

NALC
NATIONAL ALLIANCE OF LIFE COMPANIES
An association of Life and Health Insurance Companies
P.O. BOX 607906, Chicago, IL 60660 -- 7229 N. Bell, Unit 2, Chicago, IL 60645
Telephone (773) 274-9050 -- Fax (773) 274-9063

#2639

January 5, 2006

Board of Directors
Pennsylvania Cemetery Funeral Association
100 South 21st Street
Harrisburg PA 17104

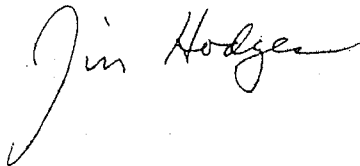
To Whom It May Concern:

I was one of the registered participants who provided testimony at the December 12, 2005, hearing in Harrisburg conducted by the State Board of Funeral Directors regarding the Funeral Board's "Exposure Draft Pre-Need Activities by Unlicensed Employees."

Having reviewed the *Draft - Pre-need Activities by Employees & Agents of Licensed Funeral Directors* as proposed by the Pennsylvania Cemetery Funeral Association (PCFA), I am pleased to provide this letter confirming my full support for the proposed language as presented.

It is my opinion that the draft presented by the Pennsylvania Cemetery Funeral Association is in keeping with the spirit of the Federal Court ruling in *Walker v. Flitton* while protecting the interests of consumers in the Commonwealth.

Sincerely,



James H. Hodges

INDEPENDENT REGULATORY
FINANCIAL COMMISSION

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COMMONWEALTH OF PENNSYLVANIA

DEPARTMENT OF STATE

BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

VERBATIM TRANSCRIPT

STATE BOARD OF FUNERAL DIRECTORS
REGULATIONS COMMITTEE MEETING

TIME: 10:09 A.M.

BOARD ROOM B

ONE PENN CENTER
2601 NORTH THIRD STREET
HARRISBURG, PENNSYLVANIA

MARCH 21, 2006

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Harrisburg, PA 17110

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State Board of Funeral Directors

Regulations Committee Meeting

March 21, 2006

Committee Members:

Michael J. Yeosock, Chair
Jodi Zucco, Esquire
Donald J. Murphy
Basil L. Merenda, Commissioner
Bureau of Professional and Occupational Affairs

Bureau Personnel:

Frank J. Bolock, Jr., Esquire, Board Counsel
Michelle T. Smey, Board Administrator

Also Present:

Kathleen Ryan, Esquire, Pennsylvania Funeral Directors
Association
Charles Bowen, PFDA
James J. Kutz, Esquire, Pennsylvania Cemetery and
Funeral Association (PCFA)
John W. Erikson, Director, Pennsylvania Funeral
Directors Association
John Katora, PCFA
Bob Stewart, PCFA
Chris Williams
Tim Kernan, PCFA
Harry Neel, PCFA
Deborah Lee, Pennsylvania Insurance Department
Thomas G., Kukuchka, PFDA

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1 MS. RYAN:

2 Well, and...

3 MR. MURPHY:

4 Say, "Jones was wrong." Let's start another
5 suit against us.

6 COMMISSIONER MERENDA:

7 Right.

8 MS. RYAN:

9 Well, you know I wasn't there but I wonder
10 how much the Judge really understood.

11 MR. MURPHY:

12 I don't think the Judge really understood.
13 I don't think the Judge had the full case of
14 how funeral directing operates. I don't
15 think he had it. It was an unfortunate fact
16 the way this was given to the Judge to
17 decide. It was lucky for Jim. It was
18 unlucky for us.

19 COMMISSIONER MERENDA:

20 Of course Mr. Kutz would say that it was
21 excellent lawyer...

22 MR. MURPHY:

23 Well, there's a strong element of that too

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COMMONWEALTH OF PENNSYLVANIA

DEPARTMENT OF STATE

BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

V E R B A T I M M I N U T E S

MEETING OF:

STATE BOARD OF FUNERAL DIRECTORS

TIME: 9:30 A.M.

BOARD ROOM D
ONE PENN CENTER
2600 NORTH THIRD STREET
HARRISBURG, PENNSYLVANIA

AUGUST 3, 2005

1 State Board of Funeral Directors

2 August 3, 2005

3 Board Members:

4 Janice H. Mannal, Professional Member, Chairperson -
5 Absent

6 Michael D. Morrison, Professional Member, Vice-
7 Chairman

8 Donald J. Murphy, Public Member, Secretary

9 Joseph A. Fluehr, III, Professional Member - Absent

10 James O. Pinkerton, Professional Member

11 Anthony Scarantino, Public Member

12 Michael J. Yeosock, Professional Member

13 Jodi L. Zucco, Esquire

14 Bureau of Consumer Protection

15 Basil L. Merenda, Commissioner

16 Bureau of Professional and Occupational Affairs

17

18 Bureau Personnel:

19

20 Thomas A. Blackburn, Esquire, Board Counsel

21 Michelle Smey, Board Administrator

22

23 Also Present:

24

25 Alison Flowers, Klett Rooney

26

1 anyway? Would that impede the, the funeral
2 business, the licensee's business? Why
3 don't we just require, as the Law currently
4 seems to indicate, that you have to engage
5 in this discussion and this agreement
6 through a consultation with a licensed
7 funeral director?

