Well, I don't.
2 CHAIRMAN: So, how do you know? So,
3 what I'm saying is, I mean, you've got to look
4 at -- these people need to know who they're
5 selling for and what they're selling and not a
6 generic-type deal. So, yeah, you know, I
7 think what we need to do is take a vote.
8 Tom, I'll let you speak last. We're going to
9 take a vote and go on to this, and we'll get
10 Baker and that will be it. I've got to cut
11 it off someplace, guys. Quick, Todd.
12 MR. MAHN: I just wanted to back up
13 what Kim said, and, Jeff, let you come up. I
14 mean, I know a lot of people right now are
15 concerned about what went on with NPS, but
16 that's -- and some of these questions don't
17 seem like they even relate to it or we even
18 had problems in that area. But that's not
19 what we're meeting here about. This is an
20 historic moment in this state to be asked to
21 sit down and go through each one of these
22 things and fix these things and really discuss
23 them, not with just a few people, but an open
24 invitation to everyone. And, you know, we
25 just need to go through them and discuss them.

1 And on the subject of the person, I mean, I'm
2 just saying, at a minimal, I mean, you have to
3 get a permit to have a yard sale; okay?
4 We're sitting here arguing over whether
5 somebody should get a permit for ten bucks or
6 whatever it is, that we know they're
7 registered, and they're out there in the
8 street somewhere. I mean --
9 MR. McCULLOCH: I think the answer,
10 Todd, is you shouldn't have to have a permit
11 to have a yard sale.
12 MR. MAHN: Yeah.
13 MR. McCULLOCH: That's just another
14 way to tax you; that's all that is.
15 MR. MAHN: Right.
16 CHAIRMAN: Bob.
17 MR. BAKER: Thank you, Mr. Chairman.
18 I'm Bob Baker. One of the things that I've
19 been hearing here is we have no complaints,
20 nobody ever has any problems at all, but I'm
21 here to tell you, as a funeral director in the
22 field, there are all kinds of problems out
23 there be it whoever goes door-to-door. And
24 the only problem that we have is that we
25 cannot get the people to actually file the

1 complaints. So, no, the State Board probably
2 does not get a lot of complaints, but they're
3 out there. To get that consumer to put their
4 name on the complaint form and have a
5 complaint to us is two different things, so I
6 think that there's a lot more complaints out
7 there than what everybody is aware of.
8 CHAIRMAN: Jerry, do you want to make
9 a quick comment?
10 MR. KRAUS: Yeah. Two quick comments.
11 Jerry Kraus, Homesteader's. Your comment on
12 the generic plan, I think, is an example of
13 why you need to look at third-party marketers
14 and their counselors as something you permit
15 under the establishment level. Control the
16 transaction of doing the preneed, let the
17 funeral establishment subcontract to
18 third-party marketers and their counselors as
19 they -- and control it as you deem fit. And
20 in dealing with other Boards, other regulators
21 that try and control the permanent process,
22 and you don't have to make it expensive, they
23 find it necessary to get down to the person at
24 the transaction level. So, if I'm the funeral
25 establishment and I want to license all these

1 people in the front row as my counselors, to
2 get to one of these person's unethical or
3 illegal activities, you've got to enforce
4 through my permit which is not necessary if
5 you can enforce through that person's permit.
6 So, charge me $100 for my establishment
7 permit, charge $5, make it a simple
8 registration process. Allow these persons to
9 be under your control so that if they're doing
10 something wrong, you can pull their license,
11 and I can go on with my permit.
12 MR. STROUD: I would like one comment.
13 CHAIRMAN: Well, get up there and say
14 it.
15 MR. STROUD: I think a registration
16 thing would be very simple, not necessarily
17 licensing. John McCulloch is a third-party
18 seller, insurance companies; if they're going
19 to be actively involved in selling some type
20 of preneed via the funeral home, then make
21 those guys register their counselors --
22 register their counselors. Not saying they
23 have to have a license, but at least register
24 them, and then if there is a complaint, we
25 know who they are. And I'll agree with John

1 there because no funeral home wants
2 complaints. They're out there, and Bob is
3 right; a lot of people don't -- they won't say
4 anything, but I'll guarantee they'll come into
5 our funeral home and chew our backsides real
6 quick. They come in and say, "Well, Larry,
7 who was that guy out there?" It applies in
8 everyday life. You remember everyday life is
9 different than sitting around this big room
10 here. Some people don't go door-to-door every
11 day. Some of you people don't even work at a
12 funeral home, but a lot of you do. But the
13 issue is, we fight the battles all the time.
14 And if you've got good people working for you,
15 you don't have these problems. Let John
16 register his counselors via the State Board
17 some way. Keep the fees down low, maybe not
18 even have a fee, just as long -- and then
19 when John has got a bad apple, that it's sent
20 to the State Board and said, "This guy is a
21 bad seller." Make it simple. I think we've
22 got too many rules and regulations as it is
23 for everything else that we do. We're still
24 penalizing the funeral home here. The funeral
25 home is not the problem. The funeral home is

1 not the problem at all; it's the seller.
2 CHAIRMAN: Okay.
3 MR. STROUD: He's got to monitor his
4 own company.
5 MR. WARREN: Mark Warren. As a
6 practical matter, part of what I understood
7 the committee was here for, that part of the
8 problem was the State Board didn't have the
9 ability to address complaints very
10 effectively. From a practical standpoint, if
11 you don't know who to go get and you don't
12 have them register through your Board, then
13 you may have a jurisdictional problem in
14 trying to regulate these people. So, from a
15 practical standpoint -- and there used to be
16 the Department of Insurance used to have an
17 appointment list which was different in a way,
18 but similar in a way that companies would
19 appoint agents to sell for their company which
20 gave the department a way to find out the name
21 of a person if they couldn't find out any
22 other way. In that particular instance, it
23 was incumbent on the company to notify, you
24 know, the department. That particular a
25 requirement, I believe, has since been done

1 away with, but something along those lines.
2 It was a way the department could get
3 jurisdiction over a bad actor and at least
4 find out who they were.
5 MR. McCULLOCH: I just have a comment.
6 I think Jerry and what Larry had to say is a
7 great compromise, actually. That works well.
8 Make us responsible. We are now, anyway, but
9 make us register those folks to give you their
10 name and then hold us accountable for them.
11 MS. GRINSTON: And I think -- I don't
12 know if the question is terminology.
13 Registration or license, I think we used
14 license just because we're used to using that
15 term. But I think that the thought was having
16 them somehow officially recognized or some way
17 for the State to know that this person is
18 selling and that you cannot sell until you do
19 this thing, whether we call it a registration
20 or a license. So, is your problem with the
21 terminology, John, of saying license as
22 opposed to a registration?
23 MR. McCULLOCH: I'm just not
24 interested in taxing those folks and
25 generating income for any organization.

1 That's what I don't want.
2 MS. GRINSTON: And I think that that's
3 --
4 MR. McCULLOCH: I don't want to lay --
5 put on another layer of an expense for a small
6 business. That's what I'm trying to avoid.
7 MS. GRINSTON: And I think that's
8 probably the next topic of discussion. If you
9 register or license or whatever you call it,
10 what are the requirements for it? But am I
11 hearing that you're not objecting to them
12 somehow being officially registered or
13 recognized by the State --
14 MR. McCULLOCH: No.
15 MS. GRINSTON: -- but you do not want
16 a full licensing mechanism like we see with
17 funeral directors and embalmers?
18 MR. McCULLOCH: Sure. Certainly.
19 Because we can't get funeral directors
20 licensed in the state now because the test is
21 too hard; okay? So, how are we going to get
22 all these counselors with a license out there?
23 So, I just don't really want to get down that
24 road because we won't be able to hire anyone.
25 CHAIRMAN: All right. Let's take a

1 vote on this. All in favor of licensing or
2 some kind of form of registration, say aye.
3 Those opposed.
4 (Unanimous voice vote for approval.)
5 MR. CLINE: I'm in favor of licensing
6 as the next -- just at least on 436, so
7 however they want to --
8 CHAIRMAN: And we're distinguishing
9 between insurance licenses and --
10 MR. CLINE: Correct.
11 MS. GRINSTON: So, what I hear
12 everyone saying is that you would like to do
13 something with the State agency, now I think
14 the discussion is register versus license.
15 What do we want to call it? Not we; what do
16 you want to call it? Do you think it should
17 be a registration where we get the list of
18 people? Do you think there should be a
19 testing element so that there's a full
20 licensing procedure? What are you interested
21 in seeing for people who are -- I don't know
22 -- registered, licensed, deputized? That's
23 what we'll call them, deputies.
24 CHAIRMAN: Darlene?
25 MS. RUSSELL: Currently, I think the

1 Board uses -- utilizes a student registration,
2 apprentice registration, and a practicum
3 registration, and all three of those types of
4 registration requires a background check as
5 far as answering questions as far as their
6 convictions and that type of thing. So, I'm
7 thinking some type of a registration might be
8 the way to handle it instead of the licensing.
9 REPRESENTATIVE MEADOWS: I strongly
10 concur.
11 MR. McCULLOCH: Someone that wants to
12 be a funeral director, do we still do
13 background checks? I thought we quit doing
14 that?
15 MS. GRINSTON: No.
16 MS. DUNN: We view Missouri State
17 Highway Patrol.
18 MR. McCULLOCH: But we don't require
19 it, do we?
20 MS. DUNN: We do background checks.
21 We do not do fingerprinting.
22 MR. McCULLOCH: Okay. But you do run
23 them through that system?
24 MS. DUNN: Uh-huh.
25 MR. McCULLOCH: Okay.

1 CHAIRMAN: Industry members?
2 MR. OTTO: Well, I just -- my only
3 question is if it's -- if you call it a
4 registration, are there going to be certain
5 qualifications for that registration, like not
6 pled guilty to a -- don't say convict, by the
7 way -- not pled guilty to a felony, you know,
8 all those other -- you know, pick a half dozen
9 things that are already in most of the
10 licensing things that you're not allowed to
11 have, and is it going to be something that can
12 be taken away from them.
13 CHAIRMAN: That's a key point.
14 MS. GRINSTON: It is.
15 CHAIRMAN: If you get a complaint and
16 you find whatever out about them and they're
17 no good, they need to be revoked and then sent
18 whatever -- notification on the Web site that
19 they are revoked and you shouldn't, you know,
20 hire the guy. I don't know. Someone --
21 MR. OTTO: Whatever you call it, is it
22 something -- that's just the question I have.
23 Is it something that you can take away from
24 them if --
25 CHAIRMAN: We're just taking their

1 livelihood away, which you take your
2 livelihood away, then you've --
3 MR. OTTO: John may -- (inaudible) --
4 because he does things right away.
5 MR. McCULLOCH: Well, no, I think what
6 you all are doing is great because you're --
7 again, I'm doing it myself. You're just
8 saying, well, we want to make sure that
9 everybody does this; okay? That makes sense
10 to me. And so, you post these people's names,
11 and so, that let's me know if I go to hire
12 someone, I look on this site and I see, uh-oh,
13 don't hire John McCulloch, and, you know, I
14 can move on to the next person. I don't see
15 anything wrong with that at all. That's
16 probably just good common sense.
17 MS. GRINSTON: So, if your thought is
18 registration, I know with other boards,
19 there's sort of, like, an approved
20 registration list, and then you can be removed
21 from an approved registration, and it's not a
22 full license, if you will.
23 MR. BAKER: Are we talking about
24 anyone who sells a product, whether it be a
25 trust, insurance. Just because you have an

1 insurance license doesn't mean you know
2 anything about funerals. Are we talking about
3 everybody that's going to sell funerals?
4 MR. KRAUS: (Inaudible) -- that you can
5 perform funerals to sell funerals. Don't
6 license insurance companies, don't license
7 marketers; license people to sell funerals
8 that can do funerals.
9 MR. McCULLOCH: I agree with you,
10 totally.
11 UNIDENTIFIED: You what, John?
12 MR. McCULLOCH: I was just agreeing
13 with him. I think that preneed is a separate
14 -- totally separate from being a funeral
15 director. It's different. I really do
16 believe that.
17 MR. BENNETT: I'm Bill Bennett. I
18 have a dual license, plus I'm a licensed
19 insurance agent. But we're talking 436, we're
20 talking the future. And like Joy and like Jo,
21 we need to protect the consumer. If we --
22 the least we can do is register the person
23 that actually writes the contract or knocks on
24 the door, even if they work for me. I know
25 John very well. John has a tight ship. I

1 appreciate that, but he's not the only one
2 that we're going to encounter in the next 20,
3 30, 40 years, so the least we can do is have
4 them registered with a qualification list and
5 a disqualification list, and go from there.
6 At least we know who the actual person is out
7 there.
8 CHAIRMAN: Sharon?
9 MS. EULER: My suggestion would be
10 from a consistency point of view that it would
11 make sense to have a license as opposed to a
12 registration because there's a whole body of
13 law in the state of Missouri as to what a
14 license means and what you need to do to take
15 away a license and what it means to hold a
16 license. If you call it a registration, it's
17 not as clear -- it's not legally as clear.
18 And, also, it seems to me that minimal
19 competency and knowledge of Chapter 436 and,
20 again, for consistency purposes, use the
21 criteria in Chapter 333, which is common to
22 various licenses, as to your criteria. We
23 already have that; why reinvent the wheel.
24 CHAIRMAN: Representative?
25 REPRESENTATIVE MEADOWS: I just might

1 add, and maybe I'm wrong and I'm not here to
2 slight anybody, the third-party sellers and
3 the insurance companies that are in the room.
4 But folks, this is a serious problem. When
5 you're going to take me and you're going to
6 abuse the little old lady that's out there --
7 I'm not saying John's company has done that or
8 any insurance company here. But this has to
9 be about the consumer and if we're going to
10 come all this way and we're going to get here
11 to the threshold and then we're going to water
12 everything down, then, to me, that's not the
13 way we're going to go. There are senior
14 citizens out there that are purchasing these
15 things, and that's why I brought Norma Collins
16 in a long time ago and I brought Jo Walker
17 in. This is a very important issue, and if
18 we get to the threshold and say, "Okay. Well,
19 the third-part seller, I'm going to be the one
20 that's responsible for these guys." All
21 right. Well, if they're doing something
22 wrong, are you going to be responsible enough
23 to go to jail, because I'm going to tell you
24 something, this NPS stuff -- and I don't want
25 to get there because I can get on my soapbox

1 in a hurry -- anyone associated with that --
2 that wrongdoing -- should go to jail, and
3 that's just my personal opinion, and I think
4 we need to put some penalty phases on this in
5 legislation because I am that strongly -- I
6 have convictions to put people in prison. If
7 they are doing something wrong, they need to
8 go to jail. We don't need to go, "Well,
9 okay. We're going to hide our head, we're
10 going to put our head in the sand." No. I
11 say no. I say it's time to lock down. We've
12 got an opportunity here. Let's put the
13 regulations in place. I don't want to pick on
14 any third-party seller or any insurance
15 company, but if we water it down, folks, the
16 ones that are going to lose are going to be
17 the senior citizens of this state, the
18 veterans, your customers, your consumers that
19 are out there, your funeral -- the folks that
20 you -- look up to you in your communities each
21 and every day. Those are going to be the
22 ones that are going to suffer down the road,
23 and even possibly you as a small-business
24 owner. So, I just encourage -- I mean, now
25 you know where I stand. I mean, I'm a

1 hard-core-regulation guy, and let's do it.
2 And I don't mean to pick on anybody in this
3 room, but that's the way I'm going to be
4 because I've done been there with it the last
5 couple years, so -- thank you.
6 CHAIRMAN: Thank you. Norma?
7 MS. COLLINS: I just wanted to add to
8 Representative Meadows' comments. Many older
9 people -- and I'm not talking about people who
10 are not educated. When we think about scams
11 and telemarketing, an issue that AARP has
12 worked on, so many people are embarrassed to
13 come forward and to tell you that they have
14 been the victim of a scam or whatever. Older
15 people have a trust level when they let people
16 into their homes to sell them whatever;
17 they're very trusting. And so, it could be
18 that many of these people, these complaints
19 are not coming forward because people are too
20 embarrassed to tell you about it.
21 CHAIRMAN: Mike?
22 MR. MEIERHOFFER: In answering
23 Representative Meadows' comment, I understand
24 where you're coming from, but there's got to
25 be somewhere in between what you're talking

1 about because there are not enough laws that
2 you can write or that we can hold to keep the
3 bad guys from doing what you're talking about.
4 So, somehow, we've got to come to some
5 conclusion here on how much tax does the
6 consumer ultimately pay or does the seller pay
7 themselves in doing the things that you would
8 like to do. Now, I don't disagree. We need
9 to do something, and this is our time to do
10 it. And the consumer has to be protected. I
11 don't think there's anybody in this room
12 that's going to say not. The question is:
13 How do we come to some agreement to take care
14 of that and move ourselves backwater to the
15 point where this problem really started. And
16 it's not right what we're talking about, but I
17 think we've got to be proactive and we might
18 as well get ahead of them -- of the curve and
19 do something. So, if it's registration or
20 licensing, I'm in agreement. As far as being
21 a funeral director to sell it, absolutely not.
22 Absolutely not. We've got to separate that.
23 And the insurance, keep them out of 436, and
24 if they need to take licenses or some type of
25 a deal for this thing we're talking about --

1 and I've got an insurance license and I've got
2 a pilot's license and I've got a hunter's
3 license -- but the point is, and we can have
4 all those things taken away from us if we
5 don't perform within the scope of the law.
6 And I think you're probably right, we have to
7 have some teeth in it; otherwise, it doesn't
8 mean a thing. But let's not set it up so we
9 tax John and his company and tax the person
10 that's trying to go out there and work or,
11 ultimately, the consumer is going to pay for.
12 Somehow, they've got to -- it's got to be paid
13 for, because you, as a state, have to operate,
14 too. So, if we can figure out a way to do
15 that, I'm with you.
16 CHAIRMAN: Okay, Todd.
17 MR. MAHN: Real quick, John, talking
18 about having an agent registered. If the
19 agent was to do something unbeknownst to you
20 and your company, I don't personally think
21 that your company ought to be penalized for
22 something somebody did out in the field. I
23 think that person ought to be addressed --
24 that person. So, in a way, you know, this
25 kind of protects your company, also.

1 MR. McCULLOCH: Well, you would be the
2 exception, Todd, because, ultimately, the
3 funeral homes expects me to fix it. So, I
4 have to -- you know --
5 MR. MAHN: And not so much --
6 MR. McCULLOCH: -- I may give the
7 counselor a second chance.
8 MR. MAHN: Right.
9 MR. McCULLOCH: But, ultimately, I've
10 got to go back to your customer and make
11 everything right with them.
12 MR. MAHN: Right.
13 MR. McCULLOCH: Or you're not going to
14 be happy and then you'll cancel me, see?
15 MR. MAHN: Right. Right. And in my
16 case, my counselors sell multiple policies, so
17 they're not just selling yours. We use
18 multiple companies, so they need to be
19 responsible to somebody other than just one
20 person, you know. But real quick, talking
21 about people out there just selling stuff and
22 doing what they want, I'm going to ask
23 somebody to make a couple comments here. They
24 told me a story the other day about somebody
25 out doing sales. Brian May is here from

1 Chapel Hill. Brian, would you share with us
2 about the sale situation you got into and had
3 the sheriff's department there. And would you
4 come up and take a mike. Do you mind, Mr.
5 Chairman?
6 CHAIRMAN: No.
7 MR. MAY: Well, we just got in a
8 situation where -- it was, basically, what
9 John said, though. A family calls and says,
10 "Hey, there's this guy at my house and he says
11 he's with Chapel Hill." And I had them
12 describe him and, of course, it wasn't the
13 right person. And then he said, "Well,
14 they've been out here three times now, and
15 they're going to come out here tomorrow
16 morning at 8:00 again." And she was, like,
17 "And I just remembered my husband is not going
18 to be here." And I'm, like, I don't even
19 know who this person is. So, anyway, long
20 story short, I think everything worked pretty
21 effectively. I mean, they called the funeral
22 home, they called me, and it ended up being
23 somebody from a different company; all right?
24 MR. MAHN: Go ahead. Tell them who it
25 was.

1 MR. MAY: From NPS. Okay. And so,
2 anyway, to me --
3 MR. MAHN: And that's just recent.
4 MR. MAY: Well, I guess there are
5 people out there who, I think, may not be
6 representing themselves correctly. My
7 personal opinion is some sort of
8 identification of who is out there offering
9 preneed. Wouldn't you all like to know, hey,
10 how many people are out there offering
11 preneed? There's 5,000 people in Missouri, or
12 there's 2,000, or there's -- I mean, to me, to
13 be able to track in some way seems reasonable,
14 you know. To register -- one of the
15 frustrating things, though, we have only
16 sellers on staff for our company, is I think
17 licensing takes a long time sometimes, and if
18 you find someone who is talented and you're
19 trying to find someone to come on your staff
20 who is really good, we're going to have to get
21 much, much, much, much better with that whole
22 process, or they can't even go out and talk to
23 clients, and that's a huge challenge. So, I
24 think it needs to be simple and not too overly
25 expensive. I also think my big one is

1 accountability with the providers, people who
2 own establishments. If I want a preneed to
3 hit my desk and I'm excited about it hitting
4 my desk, because John's company had done a
5 great job and my sellers have, I've got to be
6 accountable for who is out there selling. The
7 buck stops with the funeral homes as far as
8 I'm concerned. People walk in thinking
9 they're prearranging with Chapel Hill even if
10 they're meeting with a counselor of a
11 third-party seller.
12 CHAIRMAN: Joy?
13 MS. GERSTEIN: I have a simple
14 question, guys, as a public member. You were
15 fortunate that those people called you and
16 found out that they did not work for you.
17 What about the person who didn't call, which
18 is the majority of the public who would not
19 have called?
20 MR. MEIERHOFFER: But my point -- the
21 point -- Michael Meierhoffer -- there are
22 going to be people doing that anyhow. You can
23 put a license out here for everybody in the
24 state, and there will be those people who will
25 go out and still present themselves.

