

Memorial Business Journal

THE WEEKLY RESOURCE FOR PROGRESSIVE FUNERAL DIRECTORS, CEMETERIANS AND CREMATIONISTS

NFDA

NATIONAL
FUNERAL
DIRECTORS
ASSOCIATION

September 21, 2017
Vol. 8 No. 38
www.nfda.org

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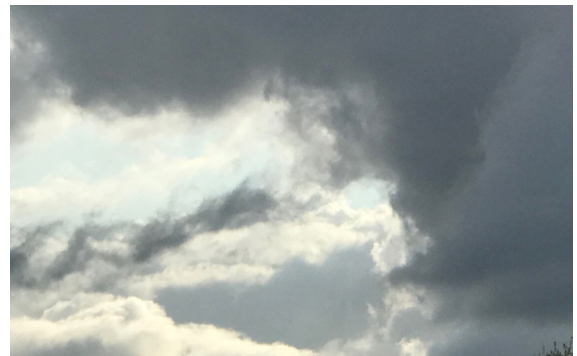
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Legislative Auditor Report Rips WV Funeral Board; Calls for Its Termination

CHARLESTON, WEST VIRGINIA – Following an investigation into how a funeral home could commit fraud to the tune of nearly \$1 million and end up with only a slap on the wrist, a state legislative report has called for the termination of the West Virginia Board of Funeral Service Examiners.

This explosive report by the West Virginia State Legislative Auditor's Office was presented to the Joint Committee on Government Organization September 17. It focused on the board's decision to suspend the license of a funeral director for just six months after he was found to have violated the state's Consumer Credit and Protection Act and the West Virginia Preneed Funeral Contracts Act, along with "committing fraudulent acts against over 100 pre-need contract beneficiaries, in excess of \$900,000."

"Ultimately, it is the opinion of the Legislative Auditor that the board chose to give preference to the licensee rather than to the interest of the public,"



wrote John Sylvia, director of the state legislature's Performance Evaluation & Research Division. "In the Chad Harding case, the Legislative Auditor finds that the board acted to protect the interest of one of its licensees more than the safety of the public."

Harding is also a former president of the board.

Sylvia went on to write: "Given the history of this board and the most recent case of Mr. Chad Harding, the Legislative Auditor concludes that the legislature should consider terminating the board and placing the regulatory function under another health-related state agency, such as the Department of Health and Human Resources' Bureau for Public Health."

Two months ago, the West Virginia Board of Funeral Service Examiners met in an "emergency session" to discuss a settlement in a case against a funeral home over its business practices. The at-

torney general filed a complaint earlier this year against Gatens-Harding Funeral Home, alleging that the business violated state law by cashing in 111 preneed contracts before the actual deaths of the individuals, to the tune of \$950,000. The board suspended the funeral director's license of Chad Harding, owner of The Harding Group and former president of the funeral board, for six months but allowed him to keep his embalmer's license.

Sylvia detailed the time line in the case against Harding in his report:

- Two years ago, on August 19, 2015, Homesteaders Life Company filed a complaint against Gatens-Harding Funeral Home in the United States District Court for the Southern District of West Virginia. The complaint indicates that Harding committed fraud against 111 consumers who had preneed policies with the company by filing false death claims and claims of providing funeral services prior to the actual deaths of preneed funeral contract beneficiaries and receiving more than \$900,000 from these false claims.
- A week later, the West Virginia Attorney General's Office of Consumer Protection-Preneed Funeral Unit conducted an audit of the preneed contract accounts held by Harding and discovered multiple violations of the West Virginia Consumer Credit and Protection Act and the West Virginia Preneed Funeral Contracts Act. The audit revealed that more than 100 death claims were made and paid to Harding prior to the deaths of any of the preneed contract beneficiaries. In addition, Harding failed to disclose to the Attorney General's Preneed Unit the withdrawals of funds belonging to consumers, as required by law.
- Nearly a year later, on August 8, 2016, a federal judge ruled in favor of Homesteaders Life Company and against Harding and his wife in the amount of approximately \$2.8 million because the judge found that Harding had violated the Racketeer Influenced and Corrupt Organizations Act (RICO Act), which provided for triple damages.
- On September 30, 2016, the Board of Funeral Service Examiners first contacted Harding via letter regarding the charges against him.
- On October 11, 2016, the Attorney General's Office filed a motion in circuit court to permanently disallow Harding from selling preneed funeral products or services in West Virginia.
- On November 28, 2016, the board sent a letter to formally advise Harding that there was probable cause to believe that he had engaged in conduct, practices and acts that violated the West Virginia Funeral Service Act. Along with the letter, Harding was provided with a Statement of Charges and Amended Notice of Hearing, which was set for January 30, 2017. Harding filed a motion to reschedule the hearing, and it was later rescheduled for March 22, 2017.
- The next month, Harding filed a petition for a Writ of Prohibition against the board in Kanawha County Circuit Court in an attempt to stop the board's disciplinary action against him. The board filed a motion to dismiss Harding's petition on January 18, 2017. Later, in March 2017, the court granted the board's motion to dismiss Harding's Writ of Prohibition.
- On February 7, 2017, Harding and the Attorney General's Office reached a settlement. Previous to that, a local businessman had paid the \$2.8 million settlement owed by Harding to Homesteaders Life Company, essentially covering the amounts owed to the preneed contract beneficiaries. The settlement between the attorney general and Harding indicates that any funeral-related businesses owned or operated by Harding or his wife shall permanently refrain from and are permanently barred from selling preneed funeral services or accepting payment of any kind for funeral services prior to the death of the person for whom the services are intended in the State of West Virginia. In addition, Harding agreed to pay \$25,000 to reimburse the State of West Virginia for the cost of the investigation.
- On February 24, 2017, the board requested that Harding's disciplinary hearing be rescheduled due to the hearing examiner having a medical issue. The

