MISSOURI STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS

CHAPTER 436 LEGISLATION MEETING

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

JULY 8, 2008
9:45 A.M. - 4:30 P.M.
CHAIRMAN: First of all, I would like to welcome everybody here today. And I, the Board, the legislators, we really appreciate everybody that's here taking the time out of their day, their businesses to come in and help work this 436 legislation. First of all, I'd like to call the meeting to order. I call the roll: Martin Vernon?

MR. VERNON: Here.

CHAIRMAN: Gary Fraker?

MR. FRAKER: Here.

CHAIRMAN: Todd Mahn?

MR. MAHN: Here.

CHAIRMAN: John McCulloch?

MR. MCCULLOCH: Here.

CHAIRMAN: Joy Gerstein?

MS. GERSTEIN: Here.

CHAIRMAN: And I'm going to ask for a motion to approve the agenda.

MR. FRAKER: I make the motion.

CHAIRMAN: Okay. Gary. Todd?

MR. MAHN: Second.

CHAIRMAN: Okay. Martin?

MR. VERNON: Yes.

CHAIRMAN: Joy?
MS. GERSTEIN: Yes.

CHAIRMAN: And John?

MR. MCCULLOCH: Yes.

CHAIRMAN: Okay. All right. Well, anyway, again, I'd like to welcome everybody here today. I'd like to take the opportunity to thank Senator Scott and Representative Wasson for the opportunity to meet and conduct this meeting over 436. I'd like to recognize Representative Meadows here who has been a big part of trying to revise 436 over the years. And at this time, I'd like to have David Broeker, the Division Director of Professional Registration make a few comments.

MR. BROEKER: Thank you, Jim. Good morning to everybody. I want to say right up front thank you ever so much to all of you who are willing to participate in this activity that's going to stretch over a four-day period. I appreciate very much your willingness to do this. I'm very gratified to each and every one of you and, again, my appreciation for your willingness to spend the time to work on this very important subject. As you are all aware, the funeral preneed
industry has recently been a topic of discussion across the country and, in particular, in the state of Missouri. The preneed industry and Chapter 436 has also been a concern for the Board of Embalmers and Funeral Directors for several years. At the end of the last legislative session, Senate Bill 788 was passed which established the joint committee on preneed funeral contracts. The joint committee will consist of fourteen members, seven members from the House of Representatives and seven members from the Senate. It is our understanding that the goal of the joint legislative committee will be to review some of the preneed concerns and to look at whether legislative changes are necessary. In a recent meeting, Senator Delbert Scott and Representative Jay Wasson invited individuals from different aspects of the preneed industry to review Chapter 436 and to help identify areas in Chapter 436 where change may be needed. It is our understanding that these suggestions will be presented to the joint committee to review when the joint committee convenes after August 28th. Augus:
28th is the date that the law goes into effect which created this committee. The Board of Embalmers and Funeral Directors was asked to take the lead on this task; specifically, the Board was asked to assist in organizing a meeting with representatives from the various sectors of the preneed industry including consumer groups, representatives from insurance, funeral directors, preneed sellers, and the various regulators. The goal today and through these meetings is to (1) identify areas of common agreement, and (2) formulate some suggested language for the joint committee to review. This is an unprecedented opportunity for all of the preneed industry to come together with State regulators to provide some suggestions for the joint legislative committee to review. From my many years in state government, an opportunity like this doesn't present itself every legislative session, and we especially want to thank Senator Delbert Scott and Representative Jay Wasson for their invitation and for allowing the Board to assist with this process. This is really an opportunity for all of you to
have a positive impact on an issue that affects a lot of people. As with anything, I am sure there are not going to be -- we are not going to be able to agree on absolutely everything; however, I would encourage you to take advantage of this truly rare opportunity and to make a good-faith attempt to provide some strong guidance for the joint legislative committee and perhaps the general assembly, as well. Quite frankly, it appears that a preneed proposal will most likely be introduced this session either with or without this group’s participation. Of course, it would be good and we would prefer for this to happen with all of your participation. We have some aggressive time frames. Cooperation will be the key to getting this done. We have no idea what will happen with the legislative process after you finish meeting and develop your suggestions. There are no guarantees that what this group develops will actually be enacted by the general assembly; however, by working together, you'll at least have a chance to provide some suggestions from the people who are actually going to be
affected by any change to Chapter 436. Also, you'll have the opportunity to at least present something for the joint legislative committee to actually review in its work. I also want to mention about the relationship with the legislative committee. Senator Delbert Scott called a meeting of members of the Board of Embalmers and Funeral Directors and several of us from the Division of Professional Registration. Senator Scott's committee -- Senator Scott, himself, and the members of his committee have worked very well with the Division and the various boards of the Division, certainly, in the last two years. The same is true with the House of Representatives. Representative Jay Wasson, who was also in attendance at that meeting, he and his committee have worked extremely well with the Division over the last couple years on all matters coming before the 39 boards and commissions that we have in the Division. We're also very pleased to have Representative Meadows with us today who is serving in this roundtable discussion with the rest of you, and he has always been most helpful and very
helpful to the Division, to its various
boards. We've always appreciated his advice
throughout our time of working with you, and
tank you very much.

REPRESENTATIVE MEADOWS: Thank you
very much, Dave.

MR. BROKER: Again, I encourage all
of you to work together. Thank you for your
time, and I truly mean that, for being willing
to participate in this process; it's a very
important one, and we have a lot to gain by
working together. Thank you, again.

CHAIRMAN: Okay. And before we get to
Connie Clarkston, I would like to start over
here with Jim on the end, and would you stand
up and introduce yourself and who you
represent and what part of the state.

(The members introduce themselves.)

CHAIRMAN: All right. Gentlemen,
ladies, we appreciate everybody. A couple
reminders here. This is recorded, so any
comments that you make, do not be ludicrous.
And then, also, your cell phones, if you can
put them at least on vibrate, and if you take
a call, please step out of the room. And,
now, I'm going to let Connie Clarkston, the
Division of Budget and Legislation, and she
works for the Division of Professional
Registration, she's going to lay down, what,
the rules, I guess, of the game, so anyway.
We've got to play by the rules.

MS. CLARKSTON: Thank you, Jim. As
David stated, we have been given a unique
opportunity by the members of the joint
commitee, Senator Scott and Representative
Wasson. During the 2008 legislative session,
two house bills were introduced to address
changes to Chapter 436. I just want to go
through a little bit of history so that we
kind of can get to where we are today. As
part of the legislative process, the Division
of Professional Registration, as any state
agency, is asked by oversight to provide
fiscal impact so that they can provide to the
members of the general assembly what it's
going to cost a state agency to implement a
bill. At that same time, the Division is
often asked what impact it has to the
industry, do we agree with the language, is
there any tweaks that we need, et cetera, et
ceters. With the two house bills that were
introduced, one by Representative Meadows and
one by Representative Kuessner, we were asked
the same question: How does this impact your
Board? How does it impact your industry? The
Board started looking at those legislative
proposals at their April 7th, 2008, meeting,
and due to the gravity of the preneed issues,
the Board held additional meetings to gather
information from the industry. May of you
were present at those meetings. A draft from
those meetings was then presented to Senator
Scott and Representative Wasson. From that
draft, the Board was requested to provide a
list of five priorities in hopes of passing
something in that short period of time before
session ended. It's important for us to
understand today that, obviously, we didn't
get anything through session that close to the
end, so the charge for the joint committee is
to come up with a draft for the members of
the general assembly for next year. We've
been asked to participate in that. It's
important to understand that the draft coming
from this group today is not a Board proposal.
It is a proposal that will represent common-ground agreements that the industry, consumer groups, the Board, the Division and other State regulators believe we can agree on with notes on areas that are unsolved so the general assembly has a starting place to begin. Because we're on such short time frames, we have kind of tried to come up with an organized fashion of how to deal with the comments, the input from the committee, and those in the audience. We will introduce the topic, relevant background information will be then provided. Committee member, those seated at the table, will have dialogue. Committee members, in order to be recognized, you will see the red cards in front of you. To try to help the chairman remember who is wanting to speak, if you will place your red card in front of your name placard, Jim will recognize you. Once the committee dialogue is completed, the public will be given 15 minutes of dialogue or comments to provide to the committee. We ask that each individual limit their comments to two minutes. We will have a timer, so when you hear "time," you need to
stop. In order to facilitate getting all of
your comments, we have developed a comment
sheet that you found outside. You may not
have enough time to provide all your comments
during your two minutes of time. We encourage
you to write your comments down and submit
those, as well. On that form, there is an
e-mail address; it is my e-mail. We ask that
you either write your comments on the comment
sheet or provide them electronically to me.
Please do not send those to the Board office.
My staff is trying to help facilitate this
process for the Board, so in order to do that,
if all comments come to me, those will be
shared with the Board, as well as committee
members. At the end of this discussion --
that includes the discussion of the membership
at the table, as well as the public comments
being received -- a consensus vote of the
group will be taken. Kim and I will then go
back to the office tomorrow and draft the
language and we'll share the review draft with
all of you after the third meeting. That
gives us time to get through the topics, make
the adjustments that are needed, and have one
final document, hopefully, ready by the fourth meeting. The last meeting of the review committee will be utilized to review the final documents to be submitted to the joint committee. If, at any point, you would like to submit a comment after a vote has been taken by the review committee, whether you are a member or not, we ask that the comment be submitted on the comment sheet or to the e-mail address provided. Again, we thank you for your time and participation, and appreciate your cooperation as we move through this process.

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

MS. CLARKSTON: Yes.

CHAIRMAN: She's the timekeeper.

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

CHAIRMAN: Lori Hayes, our investigator. I'm going to turn this over to Kim and she's going to be the facilitator and
to discuss and bring up the topics. So, here we go, and we're going to take this thing and throw it away.

MS. DUNN: While they're moving that, everyone, there is a committee sign-up sheet and there's an audience sign-up sheet. Those are very important for us to have because that's our communication with you throughout this entire process. And, also, just to remind anyone that speaks, please make sure you pronounce your name clearly and loudly for the court reporter. Just to remind you of the agenda, we'll break at noon, lunch on your own. We'll all come back here at 1:30. Rest rooms outside, refreshments. If you have any questions, Lori is available during the day.

CHAIRMAN: Okay, Kim.

MS. GRISTON: Okay. Well, I have the distinct pleasure of trying to help structure some of the discussion. I want to reiterate some of what Connie said previously. Our understanding is that we are going to be working on identifying the common grounds that you, the review committee, may be able to agree on. Our goal is not, at least for the
first two or three sessions, to actually be
drafting language at the table. Our goal is
-- the thought was that we could set the frame
first, then we could go ahead and decorate the
house. If we can just talk about the general
concepts and what this review committee's
consensus is on the general concepts, once we
hear that, Connie, myself, staff, and some
other people will go back, actually work on
putting the words on paper, and then submit
that back out to you all for you all to
review. I think that's probably a more
orderly process than actually, you know,
dealing with "may" to "shall" at this table
because I know that there are a lot of issues
that we need to discuss. Looking at the
background, we thought it was important that
we first deal or address or tackle the basic
questions of 436. I think everybody can write
a book, and many of you have been in many of
the Board meetings for years discussing a lot
of the issues with Chapter 436, but I think
they are all suggestions that we have heard.
We'd like to ask that, for purposes of our
organization, that we stick to the topics that
are listed. The Board is not here today to speak about any specific licensee or any specific issues. This is really a collaborative effort, and we will help you all formulate and pull together the ideas that we hear coming from the review committee. Having said that, I do want to clarify, the Board members are all here today. They are seated here today as an open meeting because State law says that when we have the entire Board together, we do need to post it as an open meeting that is open to the public; however, they are going to be participating as committee members of the draft. My understanding is that the suggestions that come together today are not -- we are not formulating a Board proposal, we are pulling together, again, a consensus draft. What this review committee comes up with, my understanding, is going to be presented to the Board officially in its August meeting, so you'll hear Board members making comments today. They are Board members, but they are going to be participating as practitioners, as members of the public, who have an interest in
Chapter 436. Are there any questions for me or for the chairman before, I guess, we start working? I think the best thing to do is just to pull up our sleeves and it's going to be an interesting day. Does everyone have a copy of the agenda with the specific topics? It should have a July 8th, 2008, list.

MS. DUNN: It looks like this. It was on the table out front. And we also provided a copy of Chapter 436.

MS. GRINSTON: The other thing that was on the table that I do want to just comment on very briefly, we did the survey. For everyone who returned the survey, we do appreciate it. What we tried to do is pull some of the survey results to look at what you all ranked as top priority, what are high priorities, low priorities, moderate priorities, just as a guideline for the committee to see. We did a very rough and raw draft of some of those findings. There is a more professional Excel draft that we have done, and we are going to be giving some more data and some more percentages on what the results were that the Board received on the
survey probably at the next meeting, if not later on today. But that's just a rough draft just as an FYI, and I think it probably will help better as we pull those percentages and things together for you to look at at a later date.

MS. CLARKSTON: The comment sheets are also available on the front table when you came in. One thing that will help us in the office when you send in a comment, if you will put the agenda topic. And if you look at your agenda, it starts with general administration, preneeds, and so forth. So, if you can identify your agenda topic and then the number under that topic so that it's easy for us to connect your comment with the portion for the draft that would be affected.

MS. GRINSTON: Having said that, I think we -- I was thinking about this last night. I think it may be a good idea that we do a little bit of rearranging. I think at the top of our agenda, we have some general administration items, and it talks about the repertory authority over Chapter 436. But I think before we have that discussion, it will
probably be a good idea for this review committee to address the question or the issue of who should be allowed to sell and/or be involved in the pruned industry. I think that that is a basic fundamental question that will have an effect on who is going to regulate it, and I think that question probably needs to be answered first. Having said that, let's look at topic item #3 on this agenda, "Allowing/prohibiting third-party sellers." I think that the suggestion -- and as another point of clarification, a lot of the suggestions that you see as the topic points are not suggestions of the Board. Again, we tried to compile all of the suggestions that we have gotten in from every sector of the pruned industry over the years -- most recent years. One of the questions that we had was a basic question is: Who should be registered or allowed to sell pruned in the state of Missouri? I think that that question probably will then help us answer -- or you all answer the later question of who needs to regulate it. And so, having said that, Mr. Chairman, we would like to open
up the floor for discussion on that issue,

again, looking at the consensus of the group

on who should be registered or authorized to

sell preneed in the state of Missouri.

Nobody. Okay.

REPRESENTATIVE MEADOWS: I might as

well jump right in. I'm not going to be

bashful. What I would like to just say --

this is Representative Tim Meadows, for the

record. Personally speaking as an outsider

looking in this, I think wherever we start or

however it should go, anyone wishing to sell

preneed in the state of Missouri should have

-- be licensed to where we can find out,

follow the bouncing ball to see who is out

here selling preneed. And, also, I think that

they should have to go through the State Board

of Embalmers and Funeral Directors, that they

should have to take a test on Chapter 436,

that they should be in the know on what's

going on, and they should be licensed by the

State Board of Funeral Directors and

Embalmers. With that, I'll rest.

CHAIRMAN: Any other comments? Don?

MR. OTTO: Don Otto, Missouri Funeral
Directors and Embalmers Association. For a number of years, we supported the concept of anybody that physically is dealing with the public, particularly selling preneed, should have some type of license. The form of that license might be open for discussion, whether it's, you know, this type of license or that type of license. But to have something that the State of Missouri can discipline if that person violates the rules, we have felt for a long time, is important.

MS. GRINSTON: And may I broaden the discussion just a little bit, because I think in addition to who should sell on behalf of a preneed seller, I think this committee should also -- or the suggestion was that you all review what entities should be allowed to sell preneed. Right now, we have a system where we have insurance companies that are selling insurance-funded preneed plans. We have third-party seller, which for anyone who may not understand that term, that is someone selling preneed that is open or available to anyone else other than a captive funeral home or funeral establishment. Preneed sellers may
be a funeral establishment who are selling for themselves, and we just consider them a preneed seller. A third-party seller would be another entity that is separate from that establishment whose policies may be used or provided for by one or more other preneed providers. And so, I think that a very fundamental question is: What entities? What is the committee's thoughts on what entities should be listed and/or allowed to sell as an entity in the state of Missouri?

CHAIRMAN: That's okay. Go ahead, George.

MR. CLINE: Thank you. My name is George Cline, and I'm with Kutis Funeral Home in St. Louis. And just so you know, we are family owned, operated; we have been for 100 years. We do exclusively trusts, we don't do any insurance, and we are partial to preneed providers being licensed funeral directors and being -- have their offices here in the state of Missouri.

CHAIRMAN: Bill?

MR. STALTER: I think one of the questions, though, that we'll eventually get
to is, are we going to restrict preneed
selling to licensed funeral directors, or will
we allow other non, you know, funeral-home
type of entities to be sellers. And, you
know, when (inaudible) -- everybody will
point to NPS, but the fact is, I mean, there's
a lot of entities that serve the industry as a
nonlicensed funeral home. I mean, the state
associations -- most of the state associations
are third-party sellers from state to state.
And the reason -- I mean, that is a -- I
guess, bring it together, assets that --
(inaudible) -- for the funeral homes. I mean,
if you try to say that it's -- you're going
to limit sales to licensed funeral directors,
there are a lot of smaller entities that
really are dependent upon an outside
organization. So, then it gets down to how do
you license this third-party seller and not
restrict or restrain the trade to entities
that do comply with the law.

MS. GRINSTON: And, Bill, I'm going to
expand the question, not just how, but who is
eligible for licensure? Will it be only
insurance companies, and I'm talking about the
consensus of this group. Your thoughts on
should it just be insurance companies that are
selling preneed as a preneed seller? Should
it only be third-party sellers, or should it
be restricted to funeral establishments only
as a preneed seller? I think that is the
bigger question when we talk about entities.
Who are we looking at? Insurance companies
only? Are we looking at, again, third-party
sellers only? Or are we looking at the hybrid
mix that we have now where we have third-party
sellers in Missouri, we have sellers who are
funeral establishments, and then we have
sellers who are -- well, insurance companies
who are also selling preneed plans.

MR. MCCULLOCH: John McCulloch. I
want to back on Representative Meadows'
comment. There is accountability for the
counselors now. It falls under the sellers,
and the seller is totally responsible for what
that counselor does. So, if the counselor
goes out and steals money or does something
incorrectly, the seller is going to be
responsible for that. So, these counselors
aren't just running around and no one is
responsible for them. Just a reminder of that.

MS. EULER: One thing that I've seen

in other types of licensing situations outside
of this industry is a situation where -- and
real estate comes to mind -- where you have a
license for the broker who would be, John,
like your organization, and then you have
licenses for the agents so that there is some
individual accountability for the people out
on the streets. And -- because one of the
things I think we need to think about is who
is actually having the customer contact and
where does the accountability need to lie.
And for most people, if you've got your own
license on the line, your own livelihood on
the line, I think most people are more likely
to be more concerned about that than if their
boss' livelihood is on the line because they
will get another job somewhere else.

MR. McCULLOCH: You know, the folks on
the Board can talk to this, but I don't think
we have problems with counselors. That's not
where our problems lie. I think that's a real
minor point in this discussion.

MS. EULER: While we're looking at
Chapter 436, I think it makes sense to keep an open mind and look at everything instead of just focusing on where the problems are right now, because where the problems are right now may not be where the problems are next week.

CHAIRMAN: True. Darlene?

MS. RUSSELL: I think Martin was first.

CHAIRMAN: Okay. Martin?

MR. VERNON: I think I lost my train of thought. Part of the thing, and somebody touched on it just a while ago, is in the licensing thing, I think, we're just sharing personal opinions now, we've got to be sensitive to the fact that to mandate, that you have to be licensed, and the licensed funeral director cannot be required, if I said that correctly, to sell his own merchandise in his own funeral home. So, we have to be a little careful there with the FTC and what that we would be looking at in that way. And you were asking about the hybrid mix.

Personal opinion, again, you know, the wheel, other than people that don't play by the rules, is okay. There is nothing really wrong with the wheel. It works well, so that's just
a personal opinion.

CHAIRMAN: Darlene?

MS. RUSSELL: I agree with what Sharon was speaking on about accountability personally, that everyone who sells a product should have some accountability. I'm a licensed life-insurance producer; I have accountability. I'm a licensed funeral director; there's accountability. Having someone out there that could be representing -- you know, who knows what their background is, and talking to consumers. Some type of registration, I think, so the Board knows who these individuals are out there, not so much really licensing, but at least some type of registration so that they have a personal stake in it, as well.

CHAIRMAN: Okay. Representative, did you have another --

REPRESENTATIVE MEADOWS: I was just going to say, I sit between two -- great minds think alike, but I strongly concur with both of these two ladies, just as a follow-up.

Thank you, Mr. Chairman.

MS. GRINSTON: May I go back to
Martin's wheel. When you look at the entities, again, going back to the main entities, because I understand that there are people selling them for them. Am I hearing no concerns right now with this group with the current process of allowing insurance companies to sell preneed plans, allowing third-party sellers to operate, allowing funeral establishments to operate as their own sellers -- that system? Now, the regulation of that probably is what we will discuss later on today. But for right now, am I hearing that the consensus of the group is that the system that allows all three of those entities to operate and sell preneed in Missouri is not something that you all are interested in seeing changed?

CHAIRMAN: Sharon?

MR. EULER: Sharon Euler with the AG's office. I think that 436 needs to be clarified from an enforcement point of view in that there are some people in the state who will strongly say that insurance-funded preneed contracts do not fall under Chapter 436. There are some people -- and it's just
not clear. Some people say, well, 436 only applies to trusted contracts. I'm not doing -- I don't have a trust, I'm not doing that, so I don't fall under 436, simply because it's not clear. So, what I hear you asking is: How should the definition of preneed contracts be formulated in Missouri as to funding?

MS. GRINSTON: No. I'm asking who should be out there selling. I'm asking if I'm selling a preneed plan, who should be the person authorized to sell preneed in the state of Missouri? And I'll just ask it blankly: Should we be allowing or prohibiting third-party sellers? That's the question, I think, that we probably need to look at first, and then possibly look at clarifying what it is that you're selling and whether you're under 436. But who should be under that umbrella?

MR. VERNON: I'll just reiterate again. My funeral home wants to do all three.

MS. GRINSTON: Got it.

MR. MEIERHOFFER: Michael Meierhoffer. We have used all three at one point or not. But my concern is there are a lot of people
that can't do it on their own and will need third-party administrators or third-party sellers. That is -- I think the consumer needs that. The question is: Can they operate effectively and honestly, and that's what we're all about.

CHAIRMAN: Darlene?

MS. RUSSELL: Mike, I agree with you that there's a need for third-party sellers, also, but I do believe that we probably would need to look, Kim, at the possibility of having a tougher regulation; no different than an insurance company who is examined annually, there should be a little bit more stringent requirements for a preneed seller who, you know, when they reach a certain amount, they have all these consumers' funds, that they have more accountability regarding exams.

CHAIRMAN: Don?

MR. OTTO: I would just note, you know, what Mike said. Not only is there some funeral homes could not do preneed without a preneed seller -- and, again, I know you don't want to get into specifics here. But there's been a number of instances over the four years
that I've been around that because there was a
preneed seller, when a funeral home ceased
operations, the funds were still there for the
consumer. And a number of instances -- a
couple instances where the funeral home was
doing both their own and -- they were acting
as their own seller and they had a third-party
seller; they were doing both. And when that
entity ceased operations, the consumers that
had their funds in the third-party seller got
their funerals. The consumers that had their
funds in the funeral home's own personal
account at the bank lost everything. So,
there is -- there's an additional advantage to
a third-party seller with that, as well.

MR. STRoud: Could I -- Mr. Chairman?

CHAIRMAN: Yeah. I think we've got the
discussion here. Real quick, I think
everybody's consensus probably is all three.
Now, we're going to open it up to -- you go
ahead, Larry. Larry, state your full name and
your prison sentence.

MR. STRoud: Larry Stroud, Adams
Funeral Home, Ozark and Nixa, Missouri; also
president of the NFDEA. What we're after
here, to me, is pretty simple. It doesn't
have to be complicated. Number one, we want
to see how much we're going to put in trust.
That's number one. We're not here to deprive
anyone of a livelihood. That is not our
objective here. We're penalizing ourselves
because of a company who defrauded us, not
only the consumer, but the funeral home
itself. We just need to cut to the chase and
not make it such a complicated issue that
we're all wrapped up in this thing that it's
ridiculous. We want safeguards for -- and I
don't know whether a license for a preneed
seller is the answer to that at all. I've
got a great guy that works for me, he sells
preneed. We don't make house calls; they come
to the funeral home. He could write up a
contract just as simple as anybody. What
we've got to do is trust -- put our money
into a trust or whatever we're going to do
with it and make sure it's safeguarded. I
think that everybody is interested in
safeguarding our monies in the long haul,
whether it's 80 percent, 90 percent, or 100
percent. I just feel very strongly about
this. I don't care what kind of procedure we end up with as long as it's safe -- as long as it's safe, and that's what we're out here for is a safe environment for not only the consumer, but the funeral-home operator. And when I put my trust into a third-party seller, I expect him to honor his commitments, not only to me, but to my consumer, and that's what I expect. John McCulloch was a good example. I know John fulfills his obligations every day. It only takes one crook to ruin this whole thing for all of us here. And Senator Meadows -- I mean, Representative Meadows is a prime example; he's trying to protect the consumer, as well as the funeral home.

MS. REHAGEN: Time.

CHAIRMAN: Time, Larry.

MR. STROUD: Excuse me. I'll get off my rant. I could talk for 20 minutes on this.

CHAIRMAN: Now, folks, the topic of discussion is, like, all three methods of funding.