1 MR. MAHN: Well, here's the thing.
2 Let's just not license hairdressers or anybody
3 anymore.
4 (Several people talking simultaneously.)
5 MS. GRINSTON: I'm going to simplify
6 something, just by way of explanation. Board
7 of Barbery and Cosmetology, if you're
8 technically providing cosmetology services
9 outside of your beauty shop, you've got to
10 carry around a certificate of identification
11 that says this is from the Board, this is who
12 I am, this is my license number. I don't
13 know if that's what I'm hearing people say,
14 you know, as far as being in the field. But
15 when we talk about registration or licensing,
16 since we talked about -- we understand -- I
17 understand that you guys want them to do
18 something.
19 (Several people talking simultaneously.)
20 CHAIRMAN: Hold on. Let Kim finish up
21 because she's addressing that. Okay. Go
22 ahead.
23 MS. GRINSTON: For the requirements
24 and just to help me understand the discussion,
25 are you guys looking at something that some

1 regulatory entity -- the Board, whomever --
2 can remove for a specific reason, or are you
3 looking at something that is just a
4 notification only and no removal, or I'm going
5 to say disciplinary even though I know I'm
6 going to get in trouble for it? Any way to
7 remove them from the registration list, from
8 licensure, or whatever we call it.
9 CHAIRMAN: Okay. Hold it. Now, Jo,
10 you have a comment.
11 MS. WALKER: Really, my comment was
12 that, generally, I agree with Norma that
13 senior citizens are trusting. If someone
14 comes to their door, I don't think I would
15 call my funeral home and say, "Is this person"
16 -- you know, "Are they with you?" I don't
17 think I would do that. I would just assume
18 that they were who they said they were. So,
19 I think there needs to be some type of
20 identification that this person has been
21 registered, licensed, whatever we want to call
22 it, and that they are going to carry through
23 with what they say they are going to do. And
24 if they don't, there should be some means to
25 either remove them, discipline them, whomever,

1 whether it be the funeral home, whether it be
2 the insurance company, or someone that would
3 be held accountable.
4 CHAIRMAN: Amen.
5 MR. FRAKER: I've got one comment.
6 CHAIRMAN: All right. Gary?
7 MR. FRAKER: I think it boils down to a
8 credibility and accountability issue. What
9 does it hurt to have knowledge of what you're
10 selling?
11 CHAIRMAN: Absolutely. I mean, like,
12 if you're making a commission and you're
13 selling a concrete box, what keeps you from
14 telling you've got to have a vault and make
15 another 50 bucks? And I agree; you don't have
16 to come in and take -- maybe just take a
17 class. Okay. Here's a two-hour class, you
18 can teach it. I'm just trying to get
19 everybody gets a fair piece of this. Take the
20 class. This is what it is. You don't have
21 to take a test. Here's your certificate, dah,
22 dah, dah, dah, dah -- so on and so forth.
23 Five seconds.
24 MR. MAY: Well, it sounds like we're
25 talking about accountability versus

1 identifying people. I don't think a consumer
2 is ever going to call. You know, "I've got a
3 prearrangement appointment tomorrow at Chapel
4 Hill. I'm going to call the State Board and
5 see if they're" -- (inaudible.) I just don't
6 think that's -- (inaudible.)
7 MS. DUNN: They do.
8 MS. GRINSTON: They do.
9 MS. DUNN: They do.
10 MR. MAY: They'll tell you who they're
11 supposed to meet with and you'll look at your
12 list, and they'll go, "Well, they're not on
13 the list, you shouldn't be meeting with them.
14 I mean, that happens, it sounds like.
15 CHAIRMAN: Go ahead.
16 MS. EULER: From an enforcement point
17 of view, I think there needs to be a license
18 with the disciplinary process and the removal
19 process, because if it's simply a registration
20 and we have a bad actor, then the headlines
21 are going to be State Board allowed this to
22 happen and this guy is still out there selling
23 preneed. Why hasn't the State Board done
24 anything about it, and the State Board will
25 have no authority.

1 CHAIRMAN: All right. Jerry?
2 MR. KRAUS: Real quick. Speaking of
3 accountability, the Board is responsible all
4 the way: Licenses the establishments, licenses
5 the third-party marketers, licenses the
6 counselors, and teaches the classes.
7 MR. MAY: You know, I think it's great
8 to think about registering everybody, but to
9 get that accountability, I think it's going to
10 have to lie with the funeral homes and sellers
11 more than anything.
12 CHAIRMAN: And this registration is
13 going to take a fee, because we're going to
14 have to have administration over it, so -- all
15 right. Let's take a vote.
16 MR. STYGAR: I will say something.
17 Accountability -- we license them. Whether
18 they are registered or whatever, we find out,
19 how long is it going to take you to get them
20 off the street legally?
21 MS. GRINSTON: That's something we
22 need to discuss because if we do the process
23 right now, two to four years. But I shouldn't
24 say that, because the attorney general's
25 office has really moved a lot of our -- some

1 of the issues that we needed to move on very
2 quickly, they moved very -- they were able to
3 do so. They wouldn't be able to do that for
4 a huge number of people or a huge number of
5 groups. So, I think that that discussion is
6 going to be connected to the complaint
7 discussion. But as you talk about removing
8 the license, since it appears that there is
9 some concern about giving full disciplinary
10 authority, what about limiting just the
11 removal authority, if you will, to certain
12 things; like being convicted of a felony, or
13 for violating Chapter 436. You can remove
14 them for violating Chapter 436 or for being
15 convicted of a crime that involves all the
16 stuff that all the licensing boards look at
17 that relate to the profession, that involves
18 -- I'm sorry.
19 MS. EULER: Violence, moral turpitude.
20 MS. GRINSTON: Violence. Just help
21 me. Thank you. Dishonesty.
22 MS. EULER: Dishonesty, fraud.
23 MS. GRINSTON: That's a legal term.
24 MR. BAKER: What if I plead not
25 guilty, so I'm not convicted, so you can't

1 take my license.
2 MS. GRINSTON: Well, if you're not
3 guilty for a criminal offense, but let's say
4 you still violated 436, if there is -- and
5 this is not a suggestion, but since the
6 concern appears to be giving the full arsenal
7 for these people, what about if it's -- if you
8 did limit it to felonies and violations of
9 Chapter 436? Well, not felonies for criminal
10 -- I don't even want to say convictions.
11 Criminal charges, being adjudicated, found
12 guilty, because you always want to pick up
13 your SIS charges, and then also violating 436.
14 That's just a discussion.
15 MR. MAY: Just point of clarification.
16 So, conceptually, with this registration or
17 license or whatever it is, you're talking
18 about every single person who might
19 conceivably ever put their signature on a
20 preneed contract; correct? Even for a funeral
21 home that does a little walk-in business, all
22 their funeral directors now have to be either
23 registered to do this in case they did, one
24 day, do a preneed contract; right? I mean, to
25 me, it needs to be consistent.

1 MS. GRINSTON: Anybody who is
2 authorized to sell on your behalf. Now, let's
3 say you've got a -- the person who answers the
4 phone, who doesn't sell on your behalf, she
5 just does administrative stuff, and that would
6 be no. My understanding is what I'm hearing
7 is anybody authorized to sell on your behalf.
8 So, John, I hate to keep picking on your
9 group. If it's an APS person and he's got,
10 you know, 200 counselors in the field, then
11 those 200 counselors, if he has authorized
12 those 200 people. Doesn't need to authorize
13 the secretary, the administrative people, or
14 anything else, but the people who are going to
15 be in front of a consumer selling the policy,
16 those people need to be registered, and I
17 think, conceptually, I think if what I'm
18 hearing the consensus is, there is a list of
19 some type and possibly we can remove you from
20 the list if you're convicted of something or
21 found -- if there's a criminal offense, and I
22 would suggest, also, a possible violation of
23 Chapter 436. If the consensus is not full
24 disciplinary authority, which is everything --
25 now, for funeral directors, we can do -- you

1 guys know this -- for obtaining a fee by
2 fraud, incompetence, misconduct, you know, all
3 of those things, and the arsenal is a lot
4 bigger.
5 MS. EULER: Why would you not want to
6 include the entire arsenal?
7 MS. GRINSTON: I don't know. Why
8 would you not, or would you?
9 UNIDENTIFIED: What was that question?
10 UNIDENTIFIED: Can you say it again?
11 MS. GRINSTON: The question was: Why
12 would you not want to include the entire
13 arsenal? And I don't know. Would you or
14 would you not?
15 MR. MAHN: Chairman, can I say
16 something?
17 CHAIRMAN: Well, Don had it next.
18 MR. OTTO: Well, just one thing I
19 threw out there which potentially complicates
20 it more, so sorry. I think the big issue
21 that we're talking about now is for those
22 people that currently do not have any type of
23 licensure. That's the problem. If you are a
24 funeral director, you can already have your
25 license taken away for violation of Chapter

1 436. If you have an insurance license, you
2 can normally have your insurance license taken
3 away for violating any law, any kind of
4 misconduct. So, you know, one thing to
5 consider is are we going to require people who
6 already have an insurance license or already
7 have a funeral-director's license to, in
8 addition, pick up this third-part -- this
9 preregistration/license/whatever you want to
10 call it.
11 CHAIRMAN: Don, can we do that
12 separately?
13 MR. OTTO: Okay.
14 MS. GRINSTON: Yeah. Just the
15 insurance, because I think that's a big
16 discussion on how we handle insurance-funded
17 issues.
18 MR. OTTO: Well, I'm just wondering if
19 all our funeral directors who already have to
20 be -- my concern is, I think everybody out
21 there should have something the state can take
22 away from them if they've done a bad thing.
23 Funeral directors already have that.
24 UNIDENTIFIED: Correct.
25 CHAIRMAN: All right, Todd. Well,

1 wait a minute. Hold it. Norma is next.
2 MS. COLLINS: Kim, I just need to be
3 -- some clarification. When you said it would
4 take two to four years to remove this person,
5 so that person is still running around selling
6 these products while you're trying to remove
7 him or her?
8 MS. GRINSTON: Currently, and this is
9 something that exists for almost every
10 licensing board out there -- almost every one.
11 The process from -- to get disciplinary
12 authority is about a two- to four-year, and
13 four years may be conservative. It may take
14 even a little bit longer than that. And so,
15 yes, we can have someone who is out there who
16 is still going through that process, and it
17 has happened that we have signed settlement --
18 or we have signed disciplinary orders from the
19 Board for things that began four, five, six
20 years ago.
21 MS. COLLINS: They could do so much
22 damage.
23 MS. GRINSTON: That's true. I agree.
24 CHAIRMAN: Okay. Now, I've got a
25 question, before I take any more comments.

1 How many of you are embalmers in here? Okay.
2 How long did you all go to school?
3 MR. MAY: Two years and then one year
4 afterwards.
5 CHAIRMAN: Okay. And we can't let
6 somebody that's selling preneed for you take a
7 test or go to a school, and we spent three
8 years of our lives to own a business and
9 represent yourself and to protect the
10 consumer? Now, this is a consumer-driven
11 Board, and I think we need to have some way
12 to regulate these people, make them take --
13 you know, you don't have to have a test, but
14 like you, if you lose your license, you don't
15 work. Same -- I mean, if we get something
16 against us as an embalmer or a funeral
17 director, you're out of business. So -- but
18 let's put it in perspective here. If we can
19 spend our three years, they can spend two
20 hours. John?
21 MR. McCULLOCH: I disagree with you.
22 I do agree with you what you're saying. I
23 think that you need to have these folks
24 registered, and if they do any things that
25 they're not supposed to do, we're going to

1 remove them anyway, but this will allow you to
2 have that ability to get rid of them quickly.
3 And we're only talking about the counselors,
4 we're not -- I don't think anybody in here
5 wants to have the funeral directors have to
6 have this other registration and embalmers.
7 That's not what we're talking about.
8 CHAIRMAN: No. You've got a license.
9 We'll get -- Todd?
10 MR. MAHN: Well, I'm just kind of --
11 back up what the Chairman said. Encompassing
12 the problems we've had, why would -- what
13 reasoning, if there's a minimum cost, would
14 you guys not want these people registered?
15 Let's take, for instance, that guy over there
16 doing that -- trying to do that sale the other
17 day. The cops stopped him. They find out
18 he's not even licensed to be doing it.
19 There's another charge or penalty against him.
20 I just can't imagine why we're taking so long
21 talking about this. And as far as the --
22 what it should encompass, you know, I agree
23 with Sharon. I mean, you know, it ought to
24 be the whole kit and caboodle. I mean, if
25 they pull a stunt, they pull a stunt.

1 MR. MAY: I mean, it's simple and it's
2 easy, the registration or licensure, whatever
3 we're going to talk about. And it's quick,
4 you know. I don't think there's conceptually
5 a big problem with it. On the accountability
6 side still, though, I think the accountability
7 ought to be with the provider or the seller,
8 one or the other.
9 CHAIRMAN: Well, let's make them all
10 accountable.
11 MR. MAY: Well, I mean, again, if
12 we've got a guy out there taking money from
13 people have any concern about being
14 disciplined. He's doing things illegal. He's
15 just trying to do it as long as he can. So,
16 you know, just the example, it takes two years
17 to get somebody off the street. The funeral
18 -- the providers should be going, "What? That
19 guy sold something for me?" He's done.
20 MR. McCULLOCH: In the real world,
21 that's what happens.
22 MS. GRINSTON: Well, I can tell you --
23 I may be speaking --
24 MR. MAY: Yeah, that's what I would
25 think. The businesses make those decisions

1 about who's out there selling for them.
2 MS. GRINSTON: We have -- I can tell
3 you that from the funeral side, there are
4 funeral directors -- the funeral directors
5 know there are complaints against them. They
6 know that there are problems. They know that
7 they're in the disciplinary process. Not only
8 will they hire them, they will promote them
9 and make them the funeral director in charge.
10 We've had the funeral director in charge in
11 front at the AG's office with a disciplinary
12 action, and the funeral home will -- "He
13 didn't do anything wrong. We disagree with
14 the Board."
15 CHAIRMAN: Bill?
16 MR. STALTER: At this point, what --
17 the sellers, the entity -- just registered;
18 right? It's not a license?
19 MS. GRINSTON: I think that that was --
20 MR. STALTER: So, really, kind of the
21 gap in this is -- okay. If we have all the
22 individual counselors registered, consumers,
23 the regulation, they know they can come back
24 to the seller. And what we might be talking
25 about is that the entity has to be licensed,

1 but the individuals registered. And then
2 you're -- you know, the action goes against
3 the entity. And if -- you will pull your
4 guys if you have a problem. But what if the
5 next guy, you know, if it's an NPS and they
6 don't? That's where then we start looking at
7 the -- an organization having responsibility
8 for the people who are registered with that
9 organization.
10 CHAIRMAN: That's a good point, Bill.
11 What you're saying is if the counselor is out
12 there selling and then it would go back to
13 whoever hired him, whether it be a third-party
14 seller or a funeral home or whatever.
15 MR. STALTER: Then you can -- you
16 know, again, it -- I mean, it is -- we're
17 talking about a license yet, and there is a
18 tax and there is experience for that
19 compliance. But, you know, again, you're not
20 putting the burden on every individual who may
21 be out there selling, and there are a lot of
22 funeral homes who use somebody -- a retired
23 minister or something -- you know, part-time
24 people. And it gets to be expensive when you
25 have a license, you have to have an input

1 test. But having a representative third-party
2 seller and having been the one who has to go
3 chase down those guys, I mean, I would like to
4 have some information about them, too. I
5 mean, we didn't have a lot of problems; we did
6 have some, though. But, you know, we -- you
7 know, when I went down and did those
8 background checks, I'm starting from scratch.
9 So, I mean, I really think that there is a
10 need for some kind of registration at that
11 level.
12 CHAIRMAN: Jo? I thought you had
13 something.
14 MS. WALKER: No, I don't.
15 CHAIRMAN: Miller?
16 MR. LEONARD: Miller Leonard, special
17 counsel for the Department of Insurance. Why
18 is it taking two to four years to remove a
19 bad actor?
20 MS. EULER: The Board first has to
21 investigate from the time they get the
22 complaint to investigate. And then once
23 that's done, which takes the process. And
24 then once that's done and it's referred to the
25 AG's office, even if the AG's office files the

1 complaint with the Administrative Hearing
2 Commission that day, the Administrative
3 Hearing Commission process takes about a year,
4 best-case scenario.
5 MR. LEONARD: All right. If you're
6 crafting new legislation, there is nothing
7 that would stop you from writing that
8 legislation to opt out whoever is the new
9 licensee from the Administrative Hearing law
10 and put them into a fast track. You do that
11 with driver's licenses on a .08 blow. I mean,
12 your license is gone in 30 days.
13 MS. EULER: Yes.
14 MR. LEONARD: And then you appeal, but
15 you don't have your license during the appeal
16 process.
17 MS. EULER: And that -- there is some
18 of the boards have done some statutory
19 processes similar to that for automatic
20 revocation if you do these five things.
21 MS. GRINSTON: I can -- since I not
22 only work with this Board, but I also work at
23 the Real Estate Commission and some other
24 things. And some boards that have the
25 automatic-revocation language, I can tell you

1 -- and I don't know if Connie can back me up.
2 The Administrative Hearing Commission process,
3 if you talk to legislators about not going --
4 not allowing an independent body to make the
5 determination, there is a lot of concern about
6 that. There is a concern that the Board
7 members who are in competition with the person
8 being regulated may not think impartially, and
9 so, usually, what we hear is, somebody else
10 has got to take a look at this other than the
11 Board who is in the same industry with them.
12 Now, for the boards that do have -- I think
13 the boards would love it if we could do --
14 move a lot faster. But for the boards with
15 automatic-revocation language, we've had some
16 legal issues on how that is retroactively
17 applied and how you handle it. But there are
18 some that have gone through the
19 automatic-revocation process, specifically,
20 for certain criminal offenses. If you've been
21 convicted of sexual offenses, things of that
22 nature, and these are people who have -- it's
23 the Real Estate Commission. They have contact
24 with the public, and so, if you have certain
25 sexual offenses, the Board can automatically

1 go in and revoke you and then you get to
2 appeal to the third-party body. But one of
3 the things about this Board which is unique
4 and we'll discuss this when we do
5 investigation processes, I'm going to do my --
6 you guys have heard this song before. The
7 Board gets a complaint, we have to give it to
8 the Division. The Division then has to send
9 it to an outside auditor and/or investigator.
10 They do a report that goes back to the
11 Division for review. If there are any
12 questions, then sometimes it has to go back to
13 Board to answer those questions, then it goes
14 back to the Division, goes back to the
15 auditors and investigators to figure it out.
16 Once we get the report back from the
17 investigator, it comes to the Division. It's
18 reviewed by the Division. The Division sends
19 it to the AG's office for a probable-cause
20 finding. They do their review. That
21 probable-cause finding comes back to the
22 Division for review. The Division then gives
23 that back to the Board for review. The Board
24 then is statutorily required to hold a 436
25 meeting so that the registrant can defend

1 themselves. So, then the Board has to hold a
2 meeting with the registrant. Then after that
3 meeting, the Board votes. The Board then has
4 to take that vote and send it back to the
5 AG's office for review by a different Division
6 for disciplinary action. We have been in the
7 position where we have had a 436
8 probable-cause finding, but the disciplinary
9 side of the AG's office has said this is not
10 enough for a disciplinary case. So, we go
11 through the AG's office review. They file
12 with the AHC. You go through the AHC hearing.
13 The AHC issues an order. It goes back to the
14 Board again for a hearing -- for a meeting.
15 They then schedule it for a disciplinary
16 hearing. They bring the registrant in for a
17 disciplinary hearing. Then the Board takes a
18 vote, issues an order, and we're done. That
19 process is unusual for any other licensing
20 board that we work with. If I am working
21 with the Real Estate Commission or Healing
22 Arts or whomever, the Board gets a complaint,
23 they don't like it, they investigate, send it
24 to the AG, you go through the AHC, it goes
25 back to the Board for the disciplinary order

1 and you're done -- hearing and order and
2 you're done. So, that's what's taking two to
3 four years. This volley -- the AG's office
4 looks at it twice, the Board looks at it three
5 or four times, the Division does their
6 administrative review in the middle two or
7 three times, that process -- it's just too
8 complicated and burdensome. And I think that
9 that's one of the things in the agenda for
10 today, but I think that discussion does relate
11 to the licensing issue because if it's going
12 to be a license and if it's going to be a
13 removal, I would suggest this committee look
14 at that process because that process is not
15 workable because, again, it's going to take us
16 half a decade to get them out of the industry
17 in the first place.
18 CHAIRMAN: You can start on the Board
19 your first year and never find out in five
20 years if a guy ever got disciplined.
21 MS. EULER: Right.
22 MS. GRINSTON: That's true.
23 CHAIRMAN: And they can't tell you
24 because you're off the Board.
25 MS. GRINSTON: And that's with

1 everybody working at top speed.
2 MS. EULER: Right. And not taking into
3 account judicial review.
4 CHAIRMAN: Todd?
5 MR. MAHN: We've got to change that.
6 I mean, right away.
7 CHAIRMAN: Do you want to get that one
8 off the table now? Everybody agree with that?
9 MR. MAHN: Yeah. Everybody agrees
10 that that change -- I think it's all in favor.
11 But I just want to say anything we can do to
12 protect our seniors, our veterans, our
13 handicapped is a minimal cost. I mean, if
14 I've got to pay $10 for each one of my two
15 salespeople to be registered to sell and I
16 can't afford that, I shouldn't be in the
17 business. And, you know, I've seen these
18 people preyed on. I have seen the free
19 veteran caskets in magazines and I've seen all
20 these ads in the senior magazines, and it's
21 despicable, and I can't imagine any
22 funeral-home owner or anybody in this industry
23 not wanting these people accountable. I mean,
24 this is just ridiculous that, you know, that
25 it even goes on.

1 MS. GRINSTON: Can I ask this question
2 for purposes of moving the discussion and
3 calling the vote: Since you all are not
4 making the final decision, you guys are still
5 going to have look at the language based on
6 what you agree, can we take a vote on giving
7 us permission to draft both proposals, a
8 registration with full -- or license with full
9 disciplinary authority, and then one with
10 limited disciplinary authority, and then
11 possibly, you know, something that's just a
12 registration only, so that you all can look at
13 the language to see what it looks like on
14 paper? Is that okay, since we know that you
15 guys are interested in looking at a
16 license/registration, you're just not sure of
17 the particulars?
18 REPRESENTATIVE MEADOWS: That's a
19 great idea, and I'll move.
20 CHAIRMAN: All right. All in favor,
21 say aye. All opposed.
22 (Unanimous voice vote for approval.)
23 CHAIRMAN: Joy, go ahead and made a
24 comment.
25 (Several people talking simultaneously.)