hearing was rescheduled for April 13, 2017. Harding later motioned to have the hearing rescheduled again; with no disagreement from the board, the hearing was scheduled for July 25, 2017.

- On June 16, Harding's attorney sent a letter to the board containing a settlement offer in which he would agree to be placed on a six-month probation period for his funeral director and crematory licenses, as well as pay a fine of \$10,000. The settlement would nullify the need for a disciplinary hearing.

“The integrity of any profession, especially one as sensitive as funeral service, is only as good as the ethical, moral and legal underpinnings that hold it together. Recent actions will undermine the integrity of the board, in my opinion, and weaken its authority in these types of matters.”

- Ten days later, on June 26, as the board prepared for the July 25 hearing, its attorney sent out subpoenas for individuals to serve as witnesses at the hearing, including Harding, a Homesteaders Life Company representative and the attorney general's preneed auditor. The hearing would be open to the public.

At the same time, West Virginia Gov. Jim Justice appointed four new board members whose appointments were effective July 1, 2017. Additionally, the governor appointed the board's former citizen member to a crematory operator member position.

- On July 5, at the board's scheduled meeting, the board discussed the offer of settlement received from Harding's attorney and voted unanimously to have its attorney further discuss with Harding's attorney the parameters of the settlement.

- On July 11, Harding's attorney sent another letter to the board including an updated offer of settlement in which Harding would be willing to have his funeral director and crematory licenses suspended for six months and then be placed on probation for another six months, as well as pay \$25,000 for the board's legal fees. The same day, a board staff member contacted the Secretary of State's Office to request an emergency meeting for July 14 with the purpose being to discuss the proposed settlement offer.

- On July 14, at the board's recently scheduled "emergency meeting," the issue of conflicts of interest was brought to attention by the board's attorney. Board members were asked if they had any business relationships with Harding or social relationships, such as attending the same church. One member stated that he had a business relationship with Harding but did not believe it to be a conflict of interest. No board members recused themselves from voting on issues dealing with Harding due to a conflict of interest. After several deliberations, the board voted 3-2 to not have a disciplinary hearing and to accept Harding's settlement proposal. Five days later, the board entered into a Consent Agreement with Harding that mirrored the conditions listed in the settlement offer.

This vote prompted sitting board members Ira Handley (president), John H. Taylor (secretary) and Bill Davis to resign, as the three wanted a much harsher penalty. In his resignation letter, Handley said, "Doing this, we let a man who embezzled close to a million dollars set his own fate. I was compelled to sign the consent agreement and order as president of the West Virginia Board of Funeral Service Examiners against my better judgment."

Wrote another board member: "I serve at the will and pleasure of the people of the State of West Virginia and our governor with the understanding of

(at least in part) the protection of the public as a very important facet of my service. This protection is not just for public health but for the integrity of the profession, which is for the public's protection as well, and which we are mandated to oversee. Recent actions have caused me to question my involvement with this body, and I feel I can no longer serve in the capacity for which I was appointed. The integrity of any profession, especially one as sensitive as funeral service, is only as good as the ethical, moral and legal underpinnings that hold it together. Recent actions will undermine the integrity of the board, in my opinion (and I suspect others share it as well), and weaken the board's authority in these types of matters."

At the time, the West Virginia Funeral Directors Association wrote a letter to the board seeking to have two of the new appointees recuse themselves because they "have a conflict of interest given their past and current dealings and relationship with Mr. Harding." According to the letter, one appointee, David Deal, had discussed a possible acquisition of his funeral home by Harding. A second new appointee, Ronald McVey, "attends the same church as Mr. Harding in Saint Albans."

