



2639

February 5, 2010

VIA E-MAIL IRRC@IRRC.STATE.PA.US and JJEWETT@IRRC.STATE.PA.US
The Honorable Arthur Coccodrilli, Chairman
The Honorable George D. Bedwick, Vice Chairman
The Honorable Silvan B. Lutkewitte, III, Commissioner
The Honorable John Mizner, Commissioner
The Honorable David Fineman, Commissioner
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

John H. Jewett, Regulatory Analyst
Independent Regulatory Review Commission
14th Floor, Harrisburg 2
333 Market Street
Harrisburg, PA 17101

RECEIVED
2010 FEB - 8 AM 9:10
INDEPENDENT REGULATORY
REVIEW COMMISSION

RE: Comments in Opposition to Final-Form Regulation No. 16A-4816 (IRRC # 2639)
Preneed Activities of Unlicensed Employee

Dear Chairman, Vice Chairman, Commissioners, and Mr. Jewett:

Thank you for the opportunity to express my opposition to Regulation No. 16-4816 (IRRC # 2639). Since I have shared my views in the past and the comments submitted thus far by those against this regulation have clearly expressed the reasons why it should once again be disapproved, I will keep my comments brief.

Let me start by identifying my interest in this regulation, and why I feel qualified to comment. My name is Bob Rae; I am President and CEO of Golden Considerations, Inc., one of the largest independent preneed insurance agencies in the nation. We had the privilege of serving over 8000 consumers last year, the majority of them residing in Pennsylvania. Our agency network is not only comprised of insurance agents, but also those who hold other professional licensure such as funeral directors, attorneys, financial planners. I am licensed as an insurance agent in Pennsylvania and also as a funeral director. The corporation's office is domiciled in Pennsylvania.

Golden Considerations, Inc.

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The primary argument against the proposed regulation is that the State Board of Funeral Directors has failed to identify the need for it! As Ernie Heffner (Heffner Funeral Chapel & Crematory, Inc.) pointed out in his recent comments, the consumer complaint rate is statistically zero; less the one ten thousandth of one percent. In *Walker v. Flitton*, 364 F.Supp.2d 503 (USDC, MD Pa. 2005) (*Walker*) Judge Jones called for a clarification of the current regulations. It appears that the board is confusing this directive with the need for **more** restrictions. If their true intent was to address any confusion that might exist between the reading of the *Walker* decision and the impact it may have on the *Ferguson v. State Bd of Funeral Directors*, 768 A.2d 393 (2001) (*Ferguson*) ruling, they could have mirrored the suggestions of Harry Neel (Jefferson Memorial Cemetery and Funeral Home) and simply stated:

1. The Funeral Director or Funeral Supervisor of each funeral home is responsible for the actions of all unlicensed employees or agents.
2. All preneed contracts initiated by unlicensed employees or agents of a funeral home shall be reviewed by a funeral director within 48 hours.

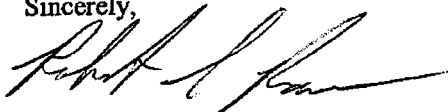
This proposed regulation will have the opposite effect of its supposed intent and will cause more confusion within our industry. As IRRRC pointed out in its first disapproval order, *Walker* made it clear that an unlicensed employee or agent of a funeral home can:

1. Interact with consumers,
2. Disseminate accurate price information,
3. Discuss preneed plans with consumers so long as it is under the auspices, employment, direction, and control of a licensed funeral director.

This writer will acknowledge that after spending two full days trying to resolve these issues with the State Board of Funeral Directors -- some of them actually got it; but unfortunately, this eleventh hour revelation resulted in a mire of conflicting and confusing language attempting to carve insurance producers out of the equation (Please refer to the comments submitted by Jonathan C. Greer of the Insurance Federation of Pennsylvania, Inc.). This proposed regulation has become so confusing that the only stakeholder who once supported it, the Pennsylvania Funeral Directors Association, is now opposed!

In summary, the State Board of Funeral Directors has not demonstrated a need for this regulation. The confusing language it contains will only serve to stifle competition and ultimately hurt the consumer. The promulgation of this regulation is not in the public interest, and therefore should once again be disapproved.

Sincerely,



Robert S. Rae

2639

From: Robert Rae [rrae@goldenconsiderations.com]
Sent: Friday, February 05, 2010 3:36 PM
To: Jewett, John H.
Cc: IRRC
Subject: Final Comments on 16A-4816 (IRRC #2639)
Attachments: Final Comments on Reg. 4816 (IRRC #2639).pdf

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INDEPENDENT REGULATORY
REVIEW COMMISSION

Dear Attorney Jewett,

Please find my attached comments to the recent Final-Form Regulation No. 16A-4816 (IRRC #2639)

Thank you once again for opportunity to express my opinion,

--

Robert S. Rae, President
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