MR. KRAUS: I'm Jerry Kraus with Homesteader's Life Company. What we feel
works best from a national standpoint is to
look at this from a dual-transaction
standpoint and realize that the insurance
transaction is beyond the authority of the
Board, so let's focus on the preneed
transaction, the funeral contract. As far as
licensure there, we feel it's best to license
the establishment that makes the contract with
the consumer and subrogate below that license
any third-party seller. So, if you license
the establishment to do the transaction and
then you let them subcontract that authority
and you keep track of the registration of
those persons as you deem appropriate. So, you have the funeral establishments at the
top, third-party sellers or independent
operators representing funeral directors under
that license.

CHAIRMAN: Anybody else?

MR. BENNETT: I'm Bill Bennett from
Britton-Bennett in Steelville. My concern
here, after 36 years, I would like to have
some kind of -- I agree with what he said,
but even the person underneath our funeral
home or a third party have some kind of
limited-liability license that is registered
so even if he leaves my funeral home and goes
to yours, we can still track him or her and
see if there's any things they do wrong, and
there is some consumer protection.

CHAIRMAN: So, members of the
committee, the consensus is that we want all
three types of funding methods?

MS. GRINSTON: Sellers.

CHAIRMAN: Sellers. Well, you've got
sellers and insurance.

UNIDENTIFIED: And funeral homes as
sellers.

MS. GRINSTON: And then funeral homes.

So, is the understanding of the group -- and,
Mr. Chairman, if we could take a vote on this.
Is it my understanding that no one -- that as
a consensus, that you guys don't see a problem
with the current persons or the people
authorized to sell preneed in the state of
Missouri? And the system of an insurance
company selling a preneed plan, a third-party
seller, or a funeral establishment selling
under its own seller's license, that that is
something that when we talk about legislative
changes, that we don't think we need to
der change, just that basic framework. Regulation
and who sells for them aside, I think that's
going to be our next question, but that
general question is: Am I understanding -- I
guess we can vote.

CHAIRMAN: Okay. All in favor. All
oppose.

(Unanimous voice vote for approval.)

CHAIRMAN: Okay.

MS. GRINSTON: Now that that first
question is answered, because, again, I think
it's fundamental that if we still have this
three-party system, if you will, now, I think
the next question would be number -- I think
that takes care of §3 and §4 on our agenda,
and I think now we move to §5, which is a
broader question: The licensing and
registration of people selling on behalf of a
preneed seller or a registered preneed seller,
and I think that question, one of the
suggestions that was presented to the Board is
that that person should be restricted to
either insurance agents only, funeral
directors only, or be given some type of
license. And so, I would like to open that
for discussion, even though I think we've
already discussed it previously, but that
issue for discussion.

MR. VERNON: Take a straw poll on all
three. Who should be insurance licensed, who
should be --

CHAIRMAN: Go ahead, Don.

MR. OTTO: I would just like to throw
cut there, just for those who don't -- aren't
aware of it, that there is already what's
called a limited funeral-director's license
under Chapter 333. To get the limited
funeral-director's license, you have to pass a
test. About half of that test is on Chapter
436. The other half of that test is on what
you are and are not allowed to do as a
funeral director -- making a funeral,
providing a funeral, arranging a funeral. So,
in addition to the full-blown
funeral-director's license and the full-blown
embalmer's license, we have under Chapter 333,
and then also the insurance license, there is
the limited funeral-director's license that is
available. And, again, what you have to do to
get that license is to take a test, like
Representative Meadows indicated. About half
of it is on Chapter 436, and almost the rest
of the half is what you can and can't do as a
funeral home -- all things, it sounds like,
somebody selling a preneed plan ought to know.

CHAIRMAN: Darlene?

MS. RUSSELL: I concur about what
Representative Meadows had said earlier about
insurance companies are already -- the people
that sell insurance are already licensed
insurance producers. People -- most of the
people that work in funeral homes that sell
preneed are usually dual licensed as funeral
directors, also. I think some type of
registration, so the Board knows who these
individuals are, is important. Just a small
test on Chapter 436, as well as the
registration fee, and, you know, a background
check, you know, just like you do when you get
a funeral-director's license or an insurance
license. Have you ever been convicted of a
felony -- you know, knowing who is out there.
So, those are my suggestions.

CHAIRMAN: Sharon?
MS. EULER: I'm going to echo what Darlene was saying in that I think that with the differences in how a preneed works, I think it's important to keep 416 and 333 separate so that you don't -- because Don's suggestion of using the 333 limited license is a good idea, but I'm concerned about intermixing the two statutes in that way. And I don't see any reason why we couldn't put language in that would give requirements for licensure just like we have for any other license. You can't sell preneed if you've been convicted of a felony. You can't sell preneed if you've been convicted of a crime involving stealing money from poor folks or old people or vulnerable people. You can't sell if you're of bad moral character; you know, that long litany of things. I don't see why we couldn't do that for preneed because right now, anybody can sell preneed. I mean, I know of one instance where a guy stole a couple million dollars from a bunch of farmers in mid-Missouri and he was selling preneed.

MS. GRINSTON: And just to add to that, some of the states do require -- their
requirements are you have to be 18, you can't
be convicted of a felony, and then you have to
get an agent -- they have different things
that they call them, but a license from the
Board. I just wanted to echo what Sharon
said. But that theme is consistent in some of
the other states.

CHAIRMAN: Representative?

REPRESENTATIVE MEADOWS: Yes. This is
a follow-up with what Don was saying. I just
think some -- when you're out there selling,
you should know that the business, you should
know the industry, and you should be -- there
are needs to, because you folks are the State
board. I want to give you guys the
opportunity and the wherewithal to know who's
out there doing this. I feel that you guys
need to be, and all future boards associated
with the State, they need to know what's going
on out there. And if you don't have no clear
path to that, you, right now, probably
couldn't tell me who is out there selling all
these different preneeds. You probably don't
even know. That's why it's important, I think
there needs to be some type of accountability
and some type of registration on these folks.

CHAIRMAN: Yes?

MS. BOHRER: And I just wanted to say with respect to the insurance-license component, anybody that is selling life insurance tied to a preneed contract would already have to have a life-insurance contract. There is nothing in the life-insurance testing protocol that taps into 416 and the preneed rules and regulations. So, solely having a life-insurance contract -- or license would not prepare someone to sell preneed necessarily.

MS. EULER: That's a good point.

MS. GRINSTON: Good point. So, I'm hearing three things; that if -- yes, that people selling for a preneed seller -- the counselors, if you will -- should be licensed as something with a regulatory entity, that they should -- we should be checking for felony or criminal convictions, and that there should be some type of 416 test. Those three things -- are there other things to add to that, or are there other suggestions?

CHAIRMAN: All right. Todd?
MR. MAHN: Well, I don't know how --
you know, how you can sit here and really
argue about more education, you know. How can
you ever have enough education about anything?
And it's not a topic, but it's a whole other
subject in this state, you know, about
continuing ed. But, you know, just something
I've done, and I don't see why it's such a
big deal, but I had a meeting with both of my
salesladies before coming up here and
instructed them both, but they are to get --
become apprentice funeral directors, bottom
line. It's now part of my internal
requirement at my funeral home. I said we're
going to take the lead on this and if it
becomes something that everybody has to do,
then we're already ahead of the game, but if
it doesn't, it doesn't, and I don't really
care. It's just something that we're going to
do. But, I mean, how complicated is it? I
mean, you know, if they can be an apprentice
funeral director and still sell preneeds, you
know -- it's not that expensive. I just -- I
don't understand why this is such a big deal
or such a problem to even argue over requiring
somebody to have additional education on
something that's so complex and important.

CHAIRMAN: All right. Members of the
industry?

MR. KRAUS: Jerry Kraus,
Homesteader's. What we find works best is the
Board licensing the entity, the funeral home,
allowing the funeral home to authorize
third-party sellers underneath that permit,
and any licensing requirements -- prelicensing
requirements or educational requirements be
imposed on that license, keeping in mind that
these people may or may not be selling
insurance. And remember to separate the
insurance transaction. The insurance company
is already doing criminal-history checks on
its people, so there is some control on that
side. If you want to impose a similar
standard on the preneed licensee, the person
who is doing the preneed transaction, that
could also be appropriate, but keep it on the
funeral-transaction side.

CHAIRMAN: Yeah. What you're saying
is you're already licensed and carry a license.

MR. KRAUS: Don't require it of the
insurance agent --

CHAIRMAN: Right. To have another --

MR. KRAUSE: -- require it of the

person doing the preneed contract.

CHAIRMAN: Yes.

MR. STYGAR: I'm a little confused

about the issue here. We're talking who is

selling preneed contracts. We didn't have a

problem with who was selling preneed contracts

-- I mean, the individuals. The problem was,

as Don had outlined in that last meeting: Who

is responsible for the big money? You know,

if the insurance company is responsible to the

consumer, is the funeral director responsible?

Is the bank trust officer responsible? You

know, that was the big issue. I mean, we --

like the gentleman said, anybody can sell the

preneed product, and I don't mean anybody, and

we can license that person. But it's once all

that money goes in the account and a funeral

director goes out of business or that company,

like NPS went out of business, who is

responsible to who on that money? We had --
you know, we're out holding the bag because

the consumer, whether we're responsible or
not, are going to come back to us and say,
"Hey, I want my funeral," you know. We're
trying to find out, well, is the bank going to
cover this stuff that was in a trust, you
know? Is the insurance company that they put
their money with, is that going to cover us?
I mean, do you understand what I'm saying?
CHAIRMAN: Right. Kim, do you want to
address that?

MS. GRINSTON: Well, I do, and I do
want to maybe make a suggestion because, of
course, we can't avoid the elephant in the
room. There are some things going on in the
preneed industry that have made the news. We
all know what's going on. But I think that
the invitation that this committee has been
given is broader than just that entity. I
think we are looking at 436 as a whole.
Right now, a 14-year-old can sell preneed if
they wanted to. Right now, I could sell
preneed from death row if I wanted to,
assuming I could make the phone call. But I
think the issue and the question is, you all
know the difficulties we have had getting into
436. You all know that rumors, "Don't open
436. It's going to open a can of worms. If you do, you know, it'll be an explosion." We have had an invitation to go into 436 and look at some of those issues outside of just what's happening in the media right now, but look at the issues that have been before the Board. If someone is convicted of stealing, and I'm going to use Sharon's example, $10 million from, you know, an insurance company or from farmers. They can come to this Board tomorrow and say, "Now, let me sell preneed," and this board would have to say, "Go for it." And so, I think as we look -- I would encourage everybody to think globally and not just, you know, at -- of course, again, it's the -- I understand it is -- that what's going on now is a big issue, but let's look at this problem and step back and really look at do you need -- and this is not a recommendation. Should we be registering and/or licensing persons selling on behalf of a third-party seller, and I do appreciate the concerns about insurance sales.

CHAIRMAN: That's a good point. Okay. There's a recommendation -- go ahead, John,
real quick, and then we'll --

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

CHAIRMAN: Joy?
MS. GERSTEIN: Two comments to make.

The lady representing the insurance board --

CHAIRMAN: Linda.

MS. GERSTEIN: -- did you tell me that.

even though someone has a license to sell

insurance, it does not qualify them -- it has

nothing to do with selling preneeds; is that

what you said?

MS. BOHRER: I'm telling you there is

no testing criteria on the life-insurance

license that is targeted to their knowledge of

preneed law. That is not a component of an

insurance-license testing.

MS. GERSTEIN: Great. Thank you.

Now, a discussion follows what I wanted to

comment about. What I see that we're here

for, it's wonderful that we're saying that

right now we don't have to worry about it or

we don't need to put that in writing because

we all know what we're doing. We all know

what we're doing today, but what about

tomorrow? What about a new company coming in?

What's not in writing you can't hold as being

an item that we need to restrict, and that's

what we're doing today. We're trying to
define what needs to be required so that ten
years from now, eight years, five years,
somebody can pick this up and say this is what
we can do, this is what you cannot do. So,
it's not an argument of dealing with what's
happened with their money, it's that we need
to clean this up. We need to get it
clarified what is going to be required. And
not -- it's not saying, like you're saying,
you know what your people are doing, but John
Smith over here might not know what his people
are doing. We need to have something to
clarify as to what we can do.

MR. MCCULLOCH: It is clarified. The
seller is responsible for them. It's there
now. They're responsible for it. We have a
situation that happened in one of the
communities. The funeral director was the
seller for us, stole the money. We made good
on all those contracts. We're making good on
them as they -- we're responsible for them.
What more can you do? If the counselor --

MS. GERSTEIN: What if your seller was
not --

MR. MCCULLOCH: -- the counselor can't
do anything. In fact, she's in jail, so what are you going to do?

MS. GERSTEIN: Go ahead, Kim.

MS. GRINSTON: John, what happens if a counselor -- let's just say a counselor steals from APS, and then decides to go from APS and move to ABC-123, and sell for them, as well. And how do you handle counselors who may be bad?

MR. McCULLOCH: We tell each other. We communicate with ourselves and say this is a bad one, don't hire them.

CHAIRMAN: Yeah, but what if they came to an individual funeral home and said, "Oh, I want to work for you," and we have no clue; we're not in your system?

MR. McCULLOCH: Well, you need to check them out and find out where they've been. And if you can find out from them and do like we do, do background checks, but find out where they have worked. And if they have sold preneed and if you find out they've worked for us, call me, and we'll tell you, you know, stay away from this person.

CHAIRMAN: Okay.
MR. MCCULLOCH: But that's not who's causing the problems, guys.

CHAIRMAN: Jo?

MS. WALKER: As a consumer and representing seniors, I do not think that would be acceptable to have them -- there should be some way to track these people going from one to another, whether it be registration, licensure, or whatever. There needs to be some way to track these people.

MR. MCCULLOCH: Do we have a lot of complaints about counselors?

MS. GRINSTON: Yes. And I'm going to speak from --

MR. MCCULLOCH: Well, when we look at those reports, they're not.

MS. GRINSTON: Because we have -- what they'll say in a complaint is, the person who sold this to me said this, and then we have no idea who may have sold it. We have actually had to ask, "Who was in there selling this plan? Who told them this?" We've had people tell them in preneed that vaults are required by law in the state of Missouri.

"Who told you that?" And then they'll say,
"Well, the guy who's worked for the company."
"Well, what's his name?" And when we have someone who may be just, let's say, a bad apple who is working for a seller or who may be working for a funeral home that's a seller, if that person, again, steals $10 million a day -- I'm going to even take it outside of stealing money. Let's say that person assaults someone in their home while selling the preneed contract. There is nothing that any entity in the state of Missouri can do right now to address that situation other than to say, "Third-party sellers, we hope that you guys are checking it or will do something or will help us somehow." If -- and, again, I'm going to use this example, because this actually came up in one of our licensing entities, not this Board, what happens if someone is sexually assaulted by a counselor? Is there anybody who can go in and say, "Counselor, you're out of there. You're not selling for anybody anymore," officially on behalf of the State?

CHAIRMAN: Sharon?

MS. RULER: I would also like to add
that from a consumer-protection point of view, having a license offers a bright-line standard for people. We get a lot of calls into our office about questions, like, "How do I know whether this person is legit or not? Somebody knocked on my door. How do I know if they're a legitimate business or not?" If the person actually doing the selling has a license, that's a bright-line test, and we can tell people who call into our office, "Before you buy a preneed plan, check to make sure they have a license." Because while there are a lot of reputable people in this state selling preneed, there are also a lot of people who aren't reputable. And the problem is, is that when we've got one of those people, we have no authority to take action. And then this Board gets the phone calls, "Why did you allow this to happen," when the Board has got no authority to do anything about it.

CHAIRMAN: Okay. We're going to take two more. Martin?

MR. VERNON: I just want to bring it to the real world, as John was doing a while ago. Being a Board member, I don't recall...
ever dealing with a complaint about a
counselor up to this point, but I haven't been
here that long. How many times, Becky, has it
really been that a counselor has been
complained against?

MS. DUNN: It's within -- probably -- I
probably can't reveal how many right now.

MR. VERNON: But a lot or not so many?

MS. GRINSTON: You mean a complaint
against the person who sold them the plan?

MR. VERNON: Yeah.

MS. GRINSTON: The person in the room?

MR. VERNON: The person we're trying
to put a license to.

MS. GRINSTON: Have we seen complaints
about someone who has had a complaint with the
person who sold them the preneed plan?

MR. VERNON: As long as I've been on
this Board, no.

MR. McCULLOCH: Plus, typically, what
happens is, when you go into a home as a
preneed counselor and someone is questioning
if you are legit or who you are or are you
really doing what you're supposed to be doing,
they call the funeral director right there.
They call the funeral director and say, "Hey, there's a guy here by the name of John McCulloch. He's trying to sell me this preneed program. Do you have a man out here doing this?" And they'll describe me, and that's kind of the process that happens there.

CHAIRMAN: Jim?

MR. MOODY: You know, I think there's two levels here. I think one is, you know, if you're a felon or something like that where there's a public record of it. That's really straightforward and that's not unreasonable to check that. In other areas of government, there are disqualification lists -- in the long-term-care industry, there's an employee disqualification list. However, there is a very cumbersome administrative process that gets you on that list. And I think, ultimately, on a lot of these issues, when you get to the bottom line, it's what are your fees going to be for administration. And, at some point here, do you make the fee so high that you simply -- you know, I think that we have said that we kind of want to keep the current structure. The level of fees simply...
drive people out of business because it's so expensive to do business. So, I don't think you have to reinvent the wheel. I mean, there are, obviously, ways that you have disqualification lists, but I will tell that they're pretty expensive, and whether the industry is going to want to pay for that.

MS. GRINSTON: And I think that when we talk -- you're talking about disqualification lists as opposed to a license. I think sometimes we think a license -- the process for funeral directors to get licensed and embalmers, I know you guys go through tests and school and everything else. But some of the boards within the Division for people who are out there doing certain things that just need to be -- so for tracking purposes, they come to the entity, they pay a fee, they file an application, they get a license in hand or something that is not essentially burdensome. But what I'm hearing Martin and John say is that it is not your interest to have anybody -- you don't see a regulatory need to track the people selling on behalf of a preneed seller, that, right now,
you believe that the third-party sellers are
taking care of the people working for them,
and you would prefer that the State not get
involved in monitoring or qualifying or
licensing or tracking those people, allow the
third-party sellers to work it out between
themselves.

MR. McCULLOCH: Because I'm
responsible for them and I'm taking
responsibility for them. Is that not true?

MS. GRINSTON: I think as a seller,
yes. I think the answer is yes, but I think
the Board -- I think that the other side of
the discussion is being able to hold the
person responsible, as well, so that if I'm
out there lying to a consumer about what a
funeral plan is, that not only can I go back
to you, but I can also go to that person and
say, "And you stop it, as well." And what
I'm hearing you say is, let the seller stop
it, that you don't believe it's necessary for
the State to be involved or have anything --
exercise any control over those persons
because their employers should be doing that.

MR. McCULLOCH: Because we're not
having any problems. That's the whole point.
If we were having this huge outcry, that is --
this is not the problem that we have in front
of us, I don't think.

CHAIRMAN: Well, I'm going to make a
statement here. Does anybody remember when
NPS, which we're not supposed to go back and
talk about, sold the generic plan with
counselors? The generic plan; they came out
in your town, had a counselor, said it was
good at any funeral home, put you down, dah,
dah, dah, dah. Okay. Now, are you supposed
to service that plan, because, you know, you
may not have been contracted with for that
particular plan that they were selling. So,
who should have been licensed? If you had a
counselor was selling, they would know that
you could sell for that funeral home or you
couldn't.

UNIDENTIFIED: If I didn't notify the
Board in 30 days, I have to honor it.

CHAIRMAN: Right.

UNIDENTIFIED: That's 436.

CHAIRMAN: Yeah. But how -- if you
know it.
UNIDENTIFIED: Well, I don't.

CHAIRMAN: So, how do you know? So, what I'm saying is, I mean, you've got to look at -- these people need to know who they're selling for and what they're selling and not a generic-type deal. So, yeah, you know, I think what we need to do is take a vote.

Tom, I'll let you speak last. We're going to take a vote and go on to this, and we'll get Baker and that will be it. I've got to cut it off someplace, guys. Quick, Todd.

MR. MAHN: I just wanted to back up what Kim said, and, Jeff, let you come up. I mean, I know a lot of people right now are concerned about what went on with NPS, but that's -- and some of these questions don't seem like they even relate to it or we even had problems in that area. But that's not what we're meeting here about. This is an historic moment in this state to be asked to sit down and go through each one of these things and fix these things and really discuss them, not with just a few people, but an open invitation to everyone. And, you know, we just need to go through them and discuss them.
And on the subject of the person, I mean, I'm just saying, at a minimal, I mean, you have to get a permit to have a yard sale; okay?

We're sitting here arguing over whether somebody should get a permit for ten bucks or whatever it is, that we know they're registered, and they're out there in the street somewhere. I mean --

MR. McCULLOCH: I think the answer, Todd, is you shouldn't have to have a permit to have a yard sale.

MR. MAHN: Yeah.

MR. McCULLOCH: That's just another way to tax you; that's all that is.

MR. MAHN: Right.

CHAIRMAN: Bob.

MR. BAKER: Thank you, Mr. Chairman.

I'm Bob Baker. One of the things that I've been hearing here is we have no complaints, nobody ever has any problems at all, but I'm here to tell you, as a funeral director in the field, there are all kinds of problems out there be it whoever goes door-to-door. And the only problem that we have is that we cannot get the people to actually file the
complaints. So, no, the State Board probably
does not get a lot of complaints, but they're
out there. To get that consumer to put their
name on the complaint form and have a
complaint to us is two different things, so I
think that there's a lot more complaints out
there than what everybody is aware of.

CHAIRMAN: Jerry, do you want to make
a quick comment?

MR. KRAUS: Yeah. Two quick comments.
Jerry Kraus, Homesteader's. Your comment on
the generic plan, I think, is an example of
why you need to look at third-party marketers
and their counselors as something you permit
under the establishment level. Control the
transaction of doing the preneed, let the
funeral establishment subcontract to
third-party marketers and their counselors as
they -- and control it as you deem fit. And
in dealing with other Boards, other regulators
that try and control the permanent process,
and you don't have to make it expensive, they
find it necessary to get down to the person at
the transaction level. So, if I'm the funeral
establishment and I want to license all these
people in the front row as my counselors, to
get to one of these person's unethical or
illegal activities, you've got to enforce
through my permit which is not necessary if
you can enforce through that person's permit.
So, charge me $100 for my establishment
permit, charge $5, make it a simple
registration process. Allow these persons to
be under your control so that if they're doing
something wrong, you can pull their license,
and I can go on with my permit.

MR. STROUD: I would like one comment.
CHAIRMAN: Well, get up there and say
it.

MR. STROUD: I think a registration
thing would be very simple, not necessarily
licensing. John McCulloch is a third-party
seller, insurance companies; if they're going
to be actively involved in selling some type
of preneed via the funeral home, then make
those guys register their counselors --
register their counselors. Not saying they
have to have a license, but at least register
them, and then if there is a complaint, we
know who they are. And I'll agree with John
there because no funeral home wants complaints. They're out there, and Bob is right; a lot of people don't -- they won't say anything, but I'll guarantee they'll come into our funeral home and chew our backsides real quick. They come in and say, "Well, Larry, who was that guy out there?" It applies in everyday life. You remember everyday life is different than sitting around this big room here. Some people don't go door-to-door every day. Some of you people don't even work at a funeral home, but a lot of you do. But the issue is, we fight the battles all the time. And if you've got good people working for you, you don't have these problems. Let John register his counselors via the State Board some way. Keep the fees down low, maybe not even have a fee, just as long -- and then when John has got a bad apple, that it's sent to the State Board and said, "This guy is a bad seller." Make it simple. I think we've got too many rules and regulations as it is for everything else that we do. We're still penalizing the funeral home here. The funeral home is not the problem. The funeral home is
not the problem at all; it's the seller.

CHAIRMAN: Okay.

MR. STROUD: He's got to monitor his own company.

MR. WARREN: Mark Warren. As a practical matter, part of what I understood the committee was here for, that part of the problem was the State Board didn't have the ability to address complaints very effectively. From a practical standpoint, if you don't know who to go get and you don't have them register through your Board, then you may have a jurisdictional problem in trying to regulate these people. So, from a practical standpoint -- and there used to be the Department of Insurance used to have an appointment list which was different in a way, but similar in a way that companies would appoint agents to sell for their company which gave the department a way to find out the name of a person if they couldn't find out any other way. In that particular instance, it was incumbent on the company to notify, you know, the department. That particular a requirement, I believe, has since been done
away with, but something along those lines.
It was a way the department could get
jurisdiction over a bad actor and at least
find out who they were.

MR. McCULLOCH: I just have a comment.
I think Jerry and what Larry had to say is a
great compromise, actually. That works well.
Make us responsible. We are now, anyway, but
make us register those folks to give you their
name and then hold us accountable for them.

MS. CRINSTON: And I think -- I don't
know if the question is terminology.
Registration or license, I think we used
license just because we're used to using that
term. But I think that the thought was having
them somehow officially recognized or some way
for the State to know that this person is
selling and that you cannot sell until you do
this thing, whether we call it a registration
or a license. So, is your problem with the
terminology, John, of saying license as
opposed to a registration?

MR. McCULLOCH: I'm just not
interested in taxing those folks and
generating income for any organization.
That's what I don't want.

MS. GRINSTON: And I think that that's

MR. McCULLOCH: I don't want to lay --
put on another layer of an expense for a small
business. That's what I'm trying to avoid.

MS. GRINSTON: And I think that's
probably the next topic of discussion. If you
register or license or whatever you call it,
what are the requirements for it? But am I
hearing that you're not objecting to them
somehow being officially registered or
recognized by the State --

MR. McCULLOCH: No.

MS. GRINSTON: -- but you do not want
a full licensing mechanism like we see with
funeral directors and embalmers?

MR. McCULLOCH: Sure. Certainly.