1 CHAIRMAN: Ten-minute break.
2 (Off the record)
3 CHAIRMAN: All right. Our
4 facilitator, Kim, is going to speak.
5 MS. GRINSTON: While we're here and on
6 the topic, why don't we look at #11 very
7 quickly. It doesn't look as bad as it is.
8 Last session, there was some discussion about
9 changing for preneed sellers and providers,
10 not anyone else, just sellers and providers,
11 changing the name of what you get from the
12 Board from a registration to a license for
13 preneed sellers and providers. I think we're
14 talking about the exact same thing, just
15 changing what we call it.
16 CHAIRMAN: Do you think everybody can
17 agree on that?
18 MS. GRINSTON: I thought that would be
19 quick. Changing it from a registration, just
20 calling it a license.
21 CHAIRMAN: All in favor. All opposed?
22 (Unanimous voice vote for approval.)
23 CHAIRMAN: Can the rest of the meeting
24 go this fast? Have you got a note?
25 MS. GRINSTON: If we could start

1 tackling #6 and #10 together, because they're
2 pretty much close to the same thing.
3 Requiring bonding/insurance for -- let's start
4 with providers because I think that may be the
5 easiest one.
6 MS. EULER: Kim, can we start with #9?
7 MS. GRINSTON: Yes. Yes. Yes. Good
8 suggestion, Sharon. Very good suggestion.
9 We're going to move to #9. Scratch all that.
10 There's been a suggestion about who can be
11 licensed as a preneed provider. As part of
12 that discussion, there have been some
13 discussions as to whether a preneed-provider
14 license is necessary at all. And for that, I
15 think Sharon had some comments that she wanted
16 to share.
17 MS. EULER: Sure. As we've been
18 discussing 436 over the years, one of the
19 questions that has come up, as Kim mentioned,
20 is: Is there really a need to license the
21 provider? A provider funeral home will have a
22 license as a funeral establishment. A
23 provider cemetery will be subject to the rules
24 of the cemeteries. And what purpose is served
25 by having a separate provider license,

1 because, as we have talked about it, none of
2 us have been able to come up with a really
3 good reason for requiring that other than it's
4 just an additional license. So, we'd like to
5 get other people's perspective on it to see if
6 there is really a need for a provider license
7 when that seems to already be covered.
8 CHAIRMAN: Don?
9 MR. OTTO: I think the one thing it --
10 I mean, whether you want this or not, that's
11 another matter. But under the current scheme,
12 both the providers and the sellers are
13 theoretically submitting reports that could be
14 cross-checked -- the provider telling you
15 here's all the sellers I deal with, the seller
16 telling you all the buyers that I deal with.
17 And if you remove -- you know, if you want to
18 remove that, and some of the versions of the
19 legislation that was proposed last year would
20 have expanded the providers' reports to talk
21 about, you know, the money that was received
22 and handed in, theoretically, I guess, to
23 compare it to the seller and see if things
24 matched up. So, that's the only -- you know,
25 that's one item. If you remove the providers

1 from the registration/license process, are you
2 eliminating the report that they do? I mean,
3 number one, do you want to do that? I don't
4 know.
5 CHAIRMAN: John?
6 MR. McCULLOCH: If you just had the
7 funeral-home establishment file that same
8 report, would that solve that problem?
9 CHAIRMAN: Darlene, is that what you're
10 saying?
11 MS. RUSSELL: That's exactly what I
12 was going to say.
13 CHAIRMAN: Bill, have you got a
14 comment?
15 MR. STALTER: Well, and we've got the
16 cemeteries. I mean, the cemeteries --
17 MS. EULER: Yeah. There are providers
18 who are not funeral establishments.
19 MR. STALTER: Yeah. But as long as
20 you have a cemetery establishment, I mean,
21 there is a registration for that, as well,
22 just not the license.
23 MS. BOHRER: Could it be something
24 where the proposed legislation could comment
25 that if you don't already have some license

1 that is issued by the Funeral Board, such as a
2 funeral-home license, that then you would be
3 required to have some alternate license that
4 you then would have the authority to require
5 the reporting? I mean, I don't know that much
6 about it, but do you guys issue a license to
7 the cemeteries of some sort or another?
8 MS. DUNN: We issue a provider;
9 correct, Lori?
10 MS. HAYES: Uh-huh.
11 MS. BOHRER: I don't mean -- I mean,
12 absent the provider license.
13 MS. GRINSTON: No. No.
14 MS. BOHRER: Do the cemeteries have
15 some sort of a requirement to get a
16 registration or a license from the Funeral
17 Board?
18 MS. DUNN: No.
19 MS. GRINSTON: No, not from this board.
20 MS. EULER: They are regulated by
21 another board.
22 MS. BOHRER: Okay.
23 MS. DUNN: Which is under another
24 chapter.
25 MS. GRINSTON: But for the reporting

1 provider suggestion, Linda, you raised an
2 interesting point. Since there are funeral
3 establishments that are already licensed as
4 funeral establishments, am I hearing possibly
5 a suggestion that funeral establishments don't
6 need to go out and get a provider license, but
7 if you're not licensed by the Board as a
8 funeral establishment, then you do come in and
9 get a preneed-provider license?
10 MS. DUNN: And then you would have that
11 establishment submit those reports that
12 typically would be done by a provider.
13 MR. MAY: I'm not tracking you. So,
14 can you describe a scenario where I would be a
15 provider, but would not have some sort of
16 license as an establishment?
17 MS. GRINSTON: If you're a cemetery
18 and your license -- you're a preneed provider
19 right now. Let's say you're serving as a
20 preneed provider.
21 MR. MAY: Okay.
22 MS. GRINSTON: That cemetery, I think,
23 under -- based on Linda's comments, would
24 still have their preneed-provider license.
25 The funeral establishment, however, wouldn't

1 have to carry a funeral-establishment and a
2 provider license. They would just have their
3 funeral-establishment license, but that they
4 would still have to do the reporting that a
5 provider would do.
6 MR. MAY: So, it would primarily
7 address cemeteries having to get a provider
8 license; that's all you're talking about?
9 MS. EULER: Or anyone who is a
10 provider who is not a funeral home.
11 MS. GRINSTON: Yeah. Basically,
12 instead of the idea of having the funeral
13 establishment with two licenses from the Board.
14 MR. MAY: That, I understand. That, I
15 understand. I'm trying to think of who else
16 would be -- I'm thinking that's really the
17 cemeteries you're talking about?
18 MS. GRINSTON: Yeah. I don't think
19 we're discussing changing anything that is not
20 in process right now. It's just -- except
21 that funeral establishments would not carry a
22 dual license.
23 CHAIRMAN: Jeff?
24 MS. EULER: And I can see --
25 MR. STYGAR: (Inaudible) -- but who can

1 provide a funeral service that's not a licensed
2 funeral home.
3 MS. GRINSTON: Cemeteries.
4 MS. EULER: And we have also had
5 situations with retail casket stores wanting
6 to sell funeral merchandise on a preneed
7 basis. And I can see that there might be
8 other types of entities who would not be the
9 funeral establishments who would be selling
10 merchandise on a preneed basis. So, they
11 might not be selling the whole package, but
12 they may be selling pieces of the package.
13 MS. GRINSTON: So, if I'm hearing,
14 just to bring the comments together, if you're
15 a licensed funeral establishment with the
16 Board, possibly writing something that would
17 no longer require a separate provider license
18 on top of that? Is it possible, Mr. Chairman,
19 that we could take a vote on that issue?
20 CHAIRMAN: Is everybody in favor of
21 that?
22 And speak up if you're saying aye. Okay. Nay?
23 (Unanimous voice vote for approval.)
24 CHAIRMAN: All right.
25 MS. GRINSTON: And just to clarify,

1 this is not, you know, the final vote. We're
2 going to just get the language back to you.
3 We need to know what language to start working
4 on for purposes of the -- yeah, the consensus.
5 Okay.
6 CHAIRMAN: Okay. How about the word
7 "lunch"?
8 MS. GRINSTON: It sounds good to me.
9 CHAIRMAN: We're adjourned for lunch.
10 (Off the record)
11 CHAIRMAN: Just a reminder, folks.
12 When, like, the members of the profession out
13 there want to come up and speak, you need to
14 state your name again, because Gayle is having
15 trouble picking up who your names are. So, if
16 you would do that, we can recognize you. And
17 we're going to go to #1, and our facilitator
18 will start.
19 MS. GRINSTON: Yeah. I think that,
20 again -- I think that you all needed to
21 probably discuss some of the preliminary
22 issues before we got over to one of the media
23 issues of who is going to handle preneed
24 globally. Which regulatory agency should be
25 responsible for it? And I want to, just for

1 those who don't know, give a little bit of a
2 regulatory background. Right now, as you
3 know, the Board is responsible for registering
4 preneed sellers and preneed providers. The
5 Board has authority, somewhat questionable, to
6 do audits, investigations, and examinations of
7 books and records. We do -- that authority
8 relates to our preneed sellers and the preneed
9 providers under -- that are registered with
10 the Board. Well, as we will discuss in 436,
11 in previous legislative sessions, a very big
12 question has come up as to who should regulate
13 436. Should this be something that stays with
14 the Board? Some of the other entities that
15 have been mentioned as possible 436 handlers,
16 if you will, or regulators have been the
17 Department of Insurance, the Division of
18 Finance, the Secretary of State's office, the
19 Attorney General's office, and then, of
20 course, there has been a suggestion that it
21 remain with the Board. And so, I think that
22 it probably would be a good thing to discuss
23 now what the group's consensus and/or thoughts
24 on who should be the primary entity regulating
25 Chapter 436. And when we say regulating, that

1 would include registering, initiating
2 investigations, and all the things that come
3 with regulation. I can tell you that one of
4 the discussions that has occurred, I think
5 last session, was whether the regulatory
6 function should just be with one body or
7 should it be separated. Should audits go over
8 to an entity that, you know, may have better
9 auditing controls or better auditing
10 procedures. Having said that -- and that's
11 not a recommendation, just a summary of some
12 of the things that have been presented to the
13 Board -- I think that I'd like to open up the
14 floor now for discussion on, really, topics #1
15 and #2, but, right now, primarily #1, on who
16 should be the entity regulating -- the primary
17 regulatory authority over Chapter 436.
18 Nobody. Okay. Oh, Darlene?
19 MS. RUSSELL: I think that it almost
20 necessarily has to stay with the State Board of
21 Embalmers and Funeral Directors. It goes
22 hand-in-hand with the funeral establishment,
23 the same discussion we just had about the
24 funeral establishment being a provider. So,
25 it really -- the part about the registration

1 or the licensing of the preneed seller and
2 that needs to stay with the State Board of
3 Embalmers, in my opinion.
4 MS. GRINSTON: Yes, sir?
5 MR. CLINE: My name is George Cline,
6 and I agree with her.
7 MS. GRINSTON: Did you guys do this
8 over lunch or something?
9 MR. MAHN: Kim, and they've got the
10 second in line and they're all in favor.
11 MS. GRINSTON: Todd said that's a
12 second. Does anyone else want to comment on
13 that, as far as primary regulatory authority?
14 I hear everyone saying --
15 MR. STROUD: Could I just ask a
16 question? How does the Board feel about it?
17 MS. GRINSTON: I'm going to repeat his
18 question, and everyone who is talking, to
19 remind you to step up to the microphone. I
20 think Larry just asked -- he's going to ask it
21 again.
22 MR. STROUD: I'll ask it again. Larry
23 Stroud. How does the Board feel about keeping
24 it with the State Board of Embalmers and
25 Funeral Directors?

1 MS. GRINSTON: I'm going to switch
2 hats now. As legal counsel for the Board, I
3 don't believe that the Board has taken an
4 official vote on that, so I don't think we can
5 make a statement on behalf of the Board. If
6 you would like to -- if any of the Board
7 members would like to express their personal
8 opinion, they can, but, officially, the Board
9 has not taken a position on that.
10 MR. McCULLOCH: John McCulloch.
11 Again, just my personal opinion. I agree with
12 the other members that it sounds like that the
13 Board should be the one, you know, that would
14 follow up with regulating 436.
15 MR. OTTO: Just as a practical matter,
16 whether we like it or not, there will probably
17 be a push over at the legislature to do
18 something to involve other agencies one way or
19 the other, whether this committee likes that
20 or not. So, we might want to be prepared
21 with a -- at least consider a fall-back
22 compromise position, if necessary, if we get
23 hit with that. The one that popped up this
24 last year was in the process of streamlining
25 the entire process that Kim went through, I

1 think. And shorter is that in the event that
2 an audit was necessary, the State had built
3 into the law, probably which you already do,
4 is that when an audit is necessary or a
5 financial investigation, that the Board -- the
6 phrase that finally came out was to request
7 assistance from the Department of Insurance,
8 or I think there was another -- I think
9 Department of Insurance and something -- maybe
10 another agency. But, I mean, that -- I'm not
11 saying we need to do anything, but it might be
12 something that people keep in the back of
13 their minds if somebody comes to us and says
14 there's got to be something, because there's
15 been people over there that, for whatever
16 reason, don't like this entire topic being
17 governed by the State Board. And so, whatever
18 comes out, I think there's going to be some
19 people that try to take it away from the State
20 Board. And so, if we don't want it taken
21 away from the State Board, we might need to
22 have ready, waiting in a file folder to pull
23 out at the last second, a compromise position
24 that, at least, you know, makes that issue go
25 away if necessary.

1 MS. GRINSTON: We've done a lot of
2 that, just to share, to open up the
3 discussion. I can tell you the arguments that
4 we have heard about the State Board. There
5 have been discussions about whether, if not
6 just the auditing functions, if some of the
7 auditing would be better handled by a group
8 that does auditing as part of its normal
9 process. Right now, as you all know, the
10 Board primarily consists of funeral directors
11 and embalmers; excellent ones, but they're not
12 auditors. And so, what we've heard from the
13 legislature in light of Don's comment is that
14 should we have some control to allow someone
15 who does auditing on a more normal basis to
16 handle the auditing functions. Now, right
17 now, the Board does contract through the
18 Division -- you guys know the process -- with
19 an independent auditor that is under contract
20 with the Division. And so, the Board is not
21 actually going in. As you know, we go through
22 a contracted company. I just wanted to put
23 that out on the table.
24 MR. OTTO: Well, that's my thought was
25 perhaps, since you do that anyway, and you

1 would do that, I assume, under the streamlined
2 procedures that I hope we get to at some
3 point, that considering some statutory
4 language that builds that in, at least as an
5 option, it might be useful to have at the
6 ready at some point in time.
7 MR. McCORD: Just adding to that,
8 though, if the audit function is transferred
9 to another agency, then that would also
10 encompass a fee for costs for doing that, so
11 that entity would have to pay for that
12 auditing function, as well. I just wanted to
13 throw that in, as well.
14 MS. BOHRER: Because if the Department
15 of Insurance, when we go out and audit an
16 insurance company, the insurance company that
17 we're auditing pays the fees attached to that
18 audit.
19 CHAIRMAN: Could you kind of give us an
20 estimate of what it would be for --
21 MR. McCORD: I mean, also sitting with
22 me here, Mark Stuhlhuth, who is chief counsel
23 for the Finance -- or, excuse me -- the
24 Company Consultants -- Company Solvency?
25 MR. STUHLHUTH: It changes all the

1 time. The fees for that would vary depending
2 on the size, how many financial transactions
3 there were to review and how big the accounts
4 were that you had to audit. Obviously, the
5 bigger they are, the more expensive it would
6 be.
7 UNIDENTIFIED: Can you give an
8 approximate per-hour charge if it takes a day,
9 if it takes two days, if it takes four days?
10 MR. STUHLHUTH: That would be really
11 tough. We would have to get back to you on
12 that.
13 MR. OTTO: One of the proposed pieces
14 of legislation this last year included that
15 provision, that if a funeral home -- if
16 anybody under 436, a funeral home, seller, a
17 provider was audited, that that entity would
18 have to pay for the audit. We opposed that.
19 You could put somebody out of business real
20 easy by auditing them three times a year.
21 CHAIRMAN: Go ahead.
22 MR. MAY: This is Brian May with
23 Chapel Hill. Auditing aside, assuming we can
24 find someone who does quality audits, what
25 other consideration would there be for not

1 having the State Board oversee all this? You
2 get the report back and you look at its
3 results and then you interpret it, and then --
4 I mean, I think there's other areas -- the
5 Cemetery Association, right now. We do
6 outside audits and we hire someone to do that,
7 but, you know, I think the Endowed Care office
8 still looks at them, so I don't see why it
9 would be anybody but the Board.
10 CHAIRMAN: Good question.
11 MR. WARREN: Mark Warren. Okay.
12 First, you might want to determine when you
13 would do the audit, the frequency of the
14 audit, because that would then determine, to
15 some extent, the cost. You're also going to
16 have issues with concurrent jurisdiction, for
17 example, the Division of Insurance, if, you
18 know, preneed-insurance companies, they're
19 going to have market conducts, financial
20 exams. The issue of cost is a big issue to
21 insurance companies with respect to market
22 conduct and financial exams that is going to
23 address the recent years, but it can be a very
24 significant cost, especially if outside
25 auditing firms are used. And you could -- as

1 someone pointed out, you could quite easily
2 put a small firm out of business at $200 to
3 $300 an hour or whatever some independent
4 outside firms are going to charge. And the
5 other issue that I see is what are you going
6 to audit, you know? We need some parameters.
7 So, I think you have to look at your frequency
8 and your parameters maybe to begin with before
9 you can determine what your costs would be.
10 And the parameters would also drive, perhaps,
11 the frequency.
12 MS. GRINSTON: I see the question.
13 MR. STALTER: Okay. We're getting
14 back to, you know, whether this should be
15 regulated by the State Board or another
16 entity. I mean, usually, this comes up in the
17 context of so we're at this challenge of
18 whether an industry board should regulate
19 itself, you know. But the issue really comes
20 down to whether what other agency or board or
21 state entity will understand us well enough to
22 regulate it. Generally, this is raised by the
23 consumer advocates, and it is -- I mean, it --
24 you know, it's are we -- should we be watching
25 ourselves? But it is such a complex issue,

1 something -- I mean, who else -- who will
2 understand it to come in and do it? And I've
3 worked with other states where it is an
4 outside agency, but sometimes it's hard to get
5 that agency to take action because they're not
6 familiar with it. And, particularly, if
7 you're talking about approval of contracts or
8 trust arrangements and so forth, is that --
9 you know, I would say that it's spelled out
10 every detail in the law, they feel
11 uncomfortable with taking, you know, any
12 responsibility with decisions. So, in
13 essence, I mean, yes, it's not the perfect
14 situation having an industry board regulate
15 itself on preneed, but I don't know what other
16 options you've got, to tell the truth.
17 There's -- I mean, you've got some states
18 which can point to a good regulator, maybe
19 Iowa, Securities Bureau or so forth, or --
20 actually, that's the about the only one I'm
21 familiar with. But some of the others have
22 kind of a spotted record, as well. So, I
23 mean, this I see as more of a
24 consumer-advocate type of issue. I mean,
25 really, are the consumers comfortable with

1 this State Board continuing to regulate
2 preneed?
3 CHAIRMAN: Norma, would you --
4 MS. COLLINS: Yeah. I see him looking
5 right at me, so --
6 CHAIRMAN: Or Jo. I mean, you all --
7 MS. COLLINS: But the point that he
8 made, though, about the complexity, I mean,
9 I'm sitting here personally thinking, yeah,
10 why not leave it with the Board. I mean,
11 because the issue is so complex.
12 MR. STALTER: That's usually one of
13 the -- (inaudible) -- issues. I mean, when
14 you look at what the consumer advocates write
15 about, I mean, that's the first thing about it
16 should be with an independent agency. But
17 who? I mean -- and sometimes it works, but
18 it really depends on having somebody who is
19 familiar, who has worked a long time with the
20 agency, and that doesn't happen out in the
21 state government, so --
22 MS. COLLINS: But I also think that the
23 comment from over here, from Don, I believe,
24 who said, you know, more than likely, there's
25 going to be a recommendation or a suggestion

1 made to move that oversight to some other
2 entity in light of what has happened. So,
3 what I'm going to do, I'm going to check with
4 our policy people. But, personally, I think
5 maybe it should stay with the Board, but they
6 may say, "No, Norma. AARP policy may not
7 support that," so I will have to get back to
8 you on that.
9 CHAIRMAN: Jo, do you --
10 MS. WALKER: Well, I -- you know,
11 again, it's a very complex issue. And not
12 really understanding all of it, I don't see
13 any other way but for it to stay with the
14 Board.
15 CHAIRMAN: Well, I mean, as long as
16 the Board is doing their job and protecting
17 the consumer, I mean, that's the main thing.
18 The money is there and accountable. Sharon,
19 do you have something?
20 MS. EULER: Oh, I'm just agreeing. I
21 agree with the chairman 100 percent.
22 CHAIRMAN: Okay. Motion passed.
23 MS. GRINSTON: Don's suggestion,
24 though, and a fallback position, since I'm
25 hearing that everyone is interested in leaving

1 it with the State Board, however, there was
2 language last year, and we were asked --
3 Senator Scott and Representative Wasson asked
4 us to keep the language from last year as just
5 a basic guideline for us. The language did
6 allow the Board to work with insurance -- the
7 Department of Insurance, which would include
8 all the divisions and everyone else, should
9 they need additional help with auditing. Does
10 anyone have an objection to allowing them to
11 do that if there's an issue? And, of course,
12 I think, that we're going to have to talk
13 about the funding mechanism, but that's what --
14 MR. MEIERHOFFER: My comment is I
15 really do believe it needs to stay with the
16 Board for a number of reasons. I don't think
17 anybody is lining up to want to do it from
18 insurance or anyplace else, which I can
19 understand. And then, secondly, I think the
20 other thing that ought to be addressed is how
21 often you are audited. I don't think it
22 should be something that goes on for ten,
23 fifteen, twenty years. We just had an auditor
24 in our place the first time in seven years.
25 And I don't mind having an audit, but it is

1 more difficult when you go seven, eight, ten
2 years, and you have to start bringing all
3 these materials out. It's much simpler if you
4 are audited on a regular basis. What's the
5 matter with that? I have no problem with that
6 at all. But the other thing that goes into
7 the cost of the audit is how sophisticated you
8 are with your own record-keeping. If you can
9 provide records in a logical and a way that
10 can be understood easily, rather than out of
11 shoe box or something, it makes a lot of
12 difference. So, that's going to affect your
13 cost, as well.
14 CHAIRMAN: Sharon?
15 MS. EULER: From an ease of use for
16 the Board, perhaps we could do some language
17 that authorized the Board to have options.
18 The Board shall conduct audits by hiring an
19 outside contractor, by using another state
20 entity, or by using own staff as the Board
21 determines most efficient, appropriate, and
22 give the Board authority to have options there.
23 MR. OTTO: I mean, like I said, there
24 are -- also, there's two different kinds of
25 audits you have to worry about, audits after a

1 complaint or whether there's been a
2 probable-cause finding and just random audits
3 where there's no probable cause that you did
4 anything wrong. That's something to think
5 about. And like I said, to go off what Bill
6 said, one of the many problems that they had
7 in Illinois, and there was more than one
8 problem, was that exactly what Bill said, no
9 state agency really wanted to take ownership
10 of regulating some of the aspects of their
11 preneed situation, and kind of got passed --
12 the ball got passed along to different people.
13 CHAIRMAN: Well, let's take a vote on
14 this. All in favor of leaving it with the
15 State Board of Embalmers and Funeral
16 Directors, say aye. Those opposed?
17 (Unanimous voice vote for approval.)
18 CHAIRMAN: All right. Kim?
19 MS. GRINSTON: Sharon suggested the
20 option language, giving the Board options to
21 use different avenues. Can we possibly take a
22 vote on that, too, Mr. Chairman?
23 CHAIRMAN: Yes. We'll entertain that.
24 All in favor of different options.
25 MR. STALTER: Really, the issue here

1 is having the examine or audit authority under
2 the Board, keeping it as opposed to being in a
3 separate entity.
4 CHAIRMAN: Right. All in favor?
5 Opposed?
6 (Unanimous voice vote for approval.)
7 CHAIRMAN: All right. Kim?
8 MS. GRINSTON: I think it might be
9 good for us to skip to #8 in light of that
10 discussion, because -- and this is something
11 that has come up several times. How do we
12 handle -- 436 is not written well enough to
13 accommodate insurance-funded preneed plans,
14 when you have an insurance company that's
15 selling preneed. I think that there are a lot
16 of questions that come up on the Board's
17 authority or the Board's regulation. And so,
18 I think we probably do need to have some
19 discussion on how insurance companies selling
20 preneed plans should be regulated. Right now,
21 the law says that, you know, a life-insurance
22 policy is an insurance policy; however, if the
23 funeral home -- and you guys, forgive me if
24 I'm messing this up -- is assigned or
25 designated as the beneficiary -- I've got to

1 look at the exact language -- then it is also
2 subject to 436. However, currently, insurance
3 companies are not required to register as
4 preneed sellers because they're insurance
5 companies, even though I think the
6 understanding is that the thought between the
7 regulating entities -- and Insurance can
8 correct me if I'm wrong -- is that if it
9 becomes a preneed contract, then the contract
10 has to meet -- also has to meet the
11 requirements of Chapter 436. And so, I think
12 that there is -- some discussion needs to be
13 had about how insurance companies are
14 regulated under 436, should we -- should those
15 companies be solely left to insurance since
16 they are insurance companies selling insurance
17 plans, or should there be -- the Board have
18 any control or exercise any authority over
19 insurance companies that are also in the
20 business. Personally, as an attorney for the
21 Board, we need to clarify that assignment
22 language because it is confusing and we get
23 questions all the time on whether they need to
24 be registered. I mean, it has become a legal
25 issue for the Board to deal with, so -- Linda?

