

OPEN MEETING MINUTES
Missouri State Board of Embalmers
and Funeral Directors

October 20, 2009
Division of Professional Registration
3605 Missouri Boulevard
Jefferson City, Missouri

Tuesday, October 20, 2009 8:25a.m.

The meeting of the Missouri State Board of Embalmers and Funeral Directors was called to order by Martin Vernon, Chairman, at 8:25 a.m. on Tuesday, October 20, 2009, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri.

Roll Call

Board Members Present

Martin Vernon, Chairman
Gary Fraker, Vice-Chairman
Todd Mahn, Secretary
James Reinhard, Member
John McCulloch, Member
Joy Gerstein, Public Member

Staff Present

Becky Dunn, Executive Director
Lori Hayes, Inspector
Pam Schnieders, Administrative Assistant
Earl Kraus, Senior Legal Counsel
Sharon Euler, Assistant Attorney General
Don Eggen, Chief Investigator

Approval of Agenda

Motion was made by Gary Fraker and seconded by Todd Mahn to approve the open agenda. Motion carried with Gary Fraker, Todd Mahn, James Reinhard, John McCulloch and Joy Gerstein voting in favor with no votes in opposition.

Closed Meeting

Motion was made by Gary Fraker and seconded by Todd Mahn to move into closed session and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from the closed meeting be closed pursuant to Section 610.021 Subsection (14) and 324.001.8 RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure; Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications

between this agency and its attorney; Section 610.021 Subsection (1) RSMo and 324.001.9 RSMo for deliberation on discipline; Section 610.021 Subsection (3) RSMo discussing hiring, firing, disciplining or promoting an employee of this agency; Section 610.021 Subsection (13) RSMo for making performance ratings pertaining to individual employees; Section 610.021 Subsection (7) RSMo for reviewing testing and examination materials; Section 610.021 Subsection (14) and Section 620.010.14 Subsection (5) RSMo for proceedings required pursuant to a disciplinary order concerning medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or treatment of specific licensees; and Subsection of 610.021 RSMo for the purpose of reviewing and approving the closed minutes of previous meetings. Motion carried with Gary Fraker, Todd Mahn, James Reinhard, John McCulloch and Joy Gerstein voting in favor with no votes in opposition.

Tuesday, October 20, 2009 11:00 a.m.

The meeting of the Missouri State Board of Embalmers and Funeral Directors reconvened in open session at approximately 11:00 a.m. on Tuesday, October 20, 2009. The meeting was called to order by Martin Vernon, Chairman, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri.

Roll Call

Board Members Present

Martin Vernon, Chairman
Gary Fraker, Vice-Chairman
Todd Mahn, Secretary
James Reinhard, Member
John McCulloch, Member
Joy Gerstein, Public Member

Staff Present

Becky Dunn, Executive Director
Lori Hayes, Inspector
Pam Schnieders, Administrative Assistant
Earl Kraus, Senior Legal Counsel
Sharon Euler, Assistant Attorney General
Don Eggen, Chief Investigator
Margaret Landwehr, Assistant Attorney General

Public Present

Darlene Russell, CFL Preneed
Chris Moody, Lobbyist on behalf of SCI
Farrell Gernswyn, self
Barbara Germann, self and Representative Timothy Meadows
Leesa Wimberley, self
Gerry DeLong, self
Don Lakin, Lakin Funeral Home
Kristin Underwood, Consumer Protection of the Attorney General's Office

Darla Fox, self
Joe Schlotzhaver, Consumer Protection of the Attorney General's Office
Margaret Landwehr, AG Office
Greg Bruce, self
Brad Speak, Speaks Funeral Home and CFA
Amy Battagler, Stewart Enterprise

**Buescher Memorial Home & Barbara Buescher Disciplinary Hearing –
11:00 a.m.**

Note: John McCulloch abstained from discussion, deliberation and votes on this portion of the closed meeting.

The Board held a Disciplinary Hearing at 11:00 a.m. for Buescher Memorial Home and Barbara Buescher. Barbara Buescher was not present and no one appeared on her behalf. Margaret Landwehr, Assistant Attorney General represented the State of Missouri and Earl Kraus, Senior Legal Counsel, served as the Board's legal advisor. Testifying as witnesses on behalf of the Board were; Becky Dunn, Barbara Vossen Bruce German, Gregory William Bruce, Leesa Gayle Dooley Wimberley and Lori Hayes. Board members present were Martin Vernon, Gary Fraker, Todd Mahn, James Reinhard, and Joy Gerstein. John McCulloch abstained from the discussion and vote. At the conclusion of the Disciplinary Hearing the Board held its deliberation in Closed Session.

Closed Meeting

Motion was made by Todd Mahn and seconded by Gary Fraker to move into closed session and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from the closed meeting be closed pursuant to Section 610.021 Subsection (14) and 324.001.8 RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure; Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney; Section 610.021 Subsection (1) RSMo and 324.001.9 RSMo for deliberation on discipline; Section 610.021 Subsection (3) RSMo discussing hiring, firing, disciplining or promoting an employee of this agency; Section 610.021 Subsection (13) RSMo for making performance ratings pertaining to individual employees; Section 610.021 Subsection (7) RSMo for reviewing testing and examination materials; Section 610.021 Subsection (14) and Section 620.010.14 Subsection (5) RSMo for proceedings required pursuant to a disciplinary order concerning medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or treatment of specific licensees; and Subsection of 610.021 RSMo for the purpose of reviewing and approving the closed minutes of previous meetings. Motion carried with Gary Fraker, Todd Mahn, James Reinhard, John McCulloch and Joy Gerstein voting in favor with no votes in opposition.

Recess

The Board recessed for lunch at 12:00 p.m. and returned to go into Open Session at 1:00 p.m.

Tuesday, October 20, 2009 1:15 p.m.

Roll Call

Board Members Present

Martin Vernon, Chairman
Gary Fraker, Vice-Chairman
Todd Mahn, Secretary
James Reinhard, Member
John McCulloch, Member
Joy Gerstein, Public Member

Staff Present

Becky Dunn, Executive Director
Lori Hayes, Inspector
Pam Schnieders, Administrative Assistant
Earl Kraus, Senior Legal Counsel
Sharon Euler, Assistant Attorney General
Connie Clarkston, Director of Budget & Legislation
Don Eggen, Chief Investigator

Public Present

Bill Statler, Preneed Resource Company
Amy Battagler, Stewart Enterprise
Don Lakin, Lakin Funeral Home
Darlene Russell, CFL Preneed
Chris Moody, Lobbyist on behalf of SCI
Don Otto, MFDEA/MFT
Mark Warren, MPNC
Bob Baker, MFDEA/MFT
Brad Speaks, Speaks Funeral Home/CFA
Rep. Timothy Meadows, Missouri House of Representatives
Kevin O'Sullivan, O'Sullivan Muckle
Ellen O'Sullivan, O'Sullivan Muckle
Willie Stone, DHSS-BUR
Ivra Cross, DHSS-BUR
J. Scott Lindley, CFA/Lindley Funeral Home

A court reporter was present and recorded the discussion. The transcript is a permanent part of the record and as such a summary of the discussion is not made a part of the official minutes of this meeting.

Future Meeting Dates

The December 8-9, 2009 meeting scheduled to be held in Kansas City at the Intercontinental, with open session tentatively scheduled to be held on December 9th.

Senate Bill 1 Implementation Process

A motion was made by John McCulloch and seconded by Gary Fraker to have Emergency Rule titled "Filing of Notice of Intent to Apply" amended and refiled, allowing preneed agents who had filed a Notice of Intent Application, until March 31, 2010 to pass the Missouri law examination. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, James Reinhard and Joy Gerstein voting in favor with no votes in opposition.

A motion was made by John McCulloch and seconded by Gary Fraker to draft a rule allowing preneed contract sellers to collect \$36.00 on insurance-funded as well as all other applicable preneed contracts. Motion carried with Gary Fraker, John McCulloch, James Reinhard and Joy Gerstein voting in favor with Todd Mahn voting in opposition. Motion carried.

Electronic Death Certificate - Update

Ivra Cross addressed the Board and updated them on the electronic filing of death certificates. She stated she is preparing instructions to send to participants in her pilot program, at which time training will begin.

Ivra Cross also addressed concerns with cremations and the filing of a completed death certificate, filing of a written confirmation authorizing the cremation to a funeral director/crematory.

Special Duty Receiver – Update

Don Otto states he has been to a meeting in Texas with Special Duty Receiver and orphan contracts are still in question. Everything is running well.

MFDEA/Don Otto – Update

The consensus of the Board was for the attorneys to get together including Sharon Euler, Assistant Attorney General and Earl Kraus, Senior Legal Counsel with a list of issues the Board is interested in discussing and bring back to the Board for open discussion during open session.

Robert Cowherd Letter/Consumer Funeral Assurance (CFA)

The board reviewed a letter addressed to the Missouri Attorney General's Office relating to issues that Consumer Funeral Assurance (CFA) requested be addressed by the Board.

1. Timely Payment of Claims by National Prearranged Services (NPS).
2. Orphan contracts.
3. Ongoing Consumer Payments on Contracts.
4. Missouri Trust Companies.
5. Access to Telephone Conferences with SDR.
6. Claim Forms from SDR.

Consumer Funeral Assurance is requesting the Board to ask the Attorney General's Office to do something about these issues. Sharon Euler stated issues should be addressed to the SDR and Missouri Guarantee Association as the Attorney General does not have the authority to address these questions.

A motion was made by John McCulloch to take these concerns to the Attorney General's office. No second to the motion was made. Motion failed.

Open Discussion – Dialogue with General Public Attending Open Session Continuation and/or Completion of any Unfinished Open Session Business

A motion was made by James Reinhard to have a series of meetings to discuss ways to solve legal issues, interpretation of statutes, possible development of proposed rules and finance issues. No second to the motion was made. Motion failed.

Discussion was held relating to the development of a list of issues to get this started from attorneys. Bring the issues back to the full board in Open Meeting.

Closed Meeting

Motion was made by Todd Mahn and seconded by Gary Fraker to move into closed session and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from the closed meeting be closed pursuant to Section 610.021 Subsection (14) and 324.001.8 RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure; Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney; Section 610.021 Subsection (1) RSMo and 324.001.9 RSMo for deliberation on discipline; Section 610.021 Subsection (3) RSMo discussing hiring, firing, disciplining or promoting an employee of this agency; Section 610.021 Subsection (13) RSMo for making performance ratings pertaining to individual employees; Section 610.021 Subsection (7) RSMo for reviewing testing and examination materials; Section 610.021 Subsection (14) and Section 620.010.14 Subsection (5) RSMo for proceedings required pursuant to a disciplinary order concerning medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or treatment of specific licensees; and Subsection of 610.021 RSMo for the purpose of reviewing and approving the closed minutes of previous meetings. Motion carried with Gary Fraker, Todd Mahn, James Reinhard, John McCulloch and Joy Gerstein voting in favor with no votes in opposition.

Executive Session

The board went into executive session at 5:00 p.m.

Adjournment

A motion was made by Todd Mahn and seconded by Gary Fraker to adjourn. Motion carried with Gary Fraker, Todd Mahn, James Reinhard, John McCulloch and Joy Gerstein voting in favor with no votes in opposition. The meeting adjourned at 5:45 p.m. on Tuesday, October 20, 2009.

Executive Director: Sandy Sebastian

Approved by the Board on: 10/14-16/10

BEFORE THE STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS
STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

OPEN MEETING

OCTOBER 20, 2009

Jefferson City, Missouri

BEFORE: Martin Vernon, Chairman
Gary Fraker, Vice Chairman
Todd Mahn, Board Member
Jim Reinhard, Board Member
John McCulloch, Board Member
Joy Gerstein, Board Member

Also in Attendance:
Becky Dunn, Executive Director
Lori Hayes, Inspector
Pam Schnieders, Administrative Assistant
Connie Clarkson, Director of Budget and Legislation
Don Eggen, Inspector

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A P P E A R A N C E S

FOR THE BOARD OF EMBALMERS AND FUNERAL DIRECTORS:

MR. EARL KRAUS
General Counsel to the Board
3605 Missouri Boulevard
Jefferson City, Missouri 65102
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MS. SHARON EULER
Attorney General's Office
207 West High Street
Jefferson City, Missouri 65102
573.751.3321

CERTIFIED COURT REPORTER:

KRISTY B. BRADSHAW, CCR NO. 1269
Tiger Court Reporting, LLC
3610 Buttonwood Drive, Suite 200
Columbia, Missouri 65201
573.886.8942

1 P R O C E E D I N G S

2
3 MS. DUNN: Martin asked for me to check
4 availability at our same location in Kansas City. So
5 it appears as if we can get our meeting rooms scheduled
6 for -- the meeting would be on December 8th and 9th,
7 and I'm not sure which day would be open. So we will
8 certainly confirm that, but right now we have
9 December 8th and 9th held for a meeting, and then we
10 just have to determine which day will be open. I would
11 say probably December 9th.

12 MR. LAKIN: What's the name of it,
13 Continental what?

14 MS. DUNN: Intercontinental.

15 MR. LAKIN: Intercontinental.

16 CHAIRMAN VERNON: Anything on that?

17 MS. DUNN: No. We'll just tentatively
18 say open will be December 9th.

19 CHAIRMAN VERNON: Okay. So there's your
20 next dates. All right.

21 Mr. Otto, are you prepared to --

22 MR. OTTO: If you would like me to.

23 CHAIRMAN VERNON: -- deal with
24 electronic death certificates, special deputy receiver,
25 and MFDEA, slash, Don Otto?

1 MR. OTTO: First, the electronic death
2 certificate issue: Our president, Kalene Summerville,
3 and myself met with Margaret Donnelly and her chief of
4 staff two weeks ago now on the electronic death
5 certificate issue. What I'm pleased to report is for
6 the first time sitting across from somebody on this
7 issue, we all truly felt that they got the problem; you
8 know, the light bulb went on.

9 We presented that there were two basic
10 problems with the electronic death certificate system
11 as it has been proposed. One, even if it works exactly
12 as envisioned and everybody's on the system and there's
13 no problems with it, it'll take you a week to get your
14 death certificate.

15 But after January 1, they want to take
16 away the option of getting the death certificate at
17 your local health department in all cases. Which then
18 means if either the funeral home or the doctor is not
19 on the electronic system, and nobody will be at
20 January 1, you will have to mail your request for a
21 death certificate into Jefferson City, at which time
22 they will let you know, after they enter all the data,
23 when it's okay for you to go pick up the death
24 certificate.

25 They told us two weeks ago that they

1 envision that will take a month and that creates two
2 problems. One, which we kind of call the family
3 concern problem and the other one's the regulatory
4 problem.

5 The family concern problem is, of
6 course, that the families are not going to be happy
7 about waiting for a month for a death certificate;
8 can't get insurance, can't open safe deposit boxes,
9 can't open an estate, funeral directors can't get paid.
10 That's 30 extra days to add on before you can send your
11 claim down to MPS. And people are not going to be
12 happy about that for good reasons.

13 And the second was the regulatory
14 problem of direct cremation. That by their own rules,
15 you've got to do that within 24 hours and you have to
16 have a death certificate. And then we also went over
17 how that alternative doctor's letter really doesn't
18 work in many cases.

19 So what was good about the meeting is
20 they -- I truly believe they understood the problem and
21 expressed that they want to do something to, as best as
22 possible, solve the problem. So we left the meeting
23 feeling very good. Whether or not they are able to
24 come up with something that solves the problem, I don't
25 know.

1 Another thing we pointed out is that the
2 system's supposed to go online January 1, and they
3 haven't even started the pilot program yet, you know.
4 And it's not looking like the pilot program's going to
5 start until November. How can you -- how can you start
6 something January 1 when the pilot program to see if it
7 works doesn't start until November? That's kind of
8 weird, so --

9 MR. LAKIN: I want to comment on one
10 thing you said. I want to know -- they said that it
11 would -- about the cremation authorization, now repeat
12 that again.

13 MR. OTTO: Well, the problem with the
14 alternative cremation authorization level -- letter is
15 there's several problems with that. If you actually
16 read the regulation, you know, it says you use the
17 death certificate or get the doctor's letter. The
18 doctor's letter's only supposed to be used if the cause
19 of death cannot be determined within the first
20 72 hours.

21 So what the situation is, is it takes
22 you a week to get your death certificate if the system
23 works perfectly; but you know the cause of death, it
24 just takes you a week to get the death certificate.
25 Well, that -- arguably, that doctor's authorization is

1 not permitted under the regulation. Plus, as I pointed
2 out, try going to University of Missouri sometime and
3 find a doctor that can, you know, read English, let
4 alone fill out a letter for you.

5 MR. LAKIN: Ivra Cross made the
6 statement at the coroner's meeting about two weeks ago,
7 and I'm going to question her about this, that that
8 death certificate did not have to be filed prior to
9 cremation, according to their regulation. And she
10 is -- she is correct. It is not in 193, anything about
11 it. It's only in 33-- 333 is where it is. But she
12 made the statement at the coroner's meeting that that
13 didn't make any difference to them.

14 MR. OTTO: No. I would disagree with
15 that, because paragraph three of their own regulation
16 says that the crematory can only accept the body for
17 cremation if you either have the death certificate or
18 the alternative letter, so --

19 MR. LAKIN: I'm just telling you what
20 she said.

21 MR. OTTO: I -- I -- yeah. There's
22 several things she said that I don't necessarily agree
23 with. But anyway, the nice thing about it is I believe
24 Ms. Donnelly and her chief of staff, actually the light
25 bulb went on and they saw there's a problem and they

1 want to try to do something. Whether they do or not,
2 we'll just have to wait and see. So that's where we're
3 at with that.

4 Yes, sir?

5 MR. REINHARD: Well, and I'll -- like
6 Don referred to, they had a coroner's meeting up here.
7 I was at the meetings. Ivra's not stepping down off
8 this deal; she's on fire about it. She said we got the
9 pilot program going on, we got 20 undertakers signed up
10 for it, we got 33 doctors.

11 We made a little phone call over here to
12 the Division of Healing Arts; they've got 14,500
13 doctors, and they've got 33 online. That's really
14 going to help us.

15 And she did make the statement; she said
16 the 24-hour rule is for transportation of a body before
17 a common carrier. She's got --

18 MR. OTTO: Well, I can show her --

19 MR. REINHARD: You need to go show her.
20 Honest to God.

21 MR. OTTO: I have. I have, but it's
22 their own Health Department regulations. The third
23 paragraph of that -- of that one that talks about the
24 alternative doctor's letter. The alternative doctor's
25 letter's in paragraph two -- paragraph three. It says

1 a crematory can't do a body unless you have one of
2 these two things. So anyway, but good news, again,
3 whether they do something or not.

4 We -- we said, well, what will our
5 association do if we don't get some kind of relief.
6 Well, we'll look at legislation this year to try to do
7 something. We will look at pressuring other government
8 officials.

9 If necessary, and our Board approves of
10 it, we will look at possible litigation; because the
11 statute that says you can get a death certificate in
12 the first 24 hours from your local registrar, or as
13 designated by him or her, is still on the books. They
14 didn't take that one off. So how can they just do a
15 policy that says sorry you can't do this anymore when
16 it's in the legislation.

17 So we got a -- again, we got to give
18 them a chance. We actually talked to people that I
19 believe understood there was a problem and care about
20 it. So you got to give them a chance to try to see
21 what they can come up with. But if we don't come up
22 with a solution, I think our association is going to
23 fight that vigorously, at least as it's proposed.

24 The NPS, I was in Texas yesterday. The
25 big question, of course, still is the orphan contracts.

1 The SDR and the attorney for the SDR have not yet filed
2 their application as to how they're going to handle the
3 orphan contracts.

4 But in two conversations that we've
5 had -- they're tired of me showing up and saying things
6 down there. Is that a shock to anyone? So they're now
7 having phone conferences before the status conference
8 to find out what it is I'm going to complain about.

9 But we were told in the phone
10 conference, and they reiterated this at the hearing,
11 that here's what their plan is for the orphan
12 contracts -- although keep in mind, until they actually
13 file it, it's not official. You can't -- but this is
14 what their plan is:

15 If a contract is truly orphaned, which
16 means no insurance attached to it, and they can't
17 figure out a way to attach insurance to it -- and right
18 now that's about 7,300 contracts, all of which are in
19 Missouri almost, except for like a dozen in other
20 states -- money that was paid to the receivership
21 between the instigation of court supervision in May, or
22 whenever that was, and the effective date of the
23 liquidation order, which was the end of October, that
24 period of time, May, June, July, August, September,
25 October, six or seven months, the money that the

1 consumers paid on installment orphaned contracts where
2 they keep making payments is gone. They are not going
3 to give that back. They just flushed it down the
4 toilet.

5 On all money received on installment
6 payment orphaned contracts after the liquidation order,
7 they're putting that into an escrow account that earns
8 interest, and at the time of death, whatever funeral
9 home does the funeral or the family will get the money
10 returned to them that was put into the escrow account
11 without any interest. The interest will be kept by the
12 SDR.