Because we can't get funeral directors
licensed in the state now because the test is
too hard; okay? So, how are we going to get
all these counselors with a license out there?

So, I just don't really want to get down that
road because we won't be able to hire anyone.

CHAIRMAN: All right. Let's take a
vote on this. All in favor of licensing or
some kind of form of registration, say aye.
Those opposed.

(Unanimous voice vote for approval.)

MR. CLINE: I'm in favor of licensing
as the next -- just at least on 436, so
however they want to --

CHAIRMAN: And we're distinguishing
between insurance licenses and --

MR. CLINE: Correct.

MS. GRINSTON: So, what I hear
everyone saying is that you would like to do
something with the State agency, now I think
the discussion is register versus license.
What do we want to call it? Not we; what do
you want to call it? Do you think it should
be a registration where we get the list of
people? Do you think there should be a
testing element so that there's a full
licensing procedure? What are you interested
in seeing for people who are -- I don't know
-- registered, licensed, deputized? That's
what we'll call them, deputies.

CHAIRMAN: Darlene?

MS. RUSSELL: Currently, I think the
Board uses -- utilizes a student registration, apprentice registration, and a practicum registration, and all three of those types of registration requires a background check as far as answering questions as far as their convictions and that type of thing. So, I'm thinking some type of a registration might be the way to handle it instead of the licensing.

REPRESENTATIVE MEADOWS: I strongly concur.

MR. McCULLOCH: Someone that wants to be a funeral director, do we still do background checks? I thought we quit doing that?

MS. GRINSTON: No.

MS. DUNN: We view Missouri State Highway Patrol.

MR. McCULLOCH: But we don't require it, do we?

MS. DUNN: We do background checks.

We do not do fingerprinting.

MR. McCULLOCH: Okay. But you do run them through that system?

MS. DUNN: Uh-huh.

MR. McCULLOCH: Okay.
CHAIRMAN: Industry members?

MR. OTTO: Well, I just -- my only question is if it's -- if you call it a registration, are there going to be certain qualifications for that registration, like not pled guilty to a -- don't say convict, by the way -- not pled guilty to a felony, you know, all those other -- you know, pick a half dozen things that are already in most of the licensing things that you're not allowed to have, and is it going to be something that can be taken away from them.

CHAIRMAN: That's a key point.

MS. GRINSTON: It is.

CHAIRMAN: If you get a complaint and you find whatever out about them and they're no good, they need to be revoked and then sent whatever -- notification on the Web site that they are revoked and you shouldn't, you know, hire the guy. I don't know. Someone --

MR. OTTO: Whatever you call it, is it something -- that's just the question I have. Is it something that you can take away from them if --

CHAIRMAN: We're just taking their
livelihoo away, which you take your
livelihoo away, then you’ve --

MR. OTTO: John may -- (inaudible) --
because he does things right away.

MR. McCULLOCH: Well, no, I think what
you all are doing is great because you're --
again, I'm doing it myself. You're just
saying, well, we want to make sure that
everybody does this; okay? That makes sense
to me. And so, you post these people's names,
and so, that let's me know if I go to hire
someone, I look on this site and I see, uh-oh,
don't hire John McCulloch, and, you know, I
can move on to the next person. I don't see
anything wrong with that at all. That's
probably just good common sense.

MS. GRINSTON: So, if your thought is
registration, I know with other boards,
there's sort of, like, an approved
registration list, and then you can be removed
from an approved registration, and it's not a
full license, if you will.

MR. BAKER: Are we talking about
anyone who sells a product, whether it be a
trust, insurance. Just because you have an
insurance license doesn't mean you know anything about funerals. Are we talking about everybody that's going to sell funerals?

MR. KRAUS: (inaudible) -- that you can perform funerals to sell funerals. Don't license insurance companies, don't license marketers; license people to sell funerals that can do funerals.

MR. McCULLOCH: I agree with you, totally.

UNIDENTIFIED: You what, John?

MR. McCULLOCH: I was just agreeing with him. I think that preneed is a separate -- totally separate from being a funeral director. It's different. I really do believe that.

MR. BENNETT: I'm Bill Bennett. I have a dual license, plus I'm a licensed insurance agent. But we're talking 436, we're talking the future. And like Joy and like Jo, we need to protect the consumer. If we -- the least we can do is register the person that actually writes the contract or knocks on the door, even if they work for me. I know John very well. John has a tight ship. I
appreciate that, but he's not the only one
that we're going to encounter in the next 20,
30, 40 years, so the least we can do is have
them registered with a qualification list and
a disqualification list, and go from there.
At least we know who the actual person is cut
there.

CHAIRMAN: Sharon?

MS. EULER: My suggestion would be
from a consistency point of view that it would
make sense to have a license as opposed to a
registration because there's a whole body of
law in the state of Missouri as to what a
license means and what you need to do to take
away a license and what it means to hold a
license. If you call it a registration, it's
not as clear -- it's not legally as clear.
And, also, it seems to me that minimal
competency and knowledge of Chapter 436 and,
again, for consistency purposes, use the
criteria in Chapter 333, which is common to
various licenses, as to your criteria. We
already have that; why reinvent the wheel.

CHAIRMAN: Representative?

REPRESENTATIVE MEADOWS: I just might
add, and maybe I'm wrong and I'm not here to slight anybody, the third-party sellers and the insurance companies that are in the room. But folks, this is a serious problem. When you're going to take me and you're going to abuse the little old lady that's out there -- I'm not saying John's company has done that or any insurance company here. But this has to be about the consumer and if we're going to come all this way and we're going to get here to the threshold and then we're going to water everything down, then, to me, that's not the way we're going to go. There are senior citizens out there that are purchasing these things, and that's why I brought Norma Collins in a long time ago and I brought Jo Walker in. This is a very important issue, and if we get to the threshold and say, "Okay. Well, the third-part seller, I'm going to be the one that's responsible for these guys." All right. Well, if they're doing something wrong, are you going to be responsible enough to go to jail, because I'm going to tell you something, this NPS stuff -- and I don't want to get there because I can get on my soapbox.
in a hurry -- anyone associated with that --
that wrongdoing -- should go to jail, and
that's just my personal opinion, and I think
we need to put some penalty phases on this in
legislation because I am that strongly -- I
have convictions to put people in prison. If
they are doing something wrong, they need to
go to jail. We don't need to go, "Well,
okay. We're going to hide our head, we're
going to put our head in the sand." No. I
say no. I say it's time to lock down. We've
got an opportunity here. Let's put the
regulations in place. I don't want to pick on
any third-party seller or any insurance
company, but if we water it down, folks, the
ones that are going to lose are going to be
the senior citizens of this state, the
veterans, your customers, your consumers that
are out there, your funeral -- the folks that
you -- look up to you in your communities each
and every day. Those are going to be the
ones that are going to suffer down the road,
and even possibly you as a small-business
owner. So, I just encourage -- I mean, now
you know where I stand. I mean, I'm a
hard-core-regulation guy, and let's do it.
And I don't mean to pick on anybody in this
room, but that's the way I'm going to be
because I've done been there with it the last
couple years, so -- thank you.

CHAIRMAN: Thank you. Norma?

MS. COLLINS: I just wanted to add to
Representative Meadows' comments. Many older
people -- and I'm not talking about people who
are not educated. When we think about scams
and telemarketing, an issue that AARP has
worked on, so many people are embarrassed to
come forward and to tell you that they have
been the victim of a scam or whatever. Older
people have a trust level when they let people
into their homes to sell them whatever;
they're very trusting. And so, it could be
that many of these people, these complaints
are not coming forward because people are too
embarrassed to tell you about it.

CHAIRMAN: Mike?

MR. MEIERHOFFER: In answering
Representative Meadows' comment, I understand
where you're coming from, but there's got to
be somewhere in between what you're talking
about because there are not enough laws that
you can write or that we can hold to keep the
bad guys from doing what you're talking about.
So, somehow, we've got to come to some
conclusion here on how much tax does the
consumer ultimately pay or does the seller pay
themselves in doing the things that you would
like to do. Now, I don't disagree. We need
to do something, and this is our time to do
it. And the consumer has to be protected. I
don't think there's anybody in this room
that's going to say not. The question is:
How do we come to some agreement to take care
of that and move ourselves backwater to the
point where this problem really started. And
it's not right what we're talking about, but I
think we've got to be proactive and we might
as well get ahead of them -- of the curve and
do something. So, if it's registration or
licensing, I'm in agreement. As far as being
a funeral director to sell it, absolutely not.
Absolutely not. We've got to separate that.
And the insurance, keep them out of 436, and
if they need to take licenses or some type of
a deal for this thing we're talking about --
and I've got an insurance license and I've got a pilot's license and I've got a hunter's license -- but the point is, and we can have all those things taken away from us if we don't perform within the scope of the law. And I think you're probably right, we have to have some teeth in it; otherwise, it doesn't mean a thing. But let's not set it up so we tax John and his company and tax the person that's trying to go out there and work or, ultimately, the consumer is going to pay for. Somehow, they've got to -- it's got to be paid for, because you, as a state, have to operate, too. So, if we can figure out a way to do that, I'm with you.

CHAIRMAN: Okay, Todd.

MR. MAHN: Real quick, John, talking about having an agent registered. If the agent was to do something unbeknownst to you and your company, I don't personally think that your company ought to be penalized for something somebody did out in the field. I think that person ought to be addressed -- that person. So, in a way, you know, this kind of protects your company, also.
MR. MCCULLOCH: Well, you would be the exception, Todd, because, ultimately, the funeral homes expects me to fix it. So, I have to -- you know --

MR. MAHN: And not so much --

MR. MCCULLOCH: -- I may give the counselor a second chance.

MR. MAHN: Right.

MR. MCCULLOCH: But, ultimately, I've got to go back to your customer and make everything right with them.

MR. MAHN: Right.

MR. MCCULLOCH: Or you're not going to be happy and then you'll cancel me, see?

MR. MAHN: Right. Right. And in my case, my counselors sell multiple policies, so they're not just selling yours. We use multiple companies, so they need to be responsible to somebody other than just one person, you know. But real quick, talking about people out there just selling stuff and doing what they want, I'm going to ask somebody to make a couple comments here. They told me a story the other day about somebody out doing sales. Brian May is here from...
Chapel Hill. Brian, would you share with us about the sale situation you got into and had the sheriff's department there. And would you come up and take a mike. Do you mind, Mr. Chairman?

CHAIRMAN: No.

MR. MAY: Well, we just got in a situation where -- it was, basically, what John said, though. A family calls and says, "Hey, there's this guy at my house and he says he's with Chapel Hill." And I had them describe him and, of course, it wasn't the right person. And then he said, "Well, they've been out here three times now, and they're going to come out here tomorrow morning at 9:00 again." And she was, like, "And I just remembered my husband is not going to be here." And I'm, like, I don't even know who this person is. So, anyway, long story short, I think everything worked pretty effectively. I mean, they called the funeral home, they called me, and it ended up being somebody from a different company; all right?

MR. MAHN: Go ahead. Tell them who it was.
MR. MAY: From NPS. Okay. And so, anyway, to me --

MR. MAHN: And that's just recent.

MR. MAY: Well, I guess there are people out there who, I think, may not be representing themselves correctly. My personal opinion is some sort of identification of who is out there offering preneed. Wouldn't you all like to know, hey, how many people are out there offering preneed? There's 5,000 people in Missouri, or there's 2,000, or there's -- I mean, to me, to be able to track in some way seems reasonable, you know. To register -- one of the frustrating things, though, we have only sellers on staff for our company, is I think licensing takes a long time sometimes, and if you find someone who is talented and you're trying to find someone to come on your staff who is really good, we're going to have to get much, much, much, much better with that whole process, or they can't even go out and talk to clients, and that's a huge challenge. So, I think it needs to be simple and not too overly expensive. I also think my big one is
accountability with the providers, people who own establishments. If I want a preneed to hit my desk and I'm excited about it hitting my desk, because John's company had done a great job and my sellers have, I've got to be accountable for who is out there selling. The buck stops with the funeral homes as far as I'm concerned. People walk in thinking they're prearranging with Chapel Hill even if they're meeting with a counselor of a third-party seller.

CHAIRMAN: Joy?

MS. GERSTEIN: I have a simple question, guys, as a public member. You were fortunate that those people called you and found out that they did not work for you. What about the person who didn't call, which is the majority of the public who would not have called?

MR. MEIERHOFFER: But my point -- the point -- Michael Meierhofer -- there are going to be people doing that anyhow. You can put a license out here for everybody in the state, and there will be those people who will go out and still present themselves.
MR. MAHN: Well, here's the thing.
Let's just not license hairdressers or anybody
anymore.
(Several people talking simultaneously.)
MS. GRINSTON: I'm going to simplify
something, just by way of explanation. Board
of Barbery and Cosmetology, if you're
technically providing cosmetology services
outside of your beauty shop, you've got to
carry around a certificate of identification
that says this is from the Board, this is who
I am, this is my license number. I don't
know if that's what I'm hearing people say,
you know, as far as being in the field. But
when we talk about registration or licensing,
since we talked about -- we understand -- I
understand that you guys want them to do
something.
(Several people talking simultaneously.)
CHAIRMAN: Hold on. Let Kim finish up
because she's addressing that. Okay. Go
ahead.
MS. GRINSTON: For the requirements
and just to help me understand the discussion,
are you guys looking at something that some
regulatory entity -- the Board, whomever --
can remove for a specific reason, or are you
looking at something that is just a
notification only and no removal, or I'm going
to say disciplinary even though I know I'm
going to get in trouble for it? Any way to
remove them from the registration list, from
licensure, or whatever we call it.

CHAIRMAN: Okay. Hold it. Now, Jo,
you have a comment.

MS. WALKER: Really, my comment was
that, generally, I agree with Norma that
senior citizens are trusting. If someone
comes to their door, I don't think I would
call my funeral home and say, "Is this person"
-- you know, "Are they with you?" I don't
think I would do that. I would just assume
that they were who they said they were. So,
I think there needs to be some type of
identification that this person has been
registered, licensed, whatever we want to call
it, and that they are going to carry through
with what they say they are going to do. And
if they don't, there should be some means to
either remove them, discipline them, whomever,
whether it be the funeral home, whether it be
the insurance company, or someone that would
be held accountable.

CHAIRMAN: Amen.

MR. FRAKER: I've got one comment.

CHAIRMAN: All right. Gary?

MR. FRAKER: I think it boils down to a
credibility and accountability issue. What
does it hurt to have knowledge of what you're
selling?

CHAIRMAN: Absolutely. I mean, like,
if you're making a commission and you're
selling a concrete box, what keeps you from
telling you've got to have a vault and make
another 50 bucks? And I agree; you don't have
to come in and take -- maybe just take a
class. Okay. Here's a two-hour class, you
can teach it. I'm just trying to get
everybody gets a fair piece of this. Take the
class. This is what it is. You don't have
to take a test. Here's your certificate, dah, dah, dah, dah -- so on and so forth.

Five seconds.

MR. MAY: Well, it sounds like we're
talking about accountability versus
identifying people. I don't think a consumer is ever going to call. You know, "I've got a prearrangement appointment tomorrow at Chapel Hill. I'm going to call the State Board and see if they're" -- (inaudible.) I just don't think that's -- (inaudible.)

MS. DUNN: They do.

MS. GRINSTON: They do.

MS. DUNN: They do.

MR. MAY: They'll tell you who they're supposed to meet with and you'll look at your list, and they'll go, "Well, they're not on the list, you shouldn't be meeting with them. I mean, that happens, it sounds like.

CHAIRMAN: Go ahead.

MS. EULER: From an enforcement point of view, I think there needs to be a license with the disciplinary process and the removal process, because if it's simply a registration and we have a bad actor, then the headlines are going to be State Board allowed this to happen and this guy is still out there selling it ree need. Why hasn't the State Board done anything about it, and the State Board will have no authority.
CHAIRMAN: All right. Jerry?

MR. KRAUS: Real quick. Speaking of accountability, the Board is responsible all the way: Licenses the establishments, licenses the third-party marketers, licenses the counselors, and teaches the classes.

MR. MAY: You know, I think it's great to think about registering everybody, but to get that accountability, I think it's going to have to lie with the funeral homes and sellers more than anything.

CHAIRMAN: And this registration is going to take a fee, because we're going to have to have administration over it, so -- all right. Let's take a vote.

MR. STYGAR: I will say something. Accountability -- we license them. Whether they are registered or whatever, we find out, how long is it going to take you to get them off the street legally?

MS. CRINSTON: That's something we need to discuss because if we do the process right now, two to four years. But I shouldn't say that, because the attorney general's office has really moved a lot of our -- some
of the issues that we needed to move on very
quickly, they moved very -- they were able to
do so. They wouldn't be able to do that for
a huge number of people or a huge number of
groups. So, I think that that discussion is
going to be connected to the complaint
discussion. But as you talk about removing
the license, since it appears that there is
some concern about giving full disciplinary
authority, what about limiting just the
removal authority, if you will, to certain
things; like being convicted of a felony, or
for violating Chapter 436. You can remove
then for violating Chapter 436 or for being
convicted of a crime that involves all the
stuff that all the licensing boards look at
that relate to the profession, that involves
-- I'm sorry.

MS. EULER: Violence, moral turpitude.

MS. GRINSTON: Violence. Just help
me. Thank you. Dishonesty.

MS. EULER: Dishonesty, fraud.

MS. GRINSTON: That's a legal term.

MR. BAKEE: What if I plead not
guilty, so I'm not convicted, so you can't
take my license.

MS. GRINSTON: Well, if you’re not guilty for a criminal offense, but let’s say you still violated 436, if there is -- and this is not a suggestion, but since the concern appears to be giving the full arsenal for these people, what about if it’s -- if you did limit it to felonies and violations of Chapter 436? Well, not felonies for criminal -- I don't even want to say convictions. Criminal charges, being adjudicated, found guilty, because you always want to pick up your SIS charges, and then also violating 436. That's just a discussion.

MR. MAY: Just point of clarification. So, conceptually, with this registration or license or whatever it is, you’re talking about every single person who might conceivably ever put their signature on a preneed contract; correct? Even for a funeral home that does a little walk-in business, all their funeral directors now have to be either registered to do this in case they did, one day, do a preneed contract; right? I mean, to me, it needs to be consistent.
MS. GRINSTON: Anybody who is authorized to sell on your behalf. Now, let's say you've got a -- the person who answers the phone, who doesn't sell on your behalf, she just does administrative stuff, and that would be no. My understanding is what I'm hearing is anybody authorized to sell on your behalf. So, John, I hate to keep picking on your group. If it's an APS person and he's got, you know, 200 counselors in the field, then those 200 counselors, if he has authorized those 200 people. Doesn't need to authorize the secretary, the administrative people, or anything else, but the people who are going to be in front of a consumer selling the policy, those people need to be registered, and I think, conceptually, I think if what I'm hearing the consensus is, there is a list of some type and possibly we can remove you from the list if you're convicted of something or found -- if there's a criminal offense, and I would suggest, also, a possible violation of Chapter 436. If the consensus is not full disciplinary authority, which is everything -- now, for funeral directors, we can do -- you
guys know this -- for obtaining a fee by
fraud, incompetence, misconduct, you know, all
of those things, and the arsenal is a lot
bigger.

MS. EULER: Why would you not want to
include the entire arsenal?

MS. GRINSTON: I don't know. Why
would you not, or would you?

UNIDENTIFIED: What was that question?

UNIDENTIFIED: Can you say it again?

MS. GRINSTON: The question was: Why
would you not want to include the entire
arsenal? And I don't know. Would you or
would you not?

MR. MAHN: Chairman, can I say

something?

CHAIRMAN: Well, Don had it next.

MR. OTTO: Well, just one thing I
threw out there which potentially complicates
it more, so sorry. I think the big issue
that we're talking about now is for those
people that currently do not have any type of
licensure. That's the problem. If you are a
funeral director, you can already have your
license taken away for violation of Chapter
436. If you have an insurance license, you
car normally have your insurance license taken
away for violating any law, any kind of
misconduct. So, you know, one thing to
consider is are we going to require people who
already have an insurance license or already
have a funeral-director's license to, in
addition, pick up this third-part -- this
preregistration/license/whatever you want to
call it.

CHAIRMAN: Don, can we do that
separately?

MR. OTTO: Okay.

MS. GRINSTON: Yeah. Just the
insurance, because I think that's a big
discussion on how we handle insurance-funded
issues.

MR. OTTO: Well, I'm just wondering if
all our funeral directors who already have to
be -- my concern is, I think everybody out
there should have something the state can take
away from them if they've done a bad thing.
Funeral directors already have that.

UNIDENTIFIED: Correct.

CHAIRMAN: All right, Todd. Well,
wait a minute. Hold it. Norma is next.

MS. COLLINS: Kim, I just need to be
-- some clarification. When you said it would
take two to four years to remove this person,
so that person is still running around selling
these products while you're trying to remove
him or her?

MS. GRINSTON: Currently, and this is
something that exists for almost every
licensing board out there -- almost every one.
The process from -- to get disciplinary
authority is about a two- to four-year, and
four years may be conservative. It may take
even a little bit longer than that. And so,
yes, we can have someone who is out there who
is still going through that process, and it
has happened that we have signed settlement --
or we have signed disciplinary orders from the
Board for things that began four, five, six
years ago.

MS. COLLINS: They could do so much
damage.

MS. GRINSTON: That's true. I agree.
CHAIRMAN: Okay. Now, I've got a
question, before I take any more comments.
How many of you are embalmers in here? Okay.

How long did you all go to school?

MR. MAY: Two years and then one year afterwards.

CHAIRMAN: Okay. And we can't let somebody that's selling preneed for you take a test or go to a school, and we spent three years of our lives to own a business and represent yourself and to protect the consumer? Now, this is a consumer-driven Board, and I think we need to have some way to regulate these people, make them take -- you know, you don't have to have a test, but like you, if you lose your license, you don't work. Same -- I mean, if we get something against us as an embalmer or a funeral director, you're out of business. So -- but let's put it in perspective here. If we can spend our three years, they can spend two hours. John?

MR. MCCULLOCH: I disagree with you.

I do agree with you what you're saying. I think that you need to have these folks registered, and if they do any things that they're not supposed to do, we're going to
remove them anyway, but this will allow you to
have that ability to get rid of them quickly.
And we're only talking about the counselors,
we're not -- I don't think anybody in here
wants to have the funeral directors have to
have this other registration and embalmers.
That's not what we're talking about.

CHAIRMAN: No. You've got a license.
We'll get -- Todd?

MR. MAHN: Well, I'm just kind of --
back up what the Chairman said. Encompassing
the problems we've had, why would -- what
reasoning, if there's a minimum cost, would
you guys not want these people registered?
Let's take, for instance, that guy over there
doing that -- trying to do that sale the other
day. The cops stopped him. They find out
he's not even licensed to be doing it.
There's another charge or penalty against him.
I just can't imagine why we're taking so long
talking about this. And as far as the --
what it should encompass, you know, I agree
with Sharon. I mean, you know, it ought to
be the whole kit and caboodle. I mean, if
they pull a stunt, they pull a stunt.
MR. MAY: I mean, it's simple and it's easy, the registration or licensure, whatever we're going to talk about. And it's quick, you know. I don't think there's conceptually a big problem with it. On the accountability side still, though, I think the accountability ought to be with the provider or the seller, one or the other.

CHAIRMAN: Well, let's make them all accountable.

MR. MAY: Well, I mean, again, if we've got a guy out there taking money from people have any concern about being disciplined. He's doing things illegal. He's just trying to do it as long as he can. So, you know, just the example, it takes two years to get somebody off the street. The funeral -- the providers should be going, "What? That guy sold something for me?" He's done.

MR. McCULLOCH: In the real world, that's what happens.

MS. GRINSTON: Well, I can tell you -- I may be speaking --

MR. MAY: Yeah, that's what I would think. The businesses make those decisions
about who's out there selling for them.

MS. GRINSTON: We have -- I can tell you that from the funeral side, there are funeral directors -- the funeral directors know there are complaints against them. They know that there are problems. They know that they're in the disciplinary process. Not only will they hire them, they will promote them and make them the funeral director in charge. We've had the funeral director in charge in front at the AG's office with a disciplinary action, and the funeral home will -- "He didn't do anything wrong. We disagree with the Board."

CHAIRMAN: Bill?

MR. STALTER: At this point, what -- the sellers, the entity -- just registered; right? It's not a license?

MS. GRINSTON: I think that that was --

MR. STALTER: So, really, kind of the gap in this is -- okay. If we have all the individual counselors registered, consumers, the regulation, they know they can come back to the seller. And what we might be talking about is that the entity has to be licensed,
but the individuals registered. And then
you're -- you know, the action goes against
the entity. And if -- you will pull your
guys if you have a problem. But what if the
next guy, you know, if it's an NPS and they
don't? That's where then we start looking at
the -- an organization having responsibility
for the people who are registered with that
organization.

CHAIRMAN: That's a good point, Bill.

What you're saying is if the counselor is out
there selling and then it would go back to
whoever hired him, whether it be a third-party
seller or a funeral home or whatever.

MR. STALTER: Then you can -- you
know, again, it -- I mean, it is -- we're
talking about a license yet, and there is a
tax and there is experience for that
compliance. But, you know, again, you're not
putting the burden on every individual who may
be out there selling, and there are a lot of
funeral homes who use somebody -- a retired
minister or something -- you know, part-time
people. And it gets to be expensive when you
have a license, you have to have an input
test. But having a representative third-party
seller and having been the one who has to go
chase down those guys, I mean, I would like to
have some information about them, too. I
mean, we didn't have a lot of problems; we did
have some, though. But, you know, we -- you
know, when I went down and did those
background checks, I'm starting from scratch.
So, I mean, I really think that there is a
need for some kind of registration at that
level.

CHAIRMAN: Jo? I thought you had
something.

MS. WALKER: No, I don't.

CHAIRMAN: Miller?

