



WISCONSIN FUNERAL DIRECTORS ASSOCIATION

2000 N. Mayfair Rd., Suite 595 • Wauwatosa, WI 53226 • (414) 453-3060

Wilma Morris - Executive Director

FAX Transmittal Sheet

Date April 24, 1997

To: Representative Clifford Otte
Chairperson, Assembly Committee on Consumer Affairs

From: Diego Camacho, Jr., CFSP
President

Pages 2 (Excluding Transmittal Sheet)

Message: I would like to provide the committee with a copy of
of the following two letters.

If you have any questions on the transmission, please call WFDA at (414) 453-3060. WFDA's FAX NUMBER is: (414) 453-9860.

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P.01

April 24, 1997

TO WHOM IT MAY CONCERN

This letter is your written consent to use a copy of my letter written to the Wisconsin Funeral Directors Examining Board on September 26, 1996 in testimony or in any other manner deemed appropriate.

A copy of the mentioned letter is attached.

Sincerely,

Mrs. Barbara Miller
Mrs. Barbara Miller
17350 W. Wisconsin Avenue
Brookfield, Wisconsin 53045

September 26, 1996

Wisconsin Funeral Directors Examining Board
1400 E. Washington Street
Madison, Wisconsin 53708

To Whom It May Concern:

Recently I was contacted by mail by two area funeral homes attempting to sell their services. One funeral home had a telephone solicitor follow up their mailing by calling my home. The solicitor even stated that I "was a hard person to get a hold of"! This, I thought was an odd and offensive statement since I never wanted or asked to have this person call me in the first place.

It's difficult enough to deal with death and the services needed from a funeral home without being solicited by a telemarketer who is aggressive enough to tell you that you are a hard person to reach. I'm concerned that should these tactics be used on my father-in-law, for example, that he may be pressured into making decisions that he would not have made if we could voluntarily approach a funeral home with him. This could be done when the time was right on our terms....not on the terms of a telemarketer selling the wares of a funeral director.

This whole approach seems distasteful to me and rather odd given the sensitive nature concerning the death of a loved one. I'm writing to let you know I was offended by these tactics and upset that telemarketing is being used in an area where older, more vulnerable people may be taken advantage of.

Sincerely,

Mrs. Barbara Miller
17350 W. Wisconsin Ave.
Brookfield, Wisconsin 53045

**WISCONSIN FUNERAL DIRECTORS ASSOCIATION**

2300 N. Mayfair Rd., Suite 595 • Wauwatosa, WI 53226 • (414) 453-3060

Wilma Morris - Executive Director

March 25, 1997

The Honorable Clifford Otte
Chair, Assembly Committee on Consumer Affairs
Room 109 West, State Capitol
Madison, WI 53702

Dear Representative Otte:

The Wisconsin Funeral Directors Association requests that the Assembly Committee on Consumer Affairs hold a public hearing on Clearinghouse Rule 96-183, relating to the registration and regulation of agents authorized to represent funeral directors or funeral establishments in the sale or solicitation of burial agreements that are funded with the proceeds a life insurance policy in proposed Chapter FD 6. The association requests the hearing to enlist the committee's support in urging the Funeral Directors Examining Board (hereafter, examining board) to restore as shown below the original language in proposed s. FD 6.10:

FD 6.10 SOLICITATION OF BURIAL AGREEMENTS FUNDED WITH THE PROCEEDS OF A LIFE INSURANCE POLICY. No Funeral director, owner of a funeral establishment, or agent may initiate any telephone call by live voice or by using a automatic telephone dialing system or an artificial or prerecorded voice for the purpose of selling or soliciting a burial agreement funded by the proceeds of a life insurance policy to:

- (1) The telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment.
- (2) Any residential telephone line without the prior express written consent of the called party.
- (3) Any business telephone line without the prior express written consent of the called party.

The association bases its request for a public hearing on the following reasons:

1. It is the responsibility of the examining board to act in the best interest of the public.
2. The examining board has authority in s. 445.125(3m)j.2., as affected by 1995 Wisconsin Act 295, to ban a method of telephone solicitation if it determines that the ban is necessary to protect the public.