Robert Kimes, WVFDA executive director, noted at the time that the four people who voted in favor of the settlement were new to the board, appointed July 1 by Gov. Jim Justice, and the "emergency" meeting to consider this settlement was their first.

Sylvia said in his report that the board may have violated the Open Governmental Meetings Act by having an emergency board meeting to settle the case with Harding 11 days prior to the scheduled disciplinary hearing. "According to the West Virginia Ethics Commission, an 'emergency' meeting involves an unexpected situation or sudden occurrence of a serious nature, such as an event that threatens public health or safety," Sylvia noted. "The Ethics Commission recommends that when in doubt as to what constitutes an emergency, consider what consequences could occur if the governing body does not act immediately. If it can wait days without significant adverse consequences, then a special meeting should be called instead."

Sylvia also stated that the board, in recent history (2012-14), has been lenient and accommodating to licensees who have committed fraudulent actions and violations of the Funeral Service Examiner's Act. He cited three specific instances in his report. "These examples illustrate that when the board is faced with a case in which a licensee is acting in a fraudulent manner, the board either accommodates the licensee or waits for other law enforcement agencies to take disciplinary action, rather than utilize its own statutory authority to protect the public," he wrote.

"These examples illustrate that when the board is faced with a case in which a licensee is acting in a fraudulent manner, the board either accommodates the licensee or waits for other law enforcement agencies to take disciplinary action, rather than utilize its own statutory authority to protect the public."

Sylvia also suggested that the board could have exercised its statutory authority to take disciplinary action against Harding, such as suspend or revoke his funeral director license, as early as August 2015 because he posed an immediate risk to the public. "It is also reasonable to maintain that the board should have taken immediate action against Mr. Harding upon the federal judge's \$2.8 million judg-

ment in favor of Homesteaders Life Company in August 2016,” he said in his report.

“Moreover, the 10-month proceedings to suspend Mr. Harding’s license for six months appear accommodating to Mr. Harding, and the board imposed the disciplinary actions as dictated by the licensee,” Sylvia wrote. “The board improperly called for an emergency meeting 11 days prior to Mr. Harding’s scheduled disciplinary hearing to agree to a settlement that would allow Mr. Harding to eventually retain his funeral director and crematory licenses. It also appears that the board allowed Mr. Harding to intimidate it with court costs and dictate the outcome of this case. This is further supported by the board president’s resignation letter. Ultimately, it is the opinion of the Legislative Auditor that the board chose to give preference to the licensee rather than to the interest of the public.”

In his conclusion, Sylvia wrote, “Consumers of funeral services and goods are often in a distraught emotional state when making these high-cost transactions. The evidence demonstrates a relatively high risk of dishonest business practices by unprofessional funeral service providers.”

Sylvia said that if the board is not terminated, it should reconstitute the current membership by replacing them with new members. “The legislature should also consider requiring two citizen members to this board, [with] the definition for citizen member requiring that they [currently] have and have had no working affiliation with the funeral service industry,” Sylvia said. “Currently, there is only one citizen member on the board who has had no working affiliation with the funeral service industry. However, a previous citizen member worked for a funeral home.”

Regina Anderson, executive director of the Board of Funeral Service Examiners, said in a written response: “It has been the advice of previous attorneys assigned to the board that in matters involving criminal actions, we should wait for a conviction

and then proceed to suspend a license. We now find ourselves chastised for failing to act according to the interpretation of your attorneys when our attorneys have advised to the contrary.”

Anderson also wrote that the board members who resigned “were members of or had close ties with the lobby group that contested the appointment of the new membership.”

She also refuted Sylvia’s assertion that the board has been lenient and accommodating to licensees who have committed fraudulent actions.

In its response to the Joint Committee on Government Organization, the West Virginia Funeral Directors Association said the Legislative Auditor’s Office did a great job identifying the West Virginia Board of Funeral Service Examiners’ failures to act prudently and in a timely manner in several cases of funeral director misconduct.

The association vehemently objected to the Board of Funeral Service Examiners’ description of the association as a lobbying group.

In noting the Legislative Auditor’s recommendations to terminate the board in its current form and place the regulatory function under another health-related state agency such as the Department of Health and Human Resources’ Bureau for Public Health, WVFDA said this could be a potential remedy to the situation. In its response, WVFDA said, “Our only request would be that the West Virginia Board of Funeral Service Examiners’ current administrative team not be a part of the board regardless of what department would absorb it. We feel that a complete overhaul needs to take place for the integrity of the group that oversees our profession.

“We urge the committee to confirm the auditor’s report with the inclusion of removal of the current board office staff should the board be placed under a state government agency.”

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