MR. LEONARD: Miller Leonard, special
counsel for the Department of Insurance. Why
is it taking two to four years to remove a
bad actor?

MS. EULER: The Board first has to
investigate from the time they get the
complaint to investigate. And then once
that's done, which takes the process. And
then once that's done and it's referred to the
AG's office, even if the AG's office files the
complaint with the Administrative Hearing
Commission that day, the Administrative
Hearing Commission process takes about a year,
best-case scenario.

MR. LEONARD: All right. If you're
crafting new legislation, there is nothing
that would stop you from writing that
legislation to opt out whoever is the new
licensee from the Administrative Hearing law
and put them into a fast track. You do that
with driver's licenses on a .08 blow. I mean,
your license is gone in 30 days.

MS. EULER: Yes.

MR. LEONARD: And then you appeal, but
you don't have your license during the appeal
process.

MS. EULER: And that -- there is some
of the boards have done some statutory
processes similar to that for automatic
revocation if you do these five things.

MS. GRINSTON: I can -- since I not
only work with this Board, but I also work at
the Real Estate Commission and some other
things. And some boards that have the
automatic-revocation language, I can tell you
-- and I don't know if Connie can back me up.
The Administrative Hearing Commission process, if you talk to legislators about not going -- not allowing an independent body to make the determination, there is a lot of concern about that. There is a concern that the Board members who are in competition with the person being regulated may not think impartially, and so, usually, what we hear is, somebody else has got to take a look at this other than the Board who is in the same industry with them.
Now, for the boards that do have -- I think the boards would love it if we could do -- move a lot faster. But for the boards with automatic-revocation language, we've had some legal issues on how that is retroactively applied and how you handle it. But there are some that have gone through the automatic-revocation process, specifically, for certain criminal offenses. If you've been convicted of sexual offenses, things of that nature, and these are people who have -- it's the Real Estate Commission. They have contact with the public, and so, if you have certain sexual offenses, the Board can automatically
go in and revoke you and then you get to
appeal to the third-party body. But one of
the things about this Board which is unique
and we'll discuss this when we do
investigation processes, I'm going to do my --
you guys have heard this song before. The
Board gets a complaint, we have to give it to
the Division. The Division then has to send
it to an outside auditor and/or investigator.
They do a report that goes back to the
Division for review. If there are any
questions, then sometimes it has to go back to
Board to answer those questions, then it goes
back to the Division, goes back to the
auditors and investigators to figure it out.
Once we get the report back from the
investigator, it comes to the Division. It's
reviewed by the Division. The Division sends
it to the AG's office for a probable-cause
finding. They do their review. That
probable-cause finding comes back to the
Division for review. The Division then gives
that back to the Board for review. The Board
then is statutorily required to hold a 436
meeting so that the registrant can defend

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themselves. So, then the Board has to hold a meeting with the registrant. Then after that meeting, the Board votes. The Board then has to take that vote and send it back to the AG's office for review by a different Division for disciplinary action. We have been in the position where we have had a 436 probable-cause finding, but the disciplinary side of the AG's office has said this is not enough for a disciplinary case. So, we go through the AG's office review. They file with the AHC. You go through the AHC hearing. The AHC issues an order. It goes back to the Board again for a hearing -- for a meeting. They then schedule it for a disciplinary hearing. They bring the registrant in for a disciplinary hearing. Then the Board takes a vote, issues an order, and we're done. That process is unusual for any other licensing board that we work with. If I am working with the Real Estate Commission or Healing Arts or whomever, the Board gets a complaint, they don't like it, they investigate, send it to the AG, you go through the AHC, it goes back to the Board for the disciplinary order.
and you're done -- hearing and order and
you're done. So, that's what's taking two to
four years. This volley -- the AG's office
looks at it twice, the Board looks at it three
or four times, the Division does their
administrative review in the middle two or	hree times, that process -- it's just too
complicated and burdensome. And I think that
that's one of the things in the agenda for
today, but I think that discussion does relate
to the licensing issue because if it's going
to be a license and if it's going to be a
removal, I would suggest this committee look
at that process because that process is not
workable because, again, it's going to take us
half a decade to get them out of the industry
in the first place.

CHAIRMAN: You can start on the Board
your first year and never find out in five
years if a guy ever got disciplined.

MS. EULER: Right.

MS. GRINSTON: That's true.

CHAIRMAN: And they can't tell you
because you're off the Board.

MS. GRINSTON: And that's with
everybody working at tcp speed.

MS. EULER: Right. And not taking into account judicial review.

CHAIRMAN: Todd?

MR. MAHN: We've got to change that.

I mean, right away.

CHAIRMAN: Do you want to get that one off the table now? Everybody agree with that?

MR. MAHN: Yeah. Everybody agrees that that change -- I think it's all in favor.

But I just want to say anything we can do to protect our seniors, our veterans, our handicapped is a minimal cost. I mean, if I've got to pay $10 for each one of my two salespeople to be registered to sell and I can't afford that, I shouldn't be in the business. And, you know, I've seen these people preyed on. I have seen the free veteran caskets in magazines and I've seen all these ads in the senior magazines, and it's despicable, and I can't imagine any funeral-home owner or anybody in this industry not wanting these people accountable. I mean, this is just ridiculous that, you know, that it even goes on.
MS. GRINSTON: Can I ask this question for purposes of moving the discussion and calling the vote: Since you all are not making the final decision, you guys are still going to have look at the language based on what you agree, can we take a vote on giving us permission to draft both proposals, a registration with full -- or license with full disciplinary authority, and then one with limited disciplinary authority, and then possibly, you know, something that's just a registration only, so that you all can look at the language to see what it looks like on paper? Is that okay, since we know that you guys are interested in looking at a license/registration, you're just not sure of the particulars?

REPRESENTATIVE MEADOWS: That's a great idea, and I'll move.

CHAIRMAN: All right. All in favor, say aye. All opposed.

(Unanimous voice vote for approval.)

CHAIRMAN: Joy, go ahead and make a comment.

(Several people talking simultaneously.)
CHAIRMAN: Ten-minute break.

(Off the record)

CHAIRMAN: All right. Our facilitator, Kim, is going to speak.

MS. GRINSTON: While we're here and on the topic, why don't we look at #11 very quickly. It doesn't look as bad as it is. Last session, there was some discussion about changing for preneed sellers and providers, not anyone else, just sellers and providers, changing the name of what you get from the Board from a registration to a license for preneed sellers and providers. I think we're talking about the exact same thing, just changing what we call it.

CHAIRMAN: Do you think everybody can agree on that?

MS. GRINSTON: I thought that would be quick. Changing it from a registration, just calling it a license.

CHAIRMAN: All in favor. All opposed?

(Unanimous voice vote for approval.)

CHAIRMAN: Can the rest of the meeting go this fast? Have you got a note?

MS. GRINSTON: If we could start
tackling #6 and #10 together, because they're pretty much close to the same thing.

Requiring bonding/insurance for -- let's start with providers because I think that may be the easiest one.

Ms. Euler: Kim, can we start with #9?

Ms. Grinston: Yes. Yes. Yes. Good suggestion, Sharon. Very good suggestion. We're going to move to #9. Scratch all that. There's been a suggestion about who can be licensed as a preneed provider. As part of that discussion, there have been some discussions as to whether a preneed-provider license is necessary at all. And for that, I think Sharon had some comments that she wanted to share.

Ms. Euler: Sure. As we've been discussing 436 over the years, one of the questions that has come up, as Kim mentioned, is: Is there really a need to license the provider? A provider funeral home will have a license as a funeral establishment. A provider cemetery will be subject to the rules of the cemeteries. And what purpose is served by having a separate provider license,
because, as we have talked about it, none of us have been able to come up with a really good reason for requiring that other than it's just an additional license. So, we'd like to get other people's perspective on it to see if there is really a need for a provider license when that seems to already be covered.

CHAIRMAN: Don?

MR. OTTO: I think the one thing it -- I mean, whether you want this or not, that's another matter. But under the current scheme, both the providers and the sellers are theoretically submitting reports that could be cross-checked -- the provider telling you here's all the sellers I deal with, the seller telling you all the buyers that I deal with. And if you remove -- you know, if you want to remove that, and some of the versions of the legislation that was proposed last year would have expanded the providers' reports to talk about, you know, the money that was received and handed in, theoretically, I guess, to compare it to the seller and see if things matched up. So, that's the only -- you know, that's one item. If you remove the providers
from the registration/license process, are you
eliminating the report that they do? I mean,
number one, do you want to do that? I don't
know.

CHAIRMAN: John?

MR. MCCULLOCH: If you just had the
funeral-home establishment file that same
report, would that solve that problem?

CHAIRMAN: Darlene, is that what you're
saying?

MS. RUSSELL: That's exactly what I
was going to say.

CHAIRMAN: Bill, have you got a
comment?

MR. STALTER: Well, and we've got the
cemeteries. I mean, the cemeteries --

MS. EULER: Yeah. There are providers
who are not funeral establishments.

MR. STALTER: Yeah. But as long as
you have a cemetery establishment, I mean,
there is a registration for that, as well,
just not the license.

MS. BOHREK: Could it be something
where the proposed legislation could comment
that if you don't already have some license
that is issued by the Funeral Board, such as a funeral-home license, that then you would be required to have some alternate license that you then would have the authority to require the reporting? I mean, I don't know that much about it, but do you guys issue a license to the cemeteries of some sort or another?

MS. DUNN: We issue a provider; correct, Lori?

MS. HAYES: Uh-huh.

MS. BOHRER: I don't mean -- I mean, absent the provider license.

MS. GRINSTON: No. No.

MS. BOHRER: Do the cemeteries have some sort of a requirement to get a registration or a license from the Funeral Board?

MS. DUNN: No.

MS. GRINSTON: No, not from this board.

MS. FULER: They are regulated by another board.

MS. BOHRER: Okay.

MS. DUNN: Which is under another chapter.

MS. GRINSTON: But for the reporting
provider suggestion, Linda, you raised an interesting point. Since there are funeral establishments that are already licensed as funeral establishments, as I hearing possibly a suggestion that funeral establishments don’t need to go out and get a provider license, but if you’re not licensed by the Board as a funeral establishment, then you do come in and get a preneed-provider license?

MS. DUNN: And then you would have that establishment submit those reports that typically would be done by a provider.

MR. MAY: I’m not tracking you. So, can you describe a scenario where I would be a provider, but would not have some sort of license as an establishment?

MS. GRINSTON: If you’re a cemetery and your license -- you’re a preneed provider right now. Let’s say you’re serving as a preneed provider.

MR. MAY: Okay.

MS. GRINSTON: That cemetery, I think, under -- based on Linda’s comments, would still have their preneed-provider license.

The funeral establishment, however, wouldn't
have to carry a funeral-establishment and a
provider license. They would just have their
funeral-establishment license, but that they
would still have to do the reporting that a
provider would do.

MR. MAY: So, it would primarily
address cemeteries having to get a provider
license; that's all you're talking about?

MS. EULER: Or anyone who is a
provider who is not a funeral home.

MS. GRINSTON: Yeah. Basically,
instead of the idea of having the funeral
establishment with two licenses from the Board.

MR. MAY: That, I understand. That, I
understand. I'm trying to think of who else
would be -- I'm thinking that's really the
cemeteries you're talking about?

MS. GRINSTON: Yeah. I don't think
we're discussing changing anything that is not
in process right now. It's just -- except
that funeral establishments would not carry a
dual license.

CHAIRMAN: Jeff?

MS. EULER: And I can see --

MR. STYGAR: (Inaudible) -- but who can
provide a funeral service that's not a licensed
funeral home.

MS. GRINSTON: Cemeteries.

MS. EULER: And we have also had
situations with retail casket stores wanting
to sell funeral merchandise on a preneed
basis. And I can see that there might be
other types of entities who would not be the
funeral establishments who would be selling
merchandise on a preneed basis. So, they
might not be selling the whole package, but
they may be selling pieces of the package.

MS. GRINSTON: So, if I'm hearing,
just to bring the comments together, if you're
a licensed funeral establishment with the
Board, possibly writing something that would
no longer require a separate provider license
on top of that? Is it possible, Mr. Chairman,
that we could take a vote on that issue?

CHAIRMAN: Is everybody in favor of
that?

And speak up if you're saying aye. Okay. Nay?

(Unanimous voice vote for approval.)

CHAIRMAN: All right.

MS. GRINSTON: And just to clarify,
this is not, you know, the final vote. We're
going to just get the language back to you.
We need to know what language to start working
on for purposes of the -- yeah, the consensus.
Okay.

CHAIRMAN: Okay. How about the word
"lunch"?

MS. GRINSTON: It sounds good to me.

CHAIRMAN: We're adjourned for lunch.

(Off the record)

CHAIRMAN: Just a reminder, folks.

When, like, the members of the profession out
there want to come up and speak, you need to
state your name again, because Gayle is having
trouble picking up who your names are. So, if
you would do that, we can recognize you. And
we're going to go to #1, and our facilitator
will start.

MS. GRINSTON: Yeah. I think that,
again -- I think that you all needed to
probably discuss some of the preliminary
issues before we got over to one of the media
issues of who is going to handle preneed
globally. Which regulatory agency should be
responsible for it? And I want to, just for-
those who don’t know, give a little bit of a regulatory background. Right now, as you know, the Board is responsible for registering preneed sellers and preneed providers. The Board has authority, somewhat questionable, to do audits, investigations, and examinations of books and records. We do -- that authority relates to our preneed sellers and the preneed providers under -- that are registered with the Board. Well, as we will discuss in 436, in previous legislative sessions, a very big question has come up as to who should regulate 436. Should this be something that stays with the Board? Some of the other entities that have been mentioned as possible 436 handlers, if you will, or regulators have been the Department of Insurance, the Division of Finance, the Secretary of State’s office, the Attorney General’s office, and then, of course, there has been a suggestion that it remain with the Board. And so, I think that it probably would be a good thing to discuss now what the group’s consensus and/or thoughts on who should be the primary entity regulating Chapter 436. And when we say regulating, that
would include registering, initiating investigations, and all the things that come with regulation. I can tell you that one of the discussions that has occurred, I think last session, was whether the regulatory function should just be with one body or should it be separated. Should audits go over to an entity that, you know, may have better auditing controls or better auditing procedures. Having said that -- and that's not a recommendation, just a summary of some of the things that have been presented to the Board -- I think that I'd like to open up the floor now for discussion on, really, topics #1 and #2, but, right now, primarily #1, on who should be the entity regulating -- the primary regulatory authority over Chapter 436.

Nobody. Okay. Oh, Darlene?

Ms. Russell: I think that it almost necessarily has to stay with the State Board of Embalmers and Funeral Directors. It goes hand-in-hand with the funeral establishment, the same discussion we just had about the funeral establishment being a provider. So, it really -- the part about the registration
or the licensing of the preneed seller and
that needs to stay with the State Board of
Embalmers, in my opinion.

MS. GRINSTON: Yes, sir?

MR. CLINE: My name is George Cline,
and I agree with her.

MS. GRINSTON: Did you guys do this
over lunch or something?

MR. MAHN: Kim, and they've got the
second in line and they're all in favor.

MS. GRINSTON: Todd said that's a
second. Does anyone else want to comment on
that, as far as primary regulatory authority?
I hear everyone saying --

MR. STROUD: Could I just ask a
question? How does the Board feel about it?

MS. GRINSTON: I'm going to repeat his
question, and everyone who is talking, to
remind you to step up to the microphone. I
think Larry just asked -- he's going to ask it
again.

MR. STROUD: I'll ask it again. Larry?

Stroud. How does the Board feel about keeping
it with the State Board of Embalmers and
Funeral Directors?
MS. GRINSTON: I'm going to switch hats now. As legal counsel for the Board, I don't believe that the Board has taken an official vote on that, so I don't think we can make a statement on behalf of the Board. If you would like to -- if any of the Board members would like to express their personal opinion, they can, but, officially, the Board has not taken a position on that.

MR. MCCULLOCH: John McCulloch.

Again, just my personal opinion. I agree with the other members that it sounds like that the Board should be the one, you know, that would follow up with regulating 436.

MR. OTTO: Just as a practical matter, whether we like it or not, there will probably be a push over at the legislature to do something to involve other agencies one way or the other, whether this committee likes that or not. So, we might want to be prepared with a -- at least consider a fall-back compromise position, if necessary, if we get hit with that. The one that popped up this last year was in the process of streamlining the entire process that Kim went through, I
think. And shorter is that in the event that an audit was necessary, the State had built into the law, probably which you already do, is that when an audit is necessary or a financial investigation, that the Board -- the phrase that finally came out was to request assistance from the Department of Insurance, or I think there was another -- I think Department of Insurance and something -- maybe another agency. But, I mean, that -- I'm not saying we need to do anything, but it might be something that people keep in the back of their minds if somebody comes to us and says there's got to be something, because there's been people over there that, for whatever reason, don't like this entire topic being governed by the State Board. And so, whatever comes out, I think there's going to be some people that try to take it away from the State Board. And so, if we don't want it taken away from the State Board, we might need to have ready, waiting in a file folder to pull out at the last second, a compromise position that, at least, you know, makes that issue go away if necessary.
MS. GRINSTON: We've done a lot of that, just to share, to open up the discussion. I can tell you the arguments that we have heard about the State Board. There have been discussions about whether, if not just the auditing functions, if some of the auditing would be better handled by a group that does auditing as part of its normal process. Right now, as you all know, the Board primarily consists of funeral directors and embalmers; excellent ones, but they're not auditors. And so, what we've heard from the legislature in light of Don's comment is that should we have some control to allow someone who does auditing on a more normal basis to handle the auditing functions. Now, right now, the Board does contract through the Division -- you guys know the process -- with an independent auditor that is under contract with the Division. And so, the Board is not actually going in. As you know, we go through a contracted company. I just wanted to put that out on the table.

MR. OTTO: Well, that's my thought was perhaps, since you do that anyway, and you
would do that, I assume, under the streamlined procedures that I hope we get to at some point, that considering some statutory language that builds that in, at least as an option, it might be useful to have at the ready at some point in time.

MR. McCORD: Just adding to that, though, if the audit function is transferred to another agency, then that would also encompass a fee for costs for doing that, so that entity would have to pay for that auditing function, as well. I just wanted to throw that in, as well.

MS. BOHRER: Because if the Department of Insurance, when we go out and audit an insurance company, the insurance company that we're auditing pays the fees attached to that audit.

CHAIRMAN: Could you kind of give us an estimate of what it would be for --

MR. McCORD: I mean, also sitting with me here, Mark Stuhlhuth, who is chief counsel for the Finance -- or, excuse me -- the Company Consultants -- Company Solvency?

MR. STUHLHUTH: It changes all the
time. The fees for that would vary depending on the size, how many financial transactions there were to review and how big the accounts were that you had to audit. Obviously, the bigger they are, the more expensive it would be.

UNIDENTIFIED: Can you give an approximate per-hour charge if it takes a day, if it takes two days, if it takes four days?

MR. STUHLHUTH: That would be really tough. We would have to get back to you on that.

MR. OTTO: One of the proposed pieces of legislation this last year included that provision, that if a funeral home -- if anybody under 436, a funeral home, seller, a provider was audited, that that entity would have to pay for the audit. We opposed that. You could put somebody out of business real easy by auditing them three times a year.

CHAIRMAN: Go ahead.

MR. MAY: This is Brian May with Chapel Hill. Auditing aside, assuming we can find someone who does quality audits, what other consideration would there be for not
having the State Board oversee all this? You
get the report back and you look at its
results and then you interpret it, and then --
I mean, I think there's other areas -- the
Cemetery Association, right now. We do
outside audits and we hire someone to do that,
but, you know, I think the Endowed Care office
still looks at them, so I don't see why it
would be anybody but the Board.

CHAIRMAN: Good question.

MR. WARREN: Mark Warren. Okay.

First, you might want to determine when you
would do the audit, the frequency of the
audit, because that would then determine, to
some extent, the cost. You're also going to
have issues with concurrent jurisdiction, for
example, the Division of Insurance, if, you
know, preneed-insurance companies, they're
going to have market conducts, financial
exams. The issue of cost is a big issue to
insurance companies with respect to market
conduct and financial exams that is going to
address the recent years, but it can be a very
significant cost, especially if outside
auditing firms are used. And you could -- as
someone pointed out, you could quite easily put a small firm out of business at $200 to $300 an hour or whatever some independent outside firms are going to charge. And the other issue that I see is what are you going to audit, you know? We need some parameters. So, I think you have to look at your frequency and your parameters maybe to begin with before you can determine what your costs would be. And the parameters would also drive, perhaps, the frequency.

MS. GRINSTON: I see the question.

MR. STALTER: Okay. We're getting back to, you know, whether this should be regulated by the State Board or another entity. I mean, usually, this comes up in the context of so we're at this challenge of whether an industry board should regulate itself, you know. But the issue really comes down to whether what other agency or board or state entity will understand us well enough to regulate it. Generally, this is raised by the consumer advocates, and it is -- I mean, it -- you know, it's are we -- should we be watching ourselves? But it is such a complex issue,
something -- I mean, who else -- who will understand it to come in and do it? And I've worked with other states where it is an outside agency, but sometimes it's hard to get that agency to take action because they're not familiar with it. And, particularly, if you're talking about approval of contracts or trust arrangements and so forth, is that -- you know, I would say that it's spelled out every detail in the law, they feel uncomfortable with taking, you know, any responsibility with decisions. So, in essence, I mean, yes, it's not the perfect situation having an industry board regulate itself on preneed, but I don't know what other options you've got, to tell the truth. There's -- I mean, you've got some states which can point to a good regulator, maybe Iowa, Securities Bureau or so forth, or -- actually, that's the about the only one I'm familiar with. But some of the others have kind of a spotted record, as well. So, I mean, this I see as more of a consumer-advocate type of issue. I mean, really, are the consumers comfortable with
this State Board continuing to regulate
preneed?

CHAIRMAN: Norma, would you --

MS. COLLINS: Yeah. I see him looking
right at me, so --

CHAIRMAN: Or Jo. I mean, you all --

MS. COLLINS: But the point that he
made, though, about the complexity, I mean,
I'm sitting here personally thinking, yeah,
why not leave it with the Board. I mean,
because the issue is so complex.

MR. STALTER: That's usually one of
the -- (inaudible) -- issues. I mean, when
you look at what the consumer advocates write
about, I mean, that's the first thing about it
should be with an independent agency. But
who? I mean -- and sometimes it works, but
it really depends on having somebody who is
familiar, who has worked a long time with the
agency, and that doesn't happen out in the
state government, so --

MS. COLLINS: But I also think that the
comment from over here, from Don, I believe,
who said, you know, more than likely, there's
going to be a recommendation or a suggestion
made to move that oversight to some other
entity in light of what has happened. So,
what I'm going to do, I'm going to check with
our policy people. But, personally, I think
maybe it should stay with the Board, but they
may say, "No, Norma. AARP policy may not
support that," so I will have to get back to
you on that.

CHAIRMAN: Jo, do you --

MS. WALKER: Well, I -- you know,
again, it's a very complex issue. And not
really understanding all of it, I don't see
any other way but for it to stay with the
Board.

CHAIRMAN: Well, I mean, as long as
the Board is doing their job and protecting
the consumer, I mean, that's the main thing.
The money is there and accountable. Sharon,
do you have something?

MS. EULER: Oh, I'm just agreeing. I
agree with the chairman 100 percent.

CHAIRMAN: Okay. Motion passed.

MS. GRINSTON: Don's suggestion,
though, and a fallback position, since I'm
hearing that everyone is interested in leaving
it with the State Board, however, there was language last year, and we were asked -- Senator Scott and Representative Wasson asked us to keep the language from last year as just a basic guideline for us. The language did allow the Board to work with insurance -- the Department of Insurance, which would include all the divisions and everyone else, should they need additional help with auditing. Does anyone have an objection to allowing them to do that if there's an issue? And, of course, I think, that we're going to have to talk about the funding mechanism, but that's what --

MR. MEIERHOFER: My comment is I really do believe it needs to stay with the Board for a number of reasons. I don't think anybody is lining up to want to do it from insurance or anyplace else, which I can understand. And then, secondly, I think the other thing that ought to be addressed is how often you are audited. I don't think it should be something that goes on for ten, fifteen, twenty years. We just had an auditor in our place the first time in seven years. And I don't mind having an audit, but it is
more difficult when you go seven, eight, ten
years, and you have to start bringing all
these materials out. It's much simpler if you
are audited on a regular basis. What's the
matter with that? I have no problem with that
at all. But the other thing that goes into
the cost of the audit is how sophisticated you
are with your own record-keeping. If you can
provide records in a logical and a way that
can be understood easily, rather than out of
shoe box or something, it makes a lot of
difference. So, that's going to affect your
cost, as well.

CHAIRMAN: Sharon?

MS. EUER: From an ease of use for
the Board, perhaps we could do some language
that authorized the Board to have options.
The Board shall conduct audits by hiring an
outside contractor, by using another state
entity, or by using own staff as the Board
determines most efficient, appropriate, and
give the Board authority to have options there.

MR. OTTO: I mean, like I said, there
are -- also, there's two different kinds of
audits you have to worry about, audits after a
complaint or whether there's been a probable-cause finding and just random audits where there's no probable cause that you did anything wrong. That's something to think about. And like I said, to go off what Bill said, one of the many problems that they had in Illinois, and there was more than one problem, was that exactly what Bill said, no state agency really wanted to take ownership of regulating some of the aspects of their preneed situation, and kind of got passed -- the ball got passed along to different people.

CHAIRMAN: Well, let's take a vote on this. All in favor of leaving it with the State Board of Embalmers and Funeral Directors, say aye. Those opposed?

(Unanimous voice vote for approval.)

CHAIRMAN: All right. Kim?

MS. GRINSTON: Sharon suggested the option language, giving the Board options to use different avenues. Can we possibly take a vote on that, too, Mr. Chairman?