The Honorable Clifford Otte

March 25, 1997

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3. Until February 12, 1997, two or more professional members and the two public members consistently had opposed door-to-door solicitation and any form of telemarketing of insurance-funded burial agreements (See the board's March 19, 1996 memo to the sponsors of the enabling legislation enclosed.) Their position on this issue is evidenced by the fact that all members supported the original provisions in s. FD 6.10.
4. As expressly stated by each of the four professional members at the board meeting on February 12, 1997, all individually affirmed his/her belief that telephone solicitation is not in the best interest of the public.
5. The substitute provision on telephone solicitation in s. FD 6.10, as referred to committee, does not protect the public adequately because it requires a higher degree of self-protection that is seldom present in the segment targeted by telephone solicitors in the burial insurance market.
6. The four professional board members' rationale for removing the restriction on telephone solicitation is invalid because it presumes that detailed product information is always provided in the initial unsolicited call, a call that in usual telemarketing practices is used to primarily generate leads.
7. The professional members disregarded the often and fully stated concerns of the two public members on the board who argued against deleting the original restriction on telephone solicitation.
8. By their reversal of the long-standing position of the board on this issue, the practitioners on the board have failed to meet their statutory responsibility to protect the public.

For the reasons stated above, the Wisconsin Funeral Directors Association requests that the committee schedule a public hearing on Clearinghouse Rule 96-183.

The Honorable Clifford Otte
March 25, 1997
Page 3

Thank you for your consideration. If you have questions, please call me at (608)776-2461; or, Wilma Morris at (800) 648-5580.

Sincerely,

Diego Camacho

Diego Camacho, Jr., CFSP
President

DC:cp
enclosure

cc: Assembly Committee Members



CLIFFORD OTTE

WISCONSIN STATE REPRESENTATIVE
27TH ASSEMBLY DISTRICT

April 24, 1997

Funeral Directors Examining Board
Wisconsin Dept. of Regulation & Licensing
1400 E. Washington Avenue
Madison, WI 53702
ATTN: Ms. Patricia H. Reuter

Dear Members of the Board:

In an executive session on April 24, 1997, following a public hearing, the Assembly Committee on Consumer Affairs passed the following motion:

The Committee requests that the Funeral Directors Examining Board under s. 227.19(4)(b)2, *Wisconsin Statutes*, agree to consider modification of Clearinghouse Rule 96-183, including the recession of the modification of the rule contained in the April 23, 1997 letter to the Committee, and consider returning to the original administrative rule as submitted to the Legislature and to the Committee. Further, the Committee voted that if the Funeral Directors Examining Board does not agree to consider the modification of CR 96-183 by 4:00 p.m. on May 6, 1997, the Committee objects to Clearinghouse Rule 96-183 in its entirety for the reasons specified in s.227.19(4)(d)1., 3. and 6., *Wisconsin Statutes*.

The motion was approved on a vote of Ayes, 7; and Noes, 0.

If you have any questions regarding this motion, please feel free to contact me at my office.

Sincerely yours,

CLIFFORD OTTE
Chairman
Assembly Committee on Consumer Affairs

CO:day

cc: Secretary Marlene Cummings
Senator Gwendolynne Moore
Members, Assembly Committee on Consumer Affairs

Office: P.O. Box 8953 • Madison, WI 53708-8953 • (608) 266-8530
Home: N5385 Bridgewood Road • Sheboygan Falls, WI 53085 • (414) 467-4794
Toll-Free Legislative Hotline: 1 (800) 362-9472

**STATE OF WISCONSIN
FUNERAL DIRECTORS EXAMINING BOARD**

**IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : FUNERAL DIRECTORS EXAMINING
FUNERAL DIRECTORS : BOARD ADOPTING RULES
EXAMINING BOARD : (CLEARINGHOUSE RULE 96-183)**

TO: Ben Brancel
Speaker of the Assembly
119 Martin Luther King Jr., Blvd.
Room LL2
Madison, Wisconsin 53702

PLEASE TAKE NOTICE that the FUNERAL DIRECTORS EXAMINING BOARD is submitting in final draft form proposed rules relating to the registration and regulation of agents authorized to represent funeral directors or funeral establishments in the sale or solicitation of burial agreements that are funded with the proceeds of a life insurance policy.

