

**FUNERAL CONSUMERS ALLIANCE OF MARYLAND AND ENVIRONS
(FCAME)**

Protecting a consumer's right to a meaningful, dignified, and affordable funeral.

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Mortuary Mischief

As a follow-up to my *Stroll down Mortuary Lane* (Newsletter Winter 2005), in which I inquired about goods and services at four funeral homes in Montgomery County, I decided to undertake a second shopping tour. This time I visited seven establishments—all mainstream and well known, like the ones I called on previously—and found that most were engaged, like the places I saw last year, in shenanigans. As one funeral director poignantly stated, “You wouldn’t believe what goes on behind the scenes.”

It’s hard to believe: It has been more than 20 years since the implementation of the FTC’s Funeral Rule. Yet mortuaries deftly skirt its requirements drawn up in 1982 to rectify the abuses of the past when funeral prices were shrouded in secrecy. Back in what author Jessica Mitford called “the bad old days,” funeral directors frequently “bundled” fees—the charge for embalming, for instance—into

the price of a casket regardless of the wishes of consumers, who had little recourse but to pay for all the items included, whether they wanted them or not.

Finally, after a decade of consumer pressure, the FTC crafted and set into motion its Funeral Rule, whose goal is to ensure accurate, itemized price information for funeral goods and services. The Rule mandates, among other things:

- A funeral director must give a **General Price List (GPL)**, an itemized listing of the prices for goods and services, to anyone entering his establishment and requesting this information.
- Consumers have the right to select only the goods and services they desire.
- When beginning a discussion about caskets—before showing them—a funeral director must offer a **Casket Price List (CPL)** to anyone who inquires about them in person.
- A **“Basic Services Fee,”** for basic mortuary staff services and overhead, is the fee for services common to all funerals and is the **only non-declinable fee allowed.**
- **Embalming** is not required by law though for “certain funeral arrangements, such as a funeral with viewing,” a mortuary may consider embalming “necessary.” Consumers may instead choose “an arrangement that does not require...[embalming], such as *direct cremation* or *immediate burial.*”

In this year’s tour I visited each funeral home with an inquiry about the cost of a modest funeral. I also explained that I had not yet decided upon earth burial or cremation.

Note: Dialog in this newsletter was written from memory and from notes taken during and immediately after conversations.

Package-Price Paradise

In most establishments I was immediately handed a General Price List (GPL). But in two mortuaries that initial act was accompanied by an unexpected turn: a manipulation on the part of the mortician who traversed the GPL—a multi-page document—so that his nimble fingers bypassed the required itemized pricing and landed smack on a page entitled “Packages.” The mortician explained:

“The first pages are too confusing. No sense wasting time on that. Let’s go right to the packages.”

The other mortician who headed straight for his package deals not only announced that his GPL was confusing but intoned:

“It’s a Government regulation.”

Comment: Complicated or not, it is the mortician’s duty to explain the itemized prices on his GPL as soon as a customer enters and inquires about the type of funeral he can arrange, the goods and services which he offers, or their prices.

Though normally it’s confusion that enhances industry profits, when it comes to packages, it’s simplicity: at one mortuary, for instance, all its packages included embalming. And the items themselves are never the least expensive. In this way packages deflect consumers’ attention from cheaper options.

Packages may make sense for consumers willing to spend more. But how can a mortician know beforehand who will want what? Thus the Funeral Rule mandates that ***packages may be offered—but only secondarily—not in place of itemized prices.***

Will the real Funeral Rule Violation please stand up?

Interestingly, one mortuary saved its packages for last. In its casket showroom, atop each coffin was a card describing all that was included. Each package always contained—not surprisingly—an expensive burial vault—never a modest grave liner—to prevent gravesite earth from sinking after burial. But by focusing on these package deals, I nearly missed the real Funeral Rule violation—a common one, reported by one-third of those queried in an AARP survey a few years ago: the mortician did not hand me a Casket Price List (CPL) before ushering me into the Casket Room. (Instead he mumbled about “a casket price list in a folder.”)