CHAIRMAN: Yes. We'll entertain that. All in favor of different options.

MR. STALTER: Really, the issue here
is having the examine or audit authority under
the Board, keeping it as opposed to being in a
separate entity.

CHAIRMAN: Right. All in favor?

Opposed?

(Unanimous voice vote for approval.)

CHAIRMAN: All right. Kim?

MS. GRINSTON: I think it might be
good for us to skip to #8 in light of that
discussion, because -- and this is something
that has come up several times. How do we
handle -- 436 is not written well enough to
accommodate insurance-funded preneed plans,
when you have an insurance company that's
selling preneed. I think that there are a lot
of questions that come up on the Board's
authority or the Board's regulation. And so,
I think we probably do need to have some
discussion on how insurance companies selling
preneed plans should be regulated. Right now,
the law says that, you know, a life-insurance
policy is an insurance policy; however, if the
funeral home -- and you guys, forgive me if
I'm messing this up -- is assigned or
designated as the beneficiary -- I've got to
look at the exact language -- then it is also 
subject to 436. However, currently, insurance 
companies are not required to register as 
preneed sellers because they're insurance 
companies, even though I think the 
understanding is that the thought between the 
regulating entities -- and Insurance can 
correct me if I'm wrong -- is that if it 
becomes a preneed contract, then the contract 
has to meet -- also has to meet the 
requirements of Chapter 436. And so, I think 
that there is -- some discussion needs to be 
had about how insurance companies are 
regulated under 436, should we -- should those 
companies be solely left to insurance since 
they are insurance companies selling insurance 
plans, or should there be -- the Board have 
any control or exercise any authority over 
insurance companies that are also in the 
business. Personally, as an attorney for the 
Board, we need to clarify that assignment 
language because it is confusing and we get 
questions all the time on whether they need to 
be registered. I mean, it has become a legal 
issue for the Board to deal with, so -- Linda?
MS. BOHRER: And just to clarify --
and Don and I were talking about this before.
There is confusion, especially by companies
that are not specifically designed to function
as a funding mechanism for the preneed
contracts, there is a lot of confusion and
reluctance on the part of some insurance
companies to allow ownership and beneficiary
designations of funeral homes on the insurance
contract because they do not want to get
tangled up into the 436 laws. And so, they
have a hesitancy and some of them actually
out-and-out refuse to allow that type of
designation to occur on their insurance
contracts because of sort of the overlap, and
they don't want to be in the preneed business,
they don't want to be subject to Chapter 436,
and so, they hesitate, if not refuse, to let
those ownership and beneficiary designations
occur on their contracts.

MR. OTTO: I mean, the question I get
a lot, I mean, 436 says this in a completely
backwards way --

MS. GRINSTON: That's a legal term.

MR. OTTO: Yeah. -- that insurance is
not preneed contract unless the preneed seller
or the provider is named as the owner or
beneficiary of the contracted insurance. So,
even if the seller and the provider are the
owner or the beneficiary, then it falls under
436; otherwise, it doesn't. The question I
get a lot is, "Well, what about a separate
assignment document that assigns the proceeds
to the funeral home," and that's step one, and
step two, what if you made that irrevocable?
That's not addressed.

MS. BOHRER: And I'll go back. One of
the arguments I've heard from the insurance
companies is the preneed laws, once a contract
is established to be a preneed contract, the
owner of that contract has the right to say,
"I changed my mind. I want all my money
back." An insurance company is not in the
business of refunding premiums after 20 years
have been paid in. That's not how they
calculate the premiums that are paid. That is
never a consideration in the premium
calculations. And so, that would be very
problematic financially for these companies to
have to say to someone that's paid into their
life-insurance policy for 20 years, and now
they've named the funeral home as the
beneficiary, and then they say, "Okay. Now,
it's a preneed contract. I want all my
premiums back." That's a problem, and that
would be a problem for Mark in the financial
evaluation of companies because, you know, you
reserve for the death benefit, but you don't
reserve for paying all the premiums back. So,
you know, those are problems.

CHAIRMAN: John?

MR. MCCULLOCH: John McCulloch. I
think the difference is the funding mechanism.
If it's funded by a trust, then, obviously, we
know what that is. If it's funded by an
insurance policy, then it's just that animal.
The problem is if you freeze the cost from a
funeral-home standpoint, then you have
additional obligations that fall under 436,
but it's still an insurance policy and it's
going to have to go by their rules, and you're
not going to change that and you shouldn't.

CHAIRMAN: Darlene?

MS. RUSSELL: Well, for as long as
I've been around the business, insurance,
whether it was an assignment, somebody came
into the funeral home with ABC insurance
policy and said, "I want to sign this over so
I can get eligible for spend down." So,
anyway, the whole concept is insurance has
always been used as a funding mechanism. The
preneed part of it becomes -- someone has to
write a preneed contract on it, not
necessarily the insurance company, but the
funeral home who is the seller, normally, is
the one who is accepting that assignment, has
to be the preneed seller. So, the insurance
company not necessarily is a preneed seller.
The insurance company is a funding mechanism
no different than a bank -- requiring a bank
to be a preneed seller because they're a
funding mechanism.

CHAIRMAN: Go ahead.

MR. WARREN: Mark Warren. To kind of
piggyback on what you just said, it's always
been the position of the companies I
represented, anyway, that within the
parameters of 436, sub .05 and .07 were exempt
from regulation by the Board. It is a funding
mechanism.
CHAIRMAN: Don?

MR. OTTO: Well, I'll go out on a limb here because the people who claim that they wrote 436 aren't here today, but I think probably what the idea was back then is they wanted to make sure that you had a basic contract that spelled out the goods and services, you know. They had all the names, you know -- I'm just -- from the way this looks to me is that the intent was, okay, we want some basic things. If you're using life insurance and you're going to make the funeral home the beneficiary, we don't just want you to make the funeral home the beneficiary on the life-insurance policy, and then when that person dies, they've got $10,000, and you tell the family what can you get for $10,000, you know. I think the idea was, okay, if I'm going to make the funeral home the beneficiary, I want at least some basic contract between the funeral home and the consumer that spells out some relationships and rights, and here's who to call and here's who is in charge, here's the goods and services I'm buying, things like that. But
the way it's worded, it makes all of 436 apply
to the insurance contract, not just this --
some basic things that say, hey, if you're
using -- if you make the funeral home the
beneficiary or the owner of the life-insurance
policy, we want the following five things to
happen to protect the consumer or to protect
the funeral home or whatever. The way it's
worded, everything in 436 applies to the
insurance contract if the funeral home or
seller is the only beneficiary, and I'm not
sure that's what was really intended when this
was written.

MS. GRINSTON: If I could make a
comment. Some states who have this insurance
split, some of them put everything, all
regulation, auditing with the insurance
department, but then they just spell out that
a preneed contract must contain the following,
and then there are just things that say, you
know, it must be in clear language, must have
the following disclosures, or something like
that, as opposed to regulating everything
else. I just want to throw that out as a
discussion point.
CHAIRMAN: Sharon?

MS. EULER: It makes sense to me that we acknowledge insurance as a funding mechanism in 436, as opposed to right now where it's not all clear. And we could clarify that by saying the preneed contract is a contract, it specifies goods and services, you lock in a price, you know, define preneed contract, and then go on to say a preneed contract may be funded by a trust, it may be funded by an insurance policy, it may be funded by a joint account or other mechanism as approved by the Board. And, that way, we would have acknowledgement of it, and then we could go have a separate section saying if it's funded by insurance, here are the rules. Here's what applies to insurance-funded contracts. You know, it's subject to regulation by the Department of Insurance, you have to be licensed by the insurance department, you know, and specify that, but at least acknowledge that it is available as a funding mechanism and spell out how it should work.

CHAIRMAN: What does the committee
think of that?

MR. OTTO: One further complication is you have both. I mean, you'll have somebody to come in who has a $3,000 life-insurance policy, and they'll use that, plus they're going to put $2,000 in addition to that into the trust or something else.

MS. EULER: It doesn't have to be an exclusive, just an acknowledgement that there are those three different mechanisms to fund a preneed contract, and all are acceptable.

MS. GRINSTON: So, am I hearing the suggestion that we just remove this whole assignment, you know, beneficiary deal, and possibly say if it's insurance funded, these are the requirements and, I guess, we could talk about those requirements for an insurance-funded plan and not hinge that on the assignment issue or naming someone as owner/beneficiary?

MR. STALTER: Well, isn't it more like you're going to define the preneed contract, and then we say it could be -- but it can be funded either with insurance or a trust funding.
MS. GRINSTON: I understand.

MS. EULER: Or joint account.

MS. GRINSTON: Or a joint account.

CHAIRMAN: Jerry?

MR. KRAUS: Jerry Kraus, Homesteader's. I don't know if it's -- I think it's a good point to clarify a small elephant that may be around the room, and that's final-expense insurance where it may be sold with a little bit of funeral discussion, but -- and maybe the situation where the funeral home becomes the beneficiary or the assignee, but there is no preneed contract. That's going to happen and is beyond the control of the Board. And so, I think we kind of need to set final-expense life-insurance sales aside and say they're going to continue to happen, and unless the insurance department decides to control them, it's beyond this Board's authority to control them. Now, having said that, the insurance department does a wonderful job of controlling the insurance environment, and I don't think you guys want to step in there and try and second guess that. I think you're going down
the right road of talking about the mechanics that link the two. What we recommend and what we find works best is the assignment where the funeral director becomes the contingent assignee of the policy proceeds contingent on their performance. They don't become a beneficiary; that's reserved for the next of kin. They don't become an owner; that was part of the problems that we've had in the mess that we're in is we let someone else step between the insurance company and the consumer in terms of policy ownership, so we prefer assignment.

CHAIRMAN: That's good. Bill?

MR. STALTER: Well, and take that a step further. When you talk about final-expense insurance, but you may be seeing the same thing in smaller trusts. In other words, more like a financial product that will cover a number of things besides the funeral itself. And at what point does it -- you know, do you come in and regulate that transaction, as well? And what we looked at it in terms of that is: What is the document or the contract that ties this account to the
funeral home? And it's been kind of difficult
in terms of, you know, there's no
consideration paid to the funeral home. I
mean, at what point does it become a preneed
contract where you step over and regulate the
fund or the insurance? So --

CHAIRMAN: Well, do you committee
members want to just -- like, we'll just draft
some legislation and get it back to you? I
mean, she's got all this in here, so -- and
then you can look at it at the next meeting?
Bob?

MR. BAKER: Bob Baker. Thank you,
Jim. I think we've got two concepts going
here. I guess I'm going to preface it by
asking a question: Do we have any insurance
companies that are registered as preneed
sellers currently?

MS. BOHRER: You would need to ask
them. They register the preneed sellers.

CHAIRMAN: Pass the buck over here.

MS. GRINSTON: No.

MS. BOHRER: Yeah, I just passed the
buck. I don't know who's registered as a
preneed seller.
MR. BAKER: State Board. Kim?

MS. GRINSTON: I don't think so, but I

-- Lori --

MR. BAKER: Okay. So, what we were
talking about earlier, they're thrown out the
window as far as regulation. I think if we're
going to fund a preneed contract, let's call
it with cash, it has to stay in cash. If
you're going to sell it as insurance, you have
to disclose that up front and you can't take,
at all of a sudden, out the back door and buy an
insurance policy with it and come under a
total set of different regulations.

MS. GRINSTON: I think we go back to
Sharon's point that we clarify -- that this
whole assignment beneficiary deal won't be the
contingent factor. But if it is fund -- if
the contract is funded by insurance -- and we
probably have to qualify what a contract is,
but if it's funded by insurance, insurance
companies, their auditing, everything is under
the Department of Insurance; however, for the
preneed contract itself, there may be some
disclosure requirements on what needs to be on
the preneed portion of a contract if it's
insurance funded.

MR. BAKER: Right. Because the problem is -- we have a problem all the time. Mom is in the nursing home, they're going to spend down. You cannot get an insurance company -- excuse me, you insurance people -- to act in a manner that satisfies our local Division of Family Service. It's a problem -- it's a big problem. And then, again, you know, what are you going to count as a value? They paid in twice the face value and will continue to pay it, but if they cash it, they're only going to get a little portion back, so we're talking two different animals, I think. So, we need to take a look at if it's funding a preneed contract, then maybe it needs to really be a preneed contract. If it's going to be in cash, then we're talking about trusts, joint accounts, and if they want to get their money back later on, you know you're going to only get a small portion back on a cash-surrender value of it.

CHAIRMAN: Thank you, Bob. Sharon?

MS. EULER: I was just going to comment, part of what you're talking about I
think we're going to talk about later when we
talk about regulation of the trust in terms of
if it's a cash transaction, what happens to it
after the consumer pays their money, so I
think we're going to talk about that some more.

CHAIRMAN: Martin?

MR. VERNON: I just want to split a
hair that, basically, they have been talking
about. In the burial, as he called it, when
somebody just comes in with a small policy,
maybe even a little bit bigger policy, but the
guarantee -- we have to be able to have the
ability where there doesn't guarantee
merchandise and all that when there is no cash
value there to do it, and you're still trying
to help them with the Medicaid thing or spend
down or however you want to label it. So,
you're going to have to write that where that
can still work in both ways.

MR. OTTO: The other thing to look at
when you draft this up, which is causing the
problem, is in that same paragraph, "Requires
the current payment of money or other
property."

MS. GRINSTON: Yeah.
CHAIRMAN: Darlene?

MS. RUSSELL: It could be as simple as just requiring the preneed contract to -- for instance, you have a trust funded preneed contract, you have the insurance-funded preneed contract, and a joint-account preneed contract, three different types of contracts. The insurance-funded uses a different type of a contract, you know, and we've all seen those -- seen all three of the different types because, right now, you do preneed. If you do insurance funding, you're required to have certain things in it, as you are with a trust and joint account. So, it could be specified in your rules.

CHAIRMAN: All right. Consensus is we'll just write a few things up and --

MS. GRINSTON: Yeah. Write something that's, again, clarifies insurance stays under the Department of Insurance, clarify that there are three types of preneed contracts: trust-funded, joint-account funded, and insurance funded, and then perhaps at future discussions, talk about whether we need to add some disclosure or contract requirements for
those issues later. Am I hearing that to be
the current consensus, just so that we can
clarify this insurance issue, because I'm
telling you this assignment issue is just
confusing. And I think possibly that
suggestion may help, legally, us deal with
some of that confusion on when it is an
assignment and when it's not, and when does it
become a preneed fund.

CHAIRMAN: All in favor of that? Oh,
go ahead.

MR. CLINE: One questions before we do
this. Obviously, I'm not familiar with all
the insurance and everything else. But it
crosses my mind that we're dealing with a
funeral; okay? And we're dealing with
people's lives and their passing, and an
insurance policy. I would think, that had some
sort of preneed contract or arrangement in it
should be under the same rules as the
funeral-home contract or preneed in a
funeral-home contract. So, my vote would be,
if it matters, that any insurance-funded
preneeds there should be under 436.

CHAIRMAN: So, we'll add that to our
list, and is everybody in favor of the
insurance division, what we're going to
rewrite? Okay. All in favor, say aye.
(Unanimous voice vote for approval.)

MR. MEIERHOFER: I guess, I've got a
question. I'm not sure I'm exactly
understanding everything under insurance all
under 436. Are we talking -- what do you
really mean by that? I mean, what are you
saying, everything is under 436?

MR. CLINE: Well, for example, in
other words, I thought we had this situation
with NFS because they were not under 436 and
were able to move funds into term insurance.

MS. GRINSTON: I think that's a
different question about what happens with
funds once it hits a trust or once -- you
know, they hit, you know, whatever funding
mechanism. I think the question now, though,
is, when we're talking about insurance-funded
preneed contract, because it's different from
a preneed contract that has investments in
insurance -- insurance-funded preneed
contracts. My understanding is that the
thought is that we clarify, that we remove
that whole assignment/beneficiary language, we
clarify that insurance companies are under the
regulation of the Department of Insurance, we
clarify that there are three different methods
to fund a preneed contract, and then we come
back, once we look at that language, and see
if we need to make requirements for preneed
contracts for a trust fund versus insurance,
or put them all under the same requirements,
but reserve that last issue for another day,
once we see how it shakes out.

CHAIRMAN: Good enough. Next?

MS. GRINSTON: All right. Well, let's
jump to a fun topic. I think we've got that.
Let's switch over to #21 through #28 and do
this as a whole because my hope is that
everybody is full and this won't take very
long, but I think we need to talk about,
again, the complaint/disciplinary process. If
we know that this is going to stay with the
Board, again -- and I'm going to speak on
behalf of the Board because they have
officially voted on this -- one of the biggest
frustrations for the Board is the disciplinary
process for 436 people -- registrants,
licensees, whatever you call them. It is
cumbersome. I'm not going to do the whole
speech again on how we do it. You'll be
happy about that. But if you give me music,
I can sort of liven it up a little bit. But
if you -- I'm not going to do that, but we do
need to address how that
complaint/disciplinary process should go. And
I think I'd like to possibly start with the
disciplinary portion of it, you know. For the
other boards assigned to the Division, we get
a complaint, the board investigates, does what
it needs to do. If there's a problem, it
goes to the AG's office to file with the AHC.
We get a filing, it comes back to the Board
for a disciplinary hearing, and we're done.
I'd like to open that can worms for public
discussion. Todd is trying to sneak out the
doors, Mr. Chairman.

CHAIRMAN: I see that.

MS. EULER: So, Kim, is the question
you're throwing out should we keep the current
probable-cause process?

MS. GRINSTON: Yes.

MS. EULER: I don't want to speak for
the group, but from what I have heard people
say, I think the answer to that is no, we
don't want to keep the current process. And
it seems to me that, for consistency sake, it
makes sense for the discipline of 436
registrants, licensees to be the same as it is
for any other type of licensee.

MS. GRINSTON: Namely, 333 people.

MS. EULER: Yeah. Yeah.

MS. GRINSTON: Funeral directors,
embalmers, and --

MS. EULER: Or real estate agents or
accountants or anybody. It's all consistent.

UNIDENTIFIED: Second.

MR. MEIERHOFER: I agree
wholeheartedly, and that's what you've got do
so you can get something done.

MR. MAY: I don't recall what the
process is for all the other boards, so is it
-- does it still give people, if they were
concerned about having an objective exam by an
outside whatever, does that still happen?

MS. EULER: The process would be
somebody files a complaint or it's brought to
the Board's attention, they investigate. If
they determine that it should be -- proceed to
discipline, it would be referred to the
attorney general's office or their counsel to
take disciplinary action through the -- by
filing for a hearing in front of the
Administrative Hearing Commission. The
Administrative Hearing Commission determines
whether there is cause to discipline, and then
it goes before the Board for a hearing to
determine what the discipline should be.

CHAIRMAN: Bill, have you got any
thoughts on that?

MR. STALTER: Well, it goes back to,
you know, when we talk about this -- how to
regulate the seller. What's kind of implicit
in this, that there was supposed to be some
kind of a license at the seller-entity type.
So, otherwise, I mean, you know, there's no
teeth or accountability in it, so kind of back
to that issue sooner or later.

CHAIRMAN: What does the committee
think of this; yea or nay? All in favor, say
yes. All, nay?

(Unanimous voice vote for approval.)

MS. GRINSTON: Okay. Well, since
we've got the disciplinary process streamlined, one of the fundamental questions for the Board is what can initiate a complaint or investigation, an examination of books and records, which is different from a full-scale audit. Audits are very expensive -- very expensive. Right now, the Board is complaint driven. Generally, we can't do anything unless we have a complaint, and we are very limited on when a Board can file a complaint with itself. I'd like to open up for public discussion on whether we want to keep that system or allow the Board to handle 436 people just like we do with 333 people. If there is a problem or a suggestion or a cause -- and I'd like to pull audits out of that. Now, I'm not talking about the regularly or randomly scheduled audits, but just handling that investigation disciplinary process, should that still be complain driven?

MS. BULEB: And I don't know what people know or they don't know. Under Chapter 333, the statute gives the Board authority to go into any funeral establishment, inspect books and records, inspect the premises at any
time. Under 436, currently, the Board has no 
similar authority. So, under 436, nothing -- 
the Board itself has no authority to do 
anything, but if they get a complaint, then 
they refer it to the Division, and the choices 
are audit or examination of books and records. 
There is no authority just to enter the 
premises, do a quick check of the files.

MS. BOHRER: What do other boards and 
commissions have by way of the trigger to 
investigate whether there's a problem with a 
licensee?

MS. EULER: Most of the boards that I'm 
familiar with, the trigger is either a 
complaint and they have authority to go in and 
inspect books and records and premises at any 
time.

MS. DUNN: And that's what we do with 
funeral homes now -- and funeral directors, 
but under Chapter 436, we do not.

MS. EULER: And I think with a lot of 
the boards -- and, Kim, you can correct me if 
I'm wrong on this -- it's pretty routine, you 
know. The Board of Cosmetology sends somebody 
out to just go out and visit with the salons,
make sure everything is going all right, at
any time.

MS. BOHRER: Make sure they've got that
license posted and --

MS. EULER: They've got their license,
they've got their picture, their instruments
are clean, and they just show up. Like, "I'm
here from the State Board. I'm here to take
a look at your work station."

MS. BOHRER: And that person's salary
then is funded by the license fees for those
licensees?

MS. EULER: Yes. Yes. And that's
what, like, the embalmer's board does now with
funeral homes. They've got inspectors who go
out and just drop in.

CHAIRMAN: Darlene, you had something?

MS. RUSSELL: No. I was just agreeing
that -- with Sharon about the fact that you
have inspectors that go out already, right
now, that this would be just a -- if you have
a complaint, you can just send out your
inspector instead of having to wait for -- you
know, it has to say that this complaint was
preneed and it was money missing and all these
other things. I think this is where -- how come we're here today, because we've had problems where the Board hasn't had the authority to go out and check preneed records, and I think that needs to be streamlined to where the Board can have the authority to check the records.

MS. GRINSTON: Now, we're talking about complaint inspections, but are we suggesting or talking about regularly scheduled inspections?

MS. RUSSELL: Regularly scheduled inspections --

MS. GRINSTON: Like we do with funeral homes?

MS. RUSSELL: -- where they can just check five preneed contracts. Do you have five preneed? What are the last five you did? They do that on your at-need.

MS. GRINSTON: They do.

CHAIRMAN: Larry, do you want to come to the mike?

MR. STROUD: Larry Stroud. I would think if we're going to establish a time frame about funeral homes being audited on a regular basis as some have mentioned, if we're going
to have, let's say, an audit every two years, you know, then that audit would automatically pick up indiscrepancies that's taking place in the funeral home, wouldn't it -- if we had an audit every two years for all firms?

MS. GRINSTON: Possibly. Audits usually look at financial records. There are issues outside of financial records that may come up. Like, for example, they pull your all's at-need contracts, going in and doing an at-need inspection would be pulling an at-need -- I'm sorry -- preneed contract to see does it have everything in it that it's supposed to have. Are the signatures on the document? Does it list what it's supposed to, with all the questions --

MR. STRoud: I'm a little apprehensive about letting inspectors pull preneeds because I don't think they know that much about it.

Sorry.

MS. GRINSTON: Okay.

MR. OTTO: There's a middle ground, as well, that's in 333 that the staff of the Board can file a complaint as any public -- as any member of the public can. So, if you
drafted that onto 436 -- it's just one other option -- you wouldn't need to wait for a member of the public to file a complaint before you could do an inspection, but there would be, at least, some sort of documentation of a problem before the inspector went in and started randomly grabbing preneed files.

That's just -- I'm just throwing that out there because on 333, there's already a mechanism for that where the staff of the Board can file a complaint as any public person can do.

MS. GRINSTON: I just want to say this as a point. Last year, we did get some push back on that idea of the Board being able to file a complaint with itself in 436. The question I got was: Do you mean if someone calls in and says, you know, this is my issue, that the Board can file a complaint on just a phone call? And we explained that, you know, sometimes phone calls are your best tips that something is going wrong. But just so everyone knows that we did get some resistance on the Board being able to file a complaint with itself if it thinks something has gone
wrong, and that's just FYI.

MR. STALTER: When we go back to this being an industry Board -- I mean, that was one of the key things about 436 was that you would have a competitor on the Board, and he'd kind of jerry-rig some kind of a complaint. But, you know, we have to take a look at the circumstances today, and, really, I mean, there should be better ways to protect, you know, that preneed book. I mean, confidentiality, but still open up and allow inspections or some type of a process other than complaint driven because, I mean, really, consumers don't -- they don't really like to file those complaints, either. But, really, sign the paper and send it in. I mean, they may not be satisfied with something, but they're really reluctant to sign the piece of paper and send it in.

CHAIRMAN: Representative?

REPRESENTATIVE MEADOWS: Two years ago -- it's kind of amazing because two years when I first filed House Bill 825, this lady to my immediate right, she spent a lot of hours in my office, as well as Kim and Connie and
Becky. And, I mean, it's kind of déjà vu coming home to roost for me today looking at all these faces, but -- and it's a good thing. But I think that you -- I think it should be opened up. I think that you folks should have the opportunity to XYZ funeral Home and ABC County of ABC City, DEF City, you should have the opportunity, if whether you receive a complaint or not, to maybe put a restriction on a number that you're going to go look at. But someone mentioned how competent the inspectors are, and I'm not picking on inspectors; I want people to know that here. I mean, but, truly, if an inspector is going to take this on, they need to know the law the same as everybody else. Now, I feel that they need to also be tested on chapter 436, as well, if they're going to -- because if you send an inspector into a home to look at XYZ Funeral Home's preneed contracts, and he just starts ripping through it and making accusations and so forth and so on -- well, I need a copy of this, I need a copy of that, I need a copy of this, and this associated with this -- and it may not be pertaining to
anything. So, I feel it's important that if we're going to go that way, to just make sure the inspectors also go to class, too; wouldn't you all agree? Wouldn't you all agree that they would have to go through the training, as well? And, by the way, the governor is going to love me because I just keep running the bill up all the time on that. But, at any rate, if you can see what I'm saying and where I'm going with that, but -- and I just hope -- like I said, I think that everybody should have the right to go in. After all, what's so harmful in pulling the covers back and taking a look, and, I mean, that's what it's all about is to make sure people are doing what they're supposed to be doing with the money. So, thank you, Mr. Chairman.

