



Ronald E. Harrell
Licensed Funeral Director

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Commonwealth of Massachusetts
Division of Registration
Board of Registration in Embalming and Funeral Directing
239 Causeway Street
Boston, Massachusetts 02114

Dear Board Members:

I am writing to you about a section of your regulations that I think is well intentioned but misguided. I find it to be 1) unclear, 2) impractical, and 3) possibly illegal. The section in question is CMR 239.3.13.(11) that reads as follows:

No person who is registered with the Board, nor any person who holds an ownership interest in or is employed by any funeral establishment licensed by the Board, shall make the rendering of professional services dependent upon the amount of money paid or the certainty of payment.

I have shown this, for interpretation, to numerous people both connected to and independent of funeral service. The overwhelming consensus was that this regulation means that we have to give families funerals whether we get paid or not.

I'm sure that long ago there was an incident that this regulation was implemented to remedy. As often happens, however, the intended remedy has far reaching unintended consequences.

First of all, this regulation is unclear. It speaks of "rendering" and "professional services". At what point is the funeral director on the hook to "render"? When we

get the initial phone call?, when we meet with the family?, or when we remove the body? Does this just apply to "professional services" or does it include other services and merchandise? If we are not paid for the limousine do we have to provide a limousine? If we are not paid for the newspaper, do we have to place the obituary in the newspaper? What about organist, clergy, casket, and cemetery? If it truly only applies to professional services, how do we separate that from everything else we do? How can we provide our professional services at the wake or funeral if the body is not yet in the casket that was not yet paid for? Is this designed to protect the temporarily disoriented consumer, the indigent consumer, or the dishonest consumer?

Secondly, this regulation is impractical. Compassion aside, we are licensed to operate businesses, not agencies or charities. On a daily basis we work with grieving spouses, children, parents, and siblings. We also work with families with a wide range of credit situations and financial integrity. While it is in our nature to help people who need assistance, even financially if necessary, it is vital that we can advise clients to stay within their means, by planning and selecting what they can afford without our being in violation. It is vital that when our capacity to help people financially has reached its limit, we should be able to tell families NO without being in violation. It is vital that when we sense that someone is trying to scam us, we can tell them NO without being in violation. Fundamentally, no businessperson should be **required** to spend money on clients without reasonable expectation of getting it back.

Thirdly, this regulation may be illegal. We are required to have a signed contract with each arrangement. According to the law, that contract means that we provide and they pay. We provide and they pay if they can, or they pay if they feel like it, does not satisfy the conditions of a contract.

The uncertainty of this regulation has led to numerous independent translations by practitioners, ranging from strict conservative adherence to completely ignoring it. In a competitive environment, there needs to be a level playing field.

Twice in the last year and a half, the Massachusetts Funeral Directors Association, at my urging, has requested an interpretation of this regulation from your board. They have not yet received an answer.

I now come to you directly. This regulation is ruinous for me. It is generally accepted that normally the family pays up front by cash, check, or credit card. It is further understood that sometimes payment may be delayed while waiting for

insurances, estates, stocks, and other resources that cannot be accessed in time for the funeral. In such a world, a regulation instructing funeral directors to have some compassion and consideration for families is not unreasonable. In my world, however, where 25-30% of my market consists of welfare/MassHealth/SSI, the vast majority of the remainder are under-insured or uninsured, and the next of kin is unemployed, yet feels entitled to have a decent funeral for their loved one, and rides away in the family's late model Lexus SUV ... this regulation makes no sense. It sets the funeral director up to fail, either financially or morally.

Most of you know me personally. You know my reputation as a fair, ethical, and honest person and practitioner. You know my horrendous experience on the welfare front. You know that I do go to great lengths to be and stay in compliance with anything and everything that I am supposed to do, as much as I am able. You also know me as a defender of the rights of the funeral director. It troubles me that in the effort to rightfully look out for the consumer, the public health, etc., we sometimes leave the funeral director exposed to abuse. This is one of those times. We have failed to address the difference between the rights of the "**purchaser**" vs. the rights of the "**consumer**". To my mind, the purchaser (the one who pays for the service) is due all the rights that the board has stated, but the only rights owed to the consumer (the one who just uses the service without paying for it) are politeness and fairness. Over the years, I have received several un-official, off the record, verbal explanations of this regulation from board members, former board members, and other knowledgeable persons. Those personal, unwritten explanations disagreed with each other, and, no offense intended, as such are not of much use.

I need, in writing, a clear explanation of what this regulation does and does not cover, and how it is to be applied by the funeral director. I also need assurance that whatever your directives are, that I will not be the only one following them. If, in the process of your review, you conclude that the current regulation does not mean what you want it to say, I would be pleased to work with you to identify some ways to revise it.

Looking forward to your response in the near future.

Sincerely,



Ronald E. Harrell, #5858