1 MS. BOHRER: And just to clarify --
2 and Don and I were talking about this before.
3 There is confusion, especially by companies
4 that are not specifically designed to function
5 as a funding mechanism for the preneed
6 contracts, there is a lot of confusion and
7 reluctance on the part of some insurance
8 companies to allow ownership and beneficiary
9 designations of funeral homes on the insurance
10 contract because they do not want to get
11 tangled up into the 436 laws. And so, they
12 have a hesitancy and some of them actually
13 out-and-out refuse to allow that type of
14 designation to occur on their insurance
15 contracts because of sort of the overlap, and
16 they don't want to be in the preneed business,
17 they don't want to be subject to Chapter 436,
18 and so, they hesitate, if not refuse, to let
19 those ownership and beneficiary designations
20 occur on their contracts.
21 MR. OTTO: I mean, the question I get
22 a lot, I mean, 436 says this in a completely
23 backasswards way --
24 MS. GRINSTON: That's a legal term.
25 MR. OTTO: Yeah. -- that insurance is

1 not preneed contract unless the preneed seller
2 or the provider is named as the owner or
3 beneficiary of the contracted insurance. So,
4 even if the seller and the provider are the
5 owner or the beneficiary, then it falls under
6 436; otherwise, it doesn't. The question I
7 get a lot is, "Well, what about a separate
8 assignment document that assigns the proceeds
9 to the funeral home," and that's step one, and
10 step two, what if you made that irrevocable?
11 That's not addressed.
12 MS. BOHRER: And I'll go back. One of
13 the arguments I've heard from the insurance
14 companies is the preneed laws, once a contract
15 is established to be a preneed contract, the
16 owner of that contract has the right to say,
17 "I changed my mind. I want all my money
18 back." An insurance company is not in the
19 business of refunding premiums after 20 years
20 have been paid in. That's not how they
21 calculate the premiums that are paid. That is
22 never a consideration in the premium
23 calculations. And so, that would be very
24 problematic financially for these companies to
25 have to say to someone that's paid into their

1 life-insurance policy for 20 years, and now
2 they've named the funeral home as the
3 beneficiary, and then they say, "Okay. Now,
4 it's a preneed contract. I want all my
5 premiums back." That's a problem, and that
6 would be a problem for Mark in the financial
7 evaluation of companies because, you know, you
8 reserve for the death benefit, but you don't
9 reserve for paying all the premiums back. So,
10 you know, those are problems.
11 CHAIRMAN: John?
12 MR. McCULLOCH: John McCulloch. I
13 think the difference is the funding mechanism.
14 If it's funded by a trust, then, obviously, we
15 know what that is. If it's funded by an
16 insurance policy, then it's just that animal.
17 The problem is if you freeze the cost from a
18 funeral-home standpoint, then you have
19 additional obligations that fall under 436,
20 but it's still an insurance policy and it's
21 going to have to go by their rules, and you're
22 not going to change that and you shouldn't.
23 CHAIRMAN: Darlene?
24 MS. RUSSELL: Well, for as long as
25 I've been around the business, insurance,

1 whether it was an assignment, somebody came
2 into the funeral home with ABC insurance
3 policy and said, "I want to sign this over so
4 I can get eligible for spend down." So,
5 anyway, the whole concept is insurance has
6 always been used as a funding mechanism. The
7 preneed part of it becomes -- someone has to
8 write a preneed contract on it, not
9 necessarily the insurance company, but the
10 funeral home who is the seller, normally, is
11 the one who is accepting that assignment, has
12 to be the preneed seller. So, the insurance
13 company not necessarily is a preneed seller.
14 The insurance company is a funding mechanism
15 no different than a bank -- requiring a bank
16 to be a preneed seller because they're a
17 funding mechanism.
18 CHAIRMAN: Go ahead.
19 MR. WARREN: Mark Warren. To kind of
20 piggyback on what you just said, it's always
21 been the position of the companies I
22 represented, anyway, that within the
23 parameters of 436, sub .05 and .07 were exempt
24 from regulation by the Board. It is a funding
25 mechanism.

1 CHAIRMAN: Don?
2 MR. OTTO: Well, I'll go out on a limb
3 here because the people who claim that they
4 wrote 436 aren't here today, but I think
5 probably what the idea was back then is they
6 wanted to make sure that you had a basic
7 contract that spelled out the goods and
8 services, you know. They had all the names,
9 you know -- I'm just -- from the way this
10 looks to me is that the intent was, okay, we
11 want some basic things. If you're using life
12 insurance and you're going to make the funeral
13 home the beneficiary, we don't just want you
14 to make the funeral home the beneficiary on
15 the life-insurance policy, and then when that
16 person dies, they've got $10,000, and you tell
17 the family what can you get for $10,000, you
18 know. I think the idea was, okay, if I'm
19 going to make the funeral home the
20 beneficiary, I want at least some basic
21 contract between the funeral home and the
22 consumer that spells out some relationships
23 and rights, and here's who to call and here's
24 who is in charge, here's the goods and
25 services I'm buying, things like that. But

1 the way it's worded, it makes all of 436 apply
2 to the insurance contract, not just this --
3 some basic things that say, hey, if you're
4 using -- if you make the funeral home the
5 beneficiary or the owner of the life-insurance
6 policy, we want the following five things to
7 happen to protect the consumer or to protect
8 the funeral home or whatever. The way it's
9 worded, everything in 436 applies to the
10 insurance contract if the funeral home or
11 seller is the only beneficiary, and I'm not
12 sure that's what was really intended when this
13 was written.
14 MS. GRINSTON: If I could make a
15 comment. Some states who have this insurance
16 split, some of them put everything, all
17 regulation, auditing with the insurance
18 department, but then they just spell out that
19 a preneed contract must contain the following,
20 and then there are just things that say, you
21 know, it must be in clear language, must have
22 the following disclosures, or something like
23 that, as opposed to regulating everything
24 else. I just want to throw that out as a
25 discussion point.

1 CHAIRMAN: Sharon?
2 MS. EULER: It makes sense to me that
3 we acknowledge insurance as a funding
4 mechanism in 436, as opposed to right now
5 where it's not all clear. And we could
6 clarify that by saying the preneed contract is
7 a contract, it specifies goods and services,
8 you lock in a price, you know, define preneed
9 contract, and then go on to say a preneed
10 contract may be funded by a trust, it may be
11 funded by an insurance policy, it may be
12 funded by a joint account or other mechanism
13 as approved by the Board. And, that way, we
14 would have acknowledgement of it, and then we
15 could go have a separate section saying if
16 it's funded by insurance, here are the rules.
17 Here's what applies to insurance-funded
18 contracts. You know, it's subject to
19 regulation by the Department of Insurance, you
20 have to be licensed by the insurance
21 department, you know, and specify that, but at
22 least acknowledge that it is available as a
23 funding mechanism and spell out how it should
24 work.
25 CHAIRMAN: What does the committee

1 think of that?

2 MR. OTTO: One further complication is

3 you have both. I mean, you'll have somebody

4 to come in who has a $3,000 life-insurance

5 policy, and they'll use that, plus they're

6 going to put $2,000 in addition to that into

7 the trust or something else.

8 MS. EULER: It doesn't have to be an

9 exclusive, just an acknowledgement that there

10 are those three different mechanisms to fund a

11 preneed contract, and all are acceptable.

12 MS. GRINSTON: So, am I hearing the

13 suggestion that we just remove this whole

14 assignment, you know, beneficiary deal, and

15 possibly say if it's insurance funded, these

16 are the requirements and, I guess, we could

17 talk about those requirements for an

18 insurance-funded plan and not hinge that on

19 the assignment issue or naming someone as

20 owner/beneficiary?

21 MR. STALTER: Well, isn't it more like

22 you're going to define the preneed contract,

23 and then we say it could be -- but it can be

24 funded either with insurance or a trust

25 funding.

1 MS. GRINSTON: I understand.
2 MS. EULER: Or joint account.
3 MS. GRINSTON: Or a joint account.
4 CHAIRMAN: Jerry?
5 MR. KRAUS: Jerry Kraus,
6 Homesteader's. I don't know if it's -- I
7 think it's a good point to clarify a small
8 elephant that may be around the room, and
9 that's final-expense insurance where it may be
10 sold with a little bit of funeral discussion,
11 but -- and maybe the situation where the
12 funeral home becomes the beneficiary or the
13 assignee, but there is no preneed contract.
14 That's going to happen and is beyond the
15 control of the Board. And so, I think we
16 kind of need to set final-expense
17 life-insurance sales aside and say they're
18 going to continue to happen, and unless the
19 insurance department decides to control them,
20 it's beyond this Board's authority to control
21 them. Now, having said that, the insurance
22 department does a wonderful job of controlling
23 the insurance environment, and I don't think
24 you guys want to step in there and try and
25 second guess that. I think you're going down

1 the right road of talking about the mechanics
2 that link the two. What we recommend and what
3 we find works best is the assignment where the
4 funeral director becomes the contingent
5 assignee of the policy proceeds contingent on
6 their performance. They don't become a
7 beneficiary; that's reserved for the next of
8 kin. They don't become an owner; that was
9 part of the problems that we've had in the
10 mess that we're in is we let someone else step
11 between the insurance company and the consumer
12 in terms of policy ownership, so we prefer
13 assignment.
14 CHAIRMAN: That's good. Bill?
15 MR. STALTER: Well, and take that a
16 step further. When you talk about
17 final-expense insurance, but you may be seeing
18 the same thing in smaller trusts. In other
19 words, more like a financial product that will
20 cover a number of things besides the funeral
21 itself. And at what point does it -- you
22 know, do you come in and regulate that
23 transaction, as well? And what we looked at
24 it in terms of that is: What is the document
25 or the contract that ties this account to the

1 funeral home? And it's been kind of difficult
2 in terms of, you know, there's no
3 consideration paid to the funeral home. I
4 mean, at what point does it become a preneed
5 contract where you step over and regulate the
6 fund or the insurance? So --
7 CHAIRMAN: Well, do you committee
8 members want to just -- like, we'll just draft
9 some legislation and get it back to you? I
10 mean, she's got all this in here, so -- and
11 then you can look at it at the next meeting?
12 Bob?
13 MR. BAKER: Bob Baker. Thank you,
14 Jim. I think we've got two concepts going
15 here. I guess I'm going to preface it by
16 asking a question: Do we have any insurance
17 companies that are registered as preneed
18 sellers currently?
19 MS. BOHRER: You would need to ask
20 them. They register the preneed sellers.
21 CHAIRMAN: Pass the buck over here.
22 MS. GRINSTON: No.
23 MS. BOHRER: Yeah, I just passed the
24 buck. I don't know who's registered as a
25 preneed seller.

1 MR. BAKER: State Board. Kim?
2 MS. GRINSTON: I don't think so, but I
3 -- Lori --
4 MR. BAKER: Okay. So, what we were
5 talking about earlier, they're thrown out the
6 window as far as regulation. I think if we're
7 going to fund a preneed contract, let's call
8 it with cash, it has to stay in cash. If
9 you're going to sell it as insurance, you have
10 to disclose that up front and you can't take,
11 all of a sudden, out the back door and buy an
12 insurance policy with it and come under a
13 total set of different regulations.
14 MS. GRINSTON: I think we go back to
15 Sharon's point that we clarify -- that this
16 whole assignment beneficiary deal won't be the
17 contingent factor. But if it is fund -- if
18 the contract is funded by insurance -- and we
19 probably have to qualify what a contract is,
20 but if it's funded by insurance, insurance
21 companies, their auditing, everything is under
22 the Department of Insurance; however, for the
23 preneed contract itself, there may be some
24 disclosure requirements on what needs to be on
25 the preneed portion of a contract if it's

1 insurance funded.
2 MR. BAKER: Right. Because the
3 problem is -- we have a problem all the time.
4 Mom is in the nursing home, they're going to
5 spend down. You cannot get an insurance
6 company -- excuse me, you insurance people --
7 to act in a manner that satisfies our local
8 Division of Family Service. It's a problem --
9 it's a big problem. And then, again, you
10 know, what are you going to count as a value?
11 They paid in twice the face value and will
12 continue to pay it, but if they cash it,
13 they're only going to get a little portion
14 back, so we're talking two different animals,
15 I think. So, we need to take a look at if
16 it's funding a preneed contract, then maybe it
17 needs to really be a preneed contract. If
18 it's going to be in cash, then we're talking
19 about trusts, joint accounts, and if they want
20 to get their money back later on, you know
21 you're going to only get a small portion back
22 on a cash-surrender value of it.
23 CHAIRMAN: Thank you, Bob. Sharon?
24 MS. EULER: I was just going to
25 comment, part of what you're talking about I

1 think we're going to talk about later when we
2 talk about regulation of the trust in terms of
3 if it's a cash transaction, what happens to it
4 after the consumer pays their money, so I
5 think we're going to talk about that some more.
6 CHAIRMAN: Martin?
7 MR. VERNON: I just want to split a
8 hair that, basically, they have been talking
9 about. In the burial, as he called it, when
10 somebody just comes in with a small policy,
11 maybe even a little bit bigger policy, but the
12 guarantee -- we have to be able to have the
13 ability where there doesn't guarantee
14 merchandise and all that when there is no cash
15 value there to do it, and you're still trying
16 to help them with the Medicaid thing or spend
17 down or however you want to label it. So,
18 you're going to have to write that where that
19 can still work in both ways.
20 MR. OTTO: The other thing to look at
21 when you draft this up, which is causing the
22 problem, is in that same paragraph, "Requires
23 the current payment of money or other
24 property."
25 MS. GRINSTON: Yeah.

1 CHAIRMAN: Darlene?
2 MS. RUSSELL: It could be as simple as
3 just requiring the preneed contract to -- for
4 instance, you have a trust funded preneed
5 contract, you have the insurance-funded
6 preneed contract, and a joint-account preneed
7 contract, three different types of contracts.
8 The insurance-funded uses a different type of
9 a contract, you know, and we've all seen those
10 -- seen all three of the different types
11 because, right now, you do preneed. If you do
12 insurance funding, you're required to have
13 certain things in it, as you are with a trust
14 and joint account. So, it could be specified
15 in your rules.
16 CHAIRMAN: All right. Consensus is
17 we'll just write a few things up and --
18 MS. GRINSTON: Yeah. Write something
19 that's, again, clarifies insurance stays under
20 the Department of Insurance, clarify that
21 there are three types of preneed contracts:
22 trust-funded, joint-account funded, and
23 insurance funded, and then perhaps at future
24 discussions, talk about whether we need to add
25 some disclosure or contract requirements for

1 those issues later. Am I hearing that to be
2 the current consensus, just so that we can
3 clarify this insurance issue, because I'm
4 telling you this assignment issue is just
5 confusing. And I think possibly that
6 suggestion may help, legally, us deal with
7 some of that confusion on when it is an
8 assignment and when it's not, and when does it
9 become a preneed fund.
10 CHAIRMAN: All in favor of that? Oh,
11 go ahead.
12 MR. CLINE: One questions before we do
13 this. Obviously, I'm not familiar with all
14 the insurance and everything else. But it
15 crosses my mind that we're dealing with a
16 funeral; okay? And we're dealing with
17 people's lives and their passing, and an
18 insurance policy, I would think, that had some
19 sort of preneed contract or arrangement in it
20 should be under the same rules as the
21 funeral-home contract or preneed in a
22 funeral-home contract. So, my vote would be,
23 if it matters, that any insurance-funded
24 preneeds there should be under 436.
25 CHAIRMAN: So, we'll add that to our

1 list, and is everybody in favor of the
2 insurance division, what we're going to
3 rewrite? Okay. All in favor, say aye.
4 (Unanimous voice vote for approval.)
5 MR. MEIERHOFFER: I guess, I've got a
6 question. I'm not sure I'm exactly
7 understanding everything under insurance all
8 under 436. Are we talking -- what do you
9 really mean by that? I mean, what are you
10 saying, everything is under 436?
11 MR. CLINE: Well, for example, in
12 other words, I thought we had this situation
13 with NPS because they were not under 436 and
14 were able to move funds into term insurance.
15 MS. GRINSTON: I think that's a
16 different question about what happens with
17 funds once it hits a trust or once -- you
18 know, they hit, you know, whatever funding
19 mechanism. I think the question now, though,
20 is, when we're talking about insurance-funded
21 preneed contract, because it's different from
22 a preneed contract that has investments in
23 insurance -- insurance-funded preneed
24 contracts. My understanding is that the
25 thought is that we clarify, that we remove

1 that whole assignment/beneficiary language, we
2 clarify that insurance companies are under the
3 regulation of the Department of Insurance, we
4 clarify that there are three different methods
5 to fund a preneed contract, and then we come
6 back, once we look at that language, and see
7 if we need to make requirements for preneed
8 contracts for a trust fund versus insurance,
9 or put them all under the same requirements,
10 but reserve that last issue for another day,
11 once we see how it shakes out.
12 CHAIRMAN: Good enough. Next?
13 MS. GRINSTON: All right. Well, let's
14 jump to a fun topic. I think we've got that.
15 Let's switch over to #21 through #28 and do
16 this as a whole because my hope is that
17 everybody is full and this won't take very
18 long, but I think we need to talk about,
19 again, the complaint/disciplinary process. If
20 we know that this is going to stay with the
21 Board, again -- and I'm going to speak on
22 behalf of the Board because they have
23 officially voted on this -- one of the biggest
24 frustrations for the Board is the disciplinary
25 process for 436 people -- registrants,

1 licensees, whatever you call them. It is
2 cumbersome. I'm not going to do the whole
3 speech again on how we do it. You'll be
4 happy about that. But if you give me music,
5 I can sort of liven it up a little bit. But
6 if you -- I'm not going to do that, but we do
7 need to address how that
8 complaint/disciplinary process should go. And
9 I think I'd like to possibly start with the
10 disciplinary portion of it, you know. For the
11 other boards assigned to the Division, we get
12 a complaint, the board investigates, does what
13 it needs to do. If there's a problem, it
14 goes to the AG's office to file with the AHC.
15 We get a filing, it comes back to the Board
16 for a disciplinary hearing, and we're done.
17 I'd like to open that can worms for public
18 discussion. Todd is trying to sneak out the
19 door, Mr. Chairman.
20 CHAIRMAN: I see that.
21 MS. EULER: So, Kim, is the question
22 you're throwing out should we keep the current
23 probable-cause process?
24 MS. GRINSTON: Yes.
25 MS. EULER: I don't want to speak for

1 the group, but from what I have heard people
2 say, I think the answer to that is no, we
3 don't want to keep the current process. And
4 it seems to me that, for consistency sake, it
5 makes sense for the discipline of 436
6 registrants, licensees to be the same as it is
7 for any other type of licensee.
8 MS. GRINSTON: Namely, 333 people.
9 MS. EULER: Yeah. Yeah.
10 MS. GRINSTON: Funeral directors,
11 embalmers, and --
12 MS. EULER: Or real estate agents or
13 accountants or anybody. It's all consistent.
14 UNIDENTIFIED: Second.
15 MR. MEIERHOFFER: I agree
16 wholeheartedly, and that's what you've got do
17 so you can get something done.
18 MR. MAY: I don't recall what the
19 process is for all the other boards, so is it
20 -- does it still give people, if they were
21 concerned about having an objective exam by an
22 outside whatever, does that still happen?
23 MS. EULER: The process would be
24 somebody files a complaint or it's brought to
25 the Board's attention, they investigate. If

1 they determine that it should be -- proceed to
2 discipline, it would be referred to the
3 attorney general's office or their counsel to
4 take disciplinary action through the -- by
5 filing for a hearing in front of the
6 Administrative Hearing Commission. The
7 Administrative Hearing Commission determines
8 whether there is cause to discipline, and then
9 it goes before the Board for a hearing to
10 determine what the discipline should be.
11 CHAIRMAN: Bill, have you got any
12 thoughts on that?
13 MR. STALTER: Well, it goes back to,
14 you know, when we talk about this -- how to
15 regulate the seller. What's kind of implicit
16 in this, that there was supposed to be some
17 kind of a license at the seller-entity type.
18 So, otherwise, I mean, you know, there's no
19 teeth or accountability in it, so kind of back
20 to that issue sooner or later.
21 CHAIRMAN: What does the committee
22 think of this; yea or nay? All in favor, say
23 yes. All, nay?
24 (Unanimous voice vote for approval.)
25 MS. GRINSTON: Okay. Well, since

1 we've got the disciplinary process
2 streamlined, one of the fundamental questions
3 for the Board is what can initiate a complaint
4 or investigation, an examination of books and
5 records, which is different from a full-scale
6 audit. Audits are very expensive -- very
7 expensive. Right now, the Board is complaint
8 driven. Generally, we can't do anything
9 unless we have a complaint, and we are very
10 limited on when a Board can file a complaint
11 with itself. I'd like to open up for public
12 discussion on whether we want to keep that
13 system or allow the Board to handle 436 people
14 just like we do with 333 people. If there is
15 a problem or a suggestion or a cause -- and
16 I'd like to pull audits out of that. Now,
17 I'm not talking about the regularly or
18 randomly scheduled audits, but just handling
19 that investigation disciplinary process,
20 should that still be complain driven?
21 MS. EULER: And I don't know what
22 people know or they don't know. Under Chapter
23 333, the statute gives the Board authority to
24 go into any funeral establishment, inspect
25 books and records, inspect the premises at any

1 time. Under 436, currently, the Board has no
2 similar authority. So, under 436, nothing --
3 the Board itself has no authority to do
4 anything, but if they get a complaint, then
5 they refer it to the Division, and the choices
6 are audit or examination of books and records.
7 There is no authority just to enter the
8 premises, do a quick check of the files.
9 MS. BOHRER: What do other boards and
10 commissions have by way of the trigger to
11 investigate whether there's a problem with a
12 licensee?
13 MS. EULER: Most of the boards that I'm
14 familiar with, the trigger is either a
15 complaint and they have authority to go in and
16 inspect books and records and premises at any
17 time.
18 MS. DUNN: And that's what we do with
19 funeral homes now -- and funeral directors,
20 but under Chapter 436, we do not.
21 MS. EULER: And I think with a lot of
22 the boards -- and, Kim, you can correct me if
23 I'm wrong on this -- it's pretty routine, you
24 know. The Board of Cosmetology sends somebody
25 out to just go out and visit with the salons,

1 make sure everything is going all right, at
2 any time.
3 MS. BOHRER: Make sure they've got that
4 license posted and --
5 MS. EULER: They've got their license,
6 they've got their picture, their instruments
7 are clean, and they just show up. Like, "I'm
8 here from the State Board. I'm here to take
9 a look at your work station."
10 MS. BOHRER: And that person's salary
11 then is funded by the license fees for those
12 licensees?
13 MS. EULER: Yes. Yes. And that's
14 what, like, the embalmer's board does now with
15 funeral homes. They've got inspectors who go
16 out and just drop in.
17 CHAIRMAN: Darlene, you had something?
18 MS. RUSSELL: No. I was just agreeing
19 that -- with Sharon about the fact that you
20 have inspectors that go out already, right
21 now, that this would be just a -- if you have
22 a complaint, you can just send out your
23 inspector instead of having to wait for -- you
24 know, it has to say that this complaint was
25 preneed and it was money missing and all these

1 other things. I think this is where -- how
2 come we're here today, because we've had
3 problems where the Board hasn't had the
4 authority to go out and check preneed records,
5 and I think that needs to be streamlined to
6 where the Board can have the authority to
7 check the records.
8 MS. GRINSTON: Now, we're talking about
9 complaint inspections, but are we suggesting or
10 talking about regularly scheduled inspections?
11 MS. RUSSELL: Regularly scheduled
12 inspections --
13 MS. GRINSTON: Like we do with funeral
14 homes?
15 MS. RUSSELL: -- where they can just
16 check five preneed contracts. Do you have
17 five preneed? What are the last five you did?
18 They do that on your at-need.
19 MS. GRINSTON: They do.
20 CHAIRMAN: Larry, do you want to come
21 to the mike?
22 MR. STROUD: Larry Stroud. I would
23 think if we're going to establish a time frame
24 about funeral homes being audited on a regular
25 basis as some have mentioned, if we're going