13 I said that if and when that is ever the
14 official position, we've got three problems with that.
15 One, the only reason those people paid those
16 installment contracts during that period between May
17 and October, or whenever it was exactly, is because the
18 SDR told them to. So here's the SDR saying -- the
19 Special Deputy Receiver saying, Pay the money in, and
20 then saying, Sorry, it's gone; you can't have it back.

21 Secondly, if they're earning -- if
22 they're putting that money in an escrow account for
23 years and earning interest on it, why shouldn't the
24 consumer get that interest? Why is that going to the
25 SDR?

1 And then I also have a philosophical
2 problem with them continuing to collect money from
3 consumers on a contractual obligation that they don't
4 intend to fulfill. Because why are these consumers
5 paying the money? They're paying the money because
6 they have a contract that says if I pay you money, you
7 give me a funeral. And so what they're going to say in
8 the future is keep paying me the money, but we're not
9 going to give you the funeral. You'll get your money
10 back, no interest. That's kind of weird.

11 But until they actually file that,
12 there's nothing you can -- there's nothing to object
13 about. The attorney for the SDR said he thought that
14 this would be ready to be filed in the next week or so.
15 Donna Garrett said she thought it would be a couple
16 months and may not be until the next status review
17 conference, which is in January; which I pointed out
18 that, sorry, those proof of claim forms are due in
19 January. You really can't fill out the proof of claim
20 forms properly unless you know how you're handling the
21 orphan contracts, so I'm just going to have to -- so
22 that was it.

23 Other than that, according to the SDR,
24 everything is running well and everybody's happy. It's
25 taking them an average of 60 days to pay the contracts.

1 They've received about -- they've gotten somewhere
2 around twenty million dollars in settlements from
3 reinsurance companies with some more on the way. There
4 aren't going to be any distributions of money to any
5 creditors this year because it's all going to be taken
6 up by -- by expenses and then by -- if there's any left
7 over, payments to the State Guaranty Fund Associations.
8 So that is an update on that.

9 And then the last thing is, everyone got
10 a copy of my very, very long e-mail that just raised
11 issues. I won't go over all those; you don't have
12 time. But I've run into two basic issues on the
13 implementation of 436 that I think at some point needs
14 to be addressed. And I think Bill Stalter's suggestion
15 in his letter of maybe having an attorney working group
16 to come up with some proposed rules for you guys to
17 consider, I think is probably a good one.

18 The first one has to do with joint
19 accounts. And interestingly enough, this has nothing
20 to do with Senate Bill 1, really, but the banks for the
21 first time have read Chapter 436 and are complaining
22 about stuff that was passed in 1982 and saying they
23 can't follow the law. I wish they would have said that
24 during the legislative process, but they're saying that
25 now.

1 And so joint accounts may, as the law
2 stands right now, as it's been finally read by the
3 banks, may not be a viable preneed alternative for
4 people. And that is clearly nobody's intent; everybody
5 wanted to keep joint accounts. But the banks have for
6 the first time read Chapter 436 and are -- some of them
7 are telling me they can't follow it. And even if they
8 could, they don't want to get involved in any disputes.

9 The other one has to do with insurance
10 assignments that we've talked about in the past, and
11 the fact that what happens if a consumer has a
12 preexisting insurance assignment; no money changes
13 hands; but for whatever reason, because of DFS or
14 something, they need to do a preneed contract; with
15 that, collect the \$36. How are you going to report
16 that on the report a year from now?

17 Arguably -- I hope this isn't the case,
18 because I hope we can come up with some rules to change
19 this. Arguably, if you say -- if between now and
20 October, what is it, 31st, 2010, if five consumers came
21 in with five different insurance policies: Two from
22 MetLife, one from Prudential, one from Old Dominion,
23 and one from Lincoln Mutual -- not Lincoln Memorial,
24 Lincoln Mutual, they've changed their name, bless their
25 hearts, good reason -- and assigned those policies to

1 you, and you wrote contracts, you would have to state
2 the value of all those contracts; but you can't be the
3 owners, the funeral home, so they're not going to tell
4 you what -- may not tell you what the value of those
5 contracts are.

6 Plus, you've got to get each insurance
7 company to sign off on your annual report. So that
8 would be circulating your annual report to five
9 different insurance companies, one of which you may not
10 even know if it's in business anymore, to have them
11 sign off on your report.

12 So I guess that also dovetails with the
13 joint account problem. What's a funeral home -- seller
14 to do a year from now; they've been selling joint
15 accounts all year, or they've been selling -- or
16 they've been accepting insurance assignments all year.
17 Two weeks to go before the report's due, they take it
18 to their bank and their bank says, I'm not signing
19 that. What do we do? I don't know.

20 And so if you get an opportunity to read
21 that rambling e-mail of mine, they're mostly just
22 questions that I don't have answers to that I was just
23 bringing for people's consideration. But the idea of
24 having some kind of working group to go through those
25 and maybe come up with some ideas just sounds like a

1 good one, so that's really it for us.

2 I still don't think you should charge
3 \$36 for those insurance assignments though if no other
4 money changes hands. I lost that battle last meeting,
5 but I'm going to mention it again 'cause I don't think
6 that's -- I don't think that's good. And I'm getting a
7 lot of complaints about that one, let me tell you.
8 That's the one -- one of the biggest complaints I've
9 got is, That consumer's not giving me a dime, they're
10 just bringing in the insurance policy; why do I have
11 to -- if I have to do a contract, why do I have to
12 collect 36 bucks?

13 So if you ever get the opportunity to
14 revisit that issue, I'd sure encourage you to do so.

15 CHAIRMAN VERNON: Okay.

16 MS. DUNN: Could we just ask you to give
17 your names for the court reporter please?

18 MR. O'SULLIVAN: Kevin O'Sullivan.

19 MS. O'SULLIVAN: Ellen O'Sullivan.

20 MR. MAHN: Don, we've got kind of a
21 question for you.

22 MR. OTTO: Sure.

23 MR. MAHN: Say a funeral home decides
24 not to get a seller license; they're going to use MFT
25 under your seller license, but they're going to --

1 they're not doing joint accounts or their own trust or
2 insurance. But someone walks into their funeral home
3 and they are going to accept an insurance policy for
4 future expenses of a funeral. They do up a contract
5 with the family.

6 So if they're not a seller, then will
7 that be the responsibility of MFT of any legalities or
8 any issues that may go on with that since you're the
9 representation of that funeral home for a seller
10 license?

11 MR. OTTO: Well, if the funeral home
12 just accepts an assignment and signs a contract in the
13 funeral home's name, I think they're going to have to
14 have a seller's license to do that. I believe what
15 Missouri Funeral Trust -- or any trust for that
16 matter -- could do is not sell that as an
17 insurance-funded preneed contract, but sell that as a
18 trust-funded preneed contract and put the insurance
19 policy into the trust.

20 MR. MAHN: In that trust?

21 MR. OTTO: Yes, as a trust asset.

22 MR. MAHN: So make MFT the beneficiary?

23 MR. OTTO: Make MFT the beneficiary or
24 assignee of that, and then that would be a trust asset.
25 I believe that is perfectly permissible and that would

1 then be listed as a trust-fund preneed contract and
2 solve some of those problems. But that doesn't help
3 the funeral home that doesn't want to deal with trusts
4 or us. And I really don't feel --

5 MR. MAHN: No. I'm not asking about the
6 funeral home that doesn't want to deal with you or --

7 MR. OTTO: Or any trust.

8 MR. MAHN: I'm talking about a funeral
9 home that is dealing --

10 MR. OTTO: Yeah.

11 MR. MAHN: -- with you and you're their
12 seller. They don't have a seller's license. But
13 naturally, they're going to have somebody come in with
14 an insurance policy that they want to be put in a file,
15 you know, there for their future funeral. And, you
16 know, in the event they do that, then if you're the
17 seller, the responsibility would --

18 MR. OTTO: It would fall on MFT to
19 handle --

20 MR. MAHN: Right.

21 MR. OTTO: -- all the reporting of that.
22 Yes. And I believe that is perfectly permissible under
23 the law, and we intend to do that for funeral homes
24 that are MFT members.

25 MR. MAHN: Okay. And if they're not

1 going to make MFT the beneficiary, then they need to
2 have a seller's license is what you're saying?

3 MR. OTTO: Yeah. Yeah. One of the -- I
4 don't know if this is a mistake in Chapter 436 when it
5 was written or if this was the intent. One of the
6 problems that this doesn't solve -- this helps solve
7 that problem, but it may not cover everything.

8 Under an insurance-funded preneed
9 contract, the funeral home cannot be the owner of the
10 policy, because it says the only people that can be
11 bene-- the only people that can be owners of the policy
12 are either the purchaser or the beneficiary. And where
13 that word "beneficiary" is, it's not talking about
14 beneficiary of the insurance policy, it's talking about
15 beneficiary of the preneed contract.

16 So that -- in that circumstance, the
17 funeral home can never be the owner I don't think. If
18 somebody wants to correct me -- would you agree with
19 that one?

20 MS. EULER: I agree with that one.

21 MR. OTTO: Okay. You may not agree with
22 everything, but you agree with that one. Okay, good.

23 I don't think the funeral home can be
24 the owner. Now, that causes family services problems.
25 That causes problems with the insurance company

1 becoming -- getting informal -- I mean, the funeral
2 home getting money from the insurance company.

3 I think one way around that potentially
4 is, again, to use a trust-funded insurance contract
5 where that insurance policy is one of the assets of the
6 trust. Of course, it couldn't be a term life policy
7 because that's specifically excluded as being a trust
8 asset -- or an asset for a trust. But if it's not a
9 term life policy, I think you can put that in the
10 trust; and that solves a lot, not every problem, but a
11 lot of problems.

12 CHAIRMAN VERNON: So your thought there
13 was that if you take the insurance policy, skipping
14 over some of the other stuff, and you put it in your
15 trust, that then -- just like an irrevocable clause or
16 something to the trust -- then exempts it from the
17 family services?

18 MR. OTTO: Well, unfortunately, it
19 sounds like from -- and this is in my e-mail as well,
20 it probably -- it may depend on what family services
21 people you're dealing with.

22 CHAIRMAN VERNON: I understand that.

23 MR. OTTO: Yeah. Some may be --

24 MS. EULER: And Don, we've got a call
25 into FSD to ask those questions, and we have asked

1 those questions.

2 I don't think we've gotten a response
3 back, have we.

4 CHAIRMAN VERNON: (Shook head.)

5 MR. OTTO: Now, if someone there tells
6 me I'm wrong and that that doesn't work, then we'll
7 have to think of something else. And that would really
8 require -- I mean, we had talked earlier about us going
9 back to the legislature this year to clean up some
10 436 language.

11 I'm kind of leaning right now as to
12 waiting until a year from now; not this session, but
13 next session, because you can't -- I don't think you
14 can keep going back there every single year doing
15 stuff; and we won't know all of the problems until a
16 year from now when people are trying to fill out those
17 reports. So it might be better to give them a break,
18 especially if we have to go over there on death
19 certificates this year. Maybe give them a break from
20 preneed this year, and then go back next year to clear
21 up some of these problems.

22 Now, I think that 436 is worded vaguely
23 enough on the -- on this issue that you could come up
24 with some rules on insurance assignments that might
25 solve the problem. For example, I think what would be

1 great for a lot of the small funeral homes and ones
2 that don't want to use a trust is if you came up with a
3 rule that said if it's a preexisting -- I don't know
4 how to word it exactly. You got to be careful somebody
5 tries -- doesn't try to get around it.

6 But if it's a preexisting insurance
7 policy, not one that was sold as part of this contract
8 and no additional money changes hands other than the
9 \$36 if you keep that, that here's how you report that
10 every year: You say, Contract 1115, funded by an
11 assignment from Prudential Life Insurance, policy
12 number 612, period. And that satisfies the Board.

13 Now, that may not satisfy DFS on
14 everything, but at least that would take care of the
15 nasty reporting requirements for insurance assignments
16 which again, it's kind of -- although MFT is happy to
17 offer that service to its consumer -- to its -- to its
18 members, it's kind of silly to have to use a trust
19 vehicle just for a reporting requirement. That doesn't
20 seem fair.

21 MS. EULER: Well, I think that as this
22 process goes on, that's one of the things that the
23 Board will need to look at, because this whole
24 regulation of preneed contracts at -- under the
25 seller's umbrella for joint accounts and insurance is

1 new. And I think we'll have to -- it'll be a learning
2 process. And the rules will have to be made as we go
3 along.

4 MR. OTTO: Well, I think there's a lot
5 of funeral homes out there that would not be sellers at
6 all, but for accepting insurance assignments.

7 MS. EULER: Yeah.

8 MR. OTTO: And if there was a way to
9 give them some relief so they weren't forced to use
10 MFT -- I mean, I'm happy if they want to use us; that's
11 a wonderful thing -- but nobody should be forced to use
12 us or any trust just because of a reporting requirement
13 or something that maybe could be taken care of.

14 And the other thing I didn't mention
15 either in that is that I'm getting a lot -- several
16 questions on which we discussed earlier, is the finance
17 charge issue. One, can you charge finance charges.
18 And number two, if you can, does it all have to be put
19 in the trust.

20 MS. EULER: And we --

21 MR. OTTO: And I punted it.

22 MS. EULER: Well, we have been looking
23 at that issue as well. I think there's some real
24 question as to whether finance charges are allowed at
25 all. But we will look at that and report back to the

1 Board, so we don't need to go over that again today.

2 MR. OTTO: No. No. I'm just saying I'm
3 getting a lot of questions on it.

4 MR. KRAUS: Don, how do you suggest that
5 reporting requirement be taken care of?

6 MR. OTTO: Well, again, you want to make
7 sure that you write it so that it's -- somebody doesn't
8 use subterfuge in selling an insurance policy as part
9 of a preneed contract. But basically, if all that's
10 being done is a consumer is assigning a preexisting
11 insurance policy for -- and no additional money's
12 changing hands, you don't have the requirement that the
13 value of the life insurance policy be stated. Or all
14 those other requirements -- a lot of all those other
15 requirements that are under the insurance funded
16 section of the report.

17 And most importantly that the insurance
18 company doesn't have to sign it. Because I --
19 Prudential won't. I guarantee you. I'll bet -- I got
20 five dollars here if anybody can get Prudential to sign
21 a report.

22 MR. KRAUS: And do you think that any of
23 the language in Senate Bill 1 that relates to either
24 trust funds being contracts or insurance funded
25 restricts in any way the use of that insurance policy

1 as an asset of a trust-funded preneed contract?

2 MR. OTTO: Well, I think that's
3 specifically allowed as long as it's not term, because
4 it specifically says in there the trust shall not have
5 a term life policy.

6 MR. KRAUS: So you think that explicitly
7 allows --

8 MR. OTTO: I think that explicitly
9 allows a nonterm policy --

10 MR. KRAUS: Or implicitly allows.

11 MR. OTTO: Implicitly would be the right
12 word -- allows a nonterm policy. I think so.

13 MS. EULER: Can I ask a question before
14 we move on? Do you get any sort of -- do the funeral
15 homes or the sellers get any report from the insurance
16 companies, or can you get a report from the insurance
17 companies saying, These are your policies?

18 MR. LAKIN: Some insurance companies.

19 MR. OTTO: Oh, yeah. Some you can, yes,
20 if you're the owner.

21 MR. LAKIN: Big insurance companies will
22 not do that though. Prudential, New York Life, those
23 type companies won't even give you the information how
24 much the policy's worth.

25 MS. EULER: Okay.

1 MS. RUSSELL: Is that the word
2 "issuing", I wonder if that will take care of that on
3 page 29, line 79, The name and address of each
4 insurance company issuing insurance. The word
5 "issuing" would take away the problem with the
6 assignments, wouldn't it? Because it's really not --
7 it wasn't intended for the assignments to have to
8 comply on the annual reporting on the face values and
9 everything. It's for the ones that were issuing it in
10 conjunction with the preneed contract.

11 Sharon, what do you think?

12 MS. EULER: I'm sorry?

13 MS. RUSSELL: Talking about the word
14 "issuing" on --

15 MS. EULER: What page are you on?

16 MS. RUSSELL: 29.

17 MR. MAHN: Don, while they look --

18 MR. MCCULLOCH: The thing people have to
19 understand is there's two different types of policies
20 here.

21 MS. RUSSELL: Right.

22 MR. MCCULLOCH: There's ones that just
23 us as individuals go out and buy from our State Farm
24 guy. And then there's these ones that are specifically
25 for preneed. And that's what you're trying to say.

1 Right?

2 MS. RUSSELL: Yes.

3 MR. MCCULLOCH: There's a big difference
4 there.

5 MS. RUSSELL: The difference between an
6 assignment and an actual insurance funded.

7 MR. MCCULLOCH: Yes.

8 MS. RUSSELL: Yes. That's what we would
9 call them. Two different --

10 MR. MCCULLOCH: Yeah. Our preneed
11 funded --

12 MS. RUSSELL: Right.

13 MR. MCCULLOCH: -- by insurance.

14 MR. OTTO: Arguably, one possibility is
15 to have a rule that specifically says that an insurance
16 assignment, even if it triggers the need for a
17 436 contract, is not an insurance-funded contract as
18 defined in here.

19 MS. RUSSELL: I think it says that
20 because it says, The name and address of each insurance
21 company issuing. The word "issuing" insurance to fund
22 a preneed contract; I think that's pretty clear.

23 MR. MCCULLOCH: Because those other
24 companies aren't issuing it to fund a preneed contract.

25 MS. RUSSELL: No, they're not issuing

1 it. They are --

2 MR. MCCULLOCH: Exactly.

3 MR. OTTO: Well, that's why I think a
4 rule -- I think that's vague enough that a rule is
5 needed.

6 MR. MCCULLOCH: That's the difference
7 right there.

8 MS. RUSSELL: The word "issuing".

9 MR. MCCULLOCH: Yeah.

10 MR. STALTER: It really comes down to
11 intent.

12 MR. MCCULLOCH: Yeah, the intent.

13 MS. RUSSELL: Sharon, you're an
14 attorney. What would you think?

15 MS. EULER: I think that we should take
16 a more close look at this and get back to the Board in
17 December.

18 MR. OTTO: That's what I was getting at
19 is I think the language is vague enough that the Board
20 could come up with a rule to solve at least the
21 reporting requirement problem.

22 MR. MAHN: Don, did you think that the
23 wording in there -- maybe I misunderstood what you
24 said -- that the funeral home, somebody brings in an
25 insurance policy, cannot be made beneficiary; is that

1 what you said?

2 MR. OTTO: Well, if -- this gets into
3 the definitions; if that is defined as an
4 insurance-funded preneed contract. That's what we were
5 just talking about that Sharon says she needs to look
6 into, but if it's defined, it says on page --

7 MS. EULER: 24.

8 MR. OTTO: Is it 24?

9 MS. EULER: In sub seven, The purchaser
10 or beneficiary shall be the owner, but the seller or
11 provider can be named as the beneficiary of the life
12 insurance policy.

13 MR. MAHN: Well, the funeral home is the
14 provider. They can be the beneficiary.

15 MR. OTTO: They can be the beneficiary,
16 oh, yeah, that's no problem. But depending on how you
17 read this, the funeral home could not be the owner of
18 the policy.

19 MS. EULER: Correct.

20 MS. RUSSELL: Well, except on -- is that
21 true, Sharon --

22 MS. EULER: Yes.

23 MS. RUSSELL: -- on line 39 where it
24 says, An insurance-funded preneed contract shall be
25 valid and enforceable only if the seller or provider is

1 named as the beneficiary or is assignee of the life
2 insurance policy.

3 MS. EULER: Right, not the owner.

4 MS. RUSSELL: Not the owner.

5 MS. EULER: The purchaser or the
6 beneficiary of the preneed contract shall be the owner.

7 CHAIRMAN VERNON: Wouldn't the company
8 that --

9 MR. MCCULLOCH: Why would you want those
10 to be brought into this anyway? Why would you want
11 that State Farm policy to be brought into this anyway?
12 Somebody just goes out and buys it and they come in and
13 they say, Here I want to make you the -- why do you
14 want to drag those into this anyway?

15 MR. LAKIN: That's what I want to know.

16 MS. RUSSELL: The law requires it.

17 MS. EULER: Yeah.

18 MR. MCCULLOCH: I don't think it does.
19 I don't think that's what we're debating here. And why
20 would you want to try to make an argument that it does
21 when --

22 MS. EULER: I'm not arguing one way or
23 the other.

24 MR. MCCULLOCH: -- it clearly shouldn't?

25 MS. EULER: I'm saying that this is an

1 issue that warren's going to need to look at.

2 MR. MAHN: We're just talking about the
3 beneficiary.

4 MR. OTTO: And one thing, I mean --

5 MR. MAHN: We're talking about the
6 beneficiary.

7 MS. EULER: The life insurance
8 beneficiary.

9 MR. MAHN: Who would be the -- who could
10 be the beneficiary?

11 MR. MCCULLOCH: Whoever that person put
12 on there.

13 MR. MAHN: Right. But earlier we
14 interpreted that being said, at least I did, as that
15 the funeral couldn't be made beneficiary. We
16 interpreted that earlier from something Don said.

