

Gelnett, Wanda B.

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From: IRRC
Sent: Friday, October 26, 2007 3:48 PM
To: Jewett, John H.; Gelnett, Wanda B.
Subject: FW: BHC.SBFD

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INDEPENDENT REGULATORY
REVIEW COMMISSION

-----Original Message-----

From: Bart cavanagh [mailto:bhcavanagh@comcast.net]
Sent: Friday, October 26, 2007 3:16 PM
To: IRRC
Subject: BHC.SBFD

CAVANAGH FAMILY FUNERAL HOME, INC.

301 CHESTER PIKE, NORWOOD, PENNSYLVANIA 19074
PHONE: 610-532-3120

BART H. CAVANAGH, SR.
SUPERVISOR

26 October 2007

John H. Jewett
Independent Regulatory Review Commission Via e-mail to: irrc@irrc.state.pa.us
333 Market Street, 14th Floor
Harrisburg, Pa. 17101

RE: Proposed Pre-Need Regulation #16A-4815 and
Proposed Regulation #16A-4816 (Pre-Need
activities of unlicensed employees) published
9.29.07 as put forth by the State Board of
Funeral Directors.

Dear Mr. Jewett:

I am writing to you to offer a historical perspective relative to the State Board of Funeral Directors ("SBFD") and the real motivation for the above referenced proposed regulations.

I was appointed to the SBFD in 1980 by then Governor Thornburgh and was subsequently approved by the Senate. At the time of my appointment, I was not and am not presently a member of the Pennsylvania Funeral Directors Association ("PFDA"). As a member of the SBFD, my allegiance was to the citizens of Pennsylvania and not the PFDA which almost immediately resulted in my becoming a target for removal from the SBFD.

After serving as vice chairman of the SBFD for one five year term and being commended by Governor Thornburgh for excellent service, I was reappointed to serve a second term. However, as a direct result of my

10/29/2007

-serving the interest of Pennsylvania citizens instead of the PFDA, I was not confirmed by the Senate a second time, due to a statewide legislative effort against my confirmation by PFDA. In need of an SBFD board member who would serve its needs as opposed to those of the public, the PFDA issued a "legislative alert" letter to all of its undertaker members strongly urging them to contact their senators to vote "no" on my confirmation for a second term of the SBFD.

The senate's failure to confirm my reappointment had nothing to do with my service record or integrity which is evidenced by my appointment and senate confirmation to the Pennsylvania Public Television Commission shortly after I was blocked from serving a second term on the SBFD.

The PFDA called for my ouster as the result of my advocacy for the concept of pre-arranged funeral counseling in order to educate consumers and create competition, both of which tend to reduce customer costs while increasing customer service.

The PFDA continues to exert undue influence on the SBFD. Its Funeral Director Members all have been incubated in the PFDA's philosophical hen house. By way of illustration, when I served on the SBFD, former PFDA president, John Lutton, then Board Chairman, had a phone in the conference room that served basically as a direct line to J. Scott Calkins, Esquire, legal counsel for the PFDA. In house- counsel for the SBFD was down the hall from the SBFD conference room and yet Mr. Lutton would instead call counsel for the PFDA when he required an opinion on a legal issue.

During my time on the SBFD, in addition to serving the needs of the public instead of the PFDA, I also ended Mr. Lutton's practice of using PFDA counsel instead of SBFD counsel for advice on SBFD issues which presented another reason for the PFDA to call an end to my time on the SBFD.

Having noted my first-hand knowledge of the regulatory capture between the SBFD and the PFDA I turn my attention to the above referenced proposed regulations which if approved will make offering pre-need education, goods and services to the public very difficult and intimidating for ethical funeral directors. Failure to offer pre-need options to the public will allow certain funeral directors to maintain the very emotional "time of death atmosphere" in which consumers are likely to be taken advantage of at the hands of opportunistic undertakers.

An educated and unemotional consumer poses a problem for the PFDA's predatory "marketing mentality" in that the educated and unemotional consumer is not likely to spend as much money when in a calm state as they might when forced to arrange and pay for a funeral during a time of distress and emotional vulnerability. In fact, maintaining that type of predatory practice is what these proposed regulations are really about.

If the proposed regulations are approved they will make pre-need services so unattractive and intimidating that ethical funeral directors will not offer pre-need care. As part of the PFDA's campaign to abolish pre-need, the SBFD recently fined a funeral director \$89,000.00 for what could easily be explained as a misunderstanding regarding fees for counseling pre-need clients. In that instance, nothing was hidden and no consumer was hurt. Why this funeral director was made a target is unknown to me. Most disturbing is that the funeral director was represented in that case by a former SBFD prosecutor who is now in-house counsel to the PFDA and who also, between those two positions, was an unlicensed person associated with pre-need funeral sales.

By writing this very letter I have made myself and family a target of The Board as in my opinion it acts as an enforcer and metes out discipline as the PFDA sees fit.

Be aware that the proposed regulations are a tool by which the PFDA can retain its grip on the SBFD in an effort to maintain the "at-need" funeral market to the exclusion of the "pre-need" funeral market. At-need sales present an opportunity for predatory funeral directors to take advantage of people that results in a financial

windfall for the predatory undertaker. Pre-need sales present an opportunity for the many Pennsylvania funeral directors who serve sincerely and are ethical to counsel, educate and assist in difficult choices that will not result in a financial hardship to the consumer.

Much of this letter echoes testimony I gave 20-odd years ago before IRC which resulted in the PFDA issuing its "legislative alert" which in turn resulted in my removal from the SBFD. The concept which I advocate is a simple one – providing the highest level of service to the consumer. By offering education and advice in the unemotional pre-need setting as opposed to the time constraints present when arranging a service at the time of death, the pre-need consumer can take all the time they want to make a decision; days, weeks, whatever, a tough environment for a predatory funeral director. Approval of the proposed regulations advocates fewer consumer choices.

Having heard all the legal reasons for not approving these regulations, hopefully my historical perspective will create a greater understanding of this issue.

Sincerely,

Bart H. Cavanagh, Sr.

P.S. It is comical that existing regulation will permit the funeral home maintenance man to arrange an at need funeral and determine if embalming is necessary as long as the licensee okays it in forty-eight hours; but, the unlicensed maintenance man cannot make a pre-need arrangement to be ratified later by the licensee.