8 JAMES O. PINKERTON:

9 There's a Federal Court case that says that...

10 JODI L. ZUCCO:

11 Well what is the impact on that? We also
12 have our Statute and our current regs. Who
13 cares what the Judge said? He said "not
14 engaging in funeral direction."

15 JAMES O. PINKERTON:

16 But he's saying we can't restrict people
17 from going out there and delivering
18 information.

19 MICHAEL MORRISON:

20 But is information a contract?

21 JODI L. ZUCCO:

22 Well, isn't it funeral directing which the
23 Order says, as opposed to the Opinion, isn't

1 But it's got to be consistent with our prior
2 decisions. Who cares what the Judge wants?
3 It has to be consistent with our prior
4 decisions. It has to be consistent with
5 Ferguson...

6 MICHAEL MORRISON:

7 Support Ferguson with what we do because
8 that's still (inaudible). This to me just
9 supports Ferguson is what it's doing. It's
10 saying they can get out information, but
11 they can't do the contract.

12 DONALD J. MURPHY:

13 Right, exactly. But we need to say that, we
14 need to get out in print.

15 JODI L. ZUCCO:

16 Well.

17 DONALD J. MURPHY:

18 Let me ask another question. Counselor, are
19 we in contempt if we go too far?

20 JODI L. ZUCCO:

21 I wondered about that.

22 THOMAS BLACKBURN:

23 I'm not.

ANNEX A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. Professional and Occupational Affairs

CHAPTER 13. STATE BOARD OF FUNERAL DIRECTORS

GENERAL PROVISIONS

§ 13.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

* * *

Funeral entity – A restricted business corporation, professional corporation, pre-1935 corporation, partnership, sole proprietorship, widow, widower, or estate authorized by the Board to practice the profession of funeral director.

* * *

Preneed activity – Any activity on behalf of a funeral entity concerning the provision of funeral service upon the death of a specifically identified person living at the time of the activity.

Preneed funeral contract – An agreement under which a funeral entity promises or agrees to provide funeral merchandise and render services upon the death of a person living at the time the contract is made, whether or not the funeral entity receives preneed funeral funds.

* * *

§ 13.206a. Utilization of employees or agents by a licensed funeral director or funeral entity.

(a) A licensed funeral director or funeral entity may permit an unlicensed employee or agent to

interact with customers concerning preneed activity in accordance with this section.

- (1) The funeral director or funeral entity utilizing an unlicensed employee or agent shall be professionally responsible for the actions of the unlicensed employee or agent.
- (2) The unlicensed employee or agent shall operate only under the close supervision of a licensed funeral director.
- (3) The funeral director or funeral entity may not pay or agree to pay a commission to the unlicensed employee or agent for soliciting business or for business secured by the unlicensed employee or agent.
- (4) A licensed funeral director of the funeral entity employing an unlicensed employee or agent in this capacity shall consult face-to-face with each customer before entering into or offering to enter into a preneed funeral contract.
- (5) Any document presented by the employee or agent to the customer for signature or acknowledgment must bear in 20-point or larger print the following notice completed with the name of the funeral entity:

THIS DOCUMENT DOES NOT CONSTITUTE A CONTRACT OR AN OFFER TO CONTRACT. THIS DOCUMENT IS NOT BINDING ON YOU (THE CUSTOMER) OR [name of funeral entity], BUT IS MERELY FOR INFORMATION PURPOSES TO INFORM YOU OF THE SERVICES AND MERCHANDISE AVAILABLE AND THE COST THEREOF, AS WELL AS FUNDING OPTIONS. ANY NEGOTIATIONS WITH A VIEW TO ENTERING INTO A CONTRACT WITH [name of funeral entity]

MUST TAKE PLACE IN A FACE-TO-FACE MEETING WITH A
LICENSED FUNERAL DIRECTOR OF [name of funeral entity].

(b) An employee or agent not licensed under the act may:

- (1) Distribute general price lists of the employing funeral director or funeral entity only.
- (2) Provide general assistance to the employing funeral director or funeral entity by engaging in activities, including communications with customers, not otherwise prohibited by the act or this chapter.

(c) An employee or agent not licensed under the act may not:

- (1) Be associated with any other funeral director or funeral entity.
- (2) Prepare worksheets, proposals or other presentations for funeral services.
- (3) Engage in discussions or other communications with customers regarding the actual selection of funeral services and merchandise incidental to such services.
- (4) Make financial arrangements for the rendering of funeral services and merchandise incidental to such services.
- (5) Offer to or enter into a preneed funeral contract with any customer on behalf of the funeral director or funeral entity.
- (6) Engage in any activity that would cause a customer to believe that the unlicensed employee or agent is skilled in the knowledge, science or practice of funeral directing.
- (7) Engage in any activity that constitutes the practice of funeral directing under the act.

(d) Nothing in this section shall be construed to alter the scope of practice of a licensed insurance agent acting pursuant to licensure from the Department of Insurance, so long as the insurance agent is not acting as a funeral director or practicing funeral directing.