

**Special Board Meeting
Cemetery Board Minutes
May 1, 2020, 3 P.M.
Via WebEx**

BOARD MEMBERS PRESENT:

Mark Pattison, Department of State, Chair
Jill Faber, Office of the New York Attorney General
Thomas Fuller, Department of Health

OTHER ATTENDEES

Linda Baldwin, Dep't of State
John Fatato, Dep't of State
Antonio Milillo, Counsel, Dep't of State
Lewis Polishook, Div. of Cemeteries
Brendon Stanton, Div. of Cemeteries

Cynthia Craig, Division of Cemeteries
James Leary, Dep't of State
Mercedes Padilla, Dep't of State
Michael Seelman, Div. of Cemeteries
Alicia Young, Div. of Cemeteries
Joshua Beams, Dept. Of State

GUESTS:

Joanne Aliberto, Ferncliff Cemetery
Alexander Buchholz, PFK O'Connor Davies
David Fleming, NYSAC
Mark D. Kleczka
David Quinn, Albany Rural Cemetery
Delores Stigler, White Chapel Cemetery
Kim Wheeler
Gordon Zuckerman, Vale Cemetery

Brendan Boyle, NYSAC
John Caulfield, Holy Sepulchre Cemetery
Brian Groblewski, Pinelawn Memorial Park
Robert Mangels
Aaron Shipper, Rose Hills Memorial Park
Philip Tassi, Ferncliff Cemetery
Jay Wilkins

Note: It is possible that not all telephonic attendees identified themselves

Opening Remarks

Mr. Pattison asked for attendees to identify themselves and briefly described the procedure for holding the current meeting.

Emergency Rule Making

Mr. Pattison asked Mr. Polishook to provide background.

Mr. Polishook stated that since the beginning of the public health emergency, the Division has attempted to monitor cremation caseload and capacity and help them adapt to the conditions and variables related to the emergency.

In late March, the Division issued guidance allowing for remote signing and witnessing of the cremation authorization in certain circumstances.

Around the same time, we began daily monitoring of crematory capacity, in part to try to identify crematories with excess capacity.

We have shared this data with stakeholders; several funeral directors have already used this data to bring remains for crematories in other regions of the state.

Yesterday, the Division revised its cremation authorization to allow the person authorizing cremation to permit the funeral director to bring the remains to a different crematory where deemed necessary. However, for remains currently awaiting cremation, we need to permit these remains to be brought elsewhere without completion of a new authorization, which might add to the family's grief. The proposed rule change counsel will discuss will allow funeral directors to use another crematory when necessary even though the authorization does not permit use of a different crematory. In any event, the funeral director will still have to obtain consent to use a different crematory.

Mr. Milillo explained that this is a special meeting called by the Chair. The Board members have received notice of the meeting, and we have complied with the requirements of the Open Meetings Law when a meeting is called on less than three days' notice and posting. We are proceeding under Executive Order 202.1 allowing meetings to proceed by telephone or video conference.

We have proposed draft regulations for the Board to consider. The proposal adds Section 203.14 to our regulations, entitled Emergency cases. The proposed text reads as follows:

Whenever the governor has declared a disaster emergency pursuant to section 28 of the Executive Law or the cemetery board determines that emergency conditions exist that substantially delay timely cremation of human remains, then, notwithstanding the requirements of section 203.13 (c) of this part, a crematory may accept human remains delivered with a cremation authorization form in which the intended crematory has been manually corrected by a funeral director or a person authorized to deliver remains on behalf of a funeral director, provided that the crematory is able to verify the intended final disposition for such human remains and provided the person in control of disposition has been made aware of and has consented to the transfer.

The Department has also proposed a finding of necessity, required for emergency filings. The proposed finding of necessity states that the Board finds and determines that adopting this rule on an emergency basis is necessary for the preservation of the public health, safety, and general welfare, and that compliance with the requirements of subdivision one of section 202 of the State Administrative Procedures Act would be contrary to the public interest for the following reasons. Counsel clarified that section 202 has certain formalities that are normally followed for a proposed rule change, including public comment and review of public comment. Almost all of this is dispensed with in an emergency filing. If filed tonight it will be effective today.

