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#2639

February 19, 2010

2010 FEB 19 PM 3:12

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

INDEPENDENT REGULATORY
REVIEW COMMISSION

Via Email to: irrc@irrc.state.pa.us Independent
and jjewett@irrc.state.pa.us

Re: Pennsylvania Administrative Code Title 49, Part I, Subpart A, Chapter 13 - No. 16A-4816 (Preneed activities of unlicensed employees - #2639)

Mr. Jewett:

Founded in 1909, National Guardian Life Insurance Company is a mutual insurance company located in Madison, Wisconsin and is licensed to do business in Pennsylvania and 48 states and the District of Columbia. NGL markets preneed and final expense life insurance as well as group dental and vision coverage through independent agents. It is also active in mergers and acquisitions to supplement its growth. National Guardian Life is rated "A-g (Excellent)" by A.M. Best.

National Guardian Life Insurance Company (NGL) once again appreciates the opportunity to comment on the above referenced proposed rules regarding the activities of unlicensed persons proposed by the Pennsylvania State Board of Funeral Directors.

NGL is opposed to this regulation for the reasons set forth in the submissions of Forethought Financial Group, Assurant Solutions and Golden Considerations and concurs in their comments.

Despite the explicit direction from the IRRC in its Disapproval Order dated November 19, 2009, the State Board of Funeral Directors has still not demonstrated a need for the regulation. While there is a section in the Board's submission entitled "Description and Need for the Rulemaking", NGL is unable to find where the need is actually described.

The only "need" that I can find stated by the Board is need to follow-up on the court decision in *Walker, et al v. Flitten*. While it is true that the court in *Walker et al v. Flitten*, urged the Board to clarify the current regulations, the current proposed rule does not result in any clarification and would only lead to ongoing violations of insurance producers' First Amendment rights (i.e. not being allowed to discuss prices of funeral merchandise) and would continue to intrude into the area of insurance regulation (i.e. requiring disclosures from insurance producers, not funeral directors).

The State Board of Funeral Directors also has not provided a financial impact study nor have they provided any meaningful data as to the consumer complaints. The data they have provided gives no information as to whether or not any of the complaints are even related to preneed arrangements or insurance producers.

The Board has stated that this regulation won't adversely affect any groups of individuals and companies in Pennsylvania, yet the proposed regulation includes overly broad lists of prohibited activities that are not supported by either the current laws and regulations or court rulings. Despite the IRRC's prior warnings that the regulation must be narrowly tailored to achieve a government interest, the regulation is broadly drafted to prohibit activities that should be protected, such as discussing the costs of funeral merchandise. The groups that will be adversely affected include insurance agents, funeral directors, insurance companies and the general public.

In conclusion, NGL believes that due to the lack of demonstrated need and the failure to narrowly tailor these regulations to achieve a government interest, the IRRC should once again issue a Disapproval Order relative to the Board's proposed regulation. NGL appreciates your consideration of these comments.

If you have any questions or concerns regarding these comments, please do not hesitate to contact me at mcneidinger@nglic.com or at 608.443.5253.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Neidinger', written in a cursive style.

Mark Neidinger
Associate General Counsel

Gelnett, Wanda B.

From: Jewett, John H.
Sent: Friday, February 19, 2010 3:05 PM
To: Johnson, Leslie A. Lewis; Wilmarth, Fiona E.; Gelnett, Wanda B.
Subject: FW: Objection to Final-Form Regulation No. 16A-4816
Attachments: 20100219132802.pdf

A comment on #2639

From: Mark Neidinger [mailto:McNeidinger@nglic.com]
Sent: Friday, February 19, 2010 2:33 PM
To: IRRC; Jewett, John H.
Cc: Mark Neidinger
Subject: Objection to Final-Form Regulation No. 16A-4816

Dear Mr. Jewett,

Please find my attached comments to the above referenced regulation. NGL appreciates this opportunity to provide our opinion as to these proposed regulations. If you have any questions, please do not hesitate to contact me.

Mark C. Neidinger
Associate General Counsel

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