1 to have, let's say, an audit every two years,
2 you know, then that audit would automatically
3 pick up indiscrepancies that's taking place in
4 the funeral home, wouldn't it -- if we had an
5 audit every two years for all firms?
6 MS. GRINSTON: Possibly. Audits
7 usually look at financial records. There are
8 issues outside of financial records that may
9 come up. Like, for example, they pull your
10 all's at-need contracts, going in and doing an
11 at-need inspection would be pulling an at-need
12 -- I'm sorry -- preneed contract to see does
13 it have everything in it that it's supposed to
14 have. Are the signatures on the document?
15 Does it list what it's supposed to, with all
16 the questions --
17 MR. STROUD: I'm a little apprehensive
18 about letting inspectors pull preneeds because
19 I don't think they know that much about it.
20 Sorry.
21 MS. GRINSTON: Okay.
22 MR. OTTO: There's a middle ground, as
23 well, that's in 333 that the staff of the
24 Board can file a complaint as any public -- as
25 any member of the public can. So, if you

1 drafted that onto 436 -- it's just one other
2 option -- you wouldn't need to wait for a
3 member of the public to file a complaint
4 before you could do an inspection, but there
5 would be, at least, some sort of documentation
6 of a problem before the inspector went in and
7 started randomly grabbing preneed files.
8 That's just -- I'm just throwing that out
9 there because on 333, there's already a
10 mechanism for that where the staff of the
11 Board can file a complaint as any public
12 person can do.
13 MS. GRINSTON: I just want to say this
14 as a point. Last year, we did get some push
15 back on that idea of the Board being able to
16 file a complaint with itself in 436. The
17 question I got was: Do you mean if someone
18 calls in and says, you know, this is my issue,
19 that the Board can file a complaint on just a
20 phone call? And we explained that, you know,
21 sometimes phone calls are your best tips that
22 something is going wrong. But just so
23 everyone knows that we did get some resistance
24 on the Board being able to file a complaint
25 with itself if it thinks something has gone

1 wrong, and that's just FYI.
2 MR. STALTER: When we go back to this
3 being an industry Board -- I mean, that was
4 one of the key things about 436 was that you
5 would have a competitor on the Board, and he'd
6 kind of jerry-rig some kind of a complaint.
7 But, you know, we have to take a look at the
8 circumstances today, and, really, I mean,
9 there should be better ways to protect, you
10 know, that preneed book. I mean,
11 confidentiality, but still open up and allow
12 inspections or some type of a process other
13 than complaint driven because, I mean, really,
14 consumers don't -- they don't really like to
15 file those complaints, either. But, really,
16 sign the paper and send it in. I mean, they
17 may not be satisfied with something, but
18 they're really reluctant to sign the piece of
19 paper and send it in.
20 CHAIRMAN: Representative?
21 REPRESENTATIVE MEADOWS: Two years ago
22 -- it's kind of amazing because two years when
23 I first filed House Bill 825, this lady to my
24 immediate right, she spent a lot of hours in
25 my office, as well as Kim and Connie and

1 Becky. And, I mean, it's kind of deja vu
2 coming home to roost for me today looking at
3 all these faces, but -- and it's a good thing.
4 But I think that you -- I think it should be
5 opened up. I think that you folks should have
6 the opportunity to XYZ Funeral Home and ABC
7 County of ABC City, DEF City, you should have
8 the opportunity, if whether you receive a
9 complaint or not, to maybe put a restriction
10 on a number that you're going to go look at.
11 But someone mentioned how competent the
12 inspectors are, and I'm not picking on
13 inspectors; I want people to know that here.
14 I mean, but, truly, if an inspector is going
15 to take this on, they need to know the law
16 the same as everybody else. Now, I feel that
17 they need to also be tested on Chapter 436, as
18 well, if they're going to -- because if you
19 send an inspector into a home to look at XYZ
20 Funeral Home's preneed contracts, and he just
21 starts ripping through it and making
22 accusations and so forth and so on -- well, I
23 need a copy of this, I need a copy of that, I
24 need a copy of this, and this associated with
25 this -- and it may not be pertaining to

1 anything. So, I feel it's important that if
2 we're going to go that way, to just make sure
3 the inspectors also go to class, too; wouldn't
4 you all agree? Wouldn't you all agree that
5 they would have to go through the training, as
6 well? And, by the way, the governor is going
7 to love me because I just keep running the
8 bill up all the time on that. But, at any
9 rate, if you can see what I'm saying and where
10 I'm going with that, but -- and I just hope
11 -- like I said, I think that everybody should
12 have the right to go in. After all, what's
13 so harmful in pulling the covers back and
14 taking a look, and, I mean, that's what it's
15 all about is to make sure people are doing
16 what they're supposed to be doing with the
17 money. So, thank you, Mr. Chairman.
18 CHAIRMAN: You're welcome. Sharon?
19 MS. EULER: I'll be very quick. I
20 think something that needs to be kept in mind
21 is that the premise that the current 436, at
22 least how I read it and what I hear people
23 talking about today, is that the only
24 violation of 436 is stealing money or not
25 properly handling money. And there are a lot

1 of other violations of 436, a lot of other
2 things people can do that, I think, most
3 people would want discipline for or would at
4 least want people to be held accountable for.
5 So -- and that's something an inspector could
6 check on, you know. Is the money being
7 properly forwarded within a timely fashion?
8 Are the contracts being properly signed? Are
9 they following the law? Are they doing the
10 right things? Are they paying the money to
11 Medicaid that needs to be paid? There are a
12 lot of other things besides just is the money
13 going in the right place.
14 MS. GRINSTON: And I do want to say
15 something just for the record, as well, in
16 response to the comment about the inspectors.
17 Right now, there are four inspectors. Two of
18 the four inspectors are funeral directors, one
19 of those two is a funeral director and an
20 embalmer. The other thing, I think, that
21 needs to be kept in mind is that inspectors
22 don't write violations on the spot; they
23 report them back to the Board. And so, if it
24 comes back into the Board on something that
25 says, you know, your preneed contract is not

1 on purple paper, it's a violation. The Board
2 stands as the checkpoint on whether this
3 really does violate 436. And there have been
4 times when the Board has looked at things,
5 even from the funeral-director's side, and
6 said, no, you know, the inspector did a good
7 job, but we just don't think that that's a
8 violation of 333 or it's unclear. And so, I
9 just want to keep that in mind, as well, that
10 your Board is the person who determines
11 whether you have violated the law as opposed
12 to your inspectors on the job, two of whom,
13 again, are funeral directors.
14 CHAIRMAN: And, no, I'm not taking the
15 test.
16 REPRESENTATIVE MEADOWS: That's my next
17 proposal, that all Board members have to take
18 the test.
19 CHAIRMAN: Also, Ladies and Gentlemen,
20 we do have a training session for the
21 inspector, and that the Board does give them
22 some direction, whether that be good or bad.
23 MS. GRINSTON: And so, I guess I'm
24 hearing yes on expanding the disciplinary
25 authority so that it matches 333; yes on

1 allowing the Board to remove the
2 complaint-driven process. I think the issue
3 that is still in the air is inspections. Are
4 we talking about random -- again, scheduled
5 inspections or just regularly scheduled
6 inspections? I'm sorry. Complaint
7 inspections or regularly scheduled
8 inspections. What is the consensus on a
9 regularly scheduled inspection, when an
10 inspector goes out doing a sampling of the
11 preneed files?
12 CHAIRMAN: All right. All in favor?
13 Those opposed.
14 (Unanimous voice vote for approval.)
15 MS. GRINSTON: So, those two things.
16 As we talk about disciplinary authority, I
17 think we need to look at the grounds for
18 disciplinary action. I don't know if everyone
19 has -- everyone should have their books from
20 Senator Scott's proposal. Well, the last
21 draft that we had with Senator Scott's
22 language, and I think it was a merger of
23 several bills, but there was some language in
24 there, and I'm going to -- it's on page 22.
25 Okay. You guys may not have it -- 21 through

1 23, 24, 25. Actually, 21 through page 23
2 right now. It should be the first document in
3 the beginning of your binders. Page 21
4 through 23. This language mirrors the
5 language for 333 funeral directors and
6 embalmers, but it had some amendments in it to
7 specifically address preneed and preneed
8 registrants, sellers, and providers. There is
9 a question about the grounds for disciplinary
10 action. Right now, like Sharon said -- and,
11 Sharon, maybe you can tell them what the
12 grounds generally are for disciplinary action.
13 MS. EULER: Like, against the funeral
14 director?
15 MS. GRINSTON: Yeah.
16 MS. EULER: Right now, a funeral
17 director can be disciplined for use of any
18 controlled substance or alcoholic beverage
19 that impairs the person's ability to work,
20 being adjudicated -- found guilty -- of a
21 felony or any offense recently related to the
22 qualifications, functions, or duties, or any
23 offense where fraud, dishonesty, violence,
24 moral turpitude, use of fraud, deception,
25 misrepresentation in obtaining the license,

1 attempting to obtain a fee by fraud,
2 deception, or misrepresentation, incompetency,
3 misconduct, gross negligence, broad
4 misrepresentation or dishonesty in performance
5 of their duties, violating any provision of
6 the statute or regulation, impersonation of
7 holding a certification, being disciplined in
8 any other state, being adjudged insane --
9 sorry about that, Jim.
10 MS. GRINSTON: They don't have that
11 one for attorneys, so --
12 MS. EULER: No. No. Assisting
13 someone to practice who is not eligible to
14 practice, issuing a license upon material
15 mistake of fact, failure to display a license,
16 violation of professional trust and
17 confidence, advertising which is false,
18 misleading or deceptive, violation of Chapters
19 193, 194, 436, presigning a death certificate,
20 obtaining possession of a dead human body
21 without authority, failure to sign the reverse
22 side of the death certificate, failure to
23 guard against contagious, infectious, or
24 communicable diseases, willfully or through
25 undue influence, selling a funeral or refusing

1 to surrender a dead human body upon request of
2 the next of kin. It's a long list.
3 MS. GRINSTON: What you just looked at
4 in Senator Scott's proposal was an amended
5 version of that list. Again, it mirrors and
6 matches what a lot of the other professional
7 entities have in place. What is the thought
8 of expanding the grounds to disciplinary
9 action because, right now, we've to show that
10 you have specifically violated 436 to
11 discipline someone? Obtaining a fee or
12 defrauding someone is not a specific violation
13 of 436. And so, if someone came in and said,
14 "I defrauded the whole world," unless we can
15 find a specific 436 violation, there is
16 nothing the Board can do. What are the
17 thoughts about expanding the disciplinary
18 authority to include some of the things that
19 are traditional for most other professions?
20 MS. EULER: Yes.
21 MS. GRINSTON: I hear a yes from
22 Sharon. Going once, going twice.
23 MS. COLLINS: Another yes.
24 MS. GRINSTON: Another yes from Norma.
25 MS. GERSTEIN: Yes.

1 MS. GRINSTON: Public member, yes.
2 CHAIRMAN: That's it. We got it.
3 It's over. Don, you can't ask anything now.
4 MR. OTTO: Well, first off, I mean,
5 let's get -- I mean, I fought this for three
6 years -- the reverse side of the death
7 certificate. But there's a lot of things in
8 this list that, I think, should also be taken
9 out.
10 MS. GRINSTON: Okay.
11 MR. OTTO: If you're dealing with
12 disciplining somebody under 436.
13 MS. GRINSTON: Okay.
14 MR. OTTO: Because there's no reason
15 to put stuff in there that just bogs it down,
16 like retaining the body without permission to
17 do so. That --
18 MS. EULER: We'll adapt it -- we'll
19 change it to make it better.
20 MS. GRINSTON: And if you look at
21 Senator Scott's -- the one in the front by
22 Senator Scott, I don't know retaining the body
23 --
24 MR. OTTO: Some of the stuff was left
25 in, some, I mean, it was rushed through at the

1 end and a couple things were taken out, but
2 not everything was. And I would also point
3 out on page 23, you do already have that
4 paragraph 5, incompetency, misconduct, gross
5 negligence, fraud, misrepresentation,
6 dishonesty in the performance of a function or
7 duties of any professional license is
8 required, you know. We do have that in there,
9 so, I mean, don't repeat yourself. I don't --
10 you know. You understand what I'm saying.
11 MS. GRINSTON: I don't. Help me, Don.
12 MR. OTTO: Well, you've already got
13 that language in there now. If you're going
14 to try to expand it to include other kinds of
15 fraud or misconduct, maybe you need to take
16 paragraph 5 out completely, as well.
17 MS. GRINSTON: No. You mean it's in
18 Senator Scott's language, but it's not in the
19 law right now.
20 MR. OTTO: That's correct.
21 MS. GRINSTON: Right. And so, I'm not
22 talking about adding anything to -- or adding
23 anything after to what we see in Senator
24 Scott's. I'm really talking about the list in
25 Senator Scott's draft. Is there -- maybe if

1 we could look at that list to see if that
2 list is something that mirrors what you all
3 believe should be grounds for disciplinary
4 action. And the 333 lists the retaining the
5 body. I think we may have taken out
6 incompetency, misconduct, or fraud would
7 address the fraud situations that I was
8 talking about earlier. But the list, since we
9 were asked to use this as a guideline, the
10 list that is in Senator Scott's draft, maybe
11 we can take some comments on whether this list
12 is complete enough or if it's not -- if it's
13 incomplete, if it needs to be amended, or if
14 there are any other changes.
15 MR. MEIERHOFFER: Michael Meierhoffer.
16 I actually went through this and highlighted
17 this whole bit.
18 MS. GRINSTON: Okay.
19 MR. MEIERHOFFER: And a couple things
20 came up. Number 17, had any license, permit,
21 registration revoked by any insurance or
22 preneeds regulatory special licensing board of
23 any state. I mean, I'm not sure if I got
24 somebody that's yanking my license someplace I
25 want you to automatically pull mine because

1 somebody has done that somewhere else. I'm
2 not sure that's necessarily valid.
3 MS. EULER: Can we speak to that?
4 CHAIRMAN: Yes.
5 MS. EULER: How that's come up with
6 other licensing boards is I worked on a case
7 not so long ago where a guy had his license
8 pulled in Arizona for inappropriate sexual
9 conduct with a client. And when he came to
10 Missouri to get licensed, and everybody agreed
11 that his conduct in Arizona was improper, if
12 there had not been that kind of language
13 authorizing the Board to deny his license
14 based on that, if we were to deny his license
15 based on the conduct in Arizona and he
16 challenged it, we would have to prove up the
17 conduct from Arizona, which means we would
18 have to go to Arizona, find the witnesses,
19 find the people involved, and bring all those
20 people to Missouri to prove up his conduct in
21 Arizona so we wouldn't give him the license in
22 Missouri. So, if you've got somebody who was
23 selling preneed in Illinois and went to -- and
24 was found to have violated Illinois' preneed
25 license and had his funeral-director's license

1 pulled, his preneed license pulled, and he
2 came to Missouri, and he's clearly somebody
3 Missouri doesn't want to have licensed,
4 without language like this, you would have to
5 give him a license or else you would have to
6 prove up the conduct from Illinois, which
7 would be difficult to do. So, I think that's
8 the intention of this language, if that helps
9 clarify that for you.
10 MS. GRINSTON: How does it work with
11 funeral directors and embalmers?
12 MS. EULER: We've got similar
13 language. I just read it. "Disciplinary
14 action against the holder of a licensee or
15 other right to practice any profession
16 regulated by this chapter granted by another
17 state, territory, federal agency, or country,
18 upon grounds for which revocation or
19 suspension is authorized in this state."
20 MS. GRINSTON: So, that's kind of in
21 place for funeral directors and embalmers?
22 MS. EULER: Yes.
23 MS. DUNN: Mr. Meierhoffer, many
24 states do licensure verifications with us and
25 we do it with them. So, if there is a dual

1 license, Kansas checks with us repeatedly. I
2 mean, this happens all the time. So, most
3 states do this.
4 MR. MEIERHOFFER: Okay. I stand
5 corrected. I understand what you're saying.
6 I was looking at it in a different way
7 entirely.
8 MR. WARREN: Well, I was going to say
9 this language is standard with respect to a
10 lot of other boards, the Medical Arts,
11 Nursing, pretty similar or exactly the same
12 language.
13 MR. OTTO: The way it's currently
14 worded on paragraph 17, page 24, if I have my
15 tattoo parlor license revoked in Florida, is
16 my preneed license in Missouri revoked?
17 MS. GRINSTON: Since it says that it
18 has to be revoked by an insurance or preneed
19 regulatory agency -- MR. OTTO: Or
20 professional licensing board. That's the one
21 that kind of pops out.
22 MS. GRINSTON: Oh, got it. So, you
23 think we may need to narrow that down?
24 MR. OTTO: I think -- yeah. I don't
25 know how, but I think you need to.

1 MS. GRINSTON: Should we just say
2 funeral -- you know, maybe funeral/embalmers
3 boards so we could tie it to the practice?
4 MS. EULER: But if they were an
5 accountant and had their accountancy license
6 revoked for embezzling money?
7 MS. GRINSTON: Don, are you worried
8 about the tattoo license?
9 MR. OTTO: Well, the tattoo, but, you
10 know, I could get my license revoked in a
11 state because I failed to file a state tax
12 return, you know.
13 MS. GRINSTON: What state is that?
14 MR. OTTO: Yeah. Does that
15 automatically mean I'm disqualified from
16 selling preneed in Missouri, or should it be?
17 I mean -- but like I said, the way it's
18 worded now, if you lost your tattoo-parlor's
19 license for failing to pay your tattoo-parlor
20 tax in Florida, you automatically get pulled
21 here, it looks like.
22 MS. EULER: And that's not unusual on
23 most licensing boards. I mean, I had a woman
24 who had a cosmetology license who was fighting
25 revocation even though there was a couple

1 hundred thousand dollars missing because she
2 wanted to get a real estate license in
3 Florida, and Florida would not give her a real
4 estate if she had had any license revoked
5 anywhere.
6 CHAIRMAN: John?
7 MR. McCULLOCH: In the language, just
8 say the Board may; right -- which means you
9 don't have to; right? So, you do have that
10 flexibility?
11 MS. EULER: Right.
12 MR. MEIERHOFFER: That's important
13 that it says that.
14 MS. GRINSTON: Which, in the past,
15 leaves the Board as the gate -- gives you a
16 gatekeeper. And, of course, you always have
17 the right to appeal, because not only do you
18 have to get through them, you've got to get
19 through the AHC --
20 MS. EULER: Right.
21 MS. GRINSTON: -- which is the reason
22 why that third independent body is there,
23 because I can tell you, having tried cases in
24 front of the AHC, you go in front of them and
25 say, you know, they had their gun-selling

1 license revoked. They'll look and say, "May
2 means discretionary. We're going to exercise
3 a discretion. Nice try, but you can't do it."
4 And so, I think that there are checks and
5 balances in that process, should the Board run
6 amok and, you know, pull it to that. And
7 there are boards that do look at disciplinary
8 action. I know with this Board for Embalmers
9 and Funeral Directors, they will actually see
10 what they were disciplined for. Was it just a
11 late filing? Did they forget to pay the
12 filing fee? Or did they actually do something
13 that relates to the practice? So, I think
14 it's a good point, John, that it still goes
15 through the Board. Okay. I think we haven't
16 -- it seems like we've reached a consensus on
17 that point. I'd like to look at the language
18 on page 25 of Senator Scott's draft. This is
19 something that was recommended in -- and what
20 we've gone through the last legislative
21 session, having a trigger that would allow the
22 Board to automatically revoke or suspend
23 someone's license for two things; one would be
24 a conviction of some sort and the second one
25 would be if there's a shortage in the trust

1 fund. If we get an audit back or do an
2 examination or a report that tells us that X
3 amount of dollars is missing from the trust
4 fund, can we go ahead and suspend the license
5 automatically? This is something that was,
6 again, done very quickly at the end of
7 session, but I would like to throw that out
8 there for us to discuss whether there needs to
9 be some type of automatic revocation or
10 suspension procedure for certain designated
11 things under 436. The idea in theory is that
12 let's say that we find out that there is a
13 huge problem, that you can get someone out of
14 the practice until you can get in and figure
15 out what's going on. And the way it works
16 for other licensing boards is if it happens,
17 you appeal to the Administrative Hearing
18 Commission. They have had some success with
19 licensees being able to ask for an expedited
20 hearing, to get that hearing expedited so it
21 doesn't take a year for them to go through
22 that process. And, of course, they also stay
23 in a friendly AHC, usually, so the person can
24 continue practicing until the appeal is done.
25 But I would like to throw it out for

1 discussion on whether there should be some
2 type of automatic disciplinary authority for
3 the Board should certain things occur.
4 MS. EULER: Yes.
5 CHAIRMAN: Darlene?
6 MS. RUSSELL: I'm just not sure if the
7 $5,000 mark is a fair figure because that
8 could just be some little accounting error
9 that occurred. The $5,000 mark -- I agree
10 that you should be able to suspend a license,
11 but that $5,000 mark sounded a little low.
12 MS. GRINSTON: How high do you think
13 it should go?
14 MS. RUSSELL: Preneed contracts, you
15 know, now are averaging, you know, $6,000,
16 $7,000, and so, one missing --
17 MR. OTTO: One missing is -- yeah.
18 One could have fallen behind the desk, but no
19 one did anything wrong. $50,000. I don't
20 know.
21 MS. RUSSELL: Well, I was thinking,
22 you know, in the terms of, you know, $15,000
23 to $25,000, you know. There would at least be
24 two missing, you know. There would be
25 something in that neighborhood. What do you

1 guys think?
2 CHAIRMAN: Larry Stroud says $50,000.
3 Bill?
4 MR. STALTER: I would just say for the
5 big guys, I mean, they'll look for a higher
6 number when you talk about a large trust. And
7 it's really kind of hard to say. I mean,
8 even if we're talking about a small operator,
9 I mean, if it's $10,000 or $15,000, you know.
10 Okay. I mean, you've got them under watch,
11 but you really have to be careful when it's an
12 automatic, you know, termination or authority.
13 And what they're also going to cry about is --
14 I mean, you say it's a shortage. I mean, is
15 it because of a market value or is it actually
16 because of a theft? You know, if it's a
17 theft issue, you know, then I think you --
18 really, there is a basis for acting more
19 promptly to try to foreclose more problems.
20 But, I mean --
21 MR. OTTO: Misappropriation instead of
22 shortage, for one thing.
23 MS. GRINSTON: Misappropriation.
24 MR. OTTO: Instead of the word
25 "shortage," because that's not defined.

1 Misappropriation.
2 MS. RUSSELL: Yeah. There we go.
3 MS. GRINSTON: See, Don, with the
4 misappropriation language, it would require us
5 to prove up the underlying case before you can
6 get in there. So, you would have to go in
7 and do the full investigation, inspection,
8 examination, figure out who did what to see if
9 it's misappropriation or something else, and
10 then it triggers. And maybe that's the
11 suggestion. Maybe -- unless you're suggesting
12 that we -- it be limited to misappropriation
13 as opposed to just the mere shortage at all.
14 That's a point to consider, as well.
15 MR. OTTO: Well, I just think
16 "shortage" is so vague.
17 MS. COLLINS: I was just going to ask,
18 could we use a word like "discrepancy" or
19 something.
20 MS. RUSSELL: Kim, I do like -- I like
21 the word "discrepancy" --
22 MS. COLLINS: Discrepancy?
23 MS. RUSSELL: -- and I'm thinking of a
24 term, $25,000, and then you know it's major,
25 you know. It really shows something. But

1 "discrepancy" is a good terminology.
2 MR. OTTO: Well, if you've got $50, $60
3 million in a trust, $25,000 is not a major
4 discrepancy.
5 MS. BOHRER: Could it be a percentage
6 trigger and, that way, you would -- it would
7 be relative to the size of the operation? And
8 if you've got a small operation and it's a
9 10-percent trigger; you know, for a very
10 larger operation, obviously, that would be a
11 much bigger number.
12 MR. STALTER: Talk about a material
13 discrepancy --
14 MR. OTTO: And, again, I'm not talking
15 about not investigating somebody if there's a
16 problem. It's the automatic yanking of
17 somebody's license.
18 MS. BOHRER: Yeah. And the thing of
19 it is, I don't know how long it's been since
20 you amended 436, but when you put a static
21 amount in a statute, in 20 years, that amount
22 will have no meaning.
23 MS. COLLINS: It's going to be
24 outdated. Absolutely.
25 MS. GRINSTON: That's true.