Comment: The Funeral Rule states that a ***mortician must offer a Casket Price List (CPL) at the beginning of a discussion about caskets—before showing them.*** The intent here is to afford consumers an opportunity to see prices before confronting the munificent wood and dazzling array.

Not All Caskets Are Created Equal...

Lower-cost cremation caskets, constructed of completely combustible material, have become popular over the last 10 years, and the ones I saw were handsome. But whenever I expressed my wish to use such a casket to save on costs for earth burial, most morticians balked. Here follows part of my exchange at one mortuary (FD stands for funeral director):

Me: May I use a cremation casket for earth burial?
FD: No.

Me: Why not?

FD: Because it's only for cremation.

Me: But why is that?

FD: Because it's not for earth burial.

Me: Sorry, I'm not following. I don't understand why I wouldn't be able to use a cremation casket for earth burial.

FD: It may look like a casket, but it's only for cremation...

And additional reasons—culled from other mortuaries--why I would not be permitted to purchase a cremation casket for earth burial?

“It's not made of real wood.”

“The wood isn't as thick as that of a regular casket.”

“Its dimensions are restrictive...well, I guess it would be o.k. so long as you're not over 6'2”, but it wouldn't work for obese people.”

“With a regular casket you get more for your money.”

“Its handles are only decorative.”

Comment: A mortician may not dictate the choice of a casket. The first disclosure on the General Price List (GPL), mandated by the Funeral Rule, is the ***Right of Selection: consumers have the right to select only those goods and services they desire.***

At one place, though, when it came to policing caskets, creativity did reach a new high. The mortician handed one folder to cremation customers, another to earth burial clientele. Though both contained a General Price List (GPL), the Casket Price List (CPL)—inserted only into the earth burial folder—omitted cremation caskets--listed only for those wishing cremation. Thus in one fell swoop, this establishment had contrived a foolproof method for preventing earth burial customers from choosing lower-priced cremation caskets: it concealed their existence!

Comment: The Funeral Rule states that ***all caskets should be listed together.*** Whether for earth burial or cremation, all consumers should receive the same information.

But here's the coup de grace for this well known Montgomery County mortuary: It insisted that consumers sign an “FTC Disclosure/Disclaimer Form” stating that it had complied with various provisions of the Funeral Rule. That in itself is a violation!

The Idea to I.D.—Too Much of a Good Thing!

According to Maryland law, before cremation may occur, a body must be identified by the next of kin or other person authorized to arrange for final disposition. Who would argue with that? Even though foul-ups can happen despite routine identification, this law is wise. Indeed a mortician-friend told me that on two recent pick-ups at a major Montgomery County hospital, one body had been incorrectly tagged and another, not at all.

What are the logistics of an ID? At a hospice, said my friend, it's often a nurse whom families ask to make the ID; at home, it's likely the next of kin; and when it comes to death in a hospital, an ID might take place in a "family room" near the morgue. "It all depends on the circumstance," she explained, "each case is different."

Lisa Carlson, author of *Caring for the dead: your final act of love*, concurs. She writes that identification can occur, and often does, at a private residence, hospital, nursing home, or hospice, where a caretaker is almost always a "qualified person."

Hence I was astonished that most mortuaries which I visited required an ID—unyieldingly--***at the funeral home***—sometimes even if one had already been made elsewhere. Whenever I questioned this, I was met with profound solemnity: "We are responsible. It's a matter of liability. Once cremation has occurred, we can't correct a mistake."

Who could object?

One funeral director insisted that an ID viewing ***at the funeral home*** was the law:

Me: Are you sure it's the law that an ID must take place *at the funeral home*?"

FD: Yes. It's the law.

Me: You're absolutely sure?

FD: Yes.

Me. I read the law but didn't see any requirement that the ID must take place at a funeral home.

FD: Oh...oh...well, it's the law which requires the ID. But it's our policy that it take place at our mortuary."