17 MR. OTTO: No. No. Yeah. It's the
18 owner. If I misspoke, it's my fault. It's the owner.

19 MR. STALTER: That's what I heard. The
20 funeral director -- or funeral home can't be the owner
21 here in 436.

22 MR. MAHN: You can be a beneficiary.

23 MS. EULER: Right.

24 MR. STALTER: You can be a beneficiary,
25 right.

1 MR. LAKIN: Then that triggers family
2 services as the owner, because if the beneficiary is
3 John Doe and he's the owner, he can cash it in at any
4 time.

5 MS. EULER: That's right.

6 MR. OTTO: Something I just throw out
7 there is if the Board came up with a rule that said a
8 funeral contract that is backed by an insurance
9 assignment that is like what you're calling the State
10 Farm thing -- you know, I don't know how to word it
11 properly --

12 MS. EULER: Well, Don, if you want to
13 write up a rule and send it over, we'll --

14 MR. OTTO: I think the idea of getting
15 several attorneys together to hash it out is a good
16 one, because I --

17 MS. EULER: Yeah. Well, and we need to
18 talk with the FSD counsel too, and we haven't heard
19 back from them.

20 MR. LAKIN: The problem with that,
21 Sharon, is every county has a different rule to go by.

22 MS. EULER: Right. But if DLS issues a
23 memo saying this is what it's going to be, then --

24 MR. OTTO: Yeah. That makes it tough to
25 get a rule, but just, again, if you could come up with

1 a language that you were satisfied with that said an
2 insurance assignment is not a 436 insurance-funded
3 contract, who's going to object to it? Who's going to
4 sue you?

5 MS. EULER: Or to clarify when it is and
6 when it isn't.

7 MR. OTTO: Yeah. I mean, that bene-- I
8 mean, if it benefits everybody, who's going to
9 challenge it?

10 MS. EULER: Right.

11 CHAIRMAN VERNON: In one of the comments
12 of the issuing Darlene was talking about, wouldn't --
13 and just another thought extending the issuing, the
14 company that is issuing those policies would also have
15 an arrangement with that seller. Right?

16 MR. OTTO: Well, on new policies.

17 CHAIRMAN VERNON: But that's what we're
18 talking about anyway.

19 MR. OTTO: Well, I was talking about --
20 my big concern is the old -- 15-year-old Old Dominion
21 life insurance policy that somebody brings in and wants
22 to assign because DFS tells them they got to get rid of
23 it.

24 CHAIRMAN VERNON: Right.

25 MR. OTTO: How do you report that a year

1 from now?

2 CHAIRMAN VERNON: But just reporting it
3 as it's on the list, isn't necessarily the big deal of
4 the issuing, your seller, your arrangement, and all
5 that. That's completely separate.

6 MR. OTTO: That's why I think there's
7 enough wiggle room in the statute that you can come up
8 with some rules that I think solves not every problem,
9 but a lot of them.

10 CHAIRMAN VERNON: But in your scenario
11 of the State Farm -- because one of the questions we're
12 going to probably talk about here later is somebody
13 brings in the State Farm policy, you actually do sit
14 down and you spec everything about the preneed with
15 them even though it's nonguaranteed; is that a preneed?

16 MR. OTTO: I think arg-- I think the way
17 it's worded right now, yeah.

18 CHAIRMAN VERNON: That's what I would
19 say too.

20 MR. MCCULLOCH: I would disagree with
21 you guys.

22 MR. OTTO: I think there's some room --

23 MS. EULER: If you enter into a preneed
24 contract --

25 MR. OTTO: But I think there's some --

1 MR. MCCULLOCH: If you don't write it
2 down.

3 CHAIRMAN VERNON: No, I said they did.

4 MR. MCCULLOCH: Oh, I'm sorry.

5 CHAIRMAN VERNON: I said they did.

6 MR. OTTO: Yeah.

7 MR. MCCULLOCH: Well, if they do that,
8 yes.

9 MS. EULER: If you enter into a preneed
10 contract, then yes. If they just preplan, then no.

11 MR. STALTER: If DFS says, You need to
12 get that off of your assets; you need to do something
13 with it.

14 MS. EULER: Right. I know.

15 MR. STALTER: What is my compensation as
16 a funeral director for taking it?

17 MS. EULER: I know.

18 MR. STALTER: None.

19 MS. EULER: That's why we need to get
20 ahold of FSD, and they have not been as prompt in
21 returning our inquiry as they might have been.

22 MR. OTTO: I really don't -- I mean, I
23 do -- I do care what the rule is, but I almost really
24 don't care what the rule is, if I just knew what the
25 rule is.

1 MS. EULER: Yeah.

2 MR. OTTO: If I just knew what the rule
3 was, maybe I could deal with it, but I don't know what
4 the rule is.

5 MS. EULER: The rule is (indicating).
6 So, yeah, we'll take a look at that.

7 MR. BAKER: Martin, I have a que-- I
8 guess this is for Sharon. Bob Baker.

9 Whenever we're talking about the --
10 the -- whatever the new acronym is, the DFS, I'm going
11 to call it --

12 MS. EULER: FSD.

13 MR. BAKER: Okay. In your letter --
14 there's two things that happened. We deal with several
15 different counties.

16 MS. EULER: Uh-huh.

17 MR. BAKER: Some write contracts, some
18 doesn't.

19 MS. EULER: Right.

20 MR. BAKER: Could we get clarification
21 on what triggers a contract? And then also get the
22 answer on who is to be the owner of the policy in order
23 to reduce the assets to qualify.

24 MS. EULER: Those are the kinds of
25 questions we've asked --

1 MR. BAKER: You've asked, okay.

2 MS. EULER: Yeah.

3 MR. OTTO: The other thing that's
4 hanging out there that maybe you can get an answer
5 from -- I don't know if you can or maybe you don't want
6 to touch it -- is that old Attorney General's opinion.

7 MS. EULER: Which one?

8 MR. OTTO: Darlene, what's that old --

9 MS. RUSSELL: It's not an opin-- an
10 official opinion --

11 MR. OTTO: No, it's not an official
12 opinion.

13 MS. RUSSELL: -- it's a Board issue, and
14 I shared this with Becky. Let me see if I can find a
15 copy of it.

16 MR. OTTO: I don't think we're going to
17 have to --

18 MS. RUSSELL: Where the Board took the
19 position that an insurance assignment -- if you took an
20 insurance assignment, you were the owner -- the funeral
21 home was the owner, that it constituted a preneed
22 contract. It's been going on since Senate Bill 644,
23 1982. Right, Don? I mean, so it's not a new issue,
24 you know, so --

25 MR. LAKIN: But it's an issue -- when

1 the funeral home can't be the owner, it's an issue with
2 family services.

3 MS. RUSSELL: Yes. That is -- that is a
4 big issue. And it was called, Checklist for preneed
5 contract when the consideration for the contract is the
6 assignment of a contract of insurance.

7 MS. DUNN: Darlene, can we make a copy
8 of that so we can put it with the record?

9 MS. RUSSELL: Sure. I don't have a good
10 one with me. Do you have it in your office? This
11 one's missing --

12 CHAIRMAN VERNON: Okay. While they're
13 thinking about that, Mr. Stalter, did you want to
14 address us in regard to this letter?

15 MR. STALTER: Actually, it's kind of a
16 follow-up. Maybe just the premises that people have of
17 Don and I interpreting things differently, but it would
18 behoove us if we could then bring -- I guess go ahead
19 and call it an attorney's forum; kind of work through
20 the interpretation, at least come up with some common
21 ground. That's the purpose.

22 (Meeting interrupted)

23 CHAIRMAN VERNON: Come on in, guys.
24 There's a couple of chairs over there against the wall.

25 start all over again.

1 MR. STATLER: Okay. I'm running into a
2 lot of the same problems Don is. And we've talked
3 about joint accounts, we've talked about -- there's
4 plenty of advice that funeral directors are wanting on
5 how to, I guess, comply with SB 1. Frankly, you know,
6 it's not clear. We hear different things. We each
7 sent e-mails or contacts with Becky, Sharon; we hear
8 different things. So I'm trying to get to a point
9 where we can -- Becky, I know.

10 MS. DUNN: I haven't responded --

11 MR. STALTER: You're copied.

12 MS. DUNN: -- so I can't -- so don't put
13 me in for a response yet.

14 MR. STALTER: Anyway, we need to
15 facilitate some way for us all to get on the same page.
16 And if attorneys can't get on the same page, you know,
17 the clients aren't going to hear the same story.
18 That's one issue.

19 The other issue is -- I agree -- this
20 joint account contract issue is a problem. And it --
21 people don't know how to comply with it. They -- you
22 know, they have a perception of how it should work, but
23 it's not working that way. And new folks -- the
24 O'Sullivan's are here -- that purpose -- it was
25 perceived that the joint account contract was going to

1 give an easy way for people to comply, but it doesn't
2 work. It doesn't work with the intent -- it doesn't
3 give them an easy way out. So I mean, you need to hear
4 from some of these other folks who are stepping into
5 that.

6 And part of the story is we've been
7 doing it that way for years and the Board says it's all
8 right to do it that way. What we're going to find out
9 when we go in there, a lot of folks do not have the
10 right paper in place. The money's there, they've put
11 every dime in there, but the paper is bad. You know,
12 are we going to apply this law by the letter of the
13 law? And if we do, a lot of people get in trouble, but
14 they really haven't done anything wrong, other than use
15 the wrong paper.

16 CHAIRMAN VERNON: Okay.

17 MR. STALTER: And at some point we can
18 talk about alternatives, but the Board's got to step in
19 and help us with that. We'll work with the
20 association; enough said.

21 CHAIRMAN VERNON: Do they want -- is
22 that who -- do they want to address this issue?

23 MR. STALTER: I think -- do y'all have
24 anything --

25 MS. O'SULLIVAN: We just want to learn

1 how to do it right.

2 MR. STATLER: That's what I'm saying.

3 There are a lot of people like that.

4 MS. O'SULLIVAN: Everything's there, we
5 just --

6 MR. STALTER: And basically, it said for
7 them to come to the webpage or something like that; it
8 doesn't work. There has to be some way -- some folks
9 just -- you know, how do I have to do it.

10 CHAIRMAN VERNON: Yes, sir.

11 MR. LAKIN: Everything would've been
12 fine if the banks wouldn't have read the old law 10 --
13 15 years later. And then, see, if we wouldn't have had
14 to go to the banks to begin with, with the new law,
15 they were -- they were going along with everything that
16 we were doing in the past. Now, all at once, there
17 isn't a bank within 50 miles of me that even wants to
18 talk to me about that.

19 And I don't know what -- I've had three
20 families that I've told, you know, I'm not in the
21 preneed business right now. I may be by the first of
22 the year. But those three families have -- and that is
23 not right for my business. That is not fair to me as a
24 funeral director that I've got to tell them, I -- and
25 you know, half the other funeral directors don't even

1 know the law's been changed. Oh, yeah, come on over,
2 you know. And this is bad. I talked to one funeral
3 director, he told people come on over, we'll take care
4 of you. Now, how -- you know.

5 I pay a license here. I don't want to
6 get off on the license that I got to pay, but you got
7 to pay a license to be in business. And then I tell
8 people just go someplace else and that funeral director
9 over there's just, Oh, yeah, yeah; we'll take it. He
10 don't know a damn thing about the law. Don't -- didn't
11 even know the law changed. And the banks sure found
12 out the law changed.

13 CHAIRMAN VERNON: That's true.

14 MR. LAKIN: And it's a problem for
15 little funeral directors. If you sell one-hundred
16 fifty, two-hundred thousand dollars worth of preneed
17 insurance a year, yeah.
18 It's -- or in preneed, not insurance, preneed, it's
19 great. You can afford to trust; you do that. But
20 you're sitting down in a little town with 1,600 people,
21 you sell \$3,000 -- or \$30,000 worth a year, and you got
22 to comply with this thing, it's absolutely ludicrous.

23 MR. OTTO: Hey, Don, can I sign you up
24 on the continuing education committee?

25 MS. RUSSELL: There's just so much

1 confusion out there right now. Every-- I mean,
2 everybody's hearing different things, and I'm just
3 really feeling sorry for a lot of funeral homes that
4 don't understand what's going on. And I mean, here
5 we're talking, and we've just changed our -- some of
6 the direction of previous conversations, you know, so
7 what are they supposed to do?

8 MR. REINHARD: There's a man right there
9 that helped pass the law. Talk to him about it, you
10 know.

11 REPRESENTATIVE MEADOWS: Thank you.

12 MR. REINHARD: Well, I just want to give
13 credit where credit's due.

14 REPRESENTATIVE MEADOWS: I seem to
15 recall one funeral director in the room told me this
16 was going to be a can of worms.

17 MR. LAKIN: Said that for the last 15,
18 20 years, and it is.

19 REPRESENTATIVE MEADOWS: Yes, sir.

20 MR. MAHN: Hey, Bill, what's the big
21 problem that you're seeing? Is it the contract that
22 the funeral homes are currently using in order to put
23 money into a joint account?

24 MR. STALTER: You know, two things. I
25 think if they're really going to exclude the assets,

1 they have to do it for the benefit of --

2 MR. MAHN: Right.

3 MR. STALTER: -- or it's not really a
4 joint account.

5 MR. MAHN: Uh-huh.

6 MR. STALTER: And the other thing is
7 just basically that they're picking up, I'd say, more
8 like a statement of goods and services; some kind of
9 form that wasn't intended for that purpose.

10 MR. MAHN: Like a Peachtree form or --

11 MR. STALTER: Peachtree. Also I've
12 heard them say, I just used the MPS contract and whited
13 it out.

14 MR. MAHN: Right. They used something.

15 MR. STALTER: I know they've used some
16 of ours and just whited it out too, so, you know.

17 MR. MAHN: Right.

18 MR. STALTER: But basically, what you're
19 going to see is a contract form that probably
20 references trust funded --

21 MR. MAHN: Right.

22 MR. STALTER: -- and then it's really
23 going into a joint account.

24 MR. MAHN: And you're saying come up
25 with some sort of form for joint accounts that fits the

1 profile of the law.

2 MR. STALTER: And what we said before is
3 that even under the old law, if it was joint accounts,
4 you still had to reference that funding. You know,
5 there was a contract form required for that. It
6 spelled out their rights, 100 percent was supposed to
7 go in there.

8 You know, they had some rights as far as
9 you knew, kind of, where the administrative costs were
10 if you cancelled; and otherwise, you were supposed to
11 have gotten everything back. But if we go in there,
12 what we're going to see are just all kinds of things.

13 MR. MAHN: Right.

14 MR. REINHARD: I've got a question.
15 Representative Meadows; you came a little late and Don
16 Otto had addressed this. You know, he was talking
17 about the association, you know, going back in and
18 trying to -- you know, coming to you all to open it
19 back up, maybe not this year but a year from now, but
20 can we -- I mean, like, if we get a list of what we
21 think's troublesome to us, can we bring it to you all
22 to --

23 REPRESENTATIVE MEADOWS: Oh, I would
24 think so, sure.

25 MR. REINHARD: -- go back to it to help

1 us out?

2 REPRESENTATIVE MEADOWS: You know, to be
3 quite honest with you, I'm getting a lot of phone calls
4 too. A lot of the funeral directors -- several funeral
5 directors around the state are calling me. And they're
6 saying, well, what is it; like, if I own three or four
7 funeral homes, do I just license the one, do I have to
8 license them all. You know, there's a lot of, I think,
9 misconception. There's different folks that are
10 interpreting the law the wrong way.

11 And, yeah, I know that you guys are
12 going to have to do whatever you are going to have to
13 do to get your arms around it; and I think that if --
14 that Representative Watson and I would be more than
15 willing to sit down and try to get you some clear on
16 which way you all want to go with it.

17 And again, I got to caution you -- and
18 God bless you all, but sometimes when I get three or
19 four funeral directors in one room, not everybody
20 agrees. Am I right? So I mean, there again, nothing
21 against your profession, but I understand and I feel --
22 and that's where we were with the whole thing last
23 year. There's a lot of disagreement and we were trying
24 to tweak it, turn it this way and turn it that way,
25 and -- but yeah. But I don't think there would be any

1 disagreement to try to clean something up.

2 MR. MAHN: Do you think it would be
3 better to let it, like Don suggested, let it operate
4 for a year, see what the bugs are, and then --

5 REPRESENTATIVE MEADOWS: And then do it,
6 yeah.

7 MR. MAHN: -- instead of just trying to
8 fix a few things --

9 REPRESENTATIVE MEADOWS: I'll be honest
10 with you. There may be some folks that may be trying
11 to jump out there to try to change some things right
12 from the get go. I don't think that that's necessary
13 that we do that. I would hope that as a group we can
14 maybe give a year --

15 MR. MAHN: Right.

16 REPRESENTATIVE MEADOWS: -- and give it
17 more time to iron the kinks out. Then again, I
18 understand with what Don's going through and a lot of
19 folks, but again, it's the misconceptions that are out
20 there. I think there's a lot of different people that
21 are interpreting the law the way that they want to
22 interpret the law; and that is what's causing the
23 problems I believe.

24 MR. MAHN: And I think Bill's got a good
25 point. There are some things, between the joint

1 accounts and owner -- or insurance policies, there's
2 some things in there that are really going to have
3 people messed up for a while. If we knew, we could
4 just go in and fix those things, it would be great, but
5 then what else is people going to gripe about and how
6 are they going to want it fixed. And do we want to do
7 like Don said and operate it for a year and see how it
8 works, you know.

9 MR. OTTO: And let the record reflect
10 that Don Lakin and I agree 100 percent on a lot of this
11 because a lot of the problem isn't in what
12 Representative Meadows --

13 MR. LAKIN: Well, now, let's wait.
14 Let's make this clear again.

15 MR. OTTO: Yeah, but a lot of the
16 problem is not the new law, it's the banks have read
17 the old law for the first time.

18 MR. LAKIN: That's right. That's right.

19 MR. OTTO: Because we didn't change
20 hardly any of the joint account language.

21 MR. LAKIN: No, no.

22 MR. OTTO: But now they've read it for
23 the first time --

24 MR. LAKIN: And they're scared to death
25 of it.

1 MR. OTTO: Yeah. I have banks telling
2 me, Oh, we're not going to honor that irrevocability
3 clause that's in your preneed contract because we have
4 to follow the UCC regulations on how bank deposits are
5 handled. And if -- and I go, well, that's been the law
6 for 27 years.

7 MS. EULER: Well, and I will --

8 MR. OTTO: And they say, well, we didn't
9 know that.

10 MS. EULER: I will tell you that
11 Division of Finance is taking a different approach now
12 than they have in the past. Fran is actively working
13 on this with the banks.

14 MR. OTTO: Because we sat there with --

15 MR. LAKIN: There's a difference between
16 state banks and federal banks too.

17 MS. EULER: Right.

18 MR. LAKIN: There's a big difference
19 between that and this preneed.

20 MS. EULER: And we can't do anything
21 with the national banks, but Division of Finance has
22 Senate Bill 1 and is working with their banks.

23 MR. OTTO: That's great because we sat
24 there all last summer with the Division of Finance
25 person there and kept saying, Is this okay, is this

1 okay, and we didn't hear a single problem.

2 MS. EULER: Uh-huh.

3 MR. OTTO: And the banking lobbyist was
4 there and the first time I heard there was a problem --
5 what was it, was it Thursday morning that Senate Bill 1
6 got passed at 8:00 a.m.? Something like that, wasn't
7 it? Wednesday afternoon at 4:30, the banking lobbyist
8 comes up to me and says, You know, I think the banks
9 may have some problems with some of this language. It
10 was like, A little late.

11 MS. EULER: Yeah. And some of the
12 issues that the banks are now raising have to do with
13 the Patriot Act and there's nothing we can do about
14 that.

15 MR. OTTO: Well, yeah, that's a whole
16 other matter.

17 MS. EULER: As much as Don would like me
18 to fix the Patriot Act, I don't quite have that power
19 yet.

20 MR. LAKIN: I thought you did have.

21 MS. EULER: I know, and I appreciate
22 your confidence in us.

23 CHAIRMAN VERNON: I would ask Bill, Don,
24 attorneys, Mark, not really including Sharon and Earl
25 in the thought, when you speak of attorneys getting

1 together and hashing out some of this, what is your
2 real scope of that? What is -- how do you see that?
3 Are you seeing -- I mean, because obviously you guys
4 could do that from that perspective and just go do it
5 and come back to the Board and whatever, but how are
6 you seeing that?

7 MR. STALTER: You mean how to go about
8 it?

9 CHAIRMAN VERNON: Yeah.

10 MR. STALTER: I think the first thing is
11 that basically list your issues. Everybody kind of
12 come to a consensus of issues, and I think you could
13 bring -- and whoever wants to participate in this
14 together, but we got to have Sharon and Earl as part of
15 the process. So, I mean, you have to figure out how to
16 facilitate that with the open meeting requirements and
17 so forth. But it is -- if you're hearing about people
18 out there trying to interpret it differently, we need
19 to get those people into this process so that, you
20 know.