If you have any questions concerning the final draft form or desire additional information, please contact Pamela Haack at 266-0495.



State of Wisconsin \ DEPARTMENT OF REGULATION & LICENSING

Tommy G. Thompson
Governor

Marlene A. Cummings
Secretary

1400 E. WASHINGTON AVENUE
P.O. BOX 8935
MADISON, WISCONSIN 53708
608 266-2112

Administrative Rules in Final Draft Form

Funeral Directors Examining Board

Rule: Chapter FD 6

Relating to: Agents in Sale or Solicitation of Burial Agreements Funded by Proceeds of Life Insurance Policy

Clearinghouse Rule: No. 96-183

Regulatory Boards

Accounting; Architects, Professional Engineers, Designers and Land Surveyors; Barbering and Cosmetology; Chiropractic; Dentistry; Funeral Directors; Hearing and Speech; Medical; Nursing; Nursing Home Administrator; Optometry; Pharmacy; Psychology; Real Estate; Real Estate Appraisers; Social Workers, Marriage and Family Therapists and Professional Counselors; and Veterinary.

Committed to Equal Opportunity in Employment and Licensing

**STATE OF WISCONSIN
FUNERAL DIRECTORS EXAMINING BOARD**

**IN THE MATTER OF RULE-MAKING : REPORT TO THE LEGISLATURE
PROCEEDINGS BEFORE THE : ON CLEARINGHOUSE RULE 96-183
FUNERAL DIRECTORS : (s. 227.19 (3), Stats.)
EXAMINING BOARD :**

I. THE PROPOSED RULE:

The proposed rule, including the analysis and text, is attached.

II. REFERENCE TO APPLICABLE FORMS:

No new or revised forms are required by these rules.

III. FISCAL ESTIMATES:

These rules will have no significant impact upon state or local units of government.

IV. STATEMENT EXPLAINING NEED:

In this proposed rule-making order the Funeral Directors Examining Board creates rules relating to the registration and regulation of agents authorized to represent funeral directors or funeral establishments in the sale or solicitation of burial agreements that are funded with the proceeds of a life insurance policy. These rules are the result of 1995 Wisconsin Act 295 which created a new category of sales agents and gave the board the authority to promulgate rules regarding them.

V. NOTICE OF PUBLIC HEARING:

A public hearing was held on February 5, 1997. The following appeared and registered in favor of the proposed rules:

Michael E. Horan, Chippewa Falls, representing Horan Funeral Home Inc.
Edwin Horan, Chippewa Falls, representing Horan Funeral Home, Inc.
Wilma Morris, Wauwatosa, representing the Wisconsin Funeral Directors Association
Richard E. Daniels, Burlington, representing the Wisconsin Funeral Directors Association
Jerry Speckien, Eau Claire, representing Speckien Funeral Home
Thomas Wiseman, Milwaukee, representing Brett Funeral Home, Inc.
Patrick Koszuta, Milwaukee, representing the Wisconsin Funeral Directors Association
Tom Hanson, Madison, representing the Wisconsin Funeral Directors Association
Diego Camacho, Jr., Darlington, representing the Wisconsin Funeral Directors Association. Mr. Camacho also presented testimony and submitted written comments.