Lisa Carlson explains that a required ID *at the funeral home* can be a lure to inflate the bill. Lisa should know. As former executive director of our national Funeral Consumers Alliance, she has seen plenty: a funeral home which added a five days' "storage" fee when a son declined to view his mother's body; a mortician

who advised a caller that “there will be an identification viewing ... most families don’t want to see their loved one in a cardboard box, so you’ll probably want to upgrade to a cremation casket”; a symposium entitled “Keys to Cremation Success,” in which an industry speaker admitted that ID viewing was “self-serving.”

So one has got to ask: Do funeral directors require an ID *at the funeral home* because of a legitimate concern for proper identification or to manipulate families into purchasing more? At some mortuaries it seemed to me the latter. Here follow excerpts from my conversations:

Me: It would be traumatic for my husband to have to come here to identify my body.

FD: Well, he’d have to come anyway... to authorize your cremation.

Me: Yes, but why would he have to identify me here? If I die at home, couldn’t he just identify me there?

FD: No. He might not be thinking clearly....He might be in a distressed state of mind.

At another mortuary:

Me: My husband would be very upset if he had to come here to identify my body. Would a photo suffice?

FD: No.... you might have a twin.

At yet another establishment:

Me. Why would it be necessary for my husband to come here to identify me after I die?

FD: Because we have a thousand pick-ups a year and could have several bodies in the van at the same time. Bodies could get mixed up....

Me: Oh...has that ever happened?

FD: No, never. That’s why you should come to a funeral home like ours...we have been in business for 40 years!

Me: Then why are you so concerned about mix-ups?

FD: Well, mix-ups could occur. If we have to use a contractor, there might be several bodies in the van at the same time....

Me: Is that a problem? I always thought bodies were tagged.

FD: They are, but tags could get switched...they are tied to the toe, not stapled.

One funeral director charged \$175 for “preparation of unembalmed remains for identification,” while another imposed a \$250 fee for “Dressing, cosmetics, or professional care for family identification.”

A third, whose General Price List (GPL) included a \$340 charge for “sanitary care and preparation for family identification,” consistently referred to items on display in his showroom—not as “cremation caskets” or “alternative containers” (simple boxes into which bodies are placed for cremation)—but as “the container in which you’ll be identified.”

But whatever the motive, the trend has been set. Most funeral directors told me that it is their policy to require an ID at the funeral home—not just for cremation—but for earth burial as well!

In a nutshell, what can you do? Above all, remember that you cannot be forced to pay a fee to prepare remains for identification because the **Funeral Rule permits only one non-declinable fee, the Basic Services Fee**; forcing consumers to pay a second, to prepare remains for identification, is illegal. But perhaps more to the point: If a funeral home insists that you appear for an ID viewing, **ask if a photo will suffice; if not, send a neighbor or clergy in your stead—someone without the authority to spend your money.**

Embalm me? Over my dead body!

Not much has changed since last year when—despite my protests—one funeral director insisted on embalming after my death because “who knows what could be lurking in an unembalmed body.” This year I heard:

“It’s either pay us for embalming...or pay some other place \$180 per day to be refrigerated.”

Comment: This mortician gave incorrect “advice.” If he had understood the Funeral Rule, he’d see why consumers cannot be forced to choose embalming:

- ***There is only one non-declinable fee allowed: the Basic Services Fee.*** Requiring a second, an embalming fee, is a violation of the Funeral Rule.
- ***Consumers have the right to select only those goods and services they desire.*** This *Right of Selection* is the first prescribed disclosure on all General Price Lists (GPL’s).
- Embalming is not required by law (except in unusual cases)—this is the second prescribed disclosure on all GPL’s. Though most morticians insist on embalming prior to a viewing, consumers can instead choose direct cremation or immediate burial, which are without a viewing.