21 And in essence, that consensus group
22 will then bounce things off and basically it -- you
23 know, if there's some things way off the wall, you
24 know, that's not -- we're looking to find a way to make
25 this work until, you know, a year from now when we're

1 talking about a consensus bill. Because truly, we need
2 to know what's wrong with this one and all have kind of
3 an agreement about how best to work with it. I agree;
4 it's really -- we can't get it done in three months.
5 It'll take a year.

6 We also -- but the important issue here
7 is -- that we haven't even touched on, is that
8 reporting. Are you all requiring reporting on existing
9 trusts? How are you going to do that? Because
10 that's -- you know, I've heard different things
11 about -- are you going to require that?

12 MR. REINHARD: Martin, I would make a
13 motion that I -- and the motion would be, like, the
14 Chairman appoint a committee of, like, Bill, and Don,
15 you know, maybe a Board member, and Earl, Sharon, and
16 Mark, and you know, some people that could sit down and
17 have the legal minds to kind of figure this out.

18 Because, you know, we're trying to take
19 care of business --

20 CHAIRMAN VERNON: Sure.

21 MR. REINHARD: -- and we're trying to
22 figure this out ourselves.

23 CHAIRMAN VERNON: Hold that thought for
24 one second because if --

25 MR. KRAUS: If you're talking about a

1 series of meetings over time with counsel and other
2 folks interested in these matters, then that's along
3 the lines of the meetings that happened summer before
4 last when this was all developed. That's going to
5 involve a time commitment that I, representing all the
6 39 boards in the Division, am not going to have time to
7 do.

8 If that group meets and presents
9 suggestions, I will certainly be able to look at those
10 and discuss it with the Board, but I'm not going to be
11 able to go out and go to all of those meetings.

12 MR. STALTER: What I've heard from you
13 all, which won't work either, Go draft some proposals
14 and bring it back to us. Now, that requires us to go
15 spend a bunch of time, and I've run into -- and I've
16 had to push hard for those. So I have to know -- you
17 know, have some exchange with the two of you, with the
18 Board about whether you're going to be receptive to
19 what the industry brings to you.

20 And that's why I say it's got to be a
21 sit down, you know, and I'm going to talk to you about
22 a series of meetings.

23 MS. EULER: So are you talking about one
24 meeting, maybe two?

25 MR. STALTER: I think we're probably

1 talking maybe three.

2 MR. REINHARD: We know the trouble
3 points in this all already, so I mean, that's where you
4 have to sit down, address those.

5 MR. KRAUS: I think it's quite an
6 important thing in going forward with such meetings and
7 saying that you need feedback from Sharon and I, which
8 we can certainly give as to, well, we think that will
9 fly legally under senate Bill 1, or, It's our personal
10 legal opinion that we think it won't. But as to
11 whether it's a good idea, assuming it would fly
12 legally, isn't for me or Sharon to make.

13 MS. EULER: Right.

14 MR. KRAUS: We would be obligated to
15 bring that to the Board and see what the Board wants to
16 do; but legal discussions we could have.

17 MR. MAHN: Mr. Chairman, didn't we
18 already discuss the different disclaimers that needs to
19 be in the contracts? Remember, Earl?

20 MR. KRAUS: (Nodded head.)

21 MR. MAHN: Right. So why can't a
22 funeral home or Bill and his group or whoever take that
23 and design their own contract? I mean, is that what
24 you're really wanting to talk about?

25 MS. EULER: No. No. We're talking

1 about rules, or interpretation of the statute, what the
2 statute means, things like the insurance issues that
3 Bill and Don have both raised, things like the finance
4 charge issue.

5 MR. KRAUS: I assume ultimately they
6 lean towards proposed rules, clarify issues --

7 MS. EULER: Uh-huh.

8 MR. MAHN: Exactly.

9 MR. KRAUS: -- or proposed legislative
10 changes to fix problems we can't fix by rule.

11 MS. EULER: Yeah.

12 MR. MAHN: Yeah.

13 MR. OTTO: And I hate to have two or
14 three meetings and come up with a whole list of stuff
15 to have you or Sharon say no.

16 MS. EULER: So we can just short circuit
17 that and say no now?

18 MR. OTTO: Yeah. Yeah. If you're going
19 to say no, let us --

20 MS. EULER: I mean, I think we would
21 certainly be receptive.

22 MR. KRAUS: And we've seen in these very
23 meetings too, I think, where sometimes Sharon and I
24 disagree as to whether something's going to fly or not
25 and whether we think it's lawful or not. Or sometimes

1 we agree that we don't think it's lawful, but the Board
2 really thinks it is and that they want to do it, and
3 they consider it and, well, maybe they go forward with
4 it anyway. Of course, we recommend not doing that, but
5 ultimately, it's not our decision.

6 MR. STALTER: I think that's understood.
7 I mean, the Board is -- makes the decisions, but what
8 we're trying to do, we -- we, as attorneys, give advice
9 to our clients. And we're looking to get on the same
10 page --

11 MR. KRAUS: Sure.

12 MR. STALTER: -- with you all.

13 MR. KRAUS: And where I'm going is my
14 client's the Board, as opposed to you and your clients.
15 And also I -- I don't think I can be -- I can have the
16 legal discussions as to whether I think things are
17 legal under Senate Bill 1, but I don't think I'm the
18 filter for the Board in any way because the Board still
19 needs to make their own decisions. So I wouldn't want
20 to -- I'm willing to participate in these meetings or
21 discussions, but I don't want us to go in with --

22 MS. EULER: We don't speak for the
23 Board.

24 MR. KRAUS: -- differing conceptions of
25 what's going to happen and what my role is because I

1 don't speak for the Board.

2 MR. STALTER: That's understood.

3 CHAIRMAN VERNON: So if we actually --
4 if we set up a first-time trial and got attorneys,
5 would you guys be willing, or is it kosher from AG and
6 Division for a first time, one time go at it, to see
7 what happens. Kind of Jim's thought of -- really
8 the -- I don't know.

9 I think subcommittee would have to be
10 the way we would go about it, just as a working day to
11 some extent. Even though all the Board might like to
12 hear it all, but -- but if we did a subcommittee that
13 way, do you guys think that would work okay? You guys
14 (indicating) think it would work okay, but do you guys
15 (indicating) think it would work okay?

16 MR. KRAUS: Just looking at it from a
17 procedural perspective, I would suggest that that's not
18 really a subcommittee of the Board because no members
19 of the Board are there.

20 CHAIRMAN VERNON: No, two would be
21 there.

22 MR. KRAUS: Two would be? Okay. What I
23 was going to say is if there are no members of the
24 Board there, then it wouldn't be and then you wouldn't
25 have to post notice of the meeting, you wouldn't have

1 to do any of that. But if it is a subcommittee, then
2 you would post it, people could attend, it would be an
3 open meeting.

4 CHAIRMAN VERNON: Okay. I'm not
5 being --

6 MR. KRAUS: which could change the
7 dynamics of the meeting.

8 CHAIRMAN VERNON: But if we're doing all
9 that, if all the Board wants to come, I mean, if you're
10 going through the openness of it and all of that -- I'm
11 not going to say hype, but --

12 MR. KRAUS: Right. Because you would
13 have to.

14 CHAIRMAN VERNON: Because basically it
15 just becomes -- it's an open meeting and that's okay --

16 MR. MAHN: Can I make a suggestion,
17 Mr. Chairman?

18 CHAIRMAN VERNON: Yes.

19 MR. MAHN: Why not over the next year do
20 like we did on the emergency rules and all the meetings
21 we have, set up a section or time of it for open to go
22 over these?

23 CHAIRMAN VERNON: I think their thoughts
24 though are they're wanting to fix it faster than that.

25 MR. STALTER: I think basically to look

1 at initiating something within the next month or so.

2 MS. DUNN: It would be like a work
3 dedicated to just that.

4 MR. STALTER: Some of these places are
5 trying to get a program together and we just want some
6 clarification. As long as we can all kind of get on
7 the same page about things; we may not agree, but if we
8 can understand where each other is coming from --

9 MR. MAHN: Can you give me an example of
10 something that they have an issue with?

11 MR. REINHARD: They just did, that
12 insurance.

13 MR. MAHN: Well, not the insurance.

14 MR. MCCULLOCH: How about -- let me say
15 this: why don't we get these guys together and let the
16 Board just decide what we're going to do because we're
17 trying to fix for our customers and for the funeral
18 industry and that's really what we want. We'll leave
19 those two attorneys (indicating) out of it. And we'll
20 get something done. Don't you agree? How about that?

21 MS. EULER: And then when you get sued?

22 MR. MCCULLOCH: You don't worry about
23 that; that's us. Don't worry about it.

24 MR. KRAUS: I think the one thing to be
25 careful about --

1 MR. MCCULLOCH: And we'll get something
2 done, because if not, we're going to sit here doing
3 what we're doing and we're not going to get anything
4 done. And no one is getting helped.

5 MR. KRAUS: I think one thing to be
6 careful about, whether Sharon and I are included or
7 not, is I would recommend that through such meetings
8 that there not be developed some kind of policy or
9 something like that, that well, Here's how the Board's
10 going to view this, which I think is kind of what
11 you're wanting, without promulgating a rule. Because
12 then you're essentially going by an unpromulgated rule.

13 MR. MAHN: The Board has to make rule.

14 MS. EULER: Right.

15 MR. KRAUS: You have to make rule.

16 MR. MAHN: Right. The Board has to make
17 rule on it, so they can meet and talk all they want on
18 it, but they can't do anything unless we make a rule.

19 MR. MCCULLOCH: We're going to be
20 involved in this and we're going to make a rule.
21 That's what --

22 MR. MAHN: Can't make a rule without the
23 whole Board.

24 MR. MCCULLOCH: It's going to be the
25 whole Board. Yeah. We can do it right now, today, if

1 you want to take the time.

2 MR. REINHARD: All right. I make a
3 motion we suspend the law for a while.

4 CHAIRMAN VERNON: Go ahead, Don.

5 MR. MCCULLOCH: We're not going to sit
6 here and do this forever.

7 MR. OTTO: What I think would be great
8 to get literally just the attorneys together for a day
9 even to say, well, like we just did a second ago. Now,
10 do you agree with that interpretation or do you not
11 agree with that interpretation? And I'm not saying --
12 you know, I know it's not binding on the Board. The
13 Board does what the Board does.

14 But if we can get a list of things,
15 okay. We -- even if we can't solve the problem, maybe
16 we can come up with some rules that solve some of the
17 problems. But even if we don't agree, here are some
18 issues that we don't agree on; but we all agree we
19 don't agree, so there obviously -- there's a problem
20 right there.

21 MS. EULER: Well, and maybe the thing to
22 do would be to get that list together instead of just
23 talking in the abstract.

24 MR. KRAUS: I think that's just where I
25 was going. We could get together a list of issues that

1 you are all interested in discussing, beating around.

2 MS. EULER: Uh-huh.

3 MR. KRAUS: And then we get together
4 when we all talk about those; see where we all think
5 things should be. We may disagree, we may agree. And
6 then from that, we can come up with something definite
7 to bring back to the Board. Here's what we all agree
8 on; here's what we think the fix would be for the Board
9 to consider. The things that we disagree on, we can
10 just talk about with the Board and see what they think.

11 MS. EULER: Because if we could have a
12 list together, we could all do a little work in
13 anticipation. It's hard for me to block off a whole
14 day for something like this because I have a lot of
15 other obligations and concerns. But if we could -- if
16 we had a list of things together and the issues
17 identified, then maybe we could -- even if it was a
18 conference call for an hour, I think a lot could get
19 done.

20 MR. KRAUS: Yeah. Which could be a
21 series of calls or could be a couple of meetings or --

22 MS. EULER: Yeah, or we have video
23 conferencing available in our office. Bill, you could
24 come over to our office and we wouldn't have to travel
25 because that sucks up a lot of time.

1 MR. REINHARD: Martin, maybe the thing
2 to do is let the lawyers do it and then -- you know,
3 and then leave us out of it for the first go around.

4 MR. KRAUS: -- bring it back to the
5 Board, which we're required to do. That will be an
6 open meeting, open discussion, everybody can
7 participate.

8 MS. EULER: Uh-huh.

9 CHAIRMAN VERNON: Okay. So I don't
10 think we're going to solve this one today. So --

11 MR. KRAUS: We've kind of arrived at
12 where we could go forward, but I don't know that it
13 requires any action by the Board. We could simply
14 agree to get together with counsel.

15 MR. SPEAKS: Question?

16 CHAIRMAN VERNON: Yes, sir.

17 MR. SPEAKS: Very interesting
18 discussion. The attorneys that have been mentioned
19 represent a certain section of the funeral home
20 population. What about our conglomerate friends at SCI
21 and Stewart? I'd hate to have, you know, Stalter and
22 Otto be the only attorneys present when most of the
23 preneed written in the state is written by Mr. Moody's
24 clients and Amy's employers.

25 CHAIRMAN VERNON: I guess from my

1 perspective, we would just invite any attorney that
2 wants to show up.

3 MR. SPEAKS: Okay.

4 MR. OTTO: Oh, yeah.

5 MR. SPEAKS: Just making sure.

6 CHAIRMAN VERNON: So I guess the next
7 step would just be ball's in your court; go for it.

8 MR. LINDLEY: Just a point of reference
9 here coming in late.

10 Sharon, do you and Earl have a list of
11 things that -- or anything? Does the Board have a
12 list, I mean, that we can start on? I mean, that would
13 be some direction that would be helpful.

14 MR. KRAUS: There are some items that we
15 plan on getting to later in the open session today that
16 we're going to bring up. And I think the vast majority
17 of those are items that the Board has identified
18 previously when we were marching through line by line
19 and said, Let's come back to that later. So we made
20 notes of those and now it's later, to the extent the
21 Board wants to talk about it.

22 CHAIRMAN VERNON: Mr. Lindley,
23 Mr. Speaks, we received a letter from Mr. Cowherd -- is
24 that the way it's pronounced?

25 MR. SPEAKS: Cowherd, yes.

1 CHAIRMAN VERNON: So do you want to
2 address this, whoever?

3 MR. SPEAKS: Let Scott say anything he
4 wants to. Basically, Sharon, I guess, asked for
5 clarification on the points that I presented to the
6 Board, I think, two meetings ago; is that right, Becky?

7 MS. DUNN: Yes.

8 MR. SPEAKS: Two meetings ago. And so
9 this is our attorney's clarification, I guess, on those
10 points. Don Otto addressed in fine fashion number one,
11 timely payment of claims --

12 CHAIRMAN VERNON: Hey, Brad, hang on
13 just a second.

14 Are you going out the door?

15 MS. GERSTEIN: Just for a second.

16 CHAIRMAN VERNON: Okay.

17 MS. EULER: Then we won't have a quorum.

18 CHAIRMAN VERNON: We do not have a
19 quorum, just hang tight.

20 MR. SPEAKS: You can't leave.

21 MS. GERSTEIN: We don't have a quorum
22 with me here.

23 MS. EULER: Yeah. You have three.

24 MS. GERSTEIN: There's only two of us.

25 MS. EULER: There are three; one, two,

1 three.

2 MS. GERSTEIN: Oh, that's right. There
3 are three. You want me to stay then?

4 MS. EULER: Or go out and round up one
5 of the others.

6 Martin, Jim has a motion on the floor.
7 Well, it seems like the Board members have all taken a
8 break.

9 CHAIRMAN VERNON: Okay. Take a break.
10 (Off the record.)

11 CHAIRMAN VERNON: It is time. Sorry
12 about the delay. We will start again. Mr. Speaks,
13 Mr. Lindley, however that's working, you have the floor
14 and you have asked for an uninterrupted discussion
15 until you're done presenting, and you have it, so go
16 for it.

17 MR. SPEAKS: All right. Everybody have
18 copies of the letter from Robert Cowherd? It was over
19 here on the desk, a handout. Basically, the meeting
20 before last, made a presentation, were kindly allowed
21 to be on the agenda and addressed essentially these
22 same issues. Sharon asked for clarification, and so
23 this is our attorney's response to that request.

24 Item number one, I think Don did a
25 really good job of addressing that in his comments. I

1 just want to point out that where at the time we
2 thought the average was 45 days, Donna Garrett, the
3 Special Deputy Receiver, yesterday said that the
4 average is 60 days now. So it's kind of going in the
5 wrong direction.

6 where it makes the point, the approved
7 liquidation plan does not provide for payment to the
8 SDR, but instead requires the Guaranty Association to
9 make payment directly to the funeral homes --

10 MS. EULER: And Brad, if I may speak to
11 that --

12 CHAIRMAN VERNON: Actually not.
13 Actually not.

14 MS. EULER: The Guaranty Association --

15 CHAIRMAN VERNON: No. They wanted
16 uninterrupted discussion, please.

17 MR. SPEAKS: Number two --

18 MS. EULER: Okay.

19 MR. SPEAKS: -- orphan contracts, no
20 mechanism for reviewing the orphan contracts. And many
21 funeral homes in Missouri have been told and led to
22 believe that they do not have indicia of insurance;
23 indicia of insurance is a phrase that means indication
24 of insurance.

25 And every time that a contract is

1 essentially determined to be orphaned, that means that
2 they're not going to pay that funeral home provider
3 anything for providing the goods and services to the
4 consumer at the time of death. And so we're requesting
5 that the Board confer with the Guaranty Fund to create
6 a procedure, an official procedure, for addressing and
7 reviewing those orphaned contracts. We can't get
8 anything out of them as to how that's being addressed.

9 Number three, ongoing consumer payments.
10 Again, I think Don did a very good job of addressing
11 that issue. Basically, you know, I think a person
12 could say that money's being stolen because it's not
13 going for anything. Robert terms it an egregious act
14 and I have to say that I agree with that.

15 We would like to know what's happening
16 with that money, where it's going, and why people
17 should continue to pay that. To date, no one's taken
18 any action to protect these Missouri consumers, so we
19 would like the Board to refer this matter to the
20 Attorney General's office for immediate action to cease
21 this fraud on Missouri consumers.

22 Number four, Missouri Trust Companies.
23 Under 436, we believe there is multiple violations of
24 old 436 by Missouri Trust Companies in regards to MPS
25 contracts. We are requesting that the Board refer this

1 matter to the Attorney General for prosecution.

2 Number five, access to telephone
3 conferences. CFA is a consortium of approximately
4 100 funeral homes holding MPS contracts in the state of
5 Missouri. We would like to at least have the chance to
6 listen in on the status phone calls with the SDR. That
7 does not seem to be a point that anybody can make a
8 good argument against. We have a vested stake in that,
9 but have been excluded from the proceedings.

10 And then finally, Mr. Cowherd talks
11 about the claim forms that were sent out to every
12 consumer in the state of Missouri holding an MPS
13 contract or have had dealings with their cemetery
14 operations. Nevertheless, mass confusion about these
15 forms. The consumers don't know how to fill them out.
16 The funeral homes don't know how to fill them out.

17 Robert makes two points here. We need
18 direction whether or not to complete the form if you
19 are a consumer; and two, how to complete it, because
20 one of the questions the form asks is what are the
21 damages. Well, nobody knows that because nobody's died
22 yet. So if death occurs 20 years in the future,
23 whatever that amount would have grown to is the amount
24 of damages, but there's not a single one of us in this
25 room that can predict our own deaths and there's just

1 no way to determine that.

2 So since one of the primary functions of
3 the Board is to protect consumers we would like the
4 Board to mail Missouri consumers, or get this to them
5 somehow, the answer to those two questions, and not
6 leave it up to individual consumers, many of whom are
7 elderly and, you know, maybe not familiar with the
8 case, the forms, or the concepts involved. So that
9 concludes my comments.

10 Scott, do you have something else?

11 MR. LINDLEY: Sure. Yeah. In the be --
12 in regards to the timely payments and that issue, our
13 group consented to sign off on that original order.
14 And we had two requests; we pretty much wanted to be
15 paid every 30 days and we wanted to be able to
16 negotiate directly with the banks to resolve this
17 issue.

18 And those were the only two big issues
19 that we asked and neither one of those have come to
20 light as of today's date. Okay? And, you know, that's
21 very unhandy. Okay? And when we negotiated in good
22 faith with the SDR not to file a complaint and do all
23 that stuff and put them through a bunch of stuff, and
24 then they in turn went forward and had not allowed us
25 to do that. And the minute I think it was, Brad, after

1 the order got done, it adjured us in court from going
2 after them. And then the minute that we get relief
3 from the judge here in this district, they file another
4 suit the following Friday to keep us from getting with
5 the banks. That's -- that's not right.

6 And this Board definitely had the privy
7 to deal with that because there's two things here.
8 We're only asking you to represent the licensees, which
9 we all are. Okay? We're only asking you, which you're
10 supposed to be, is a consumer board that represent
11 these 55,000 customers. Okay? And you certainly have
12 the right to do that because that's -- if you look at
13 that, you have the right to represent consumers.