The reasons for the finding of necessity are:

1. On March 7, 2020, Governor Andrew M. Cuomo declared a State disaster emergency for the entire State of New York relating to the novel coronavirus (COVID-19) outbreak. The governor's declaration authorizes "all necessary State agencies to take appropriate action to assist local governments and individuals in

containing, preparing for, responding to and recovering from this state disaster emergency, to protect state and local property, and to provide such other assistance as is necessary to protect public health, welfare, and safety.”

2. Not-for-Profit Corporation Law Article 15 mandates that a next of kin or authorizing agent authorize cremation by a signed authorization form attesting to the permission for the cremation of the deceased. It prohibits crematories from cremating remains without the form.
3. 19 NYCRR section 203.13(c) requires that the cremation authorization form set forth the name and address of the crematory and provide explicit authorization for the crematory to cremate the remains of the deceased. It requires the signature of the person in control of disposition attesting to the accuracy and completeness of the information in the cremation authorization form and requires the signature of the funeral director as a witness to its execution.
4. As a result of the COVID-19 outbreak, the downstate region has experienced a tremendous surge in deaths and a need for cremation that exceeds the capacity of downstate crematories, resulting in substantial delays in cremation and creating significant issues with storage of remains.
5. Crematories outside of downstate are available to cremate remains promptly, but the requirements relating to the cremation authorization form delay or impede sending remains to a crematory other than the one named in the form that was signed by the person in control of disposition.
6. To address these issues, procedures must be in place that would allow crematories to accept human remains delivered with a cremation authorization form in which the intended crematory has been manually corrected by a funeral director or a person authorized to deliver remains on behalf of a funeral director.
7. In order to protect the interests of the family of the deceased, the procedures should require that the crematory is able to verify the intended final disposition for such human remains.
8. Not-for-Profit Corporation Law section 1504(c)(1) gives the cemetery board the power and duty to adopt such reasonable rules and regulations as the cemetery board shall deem necessary for the proper administration of Article 15.
9. Under this rule, due to the Governor’s March 7, 2020 Emergency Order, these emergency procedures will be effective immediately upon filing of this emergency rulemaking.
10. In the future, these procedures will be effective upon: (1) a declaration by the Governor of a disaster emergency pursuant to section 28 of the Executive Law, or (2) a determination by the cemetery board that emergency conditions exist that substantially delay timely cremation of human remains.

Mr. Pattison questioned whether the Board should vote on the findings of necessity first, and moved to adopt the findings of necessity for purposes of discussion. Ms. Faber seconded, and Mr. Fuller concurred.

Mr. Fuller indicated that he understood the necessity of this.

Ms. Faber had no further comment.

Mr. Tassi asked whether the cremation permit has to be changed. Mr. Pattison indicated that this question did not concern the finding of necessity and deferred discussion.

Mr. Fleming indicated that this rulemaking is of absolute necessity for emergency adoption.

The Board unanimously adopted the finding of necessity.

Mr. Milillo summarized the regulation again, stating that a crematory may receive remains where a funeral director or someone authorized by Executive Order to act on the funeral director's behalf to modify the form to designate another crematory. The regulations still require consent and the crematory must still verify that cremation is intended as final disposition.

Mr. Polishook answered Mr. Tassi's question. Mr. Polishook explained that the requirement of delivering a burial-transit or cremation permit is regulated by the Bureau of Vital Records (or, in New York City, the Bureau of Vital Statistics). Mr. Polishook noted that the Department has had discussions with counsel to Vital Records concerning this issue. Additionally, it has been possible to amend permits when changing place of cremation because there is no need to obtain consent of the family.

Mr. Pattison placed the emergency regulation on the table for discussion. Neither Mr. Fuller nor Ms. Faber had any further comment.

Mr. Fleming commented that the regulation would not deal with remains in backlog unless the funeral director corrected permits. Mr. Polishook indicated that we are waiting for clarification from Vital Records. Mr. Pattison added that funeral directors have to obtain consent and processing can happen immediately. Mr. Polishook observed that the greatest impediment has been the authorization, not permits.