The following appeared and registered against the proposed rules:

Mark Aarden, Beaver Dam, representing Community Funeral Homes
Doug Seefeld, Oshkosh, representing Seefeld Funeral Home
R. George Burmeister, Oregon
Pat Essie, Madison, representing Funeral Service Alliance
Pete Gunderson, Madison, representing Gunderson Funeral Home
Estella Chandler, Appleton, representing Familyside Preneed
Ed Patschke, Appleton, representing Secura Life Insurance Company
Mark Pichelmeyer, New London
Ken Schmidt, West Bend, representing Schmidt Funeral Homes, West Bend and Jackson
Charles Peters, Wauwatosa, representing Schmidt & Bartelt Funeral Service

The following appeared and registered against s. FD 6.10, Solicitation, only:

William Krause, Jr., Milwaukee, representing Krause Funeral Home
Mark Krause, Milwaukee, representing Funeral Service Alliance of Wisconsin
Christine Jacob, Milwaukee, representing American Legacy
Mark Willoughby, Batesville, IN, representing The Forethought Group
Paula Bonds, Atlanta, GA, representing United Family Life
Steven Whitehead, West Des Moines, IA, representing Cornerstone Management Systems, Inc.
Dean Dickinson, LaCrosse, representing Dickinson Funeral Homes

Written comments were received from the following:

Kenneth L. Schmidt, Schmidt Funeral Homes, Inc., West Bend & Jackson
William Krause, Krause Funeral Home, Inc., Milwaukee
Edwin L. Patschke, Secura Life, Appleton
Susan E. Cyr, Counsel and Assistant Secretary, the Liberty Corporation, Greenville, SC
Curtis J. Schmidt, Schmidt Funeral Homes, West Bend & Jackson
Diego Camacho, Jr., President, Wisconsin Funeral Directors Association, Wauwatosa
Steven W. Whitehead, Cornerstone Management Systems, West Des Moines, IA
Mark Krause, Secretary/Treasurer, Funeral Service Alliance of Wisconsin
Paula Bonds, United Family Life Insurance, Atlanta, GA
Christine M. Jacob, Funeral Home Representatives
Dean D. Dickinson, President, The Dickinson Family Funeral Homes
C. Keith Edison, Edison Funeral Homes, Independence

VI. MODIFICATIONS MADE AS A RESULT OF PUBLIC HEARING TESTIMONY:

The majority of the testimony at the public hearing concerned s. FD 6.10, which relates to the prohibition of telephone solicitation by "live-voice" callers. Several individuals urged the board to delete that provision, thereby allowing the use of telephone solicitation by "live-voice" callers. Although proponents of that position maintained that the intent of the legislature precludes the board from adopting such a rule, the legislation indicates otherwise.

Following the testimony at the public hearing, the board voted in favor of allowing "live-voice" telephone solicitation, with some limitations. *Section FD 6.10 (1) (intro.)* has been amended to remove the ban on "live-voice" callers. *Section FD 6.10 (2)* has been created to allow "live-voice" callers only between the hours of 8:00 a.m. to 6:00 p.m. central standard time. And, *s. FD 6.10 (3)* has been created identifying requirements to be met by agents who sell or solicit the sale of burial agreements by "live-voice" callers.

The two public board members opposed changing the rules to permit "live-voice" telephone solicitation. Nevertheless, the board majority was willing to allow this type of solicitation for a trial-period, and agreed that it should revisit the rule within two years of its implementation to determine whether "live-voice" calls should be prohibited.

VII. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

All of the recommendations suggested in the Clearinghouse Report were accepted in whole.

VIII. FINAL REGULATORY FLEXIBILITY ANALYSIS:

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

STATE OF WISCONSIN
FUNERAL DIRECTORS EXAMINING BOARD

IN THE MATTER OF RULE-MAKING	:	PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE	:	FUNERAL DIRECTORS EXAMINING
FUNERAL DIRECTORS	:	BOARD ADOPTING RULES
EXAMINING BOARD	:	(CLEARINGHOUSE RULE 96-183)

PROPOSED ORDER

An order of the Funeral Directors Examining Board to create chapter FD 6 relating to the registration and regulation of agents authorized to represent funeral directors or funeral establishments in the sale or solicitation of burial agreements that are funded with the proceeds of a life insurance policy.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes authorizing promulgation: ss. 15.08 (5) (b) and 227.11 (2), Stats., and s. 445.125 (3m) (b) 2. b. and (j) 1. and 2., Stats., as created by 1995 Wisconsin Act 295.