CHAIRMAN: You're welcome. Sharon?

MS. EULER: I'll be very quick. I think something that needs to be kept in mind is that the premise that the current 436, at least how I read it and what I hear people talking about today, is that the only violation of 436 is stealing money or not properly handling money. And there are a lot
of other violations of 436, a lot of other
things people can do that, I think, most
people would want discipline for or would at
least want people to be held accountable for.
So -- and that's something an inspector could
check on, you know. Is the money being
properly forwarded within a timely fashion?
Are the contracts being properly signed? Are
they following the law? Are they doing the
right things? Are they paying the money to
Medicaid that needs to be paid? There are a
lot of other things besides just is the money
going in the right place.

MS. GRINSTON: And I do want to say
something just for the record, as well, in
response to the comment about the inspectors.
Right now, there are four inspectors. Two of
the four inspectors are funeral directors, one
of those two is a funeral director and an
embalmer. The other thing, I think, that
needs to be kept in mind is that inspectors
don't write violations on the spot; they
report them back to the Board. And so, if it
comes back into the Board on something that
says, you know, your preneed contract is not
on purple paper, it's a violation. The Board stands as the checkpoint on whether this really does violate 436. And there have been times when the Board has looked at things, even from the funeral-director's side, and said, no, you know, the inspector did a good job, but we just don't think that that's a violation of 333 or it's unclear. And so, I just want to keep that in mind, as well, that your Board is the person who determines whether you have violated the law as opposed to your inspectors on the job, two of whom, again, are funeral directors.

CHAIRMAN: And, no, I'm not taking the test.

REPRESENTATIVE MEADOWS: That's my next proposal, that all Board members have to take the test.

CHAIRMAN: Also, Ladies and Gentlemen, we do have a training session for the inspector, and that the Board does give them some direction, whether that be good or bad.

MS. GRINSTON: And so, I guess I'm hearing yes on expanding the disciplinary authority so that it matches 333; yes on
allowing the Board to remove the
complaint-driven process. I think the issue
that is still in the air is inspections. Are
we talking about random -- again, scheduled
inspections or just regularly scheduled
inspections? I'm sorry. Complaint
inspections or regularly scheduled
inspections. What is the consensus on a
regularly scheduled inspection, when an
inspector goes out doing a sampling of the
preneed files?

CHAIRMAN: All right. All in favor?

Those opposed.

(Unanimous voice vote for approval.)

MS. GRINSTON: So, those two things.

As we talk about disciplinary authority, I
think we need to look at the grounds for
disciplinary action. I don't know if everyone
has -- everyone should have their books from
Senator Scott's proposal. Well, the last
draft that we had with Senator Scott's
language, and I think it was a merger of
several bills, but there was some language in
there, and I'm going to -- it's on page 22.

Okay. You guys may not have it -- 21 through
23, 24, 25. Actually, 21 through page 23
right now. It should be the first document in
the beginning of your binders. Page 21
through 23. This language mirrors the
language for 333 funeral directors and
embalmers, but it had some amendments in it to
specifically address preneed and preneed
registrants, sellers, and providers. There is
a question about the grounds for disciplinary
action. Right now, like Sharon said -- and,
Sharon, maybe you can tell them what the
grounds generally are for disciplinary action.

Ms. Euler: Like, against the funeral
director?

Ms. Grinston: Yeah.

Ms. Euler: Right now, a funeral
director can be disciplined for use of any
controlled substance or alcoholic beverage
that impairs the person's ability to work,
being adjudicated -- found guilty -- of a
felony or any offense recently related to the
qualifications, functions, or duties, or any
offense where fraud, dishonesty, violence,
moral turpitude, use of fraud, deception,
representation in obtaining the license,
attempting to obtain a fee by fraud,
deception, or misrepresentation, incompetency,
misconduct, gross negligence, broad
misrepresentation or dishonesty in performance
of their duties, violating any provision of
the statute or regulation, impersonation of
holding a certification, being disciplined in
any other state, being adjudged insane --
sorry about that, Jim.

MS. GRINSTON: They don't have that
one for attorneys, so --

MS. EULER: No. No. Assisting
someone to practice who is not eligible to
practice, issuing a license upon material
mistake of fact, failure to display a license,
violation of professional trust and
confidence, advertising which is false,
misleading or deceptive, violation of Chapters
193, 194, 436, presigning a death certificate,
obtaining possession of a dead human body
without authority, failure to sign the reverse
side of the death certificate, failure to
guard against contagious, infectious, or
communicable diseases, willfully or through
undue influence, selling a funeral or refusing
to surrender a dead human body upon request of the next of kin. It's a long list.

MS. GRINSTON: What you just looked at in Senator Scott's proposal was an amended version of that list. Again, it mirrors and matches what a lot of the other professional entities have in place. What is the thought of expanding the grounds to disciplinary action because, right now, we've to show that you have specifically violated 436 to discipline someone? Obtaining a fee or defrauding someone is not a specific violation of 436. And so, if someone came in and said, "I defrauded the whole world," unless we can find a specific 436 violation, there is nothing the Board can do. What are the thoughts about expanding the disciplinary authority to include some of the things that are traditional for most other professions?

MS. EULER: Yes.

MS. GRINSTON: I hear a yes from Sharon. Going once, going twice.

MS. COLLINS: Another yes.

MS. GRINSTON: Another yes from Norma.

MS. GERSTEIN: Yes.
MS. GRINSTON: Public member, yes.

CHAIRMAN: That's it. We got it.

It's over. Don, you can't ask anything now.

MR. OTTO: Well, first off, I mean, let's get -- I mean, I fought this for three years -- the reverse side of the death certificate. But there's a lot of things in this list that, I think, should also be taken out.

MS. GRINSTON: Okay.

MR. OTTO: If you're dealing with disciplining somebody under 436.

MS. GRINSTON: Okay.

MR. OTTO: Because there's no reason to put stuff in there that just bogs it down, like retaining the body without permission to do so. That --

MS. EULER: We'll adapt it -- we'll change it to make it better.

MS. GRINSTON: And if you look at Senator Scott's -- the one in the front by Senator Scott, I don't know retaining the body --

MR. OTTO: Some of the stuff was left in, some, I mean, it was rushed through at the
end and a couple things were taken out, but
not everything was. And I would also point
out on page 21, you do already have that
paragraph 5, incompetency, misconduct, gross
negligence, fraud, misrepresentation,
dishonesty in the performance of a function or
duties of any professional license is
required, you know. We do have that in there,
so, I mean, don't repeat yourself. I don't --
you know. You understand what I'm saying.

MS. GRINSTON: I don't. Help me, Don.

MR. OTTO: Well, you've already got
that language in there now. If you're going
to try to expand it to include other kinds of
fraud or misconduct, maybe you need to take
paragraph 5 out completely, as well.

MS. GRINSTON: No. You mean it's in
Senator Scott's language, but it's not in the
law right now.

MR. OTTO: That's correct.

MS. GRINSTON: Right. And so, I'm not
talking about adding anything to -- or adding
anything after to what we see in Senator
Scott's. I'm really talking about the list in
Senator Scott's draft. Is there -- maybe if
we could look at that list to see if that list is something that mirrors what you all believe should be grounds for disciplinary action. And the 333 lists the retaining the body. I think we may have taken out incompetency, misconduct, or fraud would address the fraud situations that I was talking about earlier. But the list, since we were asked to use this as a guideline, the list that is in Senator Scott's draft, maybe we can take some comments on whether this list is complete enough or if it's not -- if it's incomplete, if it needs to be amended, or if there are any other changes.

MR. MEIERHOFER: Michael Meierhofer.

I actually went through this and highlighted this whole bit.

MS. GRINST0N: Okay.

MR. MEIERHOFER: And a couple things came up. Number 17, had any license, permit, registration revoked by any insurance or preneeds regulatory special licensing board of any state. I mean, I'm not sure if I got somebody that's yanking my license someplace I want you to automatically pull mine because
somebody has done that somewhere else. I'm not sure that's necessarily valid.

MS. EULER: Can we speak to that?

CHAIRMAN: Yes.

MS. EULER: How that's come up with other licensing boards is I worked on a case not so long ago where a guy had his license pulled in Arizona for inappropriate sexual conduct with a client. And when he came to Missouri to get licensed, and everybody agreed that his conduct in Arizona was improper, if there had not been that kind of language authorizing the Board to deny his license based on that, if we were to deny his license based on the conduct in Arizona and he challenged it, we would have to prove up the conduct from Arizona, which means we would have to go to Arizona, find the witnesses, find the people involved, and bring all those people to Missouri to prove up his conduct in Arizona so we wouldn't give him the license in Missouri. So, if you've got somebody who was selling preneed in Illinois and went to -- and was found to have violated Illinois' preneed license and had his funeral-director's license
pulled, his preneed license pulled, and he
came to Missouri, and he's clearly somebody
Missouri doesn't want to have licensed,
without language like this, you would have to
give him a license or else you would have to
prove up the conduct from Illinois, which
would be difficult to do. So, I think that's
the intention of this language, if that helps
clarify that for you.

MS. GRINSTON: How does it work with
funeral directors and embalmers?

MS. EULER: We've got similar
language. I just read it. "Disciplinary
action against the holder of a licensee or
other right to practice any profession
regulated by this chapter granted by another
state, territory, federal agency, or country,
upon grounds for which revocation or
suspension is authorized in this state."

MS. GRINSTON: So, that's kind of in
place for funeral directors and embalmers?

MS. EULER: Yes.

MS. DUNN: Mr. Meierhoffer, many
states do licensure verifications with us and
we do it with them. So, if there is a dual
license, Kansas checks with us repeatedly. I mean, this happens all the time. So, most states do this.

MR. MEIERHOFER: Okay. I stand corrected. I understand what you're saying. I was looking at it in a different way entirely.

MR. WARREN: Well, I was going to say this language is standard with respect to a lot of other boards, the Medical Arts, Nursing, pretty similar or exactly the same language.

MR. OTTO: The way it's currently worded on paragraph 17, page 24, if I have my tattoo parlor license revoked in Florida, is my preneed license in Missouri revoked?

MS. GRINSTON: Since it says that it has to be revoked by an insurance or preneed regulatory agency -- MR. OTTO: Or professional licensing board. That's the one that kind of pops out.

MS. GRINSTON: Oh, got it. So, you think we may need to narrow that down?

MR. OTTO: I think -- yeah. I don't know how, but I think you need to.
MS. GRINSTON: Should we just say funeral -- you know, maybe funeral/embalmers boards so we could tie it to the practice?

MS. EULER: But if they were an accountant and had their accountancy license revoked for embezzling money?

MS. GRINSTON: Don, are you worried about the tattoo license?

MR. OTTO: Well, the tattoo, but, you know, I could get my license revoked in a state because I failed to file a state tax return, you know.

MS. GRINSTON: What state is that?

MR. OTTO: Yeah. Does that automatically mean I'm disqualified from selling preneed in Missouri, or should it be? I mean -- but like I said, the way it's worded now, if you lost your tattoo-parlor's license for failing to pay your tattoo-parlor tax in Florida, you automatically get pulled here, it looks like.

MS. EULER: And that's not unusual on most licensing boards. I mean, I had a woman who had a cosmetology license who was fighting revocation even though there was a couple
hundred thousand dollars missing because she
wanted to get a real estate license in
Florida, and Florida would not give her a real
estate if she had had any license revoked
anywhere.

CHAIRMAN: John?

MR. McCULLOCH: In the language, just
say the Board may; right -- which means you
don't have to; right? So, you do have that
flexibility?

MS. EULER: Right.

MR. MEIERHOFER: That's important
that it says that.

MS. GRINSTON: Which, in the past,
leaves the Board as the gate -- gives you a
gatekeeper. And, of course, you always have
the right to appeal, because not only do you
have to get through them, you've got to get
through the AHC --

MS. EULER: Right.

MS. GRINSTON: -- which is the reason
why that third independent body is there,
because I can tell you, having tried cases in
front of the AHC, you go in front of them and
say, you know, they had their gun-selling
license revoked. They'll look and say, "May
means discretionary. We're going to exercise
a discretion. Nice try, but you can't do it."
And so, I think that there are checks and
balances in that process, should the Board run
amok and, you know, pull it to that. And
there are boards that do look at disciplinary
action. I know with this Board for Embalmers
and Funeral Directors, they will actually see
what they were disciplined for. Was it just a
late filing? Did they forget to pay the
filing fee? Or did they actually do something
that relates to the practice? So, I think
it's a good point, John, that it still goes
through the Board. Okay. I think we haven't
-- it seems like we've reached a consensus on
that point. I'd like to look at the language
on page 25 of Senator Scott's draft. This is
something that was recommended in -- and what
we've gone through the last legislative
session, having a trigger that would allow the
Board to automatically revoke or suspend
someone's license for two things; one would be
a conviction of some sort and the second one
would be if there's a shortage in the trust
fund. If we get an audit back or do an
examination or a report that tells us that X
amount of dollars is missing from the trust
fund, can we go ahead and suspend the license
automatically? This is something that was,
again, done very quickly at the end of
session, but I would like to throw that out
there for us to discuss whether there needs to
be some type of automatic revocation or
suspension procedure for certain designated
things under 436. The idea in theory is that
let's say that we find out that there is a
huge problem, that you can get someone out of
the practice until you can get in and figure
out what's going on. And the way it works
for other licensing boards is if it happens,
you appeal to the Administrative Hearing
Commission. They have had some success with
licensees being able to ask for an expedited
hearing, to get that hearing expedited so it
doesn't take a year for them to go through
that process. And, of course, they also stay
in a friendly AHC, usually, so the person can
continue practicing until the appeal is done.

But I would like to throw it out for
discussion on whether there should be some

type of automatic disciplinary authority for

the Board should certain things occur.

MS. EULER: Yes.

CHAIRMAN: Darlene?

MS. RUSSELL: I'm just not sure if the

$5,000 mark is a fair figure because that

could just be some little accounting error

that occurred. The $5,000 mark -- I agree.

that you should be able to suspend a license,

but that $5,000 mark sounded a little low.

MS. GRINSTON: How high do you think

it should go?

MS. RUSSELL: Preneed contracts, you

know, now are averaging, you know, $6,000,

$7,000, and so, one missing --

MR. OTTO: One missing is -- yeah.

One could have fallen behind the desk, but no

one did anything wrong. $50,000. I don't

know.

MS. RUSSELL: Well, I was thinking,

you know, in the terms of, you know, $15,000

to $25,000, you know. There would at least be

two missing, you know. There would be

something in that neighborhood. What do you
guys think?

CHAIRMAN: Larry Stroud says $50,000.

Bill?

MR. STALTER: I would just say for the big guys, I mean, they'll look for a higher number when you talk about a large trust. And it's really kind of hard to say. I mean, even if we're talking about a small operator, I mean, if it's $10,000 or $15,000, you know. Okay. I mean, you've got them under watch, but you really have to be careful when it's an automatic, you know, termination or authority. And what they're also going to cry about is -- I mean, you say it's a shortage. I mean, is it because of a market value or is it actually because of a theft? You know, if it's a theft issue, you know, then I think you -- really, there is a basis for acting more promptly to try to foreclose more problems.

But, I mean --

MR. OTTO: Misappropriation instead of shortage, for one thing.

MS. GRINSTON: Misappropriation.

MR. OTTO: Instead of the word "shortage," because that's not defined.
Misappropriation.

MS. RUSSELL: Yeah. There we go.

MS. GRINSTON: See, Don, with the misappropriation language, it would require us to prove up the underlying case before you can get in there. So, you would have to go in and do the full investigation, inspection, examination, figure out who did what to see if it's misappropriation or something else, and then it triggers. And maybe that's the suggestion. Maybe -- unless you're suggesting that we -- it be limited to misappropriation as opposed to just the mere shortage at all. That's a point to consider, as well.

MR. OTTO: Well, I just think "shortage" is so vague.

MS. COLLINS: I was just going to ask, could we use a word like "discrepancy" or something.

MS. RUSSELL: Kim, I do like -- I like the word "discrepancy" --

MS. COLLINS: Discrepancy?

MS. RUSSELL: -- and I'm thinking of a term, $25,000, and then you know it's major, you know. It really shows something. But
"discrepancy" is a good terminology.

MR. OTTO: Well, if you've got $50, $60 million in a trust, $25,000 is not a major discrepancy.

MS. BOHRER: Could it be a percentage trigger and, that way, you would -- it would be relative to the size of the operation? And if you've got a small operation and it's a 10-percent trigger; you know, for a very larger operation, obviously, that would be a much bigger number.

MR. STALTER: Talk about a material discrepancy --

MR. OTTO: And, again, I'm not talking about not investigating somebody if there's a problem. It's the automatic yanking of somebody's license.

MS. BOHRER: Yeah. And the thing of it is, I don't know how long it's been since you amended 436, but when you put a static amount in a statute, in 20 years, that amount will have no meaning.

MS. COLLINS: It's going to be outdated. Absolutely.

MS. GRINSTON: That's true.
MS. BOHRER: And we run into that periodically where some amount has been inserted 20 years ago and, now, in today's market, it doesn't mean anything.

MR. STALTER: And this is one of those issues we've talked about. Maybe you have to deal with it in regulations. You know, you have to be able to adapt to it. I mean, what's material today and material in ten years, there's a difference.

MS. RUSSELL: I agree that you need to be able to suspend a license when you're investigating. You go in and you see John Doe is missing a lot of money, and you just can't let him keep going out there and taking people's money. How you fix that is the problem. I wouldn't want you to give that right up. I'm just concerned about, just like we talked about, the amount.

MS. GRINSTON: So, what about a shortage of -- choosing a percentage -- 20 percent or 25 percent which would trigger, you know, for -- because Linda raises a good point, you know. Twenty-five years from now, which is probably the next time 436 will be --
no, I'm joking. Twenty-five years from now, you know, $5,000, $50,000 may mean nothing given the size of the preneed industry. So, maybe a percentage that is significant enough to possibly signify a problem. And can we draft the language, if it's okay with everyone, with a percentage requirement, and then maybe once you look at the language and how the automatic suspension will be done, maybe make a determination then on what the percentage should be? Would that be a better proposal? Okay.

CHAIRMAN: All in favor of that?

Opposed?

(Unanimous voice vote for approval.)

MS. GRINSTON: The other thing, and this is -- we're actually moving through this list, but injunctive authority for the Board for people who are --

MS. DUNN: What number are you on?

MS. GRINSTON: I think I'm still sort of on #22 -- between #21 and #22. Sorry.

MS. DUNN: Okay.

MS. GRINSTON: But injunctive authority. Most of the boards have standard
injunctive authority language. Sharon, do you
want to speak to that at all?

NS. EULER: Sure. From an enforcement
point of view, having injunction authority
gives us teeth because if we have injunction
authority and there is someone out there who
is practicing without a license or is doing
something so seriously bad and wrong that we
need to take immediate action, that gives us
the tool to go out and do that. Right now,
if people are selling preneed without
registration -- in fact, I've had one funeral
director in the state tell me this. "Yeah,
I'm selling preneed without a registration.
What are you going to do about it?" And, you
know, he's right. We have no tools. So,
from an enforcement point of view, having
injunctive authority is very important, and I
would think we could use language that mirrors
what's in Chapter 333.

CHAIRMAN: Any discussion on that? If
not, all in favor of that, say aye. Those
opposed.

(Unanimous voice vote for approval.)

CHAIRMAN: Ten-minute break.
(Off the record)

CHAIRMAN: If everybody would like to
take their seat, we're going to resume the
meeting.

MS. GRINSTON: Since we're talking
about disciplinary action and we're talking
about auditing, I think this is a good time to
talk about preneed sellers, the question of
how they should be audited and how often they
should be audited. We understand that this is
going to be under the Board's purview. Are
the recommendations going to be to suggest it
being under the Board's purview, giving the
Board options to use either an outside auditor
or an auditor that they designate. But for
auditing purposes, which is your full review
of books and records and financial accounts,
how often a preneed seller should be audited
and/or possibly doing financial reports, and
now that is open to the floor.

MR. MAHN: Mr. Chairman?

CHAIRMAN: Todd?

MR. MAHN: I know there was some
discussion earlier about, you know, all the
funerals being audited. I forget, Larry.
What did you say, once a year or something like that? Every two years? The question is: Who would pay for that and what would the cost be? You know, I mean, that -- you know, if you send inspectors by to check, you know, as they're under random inspections and as long as they're trained properly, to pull a few preneed contracts and look at them. But, I mean, you're talking, what, 600 funeral homes, auditing every one of them every two years? Would it be astronomical? I mean, I don't know. I'm asking the question.

MS. DUNN: Well, currently, we use an outside firm because that's the way the law is written. And, you know, it's been discussed in meetings previously that possibly a review process would be conducted in lieu of a full audit that would allow the Board to get the documents they needed to insure compliance. So, an audit is expensive, but a review process that would capture what we needed might be something more in order.

MS. GRINSTOW: Yeah. And I'm going to go back to something Mark mentioned earlier, that there are questions about -- your
question is your frequency and your scope, how
to often you're going to do it and how far back
you're going to go. If it's an eight-year
audit, the cost is going to be -- probably
going to be expensive. And I'm using the word
"audit," but I think that is a question, as
well, whether it should be a financial review,
an examination of books and records. Should
audits be reserved for disciplinary issues,
known, when there is a complaint, and maybe
just we deal with a financial reporting, if
you will, or something of the sort. But I
think that the discussion should be guided by
the idea that whatever the consensus is, you
guys do have to consider that somehow this is
going to have to be paid for, because it
wouldn't make sense for us to do an audit
requirement that says every year, you know,
all accounts, and then not, later on, decide
to fund it, because if that's the suggestion,
we've got to think about funding. And if
you're going to charge this back to the
funeral homes, you've got to think about that,
as well. Something Don said is that we have
had some concerns about charging this back to
funeral homes who may not be able to really pay for the cost of an audit or a financial review. I'm going to stop using the term "audit."

CHAIRMAN: Rich, can you enlighten us on any of this?

MS. DUNN: On, like, your banking reviews or --

MR. WEAVER: Sure. Yeah, I'd be happy just to -- and like I say, I don't -- can't really tie it directly to the funeral business, but just to give you a perspective on -- banks, for example, by statute, have to be audited at least once every 18 months, and some of them fall in the category they're audited once every 12 months. And you look at it from a financial audit as well as a compliance audit, and so, there may be a situation where some discussion there, we're talking about investigations of complaints and things like that. If you're going in to determine a financial audit, it seems to me that you could randomly select some contracts, tie that back to the funding where that's insurance, trust, et cetera, look at the
overall solvency of the seller, things of that nature. And then compliance audit would be
to, in that same sampling, you could determine
compliance with the law. So, when we conduct
bank examinations, that's, essentially, what
we do is we go and we look at the financial
solvency of that bank, and it's spelled out in
statutes specifically certain things that the
director has to do through his examiners by
law, but then it's up to the individual size,
complexity of the institution, whether or not
to expand the scope of that audit. So, if
you have, say, a relatively small operation,
an audit, I think, can be completed probably
within maybe a day or something. If you're a
big provider, you know, several hundred
million dollars of contracts out there, then,
obviously, that audit then is going to take
considerably more time. So, I think you just
dictate it by the size of the shop. How we
bill that, though, is there is actually an
assessment formula, which that gets out --
totally outside of what you guys are talking
about because that's based largely off a
weighted formula that looks at the size of the
assets of the institution and the variable amount of time it takes to examine those various different banks. And so, it may be that you could tie the expense side of it, possibly, to the actual contracts. I think, right now, isn't it, like, a $2 charge per contract? And so, maybe you could come up with a funding mechanism there to where the Board then would have access to that funding, and if they can get the appropriation authority, the adequate FTEs they need, et cetera, then there wouldn't be -- you know, here is an audit, you guys write us a check to pay you back. You actually have a fund that you're operating under. Those monies are coming into the fund essentially providing monies to pay for travel expenses, salaries, things of that nature. So, I know trying to tie that to bank exams and how that's done is maybe, you know, you can't specifically tie that to this business, but just to give you an idea of how we operate our examinations. And so, like I said, if -- when we go into a bank, we don't -- they don't get a bill from us after the examination and say, okay, this
is how much you owe us, and then that could
fluctuate, you know, every year depending on
your audit. They pay kind of their fair
share, so to speak, in assessments that goes
into a fund, then that covers our projected
operating expenditures for the year, fringe
benefits, travel expenses, things of that
nature.

MS. BOHRER: And that funding
assessment is based -- it's relative to the
size of the operation of the bank.

MR. WEAVER: That's correct.

MS. BOHRER: Every bank doesn't pay you
$10,000 --

MR. WEAVER: A flat feet. That's
correct.

MS. BOHRER: -- it fluctuates based on
the size.

CHAIRMAN: Jeff?

MR. STYGAR: Yeah. I'm just curious
about the audits. I mean, unless you have an
individual trust, what's -- I mean, we do
100-percent insurance. So, I mean, who are
you going to audit? I mean, are you going to
go to the insurance company and audit? All
our money is with them. I mean, I've got
contracts in my files, but, I mean, are you
going to go through and look at it for all
those contracts that are there? I mean, I'm
-- what's the audit consist of?