Ms. Faber indicated her understanding that the permit issue has not presented a problem for remains that have already been brought upstate. Mr. Polishook confirmed that he knew of no issues based on permitting.

Mr. Milillo added that the Department of Health will clarify this issue for individuals it regulates.

Mr. Milillo asked the Board to authorize him to file all required documents with the Division of Administrative rules, including the finding of necessity, rule text, notice of emergency adoption, and certification signed by the Secretary of State, and to authorize counsel to prepare and file all other required documents.

Mr. Pattison added to his motion a motion to authorize counsel to prepare and file all required documents.

Motion, was made, seconded, and unanimously adopted approving the regulation and authorizing counsel to file supporting documents.

Mr. Pattison thanked the Department of Health, NYSAC, and individual funeral directors and crematories for working with us concerning the COVID-19 response.

Motion was made, seconded, and unanimously adopted adjourning the meeting.

Mount Pleasant Cemetery in Center Moriches, NY, seeks to add two new N20AA retorts. The total cost of the addition will be under \$207,000, of which \$193,400 is for the retorts. The retorts will be placed in a building attached to the building where the current three retorts are. The Division explained that the primary motivation for this application is COVID-19, which has significantly increased the number of cremations downstate, but that Mount Pleasant had seen an increase in regular cases over time as well (of about 5% a year for the last five years), partly via handling remains from SUNY Stony Brook after anatomical donation (approximately 120 cremations per year). The proposal is to install two new retorts; the Department of Environmental Conservation has indicated it would expedite processing of the required permits. The crematory indicates that the retorts could be installed, up and running by April 14. No permits other than the permits from DEC are required.

Director Polishook reported that right now, area crematories are up between 27% and 114% (over the entire downstate region, about 54% more) over the last year, but the situation is projected to get worse over the next two weeks. Based on current utilization, the retorts will pay for themselves over the next two months because of additional fatalities resulting from COVID-19. Crematories are booking out 1-2 weeks in advance.

Mount Pleasant Cemetery complies with Division requirements, has a conflict of interest policy, and there are no related parties. Mount Pleasant has been very forthcoming in picking up cremations from other crematories.

Steve Scerri of Mount Pleasant Cemetery reported on increased demand from several funeral directors who had not previously used Mount Pleasant Cemetery. A staff member from NYC OCME expressed appreciation for Mount Pleasant's assistance in providing a place for remains to be cremated.

Payments will come from the general fund.

Mr. Milillo asked for additional information about staffing. Mr. Scerri reported that he has five operators; with this level of staffing the retorts could increase cremations by 20 per day.

Mr. Milillo mentioned that some crematories were having issues with certain body bags and asked if Mount Pleasant was experiencing those issues. Mr. Scerri stated they have avoided this problem by managing the temperature of the retort for remains delivered in those body bags, and said they can see the body bags by looking through a hole where the handles are attached to the container.

Mr. Milillo also asked about the receipt of remains from Stony Brook. Mr. Scerri explained that he met with SUNY Stony Brook and spoke with Mike Seelman about this. Mount Pleasant handles these cremations like any other cremation, with full paperwork. Linda Benson at Stony

Brook receives authority for disposition of the remains and provides the necessary paperwork. After 120 days, if no family member claims the cremated remains, he returns them to Linda Benson at Stony Brook. Eventually, the trade service will dispose of remains in the ocean if unclaimed.

After further discussion, motion was made, seconded, and unanimously adopted approving the application.

Public Comment

David Fleming of the New York State Association of Cemeteries addressed the Cemetery Board, thanking everyone involved for working seven days a week to deal with this crisis. It's no surprise to anyone that downstate cemeteries and crematories are overwhelmed, running at up to three times capacity. Many cemeteries' costs are through the roof but are not making back sufficient funds. There are few pre-need sales, resulting in furloughs and drying up income. Mr. Fleming asks the Board to consider the possibility of a one-year extension of PM Loans. Federal programs for payroll protection do not apply to 501(c)(13) corporations.

Motion was made, seconded, and unanimously adopted adjourning the meeting.

The next meeting is scheduled for April 14, 2020, at 10:30 a.m., via Webex.