Statutes interpreted: s. 445.125 (3m), Stats.

In this proposed rule-making order, the Funeral Directors Examining Board creates rules relating to the registration and regulation of agents authorized to represent funeral directors or funeral establishments in the sale or solicitation of burial agreements that are funded with the proceeds of a life insurance policy. These rules are the result of 1995 Wisconsin Act 295 which created a new category of sales agents and gave the board the authority to promulgate rules regarding them.

Section FD 6.01 sets forth the statutory authority and purpose for the proposed rules. Section FD 6.02 provides definitions of terminology used in the proposed rules. Section FD 6.03 specifically outlines the registration process for sales agents. Section FD 6.04 requires a funeral director to notify the board when an agency relationship is terminated. Section FD 6.05 sets forth the training requirements for agents. Section FD 6.06 identifies the procedure for obtaining approval for educational training programs. Section FD 6.07 creates the standards for burial agreements funded by the proceeds of life insurance. Section FD 6.08 sets out the contractual standards necessary for an agent and operators of funeral establishments. Section FD 6.09 identifies the requirements that are essential before a burial trust can be terminated. Section FD 6.10 outlines the restrictions on the solicitation of burial agreements that are funded by the proceeds of life insurance. Pursuant to s. 445.125 (3m) (j) 2., Stats., the board has determined that the restrictions contained in s. FD 6.10 are necessary in order to protect the health, safety, and welfare of the public.

TEXT OF RULE

SECTION 1. Chapter FD 6 is created to read:

Chapter FD 6

BURIAL AGREEMENTS FUNDED
WITH LIFE INSURANCE

FD 6.01 AUTHORITY AND PURPOSE. The rules in this chapter are adopted by the board under the authority of ss. 15.08 (5) (b), 227.11 (2), 445.125 (3m) (b) 2. b. and (j) 1. and 2., Stats., and govern the registration and regulation of agents.

FD 6.02 DEFINITIONS. In this chapter:

- (1) "Agent" means an authorized representative of a funeral director or an operator of a funeral establishment who sells or solicits the sale of a burial agreement that is funded with the proceeds of a life insurance policy.
- (2) "Board" means the funeral directors examining board.
- (3) "Department" means the department of regulation and licensing.
- (4) "Evidence of attendance" means an official transcript, student grade report, or a written form furnished by a program provider which specifies satisfactory completion of an educational training program.
- (5) "Program provider" means an educational institution, governmental agency, professional or trade association or foundation or a private firm or individual whose function is educational training programming.

FD 6.03 REGISTRATION REQUIREMENTS. (1) A licensed funeral director or operator of a funeral establishment shall submit an application with all of the following information:

- (a) The identity of any agent authorized by s. 445.125 (3m), Stats., to sell or solicit the sale of a burial agreement that is funded with the proceeds of a life insurance policy on behalf of the licensed funeral director or operator of a funeral establishment.
- (b) The agent's Wisconsin life insurance intermediary's license number and expiration date, and the insurer or insurers whom the agent is listed to represent.
- (c) Evidence satisfactory to the board that the agent has successfully completed at least 20 hours of approved educational training as provided in s. FD 6.05. An agent

who is a Wisconsin licensed funeral director and a Wisconsin licensed insurance intermediary shall be exempt from having to complete the 20 hours of approved educational training as provided in s. FD 6.05.

(2) A copy of each contract between an agent and an operator of a funeral establishment shall accompany the application.

(3) The application shall be accompanied by the fee authorized in s. 440.05 (1), Stats.

(4) Upon receipt of an application and payment of the fees, the board shall issue a registration card to an agent.

(5) No agent may sell or solicit the sale of a burial agreement funded with the proceeds of a life insurance policy unless he or she is registered by the board.

Note: Application forms are available upon request to the Funeral Directors Examining Board, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

FD 6.04 CHANGE OF EMPLOYMENT. A licensed funeral director or operator of a funeral establishment shall notify the board within 30 calendar days of the termination of any contract he or she has with an agent.