14 And if there was somebody out there
15 taking money as their interest did not appear in a
16 prearrangement contract, like these guys are doing --
17 because they've already said, All we're paying is face
18 value, but yet they want to take more money than that,
19 you all would be jumping on them with both feet. You
20 wouldn't allow that to happen. So, you know, there is
21 no reason for that not to be taken care of.

22 And with regards to the orphan
23 contracts, once again, we get a written thing of what
24 they want for us, we call our people in, they bring in
25 their records, we take them to them, we go over them

1 with them. Oh well, that's not good enough. Every
2 time, the dime changes. The marbles move to a
3 different spot.

4 Under Chapter 436, once again, we go
5 back to representing licensees. Okay? And we go back
6 to representing consumers. There are two sections of
7 436 that are really clear. Okay? One, everybody's
8 supposed to be paid in 30 days after somebody dies.
9 Okay? And it doesn't say 45; it doesn't say 60. And
10 guess what? Every time one of those incidents takes
11 place, that's a separate Class D felony. Okay? And
12 right now, we've got at least 110,000 of them on four
13 different banks running around this state. Okay? Now,
14 I don't know how that happens, but it does.

15 And the other thing that it happens is
16 it's real clear that under 436, the banks are required
17 to keep accurate books and records. Okay? And it is
18 really clear that this did not happen. You go to the
19 federal district court where the lawsuit was filed by
20 NOHLGA, and it's basically in there right in black and
21 white; it didn't happen. And nobody's referred it to
22 prosecution or done anything about it.

23 And the claim forms under the SDR, this
24 will never get right, and they know it, until those
25 forms go through these funeral homes. These customers

1 can't do it. Okay? And if the customers do it, then
2 your licensee is going to get taken advantage of; and
3 if the consumers do it, they're going to get taken
4 advantage of by the SDR. The accurate books and
5 records are in the funeral home. That's where this is
6 at. That's where those records are accurate at. And
7 that's where these forms need to go through.

8 And, you know, in my estimation, if I
9 was this Board, I would hire Mr. Cowherd, it would be
10 less money, and let him resolve these six or seven
11 issues for you. It'll get done quickly. It'll be less
12 expensive and it'll be much more efficient. Thank you.
13 I appreciate your time.

14 CHAIRMAN VERNON: All right. Does a
15 specific Board member have a question to Scott or Brad?

16 MR. MAHN: I think I just have a comment
17 that the SDR and Guaranty Association are not licensed
18 under this State Board, are they? So they don't follow
19 underneath our -- we can't start telling them what to
20 do.

21 MR. LINDLEY: That's my exact point.
22 They're not licensed. They're not under 436. They
23 shouldn't be taking people's money and they shouldn't
24 be dealing with consumer's money at this point in time.

25 MR. SPEAKS: We're not asking the Board

1 to do something about it. We're asking the Board to
2 ask our Attorney General to do something because they
3 have declined. That's not right. The Attorney
4 General's office is not responsive to the consumers of
5 the state on this issue.

6 MR. LINDLEY: You cannot take money as
7 your interest appears anymore than that. And that's
8 what they're doing. Because they've made the
9 statement, they're only going to pay X, and they're
10 taking more than X.

11 CHAIRMAN VERNON: Okay.

12 MR. LINDLEY: In other words, if they
13 have a \$5,000 contract and that's the face value, some
14 of these contracts had a guarantee factor in it. Some
15 of these consumers, and a lot of them, had paid more
16 than the \$5,000 and we have continually tried to share
17 with them that this should immediately stop because
18 you're not going to pay any more than what the face
19 value is.

20 In fact, our point has always been, quit
21 taking money at all. If the guy's paid in \$2,500, and
22 he dies, give them the \$2,500. Let the funeral home
23 deal with the consumer to work out that issue. Quit
24 taking money. It's costing more money to keep track of
25 it; it's not efficient; and it is counterproductive to

1 what is going to have to happen in the future. If they
2 just wipe it at that one level where the dollar is
3 today, everybody knows what they're going to get, no
4 more money has to go in, and then that contract can be
5 taken up with the funeral home.

6 MR. MCCULLOCH: I'd like to make a
7 motion that we accept these -- the Board, take these
8 ideas and present them to the Attorney General and see
9 if they will act on them getting that from us.

10 CHAIRMAN VERNON: There's a motion;
11 anybody going to second it. Do I need to go once,
12 twice? I guess not.

13 MR. LINDLEY: So where do we go for our
14 customers? If this group's not going to represent
15 them, where do you want us to go?

16 CHAIRMAN VERNON: I have to ask legal
17 counsel a question. If I, as the chairman, ask for our
18 legal counsel to review each one of the six CFA is
19 requesting the Board, CFA is requesting the Board, CFA
20 is requesting the Board, to look into those six
21 points -- I know there's been discussion in further,
22 but one more go. Is that something to do?

23 MR. KRAUS: Look at them with respect to
24 what?

25 CHAIRMAN VERNON: The question that's

1 being asked. CFA's requesting the Board to refer the
2 matter to the Attorney General's office.

3 MR. KRAUS: You mean whether they have
4 the authority to do that?

5 CHAIRMAN VERNON: Whatever. Just at
6 least to look at each one of those individual items and
7 come back with an answer of we can, we can't, or why we
8 can't.

9 MR. KRAUS: You have jurisdiction or you
10 don't?

11 CHAIRMAN VERNON: Yes.

12 MR. KRAUS: If the Board wants to give
13 me that directive, I will look into it.

14 CHAIRMAN VERNON: Anybody in for that?

15 MS. GERSTEIN: I'm sorry.

16 MR. REINHARD: I didn't hear you.

17 CHAIRMAN VERNON: Each one of these six
18 points has a final comment behind it that CFA is
19 requesting the Board to refer this matter to the
20 Attorney General's office for prosecution. And my
21 question is have our legal counsel look and to tell me
22 why I can or you why you can't or where our
23 jurisdiction totally stops, where it is, where it
24 isn't. They think we have it. I'm not totally sure
25 just to be honest about it. I know what's been said in

1 the past, but almost a one more time ultimate
2 authority, if that's the right word, to see if we go
3 forward.

4 Yes, sir?

5 MR. MCCULLOCH: Who has said the
6 Attorney General can't do any of these things? Where
7 did that come from?

8 CHAIRMAN VERNON: Even one more thought
9 as to following through with it. Now --

10 MR. MCCULLOCH: My understanding is
11 they're not talking with you guys and won't talk to
12 you. But is there a reason why they think they can't
13 do anything that you know of?

14 MS. EULER: Actually, if -- if I could
15 address that. The Attorney General's office has talked
16 with CFA, and the Attorney General's office has at this
17 point declined to pursue these matters for several
18 reasons -- for several valid reasons. And I'd also
19 like to make --

20 MR. MCCULLOCH: Can those be shared with
21 us?

22 MS. EULER: Sure. I'd like to -- let me
23 make a point of clarification. In subparagraph one,
24 the Missouri Guaranty Association has entered into a
25 contract with Donna Garrett to process claims for

1 Missouri. So the Missouri -- Donna Garrett is wearing
2 two hats, both as the SDR and as the claims processor
3 for the Missouri Guaranty Association; just as a point
4 of clarification.

5 And from the Attorney General's
6 perspective, the matters that are raised are matters
7 that need to be taken up with the SDR. If CFA has a
8 problem with how claims are being paid or how orphans
9 are being handled or access to telephone conferences,
10 those matters need to be taken up before the special
11 master.

12 We as the Missouri Attorney General's
13 office cannot order the special master to provide
14 telephone access to folks. If people want telephone
15 access, they can file a motion for the special master,
16 and they can appear in Texas. Don's been going down to
17 Texas for the special -- for the status conferences.
18 Access has not been denied, it just hasn't been in the
19 format that people want it in.

20 MR. MCCULLOCH: Isn't the Missouri
21 Guaranty Association's purpose to protect Missouri
22 consumers?

23 MS. EULER: The purpose of the Missouri
24 Guaranty Association is to provide payment when an
25 insurance company go-- is taken into liquidation.

1 MR. MCCULLOCH: And to protect the
2 Missouri people that bought policies in Missouri, not
3 the ones in Texas --

4 MS. EULER: Uh-huh, right.

5 MR. MCCULLOCH: -- or Ohio, or any other
6 place, right here.

7 MS. EULER: And the Missouri Guaranty
8 Association is doing that.

9 MR. SPEAKS: On some of them.

10 MS. EULER: Well, if you're not happy
11 with the decision of the Missouri Guaranty Association,
12 then the forum to address that is with the Guaranty
13 Association and through that process. The Attorney
14 General's office doesn't have any authority over that
15 or any reason to interfere with another state agency's
16 process, unless there's some evidence that that agency
17 is acting inappropriately.

18 MR. MCCULLOCH: So slow pay and taking
19 the money on orphan contracts don't fall under that?

20 MS. EULER: Those are issues that can be
21 raised before the special master because the Texas
22 courts have control and supervision over the
23 receivership. And if anyone has problems with the way
24 that's being handled, then that needs to be taken
25 before the special master.

1 I mean, Don's raised issues, haven't you
2 Don?

3 MR. OTTO: Yes, every time. And again,
4 until they officially file that this is how they're
5 handling orphan contracts, we're kind of stuck.

6 MS. EULER: Right.

7 MR. OTTO: But the day they say, we're
8 keeping that money that was paid from May through
9 October and not giving anything back, that's the day I
10 would certainly hope somebody would file a lawsuit
11 against Donna Garrett personally.

12 MR. KRAUS: When you say they're
13 "keeping that money," what do mean? Where is that
14 money going to go?

15 MR. OTTO: It's gone.

16 MR. KRAUS: Where is it going to be?
17 well, the money isn't just gone; it's got to be
18 somewhere.

19 MR. OTTO: Well, I've asked that -- no.
20 It's gone.

21 (Discussions were held off the record.)

22 MR. OTTO: That's what they were living
23 off of, I guess.

24 MR. LINDLEY: Earl, our point here --

25 MR. KRAUS: So you're implying that

1 they've stolen it?

2 MR. OTTO: You know, my view is, you
3 know, what are we complaining that MPS did? They took
4 money and didn't give it back to people that should've
5 had it.

6 MR. KRAUS: Well, that's a whole other
7 thing. We're talking about SDR --

8 MR. OTTO: I know, but to me --

9 MR. KRAUS: -- and I think your point
10 is --

11 MR. OTTO: My personal opinion --

12 MR. KRAUS: -- that if they haven't
13 filed a plan, you don't even know what the plan is.

14 MR. OTTO: That's right. Until they
15 file the plan, you can't do much, I don't think,
16 legally. But if they do what they have told me they're
17 doing in the phone conferences, what -- in my personal
18 opinion -- I would say that -- in my personal opinion,
19 what the SDR did for those five months is not a whole
20 lot different than what MPS did.

21 CHAIRMAN VERNON: Scott?

22 MR. LINDLEY: Mr. Chairman, what our
23 issue is, is that why do we need to pay to go do
24 something, and why does the consumer need to pay to go
25 do something they've already paid. Okay? They've paid

1 for this protection. This is what the Attorney
2 General's supposed to do is to represent the people of
3 this state and there is -- these are felonies; 436,
4 Earl, Sharon, would you disagree? Every time something
5 happens under 436, and it can be proven that it's not
6 right, it is a separate Class D felony.

7 MS. EULER: And Scott, right now, as we
8 speak, there are federal agencies --

9 MR. LINDLEY: I understand that.

10 MS. EULER: -- investigating that, and
11 our office is cooperating with those federal
12 agencies --

13 MR. LINDLEY: That's right.

14 MS. EULER: -- and we do not want to do
15 anything that will hamper those federal agencies --

16 MR. LINDLEY: I don't think -- you know
17 what? In our conversation with people, this is what
18 we're asking. We had --

19 MS. EULER: And that's fine.

20 MR. LINDLEY: -- cleared this. It's not
21 going to bother anything. It's not going to upset or
22 give anybody a hiccup or heartburn except for a couple
23 of people.

24 And I don't think it's a -- I think
25 we're all -- I think the judge was pretty clear from

1 Jeff City. Yes, SDR has certain rights under code 19
2 of the federal statute. But they don't have total
3 right and total say over all this issue that's going
4 on. And it was pretty clear in her directive that
5 these funeral homes and consumers have just as much
6 right as she does when you read that. And that was
7 perfectly clear.

8 Now, did she say this was going to be
9 difficult? Yes. She did say that. And that's why we
10 think that our Attorney General needs to be out front
11 with us moving forward to resolve this.

12 MS. EULER: Well, and if you would like
13 to request the Attorney General to take additional
14 action --

15 MR. SPEAKS: We did.

16 MS. EULER: -- feel free to send us --
17 send us a second request.

18 MR. SPEAKS: We had a personal meeting
19 with you and your boss and he said --

20 MS. EULER: Exactly.

21 MR. SPEAKS: -- it's not part of our
22 strategy.

23 MS. EULER: That's exactly right.

24 MR. SPEAKS: Well, when did burying your
25 heads in the sand become the state of Missouri's

1 strategy?

2 MS. EULER: I don't think that anybody
3 said that was the strategy. But if you would like to
4 submit a request to the Attorney General's office --

5 MR. LINDLEY: We're submitting a request
6 to the body that we're licensed under and we're
7 submitting a request to what our consumers deposited
8 the money under, right here.

9 MR. MCCULLOCH: So again, I'd like to
10 make the motion that this Board submit this information
11 to the Attorney General. I'd like to make that motion
12 again.

13 CHAIRMAN VERNON: There's the motion.

14 MR. MAHN: This letter you mean
15 (indicating)?

16 MR. MCCULLOCH: Yeah. What we just
17 talked about.

18 CHAIRMAN VERNON: That's all the
19 letter's actually asking for.

20 MR. MCCULLOCH: The same thing that
21 Sharon said that they should submit. I think the Board
22 should do that. That's what he's trying to say; if it
23 comes from the Board, maybe it'll have a little more
24 impact, maybe they'll see it as more important. That
25 will help your consumers --

1 MR. SPEAKS: Isn't that how violations
2 of 436 are normally handled? The Board makes a
3 referral to the Attorney General's office?

4 Representative Meadows is nodding his
5 head that is correct. That's what we're asking for.

6 MR. KRAUS: That is true in issues of
7 discipline. That's referred to the Attorney General's
8 office when the Board has viewed a complaint regarding
9 one of its licensees that they think merits some kind
10 of discipline, they refer that to the Attorney
11 General's office. The Attorney General's office files
12 the case with the Administrative Hearing Commission,
13 they have a hearing with the respondent there -- the
14 licensee there, determine if it is a cause for a
15 violation. It comes back to the Board; the Board
16 determines what that level of discipline should be with
17 regard to its licensee.

18 Now, this isn't with regard to a
19 licensee.

20 MR. LINDLEY: This is in regards to
21 55,000 people.

22 MR. KRAUS: I'm just talking about
23 jurisdiction.

24 MR. LINDLEY: And you know what, Earl?
25 Jurisdiction is sorted out later on and you know that

1 as well as I do.

2 MR. KRAUS: I don't agree with that.

3 MR. LINDLEY: Yeah, well, you -- yeah,
4 it is. I've been there, done that.

5 MR. SPEAKS: We've all been doing the
6 right thing. If they slap you down, you know, no harm
7 done. What's going to happen?

8 CHAIRMAN VERNON: John made a motion,
9 anybody second? I guess not. Okay.

10 MR. SPEAKS: Thank you, John.

11 MR. LINDLEY: John, thanks a lot.
12 Appreciate it.

13 CHAIRMAN VERNON: I'm still thinking a
14 formal request might -- tell me how to satisfy this. A
15 formal request was made to this Board. Are we going to
16 answer that formal request sitting here today or just
17 say we're not or maybe that's what we just did?

18 MR. KRAUS: I think procedurally you've
19 done that. There was a motion and it died without a
20 second, so that's the action or the nonaction by the
21 Board.

22 CHAIRMAN VERNON: Okay.

23 MR. LINDLEY: Why doesn't Earl just call
24 Robert? Because I think most of these people are
25 sitting around this thinking that they're going to have

1 some issue with it later on and maybe Earl and Robert
2 could talk on the phone and resolve some of these
3 issues here, looks like to me.

4 MR. KRAUS: Resolve the issues with the
5 SDR?

6 MR. LINDLEY: No. Resolve the issues of
7 why they won't vote.

8 MR. KRAUS: Why who won't vote?

9 MR. LINDLEY: I mean, I think some of
10 them think that if it seconds, they're going to create
11 some difficulty here. And --

12 MR. MAHN: Mr. Chairman, can I say
13 something?

14 MR. LINDLEY: -- maybe you can resolve
15 that along with Robert. Put them at ease.

16 MR. MAHN: Scott, I don't think we're
17 thinking we're going to create difficulty, but there
18 are procedures to be followed here. And what this
19 Board does and acts on, you're asking us to do
20 something that's not in our jurisdiction.

21 MR. LINDLEY: This is totally in your
22 jurisdiction.

23 MR. MAHN: Well, I'm telling you that
24 it's not. But you come in on your horse every time
25 like you want something, and we're going to do whatever

1 it is that you ask for. Okay?

2 MR. LINDLEY: I don't think we -- I
3 think we wrote several different --

4 MR. MAHN: I mean, Brad puts things one
5 way, I'll be honest with you, you put and direct it
6 another way. And maybe you should have had Brad ask
7 that question, but I'm just telling you --

8 MR. LINDLEY: I think the Chairman was
9 struggling.

10 MR. MAHN: -- next month, December,
11 it'll be something else, you know.

12 MR. LINDLEY: I don't think so.

13 MR. MAHN: It'll be something else and
14 this is out of our hands.

15 MR. LINDLEY: I don't think it's out of
16 your hands either.

17 MR. MAHN: I've got MPS contracts; I
18 understand where you're coming from. I don't like
19 waiting 60 or 80 days either, but, you know, at the
20 same time, I don't want to end up getting zero.

21 MR. LINDLEY: You're not going to get
22 zero. How do you figure you're --

23 MR. MAHN: How do you know that? You
24 got a crystal ball?

25 MR. LINDLEY: Because it's already

1 stated in the law how you're supposed to be paid. I
2 mean, you're not going to get anything less than what
3 you're getting right now, because they've already filed
4 all that in the courts.

5 MR. MAHN: Okay.

6 MR. LINDLEY: I mean, you're not going
7 to get less than that.

8 MR. MCCULLOCH: Hey, Todd, why do you
9 think it's out of our jurisdiction? I mean, we're just
10 asking the Attorney General, who represents us all, to
11 say, Hey, why don't you see if you can do something to
12 move these folks to get us closer to -- what -- what's
13 wrong with that? The worst case thing, they're going
14 to say no, just like they told them, they're going to
15 say no, but at least we tried.

16 So then, kind of like you're always
17 wanting to go back to your consumers and be able to
18 say, Hey, I tried to do something to help out consumers
19 and the people in my community.

20 MR. MAHN: I have several concerns on
21 it, John, to be honest with you. You know, some of
22 them being that this Board become the voice for someone
23 else -- for some other group. I think that the
24 Association has made several trips to Texas and I don't
25 actually see them asking us.

1 And I don't always agree with Don on
2 everything, but, you know, I think I'd feel a little
3 better even if it was an Association -- state
4 association asking. He's been to Texas yesterday.
5 He's not making a formal request for the Board to make
6 any statements or ask for anything in this matter. As
7 a matter of fact, I don't even see Don really seconding
8 in on this at all.

9 I mean, you've been down to Texas. Do
10 you see a necessity for this Board to make this
11 request?

12 MR. OTTO: My personal opinion is that a
13 request would be futile whether you have the
14 jurisdiction or not, so -- you have to pick your
15 battles sometimes.

16 CHAIRMAN VERNON: Unless we're going --
17 anybody else has got a comment to go forward with it,
18 we respectfully accept your comments.

19 MR. SPEAKS: Thank you, Mr. Chairman.

20 MR. LINDLEY: Thanks, Martin.
21 Appreciate it.

22 CHAIRMAN VERNON: Next thought, the open
23 agenda item number four.

24 MS. DUNN: Ivra, did you have anything
25 before you left?

1 MS. CROSS: Now, that you've put me on
2 the spot.

3 MS. DUNN: I'm sorry. I didn't know you
4 were leaving.

5 MS. CROSS: When Becky had asked me if I
6 would come and talk to the Board if I had any updates
7 on the electronic registration system, I told her at
8 the time that I really didn't have any updates other
9 than what I had sent out in late September to our
10 pilots.

11 This week I -- the latter part of last
12 week and yesterday and today, I've been working on
13 instructions to get out to my pilots on how to get
14 started with the user ID and things of that nature.
15 I have a map that we made up identifying locations and
16 data providers on that map because I wanted to see just
17 what sort of range we had.

18 We've identified almost 40 physicians.
19 All of the medical examiners in the state are going to
20 participate. We have identified, oh, I guess about 10
21 or 15 coroners that are going to participate, but we've
22 only got 20 funeral homes. I think that one of the
23 concerns was that the funeral directors were not
24 comfortable with physicians not participating in this
25 pilot. I have more physicians -- or medical certifiers

1 than I do funeral homes that are going to pilot.