MS. GRINSTON: I think from what I
heard earlier, that for insurance-funded -- if
you're doing 100-percent insurance funded,
then, if I'm not mistaken, I heard that that
would be handled through insurance and the
insurance people who are handling regulating
insurance companies, that this Board would not
be auditing an insurance company to determine
their solvency, if I heard the recommendation
correctly. But for -- in that instance then,
they probably will be going in on inspections
and just look at forms and maybe things of
that nature for you -- not the company, but
for you. And I think the audits or a
financial review for a trust-funded preneed
contract, if I said that right, Darlene -- for
a trust-funded preneed contract, that would
really look at whether, you know, monies are
being handled appropriately and being
appropriately trusted.
CHAIRMAN: Dor?

MR. OTTO: The two things I would just mention, that is, if you do any kind of your -- if we're doing, like, what you call an audit or a financial investigation or something like that of every funeral home once every two years, that's one a day. I mean, every day you're doing a new funeral home with over 600 licensees, so however -- I mean --

MS. EULER: Not every funeral home is a seller.

MR. OTTO: Well, they're a provider. Are they providing -- I mean, now, are you saying we're not going to look into what the provider is doing?

MS. GRINSTON: Well, the providers would come up on the inspection side, but for financial reviews, we should be dealing with the entity that is responsible for the money, which would be whoever is responsible for handling those funds, which would be your sellers. So, I don't know. And I don't know what percentage of funeral homes are sellers.

MR. OTTO: Oh. Because we talked about changing that. Remember, you know, if you
can't -- particularly when funeral homes when
customers are canceling, you know, they have
to notify the provider and the seller. And
I'm just saying --

MS. GRINSTON: Yeah.

MR. OTTO: -- it can get -- and, also,
unlike banks anymore, we do have a lot of
funeral homes that are -- I don't mean this to
sound bad, but ma-and-pa operations where an
audit -- a full-blown audit could make a
difference of whether they -- if they're
paying for it, could make a difference whether
they're in business or not in business,
particularly if it's an audit that's without
-- you know, a random audit without probable
cause or something like that, and I sure
wouldn't want to see that kind of thing happen.

MR. KRAUS: Jerry Kraus, Homesteader's.

There's about a dozen states where the
sophistication in the funeral industry is to
the point where they're looking at the
financial-responsibility side of the preneed
contract. And so, they ask the licensed
entity to approve that they have adequate
funding, whether it's in a trust company or, I
mean, a bank or a trust that they maintain themselves, or in a bank or an insurance company. And so, the examiner comes in and says, "You have a $5,000 preneed contract. Do you have enough funding to make you financially solvent if you have to provide that now?" And so, they come to us to determine how much funding they have, and the examiner's look at that. So, I propose that you need to look at how much funding is there even though it means through reporting from banks, trusts, and insurance companies.

CHAIRMAN: Linda?

MS. BOHRER: I would just say in response to what function you want to rest with the Department of Insurance, we are in the business, so to speak, of regulating insurance companies, so we would be able to say that the insurance company that is the funding mechanism for the preneed contract is solvent and is, you know, complying with the State's insurance laws. But, you know, you would need to make it clear in however you write the legislation if you wanted us to additionally go in and look at the preneed
contract and say when insurance is used as the
funding mechanism, "Do you have an adequate
contract of insurance? Have you got a fully
paid-up whole-life insurance policy behind
this? Are you making monthly payments or
annual payments on this contract?" I mean,
that's a different sort of oversight from the
Department of Insurance than what we would
traditionally do with an insurance company.
And, again, talking about the elephant in the
room and NPS and Lincoln Memorial, you know. I
mean, we were able to say, you know, there's
life insurance that's been purchased and this
company is fully approved to sell that life
insurance, but were we looking at the concept
of whether that was a fully paid-up whole-life
life-insurance policy with no loans against
it? That really isn't the purview of
regulating an insurance company. That's
really under the purview of regulating the
preneed contract. And so, you know, that goes
to that whole separation of authority and
regulatory oversight that, everyone agrees,
has been somewhat of a problem here. And so,
you need to make clear, however you're going
to do it, that if insurance is involved in the
process or the sale, you need to make it clear
what you want the Department of Insurance to
be involved with in that regulatory-oversight
process and, at the same time, provide them
with the authority to address the wrongdoing
if there is established to be an inappropriate
activity related to the preneed-contract
function related to that insurance policy.
You know, they bought term instead of whole
life. That's totally not appropriate. Is it
inappropriate for a life-insurance company to
sell term insurance? Absolutely not. So, we
wouldn't necessarily cite an insurance company
for wrongdoing just because they sold a
term-insurance contract. So, you need to sort
of put all those pieces together however you
decide you're going to do it.
CHAIRMAN: Sharon?
MS. EULER: In accord with what Linda
is saying, but down a slightly different path,
another problem with the current 436 as it
relates with Department of Finance is that
there is no statutory authority or oversight
of how the trustee is handling the preneed
contracts. And I know that -- and I'm on the edge of my knowledge here. I know the Department of Finance, that the bank examiners examine the banks, but I'm not sure -- my guess is that they aren't looking at -- when they're doing the bank examination, they're not looking at 436.

MR. WEAVER: Well, that -- and I could be happy to talk about that. The way that it works in a bank examination, if you have a bank that has trust powers and they have one of these preneed funeral contract accounts, the examiners would look at -- not looking at so much what's in -- it kind of depends, I guess, on the trust agreement itself. In a situation to where if the bank is responsible for investing the monies that are in the account, if they have that fiduciary responsibility, then the examiners are going to look at the trust agreement and say, okay, the trust agreement says that you can invest money in mutual funds, you can invest it in life-insurance policies, you can invest it in CDs. And so, they'll determine are those monies being invested properly in accordance
with the trust agreement. If the trust agreement says that, well, no, the bank or the trust department is actually a custodian and you have an investment advisor that has a responsibility for investing those monies,
then that's essentially as far as the examiners are going to go because what we're trying to determine is how much risk is the trust department putting on the bank as far as if the bank was going out and doing something that was violating the trust agreement, they could potentially be sued by somebody, then that threatens the viability of that bank, their capital account. And so, that's -- it's more of an internal routines and controls or compliance on the trust side than it is actually a financial audit on the trust account, if that makes sense.

MS. EULER: Right. And so, we have the same sort of situation where nobody is looking at the trustee in terms of is the trustee in compliance with Chapter 436; is that an accurate statement? And maybe, just like with Department of Insurance, and maybe we can craft some legislation that will
clarify both of those things.

MR. WEAVER: Well, we -- as far as
making sure -- like I said, if they have that
type of account, then the examiners would look
at the actual bank. Are they administering
the account in accordance with 436? And
that's what I'm saying. If you're talking
about in the current problem that you have is
to say, well, under the law, the investment
advisor is responsible for managing the
investments. And so, that's kind of getting
on a different topic of discussion, I guess,
but whether or not -- if you're going to put
100-percent accountability on the trust
department of the bank to manage the
investments as well as the trust account that
it's in compliance with 436, then, to me, then
the bank is 100-percent responsible for both
sides of that coin, administering the trust in
accordance with 436 and managing the
investments as a prudent investment. And
depending on if you want to fine-tune that and
say -- but once you say, well, an investment
advisor, according to the law, can manage
those investments and invest them, then the
bank is largely relying on the expertise of
the investment advisor whether or not to
determine if those were prudent investments.
And so, you would have to look at kind of
both sides, the actual trust agreement, look
at 436, obviously, and then look at whether or
not the bank has a fiduciary responsibility
for investing those monies in a prudent
manner. I don't know if I'm explaining that
clearly or not, but --

MR. STALTER: Well, let me press on the
issues. Let's go back to when you said you
go in and you look at a trust instrument,
basically. I mean, when you pull that
account. You really don't know whether that's
a preneed account or any kind of account. So
-- but you go in and you look at what the
trustee has administered the account pursuant
to a trust agreement.

MR. WEAVER: Correct.

MR. STALTER: Now, that trust
agreement then is incorporate Chapter 436. I
mean, do you ever pierce through that document
to seek compliance with 436?

MR. WEAVER: Oh, yes. I mean, that's
part of it is actually looking at the trust
agreement itself, looking at what are the
conditions -- well, let me back up. I don't
know if "conditions" is the best word, but
making sure that the trust agreement complies
with Chapter 436 is part of that review.

MR. STALTER: Then let's clarify for
them, what are you looking for in terms --
basically, ask that administration; is that
correct?

MR. WEAVER: Correct. And that's what
I'm saying. If the trust agreement basically
says that the investment advisor is
responsible for managing the investments, then
we would look to see is the bank then
complying with what the investment advisor is
saying -- let's say that they say it's
permissible to invest in life-insurance
policies.

MR. STALTER: Right.

MR. WEAVER: Then we would say, okay,
you've got life-insurance policies issued by
this insurance company. These are whole-life
policies, these match up to the balance in the
account, whatever the case may be. Or if they
said these are CDs that are invested in a
financial institution. So, we would look at
the actual compliance with the actual trust
agreement is kind of the gist of it.

MR. STALTER: But what -- the issue
here is usually from state to state, you'll
see some states actually go -- get in and say
what should be in the preneed contract, but
you rarely see a state law go into the fact
and say what's going to be in the trust
agreement. So, when you say you're going to
bring in the trustee and make him more
responsible, you're really kind of going into
a new area in terms of, you know, whose
responsibility is it, you know, for compliance
with 436. And, frankly, a lot of the banks
have no idea about 436. I mean, they'll look
at the trust agreement, but they usually don't
look past that.

MR. WEAVER: Well, they should be
familiar with it if they're handling those
accounts.

MR. STALTER: I agree. Even the OCC
says that, but the fact is a lot of banks,
even your national banks, aren't aware, and
you're going from state to state, you know, who has responsibility, the funeral or the trustee. And so, you have to be very clear about that. I mean -- or else the fact is, I mean, if you shoo that over on the fiduciaries, then they don't have to take these accounts; they'll stop taking those accounts, and we see that already. So, you know, at some point, what's the fiduciary's responsibility with this transaction? And the first thing is, I mean, always, the asset management.

MR. WEAVER: Sure.

MR. STALTER: And, basically, then it comes down to the key issue in this law right now that we're looking at is that provision about exculpating the trustee when there's an independent investment advisor. And, you know, we're going to get to the point where that -- you know, that was a mistake. But, still, these banks, you know, want and need to have an independent investment advisor available to them, but they need to continue to have responsibility for asset management, and that's really what -- whether it's on the
state level or the OCC level, where we come in
and take a look at, you know, what's the
standard and are you in compliance with that
investment standard?

MS. GRINSTON: Can we go back to
auditing a little bit?

MR. STALTER: Well, but, no. But
we're, in fact, out here is who are we
auditing? Are we going to audit financial
institutions or are we auditing --

MS. GRINSTON: Right now, we audit the
preneed seller's trust account, and I think
our audit traditionally is limited to are they
trustee appropriately and is the amount in
that trust account, does that match what you
are statutorily required to have? I think
that that's what we're looking at. I don't
believe that our audits right now get into the
specifics of, you know, trust agreements
and/or investment allocations or anything
else. I think the audits really probably
should have -- well, I shouldn't say audit --
examinations, however you term it, have been
more traditionally tied to if you're supposed
to trust, you know, whatever amount, is that
amount in that trust right now, instead of
looking at some of the other issues. And I
think that that probably is a question that is
connected to this, but I think that for right
now, we probably need to clarify, if we're
going to audit, how often should we be in
there auditing, and then a discussion probably
for another day is what are we going -- what
should be looked at and what standard should
you be governed by once you go in there? But
I think that the initial question should
probably be: How often should someone, a
preneed seller now, be audited?

MR. OTTO: How many sellers do we have
in Missouri?

MS. DUNN: I think it's 340 or
something like that.

MS. GRINSTON: Looking at some of the
states, some of the states are doing it, they
do audit once every three years, and then once
within your first initial year of setup, so if
they catch, you know, any problems at that
first instance, and then after that, every
three years. Some states require a financial
report be filed by the entity in the interim.
so that while there may not be a full audit
or examination, there is a financial report
coming in for someone to review. Now, I do
know that we do that for endowed care. There
is an annual report -- cemeteries. There is
an annual report that comes in that says
what's there, and I'm doing this very
generally. Some of the information -- what
you spent money on, disbursements from the
account so that there's at least something to
look at to see if that account is in the red
or something of the sort. I don't know if that
discussion is added into the auditing
discussion because maybe you won't need to
audit as often if you have a financial report
coming in on a different periodic basis. The
question is, again, is once every three years
too much? Is it not often enough? Is once
every two years too much? And, again, we're
talking about preneed sellers. Is it not
often enough? John?

CHAIRMAN: Go ahead.

MR. McCULLOCH: It was my
understanding that the insurance companies get
audited every three years, so I would think
That would be fine, but that may not be true.

That is not true? How often do you --

MS. BOHRER: Well, financial audits are --

MR. STUHLHUTH: Well, and, generally, they do -- we do audit, on average, once every three years. The standard of the law is once -- at least once every five years.

MR. McCULLOCH: Okay.

MR. STUHLHUTH: So, some insurance companies, depending on the level of financial risk that we assess, might get audited more often than every three years, but -- and some less, but at least once every five years is the standard.

MR. McCULLOCH: Okay.

MR. MEIERHOFER: That makes sense.

MS. BOHRER: And I'm sorry. When you asked that, I was thinking of something else.

UNIDENTIFIED: But they also have to do quarterly reporting -- the insurance companies.

MR. STUHLHUTH: Yes. And they also do regular financial reporting.

MS. BOHRER: Yeah. They have to provide an annual audited financial report.
MR. STUHLHUTH: Yes.

MR. McCULLOCH: And you have to do quarterlys, too.

MR. STUHLHUTH: And their own quarterly financial reports.

MR. McCULLOCH: Yeah, it's constant. But I think for what we're doing, I think you would want to do at least three years for sure because I think if people know that someone is going to be coming and looking, it's going to help out this situation.

MR. MEIERHOFFER: That's nine a month based on 340, roughly.

MR. McCULLOCH: Yeah. Well, the big question is: How do we afford it? How do we fund it? I mean, those are different issues, but I think the question is, you're just trying to zero in on time here, so --

MS. GERSTEN: If you do it every three years, then what are you going to do, a once-a-year financial report or every six months or --

MS. GRINSTON: You could do both.

MR. STALTER: Yeah. I mean, really, there's some kind of self-reporting. I mean,
some kind of an annual report and then the --

MS. DUNN: With your annual report,
you could expand that.

MR. STALTER: Yeah. Exactly.

MS. DUNN: And, Linda, for you, we
have not changed this law since 1982, so the
fees are set in statute and the fees do not
support us. So, we're struggling right now.

MS. GERSTEIN: Also, I have a comment.

Rich, all the banks in my town know about what
to do, and I don't live in a huge town, but
we've got five banks.

MS. GRINSTON: So, I hear the last
suggestion is possibly once every three years.
And as I think about it, it may be a little
bit different for insurance-company people,
but once every three years, but what about a
financial report, something that comes in once
a year? I know endowed-care cemeteries does
it. It basically is -- and it has to be
done, I think, by a CPA -- and someone can
correct me on that. It's got to be by a CPA
or someone else to at least tell us -- Martin
is shaking his head very heavy. Yes, sir?

MR. VERNON: The trustee fills out
half of -- the top of the report, and then
the cemetery fills out the bottom half.

MS. GRINSTON: It's the trustee?

Well, what about that, a financial report that
is done by the trustee that just does --

CHAIRMAN: Once a year?

MS. GRINSTON: Yeah. Once a year,
that does the reporting of, you know, assets
and disbursements from the account?

MR. STALTER: Well, in Nevada, I mean,
the trustee just sends in a quarterly report.
Just -- actually, you get the transaction
report and the asset listing. So, I mean,
just -- it kind of papers a file, but it
shows you that, you know, there's a trust out
there.

CHAIRMAN: Representative?

REPRESENTATIVE MEADOWS: See, I knew I
did my homework, Mr. Chairman. Arizona's law,
they have what they call an annual trust
report, and I highlighted some of this. I
think it's -- and you're more than welcome to
look at it. I think it's -- they've got a
pretty good look on what they're doing. It's
in everybody's book. It's on -- well, of
course, I couldn't tell you the page, but it's highlighted in Arizona. It's on the last page of Arizona. But they have some -- a pretty sound, decent law, I think, but, again, that's up for discussion, but it's on the final page. And it's a yearly trust report. "On or before May 1st, each funeral establishment holding a prearranged funeral-sales endorsement shall file an annual report with the Board," and it just breaks it down to what is required on the report, but that was one of the ones that highlighted when I was going through this doing my homework, but it's just an idea. I throw it out there for discussion.

MS. GRINSTON: Looking at Arizona's language, would it be a consensus for right now that we draft something for you to look at that has auditing every three years and a financial report of some sort that is filed or done by the trustee? Does that sound like an okay for us to at least start from?

MR. WATKINS: Are we looking at a full-blown audit every three years, or just a review of the accounts to make sure that it's being done properly?
MS. GRINSTON: I think that's a good question. I think it's up for discussion, because I can tell you a full-blown audit is going to be incredibly expensive. And so, maybe we need to do -- go back to the other word in 436, an examination, and then maybe -- 
I don't know if you reserve audit for complaint and disciplinary issues as opposed to the examination issues.

MS. EULER: Or at the Board's discretion.

MS. GRINSTON: Yeah. If that works.

CHAIRMAN: Would it suit the committee if we take this kind of under advisement and try to put our minds together and then come back with something and give it to you? Because, I mean, this is a struggle trying to figure this out, and it's going to be the rest of the day.

(Several people talking simultaneously.)

MS. GRINSTON: I think I got it, and I can narrow it down even with the -- I won't call it an audit, I promise. Scout's honor, I won't. I mean, an exam.

(Several people talking simultaneously.)
MR. MEIERHOFFER: Well, I think the CPA audit is one of those things that will kill us, so a review, whatever you want to call it, but not a CPA audit.

MS. GRINSTON: Joy was just saying that Arizona only requires it for the preceding calendar year, so you don't have to keep reporting over and over again, you're just doing it from since the last reporting date, so -- I think we've got enough to go on to that one. Can we do some of the quicker ones really quickly? #22, allowing or modifying, releasing complaint information to the public. This came up in the discussion. People said they wanted to know how many complaints have been filed against someone and whether they are under investigation. I can tell you Professional Registration right now, and this is binding on the Board, all of that information, unless we take public discipline, is considered closed in the Board's hands. Any discussion on whether more of that complaint information should be open to the public or maintain status quo and keep it closed until something official is done?
MR. McCULLOCH: Wait until something official is done so that you're not accusing someone before they get a chance to show that they haven't done anything wrong, or if you find out that they have, then go forward.

CHAIRMAN: Linda?

MS. BOHRER: And I will just tell you that with the Department of Insurance, we don't release information on investigations of licensed insurance agents during the process of the investigation, but at the conclusion of the investigation, we will, regardless of whether the complaint results in an identification of a violation or not, we do release information on the number of complaints that have been filed against a particular agent, but that total or that tally is not accessible until the investigation is complete.

CHAIRMAN: Committee, all in favor of that?

MS. DUNN: What are you asking?

CHAIRMAN: What we were just saying, that we'll just -- after the investigation, that we will release that information
MS. EULER: Maintain the status quo.

MS. GRINSTON: Sharon, say it again.

MS. EULER: Maintain the status quo, not change what we currently do.

MS. GRINSTON: Okay. I hear maintain status quo, not change what we currently do, which means everything is closed until we take final public disciplinary action.

CHAIRMAN: All in favor?

MR. OTTO: What if we take no public, if we take no action?

MS. GRINSTON: Then it's still considered closed.

MR. OTTO: Well, that's not what insurance does.

MS. BOHRER: Yeah. That's not what we -- I was just relating what we do.

MR. OTTO: I think some people are saying --

MS. DUNN: I understand.

CHAIRMAN: Right. We're saying it wouldn't be released. All right. All in favor, say aye. Nay?

(UNANIMOUS VOICE VOTE FOR APPROVAL.)

MS. GRINSTON: #24, this is something
that also came up last session, allowing
release of complaint information to providers
and sellers that are under contractual
relationships. What we've heard from sellers
was that if I have a provider that's in
trouble in the preneed industry, I am their
seller, you should -- I should know if you've
got a problem with the provider that's selling
for me on the preneed side -- not
funeral-director side, but specifically
preneed issues. And so, there was a
suggestion that they should be able to get
complaint information if there's a complaint
-- a 436 complaint against a provider that is
contracted to work for me. That's not a
suggestion, that's just a topic of discussion.

MR. OTTO: Well, what about the other
way around?

MS. GRINSTON: Providers knowing about
sellers?

MR. OTTO: The buyer wanting to know
if the seller is under -- that's where you've
got the real complaints.

MS. GRINSTON: And, again, it's
different from what we normally do. Right
now, it is closed until we get to the
public-disciplinary stage. And so, no one in
that process would know what's happening with
the other licensee unless they give us
consent. Any thoughts? Any desire to change
that current process of keeping it closed
until something public happens?

MR. MCCULLOCH: Again, you don't know
if they've done anything wrong. You're just
looking into it; right?

MS. GRINSTON: That's true. That's
true. That's correct.

CHAIRMAN: No more comments?

MS. RUSSELL: Maybe if there was an
allege of money missing or something that --
you know, something substantial, that the
provider would want to know that a seller is
having financial difficulties, something that
-- I don't know.

MS. DUNN: Sharon, legally, if you
release something that's alleged? I mean, I'm
in this position, so --

MS. EULER: Well, under other
provisions of law -- it's not under 436 that
it's confidential. That type of information
is confidential by State statute.

MS. RUSSELL: Okay.

MS. EULER: But, you know, there would
be no reason why in the private contract
between the seller and the provider that they
would authorize the other entity access to
their records. That could be done by a
private contractual relationship. I'm afraid
if you release -- you know, if you start
saying these people are under contract, we
release that information to you, that will
open up a box, you know. Licensees will say,
well, I have a contract with the provider or I
have a contract with the seller; I'm entitled
to know, too, you know. Creditors, I have a
contract; I need to know. I mean, I think
you would just be opening up a box there.

MS. RUSSELL: I like the private
contract.

MR. MAY: I think, to me -- this is
Brian with Chapel Hill. One of the most
important things would be transparency to the
consumers and the public. So, if we are going
to start audits, for example, that those audit
reports -- if I'm an establishment and I have
a seller selling for me, I have to post,
share, or show the audit report that I got --
you know, the summary that I got. And I
think if I'm just a provider selling -- you
know, establishment selling for myself, I
ought to be sharing that information with
consumers, you know, in my establishment. You
know, on the cemetery side, we have to tell
them, well, here's our endowed-care trust.
You can get a report anytime, but I think more
transparency to the consumers when they come
in and go, "Hey, I've been hearing about this
stuff in the industry." "Well, yeah. Here's
our audit report right here. Here's who our
seller is." I mean, if we're going to do the
audits -- the audits now, I'm not talking
about the complaints. But if we're going to
do the audits, I think they ought to be
available to consumers. Just the perception
that knowing that someone could come in and
look at that, I think, would make more
conscious about what goes on at my
establishment.

MR. STALTER: And I'll take that
further, too. I mean, representing the banks,
and if we get somebody that says we want to
take over our trust, I mean, in states where I
can, that's the first thing I go looking for
is the audit reports to see, you know, whether
they've been compliant or not. So, I mean,
that transparency helps the banks, you know.
Okay. We feel comfortable with this
operation. You can go back and we see, you
know, three or four years -- or three or four
annual reports and see that they've been
compliant over ten years or something of that
nature.

MR. STUHLHUTH: And that sort of
balance is what takes place with insurance.
Although our insurance-complaint information
isn't public until it's closed, our audit
reports of insurance companies, those are open
to the public once they're finished.

MR. OTTO: I think it might depend on
some extent how extensive the reports are. I
mean, I certainly would not want
consumer-specific information out there.

MR. STALTER: I tell you another --
typically, I mean, we get a preliminary report
and then the operation or the review, they get
an opportunity to respond to that. And if
there's an objection to it, then, you know,
there's a process. So that, you know, you're
not seeing a preliminary report, but you're
seeing something that, you know, there's an
opportunity to go back and forth.

MR. OTTO: I'm just saying -- I mean,
the devil is the detail.

MR. STALTER: Yeah.

MR. OTTO: I mean, I wouldn't want to
be able -- Mrs. Jones has $10,000 put away for
her funeral. It is nobody else's business.

MR. STALTER: And another thing, you're
looking at more like a compliance audit,
procedural audit.

MR. OTTO: That's what I'm saying,
yeah, how extensive we're talking about here.

MR. STALTER: Yeah.

MR. MEIERHOFFER: One more point, and
that is I don't know who is signing off on
this, but very rarely will you find somebody
is going to put their stamp on it and say
this is all great unless -- even a CPA doing
a certified audit, there's ways to couch that,
so I don't know what you've got when you're
through. I don't know what the State is going to say.

MS. GRINSTON: I don't know. Let me backtrack and make sure I understand where we're headed. And, Mike, I apologize if I'm not answering your question, but when we talk about auditing and audit reports, am I hearing that you guys want -- the consensus is to have the audit report or a financial report publicly available? And, Mark, annual reports are public, aren't they?

MR. STUHLHUTH: The company's annual financial statements?

MS. GRINSTON: Yes.

MR. STUHLHUTH: Yes.

MS. GRINSTON: They are public insured. Am I hearing that you want the financial statements publicly available of the audit reports or examination reports publicly available?

MR. STALTER: The way I see it is, really, the audit report. And I hate to use the word "audit," but it's just this inspection or this triannual report that's out there. I'm not sure that the annual -- like
what the trustees file are made public, but it
is this triannual review report that comes out
that's made available.

MS. GRINSTON: So, what is the
consensus, I guess, for the financial report
-- well, the examination report that it would
be done on -- right now, it's suggested every
three years -- of that being available to the
public upon request?

MS. GERSTEIN: It's not like we're
going to post it, you know. Somebody has to
want to see it; right?

MS. DUNN: Correct. Upon request.