FD 6.05 TRAINING REQUIREMENTS. (1) Educational training shall include the following subjects:

(a) The funeral industry practice regulations of the federal trade commission, and any other applicable federal statutes and regulations related to the funeral service industry including, but not limited to, the occupational safety and health act.

(b) The funeral industry practice regulations contained in the Wisconsin statutes and administrative code including, but not limited to, burial agreements and any applicable impoverishment provisions.

(c) The ethics of funeral service marketing.

(d) Funeral service and final disposition options.

(e) Funding mechanisms for burial agreements.

(f) Financial benefits available at the time of death including, but not limited to, veteran's benefits, social security income, pensions, and human services benefits.

(g) Grief communication skills.

(2) Educational training credit for participation in a multiple-day program, in which each day of the program is a prerequisite for each succeeding day, shall be granted only for completion of the entire program.

(3) Credit for attendance at an educational training program shall be given to an agent if all of the following apply:

- (a) The program has been approved by the board under s. FD 6.06.
- (b) The agent provides evidence of attendance satisfactory to the board.
- (c) The agent takes and successfully passes a comprehensive examination administered by the program provider.

FD 6.06 APPROVAL OF EDUCATIONAL TRAINING PROGRAMS. (1) To obtain approval of an educational training program, the program provider shall submit an application to the board on a form provided by the board which shall include evidence of all of the following:

- (a) Information that the program relates to the following subject areas:
 - 1. The funeral industry practice regulations of the federal trade commission, and any other applicable federal statutes and regulations related to the funeral service industry including, but not limited to, the occupational safety and health act.
 - 2. The funeral industry practice regulations contained in the Wisconsin statutes and administrative code including, but not limited to, burial agreements and applicable impoverishment provisions.
 - 3. The ethics of funeral service marketing.
 - 4. Funeral service and final disposition options.
 - 5. Funding mechanisms for burial agreements.
 - 6. Financial benefits available at the time of death including, but not limited to, veteran's benefits, social security income, pensions, and human services benefits.
 - 7. Grief communication skills.
- (b) The program is available to all agents regardless of membership or affiliation with any organization.
- (c) The program provider agrees to monitor the continuous attendance of participants and to furnish to each participant with evidence of attendance.

(2) A separate application shall be submitted for each educational training program. Approval of an educational training program expires on December 31 of each odd-numbered year.

(3) A program provider shall apply for approval of an educational training program at least 30 days prior to its presentation.

(4) An educational training program may include subject content other than that specified in sub. (1); however, the board shall limit its approval only to that part and time segments of the program which relate to subject areas specified in sub. (1).

(5) In-service educational training programs sponsored by a funeral establishment or insurance company are not eligible for credit unless the programs are available to all agents and meet all other requirements in this section.

Note: Application forms are available upon request to the Funeral Directors Examining Board, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

FD 6.07 STANDARDS FOR BURIAL AGREEMENTS FUNDED BY LIFE INSURANCE PROCEEDS. A burial agreement shall be in written form that is clear and conspicuous, and shall include all of the following:

(1) The identity of the funeral establishment and the insurer or insurers that the agent represents.

(2) The identity of the funeral establishment that will be used to provide the funeral services or merchandise under the agreement.

(3) The nature and extent of any price guarantees for the funeral merchandise or funeral services, or any other guarantees that exist.

(4) Information that a life insurance policy is involved in or connected to, or is being used to fund, the burial agreement.

(5) The type of insurance instrument that is being used to fund the burial agreement.

(6) The effect on the burial agreement of all of the following:

(a) Changing the life insurance policy, including, but not limited to, changing the assignment of the policy proceeds, changing the beneficiary designation, or changing the use of the proceeds.

(b) Any penalties incurred by the policyholder as a result of failing to make premium payments.

(c) Any penalties incurred or money received as a result of cancellation or surrender of the life insurance policy.