2 The pilot is going to start in Jefferson
3 City. We're working out a schedule where individuals
4 can come into Jefferson City, St. Louis, Kansas City,
5 and Cape. I don't have confirmation on dates just yet,
6 but the last week in October, the first couple weeks in
7 November is when we plan to go out to these different
8 sites, other than here in Jefferson City. That's the
9 first week in November, that I do know because we have
10 the training room.

11 We will be conducting trainings at our
12 state district offices. If anybody here who is -- I
13 think, Scott, you're going to pilot?

14 MR. LINDLEY: Whenever you tell me to
15 start.

16 MS. CROSS: Okay. And I think Don --

17 MR. LAKIN: I have a question.

18 MS. CROSS: -- said something about it,
19 but anyway, anybody who wants to bring a laptop, we've
20 got wireless remote connectivity, that thing. And so
21 they can access the system through their own or we will
22 provide laptops through the training. We plan to
23 conduct two trainings per day at each site.

24 We've got some funeral homes actually
25 from Illinois that are coming over to participate, and

1 so I'm real pleased about that. There are some funeral
2 homes in the state of Kansas that would like to
3 participate. I haven't gotten back with them just yet
4 because I've been out of the office the last couple of
5 weeks, but right now we're moving forward.

6 And I know that there was a concern
7 about cremations that just was recently brought to my
8 attention. I know that people are saying -- you know,
9 we've been talking about this for years, but nobody
10 talked to me. And so I just want to lay that fear to
11 rest.

12 In this new system, for cremations,
13 there will be a successful transmission once your
14 record comes through the system and then you will be
15 able to print out a confirmation to present to the
16 crematory. Now, the crematories are not authorized to
17 have copies of death certificates anyway, so the only
18 thing that is required for a cremation is that you have
19 to have a certificate -- a completed certificate
20 registered or you have to have a written statement by
21 the certifier that they're going to certify.

22 And the system -- that's going to take
23 care of the problem that I understand has been rolling
24 around out there now about the cremations in regards to
25 the system. So I'm glad that that was brought to my

1 attention so that we could direct focus to how to
2 resolve that and I think that we have. So with that,
3 those are about the only pieces of update that I have.

4 MR. LAKIN: Are you going to come to
5 Springfield area?

6 MS. CROSS: Yes, we are. I'm sorry. I
7 haven't got any dates yet. I haven't even put that on
8 my map just yet, but we are because -- I can't think of
9 her name, but anyway she's in Springfield. She's a
10 trade service type funeral home and she --

11 MR. LAKIN: Where are the 40 -- and I'm
12 just asking this. Where are the 40 doctors you have?
13 Just in this area? Because we got 14,000 doctors in
14 the state of Missouri.

15 MS. CROSS: We've got -- actually we've
16 got probably more than that, but we sent out a letter
17 that I had come up with asking for volunteers across
18 the state. And I got quite a bit of positive feedback
19 in trying to get this taken care of and I even had
20 physicians that were dermatologists and asked if there
21 were different aspects of this project, I would like to
22 participate. So the doctors are on board with this.
23 There used to be the electronic medical records. They're
24 familiar with these electronics and they want to move
25 into the 21st century, so they really don't have a

1 problem as we thought they would.

2 I don't know exactly where. I know that
3 we've got Boone, the St. Louis city and County area, I
4 think that somebody had expressed interest in the
5 St. Charles County area. I know that Cape; I know that
6 there is someplace in Springfield, Don, I just can't
7 recall off the top of my head.

8 But these locations are continuing
9 across the state and that's the good thing. And so
10 what I was trying to do was set up the trainings where,
11 like our Illinois friends can come into St. Louis
12 because they're closer to the St. Louis County area,
13 that they can go there. But these will not be at any
14 of the health facilities; they will be in the state
15 district offices.

16 Yes?

17 MR. REINHARD: How's the embalmer sign
18 off on this thing?

19 MS. COOK: Okay, in the system we have
20 an access form where an embalmer -- we've got all of
21 the embalmers listed. They can click on their name --
22 well, let me star-- let me go back. The funeral
23 director would assign it to that embalmer that embalmed
24 for them. Okay? And then the embalmer would go into
25 that queue, they would have their own queue, and they

1 would select that deceased that they embalmed, and then
2 they would click and put -- indicate, certify that I
3 did the embalming.

4 MR. LAKIN: Will 333 have to be changed
5 because it says in the embalmer's own signature?

6 MS. CROSS: Right.

7 MR. LAKIN: So you're going to have to
8 go in and change some rule in 333, and this is going to
9 come down to the first of the year. I mean, this is
10 supposed to -- and I hope it don't. I hope they put
11 you off until February.

12 MS. CROSS: It's okay, Don. We had
13 talked about that sometime back early May, I guess,
14 when we had a meeting and I asked then if there was any
15 opposition to certifying electronically with the
16 embalmers or funeral directors. And I presented that
17 to them and there was no opposition, and so I --

18 MR. LAKIN: Yeah, but it's still going
19 to have to be changed in the statute.

20 MR. OTTO: There's a couple of things
21 that I think are going to have to be changed in the
22 statutes if this is going to fly. Putting the
23 regulation that says crematories that can do cremations
24 must have either the death certificate or the
25 doctor's --

1 MS. CROSS: No, Don.

2 MR. OTTO: Paragraph three, read
3 paragraph three of that regulation.

4 MS. CROSS: I know what it says. It
5 does not say must have a copy of the death certificate.
6 They're not authorized to have a copy of the death
7 certificate. What it says is that the death
8 certificate shall be registered or a written statement
9 provided to the funeral director or the crematory by
10 the certifier that they're going to certify this death
11 certificate. That's what it says. The certificate has
12 to be registered before you can cremate, otherwise you
13 need go to the certifier. That's what it says.

14 MR. OTTO: Say that again.

15 MS. CROSS: It says that the certificate
16 must be completed and registered prior to cremation or
17 a written statement by the certifier that they're going
18 to certify it to present to the funeral director or --
19 so that they can present it to the crematory. That's
20 what it says.

21 MR. SPEAKS: I think most of the funeral
22 homes in the state use that mechanism. I thought there
23 was wording, maybe it's not actually part of the
24 statute, that said, if the cause -- quote, unquote, if
25 the cause of death --

1 MS. CROSS: Cannot be determined.

2 MR. SPEAKS: -- cannot be determined
3 within 72 hours.

4 MS. CROSS: Right.

5 MR. SPEAKS: And the way around it is,
6 well, they haven't been able to determine it yet, but
7 here's the paperwork.

8 MR. MAHN: That's all right.

9 MS. CROSS: But here's a written
10 statement saying that you're --

11 MR. SPEAKS: That they agree that they
12 will.

13 MS. CROSS: And that answers that you
14 need to give a statement or you'd need to --

15 MR. FRAKER: So is it at that point in
16 time that a coroner takes over after the 72 hours?

17 MR. LAKIN: Yes. But it says
18 specifically in the statute that if it's a coroner's
19 case --

20 MS. CROSS: Right.

21 MR. LAKIN: I've already done for the
22 last 10 years. Ivra knows that. If it's a coroner's
23 case; if it's a hospice case and they called you, you
24 can make it into a coroner's case because they called
25 the coroner for hospice or a nursing home.

1 MS. CROSS: That's right.

2 MR. LAKIN: But if it's just somebody
3 that dies over at Mount Vernon at the state hospital,
4 the state hospital is -- they don't have to muckle with
5 any of these rules.

6 MS. CROSS: What we recommend is that in
7 the instance where you cannot get a completed
8 certificate prior to cremation, that bottom line is you
9 can't post ashes sometimes. The thing is, is that when
10 you cannot get a completed certificate, they're looking
11 to make sure that that body has not met with foul play.
12 That's the whole deal.

13 So when you cannot get a completed
14 certificate, what I recommend is if the certifier is
15 not available, then you contact the coroner or the
16 medical examiner. In most cases they will say I have
17 no interest in the case. Then you would go into -- if
18 the person expired at a facility, then you would go to
19 the chief medical officer of that facility because they
20 are responsible for the activities of their staff and
21 ask them to provide a written document so that you can
22 present to the crematory so that family can -- their
23 wishes can be carried out with the disposition.

24 If all else fails, I have said this,
25 then you cannot cremate until you get written

1 documentation that authorizes the cremation.

2 MR. LAKIN: Can a registrar do that in
3 specific cases if a coroner won't?

4 MS. CROSS: In certain cases a registrar
5 is allowed to, well, complete a certificate, provided
6 they conduct an investigation and determine facts of
7 the death. They cannot just -- a funeral director
8 can't just come in and say, You're not complying with
9 the statute if you don't sign this death certificate
10 for me; I know what the cause of death is and they're
11 going to give you the manner and cause and the local's
12 going to sign it? No.

13 I do not recommend that because --

14 MR. REINHARD: But it has happened
15 though.

16 MS. CROSS: Oh, yeah. It has and I have
17 discouraged it every time I have found that out because
18 that is not an appropriate method to get things done.
19 Because if this takes on a judicial process, somebody's
20 going to be in trouble. Okay?

21 MR. LAKIN: And the coroner just as well
22 investigate that death even though it may be a death at
23 home, call the police department and tell them --
24 getting back to your statement, Gary. But the law
25 specifically says unless it's a coroner's case, the

1 coroner cannot sign that authorization that the cause
2 of death has not been determined.

3 Now, I know that we got coroners all
4 over the state that do it. Ivra knows that we have
5 coroners --

6 MS. CROSS: Yeah, we do.

7 MR. LAKIN: -- all over, but as far as
8 it being legal, it is not. And the registrars
9 situation, back several years ago --

10 MS. CROSS: That's an archaic law --

11 MR. REINHARD: Well, you're talking to
12 the dinosaur here.

13 MS. CROSS: Well, yeah, but Don knows,
14 he knows. Okay? And trust me, I refer to him a lot.

15 MR. REINHARD: In a bad way.

16 MS. CROSS: No, no. It's all good.
17 When I'm second guessing myself or struggling with an
18 issue, well, then I will ask Don about it, because I
19 know that he does know.

20 Is there anything else?

21 CHAIRMAN VERNON: Any questions?

22 MR. REINHARD: Thank you, Ivra.

23 MS. CROSS: Okay.

24 CHAIRMAN VERNON: Thanks for coming.

25 MS. DUNN: Thank you, Ivra.

1 MS. CROSS: Okay. See y'all later.

2 CHAIRMAN VERNON: Okay. Question?

3 MR. OTTO: Just for those that were
4 looking -- trying to look this up, I know some people
5 were, it's on page 68 of the orange hymnal. If a
6 completed death cert-- this is 19CSR10-10.100,
7 paragraph two: If a completed death certificate cannot
8 be filed because the cause of death has not been
9 determined, the medical examiner/coroner/physician,
10 certifying the cause of death shall give the funeral
11 director notice of a reasonable delay.

12 The body shall not be cremated until
13 written authorization by the medical
14 examiner/coroner/physician is received by the funeral
15 director. So if the cause of death cannot be
16 determined, then that written authorization comes out.

17 Paragraph three of that says the
18 management of a crematory shall require from an
19 authorized funeral home one of the following: A
20 completed death certificate that's been filed with the
21 local registrar where the death occurred or the funeral
22 director has received that written authorization to
23 cremate the body from a medical examiner/coroner.

24 We disagree; I don't know how. And for
25 the record, we brought up this death certificate thing

1 three years ago, and about direct cremation.

2 MR. LAKIN: But on one place it says --
3 on the second part that you read it says from the
4 coroner or funeral, but on the first set it says
5 physician/coroner.

6 MR. OTTO: Yeah. But the crematory must
7 require, must require, one of those two things; a
8 completed death certificate filed with the local
9 registrar or the letter. Which you can only get the
10 letter if the cause of death has not been determined.

11 MR. LAKIN: But file is the secret with
12 her, Don. File is the little word. If you file it,
13 that -- you know, all you have to do is tell the
14 crematory you filed it according to her. Filed is the
15 secret word with her.

16 MR. LINDLEY: What's it say there?

17 MR. OTTO: Must. Shall require.

18 MR. KRAUS: You don't have to have it in
19 your hand, you just -- it just has to be filed.

20 MR. OTTO: The management from the
21 crematory shall require from an authorized funeral home
22 a signed statement which states that a completed death
23 certificate has been filed with the local registrar
24 where the death occurred.

25 You're not completing -- you're not

1 dealing with the registrar anymore. So that's why I'm
2 saying -- I mean, this is their rule. This isn't
3 yours. They can change the rule to fix it.

4 MR. LINDLEY: So in your interpretation
5 of the word "must", that means they got to do it?

6 MR. OTTO: That -- yeah. Require --

7 MR. LINDLEY: I think under -- I think
8 the same words are used in Chapter 436 on we must be
9 paid. And if this Board's going to have jurisdiction
10 over that must, they better have jurisdiction over the
11 other must.

12 MR. OTTO: Well, that is a Health
13 Department --

14 MR. LINDLEY: I don't understand how
15 anybody in the state of Missouri can have a must one
16 place and a must somewhere else and not comply. Can
17 you, Representative Meadows?

18 REPRESENTATIVE MEADOWS: I don't know
19 that one. I'd have to look into it.

20 MR. LINDLEY: Well, must and shall
21 doesn't give the people the opportunity to not do
22 things, does it, Don?

23 MR. LAKIN: No, it don't. May is the
24 secret word.

25 MR. LINDLEY: But must and shall means

1 the things that got to be done. Right?

2 MR. OTTO: Well, I think the Health
3 Department could definitely change that regulation to
4 make that --

5 MR. LAKIN: The Health Department will
6 not change any regulation. And we tried to get a
7 regulation changed when Gary Shipley was there and he
8 wouldn't do it.

9 CHAIRMAN VERNON: Well, we're the State
10 Board and not the Health Department, so the next order
11 of business is the letter from John Moore, each one of
12 you should have a copy of that, requesting a decision
13 on the scenario that creates, Is this a \$36 preneed.
14 Does everybody have that?

15 MS. EULER: It's an e-mail.

16 CHAIRMAN VERNON: Does everybody got
17 that e-mail from John Moore? Okay. The question is, I
18 would like to know if the Board can give an official
19 ruling on the following:

20 MR. REINHARD: Is it a can or a may?

21 CHAIRMAN VERNON: It says can.

22 MS. RUSSELL: I think you all discussed
23 this.

24 MR. MAHN: Yeah, I think we did.

25 CHAIRMAN VERNON: Have we?

1 MR. MAHN: Yep.

2 MS. RUSSELL: Yeah.

3 MR. MAHN: If no goods or services on
4 the contract.

5 CHAIRMAN VERNON: Okay. You mean at a
6 prior meeting?

7 MS. RUSSELL: Yeah. You had -- you just
8 had -- we just did this in August -- or you guys did
9 this in August.

10 CHAIRMAN VERNON: I don't remember
11 personally, but that's okay.

12 MS. EULER: If there's no preneed
13 contract --

14 MR. KRAUS: We talked about how if
15 there's no preneed contract, but there's an assigned
16 insurance policy, then that insurance policy doesn't
17 mean that it's a preneed; but if there is a preneed
18 contract, then there's a preneed contract --

19 MS. EULER: Right. Right.

20 MR. KRAUS: -- with regards to how it's
21 funded.

22 CHAIRMAN VERNON: All right. Does that
23 solve that?

24 MR. REINHARD: What was the answer?

25 MR. KRAUS: I mean, I think he's kind of

1 trying to ask -- well, you come in and you have this
2 assignment, there's no bill of goods and services, and
3 there's no prices frozen. He doesn't really say,
4 however, there's an understanding that this is in
5 exchange for something, because if there is an exchange
6 for something, then there is a contract. And a preneed
7 contract is a preneed contract. But that's going to be
8 a factual examination case by case.

9 MR. MCCULLOCH: Doesn't it have to be in
10 writing now though, or can you do it verbally?

11 CHAIRMAN VERNON: Okay. I think, does
12 this part matter. I understand the assignment of life
13 insurance, but a CD at the bank is put into a
14 survivorship of the funeral home. Is that equal --

15 MR. MCCULLOCH: I would say no. There's
16 no --

17 MS. EULER: It doesn't, unless there's a
18 preneed contract.

19 MR. MCCULLOCH: -- paperwork, I think
20 it's no. If you haven't written it down and said we're
21 going to do this or that and freeze, unfrozen; I think
22 that's the key to it all. Once you put it on paper and
23 you start -- and then you have the contract there,
24 there's where it becomes a preneed contract I believe.

25 CHAIRMAN VERNON: The part that bugs me

1 about his question is a person comes to a funeral home
2 and prearranges.

3 MR. MCCULLOCH: He didn't say what he
4 meant to.

5 MR. MAHN: And he picked out the items.

6 CHAIRMAN VERNON: Okay. With their
7 desires. With their desires.

8 MR. MCCULLOCH: Yeah. When I die, I've
9 got this policy; I'm just telling you that and I want
10 you to apply it toward my funeral.

11 MR. KRAUS: And that's going to have to
12 be a case by case analysis under contract law, as to
13 whether that constitutes the forming of a contract.
14 The danger in this kind of question is you have that
15 case by case question as to whether it's a contract,
16 which if the Board starts down that road, well, that's
17 going to be your job from here on out is answering
18 hypotheticals about what's a contract and what's not.

19 That's really proper for the Court to
20 determine. And if you make some overall answer, say,
21 to this question that in all similar situations like
22 this, here's what the Board deems to be the case,
23 you've promulgated a rule without promulgating a rule.
24 And you can't do that either.

25 So I think the safe thing and I think

1 what Becky and her staff have been trying to do when
2 they get questions like this on the phone is refer back
3 to the law, which is, what you should do is if there is
4 a preneed contract, then you're subject to the
5 provisions that are set out in all preneed contracts.
6 If there's not the formation of a preneed contract,
7 then there's not. And everything that that implies.
8 If there's not a preneed contract, of course there's no
9 \$36 fee; there's not a preneed contract.

10 MS. EULER: And didn't we do a rule
11 about preplanning versus -- that preplanning is not a
12 preneed contract?

13 MR. KRAUS: I don't think so.

14 MS. EULER: We talked about it.

15 (Discussions were held off the record.)

16 MS. EULER: Right. And that rule, as we
17 discussed, and I don't remember if that's one we filed
18 or if that's one we waited on, answers this one. And I
19 would second what Earl said. I caution the Board
20 against answering hypothetical questions, but if the
21 Board wants to use a hypothetical question as a basis
22 for saying we need a rule on this and then do a rule,
23 that would be appropriate.

24 CHAIRMAN VERNON: Mr. Otto?

25 MR. OTTO: Well, as was mentioned back

1 here, the wild card that's not in this hypothetical is
2 DFS or SFD or --

3 MS. EULER: FSD.

4 MR. OTTO: You know, I swear, I mean,
5 what -- who's the lobbyist for the letterhead company
6 that changes these people's names?

7 But anyway, that's the wild card that's
8 not in this hypothetical, because the family services
9 requires a contract and that's 99 percent of the time
10 why someone would turn a CD over to you if you have no
11 contract. I mean, who -- you know, I haven't had
12 anybody come to me this week and say I've got this CD
13 I'd just like to put in your name for no reason.

14 MS. EULER: Well, I have to tell you
15 from some of my work with funeral homes, people do
16 that.

17 MR. OTTO: Oh, no. You're right.
18 You're right. But the reason they do it -- the reason
19 a lot of them do it -- not all, but the reason a lot of
20 them do it is to get that exclusion of assets. And so
21 if you're in a jurisdiction where your DFS person
22 requires a contract, then -- which brings us back to
23 what we talked about earlier.

24 MS. EULER: Yeah.

25 CHAIRMAN VERNON: Okay. Well, I think

1 the answer to the question is no.

2 MR. KRAUS: Or direct them to the law.

3 CHAIRMAN VERNON: Or direct them to the
4 law. So have you got what you need?

5 MS. DUNN: Uh-huh.

6 There's a handout in the back that looks
7 like this that will go along with Connie's handout.

8 MS. CLARKSON: What Becky has provided
9 is this (indicating) handout that you see looking like
10 this with what was the final language that the Board
11 voted on. This is the document that we're working --
12 my staff is working from to promulgate those rules.

13 MS. DUNN: That was sent to you in
14 e-mail and it was also on the back table, but it
15 shouldn't be anything new.

16 MS. CLARKSON: Okay. The second
17 document was on a legal size with the colors. This is
18 the tracking sheet that we have been using internally
19 to keep track of where the process for each of the
20 rules is. It's very important with the -- again, as
21 I've said before, with rules, to make sure that we keep
22 everything on track because deadlines are set
23 statutorily so if we miss a deadline, we start over.
24 So it's very important that we make sure that we're on
25 top of those deadline dates.

1 The color coding for the rules is -- we
2 were trying to explain where things were at so when we
3 got in here it wasn't so overwhelming as you were
4 trying to follow the lines down. The green -- or the
5 blue that you see on your sheet are the ones that we've
6 completed all the documents internally. We've gotten
7 all the approvals and they've been filed with the
8 Secretary of State's office.