And a note about the “refrigeration charge” mentioned by this mortician: The FTC issued an opinion—it is not part of the Rule—that for the first three days, the length of time for ordinary funeral arrangements at the mortuary, funeral homes should not charge extra for “sheltering of remains” (holding the body until disposition). Though our national FCA office believes that refrigeration charges should also be included under the mortuary’s sheltering responsibility and hence not levied for the first three days, the FTC remains mute about this. Hence, not surprisingly, many funeral homes do indeed levy a refrigeration charge beginning within 24 hours of receipt of the body.

The Issue of Tissue Donation

Believe it or not, at one establishment, I found myself transported back to the time prior to the Funeral Rule: the mortician did not hand me a GPL. Instead he began sputtering: \$225 for transfer of the remains, \$515 for embalming, \$1300 for the basic services fee...a simple burial, \$3000 to \$4000...” He relented only when I inquired: “Would you have a pencil and paper so I can take notes?” “Oh,” he replied, “I’ve got a GPL right here.”

Such tomfoolery was eclipsed however by an item on his GPL which caught my eye at once: a \$375 charge “after skin, bone, or other tissue donation.”

This is a fee which has become increasingly common: an embalming surcharge after tissue donation when a viewing will take place. It is now commonplace on the General Price Lists (GPL’s) of mortuaries in our Price Survey; and it appeared on the GPL’s of five of the seven establishments which I visited, usually costing \$150 but a steep \$400 at one place, topping even the huge \$375 fee at the funeral home mentioned above.

According to my mortician-friend, tissue donation is an embalmer’s nightmare: “It creates a lot of extra work to get the body ready for a viewing.”

So the question is: Who should pay for it?

It seemed to me that donors—without whose selflessness tissue banking could not occur—should never be charged extra. Hence I phoned the two agencies designated by the Federal government to procure organs and tissue in Md.: the Washington Regional Transplant Consortium, which serves metropolitan D.C., including suburban Md., and the Transplant Resource Center in Baltimore, which covers the rest of our state, and asked representatives of both organizations if they routinely tell families to send them the bill for an embalming surcharge. A family advocate from the Transplant Resource Center in Baltimore said “yes” and

added that “a family should never have to pay extra when a loved one becomes a donor.” She pointed out that her agency’s consent form states: “I understand the organ/tissue donation process does not involve additional expense and should not have an impact on funeral and burial arrangements.”

However, my conversation with a representative from the Washington Regional Transplant Consortium progressed differently:

Me: Do you routinely tell families to send to your agency the bill for embalming surcharges from the funeral home?

Rep: Well, I can’t speak for other donation specialists here, but I mention an extra fee only if I know which funeral home the family will be using...It’s only a handful that charge this...a family might choose one that doesn’t.

Me: So, I was just wondering...do you—or don’t you—automatically tell families to forward extra embalming charges to you?

Rep: Sometimes I say this, sometimes I don’t. It depends.

Me: On what?

Rep: On how the conversation is going. By the way, why are you asking me so many questions about money, anyway?

Comment: Had I considered donation, with this rep as my point of contact I would have instantly changed my mind—especially in light of the Orange County Register’s series “The Body Brokers” in 2000, which uncovered an elusive network of tissue banks and organ agencies tied to a group of for-profit companies engaged in the highly lucrative business of selling products crafted from humanitarian gifts (See our FCAME Newsletter, Spring 2004, posted on our website). But the key point here is this: If you are considering donation, make sure that embalming surcharges—resulting from your selfless act—will be paid by the tissue agency. And, additionally, make sure your family is informed!

Conclusion

Clearly, oversight of the funeral industry, though theoretically in place, is questionable. In February 2005 I wrote to the Md. Board of Morticians, responsible for oversight here, to inquire about the means by which laws and regulations are enforced. I received a reply—five months later—in which its executive director wrote, among other things: “The Board works diligently to assure that all funeral providers are complying with the Funeral Rule” But in light of what I have seen, I must exclaim: How is that possible?

