

2639



RECEIVED

2009 NOV 12 AM 9:49

INDEPENDENT REGULATORY
REVIEW COMMISSION

November 9, 2009

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

Re: State Board of Funeral Directors Proposed Regulation 16A-4816

Dear Mr. Jewett:

The Pennsylvania Funeral Directors Association is a state trade association representing the overwhelming number of licensed funeral homes (64%) in this Commonwealth. PFDA is one of the oldest and largest associations of professional funeral directors in this country.

While attending the hearing held with respect to proposed regulation 16A-4815, comments were made by some of the Commissioners that they had a concern regarding both proposed regulations not necessarily addressing the concerns of Judge Jones in the 2005 Walker v. Flitton case. As you may be aware, 16A-4816 was proposed by the State Board of Funeral Directors in direct response to the concerns raised by the Walker court. PFDA would like to take this opportunity to provide analysis on the matter.

First and foremost, in our opinion, the result reached by the Walker Court could not and did not overrule statutory law and appellate case law in Pennsylvania which was established in 63 P.S. §479.13 (c) and Ferguson v. State Board, 768 A.2d 393 (Pa. Cmwlth. 2001) *appeal denied*, 782 A.2d 549 (2001). While the Walker opinion indicates that unlicensed persons can hand out a general price list and "interact" with consumers about that price list, under no circumstances can the unlicensed person:

- 1) hold herself out to the public as one skilled in the knowledge of funeral directing;
- 2) aid the consumer in the selection of funeral goods and services or prepare worksheets for the insured which for the basis for the funding product

- 3) “engaging in discussion with individuals regarding the selection of funeral services
- 4) Offering to enter into a contract for funeral goods and services when needed and
- 5) Making financial arrangements for the sale of funeral services and merchandise incidental to those services.” Ferguson at p. 13.

In October, 2007, we wrote to the State Board of Funeral Directors and suggested a number of items that could have been included in the proposed regulation that unlicensed persons could do. That list included:

- 1) Designing and mailing direct mail pieces;
- 2) Telemarketing
- 3) Conduct seminars that include such topics as history of the funeral home, information on the directors, historical, cultural and sociological trends with respect to death care (with the presence of a licensed funeral director)
- 4) Conduct aftercare with time constraints of no sooner than one year after a death.

Over and above the legal argument, there are two primary reasons PFDA believes that it is vitally important to limit the activities of unlicensed persons. First, funeral directors are expressly educated in matters of grief, counseling and religious customs and practices so that when dealing with emotionally labile consumers, licensees provide the expertise and knowledge that unlicensed persons do not have. Second, licensed funeral directors are typically well-established in their communities and have ties to the families they serve. They have a reputation to uphold and will go to great lengths to assure that families are treated fairly and properly regarding the funeral arrangements. That is not true of the commissioned sales person.

Pennsylvania has had more than its share of preneed scandals:

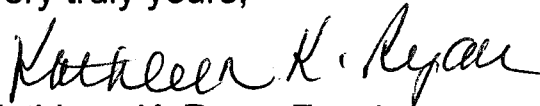
- 1) In 1987, a company called Mechem defrauded funeral directors of \$7 million of preneed funds and left the funeral directors of this state to provide the funerals.
- 2) In 2000, federal charges were brought against a preneed company located in Lebanon, PA where over \$7 million was missing.
- 3) In 2006 a casket company in western Pennsylvania defrauded consumers \$2 million in merchandise
- 4) NPS, an insurance conglomerate from the mid-west defaulted on \$1 billion in preneed funds with an estimated \$2 million in Pennsylvania.

Finally, it is of importance for IRRC to know what the public's opinion is regarding the issue using licensed versus non-licensed persons. In independent polls conducted by the Polk-Lepson Research Group in 2005 and 2009, the public rated the importance of using a licensed funeral director in making funeral arrangements (as opposed to non-licensed persons) at 77.2% and 87.3% respectively. In addition, in April, 2008, PFDA did its own study of its members. Some important findings from that survey include:

- 1) The principle driving force behind consumers making prearrangements is for purposes of spenddown.
- 2) 95% of funeral directors reported NO increased cost as a result of not being able to use unlicensed persons to prearrange
- 3) In delineating the duties of unlicensed persons at funeral homes, only three out of 272 respondent funeral homes used unlicensed persons to make arrangements
- 4) 83% of funeral directors believe licensees should meet face-to-face with consumers for purposes of making arrangements.

PFDA supports the initiative of the State Board in promulgating 16A-4816 as it helps to define what an unlicensed person can and cannot do without eroding the holding in Ferguson. We urge the Independent Regulatory and Review Commission to pass the proposed regulation at its upcoming meeting.

Very truly yours,


Kathleen K. Ryan, Esquire
General Counsel , PFDA

Cc: Arthur Coccodrilli, Chairman IRRC
George Bedwick, Vice Chairman IRRC
Silvan Lutkewitte, III, Commissioner
John Mizner, Commissioner
S. David Fineman, Commissioner