MR. OTTO: Again, I guess it also --
what will be in that report? What will it
consist of?

MS. DUNN: we haven't decided yet.

MR. OTTO: I know. To say whether I
want it -- I can't say whether I want it
public or not until I know what it is.

MS. GRINSTON: So, do you want to just
reserve that question about examination/audit
report until we figure out what's in it?

MR. OTTO: Yeah.

MS. GRINSTON: What about -- let's go
back to complaint and investigation
information. Complaint information is closed.
Examination/audit information we'll look at
again once we figure out what's going to be in
the report. That was easy enough -- if that
makes sense.

CHAIRMAN: Everybody agrees?
(Unanimous voice vote for approval.)

MS. GERSTEIN: Before we go on, Mark,
do you have a comment? You look like you
might have a suggestion to make for this.

MR. STUHLHUTZ: Well, it's just that
on the insurance side, when we are making exam
reports public, there is a process to go
through, as Bill suggested, where there is a
back-and-forth and an opportunity, if the
company didn't like it, for them to sue to
have its release blocked. But in terms of
reserving until you figure out all the details
of what's going to be an exam report, that's
not in the statutes for insurance companies.
And to try to figure out that level of detail
in a statute or even a regulation, you're
going to be a long time down the road before
you ever get into that question. So, it's --
you're almost -- if you're going to put that condition on whether or not you're going to make the exam report public, you're probably never going to get to the question of whether to make the exam report public because you're never going to be able to figure out on a legislative or even on a regulation basis what's going to be in the examine report.

MS. GRINSTON: Good point. And I guess since we -- and that's a good question. Since we won't know what's in the exam report till the exam report is done, maybe that should -- we should go back to the primary question of whether that exam report should be available to the public if we're not sure -- and if what we're worried about is personally identifiable information, like names, Social Security numbers, things like that, there's a way that we could write that to block that out if that's what you're worried about. But if the thought is that since we don't know what would be in the exam report, maybe it should or should not be open to the public, should we reconsider that question as opposed to tabling it to discuss what the examination report is
going to look like. Because Mark raises a
good point, we won't know what's in that
report until --

MR. STUHLHUTH: Because it's going to
depend.

MS. GRINSTON: Yeah.

MS. RUSSELL: Mark, they've never
indicated in any financial exam that you've
ever done on an insurance company individual's
names or any of that magnitude?

MR. STUHLHUTH: Except for maybe the
officers of the insurance company.

MS. RUSSELL: Exactly. The officers or
something, but not individual consumers?

MR. STUHLHUTH: That's correct, because
there's a lot of laws that are already in
place that we can't, even as a governmental
agency --

MS. RUSSELL: Right.

MR. STUHLHUTH: -- even though we're
brought into that information, we can't
disclose that.

MS. RUSSELL: Exactly.

MR. STUHLHUTH: So, that's -- I don't
think that's going to be much of an issue in
the examine report. Now, I know -- I don't
know what the public policy is behind it, but
I do know that in terms of bank reports, those
are not public.

MR. WEAVER: That's correct.

MR. STUELHUTH: And I'm not sure what
the public policy is behind that, but I know
for insurance companies, they are public once
they're final and there's a due process for
the insurance company before that report is
made public.

MS. GERSTEIN: Did you say banks are
not public?

MR. WEAVER: The bank-examination
reports are not public documents, no.

MS. GERSTEIN: What is public from a
bank?

MR. WEAVER: Well, they actually
publish what's considered a report of
condition and income quarterly, which is a
balance sheet and an income statement, and
there is some other supplemental information.
But as far as the actual examination report,
whether it's done by the Division of Finance,
the FDIC, or if you're a national chartered
bank, it's the OCC, those examination reports
are not public documents; they're protected by
law. There's a lot of personal confidential
information in there; for example, a borrower
and their indebtedness to a bank, things of
that nature, or specific account information.
And so, the logic behind not making it a
public document is that let's say that if you
examine the bank and there were problems in
that institution, if you put it out there in
the public, then, obviously, people would be
afraid of their deposits and there could be a
run on the bank and cause the bank to fail.
And so, that's kind of the main logic behind
why there are these confidentiality statutes
that prohibit public disclosure of that
information.

CHAIRMAN: Let's table this and
everybody give it some thought, and we'll
bring it back up at our next meeting. How's
that? Does it suit everybody? Because it's
technical, and we'll see if we can find some
ideas. Kim, do you want to do #15? Oh. Oh.
Bill? Billy-pob.

we're really talking about here is like a Good
Housekeeping seal of approval. And I think
for the public to take a look at each
individual funeral home, maybe you could take
a look at something like -- same thing with
your license -- as of such-and-such a date,
XYZ Funeral Home has met all the requirements
of the examination for the preneed accounts,
use a date, and go on from there.

CHAIRMAN: That's a good fix.

MR. BAKER: And the other thing, too,
we're talking about the three-year period, I'd
like to see us maybe discuss something on a
weighted basis. If we've got 100 funeral
homes, one funeral home sells 15 percent of
the preneed, maybe we want to take a look at
the money not getting out the door quite as
fast as -- get back to whoever made the
mom-and-pop comment earlier, that may sell
five in a year. So, that might be something
to take a look at, as well.

MS. GRINSTON: Can I make a suggestion
along with what the chairman just said? Why
don't we take that back and really think,
maybe -- go back to our people and everything
and really relook at this auditing deal,
because, again, we've been given this
opportunity. We don't want to do anything too
hasty, and I don't suspect that we're going to
get this hashed out today because it really is
very complex. And maybe talk to your
financial people or your trustees to see
what's possible and what's recommended, and
maybe pull the consensus, as well as look at
other states. I think we have a disk with a
lot of other states on it.

CHAIRMAN: But, Bob, that was a good
comment. We've got that written down, so --

MS. GRINSTON: I am going to
temporarily put aside complaints and
discipline because I think the chairman said
we're going to wrap up early because I think
you guys have done a lot of hard work, and
this is so much fun. But I just have -- and
we're maybe getting tired. Can we look at
#15? This is a completely different subject.

#15, very quickly, because a lot of you know
the history and the issue on this for the
Board. There has been a continuing question
on whether trust accounts are required for all
preneed sellers. Right now, the way 436 is written, it is written so that trust accounts are required for everyone, even people who are doing insurance-funded plans only. Well, even if you're doing an insurance-funded plan only. I think it's a good idea to discuss whether we need to clarify that trust accounts are truly required for everybody, or if people who are doing 100-percent insurance-funded plans are still required to have a trust to be registered as a seller. This came up because someone had filed a seller's application with the Board and specifically asked the question, "Do I need a trust?" We were asked to address that specific question, we did, and it appears 436 doesn't contain any allowances.

CHAIRMAN: Darlene?

MS. RUSSELL: It absolutely makes no sense to have to have a trust when there are no funds that are going to be going in it. It's just not good business practice. Why would you have someone pay fees to a trustee to maintain a trust that is -- that could potentially never have a dime in it. If you're writing insurance-funded, you know,
that is handled through the insurance; you
don't need the trust. You're, basically,
having a dummy trust because this is the way
the law is set up at this time. I, for one,
think it is something that definitely needs to
be changed.

CHAIRMAN: What about the rest of you?

John?

MR. McCULLOCH: John McCulloch. I
don't think that was ever the intent when the
folks wrote this, obviously. And I agree with
Darlene that it certainly doesn't make any
sense at all to require someone that's just
going to use strictly insurance funding or
joint accounts, for example, to have to have a
trust.

CHAIRMAN: Okay. Nobody wants it.

MS. EULER: One concern that I have,
and we talked about this before, is if you are
registered as a preneed seller, you can come
and tell the Board you're only going to sell
life insurance, but that registration gives
you the authority to do things other than just
life insurance that do cash accounts. And my
suggestion would be that maybe if we get
rule-making authority, we can have different
categories of a preneed-seller registration so
you know -- you either have an insurance only
or you have a trust only --

MS. CLARKSTON: That gets us into a
little bit of trouble. If we're writing it,
we need to have that specified in statute.
We've run into some problems before with that,
trying to establish a category within the rule
without having real writing authority for it.

MS. EULER: Okay. Well, I would
suggest that we keep that in mind because,
that way, it clarifies what kind of -- how you
plan to do your business.

MS. GRINSTON: In light of your
comment, if it is the pleasure to say if
you're doing 100-percent insurance-funded
contracts, you don't need a trust account,
should we also add language that says no
person who has identified themselves as an
insurance-funded-only preneed seller shall be
authorized to, basically, accept, you know,
cash or sell anything other than an
insurance-funded preneed plan, because that --
I mean, it will at least give us something
else to look at.

MS. RUSSELL: Or joint account, yeah.

MS. GRINSTON: Yeah.

CHAIRMAN: Yeah.

MS. RUSSELL: That's good, too.

MS. GRINSTON: Because that's #16; that's next.

CHAIRMAN: All right. So, everybody agrees this needs to be changed?

(Number of members answer yes.)

MS. GRINSTON: Got it. Got the change.

CHAIRMAN: Thank you.

MS. GRINSTON: Now, it's, I believe, over to joint accounts, which is #16. I think it might be a good wrap-up topic for us. Joint accounts for providers, right now that section reads -- and this is something that, I think, when I talked to a lot of people at 436, sends a lot of us back to read the statute again. Right now, the statute says that providers do joint accounts. It doesn't say anything about sellers doing joint accounts. And so, the question is: Should joint accounts be limited to providers only, or should joint accounts be limited to sellers
only? Should joint accounts be allowable for
both providers and sellers under 436?

CHAIRMAN: Todd?

MR. MAHN: Weren't we going to do away
with the provider word all together?

MS. GRINSTON: That's a good point.

MR. MAHN: And so, if that's the case,
that answers that, and then everybody is going
to be a seller, so they'll all have to be
able to do joint accounts; right?

MS. GRINSTON: But what about funeral
establishments? Even if we get rid of the
provider license, would we allow a funeral
establishment to still do a joint account with
someone without that preneed-seller overhead,
if you will?

MR. MAHN: Preneed-seller overhead?

MS. DUNN: Okay. If you want to be an
establishment only, and you want to use a
third-party seller --

MR. MAHN: Okay.

MS. DUNN: -- would that be a good
example?

MS. BULER: You only want to do joint
accounts, you're not going to have a trust,
you're not going to sell life insurance.

MS. DUNN: Well, I know. But you're --

MS. EULER: You're only going to do

joint accounts.

MS. DUNN: -- an establishment and now

there is no provider. you're an establishment

only --

MS. EULER: Right.

MS. DUNN: -- and you're going to do

joint accounts.

MS. GRINSTON: Yeah.

MR. MAHN: Sure.

MS. GRINSTON: So, allow -- for the

joint account, should that be an option for

sellers and perhaps now funeral establishments

who just want to do it directly with their

consumers?

MR. MAHN: Absolutely. Why not?

MS. GRINSTON: Okay.

CHAIRMAN: Go ahead.

MS. RUSSELL: Because the seller has

reporting requirements.

MR. MAHN: Well, so does the

establishment.

MR. OTTO: No. Because we're taking
that -- see, that's the thing. That's why I
mentioned before about eliminating the
provider. We've got to be careful about how
we word that.

MR. MAHN: It's not eliminating the
provider, it's just going in the name of
establishment.

MR. OTTO: But if I'm just -- if I'm a
funeral home and I do not have a seller's
registration, and I'm allowed to do joint
accounts without a seller's registration, and
we don't have providers anymore, what
authority does this Board have to come in and
audit to make sure I'm depositing that money?

MS. GRINSTON: Funeral establishments.
And I think the thought was that the funeral
establishment would also do reporting
requirements the same as a provider would. It
really would just be changing the name, Don, I
think, as -- instead of saying "provider,"
you'll say "funeral establishment."

(Several people talking simultaneously.)

MS. EULER: I have a question that may
help, and I'm going to drag Rich into this
again. You saw this one coming. Is there a
need for the Board to regulate joint accounts under 436 in terms of the account part or is that covered by the bank, because the accounts would be in a bank. Would the Department of Finance's regulation of banks cover the financial part of the joint accounts?

MR. WEAVER: Well, we wouldn't necessarily look specifically at individual accounts unless it was a material part of the overall business. So, I mean, if it's a small account, we're not even going to look at that, if that makes any sense. I mean, it would be kind of -- is it material or not to the overall scope of the business?

MS. EULER: So, if you've got a $10,000 account with Bob's Funeral Home and Ida Mae, that's not something the bank examiners are going to pull?

MR. WEAVER: That's correct.

MS. EULER: Okay.

MR. OTTO: Also, I think, the questions are, with the joint account, you have, what, five days -- three days to put the money into the account after the funeral home receives it? Who is checking on to see if
that's happening? You're supposed to deposit
100 percent. There's no 20-percent retainage.
The bank examiners aren't going to, you know --
MS. GRINSTON: Well, wouldn't the
Board still be looking at those issues? The
question is just what we call you when we look
at it.
MR. OTTO: But what if I'm a -- I
mean, here's my problem. If 436 is funeral --
I mean, how are we going to do this if we
eliminate the provider term, and 436 says
funeral establishments are supposed to provide
a report every year, or is it funeral
establishments that are --
MS. GRINSTON: Or is it funeral
establishment with joint accounts?
MS. DUNN: And then you will have to
change 333.
MR. OTTO: So, we're going to have
sellers and then we're going to have funeral
establishments with joint accounts? Why not
just call everybody -- why don't you call them
a --
MS. BULER: Well, and then the
question: If you're doing joint accounts, do
you need to be registered as a seller?

MS. GRINSTON: Yeah.

MS. EULEZ: That would solve that whole reporting problem.

MR. MAHN: Absolutely.

MR. OTTO: I agree, but that's not what we just said here a second ago. It was just --

MS. EULEZ: That was the question.

MR. MAHN: Are we eliminating provider?

MR. OTTO: Okay.

MS. GRINSTON: I actually think it's two different topics. You're talking about the provider, and I think that the question is if there's a joint account, if you want to say -- since I personally think -- this is just from what we've heard at the Board office -- if we address the trust-account issue, that funeral establishments won't have a problem because most of them have sellers registrations anyway if we allow that to happen in that format. So, I think the question is, if I'm hearing you correctly, Don, whether, if you're doing a joint account, you have to get a seller's registration, but
we have already addressed that you won't
necessarily have to do a trust to get that
registration. Is that what I'm hearing?

MS. EULER: Right.

MR. OTTO: But there was a comment
made that you should not have to be a seller
if you just do joint accounts. That comment
was made by someone.

MR. STALTER: Well, I heard that, too.
That's what I -- I interpreted it the same
way, so, basically, even if you have joint
accounts, you still have to have a seller's
license?

MS. GRISTON: Yes. If that's what
you're looking at, yes. Yeah.

MR. MAHN: Well, we should have a
seller's license for everything. Did I make
that comment that you didn't have to have a
seller's license?

MS. EULER: If you going through
preneed --

MR. MAHN: Well, just say it was me
then, but if it was me, then --

MR. WATKINS: You still have to have a
license no matter what the funding --
MR. MAHN: Yeah. Have a license or should have a license or did have a license.
I don't know.

MS. GRINSTON: Okay. That makes sense.

CHAIRMAN: And then when you report,
you'll explain what you do.

MR. MAHN: But, yeah, I think everybody should have a license.

MS. DUNN: Now, someone did make a point somewhere, because if you eliminate provider and you're going to have an establishment file an annual report based on what your provider used to do, you're going to have to amend your 333 or your 333 regulations.

MR. WATKINS: But if we make them have a seller's license, they're going to file under 436.

MS. DUNN: Right.

MR. OTTO: What if I'm a provider and I only do at-need. I don't do any preneed?

MS. EULER: Then you don't need to submit --

MR. MAHN: Then don't do it.

MR. OTTO: Okay. Then we're going to have to now have a category -- we're going to
have to have another category. We're going to have to have funeral homes that sell preneed and funeral homes that don't sell preneed.
I'm still getting back to why we're eliminating the term "provider."

MR. MAHN: Why not just go on the pretense that everybody sells it and if you decide you don't want to sell any at yours, just don't sell it.

MS. GRINSTON: Well, a funeral home that sells preneed should have a seller's license.

MR. OTTO: But I have a funeral home, I use Missouri Funeral Directors or somebody else; okay?

MS. GRINSTON: Right.

MR. OTTO: Currently, as a provider, I file a current report; okay?

MS. GRINSTON: Yes.

MS. DUNN: Yes.

MR. OTTO: What was said earlier is we're still going to have to file that report, but we're not going to have to be called a provider anymore.

MS. GRINSTON: Let me read what's in
the provider report. The business name or
names of the provider and its address, the
name and address of the seller with whom it
has entered into a written agreement, the name
and address of the custodian of its books and
records, and corroborate with the State Board
in any investigation, and then on a sale. And
so, if the concern is how to get the
information on what their business name and
address is, who they're contracted with as a
seller, where their books and records are, I
don't know. Do we need to keep a provider
designation so we can get that information?

MR. OTTO: I'm saying 436 says funeral
establishments will provide the following
report every year. That means every funeral
establishment is going to provide a report
every year, not just the ones who do any
business with preneed.

MS. GRINSTON: Well, could we say
funeral establishments that are --

MR. OTTO: -- doing preneed, which is,
of course, what a provider is.

MS. EULER: Well, the information
contained in this report would be all captured
elsewhere under what we're talking about, the
business name and the provider and the
addresses from which he engages in the
practice of his business. It will either be a
funeral establishment or it will have a
separate provider license, so that's covered.
The name and address of each seller with whom
it has entered into a written agreement since
last filing a report, if the funeral home is
acting as an agent of the seller and selling
those contracts, under our new scheme, they
will have a license, so that will be covered.
The name and address of the custodian of books
and records containing information about
preneed contracts, sales, and services, that's
already covered by 333.

MR. OTTO: Well, I just don't want us
to create a situation where I'm a funeral
home, I don't sell any preneed, but because of
the way we worded this, I've got to file a
report every year.

MS. EULER: No.

MR. OTTO: Well, that's --

MS. GRINSTON: No. And I don't think
that's anyone's intention. I think that the
intention, from my understanding of the
discussion earlier, was that that report, if
it comes in, would come in from funeral
establishments filing preneed. But what I'm
hearing you say, Don, is that you probably
think that for ease in reporting purposes, we
should go back to the two-license system?

MR. OTTO: Well, I don't see -- what
we're going to have is we're going to have now
-- we're going to have three -- well,
currently, we have three categories; funeral
establishments, providers, and sellers. And
under our new system, we're going to have
funeral establishments and funeral
establishments that do preneed and sellers.

(Several people talking simultaneously.)

MS. GRINSTON: What we're really doing,
though, is just -- we're renaming the class.
So, what you're saying is keep the name
preneed provider.

MR. OTTO: I don't see any reason why
-- I mean, I have not seen -- maybe there's a
good one, but I haven't heard a good argument
why we're eliminating the term "provider."

MS. BOHRER: Being an outsider and
listening to this, does the funeral director
annually file something to maintain his
license? I mean, do you have to file any
kind of paperwork to renew your license every
year?

MS. DUNN: A funeral director does.

Any establishment.

MS. BOHRER: A funeral director does?

MS. DUNN: Uh-huh.

MS. BOHRER: Couldn't you just
incorporate --

MR. WATKINS: A preneed provider does?

MS. BOHRER: Couldn't you just
incorporate something into the
funeral-director's license, another three
questions that says if you're involved with
the sale of preneed in any way, answer those
three questions and incorporate it into the
annual document that every funeral director
files anyway?

MR. OTTO: I'm just -- I'm getting to
the point is right now we're required to have
provider-seller agreements, says the statute.
Every provider and ever seller must have a
contract. Well, now, we're going to have to
go through the statute and everywhere where it
says "provider," we're going to have to say
"every seller and funeral establishment that
does preneed on behalf of the third-party
seller." So, we've got a term right now
that's "provider" that's one nice word. We're
going to have to, at the very least, replace
that now with a sentence that says "funeral
establishments that sell preneed, but aren't
sellers." And no one -- I have not heard an
explanation about why we need to get rid of
the term "provider."

MS. DUNN: It was just something that
we had thought that we were duplicating --
most funeral establishments are providers.

MR. OTTO: Well, half. About half.

MS. DUNN: So, we were trying to
eliminate something that we thought we were --

MR. McCULLOCH: Did it have something
to do with costs? We were trying to save
that money to fund funeral --

MS. GRINSTON: Well, also for
disciplinary purposes, right now, under the
current scheme, to do a -- to discipline
someone, a funeral establishment that has a
preneed license, you have to establish -- you have to go through the 436 process for their preneed license and then go through the 333 process for their establishment license, so that for -- when you're doing the disciplinary vein, let's say you've got the exact same funeral establishment. Let's say I -- I'm just going to use this as an example. I know that you've been stealing money from your preneed account. To do anything on the 333 side, we've got to go through this whole circle of 436.

MR. OTTO: But why would you want the option of telling a funeral home, you can't do -- we're not going to take away your funeral-home license, but we don't want you being a provider anymore?

MS. GRINSTON: I don't think that that option is off the table, but I think that where we are now is we can't touch a funeral-establishment license until we go through the 436 circle.

MR. OTTO: Well, that's the other problem we dealt with, our screwy regulatory thing. That has nothing to do with whether
you call a funeral home a provider. Again,
I'm willing to be persuaded otherwise, but I
see no reason to get rid of the term
"provider."

CHAIRMAN: Darlene?

MS. RUSSELL: I think it's going to
save the funeral homes money, if I'm
understanding correctly, because you're not
going to have to file -- they're not going to
have to file an annual provider report. It's
just going to all be encompassed in their
establishment on their provider. There's no
longer going to be a provider report.

MR. McCULLOCH: Well, why would you
want a funeral home not to be a provider?
You want to take care of those --

MR. OTTO: We just said that the
funeral homes that are doing preneed on behalf
of a third-party seller are still going to
have to do some kind of reporting.

MS. KEULER: And in my experience with
the Board, I have never known the Board to
simply revoke a provider license and not seek
discipline against the establishment license,
as well.
MR. OTTO: But I'm saying -- I mean, I think I'm making a mountain out of a mole hill. Let's get moving on. But I just think, I see no reason to remove the term "provider," because now we're going to have to replace that with a term called "a funeral establishment that does preneed for a third party seller."

NS. EULER: We may still use the term, we just won't use the license. We may still use the term, but just not have the license.

UNIDENTIFIED: What's 30 bucks more?

CHAIRMAN: I think we're fine to go back the other way. I mean, nothing is written in stone.

NS. EULER: Why don't you let us play with the language and see what we can come up with, because we can still use the word "provider" and define it to mean a funeral establishment or someone holding a license from the Board without having to have license.

CHAIRMAN: Okay. Bill?

MR. STALTER: Let's go back -- remember the cemeteries. The cemeteries, you don't -- the Board didn't license the
cemeteries, did they? They're just a
registrant provider.

MS. GRINSTON: Correct.

MR. STALTER: So, I mean, that's one
of those categories where you don't catch them
till 333.

MS. GRINSTON: Well, assuming that we
visit this question on eliminating the
preneed-provider classification and license,
on joint accounts, though, how do we still
want to handle joint accounts? Do we want to
make -- there are two questions: If I have a
joint account, do I need a seller's
registration or should I need a seller's
registration if I'm doing joint accounts only?
We have addressed the trust issue.

(Several people talking simultaneously.)

CHAIRMAN: All in favor of that one?

(Unanimous voice vote for approval.)

MS. GRINSTON: Good. And then I think
we can tinker with some language and then
revisit Don's question, put that on the
revisit list, on whether the removal of the
preneed-provider designation is a good idea in
light of how it's going to look in the
language. That's what I have. Mr. Chairman,
I think it's 4:30.

CHAIRMAN: Yes. My mediator here has
informed me it's time to quit. So, Mr. Baker?

MR. BAKER: Bob Baker again. One final
comment. We license establishments A, B, C,
or D. Why not do the same thing with preneed?
You're licensed to sell trusts, joint
accounts, insurance, and whatever else you
want to expand it. You've got one license
that you opt to participate in the different
forms of funding.

(Several people talking simultaneously.)

CHAIRMAN: Folks, before we adjourn, I
really want you to know that -- I mean,
through the last few months, which has been
really tough on our staff, with Becky Dunn and
Kim Grinston and Lori Hayes and all the staff
in the office have worked diligently day and
night. And, I mean, I have never seen a
group of people so dedicated to a disaster
that we have had. And, I mean -- and it's a
disaster. But I want to brag on those.
Connie Clarkston is excellent at what she does
on legislation. I mean, she tweaks
everything, she's typed everything that we
have said today. David Broeker is a great
department head -- division head. We've got
to get this lingo down. But, anyway, these
people are tremendous at what they do, and you
don't realize it. And you all for attending
and spending your time and looking at the --
you know, all of the literature that was sent
to you. You all are tremendous or you
wouldn't be here. And it's going to make a
difference, and it's going to make a change,
and you're doing the right thing for the
consumers. And our consumer people here,
Norma and Jo, I just really appreciate both of
you. And I cannot brag about Senator -- he's
going to be a senator one of these days --
Representative Meadows. I've elevated him,
but, anyway, they've all worked so hard and
you don't know that. You don't see that
behind the scenes. And the Board members are
excellent and we're very lucky to have a
profession that's diligent and the group of
people that are here, you know, participating
in it, and I want to thank each and every one
of you, so -- meeting adjourned.
(Off the record)
I, Gayle Z. Sims, a Certified Court Reporter and Notary Public, within and for the County of Boone, in the State of Missouri, do hereby certify that the foregoing transcript constitutes a full, true and correct record of said proceedings that were held on July 8, 2008; that said proceedings were recorded by me and afterwards transcribed under my direct supervision.

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

[Signature]

GAYLE E. SIMS, CCR
Notary Public for Boone County

My Commission Expires: 09-14-08

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