1 MS. BOHRER: And we run into that
2 periodically where some amount has been
3 inserted 20 years ago and, now, in today's
4 market, it doesn't mean anything.
5 MR. STALTER: And this is one of those
6 issues we've talked about. Maybe you have to
7 deal with it in regulations. You know, you
8 have to be able to adapt to it. I mean,
9 what's material today and material in ten
10 years, there's a difference.
11 MS. RUSSELL: I agree that you need to
12 be able to suspend a license when you're
13 investigating. You go in and you see John Doe
14 is missing a lot of money, and you just can't
15 let him keep going out there and taking
16 people's money. How you fix that is the
17 problem. I wouldn't want you to give that
18 right up. I'm just concerned about, just like
19 we talked about, the amount.
20 MS. GRINSTON: So, what about a
21 shortage of -- choosing a percentage -- 20
22 percent or 25 percent which would trigger, you
23 know, for -- because Linda raises a good
24 point, you know. Twenty-five years from now,
25 which is probably the next time 436 will be --

1 no, I'm joking. Twenty-five years from now,
2 you know, $5,000, $50,000 may mean nothing
3 given the size of the preneed industry. So,
4 maybe a percentage that is significant enough
5 to possibly signify a problem. And can we
6 draft the language, if it's okay with
7 everyone, with a percentage requirement, and
8 then maybe once you look at the language and
9 how the automatic suspension will be done,
10 maybe make a determination then on what the
11 percentage should be? Would that be a better
12 proposal? Okay.
13 CHAIRMAN: All in favor of that?
14 Opposed?
15 (Unanimous voice vote for approval.)
16 MS. GRINSTON: The other thing, and
17 this is -- we're actually moving through this
18 list, but injunctive authority for the Board
19 for people who are --
20 MS. DUNN: What number are you on?
21 MS. GRINSTON: I think I'm still sort
22 of on #22 -- between #21 and #22. Sorry.
23 MS. DUNN: Okay.
24 MS. GRINSTON: But injunctive
25 authority. Most of the boards have standard

1 injunctive authority language. Sharon, do you
2 want to speak to that at all?
3 MS. EULER: Sure. From an enforcement
4 point of view, having injunction authority
5 gives us teeth because if we have injunction
6 authority and there is someone out there who
7 is practicing without a license or is doing
8 something so seriously bad and wrong that we
9 need to take immediate action, that gives us
10 the tool to go out and do that. Right now,
11 if people are selling preneed without
12 registration -- in fact, I've had one funeral
13 director in the state tell me this. "Yeah,
14 I'm selling preneed without a registration.
15 What are you going to do about it?" And, you
16 know, he's right. We have no tools. So,
17 from an enforcement point of view, having
18 injunctive authority is very important, and I
19 would think we could use language that mirrors
20 what's in Chapter 333.
21 CHAIRMAN: Any discussion on that? If
22 not, all in favor of that, say aye. Those
23 opposed.
24 (Unanimous voice vote for approval.)
25 CHAIRMAN: Ten-minute break.

1 (Off the record)
2 CHAIRMAN: If everybody would like to
3 take their seat, we're going to resume the
4 meeting.
5 MS. GRINSTON: Since we're talking
6 about disciplinary action and we're talking
7 about auditing, I think this is a good time to
8 talk about preneed sellers, the question of
9 how they should be audited and how often they
10 should be audited. We understand that this is
11 going to be under the Board's purview. Are
12 the recommendations going to be to suggest it
13 being under the Board's purview, giving the
14 Board options to use either an outside auditor
15 or an auditor that they designate. But for
16 auditing purposes, which is your full review
17 of books and records and financial accounts,
18 how often a preneed seller should be audited
19 and/or possibly doing financial reports, and
20 now that is open to the floor.
21 MR. MAHN: Mr. Chairman?
22 CHAIRMAN: Todd?
23 MR. MAHN: I know there was some
24 discussion earlier about, you know, all the
25 funerals being audited. I forget, Larry.

1 What did you say, once a year or something
2 like that? Every two years? The question is:
3 Who would pay for that and what would the cost
4 be? You know, I mean, that -- you know, if
5 you send inspectors by to check, you know, as
6 they're under random inspections and as long
7 as they're trained properly, to pull a few
8 preneed contracts and look at them. But, I
9 mean, you're talking, what, 600 funeral homes,
10 auditing every one of them every two years?
11 Would it be astronomical? I mean, I don't
12 know. I'm asking the question.
13 MS. DUNN: Well, currently, we use an
14 outside firm because that's the way the law is
15 written. And, you know, it's been discussed
16 in meetings previously that possibly a review
17 process would be conducted in lieu of a full
18 audit that would allow the Board to get the
19 documents they needed to insure compliance.
20 So, an audit is expensive, but a review
21 process that would capture what we needed
22 might be something more in order.
23 MS. GRINSTON: Yeah. And I'm going to
24 go back to something Mark mentioned earlier,
25 that there are questions about -- your

1 question is your frequency and your scope, how
2 often you're going to do it and how far back
3 you're going to go. If it's an eight-year
4 audit, the cost is going to be -- probably
5 going to be expensive. And I'm using the word
6 "audit," but I think that is a question, as
7 well, whether it should be a financial review,
8 an examination of books and records. Should
9 audits be reserved for disciplinary issues,
10 you know, when there is a complaint, and maybe
11 just we deal with a financial reporting, if
12 you will, or something of the sort. But I
13 think that the discussion should be guided by
14 the idea that whatever the consensus is, you
15 guys do have to consider that somehow this is
16 going to have to be paid for, because it
17 wouldn't make sense for us to do an audit
18 requirement that says every year, you know,
19 all accounts, and then not, later on, decide
20 to fund it, because if that's the suggestion,
21 we've got to think about funding. And if
22 you're going to charge this back to the
23 funeral homes, you've got to think about that,
24 as well. Something Don said is that we have
25 had some concerns about charging this back to

1 funeral homes who may not be able to really
2 pay for the cost of an audit or a financial
3 review. I'm going to stop using the term
4 "audit."
5 CHAIRMAN: Rich, can you enlighten us
6 on any of this?
7 MS. DUNN: On, like, your banking
8 reviews or --
9 MR. WEAVER: Sure. Yeah, I'd be happy
10 just to -- and like I say, I don't -- can't
11 really tie it directly to the funeral
12 business, but just to give you a perspective
13 on -- banks, for example, by statute, have to
14 be audited at least once every 18 months, and
15 some of them fall in the category they're
16 audited once every 12 months. And you look at
17 it from a financial audit as well as a
18 compliance audit, and so, there may be a
19 situation where some discussion there, we're
20 talking about investigations of complaints and
21 things like that. If you're going in to
22 determine a financial audit, it seems to me
23 that you could randomly select some contracts,
24 tie that back to the funding where that's
25 insurance, trust, et cetera, look at the

1 overall solvency of the seller, things of that
2 nature. And then compliance audit would be
3 to, in that same sampling, you could determine
4 compliance with the law. So, when we conduct
5 bank examinations, that's, essentially, what
6 we do is we go and we look at the financial
7 solvency of that bank, and it's spelled out in
8 statutes specifically certain things that the
9 director has to do through his examiners by
10 law, but then it's up to the individual size,
11 complexity of the institution, whether or not
12 to expand the scope of that audit. So, if
13 you have, say, a relatively small operation,
14 an audit, I think, can be completed probably
15 within maybe a day or something. If you're a
16 big provider, you know, several hundred
17 million dollars of contracts out there, then,
18 obviously, that audit then is going to take
19 considerably more time. So, I think you just
20 dictate it by the size of the shop. How we
21 bill that, though, is there is actually an
22 assessment formula, which that gets out --
23 totally outside of what you guys are talking
24 about because that's based largely off a
25 weighted formula that looks at the size of the

1 assets of the institution and the variable
2 amount of time it takes to examine those
3 various different banks. And so, it may be
4 that you could tie the expense side of it,
5 possibly, to the actual contracts. I think,
6 right now, isn't it, like, a $2 charge per
7 contract? And so, maybe you could come up
8 with a funding mechanism there to where the
9 Board then would have access to that funding,
10 and if they can get the appropriation
11 authority, the adequate FTEs they need, et
12 cetera, then there wouldn't be -- you know,
13 here is an audit, you guys write us a check
14 to pay you back. You actually have a fund
15 that you're operating under. Those monies are
16 coming into the fund essentially providing
17 monies to pay for travel expenses, salaries,
18 things of that nature. So, I know trying to
19 tie that to bank exams and how that's done is
20 maybe, you know, you can't specifically tie
21 that to this business, but just to give you an
22 idea of how we operate our examinations. And
23 so, like I said, if -- when we go into a
24 bank, we don't -- they don't get a bill from
25 us after the examination and say, okay, this

1 is how much you owe us, and then that could
2 fluctuate, you know, every year depending on
3 your audit. They pay kind of their fair
4 share, so to speak, in assessments that goes
5 into a fund, then that covers our projected
6 operating expenditures for the year, fringe
7 benefits, travel expenses, things of that
8 nature.
9 MS. BOHRER: And that funding
10 assessment is based -- it's relative to the
11 size of the operation of the bank.
12 MR. WEAVER: That's correct.
13 MS. BOHRER: Every bank doesn't pay you
14 $10,000 --
15 MR. WEAVER: A flat feet. That's
16 correct.
17 MS. BOHRER: -- it fluctuates based on
18 the size.
19 CHAIRMAN: Jeff?
20 MR. STYGAR: Yeah. I'm just curious
21 about the audits. I mean, unless you have an
22 individual trust, what's -- I mean, we do
23 100-percent insurance. So, I mean, who are
24 you going to audit? I mean, are you going to
25 go to the insurance company and audit? All

1 our money is with them. I mean, I've got
2 contracts in my files, but, I mean, are you
3 going to go through and look at it for all
4 those contracts that are there? I mean, I'm
5 -- what's the audit consist of?
6 MS. GRINSTON: I think from what I
7 heard earlier, that for insurance-funded -- if
8 you're doing 100-percent insurance funded,
9 then, if I'm not mistaken, I heard that that
10 would be handled through insurance and the
11 insurance people who are handling regulating
12 insurance companies, that this Board would not
13 be auditing an insurance company to determine
14 their solvency, if I heard the recommendation
15 correctly. But for -- in that instance then,
16 they probably will be going in on inspections
17 and just look at forms and maybe things of
18 that nature for you -- not the company, but
19 for you. And I think the audits or a
20 financial review for a trust-funded preneed
21 contract, if I said that right, Darlene -- for
22 a trust-funded preneed contract, that would
23 really look at whether, you know, monies are
24 being handled appropriately and being
25 appropriately trusted.

1 CHAIRMAN: Don?
2 MR. OTTO: The two things I would just
3 mention, that is, if you do any kind of your
4 -- if we're doing, like, what you call an
5 audit or a financial investigation or
6 something like that of every funeral home once
7 every two years, that's one a day. I mean,
8 every day you're doing a new funeral home with
9 over 600 licensees, so however -- I mean --
10 MS. EULER: Not every funeral home is a
11 seller.
12 MR. OTTO: Well, they're a provider.
13 Are they providing -- I mean, now, are you
14 saying we're not going to look into what the
15 provider is doing?
16 MS. GRINSTON: Well, the providers
17 would come up on the inspection side, but for
18 financial reviews, we should be dealing with
19 the entity that is responsible for the money,
20 which would be whoever is responsible for
21 handling those funds, which would be your
22 sellers. So, I don't know. And I don't know
23 what percentage of funeral homes are sellers.
24 MR. OTTO: Oh. Because we talked about
25 changing that. Remember, you know, if you

1 can't -- particularly when funeral homes when
2 customers are canceling, you know, they have
3 to notify the provider and the seller. And
4 I'm just saying --
5 MS. GRINSTON: Yeah.
6 MR. OTTO: -- it can get -- and, also,
7 unlike banks anymore, we do have a lot of
8 funeral homes that are -- I don't mean this to
9 sound bad, but ma-and-pa operations where an
10 audit -- a full-blown audit could make a
11 difference of whether they -- if they're
12 paying for it, could make a difference whether
13 they're in business or not in business,
14 particularly if it's an audit that's without
15 -- you know, a random audit without probable
16 cause or something like that, and I sure
17 wouldn't want to see that kind of thing happen.
18 MR. KRAUS: Jerry Kraus, Homesteader's.
19 There's about a dozen states where the
20 sophistication in the funeral industry is to
21 the point where they're looking at the
22 financial-responsibility side of the preneed
23 contract. And so, they ask the licensed
24 entity to approve that they have adequate
25 funding, whether it's in a trust company or, I

1 mean, a bank or a trust that they maintain
2 themselves, or in a bank or an insurance
3 company. And so, the examiner comes in and
4 says, "You have a $5,000 preneed contract. Do
5 you have enough funding to make you
6 financially solvent if you have to provide
7 that now?" And so, they come to us to
8 determine how much funding they have, and the
9 examiners look at that. So, I propose that
10 you need to look at how much funding is there
11 even though it means through reporting from
12 banks, trusts, and insurance companies.
13 CHAIRMAN: Linda?
14 MS. BOHRER: I would just say in
15 response to what function you want to rest
16 with the Department of Insurance, we are in
17 the business, so to speak, of regulating
18 insurance companies, so we would be able to
19 say that the insurance company that is the
20 funding mechanism for the preneed contract is
21 solvent and is, you know, complying with the
22 State's insurance laws. But, you know, you
23 would need to make it clear in however you
24 write the legislation if you wanted us to
25 additionally go in and look at the preneed

1 contract and say when insurance is used as the
2 funding mechanism, ""Do you have an adequate
3 contract of insurance? Have you got a fully
4 paid-up whole-life insurance policy behind
5 this? Are you making monthly payments or
6 annual payments on this contract?" I mean,
7 that's a different sort of oversight from the
8 Department of Insurance than what we would
9 traditionally do with an insurance company.
10 And, again, talking about the elephant in the
11 room and NPS and Lincoln Memorial, you know, I
12 mean, we were able to say, you know, there's
13 life insurance that's been purchased and this
14 company is fully approved to sell that life
15 insurance, but were we looking at the concept
16 of whether that was a fully paid-up whole-life
17 life-insurance policy with no loans against
18 it? That really isn't the purview of
19 regulating an insurance company. That's
20 really under the purview of regulating the
21 preneed contract. And so, you know, that goes
22 to that whole separation of authority and
23 regulatory oversight that, everyone agrees,
24 has been somewhat of a problem here. And so,
25 you need to make clear, however you're going

1 to do it, that if insurance is involved in the
2 process or the sale, you need to make it clear
3 what you want the Department of Insurance to
4 be involved with in that regulatory-oversight
5 process and, at the same time, provide them
6 with the authority to address the wrongdoing
7 if there is established to be an inappropriate
8 activity related to the preneed-contract
9 function related to that insurance policy.
10 You know, they bought term instead of whole
11 life. That's totally not appropriate. Is it
12 inappropriate for a life-insurance company to
13 sell term insurance? Absolutely not. So, we
14 wouldn't necessarily cite an insurance company
15 for wrongdoing just because they sold a
16 term-insurance contract. So, you need to sort
17 of put all those pieces together however you
18 decide you're going to do it.
19 CHAIRMAN: Sharon?
20 MS. EULER: In accord with what Linda
21 is saying, but down a slightly different path,
22 another problem with the current 436 as it
23 relates with Department of Finance is that
24 there is no statutory authority or oversight
25 of how the trustee is handling the preneed

1 contracts. And I know that -- and I'm on the
2 edge of my knowledge here. I know the
3 Department of Finance, that the bank examiners
4 examine the banks, but I'm not sure -- my
5 guess is that they aren't looking at -- when
6 they're doing the bank examination, they're
7 not looking at 436.
8 MR. WEAVER: Well, that -- and I could
9 be happy to talk about that. The way that it
10 works in a bank examination, if you have a
11 bank that has trust powers and they have one
12 of these preneed funeral contract accounts,
13 the examiners would look at -- not looking at
14 so much what's in -- it kind of depends, I
15 guess, on the trust agreement itself. In a
16 situation to where if the bank is responsible
17 for investing the monies that are in the
18 account, if they have that fiduciary
19 responsibility, then the examiners are going
20 to look at the trust agreement and say, okay,
21 the trust agreement says that you can invest
22 money in mutual funds, you can invest it in
23 life-insurance policies, you can invest it in
24 CDs. And so, they'll determine are those
25 monies being invested properly in accordance

1 with the trust agreement. If the trust
2 agreement says that, well, no, the bank or the
3 trust department is actually a custodian and
4 you have an investment advisor that has a
5 responsibility for investing those monies,
6 then that's essentially as far as the
7 examiners are going to go because what we're
8 trying to determine is how much risk is the
9 trust department putting on the bank as far as
10 if the bank was going out and doing something
11 that was violating the trust agreement, they
12 could potentially be sued by somebody, then
13 that threatens the viability of that bank,
14 their capital account. And so, that's -- it's
15 more of an internal routines and controls or
16 compliance on the trust side than it is
17 actually a financial audit on the trust
18 account, if that makes sense.
19 MS. EULER: Right. And so, we have
20 the same sort of situation where nobody is
21 looking at the trustee in terms of is the
22 trustee in compliance with Chapter 436; is
23 that an accurate statement? And maybe, just
24 like with Department of Insurance, and maybe
25 we can craft some legislation that will

1 clarify both of those things.
2 MR. WEAVER: Well, we -- as far as
3 making sure -- like I said, if they have that
4 type of account, then the examiners would look
5 at the actual bank. Are they administering
6 the account in accordance with 436? And
7 that's what I'm saying. If you're talking
8 about in the current problem that you have is
9 to say, well, under the law, the investment
10 advisor is responsible for managing the
11 investments. And so, that's kind of getting
12 on a different topic of discussion, I guess,
13 but whether or not -- if you're going to put
14 100-percent accountability on the trust
15 department of the bank to manage the
16 investments as well as the trust account that
17 it's in compliance with 436, then, to me, then
18 the bank is 100-percent responsible for both
19 sides of that coin, administering the trust in
20 accordance with 436 and managing the
21 investments as a prudent investment. And
22 depending on if you want to fine-tune that and
23 say -- but once you say, well, an investment
24 advisor, according to the law, can manage
25 those investments and invest them, then the

1 bank is largely relying on the expertise of
2 the investment advisor whether or not to
3 determine if those were prudent investments.
4 And so, you would have to look at kind of
5 both sides, the actual trust agreement, look
6 at 436, obviously, and then look at whether or
7 not the bank has a fiduciary responsibility
8 for investing those monies in a prudent
9 manner. I don't know if I'm explaining that
10 clearly or not, but --
11 MR. STALTER: Well, let me press on the
12 issues. Let's go back to when you said you
13 go in and you look at a trust instrument,
14 basically. I mean, when you pull that
15 account, you really don't know whether that's
16 a preneed account or any kind of account. So
17 -- but you go in and you look at what the
18 trustee has administered the account pursuant
19 to a trust agreement.
20 MR. WEAVER: Correct.
21 MR. STALTER: Now, that trust
22 agreement then is incorporate Chapter 436. I
23 mean, do you ever pierce through that document
24 to seek compliance with 436?
25 MR. WEAVER: Oh, yes. I mean, that's

1 part of it is actually looking at the trust
2 agreement itself, looking at what are the
3 conditions -- well, let me back up. I don't
4 know if "conditions" is the best word, but
5 making sure that the trust agreement complies
6 with Chapter 436 is part of that review.
7 MR. STALTER: Then let's clarify for
8 them, what are you looking for in terms --
9 basically, ask that administration; is that
10 correct?
11 MR. WEAVER: Correct. And that's what
12 I'm saying. If the trust agreement basically
13 says that the investment advisor is
14 responsible for managing the investments, then
15 we would look to see is the bank then
16 complying with what the investment advisor is
17 saying -- let's say that they say it's
18 permissible to invest in life-insurance
19 policies.
20 MR. STALTER: Right.
21 MR. WEAVER: Then we would say, okay,
22 you've got life-insurance policies issued by
23 this insurance company. These are whole-life
24 policies, these match up to the balance in the
25 account, whatever the case may be. Or if they

1 said these are CDs that are invested in a
2 financial institution. So, we would look at
3 the actual compliance with the actual trust
4 agreement is kind of the gist of it.
5 MR. STALTER: But what -- the issue
6 here is usually from state to state, you'll
7 see some states actually go -- get in and say
8 what should be in the preneed contract, but
9 you rarely see a state law go into the fact
10 and say what's going to be in the trust
11 agreement. So, when you say you're going to
12 bring in the trustee and make him more
13 responsible, you're really kind of going into
14 a new area in terms of, you know, whose
15 responsibility is it, you know, for compliance
16 with 436. And, frankly, a lot of the banks
17 have no idea about 436. I mean, they'll look
18 at the trust agreement, but they usually don't
19 look past that.
20 MR. WEAVER: Well, they should be
21 familiar with it if they're handling those
22 accounts.
23 MR. STALTER: I agree. Even the OCC
24 says that, but the fact is a lot of banks,
25 even your national banks, aren't aware, and

1 you're going from state to state, you know,
2 who has responsibility, the funeral or the
3 trustee. And so, you have to be very clear
4 about that. I mean -- or else the fact is, I
5 mean, if you shoo that over on the
6 fiduciaries, then they don't have to take
7 these accounts; they'll stop taking those
8 accounts, and we see that already. So, you
9 know, at some point, what's the fiduciary's
10 responsibility with this transaction? And the
11 first thing is, I mean, always, the asset
12 management.
13 MR. WEAVER: Sure.
14 MR. STALTER: And, basically, then it
15 comes down to the key issue in this law right
16 now that we're looking at is that provision
17 about exculpating the trustee when there's an
18 independent investment advisor. And, you
19 know, we're going to get to the point where
20 that -- you know, that was a mistake. But,
21 still, these banks, you know, want and need to
22 have an independent investment advisor
23 available to them, but they need to continue
24 to have responsibility for asset management,
25 and that's really what -- whether it's on the

1 state level or the OCC level, where we come in
2 and take a look at, you know, what's the
3 standard and are you in compliance with that
4 investment standard?
5 MS. GRINSTON: Can we go back to
6 auditing a little bit?
7 MR. STALTER: Well, but, no. But
8 we're, in fact, out here is who are we
9 auditing? Are we going to audit financial
10 institutions or are we auditing --
11 MS. GRINSTON: Right now, we audit the
12 preneed seller's trust account, and I think
13 our audit traditionally is limited to are they
14 trusting appropriately and is the amount in
15 that trust account, does that match what you
16 are statutorily required to have? I think
17 that that's what we're looking at. I don't
18 believe that our audits right now get into the
19 specifics of, you know, trust agreements
20 and/or investment allocations or anything
21 else. I think the audits really probably
22 should have -- well, I shouldn't say audit --
23 examinations, however you term it, have been
24 more traditionally tied to if you're supposed
25 to trust, you know, whatever amount, is that

1 amount in that trust right now, instead of
2 looking at some of the other issues. And I
3 think that that probably is a question that is
4 connected to this, but I think that for right
5 now, we probably need to clarify, if we're
6 going to audit, how often should we be in
7 there auditing, and then a discussion probably
8 for another day is what are we going -- what
9 should be looked at and what standard should
10 you be governed by once you go in there? But
11 I think that the initial question should
12 probably be: How often should someone, a
13 preneed seller now, be audited?
14 MR. OTTO: How many sellers do we have
15 in Missouri?
16 MS. DUNN: I think it's 340 or
17 something like that.
18 MS. GRINSTON: Looking at some of the
19 states, some of the states are doing it, they
20 do audit once every three years, and then once
21 within your first initial year of setup, so if
22 they catch, you know, any problems at that
23 first instance, and then after that, every
24 three years. Some states require a financial
25 report be filed by the entity in the interim

1 so that while there may not be a full audit
2 or examination, there is a financial report
3 coming in for someone to review. Now, I do
4 know that we do that for endowed care. There
5 is an annual report -- cemeteries. There is
6 an annual report that comes in that says
7 what's there, and I'm doing this very
8 generally. Some of the information -- what
9 you spent money on, disbursements from the
10 account so that there's at least something to
11 look at to see if that account is in the red
12 or something of the sort. I don't know if that
13 discussion is added into the auditing
14 discussion because maybe you won't need to
15 audit as often if you have a financial report
16 coming in on a different periodic basis. The
17 question is, again, is once every three years
18 too much? Is it not often enough? Is once
19 every two years too much? And, again, we're
20 talking about preneed sellers. Is it not
21 often enough? John?
22 CHAIRMAN: Go ahead.
23 MR. McCULLOCH: It was my
24 understanding that the insurance companies get
25 audited every three years, so I would think

1 that would be fine, but that may not be true.
2 That is not true? How often do you --
3 MS. BOHRER: Well, financial audits
4 are --
5 MR. STUHLHUTH: Well, and, generally,
6 they do -- we do audit, on average, once every
7 three years. The standard of the law is once
8 -- at least once every five years.
9 MR. McCULLOCH: Okay.
10 MR. STUHLHUTH: So, some insurance
11 companies, depending on the level of financial
12 risk that we assess, might get audited more
13 often than every three years, but -- and some
14 less, but at least once every five years is
15 the standard.
16 MR. McCULLOCH: Okay.
17 MR. MEIERHOFFER: That makes sense.
18 MS. BOHRER: And I'm sorry. When you
19 asked that, I was thinking of something else.
20 UNIDENTIFIED: But they also have to do
21 quarterly reporting -- the insurance companies.
22 MR. STUHLHUTH: Yes. And they also do
23 regular financial reporting.
24 MS. BOHRER: Yeah. They have to
25 provide an annual audited financial report.