9 The notice of intent only had an
10 emergency rule filed. It did not have a regular rule
11 filed because that -- because of the time period, there
12 would be no need to file a regular rule based on the
13 notice of intent.

14 The other four rules that are
15 highlighted in green had a regular rule along with an
16 emergency rule filed. What you'll follow along the
17 line is the date that the emergency rule becomes
18 effective, and the date that the emergency rule
19 expires. That -- when an emergency rule expires,
20 hopefully we'll make all the deadlines so that there's
21 no break in the rules for the regular rule for those
22 rules. So our hope is to have the regular rule in
23 effect by the time the emergency rule expires; and for
24 most of these it's April the 1st of 2010.

25 The ones that you see in yellow are the

1 ones that we're working up right now. We're completing
2 small business statements, and what that entails for us
3 is that the transcripts that we receive from the court
4 reporting company have been very helpful because we've
5 gone back in to be able to summarize some of the
6 comments made; some of the suggestions that the public
7 has made to do those statements, and we're working
8 through those and we've got a set of about six right
9 now. I think we've got everything except for today's
10 meeting that we've been able to summarize from.

11 The small business statements then are
12 to be reviewed and approved by the Division director
13 once Becky looks at those. And that should be
14 happening and moving into her office within the next
15 week or so.

16 We're working on fiscal notes. Fiscal
17 notes are a little bit separate from small business
18 statements in the fact that we have to summarize
19 monies. So if it's costing somebody, you know, \$15 to
20 apply for an application of some sort, we track that.
21 If it's a notary, those things go into fiscal notes and
22 then we have to justify how we use that money. Some of
23 this you'll see as we've gone down, an evaluation has
24 been conducted and no fiscal notes needed, and it's
25 been noted on here. Others we're still looking at

1 carefully as we go through that.

2 The ones that have not had any kind of
3 color coding to those, we've not touched those yet, and
4 we will be working on those. Hopefully, we'll get
5 small business and everything filed by the end of the
6 month. That's my goal, but there's no promise to that.
7 So I hope by the time we're together in December, all
8 these lines are filled out, you have dates when things
9 were filed, when to watch the Missouri register, when
10 to watch for common periods, when to watch the code of
11 state regulations, and so forth.

12 One thing I did want to note was there
13 is on the Small Business Regulatory Fairness Board
14 website, which is another state agency -- you could
15 Google that to sign up for any notifications that they
16 have. And you can see the state ones as well as -- I
17 think Becky is putting those on the -- are you putting
18 those on the website? The small business statements.

19 MS. DUNN: I'm putting a link on it.

20 MS. CLARKSON: Okay. So it's filed. So
21 you'll be able to see that. Plus, you'll also be able
22 to get a notification of the rules filed. And they do
23 ask for comments on there. It is your right to file a
24 comment if you would like. They do also have the
25 ability to hold hearings of the small business. They

1 can't affect the rule, but they would go on your behalf
2 to Jake Marley to be able to hold a hearing about that,
3 so that's kind of where we're at with rules right now.

4 MS. RUSSELL: What's that website?

5 MS. CLARKSON: It's the Small Business
6 Regulatory Fairness Board.

7 MS. RUSSELL: Small Business Regulatory
8 Fairness Board. That's good. That's good. This is so
9 impressive.

10 MS. DUNN: No one anticipates the
11 workload that's involved in the rule.

12 MS. CLARKSON: That's it unless anybody
13 has questions for me.

14 CHAIRMAN VERNON: Anybody have a
15 question of Connie?

16 Quickly, does the public have specific
17 comments that they want to --

18 MR. OTTO: Just one thing and it's
19 referenced in that long e-mail, but I thought it should
20 be brought up separately. The deadline for preneed
21 agents in passing their state law exam is
22 December 31st, from previous Board action, I believe
23 I'm correct. I would wonder whether the Board would
24 consider extending that time period.

25 I think when that date was picked was

1 back in August or something and it seemed like plenty
2 of time, it did to me, but the applications weren't out
3 until a few weeks ago. It takes several weeks -- I
4 mean, I don't know how long they're being processed
5 here when they get in, but you're going to get a bunch
6 of them all of a sudden at one time, so it will
7 probably take a while here.

8 Then you got to send them down to
9 Arkansas and they process them. And then you get the
10 notice back that it's okay to schedule the exam and,
11 you know, you may or may not get in, depending on how
12 busy they are. So it's -- there's a several week
13 process in just taking the darn test after you get your
14 application in. And then with the rule that if you
15 fail the test, you have to wait 30 days before you can
16 take it again, that gives everybody one shot between
17 now and the end of the year.

18 MS. BATTAGLER: Do you have an idea
19 about how long it will take for the background checks
20 to come back and get a letter of eligibility to the
21 people?

22 MS. DUNN: The background checks we send
23 electronically to the Highway Patrol, but -- usually it
24 takes a couple of days, but we're not in control of
25 that with the Highway Patrol.

1 MR. MCCULLOCH: I personally never
2 thought we'd have time, and that's what came up the
3 other day where the agents aren't getting their notice,
4 but I would like to make a motion if we can. Can we
5 change that? Is that okay?

6 CHAIRMAN VERNON: Hold your motion for
7 one second.

8 What would -- based upon dealing with
9 the testing and all that, from your experience, what
10 would you recommend?

11 MR. OTTO: Well --

12 MR. KRAUS: I just want to clarify,
13 you're talking about the end of October date or the
14 December date?

15 MR. OTTO: December date.

16 MR. KRAUS: Okay.

17 MR. OTTO: I'm talking about the
18 December date. I mean, you voted that that notice of
19 intent covers everybody until December 31st --

20 MR. KRAUS: Assuming you get your
21 application in.

22 MR. OTTO: Yes. Assuming you get your
23 application in before October 31st, and I think --

24 MR. KRAUS: Because they should be able
25 to meet that --

1 MR. OTTO: Well --

2 MR. KRAUS: -- October 31st date.

3 MS. BATTAGLER: Well, let me tell you
4 that a lot -- the preneed agents --

5 MR. MCCULLOCH: Well, some of them
6 weren't even going to get a notice.

7 MS. BATTAGLER: -- have never gotten
8 notice.

9 MR. MCCULLOCH: Yeah.

10 MS. BATTAGLER: It was the funeral
11 directors that got notice. No preneed agents that I
12 have seen out of our company have received notice.

13 MS. EULER: That's because we don't know
14 who they are.

15 MS. BATTAGLER: Yeah, they filed a
16 notice of intent.

17 MS. EULER: Oh, that's right. They're
18 working on that.

19 CHAIRMAN VERNON: Hold on one second.
20 One more time?

21 MS. DUNN: Do you want to hear the
22 workload I have?

23 MS. BATTAGLER: I know. I know. I
24 believe you.

25 MR. MCCULLOCH: Well, Becky, that's what

1 we're trying to say is you have too much.

2 MS. BATTAGLER: That's why we're saying
3 that maybe we need to extend --

4 MR. MCCULLOCH: They put too much
5 pressure --

6 MS. DUNN: Amy, we have 450 --

7 MS. BATTAGLER: I know.

8 MS. DUNN: -- notice of intents for
9 agents.

10 MS. BATTAGLER: I know.

11 MS. DUNN: How did they file those?

12 MR. KRAUS: So they knew to file a
13 notice of intent, but don't know to apply --

14 MS. BATTAGLER: My people knew to file a
15 notice of intent because of me and I made them go back
16 and do it.

17 MR. SPEAKS: Good job, Amy.

18 MS. BATTAGLER: And I made copies of the
19 formal applications for my people, but I was saying
20 people -- and I know you all -- there's just a lot of
21 people out there who don't have a clue.

22 MR. MCCULLOCH: Yeah, the answer's no,
23 they do not.

24 MR. KRAUS: Doesn't it say on the notice
25 of intent that that is intended to cover you until you

1 file an application?

2 MR. MCCULLOCH: Well, why did we send it
3 to the funeral directors if we didn't -- if you're not
4 going to send it to the little agents that don't know
5 anything about what's going on.

6 MR. KRAUS: No. I'm saying that if the
7 argument is that a bunch of people have filed notice of
8 intents and those people don't know to file an
9 application, that doesn't make sense to me.

10 MS. EULER: That doesn't make sense.

11 MR. MCCULLOCH: I'd have to read it and
12 see exactly what it does say. I'm not sure.

13 MS. EULER: Because it says --

14 MR. KRAUS: How do you know to file one
15 and not file the other?

16 MS. EULER: -- on the notice of intent
17 that you have to file your application by --

18 MR. KRAUS: Yeah, it says it right on
19 there.

20 MR. MCCULLOCH: Can I make my motion
21 now?

22 CHAIRMAN VERNON: (Nodded head.)

23 MR. MCCULLOCH: I'd like to make a
24 motion we go to the first quarter, give everybody to
25 the first quarter of next year to give everybody time;

1 give this department time to even actually go through
2 the information. We -- we rushed way too fast in this.
3 I thought so from day one. It's obvious now and
4 everybody else is picking up on that.

5 CHAIRMAN VERNON: But you're only
6 speaking of agents?

7 MR. MCCULLOCH: I think that's -- that's
8 what I think we're --

9 CHAIRMAN VERNON: What you're talking
10 about is only speaking of agents.

11 MR. OTTO: My concern is for these
12 preneed agents. Getting the test passed by December 31
13 is going to be --

14 MR. MCCULLOCH: Because these folks --

15 MR. OTTO: -- difficult procedurally.

16 MR. MCCULLOCH: It's not going to happen
17 and a lot of these folks aren't going to be able to
18 work.

19 CHAIRMAN VERNON: Will 90 days do that?

20 MR. OTTO: I think that's reasonable. I
21 think -- is the preneed agent form on the website now?

22 MS. DUNN: Yes.

23 MR. OTTO: Okay. Now that the preneed
24 agent form is on the website, I don't think folks have
25 the excuse they had before as much.

1 MS. DUNN: Well, Don, whatever the Board
2 decides on this is fine. What we're going to do is
3 send out an e-mail to everyone that we have an e-mail
4 address for. But there again, we have 200 agents that
5 didn't send us an e-mail. So we're going to, at John's
6 suggestion, no matter what the Board decides to do
7 today, we're going to send a postcard to remind
8 everyone and we're going to send an e-mail to everyone.
9 But still, I understand the deadline that you're
10 talking about.

11 But, you know, communicating with
12 people, I -- I would think that 200 agents might have
13 an e-mail, but they did not put them on there. We had
14 450 that filed agent application -- notice of intent,
15 and only 250 gave us e-mails. So --

16 MR. MCCULLOCH: I think there's a lot of
17 folks that do not have --

18 MS. DUNN: E-mail.

19 MR. MCCULLOCH: No. They do not.
20 There's a lot more than you realize. I know you deal
21 with it every day, so it's just like an automatic to
22 you, but with a lot of folks it's just not that way.

23 MR. OTTO: I mean, issue one, do you
24 want to extend the December 31st deadline to the end of
25 the quarter?

1 MR. LAKIN: The rule will have to be
2 changed.

3 MR. OTTO: Yeah. Yeah. That'll have to
4 happen. The second issue which I think maybe John
5 implicitly raised is, is the October 31st date for
6 getting the application in for preneed agents
7 reasonable, or is there any reason why that could not
8 be extended?

9 For preneed sellers and providers,
10 they've already got an October 31st date that they're
11 facing anyway. But this is a new thing for preneed
12 agents. I -- off the top of my head, I don't see any
13 reason why the application process couldn't -- you
14 know, the deadline for preneed agents to get their
15 application in couldn't also be extended another 30
16 days or something. I mean, it's a separate issue.

17 MR. KRAUS: Wait. Wait. I mean, is
18 there more time needed to send in the application?

19 MR. OTTO: Well, I mean, like I said, a
20 lot -- there are more people than you think that don't
21 know that they should be doing that.

22 MR. KRAUS: And how are they going to
23 find out --

24 MR. OTTO: Well, we're working -- doing
25 everything we can.

1 MR. KRAUS: -- if you extend it another
2 30 days?

3 MR. OTTO: We're doing everything we
4 can.

5 MS. DUNN: Well --

6 MR. MCCULLOCH: Becky said she's going
7 to send out the postcard.

8 MS. EULER: The October 31 deadline
9 applies only if you've sent in your notice of intent.

10 MR. KRAUS: Right.

11 MS. EULER: And if people don't know and
12 they haven't sent in their notice of intent, then
13 they're not authorized now; so they can send their
14 application whenever.

15 MS. BATTAGLER: But they're not supposed
16 to be selling until they --

17 CHAIRMAN VERNON: And they're still not
18 able to sell though if they didn't send in notice of
19 intent.

20 MR. MCCULLOCH: We're concerned about
21 those that are trying to get their license and get it
22 done in time.

23 MS. EULER: Correct. Yeah. I
24 understand that. But just making the application -- I
25 guess I don't see why there needs to be an extension,

1 and I'm just throwing the question out there. It's not
2 my decision to make.

3 MR. OTTO: To me, that's not as critical
4 as the December 31st date. I just threw it out there
5 as a separate issue.

6 MR. MCCULLOCH: I agree.

7 MS. EULER: Yeah.

8 MR. MCCULLOCH: I agree. That's not as
9 important as giving them longer to get the license and
10 testing done.

11 MS. EULER: I understand that.

12 MR. MCCULLOCH: If nothing else, to help
13 this office, the State Board office process.

14 MR. KRAUS: Now, if you do draw a line,
15 let's say the Board decides to change the date and draw
16 a line that this is just for sellers that were
17 actually --

18 MS. BATTAGLER: Agents.

19 MR. KRAUS: All right. Instead of just
20 changing the date on the current rule, we're actually
21 writing a different rule for agents, which is different
22 than everybody else.

23 MS. EULER: Which is okay.

24 MR. MCCULLOCH: They're the ones that
25 need it.

1 MR. KRAUS: Being clear that that's what
2 we're talking about.

3 MR. OTTO: Which rule was it that
4 references that December 31st day?

5 MR. KRAUS: It's the one that talks
6 about the notice of intent process.

7 MS. RUSSELL: Preneed agents must take
8 the Missouri Law Exam; is that the one?

9 MS. DUNN: Well, actually, I think it
10 affects two rules maybe. So y'all want to extend the
11 notice of intent?

12 MR. OTTO: Well, that's effectively what
13 you would be doing, is you would --

14 MR. KRAUS: Well, that's what you would
15 be doing.

16 MR. OTTO: -- you would be extending the
17 notice of intent to cover people through the end of the
18 first quarter of 2010 --

19 MS. DUNN: Okay.

20 MR. OTTO: -- to give them additional
21 time to take the Missouri Law Exam.

22 MS. DUNN: Okay. Then I think we're
23 going to have to change three -- two rules. I think
24 we're going to have to change the notice of intent and
25 also the preneed agent must take the Missouri Law Exam.

1 CHAIRMAN VERNON: Can we do that? Are
2 they already --

3 MS. CLARKSON: Well, we've got emergency
4 rules in effect, so I'm trying to find out if we can
5 withdraw an emergency rule, or how because it's blended
6 in with the preneed providers and preneed sellers. How
7 do we handle that? I don't know.

8 MS. BATTAGLER: Becky, your notice of
9 intent to reply referenced the -- being able to take
10 action on anybody if you found out that they --

11 MS. DUNN: Oh, okay.

12 MS. BATTAGLER: -- had misconduct at the
13 number eight on that rule.

14 MS. DUNN: Okay. So then it's only --

15 MS. BATTAGLER: And then you've also
16 got --

17 MS. RUSSELL: It says, And shall end on
18 December 31st.

19 MS. BATTAGLER: Well, that's another --

20 MS. RUSSELL: Yeah. The notice of
21 intent, yeah. I think that's a notice of intent issue.

22 MS. BATTAGLER: What they filed on
23 number eight though -- yeah, it does. And then eight
24 says to be able to take action towards anybody that,
25 you know, has misconduct at that time. So you have to

1 change both parts of that rule.

2 MS. RUSSELL: And then on the preneed
3 agent must take Missouri Law Exam, it says on or before
4 December 31, 2009; and that's an emergency rule that's
5 already been filed.

6 MR. LAKIN: Can you refile that?

7 MS. CLARKSON: I'm checking, Don. I
8 don't know.

9 MR. LAKIN: Just tell them you made a
10 mistake.

11 MS. CLARKSON: Yeah. I'll tell them it
12 was all me.

13 MS. BATTAGLER: So the Missouri Law Exam
14 and the notice of intent to apply both have to be --

15 MS. DUNN: Right.

16 MR. OTTO: Just to throw out there also,
17 I'm running into a lot of people as I do seminars and
18 stuff like that who are figuring out, Oh my gosh, I
19 need to be a preneed agent, and they didn't know they
20 needed to be. So they haven't even filled out a notice
21 of intent yet, but now they've realized I better do
22 that because they haven't thought of it before thinking
23 it through.

24 Because it says anybody who sells or
25 solicits a preneed. solicit is a pretty broad word and

1 once they start thinking about who the seller is and
2 who's soliciting, they go, Gosh, I've got to have more
3 people than I thought be preneed agents. So the pool
4 of people, I think, that are going to want to take this
5 test is broader than the notice of intents you got in.

6 MS. DUNN: We already got more notice of
7 intents than we ever dreamed on agents, so --

8 MS. GERSTEIN: How many?

9 MS. DUNN: Four hundred and fifty, and
10 that's agents alone.

11 REPRESENTATIVE MEADOWS: Mr. Chairman?

12 CHAIRMAN VERNON: Yes, sir?

13 REPRESENTATIVE MEADOWS: I'm watching
14 that lady over there, our stenographer. Earlier, there
15 was about five, six people talking at one time and she
16 was like, going like this (indicating), gasping for
17 air, poor thing.

18 CHAIRMAN VERNON: I'm sorry.

19 MR. SPEAK: That's nitrous she's got in
20 there.

21 CHAIRMAN VERNON: Just yell shut up.

22 MS. BATTAGLER: I guess our question is
23 do you think that they'll get their background check
24 done and letter of eligibility before the end of
25 November, so that they can try it first by the end of

1 November, so they have 30 days to take it by the end of
2 December?

3 MS. DUNN: Well, that's our priority.
4 But I knew that individuals would be asking for this
5 extension because most people want more than one
6 opportunity.

7 MS. RUSSELL: Sure.

8 MS. BATTAGLER: Oh, yeah. Because it's
9 a lot to study. It takes the funeral directors how
10 long to study for that?

11 MR. SPEAKS: And 80 percent of them
12 fail.

13 MR. OTTO: Who do not take my class.

14 MR. SPEAKS: Ninety percent if you take
15 his class.

16 MR. MCCULLOCH: Yeah, I was going to
17 say.

18 MS. BATTAGLER: Can you write a rule to
19 just to add an extension time just for agents?

20 MR. KRAUS: I mean, I think Connie's
21 checking to see what procedure is as to whether you
22 would amend a rule -- an emergency rule, you withdraw
23 the emergency rule and file another one, or do you just
24 file one in its place. Those are really procedural
25 matters I think.

1 The decision for the Board is whether
2 you want to change the date, and if you do, what do you
3 want that change to be. And then if you decide to do
4 that, then you can give a directive to the staff to
5 make that happen however we need to try to make that
6 happen.

7 CHAIRMAN VERNON: John actually already
8 made the motion to do it, but the date wasn't there.

9 MR. MCCULLOCH: Through the end -- I
10 said the first quarter, through the end of March.

11 MS. DUNN: But John, I would like to
12 look at this rule, depending on what Connie says
13 because like on the notice of intent, on paren five,
14 it -- I mean, we may want to change more than one date.
15 I'm not sure. I want to make sure I'm clear.

16 MR. MCCULLOCH: Okay.

17 MS. DUNN: Because it says, Any
18 applicant who has filed a notice of intent must file
19 their completed application for licensure or
20 registration with the Board no later than October 31st.

21 Is that still something we want to leave
22 in place?

23 CHAIRMAN VERNON: You guys actually
24 said, if I recall, that's not really that much of a
25 concern. It was just the ability to take the test.

1 MS. DUNN: Well, now, Amy said and Don
2 said and John said that there are people out there that
3 have no idea.

4 MS. BATTAGLER: But even like Sharon
5 said if they didn't file -- if they have no idea, then
6 they didn't file their notice of intent either.

7 MS. DUNN: Right.

8 MS. BATTAGLER: Which means that they
9 shouldn't be selling anyway, so --

10 MR. STALTER: That's right because
11 they're under the new --

12 MR. MCCULLOCH: Yeah. I don't think
13 that's as big a deal as --

14 MS. BATTAGLER: Yeah. I don't think it
15 is.

16 MR. MCCULLOCH: -- giving the folks that
17 we know have filed the notice of intents, to give them
18 that opportunity to get that testing taken care of.