We would be lucky indeed to find a mere handful of mortuaries in Montgomery County complying fully with the Funeral Rule. Who knows the situation elsewhere? But at least we grasp what to look for. We realize what to ask. By contrast, most

consumers have never heard of the Funeral Rule: according to an AARP survey a few years ago, only 8 percent of those queried knew that a funeral home was required to provide them a General Price List (GPL) if they appeared in person. “The biggest weakness of the Funeral Rule,” says Mercedes Bern-Klug, of the Kansas City FCA, “is that families have no idea that it exists.”

At an informal gathering recently, I asked those present how they would choose a funeral home. They responded:

- My family used it.
- It’s nearby.
- It’s the one that comes to mind.
- It’s in such a pretty house.

“Funeral directors are well aware that people don’t shop around,” says Lisa Carlson, who adds: “They’re counting on it.” That morticians use tricks to circumvent rules comes for most consumers as a revelation, and that the price for identical services can vary widely, a surprise. Ironically, few people outside the industry are aware of the Funeral Rule and consumers’ rights.

But we in FCAME are in-the-know. We can educate ourselves for our protection. Here is our advice: First, order a free copy of the FTC publication “*Complying with the Funeral Rule*” (phone 1-877-FTC-HELP). Though written for morticians, this booklet provides consumers with easy-to-understand explanations and examples of the Funeral Rule’s requirements. Second, use the information in this newsletter to complement your FTC Guide: study both before going on your own “shopping spree” and see if you encounter similar violations to the ones I described. Contact our office for advice, and draw upon our Mortuary Price Survey to get an idea of the reasonable limits of prices. Don’t let yourself be snookered into accepting outlandish charges, cajoled into paying needless fees, or brow-beaten into believing untruths. Weed out the errant establishments and tell us your findings so we can share them with others.

In the end—in spite of our regulators—we have the skill to avoid funeral hucksters. That is a certainty. For, as author and philosopher Sir Francis Bacon has explained, knowledge is power.

In The News

The Washington Post and *Baltimore Sun* reported that a group of cemeterians recently filed a suit challenging a Md. law which limits funeral home ownership to licensed morticians and those who hold one of 58 corporate licenses. For years cemeterians, particularly those who'd like to own a mortuary on their premises, have been annoyed by this statute, and some have spent a decade trying unsuccessfully—there is stiff opposition from morticians—to convince legislators to change it. One cemeterian, who had contacted FCAME a few years ago to enlist consumer support, said that removing restrictions would “introduce more competition ... and give people a few more choices.” The lawsuit claims that the lack of competition adds about \$800 to the cost of a funeral in Md.

Cemetery owners have got one point right: the statute which prevents them from owning mortuaries on their premises seems anti-competitive. But they are dead wrong about another: that lifting the constraint on the local funeral trade would translate into more competition and hence lower funeral prices.

A few years back a study conducted at the behest of the funeral industry supported the notion that most consumers do not “shop” for a funeral; instead they select a mortuary used by a family member, located nearby, or perceived as belonging to a particular ethnic or religious affiliation. What this means is that the market forces of supply and demand do not apply to the deathcare industry.

Our biennial Mortuary Price Survey bears this out. While the average price of a direct cremation among 94 mortuaries included in our 2005 survey was \$1500, prices ranged from a low of \$895 to a high of nearly \$3000 for exactly the same services. Because consumers do not “shop,” the funeral home charging the exorbitant fee stays in business just as the one which charges more modestly.

What's more, a surplus of funeral homes beyond the number needed to support the prevailing death rate—and that is the case in most states, including Maryland—actually inflates the funeral tab because funeral directors must charge more to support their underutilized staff and facilities. Moreover there's no need for competition because all enjoy profitability by charging steep fees which consumers continue to pay.

Nonetheless, it's good PR for the funeral industry—be it cemetery owners or funeral directors—to claim that whatever its crusade, consumers will benefit. But make no mistake: the top priority for this industry is not consumer welfare but its own profitability.