1 MR. STUHLHUTH: Yes.
2 MR. McCULLOCH: And you have to do
3 quarterlies, too.
4 MR. STUHLHUTH: And their own quarterly
5 financial reports.
6 MR. McCULLOCH: Yeah, it's constant.
7 But I think for what we're doing, I think you
8 would want to do at least three years for sure
9 because I think if people know that someone is
10 going to be coming and looking, it's going to
11 help out this situation.
12 MR. MEIERHOFFER: That's nine a month
13 based on 340, roughly.
14 MR. McCULLOCH: Yeah. Well, the big
15 question is: How do we afford it? How do we
16 fund it? I mean, those are different issues,
17 but I think the question is, you're just
18 trying to zero in on time here, so --
19 MS. GERSTEIN: If you do it every
20 three years, then what are you going to do, a
21 once-a-year financial report or every six
22 months or --
23 MS. GRINSTON: You could do both.
24 MR. STALTER: Yeah. I mean, really,
25 there's some kind of self-reporting. I mean,

1 some kind of an annual report and then the --
2 MS. DUNN: With your annual report,
3 you could expand that.
4 MR. STALTER: Yeah. Exactly.
5 MS. DUNN: And, Linda, for you, we
6 have not changed this law since 1982, so the
7 fees are set in statute and the fees do not
8 support us. So, we're struggling right now.
9 MS. GERSTEIN: Also, I have a comment.
10 Rich, all the banks in my town know about what
11 to do, and I don't live in a huge town, but
12 we've got five banks.
13 MS. GRINSTON: So, I hear the last
14 suggestion is possibly once every three years.
15 And as I think about it, it may be a little
16 bit different for insurance-company people,
17 but once every three years, but what about a
18 financial report, something that comes in once
19 a year? I know endowed-care cemeteries does
20 it. It basically is -- and it has to be
21 done, I think, by a CPA -- and someone can
22 correct me on that. It's got to be by a CPA
23 or someone else to at least tell us -- Martin
24 is shaking his head very heavy. Yes, sir?
25 MR. VERNON: The trustee fills out

1 half of -- the top of the report, and then
2 the cemetery fills out the bottom half.
3 MS. GRINSTON: It's the trustee?
4 Well, what about that, a financial report that
5 is done by the trustee that just does --
6 CHAIRMAN: Once a year?
7 MS. GRINSTON: Yeah. Once a year,
8 that does the reporting of, you know, assets
9 and disbursements from the account?
10 MR. STALTER: Well, in Nevada, I mean,
11 the trustee just sends in a quarterly report.
12 Just -- actually, you get the transaction
13 report and the asset listing. So, I mean,
14 just -- it kind of papers a file, but it
15 shows you that, you know, there's a trust out
16 there.
17 CHAIRMAN: Representative?
18 REPRESENTATIVE MEADOWS: See, I knew I
19 did my homework, Mr. Chairman. Arizona's law,
20 they have what they call an annual trust
21 report, and I highlighted some of this. I
22 think it's -- and you're more than welcome to
23 look at it. I think it's -- they've got a
24 pretty good lock on what they're doing. It's
25 in everybody's book. It's on -- well, of

1 course, I couldn't tell you the page, but it's
2 highlighted in Arizona. It's on the last page
3 of Arizona. But they have some -- a pretty
4 sound, decent law, I think, but, again, that's
5 up for discussion, but it's on the final page.
6 And it's a yearly trust report. "On or before
7 May 1st, each funeral establishment holding a
8 prearranged funeral-sales endorsement shall
9 file an annual report with the Board," and it
10 just breaks it down to what is required on the
11 report, but that was one of the ones that
12 highlighted when I was going through this
13 doing my homework, but it's just an idea. I
14 throw it out there for discussion.
15 MS. GRINSTON: Looking at Arizona's
16 language, would it be a consensus for right
17 now that we draft something for you to look at
18 that has auditing every three years and a
19 financial report of some sort that is filed or
20 done by the trustee? Does that sound like an
21 okay for us to at least start from?
22 MR. WATKINS: Are we looking at a
23 full-blown audit every three years, or just a
24 review of the accounts to make sure that it's
25 being done properly?

1 MS. GRINSTON: I think that's a good
2 question. I think it's up for discussion,
3 because I can tell you a full-blown audit is
4 going to be incredibly expensive. And so,
5 maybe we need to do -- go back to the other
6 word in 436, an examination, and then maybe --
7 I don't know if you reserve audit for
8 complaint and disciplinary issues as opposed
9 to the examination issues.
10 MS. EULER: Or at the Board's
11 discretion.
12 MS. GRINSTON: Yeah. If that works.
13 CHAIRMAN: Would it suit the committee
14 if we take this kind of under advisement and
15 try to put our minds together and then come
16 back with something and give it to you?
17 Because, I mean, this is a struggle trying to
18 figure this out, and it's going to be the rest
19 of the day.
20 (Several people talking simultaneously.)
21 MS. GRINSTON: I think I got it, and I
22 can narrow it down even with the -- I won't
23 call it an audit, I promise. Scout's honor, I
24 won't. I mean, an exam.
25 (Several people talking simultaneously.)

1 MR. MEIERHOFFER: Well, I think the
2 CPA audit is one of those things that will
3 kill us, so a review, whatever you want to
4 call it, but not a CPA audit.
5 MS. GRINSTON: Joy was just saying that
6 Arizona only requires it for the preceding
7 calendar year, so you don't have to keep
8 reporting over and over again, you're just
9 doing it from since the last reporting date,
10 so -- I think we've got enough to go on to
11 that one. Can we do some of the quicker ones
12 really quickly? #22, allowing or modifying,
13 releasing complaint information to the public.
14 This came up in the discussion. People said
15 they wanted to know how many complaints have
16 been filed against someone and whether they
17 are under investigation. I can tell you
18 Professional Registration right now, and this
19 is binding on the Board, all of that
20 information, unless we take public discipline,
21 is considered closed in the Board's hands.
22 Any discussion on whether more of that
23 complaint information should be open to the
24 public or maintain status quo and keep it
25 closed until something official is done?

1 MR. McCULLOCH: Wait until something
2 official is done so that you're not accusing
3 someone before they get a chance to show that
4 they haven't done anything wrong, or if you
5 find out that they have, then go forward.
6 CHAIRMAN: Linda?
7 MS. BOHRER: And I will just tell you
8 that with the Department of Insurance, we
9 don't release information on investigations of
10 licensed insurance agents during the process
11 of the investigation, but at the conclusion of
12 the investigation, we will, regardless of
13 whether the complaint results in an
14 identification of a violation or not, we do
15 release information on the number of
16 complaints that have been filed against a
17 particular agent, but that total or that tally
18 is not accessible until the investigation is
19 complete.
20 CHAIRMAN: Committee, all in favor of
21 that?
22 MS. DUNN: What are you asking?
23 CHAIRMAN: What we were just saying,
24 that we'll just -- after the investigation,
25 that we will release that information

1 MS. EULER: Maintain the status quo.
2 MS. GRINSTON: Sharon, say it again.
3 MS. EULER: Maintain the status quo,
4 not change what we currently do.
5 MS. GRINSTON: Okay. I hear maintain
6 status quo, not change what we currently do,
7 which means everything is closed until we take
8 final public disciplinary action.
9 CHAIRMAN: All in favor?
10 MR. OTTO: What if we take no public,
11 if we take no action?
12 MS. GRINSTON: Then it's still
13 considered closed.
14 MR. OTTO: Well, that's not what
15 insurance does.
16 MS. BOHRER: Yeah. That's not what we
17 -- I was just relating what we do.
18 MR. OTTO: I think some people are
19 saying --
20 MS. DUNN: I understand.
21 CHAIRMAN: Right. We're saying it
22 wouldn't be released. All right. All in
23 favor, say aye. Nay?
24 (Unanimous voice vote for approval.)
25 MS. GRINSTON: #24, this is something

1 that also came up last session, allowing
2 release of complaint information to providers
3 and sellers that are under contractual
4 relationships. What we've heard from sellers
5 was that if I have a provider that's in
6 trouble in the preneed industry, I am their
7 seller, you should -- I should know if you've
8 got a problem with the provider that's selling
9 for me on the preneed side -- not
10 funeral-director side, but specifically
11 preneed issues. And so, there was a
12 suggestion that they should be able to get
13 complaint information if there's a complaint
14 -- a 436 complaint against a provider that is
15 contracted to work for me. That's not a
16 suggestion, that's just a topic of discussion.
17 MR. OTTO: Well, what about the other
18 way around?
19 MS. GRINSTON: Providers knowing about
20 sellers?
21 MR. OTTO: The buyer wanting to know
22 if the seller is under -- that's where you've
23 got the real complaints.
24 MS. GRINSTON: And, again, it's
25 different from what we normally do. Right

1 now, it is closed until we get to the
2 public-disciplinary stage. And so, no one in
3 that process would know what's happening with
4 the other licensee unless they give us
5 consent. Any thoughts? Any desire to change
6 that current process of keeping it closed
7 until something public happens?
8 MR. McCULLOCH: Again, you don't know
9 if they've done anything wrong. You're just
10 looking into it; right?
11 MS. GRINSTON: That's true. That's
12 true. That's correct.
13 CHAIRMAN: No more comments?
14 MS. RUSSELL: Maybe if there was an
15 allege of money missing or something that --
16 you know, something substantial, that the
17 provider would want to know that a seller is
18 having financial difficulties, something that
19 -- I don't know.
20 MS. DUNN: Sharon, legally, if you
21 release something that's alleged? I mean, I'm
22 in this position, so --
23 MS. EULER: Well, under other
24 provisions of law -- it's not under 436 that
25 it's confidential. That type of information

1 is confidential by State statute.
2 MS. RUSSELL: Okay.
3 MS. EULER: But, you know, there would
4 be no reason why in the private contract
5 between the seller and the provider that they
6 would authorize the other entity access to
7 their records. That could be done by a
8 private contractual relationship. I'm afraid
9 if you release -- you know, if you start
10 saying these people are under contract, we
11 release that information to you, that will
12 open up a box, you know. Licensees will say,
13 well, I have a contract with the provider or I
14 have a contract with the seller; I'm entitled
15 to know, too, you know. Creditors, I have a
16 contract; I need to know. I mean, I think
17 you would just be opening up a box there.
18 MS. RUSSELL: I like the private
19 contract.
20 MR. MAY: I think, to me -- this is
21 Brian with Chapel Hill. One of the most
22 important things would be transparency to the
23 consumers and the public. So, if we are going
24 to start audits, for example, that those audit
25 reports -- if I'm an establishment and I have

1 a seller selling for me, I have to post,
2 share, or show the audit report that I got --
3 you know, the summary that I got. And I
4 think if I'm just a provider selling -- you
5 know, establishment selling for myself, I
6 ought to be sharing that information with
7 consumers, you know, in my establishment. You
8 know, on the cemetery side, we have to tell
9 them, well, here's our endowed-care trust.
10 You can get a report anytime, but I think more
11 transparency to the consumers when they come
12 in and go, "Hey, I've been hearing about this
13 stuff in the industry." "Well, yeah. Here's
14 our audit report right here. Here's who our
15 seller is." I mean, if we're going to do the
16 audits -- the audits now, I'm not talking
17 about the complaints. But if we're going to
18 do the audits, I think they ought to be
19 available to consumers. Just the perception
20 that knowing that someone could come in and
21 look at that, I think, would make more
22 conscious about what goes on at my
23 establishment.
24 MR. STALTER: And I'll take that
25 further, too. I mean, representing the banks,

1 and if we get somebody that says we want to
2 take over our trust, I mean, in states where I
3 can, that's the first thing I go looking for
4 is the audit reports to see, you know, whether
5 they've been compliant or not. So, I mean,
6 that transparency helps the banks, you know.
7 Okay. We feel comfortable with this
8 operation. You can go back and we see, you
9 know, three or four years -- or three or four
10 annual reports and see that they've been
11 compliant over ten years or something of that
12 nature.
13 MR. STUHLHUTH: And that sort of
14 balance is what takes place with insurance.
15 Although our insurance-complaint information
16 isn't public until it's closed, our audit
17 reports of insurance companies, those are open
18 to the public once they're finished.
19 MR. OTTO: I think it might depend to
20 some extent how extensive the reports are. I
21 mean, I certainly would not want
22 consumer-specific information out there.
23 MR. STALTER: I tell you another --
24 typically, I mean, we get a preliminary report
25 and then the operation or the review, they get

1 an opportunity to respond to that. And if
2 there's an objection to it, then, you know,
3 there's a process. So that, you know, you're
4 not seeing a preliminary report, but you're
5 seeing something that, you know, there's an
6 opportunity to go back and forth.
7 MR. OTTO: I'm just saying -- I mean,
8 the devil is the detail.
9 MR. STALTER: Yeah.
10 MR. OTTO: I mean, I wouldn't want to
11 be able -- Mrs. Jones has $10,000 put away for
12 her funeral. It is nobody else's business.
13 MR. STALTER: And another thing, you're
14 looking at more like a compliance audit,
15 procedural audit.
16 MR. OTTO: That's what I'm saying,
17 yeah, how extensive we're talking about here.
18 MR. STALTER: Yeah.
19 MR. MEIERHOFFER: One more point, and
20 that is I don't know who is signing off on
21 this, but very rarely will you find somebody
22 is going to put their stamp on it and say
23 this is all great unless -- even a CPA doing
24 a certified audit, there's ways to couch that,
25 so I don't know what you've got when you're

1 through. I don't know what the State is going
2 to say.
3 MS. GRINSTON: I don't know. Let me
4 backtrack and make sure I understand where
5 we're headed. And, Mike, I apologize if I'm
6 not answering your question, but when we talk
7 about auditing and audit reports, am I hearing
8 that you guys want -- the consensus is to have
9 the audit report or a financial report
10 publicly available? And, Mark, annual reports
11 are public, aren't they?
12 MR. STUHLHUTH: The company's annual
13 financial statements?
14 MS. GRINSTON: Yes.
15 MR. STUHLHUTH: Yes.
16 MS. GRINSTON: They are public
17 insureds. Am I hearing that you want the
18 financial statements publicly available of the
19 audit reports or examination reports publicly
20 available?
21 MR. STALTER: The way I see it is,
22 really, the audit report. And I hate to use
23 the word "audit," but it's just this
24 inspection or this triannual report that's out
25 there. I'm not sure that the annual -- like

1 what the trustees file are made public, but it
2 is this triannual review report that comes out
3 that's made available.
4 MS. GRINSTON: So, what is the
5 consensus, I guess, for the financial report
6 -- well, the examination report that it would
7 be done on -- right now, it's suggested every
8 three years -- of that being available to the
9 public upon request?
10 MS. GERSTEIN: It's not like we're
11 going to post it, you know. Somebody has to
12 want to see it; right?
13 MS. DUNN: Correct. Upon request.
14 MR. OTTO: Again, I guess it also --
15 what will be in that report? What will it
16 consist of?
17 MS. DUNN: We haven't decided yet.
18 MR. OTTO: I know. To say whether I
19 want it -- I can't say whether I want it
20 public or not until I know what it is.
21 MS. GRINSTON: So, do you want to just
22 reserve that question about examination/audit
23 report until we figure out what's in it?
24 MR. OTTO: Yeah.
25 MS. GRINSTON: What about -- let's go

1 back to complaint and investigation
2 information. Complaint information is closed.
3 Examination/audit information we'll look at
4 again once we figure out what's going to be in
5 the report. That was easy enough -- if that
6 makes sense.
7 CHAIRMAN: Everybody agrees?
8 (Unanimous voice vote for approval.)
9 MS. GERSTEIN: Before we go on, Mark,
10 do you have a comment? You look like you
11 might have a suggestion to make for this.
12 MR. STUHLHUTH: Well, it's just that
13 on the insurance side, when we are making exam
14 reports public, there is a process to go
15 through, as Bill suggested, where there is a
16 back-and-forth and an opportunity, if the
17 company didn't like it, for them to sue to
18 have its release blocked. But in terms of
19 reserving until you figure out all the details
20 of what's going to be an exam report, that's
21 not in the statutes for insurance companies.
22 And to try to figure out that level of detail
23 in a statute or even a regulation, you're
24 going to be a long time down the road before
25 you ever get into that question. So, it's --

1 you're almost -- if you're going to put that
2 condition on whether or not you're going to
3 make the exam report public, you're probably
4 never going to get to the question of whether
5 to make the exam report public because you're
6 never going to be able to figure out on a
7 legislative or even on a regulation basis
8 what's going to be in the examine report.
9 MS. GRINSTON: Good point. And I
10 guess since we -- and that's a good question.
11 Since we won't know what's in the exam report
12 till the exam report is done, maybe that
13 should -- we should go back to the primary
14 question of whether that exam report should be
15 available to the public if we're not sure --
16 and if what we're worried about is personally
17 identifiable information, like names, Social
18 Security numbers, things like that, there's a
19 way that we could write that to block that out
20 if that's what you're worried about. But if
21 the thought is that since we don't know what
22 would be in the exam report, maybe it should
23 or should not be open to the public, should we
24 reconsider that question as opposed to tabling
25 it to discuss what the examination report is

1 going to look like. Because Mark raises a
2 good point, we won't know what's in that
3 report until --
4 MR. STUHLHUTH: Because it's going to
5 depend.
6 MS. GRINSTON: Yeah.
7 MS. RUSSELL: Mark, they've never
8 indicated in any financial exam that you've
9 ever done on an insurance company individual's
10 names or any of that magnitude?
11 MR. STUHLHUTH: Except for maybe the
12 officers of the insurance company.
13 MS. RUSSELL: Exactly. The officers or
14 something, but not individual consumers?
15 MR. STUHLHUTH: That's correct, because
16 there's a lot of laws that are already in
17 place that we can't, even as a governmental
18 agency --
19 MS. RUSSELL: Right.
20 MR. STUHLHUTH: -- even though we're
21 brought into that information, we can't
22 disclose that.
23 MS. RUSSELL: Exactly.
24 MR. STUHLHUTH: So, that's -- I don't
25 think that's going to be much of an issue in

1 the examine report. Now, I know -- I don't
2 know what the public policy is behind it, but
3 I do know that in terms of bank reports, those
4 are not public.
5 MR. WEAVER: That's correct.
6 MR. STUHLHUTH: And I'm not sure what
7 the public policy is behind that, but I know
8 for insurance companies, they are public once
9 they're final and there's a due process for
10 the insurance company before that report is
11 made public.
12 MS. GERSTEIN: Did you say banks are
13 not public?
14 MR. WEAVER: The bank-examination
15 reports are not public documents, no.
16 MS. GERSTEIN: What is public from a
17 bank?
18 MR. WEAVER: Well, they actually
19 publish what's considered a report of
20 condition and income quarterly, which is a
21 balance sheet and an income statement, and
22 there is some other supplemental information.
23 But as far as the actual examination report,
24 whether it's done by the Division of Finance,
25 the FDIC, or if you're a national chartered

1 bank, it's the OCC, those examination reports
2 are not public documents; they're protected by
3 law. There's a lot of personal confidential
4 information in there; for example, a borrower
5 and their indebtedness to a bank, things of
6 that nature, or specific account information.
7 And so, the logic behind not making it a
8 public document is that let's say that if you
9 examine the bank and there were problems in
10 that institution, if you put it out there in
11 the public, then, obviously, people would be
12 afraid of their deposits and there could be a
13 run on the bank and cause the bank to fail.
14 And so, that's kind of the main logic behind
15 why there are these confidentiality statutes
16 that prohibit public disclosure of that
17 information.
18 CHAIRMAN: Let's table this and
19 everybody give it some thought, and we'll
20 bring it back up at our next meeting. How's
21 that? Does it suit everybody? Because it's
22 technical, and we'll see if we can find some
23 ideas. Kim, do you want to do #15? Oh. Oh.
24 Bill? Billy-Bob.
25 MR. BAKER: Yeah. Bob Baker. What

1 we're really talking about here is like a Good
2 Housekeeping seal of approval. And I think
3 for the public to take a look at each
4 individual funeral home, maybe you could take
5 a look at something like -- same thing with
6 your license -- as of such-and-such a date,
7 XYZ Funeral Home has met all the requirements
8 of the examination for the preneed accounts,
9 use a date, and go on from there.
10 CHAIRMAN: That's a good fix.
11 MR. BAKER: And the other thing, too,
12 we're talking about the three-year period, I'd
13 like to see us maybe discuss something on a
14 weighted basis. If we've got 100 funeral
15 homes, one funeral home sells 15 percent of
16 the preneed, maybe we want to take a look at
17 the money not getting out the door quite as
18 fast as -- get back to whoever made the
19 mom-and-pop comment earlier, that may sell
20 five in a year. So, that might be something
21 to take a look at, as well.
22 MS. GRINSTON: Can I make a suggestion
23 along with what the chairman just said? Why
24 don't we take that back and really think,
25 maybe -- go back to our people and everything