19 MS. DUNN: Okay. I just want to make
20 sure to cover all dates.

21 MR. MCCULLOCH: It'll help you guys to
22 filter all this stuff, check all these people out.

23 MS. DUNN: Yeah, yeah.

24 MR. BAKER: I have a question for Becky.
25 You mentioned a while ago that you had received 450?

1 MS. DUNN: Agents only, notice of
2 intents.

3 MR. BAKER: Okay. So these were not
4 funeral directors --

5 MS. DUNN: And about 400 -- and about
6 400 funeral director agents.

7 CHAIRMAN VERNON: Eight hundred plus.

8 MR. BAKER: So there's still a lot more
9 out there because I know that we had a couple people on
10 vacation. We said, well, the applications will be
11 coming. We'll just do it all in one shot. So we've
12 got what, 2,500 --

13 MS. DUNN: And this is just notice of
14 intents.

15 MS. BATTAGLER: Oh, so you haven't
16 counted the regular applications yet?

17 MS. DUNN: No. We don't have that many
18 applications in yet.

19 MS. BATTAGLER: You'll get them all
20 after November 1st.

21 CHAIRMAN VERNON: And the magic answer?

22 MS. CLARKSON: The magic answer is we
23 can withdraw an emergency rule and refile it, but the
24 effective date does not change, so I think that's okay.

25 MR. OTTO: That's a good answer.

1 MS. RUSSELL: Good news.

2 CHAIRMAN VERNON: Okay. So John made a
3 motion we go to March 31st, end of the first quarter,
4 to be able to take the agent test. Give them that much
5 more latitude is all we're talking about.

6 MS. CLARKSON: Make sure that our
7 expiration date matches that --

8 MS. DUNN: Well, what I'd like to do,
9 John, can we look at this rule to make sure we get it
10 right?

11 MR. MCCULLOCH: Yeah. Oh, yeah. Please
12 do.

13 MS. DUNN: Okay. Everybody can pick up
14 the rule to make sure we get this right.

15 MS. RUSSELL: Which one are you on, the
16 notice of intent or the --

17 MS. DUNN: The notice of intent.

18 MS. RUSSELL: All right.

19 MS. DUNN: And I'm looking at paren
20 seven right now. Page 3.

21 CHAIRMAN VERNON: So you made a motion
22 we give agents only until the end of March to take
23 their test, just the test. John makes the motion.

24 MR. KRAUS: And I assume that they'll
25 have that long to do that. You're just doing the

1 taking of the test. Right? Not also extending the
2 notice of intent?

3 MS. RUSSELL: Oh, you're not extending
4 the notice of intent?

5 CHAIRMAN VERNON: Well, I thought we
6 basically decided that was really not that big a deal.

7 MR. OTTO: No. That's the--

8 MS. EULER: So they can continue to
9 practice under the notice of intent until the end of
10 March.

11 MR. MCCULLOCH: They'll continue on just
12 like --

13 MR. KRAUS: Right. My understanding of
14 what the discussion and of the motion might be is that
15 the December 31, 2009 date, and the notice of intent
16 rule, and the Missouri Exam rule for agents will be
17 extended to March 31, 2010; so there are the rule
18 changes that we need to do.

19 MR. MCCULLOCH: So in other words, if
20 understood, so people will still be able to send in a
21 notice of intent.

22 MR. KRAUS: Agents would still be able
23 to send in a notice of intent --

24 MR. MCCULLOCH: Still be able to do that
25 process.

1 MR. KRAUS: -- and operate under that
2 notice of intent until their application is approved or
3 until March 31, 2010.

4 MR. MCCULLOCH: Okay. I would change my
5 motion to say that. That sounds better.

6 MR. FRAKER: And I'll second that.

7 MR. REINHARD: (Nodded head.)

8 CHAIRMAN VERNON: Okay. Jim says yes.
9 Todd says --

10 MR. LARKIN: Connie has a question.

11 MS. CLARKSON: No. I just want to
12 clar-- I just want to make sure that -- clarify that
13 the notice of intent still has to be received at the
14 original date, which was October 31st.

15 CHAIRMAN VERNON: October 31st.

16 MR. KRAUS: And what Connie and I were
17 talking about earlier is because of the way the dates
18 fall and the effect of withdrawing the rule is we would
19 actually, with regard to the notice of intent rule, we
20 would withdraw that one; remove agents from it
21 entirely; refile it, and put that in place.

22 MS. CLARKSON: Right.

23 MR. KRAUS: Then we would do a nearly
24 identical notice of intent rule just for agents that
25 has the March 31, 2010 date.

1 MR. MCCULLOCH: So if I understand
2 right, a person on November 15 sends in a notice of
3 intent, they can do that and they've got now until
4 March 31, 2010?

5 MS. RUSSELL: No. They have to file --

6 MS. BATTAGLER: No. They still have to
7 file their notice of intent by October 31st.

8 MR. MCCULLOCH: But you didn't say that.

9 MS. EULER: Yes.

10 MS. BATTAGLER: But that -- your
11 authorization, if they filed that, the authorization
12 from that allows them to practice or to sell until
13 March 31st or until they take the test.

14 MS. CLARKSON: That's what my question
15 was, was there clarity on when that application of
16 notice of intent had to be received in order to allow
17 them to practice until March 31st.

18 MR. KRAUS: I don't know. What do you
19 want?

20 MR. MCCULLOCH: Well, I think that we
21 thought that it really wasn't a big deal, but if you're
22 saying that that's how it needs to be written, that's
23 fine.

24 MR. KRAUS: No. It can be done either
25 way.

1 MS. CLARKSON: I think it can be done
2 either way as long as we're all clear on when that
3 notice of intent --

4 MR. MCCULLOCH: If it's okay, then go
5 ahead and extend it.

6 MS. BATTAGLER: Actually, it's not even
7 the notice of intent --

8 MS. CLARKSON: Well, it is for the test.

9 MS. BATTAGLER: -- be filed, but then
10 the application --

11 MS. CLARKSON: Right.

12 MS. BATTAGLER: -- had to be filed.

13 MS. CLARKSON: There's two issues: How
14 soon do they have to file the notice of intent and does
15 October 31st -- is that okay?

16 MR. MCCULLOCH: If it can be extended,
17 we extend it.

18 MS. CLARKSON: And then the extension
19 for the examination is the second issue and we've
20 clarified that can be handled. And either one of those
21 can be addressed in that preneed agent rules --

22 MR. MCCULLOCH: It would be to our
23 advantage to extend that date.

24 MS. BATTAGLER: I understand that. But
25 what I'm just trying to clarify that it's not

1 necessarily the notice of intent that we're looking --
2 that you're --

3 MR. OTTO: Yeah. Yeah, it is. Because
4 here's a scenario. Somebody has not filed anything
5 yet; November 15th, they decide, oh, I'd like to be a
6 preneed agent and I want to start right away.

7 MS. BATTAGLER: So they file a regular
8 application like everybody else.

9 MR. OTTO: But they wouldn't be able to
10 do -- they wouldn't be able to practice right away.

11 MS. EULER: Yes.

12 MS. BATTAGLER: Yes, they can.

13 MS. EULER: Well, that's right.

14 MS. BATTAGLER: Oh, no.

15 MR. MCCULLOCH: They still need to send
16 in their notice of intent.

17 MS. EULER: The point of the notice of
18 intent was not to enact a temporary licensure procedure
19 for all time, it was to fix the time frame before the
20 application forms were available. Now that the
21 application forms are available, if you have not
22 previously filed a notice of intent, you just need to
23 apply for a license as normal.

24 MR. MCCULLOCH: I got you. Okay. That
25 makes sense.

1 MR. SPEAKS: But you can't sell until
2 it's approved.

3 MS. EULER: Right.

4 MR. MCCULLOCH: I understand that. So
5 now you just file your regular form.

6 MS. EULER: Right.

7 MR. MCCULLOCH: I got you.

8 MS. BATTAGLER: And it's that
9 application that gives you the right to sell until --

10 MR. MCCULLOCH: Sell now --

11 MS. BATTAGLER: -- until you take your
12 test or until March 31st --

13 MR. MCCULLOCH: -- until you get your
14 license. Okay. Now I understand what she's saying. I
15 do.

16 MS. BATTAGLER: See the notice of intent
17 is after the --

18 MR. MCCULLOCH: I understand. I was
19 totally --

20 MS. DUNN: But Amy, what you said is the
21 application doesn't give you the right to practice, the
22 notice of intent does.

23 CHAIRMAN VERNON: You have to file both.

24 MR. OTTO: Yeah. So here's the weird
25 scenario --

1 MS. EULER: Right.

2 MS. BATTAGLER: Well, until
3 October 31st.

4 MS. EULER: If you do not file your
5 notice -- if you file your notice of intent -- if you
6 get a job on January 2nd, you cannot file the notice of
7 intent on January 2nd to sell preneed until you get
8 your application in, because the application forms are
9 available now.

10 MR. MCCULLOCH: So now you just file --

11 MS. EULER: You need to apply --

12 MR. MCCULLOCH: -- the application form.

13 MS. EULER: You need to apply for your
14 registration, and then take the test, and then wait
15 until your registration is passed in order to sell.

16 MR. OTTO: Here's the anomaly that we
17 cannot fix, although we can change the date when it
18 happens; somebody files a notice of intent October
19 30th, along with their application. They can be
20 selling preneed --

21 MS. RUSSELL: Until March 31st.

22 MR. OTTO: -- immediately until whenever
23 this pro-- until March 31st --

24 MS. EULER: Uh-huh.

25 MR. OTTO: -- if they wanted to without

1 getting a license.

2 MS. EULER: Right.

3 MR. OTTO: While the person who files
4 their application on November 1 can't do that.

5 MS. EULER: Right.

6 MR. OTTO: We can shift when that
7 anomaly occurs, but there will always be that anomaly.

8 MS. EULER: Right.

9 MR. MAHN: So the intent form needs to
10 correlate with the date of the cutoff date.

11 MS. EULER: The intent form needs to
12 stay the way it is. You had to file your intent by the
13 date of the original rule, but we can extend the amount
14 of time that that notice -- that valid notice of intent
15 is good for; and that's what you're doing. You're
16 extending it until the time they pass the test or --

17 MR. KRAUS: So leave the filing time for
18 notice of intent as October 31st.

19 MS. EULER: Yeah.

20 MS. DUNN: But now, Don says there's a
21 lot of people out there that still don't know anything
22 about --

23 MS. EULER: Well, and that's the way
24 it's going to be --

25 MR. OTTO: You're going to have that

1 problem no matter when.

2 MS. DUNN: Okay.

3 MS. EULER: There's nothing we can do
4 about that.

5 MS. BATTAGLER: In that case they just
6 file a regular application --

7 MR. MCCULLOCH: The only problem is they
8 won't have the ability to sell though.

9 MS. BATTAGLER: -- whenever they figure
10 it out.

11 MR. MAHN: They can't sell though.

12 MS. BATTAGLER: That's right.

13 MS. RUSSELL: If it's after
14 November 1st.

15 MS. EULER: Just like they can't be a
16 funeral director until their application's approved and
17 they pass the test.

18 MS. BATTAGLER: Right.

19 CHAIRMAN VERNON: All right.

20 MS. EULER: Do you want to extend the
21 time that the notice of intent is good for, which is
22 what I'm understanding, but that's just me. So you
23 want to extend that the notice of intent is good until
24 the end of March or March 1st or whatever and give them
25 until that time to take the license; is that what you

1 want to do?

2 CHAIRMAN VERNON: That's what we want to
3 do.

4 MS. EULER: Okay.

5 MR. MCCULLOCH: That will be good. That
6 way people can come in and start selling --

7 MR. KRAUS: And to be clear, that's
8 without changing the date by which they must file a
9 notice of intent.

10 MS. EULER: Right.

11 MR. KRAUS: Which is October 31st.

12 CHAIRMAN VERNON: Can we fix that?

13 MR. MCCULLOCH: Yeah, can we fix that?

14 MS. EULER: Do you want to?

15 MR. KRAUS: You can.

16 MR. MCCULLOCH: I thought you -- that's
17 what you were saying you wanted to do, change that
18 date.

19 CHAIRMAN VERNON: Well, that's a
20 separate issue. We definitely want the notice of
21 intent to go through the end of March and the testing
22 through the end of March.

23 MS. EULER: For agents only.

24 CHAIRMAN VERNON: For agents only; so we
25 know we want that.

1 Now, the next question, do we want to
2 change the notice of intent October 31st date for
3 agents only; that they have more time to file a notice
4 of intent, or that's it?

5 MR. MCCULLOCH: I would prefer that.

6 CHAIRMAN VERNON: Okay. So how is --
7 yes, that's fixable? What do we need to do for that?

8 MS. CLARKSON: It's the same --

9 MR. KRAUS: I mean, it's the same thing.
10 We can make that change if you want. I think the
11 argument that agents need more time to file a notice of
12 intent, I think providers and sellers could make the
13 same argument.

14 MS. EULER: Yeah. Yeah.

15 CHAIRMAN VERNON: Yeah, but they --

16 MR. KRAUS: Not to throw a corkscrew --

17 MR. MCCULLOCH: Well, they're not here
18 making it.

19 MS. BATTAGLER: Well, the reason we
20 didn't say anything about the providers and sellers is
21 because I know they received a packet.

22 MS. DUNN: Yes. The providers and
23 sellers received a mailing.

24 MS. EULER: The agents are all working
25 for a seller. So if you were a seller and you had

1 agents working for you, I would think you would have
2 told them. It's not like agents are free agents.

3 MS. BATTAGLER: Some of them -- like we
4 have one that only -- just whenever he happens to get
5 a, you know, somebody he -- I mean, he may not go into
6 the office for a month and a half.

7 MS. EULER: But --

8 CHAIRMAN VERNON: So how much more time
9 do you want to give to file their --

10 MS. EULER: Or do you want to?

11 CHAIRMAN VERNON: -- notice of intent
12 for an agent or cut them off at October 31st?

13 MR. MCCULLOCH: I'm listening to the
14 gallery back here, but -- y'all don't think that should
15 change?

16 MR. SPEAKS: I would just leave that
17 alone, yeah.

18 MR. BAKER: What do they know about
19 selling preneed contracts --

20 MR. MCCULLOCH: If they know already?

21 MR. BAKER: -- if they don't already
22 know to send in the notice of intent?

23 MS. EULER: That's right.

24 MS. RUSSELL: Good point. That's a good
25 point, Bob.

1 MS. EULER: And they can submit an
2 application for registration at this point.

3 MR. SPEAKS: I think Sharon was making a
4 great point there in her side conversation with Amy,
5 which is the seller is the employer in this case. It's
6 up to the employer to inform their employees what they
7 need to do.

8 MR. MCCULLOCH: Okay. So we'll just
9 leave that alone and go back to the original motion
10 just extending the time to take the test to the 31st.

11 MS. EULER: And the effectiveness of the
12 notice of intent for agents so that they can continue
13 to work.

14 MR. MCCULLOCH: Yes.

15 MR. BAKER: If you got it in on time.

16 MR. MCCULLOCH: If you got it in on
17 time.

18 MS. EULER: If you got it in on time.

19 MR. MCCULLOCH: Right. I got that.

20 CHAIRMAN VERNON: Okay. There's the
21 motion.

22 MR. MAHN: Second.

23 CHAIRMAN VERNON: There's the second.
24 You already said yes, didn't you?

25 MR. REINHARD: Yeah.

1 CHAIRMAN VERNON: All right. And Gary
2 left. So there you have it.

3 This really will just fall as an FYI and
4 you all surely get this, an agent can't be licensed
5 until their seller is licensed.

6 MR. MCCULLOCH: Yes.

7 (Discussions were held off the record.)

8 CHAIRMAN VERNON: Okay. Since we're
9 doing emergency rules -- since we're talking about
10 emergency rules, I'm going to try to do this and I
11 really would like to make this short and sweet and
12 simple.

13 We have discovered in the thought of an
14 insurance-funded contract, that -- just a housecleaning
15 issue, that we need a rule, we've always intended for
16 it to be a rule, that in the statute under 436.445, sub
17 -- I'm sorry -- 450, number two, there is the little
18 word that any amount required or authorized by this
19 chapter or by rule to collect the \$36 on the
20 insurance-funded contract, we just need to put it in
21 print. So if somebody will just make that motion,
22 we'll go home.

23 MR. MCCULLOCH: I'll make that motion.

24 MR. REINHARD: No. No, no, no.

25 CHAIRMAN VERNON: In a minute.

1 MR. KRAUS: It's on page 23 of Senate
2 Bill 1.

3 MR. MCCULLOCH: You don't want that?

4 MR. REINHARD: We're going to make it --
5 now, go through that one more time.

6 CHAIRMAN VERNON: In the
7 insurance-funded contract --

8 MR. REINHARD: Okay.

9 CHAIRMAN VERNON: -- we just need the
10 rule on paper that says that we can collect the \$36 for
11 the consumers because of the -- what the words I just
12 read: For any amount required or authorized by this
13 chapter or by rule.

14 MR. KRAUS: The statute -- I think the
15 Board has always intended that sellers could collect
16 \$36 on insurance-funded contracts. The statute
17 actually prohibits any other fees other than those by
18 the insurance company from being collected unless
19 there's a rule.

20 CHAIRMAN VERNON: Keyword was the
21 insurance company.

22 MR. KRAUS: That's what it's saying. So
23 if there's a rule, then the seller can collect it. If
24 there's a rule saying the seller can collect 36 bucks
25 for insurance-funded preneed contract, then they could.

1 But if there's not a rule to that
2 effect --

3 MR. REINHARD: If it's tied to insurance
4 policy -- go ahead, Earl.

5 MR. KRAUS: -- you can't.

6 MR. MAHN: Any insurance.

7 MR. REINHARD: Any insurance. So
8 like --

9 MR. KRAUS: Any insurance on a preneed
10 contract.

11 MR. MAHN: Any insurance if there's a
12 contract.

13 MR. MCCULLOCH: But there has to be a
14 contract with it.

15 MR. REINHARD: It has to be a contract
16 with goods and services.

17 MR. KRAUS: That's right.

18 MS. EULER: Right. This is not
19 addressing whether it's a preneed contract --

20 MR. KRAUS: We're not getting into that
21 other issue.

22 MS. EULER: -- it's just when you have
23 an insurance-funded preneed contract, that the rule
24 would authorize the money to be collected from the
25 consumer that would be required on the per contract fee

1 at the end of the reporting period. Right now that's
2 the \$36.

3 MR. KRAUS: Right. Because without that
4 rule, you can't collect the \$36 for an insurance-funded
5 preneed contract; whereas you could for trust funded or
6 joint account.

7 MR. MAHN: That's right.

8 MR. REINHARD: And do you want to
9 clarify contract? The contract says it's going to be
10 applied towards the funeral --

11 MS. EULER: No.

12 MR. REINHARD: -- at a future date?
13 That doesn't count?

14 MS. EULER: We're not going to go into
15 that. It's just when there's an insurance-funded
16 preneed contract, and we'll discuss what constitutes an
17 insurance-funded preneed contract in another rule.

18 MR. RIENHARD: Oh, thank you. I got
19 what you're saying. Second.

20 CHAIRMAN VERNON: Who motioned?

21 MR. MCCULLOCH: I motioned.

22 CHAIRMAN VERNON: John motioned,
23 actually Gary seconded.

24 MR. REINHARD: That's fine.

25 CHAIRMAN VERNON: All right.

1 MR. REINHARD: Yes.

2 CHAIRMAN VERNON: Todd?

3 MR. MAHN: No.

4 CHAIRMAN VERNON: Joy?

5 MS. GERSTEIN: This -- yes.

6 CHAIRMAN VERNON: There's a yes. Go
7 ahead; speak.

8 MR. OTTO: No, no. I was just saying
9 you already voted that the funeral home is going to
10 have to pay the State of Missouri the \$36.

11 MS. EULER: Right.

12 MR. OTTO: This just allows you to
13 reimburse yourself, if you want, you don't have to,
14 from the consumer.

15 CHAIRMAN VERNON: That's right.

16 MR. REINHARD: Is that all right with
17 you?

18 MR. OTTO: Oh, yeah. You got to do
19 that; otherwise it's not fair to the insurance people.

20 CHAIRMAN VERNON: Anything else open to
21 the Board? All right. I hear nothing else from open,
22 so we will understand that open is concluded. I need a
23 motion from the Board to go into closed.

24 MR. MAHN: First.

25 CHAIRMAN VERNON: There's first.

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MR. FRAKER: Second.

CHAIRMAN VERNON: There's second.

MR. REINHARD: (Nodded head.)

CHAIRMAN VERNON: Yes.

MS. GERSTEIN: (Nodded head.)

CHAIRMAN VERNON: Yes. All right.

MS. EULER: And for what purpose?

CHAIRMAN VERNON: For all of the things
that you go into closed for.

MS. EULER: That are listed in the
agenda?

CHAIRMAN VERNON: That are listed in the
agenda. All of that. Thank you.

(The meeting was concluded at 4:40)

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CERTIFICATE OF REPORTER

I, Kristy B. Bradshaw, CCR within and for the State of Missouri, do hereby certify that the foregoing meeting was taken by me; that the testimony of said meetint was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this meeting was taken, and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.


Kristy B. Bradshaw, CCR