1 and really relook at this auditing deal,
2 because, again, we've been given this
3 opportunity. We don't want to do anything too
4 hasty, and I don't suspect that we're going to
5 get this hashed out today because it really is
6 very complex. And maybe talk to your
7 financial people or your trustees to see
8 what's possible and what's recommended, and
9 maybe pull the consensus, as well as look at
10 other states. I think we have a disk with a
11 lot of other states on it.
12 CHAIRMAN: But, Bob, that was a good
13 comment. We've got that written down, so --
14 MS. GRINSTON: I am going to
15 temporarily put aside complaints and
16 discipline because I think the chairman said
17 we're going to wrap up early because I think
18 you guys have done a lot of hard work, and
19 this is so much fun. But I just have -- and
20 we're maybe getting tired. Can we look at
21 #15? This is a completely different subject.
22 #15, very quickly, because a lot of you know
23 the history and the issue on this for the
24 Board. There has been a continuing question
25 on whether trust accounts are required for all

1 preneed sellers. Right now, the way 436 is
2 written, it is written so that trust accounts
3 are required for everyone, even people who are
4 doing insurance-funded plans only. Well, even
5 if you're doing an insurance-funded plan only.
6 I think it's a good idea to discuss whether we
7 need to clarify that trust accounts are truly
8 required for everybody, or if people who are
9 doing 100-percent insurance-funded plans are
10 still required to have a trust to be
11 registered as a seller. This came up because
12 someone had filed a seller's application with
13 the Board and specifically asked the question,
14 "Do I need a trust?" We were asked to address
15 that specific question, we did, and it appears
16 436 doesn't contain any allowances.
17 CHAIRMAN: Darlene?
18 MS. RUSSELL: It absolutely makes no
19 sense to have to have a trust when there are
20 no funds that are going to be going in it.
21 It's just not good business practice. Why
22 would you have someone pay fees to a trustee
23 to maintain a trust that is -- that could
24 potentially never have a dime in it. If
25 you're writing insurance-funded, you know,

1 that is handled through the insurance; you
2 don't need the trust. You're, basically,
3 having a dummy trust because this is the way
4 the law is set up at this time. I, for one,
5 think it is something that definitely needs to
6 be changed.
7 CHAIRMAN: What about the rest of you?
8 John?
9 MR. McCULLOCH: John McCulloch. I
10 don't think that was ever the intent when the
11 folks wrote this, obviously. And I agree with
12 Darlene that it certainly doesn't make any
13 sense at all to require someone that's just
14 going to use strictly insurance funding or
15 joint accounts, for example, to have to have a
16 trust.
17 CHAIRMAN: Okay. Nobody wants it.
18 MS. EULER: One concern that I have,
19 and we talked about this before, is if you are
20 registered as a preneed seller, you can come
21 and tell the Board you're only going to sell
22 life insurance, but that registration gives
23 you the authority to do things other than just
24 life insurance that do cash accounts. And my
25 suggestion would be that maybe if we get

1 rule-making authority, we can have different
2 categories of a preneed-seller registration so
3 you know -- you either have an insurance only
4 or you have a trust only --
5 MS. CLARKSTON: That gets us into a
6 little bit of trouble. If we're writing it,
7 we need to have that specified in statute.
8 We've run into some problems before with that,
9 trying to establish a category within the rule
10 without having real writing authority for it.
11 MS. EULER: Okay. Well, I would
12 suggest that we keep that in mind because,
13 that way, it clarifies what kind of -- how you
14 plan to do your business.
15 MS. GRINSTON: In light of your
16 comment, if it is the pleasure to say if
17 you're doing 100-percent insurance-funded
18 contracts, you don't need a trust account,
19 should we also add language that says no
20 person who has identified themselves as an
21 insurance-funded-only preneed seller shall be
22 authorized to, basically, accept, you know,
23 cash or sell anything other than an
24 insurance-funded preneed plan, because that --
25 I mean, it will at least give us something

1 else to look at.
2 MS. RUSSELL: Or joint account, yeah.
3 MS. GRINSTON: Yeah.
4 CHAIRMAN: Yeah.
5 MS. RUSSELL: That's good, too.
6 MS. GRINSTON: Because that's #16;
7 that's next.
8 CHAIRMAN: All right. So, everybody
9 agrees this needs to be changed?
10 (Number of members answer yes.)
11 MS. GRINSTON: Got it. Got the change.
12 CHAIRMAN: Thank you.
13 MS. GRINSTON: Now, it's, I believe,
14 over to joint accounts, which is #16. I think
15 it might be a good wrap-up topic for us.
16 Joint accounts for providers, right now that
17 section reads -- and this is something that, I
18 think, when I talked to a lot of people at
19 436, sends a lot of us back to read the
20 statute again. Right now, the statute says
21 that providers do joint accounts. It doesn't
22 say anything about sellers doing joint
23 accounts. And so, the question is: Should
24 joint accounts be limited to providers only,
25 or should joint accounts be limited to sellers

1 only? Should joint accounts be allowable for
2 both providers and sellers under 436?
3 CHAIRMAN: Todd?
4 MR. MAHN: Weren't we going to do away
5 with the provider word all together?
6 MS. GRINSTON: That's a good point.
7 MR. MAHN: And so, if that's the case,
8 that answers that, and then everybody is going
9 to be a seller, so they'll all have to be
10 able to do joint accounts; right?
11 MS. GRINSTON: But what about funeral
12 establishments? Even if we get rid of the
13 provider license, would we allow a funeral
14 establishment to still do a joint account with
15 someone without that preneed-seller overhead,
16 if you will?
17 MR. MAHN: Preneed-seller overhead?
18 MS. DUNN: Okay. If you want to be an
19 establishment only, and you want to use a
20 third-party seller --
21 MR. MAHN: Okay.
22 MS. DUNN: -- would that be a good
23 example?
24 MS. EULER: You only want to do joint
25 accounts, you're not going to have a trust,

1 you're not going to sell life insurance.
2 MS. DUNN: Well, I know. But you're --
3 MS. EULER: You're only going to do
4 joint accounts.
5 MS. DUNN: -- an establishment and now
6 there is no provider. You're an establishment
7 only --
8 MS. EULER: Right.
9 MS. DUNN: -- and you're going to do
10 joint accounts.
11 MS. GRINSTON: Yeah.
12 MR. MAHN: Sure.
13 MS. GRINSTON: So, allow -- for the
14 joint account, should that be an option for
15 sellers and perhaps now funeral establishments
16 who just want to do it directly with their
17 consumers?
18 MR. MAHN: Absolutely. Why not?
19 MS. GRINSTON: Okay.
20 CHAIRMAN: Go ahead.
21 MS. RUSSELL: Because the seller has
22 reporting requirements.
23 MR. MAHN: Well, so does the
24 establishment.
25 MR. OTTO: No. Because we're taking

1 that -- see, that's the thing. That's why I
2 mentioned before about eliminating the
3 provider. We've got to be careful about how
4 we word that.
5 MR. MAHN: It's not eliminating the
6 provider, it's just going in the name of
7 establishment.
8 MR. OTTO: But if I'm just -- if I'm a
9 funeral home and I do not have a seller's
10 registration, and I'm allowed to do joint
11 accounts without a seller's registration, and
12 we don't have providers anymore, what
13 authority does this Board have to come in and
14 audit to make sure I'm depositing that money?
15 MS. GRINSTON: Funeral establishments.
16 And I think the thought was that the funeral
17 establishment would also do reporting
18 requirements the same as a provider would. It
19 really would just be changing the name, Don, I
20 think, as -- instead of saying "provider,"
21 you'll say "funeral establishment."
22 (Several people talking simultaneously.)
23 MS. EULER: I have a question that may
24 help, and I'm going to drag Rich into this
25 again. You saw this one coming. Is there a

1 need for the Board to regulate joint accounts
2 under 436 in terms of the account part or is
3 that covered by the bank, because the accounts
4 would be in a bank. Would the Department of
5 Finance's regulation of banks cover the
6 financial part of the joint accounts?
7 MR. WEAVER: Well, we wouldn't
8 necessarily look specifically at individual
9 accounts unless it was a material part of the
10 overall business. So, I mean, if it's a small
11 account, we're not even going to look at that,
12 if that makes any sense. I mean, it would be
13 kind of -- is it material or not to the
14 overall scope of the business?
15 MS. EULER: So, if you've got a $10,000
16 account with Bob's Funeral Home and Ida Mae,
17 that's not something the bank examiners are
18 going to pull?
19 MR. WEAVER: That's correct.
20 MS. EULER: Okay.
21 MR. OTTO: Also, I think, the
22 questions are, with the joint account, you
23 have, what, five days -- three days to put the
24 money into the account after the funeral home
25 receives it? Who is checking on to see if

1 that's happening? You're supposed to deposit
2 100 percent. There's no 20-percent retainage.
3 The bank examiners aren't going to, you know --
4 MS. GRINSTON: Well, wouldn't the
5 Board still be looking at those issues? The
6 question is just what we call you when we look
7 at it.
8 MR. OTTO: But what if I'm a -- I
9 mean, here's my problem. If 436 is funeral --
10 I mean, how are we going to do this if we
11 eliminate the provider term, and 436 says
12 funeral establishments are supposed to provide
13 a report every year, or is it funeral
14 establishments that are --
15 MS. GRINSTON: Or is it funeral
16 establishment with joint accounts?
17 MS. DUNN: And then you will have to
18 change 333.
19 MR. OTTO: So, we're going to have
20 sellers and then we're going to have funeral
21 establishments with joint accounts? Why not
22 just call everybody -- why don't you call them
23 a --
24 MS. EULER: Well, and then the
25 question: If you're doing joint accounts, do

1 you need to be registered as a seller?
2 MS. GRINSTON: Yeah.
3 MS. EULER: That would solve that whole
4 reporting problem.
5 MR. MAHN: Absolutely.
6 MR. OTTO: I agree, but that's not
7 what we just said here a second ago. It was
8 just --
9 MS. EULER: That was the question.
10 MR. MAHN: Are we eliminating provider?
11 MR. OTTO: Okay.
12 MS. GRINSTON: I actually think it's
13 two different topics. You're talking about
14 the provider, and I think that the question is
15 if there's a joint account, if you want to say
16 -- since I personally think -- this is just
17 from what we've heard at the Board office --
18 if we address the trust-account issue, that
19 funeral establishments won't have a problem
20 because most of them have sellers
21 registrations anyway if we allow that to
22 happen in that format. So, I think the
23 question is, if I'm hearing you correctly,
24 Don, whether, if you're doing a joint account,
25 you have to get a seller's registration, but

1 we have already addressed that you won't
2 necessarily have to do a trust to get that
3 registration. Is that what I'm hearing?
4 MS. EULER: Right.
5 MR. OTTO: But there was a comment
6 made that you should not have to be a seller
7 if you just do joint accounts. That comment
8 was made by someone.
9 MR. STALTER: Well, I heard that, too.
10 That's what I -- I interpreted it the same
11 way, so, basically, even if you have joint
12 accounts, you still have to have a seller's
13 license?
14 MS. GRINSTON: Yes. If that's what
15 you're looking at, yes. Yeah.
16 MR. MAHN: Well, we should have a
17 seller's license for everything. Did I make
18 that comment that you didn't have to have a
19 seller's license?
20 MS. EULER: If you going through
21 preneed --
22 MR. MAHN: Well, just say it was me
23 then, but if it was me, then --
24 MR. WATKINS: You still have to have a
25 license no matter what the funding --

1 MR. MAHN: Yeah. Have a license or
2 should have a license or did have a license.
3 I don't know.
4 MS. GRINSTON: Okay. That makes sense.
5 CHAIRMAN: And then when you report,
6 you'll explain what you do.
7 MR. MAHN: But, yeah, I think
8 everybody should have a license.
9 MS. DUNN: Now, someone did make a
10 point somewhere, because if you eliminate
11 provider and you're going to have an
12 establishment file an annual report based on
13 what your provider used to do, you're going to
14 have to amend your 333 or your 333 regulations.
15 MR. WATKINS: But if we make them have
16 a seller's license, they're going to file
17 under 436.
18 MS. DUNN: Right.
19 MR. OTTO: What if I'm a provider and
20 I only do at-need, I don't do any preneed?
21 MS. EULER: Then you don't need to
22 submit --
23 MR. MAHN: Then don't do it.
24 MR. OTTO: Okay. Then we're going to
25 have to now have a category -- we're going to

1 have to have another category. We're going to
2 have to have funeral homes that sell preneed
3 and funeral homes that don't sell preneed.
4 I'm still getting back to why we're
5 eliminating the term "provider."
6 MR. MAHN: Why not just go on the
7 pretense that everybody sells it and if you
8 decide you don't want to sell any at yours,
9 just don't sell it.
10 MS. GRINSTON: Well, a funeral home
11 that sells preneed should have a seller's
12 license.
13 MR. OTTO: But I have a funeral home,
14 I use Missouri Funeral Directors or somebody
15 else; okay?
16 MS. GRINSTON: Right.
17 MR. OTTO: Currently, as a provider, I
18 file a current report; okay?
19 MS. GRINSTON: Yes.
20 MS. DUNN: Yes.
21 MR. OTTO: What was said earlier is
22 we're still going to have to file that report,
23 but we're not going to have to be called a
24 provider anymore.
25 MS. GRINSTON: Let me read what's in

1 the provider report. The business name or
2 names of the provider and its address, the
3 name and address of the seller with whom it
4 has entered into a written agreement, the name
5 and address of the custodian of its books and
6 records, and corroborate with the State Board
7 in any investigation, and then on a sale. And
8 so, if the concern is how to get the
9 information on what their business name and
10 address is, who they're contracted with as a
11 seller, where their books and records are, I
12 don't know. Do we need to keep a provider
13 designation so we can get that information?
14 MR. OTTO: I'm saying 436 says funeral
15 establishments will provide the following
16 report every year. That means every funeral
17 establishment is going to provide a report
18 every year, not just the ones who do any
19 business with preneed.
20 MS. GRINSTON: Well, could we say
21 funeral establishments that are --
22 MR. OTTO: -- doing preened, which is,
23 of course, what a provider is.
24 MS. EULER: Well, the information
25 contained in this report would be all captured

1 elsewhere under what we're talking about, the
2 business name and the provider and the
3 addresses from which he engages in the
4 practice of his business. It will either be a
5 funeral establishment or it will have a
6 separate provider license, so that's covered.
7 The name and address of each seller with whom
8 it has entered into a written agreement since
9 last filing a report, if the funeral home is
10 acting as an agent of the seller and selling
11 those contracts, under our new scheme, they
12 will have a license, so that will be covered.
13 The name and address of the custodian of books
14 and records containing information about
15 preneed contracts, sales, and services, that's
16 already covered by 333.
17 MR. OTTO: Well, I just don't want us
18 to create a situation where I'm a funeral
19 home, I don't sell any preneed, but because of
20 the way we worded this, I've got to file a
21 report every year.
22 MS. EULER: No.
23 MR. OTTO: Well, that's --
24 MS. GRINSTON: No. And I don't think
25 that's anyone's intention. I think that the

1 intention, from my understanding of the
2 discussion earlier, was that that report, if
3 it comes in, would come in from funeral
4 establishments filing preneed. But what I'm
5 hearing you say, Don, is that you probably
6 think that for ease in reporting purposes, we
7 should go back to the two-license system?
8 MR. OTTO: Well, I don't see -- what
9 we're going to have is we're going to have now
10 -- we're going to have three -- well,
11 currently, we have three categories; funeral
12 establishments, providers, and sellers. And
13 under our new system, we're going to have
14 funeral establishments and funeral
15 establishments that do preneed and sellers.
16 (Several people talking simultaneously.)
17 MS. GRINSTON: What we're really doing,
18 though, is just -- we're renaming the class.
19 So, what you're saying is keep the name
20 preneed provider.
21 MR. OTTO: I don't see any reason why
22 -- I mean, I have not seen -- maybe there's a
23 good one, but I haven't heard a good argument
24 why we're eliminating the term "provider."
25 MS. BOHRER: Being an outsider and

1 listening to this, does the funeral director
2 annually file something to maintain his
3 license? I mean, do you have to file any
4 kind of paperwork to renew your license every
5 year?
6 MS. DUNN: A funeral director does.
7 Any establishment.
8 MS. BOHRER: A funeral director does?
9 MS. DUNN: Uh-huh.
10 MS. BOHRER: Couldn't you just
11 incorporate --
12 MR. WATKINS: A preneed provider does?
13 MS. BOHRER: Couldn't you just
14 incorporate something into the
15 funeral-director's license, another three
16 questions that says if you're involved with
17 the sale of preneed in any way, answer those
18 three questions and incorporate it into the
19 annual document that every funeral director
20 files anyway?
21 MR. OTTO: I'm just -- I'm getting to
22 the point is right now we're required to have
23 provider-seller agreements, says the statute.
24 Every provider and ever seller must have a
25 contract. Well, now, we're going to have to

1 go through the statute and everywhere where it
2 says "provider," we're going to have to say
3 "every seller and funeral establishment that
4 does preneed on behalf of the third-party
5 seller." So, we've got a term right now
6 that's "provider" that's one nice word. We're
7 going to have to, at the very least, replace
8 that now with a sentence that says "funeral
9 establishments that sell preneed, but aren't
10 sellers." And no one -- I have not heard an
11 explanation about why we need to get rid of
12 the term "provider."
13 MS. DUNN: It was just something that
14 we had thought that we were duplicating --
15 most funeral establishments are providers.
16 MR. OTTO: Well, half. About half.
17 MS. DUNN: So, we were trying to
18 eliminate something that we thought we were --
19 MR. McCULLOCH: Did it have something
20 to do with costs? We were trying to save
21 that money to fund funeral --
22 MS. GRINSTON: Well, also for
23 disciplinary purposes, right now, under the
24 current scheme, to do a -- to discipline
25 someone, a funeral establishment that has a

1 preneed license, you have to establish -- you
2 have to go through the 436 process for their
3 preneed license and then go through the 333
4 process for their establishment license, so
5 that for -- when you're doing the disciplinary
6 vein, let's say you've got the exact same
7 funeral establishment. Let's say I -- I'm
8 just going to use this as an example. I know
9 that you've been stealing money from your
10 preneed account. To do anything on the 333
11 side, we've got to go through this whole
12 circle of 436.
13 MR. OTTO: But why would you want the
14 option of telling a funeral home, you can't do
15 -- we're not going to take away your
16 funeral-home license, but we don't want you
17 being a provider anymore?
18 MS. GRINSTON: I don't think that that
19 option is off the table, but I think that
20 where we are now is we can't touch a
21 funeral-establishment license until we go
22 through the 436 circle.
23 MR. OTTO: Well, that's the other
24 problem we dealt with, our screwy regulatory
25 thing. That has nothing to do with whether

1 you call a funeral home a provider. Again,
2 I'm willing to be persuaded otherwise, but I
3 see no reason to get rid of the term
4 "provider."
5 CHAIRMAN: Darlene?
6 MS. RUSSELL: I think it's going to
7 save the funeral homes money, if I'm
8 understanding correctly, because you're not
9 going to have to file -- they're not going to
10 have to file an annual provider report. It's
11 just going to all be encompassed in their
12 establishment on their provider. There's no
13 longer going to be a provider report.
14 MR. McCULLOCH: Well, why would you
15 want a funeral home not to be a provider?
16 You want to take care of those --
17 MR. OTTO: We just said that the
18 funeral homes that are doing preneed on behalf
19 of a third-party seller are still going to
20 have to do some kind of reporting.
21 MS. EULER: And in my experience with
22 the Board, I have never known the Board to
23 simply revoke a provider license and not seek
24 discipline against the establishment license,
25 as well.

1 MR. OTTO: But I'm saying -- I mean, I
2 think I'm making a mountain out of a mole
3 hill. Let's get moving on. But I just
4 think, I see no reason to remove the term
5 "provider," because now we're going to have to
6 replace that with a term called "a funeral
7 establishment that does preneed for a third
8 party seller."
9 MS. EULER: We may still use the term,
10 we just won't use the license. We may still
11 use the term, but just not have the license.
12 UNIDENTIFIED: What's 30 bucks more?
13 CHAIRMAN: I think we're fine to go
14 back the other way. I mean, nothing is
15 written in stone.
16 MS. EULER: Why don't you let us play
17 with the language and see what we can come up
18 with, because we can still use the word
19 "provider" and define it to mean a funeral
20 establishment or someone holding a license
21 from the Board without having to have license.
22 CHAIRMAN: Okay. Bill?
23 MR. STALTER: Let's go back --
24 remember the cemeteries. The cemeteries, you
25 don't -- the Board didn't license the

1 cemeteries, did they? They're just a
2 registrant provider.
3 MS. GRINSTON: Correct.
4 MR. STALTER: So, I mean, that's one
5 of those categories where you don't catch them
6 till 333.
7 MS. GRINSTON: Well, assuming that we
8 visit this question on eliminating the
9 preneed-provider classification and license,
10 on joint accounts, though, how do we still
11 want to handle joint accounts? Do we want to
12 make -- there are two questions: If I have a
13 joint account, do I need a seller's
14 registration or should I need a seller's
15 registration if I'm doing joint accounts only?
16 We have addressed the trust issue.
17 (Several people talking simultaneously.)
18 CHAIRMAN: All in favor of that one?
19 (Unanimous voice vote for approval.)
20 MS. GRINSTON: Good. And then I think
21 we can tinker with some language and then
22 revisit Don's question, put that on the
23 revisit list, on whether the removal of the
24 preneed-provider designation is a good idea in
25 light of how it's going to look in the

1 language. That's what I have. Mr. Chairman,
2 I think it's 4:30.
3 CHAIRMAN: Yes. My mediator here has
4 informed me it's time to quit. So, Mr. Baker?
5 MR. BAKER: Bob Baker again. One final
6 comment. We license establishments A, B, C,
7 or D. Why not do the same thing with preneed?
8 You're licensed to sell trusts, joint
9 accounts, insurance, and whatever else you
10 want to expand it. You've got one license
11 that you opt to participate in the different
12 forms of funding.
13 (Several people talking simultaneously.)
14 CHAIRMAN: Folks, before we adjourn, I
15 really want you to know that -- I mean,
16 through the last few months, which has been
17 really tough on our staff, with Becky Dunn and
18 Kim Grinston and Lori Hayes and all the staff
19 in the office have worked diligently day and
20 night. And, I mean, I have never seen a
21 group of people so dedicated to a disaster
22 that we have had. And, I mean -- and it's a
23 disaster. But I want to brag on those.
24 Connie Clarkston is excellent at what she does
25 on legislation. I mean, she tweaks

1 everything, she's typed everything that we
2 have said today. David Broeker is a great
3 department head -- division head. We've got
4 to get this lingo down. But, anyway, these
5 people are tremendous at what they do, and you
6 don't realize it. And you all for attending
7 and spending your time and looking at the --
8 you know, all of the literature that was sent
9 to you. You all are tremendous or you
10 wouldn't be here. And it's going to make a
11 difference, and it's going to make a change,
12 and you're doing the right thing for the
13 consumers. And our consumer people here,
14 Norma and Jo, I just really appreciate both of
15 you. And I cannot brag about Senator -- he's
16 going to be a senator one of these days --
17 Representative Meadows. I've elevated him,
18 but, anyway, they've all worked so hard and
19 you don't know that. You don't see that
20 behind the scenes. And the Board members are
21 excellent and we're very lucky to have a
22 profession that's diligent and the group of
23 people that are here, you know, participating
24 in it, and I want to thank each and every one
25 of you, so -- meeting adjourned.

1 (Off the record)

I, Gayle E. Sims, a Certified Court Reporter and Notary Public, within and for the County of Boone, in the State of Missouri, do hereby certify that the foregoing transcript constitutes a full, true and correct record of said proceedings that were held on July 8, 2008; that said proceedings were recorded by me and afterwards transcribed under my direct supervision.

Given at my office this 28th day of July, 2008.

GAYLE E. SIMS, CCR
Notary Public for Boone County

My Commission Expires: 09-14-08

GAYLE E. SIMS
Notary Public - Notary Seal
State of Missouri
County of Boone
My Commission Exp. 09/14/2008