(7) A statement of funeral goods and services selected under the burial agreement and the price of each item or service provided under the burial agreement, including a statement as to whether the purchase price of the funeral merchandise and services are guaranteed at the time the burial agreement is arranged or whether the price is to be determined at the time of need. If the price of funeral merchandise or services is to be determined at the time of need, those prices may not exceed the prices as set forth in the funeral establishment's general price list required under the funeral industry practices regulations of the federal trade commission.

(8) All information concerning what occurs, and whether any entitlements arise, if there is a difference between the proceeds of the life insurance policy and the amount of money actually needed to fund the burial agreement.

(9) Any restrictions, including geographic restrictions, or penalties relating to delivery or performance under the burial agreement, including any restrictions or penalties relating to the inability of the operator of the funeral establishment to perform.

(10) A statement as to whether the sales commission or other form of compensation is being paid to the agent who sells or solicits the sale of a burial agreement and the life insurance used to fund the burial agreement and, if so, the identity of any other persons to whom the commission or other compensation is paid.

(11) The following statement in not less than 12-point boldface type: **"Burial agreements are regulated by the Wisconsin Funeral Directors Examining Board. Should you have a complaint, please contact the Board at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708."**

FD 6.08 CONTRACTUAL STANDARDS FOR AGENTS AND OPERATORS OF FUNERAL ESTABLISHMENTS. A copy of each contract between an agent and an operator of a funeral establishment shall be sent to the board along with the agent's application for registration as required in s. FD 6.03. A contract between an agent and an operator of a funeral establishment shall include all of the following:

(1) A statement that the agent is currently licensed as a life insurance intermediary in Wisconsin and is currently listed with an insurer or insurers who is authorized to sell life insurance used to fund a burial agreement in Wisconsin.

(2) A statement that the agent has received the required training pursuant to s. 445.125 (3m) (b) 2 a, Stats., and will obtain any additional training as required by the board.

(3) A statement that the agent shall immediately notify the operator of the funeral establishment at any time while the contract between the agent and operator of the funeral establishment is in effect if any of the following occur:

(a) The agent's life insurance license is suspended or revoked.

(b) There are any changes to listings with insurers.

(4) A statement that the agent will abide by the funeral industry practices regulations of the federal trade commission, and all applicable Wisconsin statutes and rules.

(5) A statement as to whether the sales commission or other form of compensation is being paid to the agent who sells or solicits the sale of a burial agreement and the life insurance used to fund the burial agreement and, if so, the identity of any other persons to whom the commission or other compensation is paid.

FD 6.09 REQUIREMENTS FOR TERMINATING A BURIAL TRUST. Written notice shall be sent to the board by an agent, licensed funeral director or operator of the funeral establishment when a consumer terminates a trust as established under s. 445.125 (1), Stats. The following information shall be included in the written notice that an agent, funeral director, or operator of a funeral establishment gives to a consumer and to the board when the consumer terminates a burial trust and converts to a burial agreement funded by the proceeds of a life insurance policy:

(1) The name of the individual for whom the existing burial trust is intended.

(2) The date on which the original burial trust agreement was made.

(3) The name of the funeral establishment that was designated on the original burial trust agreement.

(4) The name of the bank, trust company, savings and loan association, or savings bank in which the burial trust funds have been held.

(5) The current value of the trust.

(6) The name of the life insurance company issuing the life insurance policy intended to fund the burial agreement.

(7) The name of the agent who sells the life insurance policy.

(8) The name of the funeral establishment that will be designated on the life insurance policy as the beneficiary.

FD 6.10 SOLICITATION OF BURIAL AGREEMENTS FUNDED WITH THE PROCEEDS OF A LIFE INSURANCE POLICY. (1) No funeral director, owner of a funeral establishment, or agent may initiate any telephone call using an automatic telephone dialing system or an artificial or prerecorded voice for the purpose of selling or soliciting a burial agreement funded by the proceeds of a life insurance policy to any of the following:

(a) The telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment.

(b) Any residential telephone line without the prior express written consent of the called party.

(c) Any business telephone line without the prior express written consent of the called party.

(2) An agent may initiate a telephone call by live-voice for the purpose of selling or soliciting a burial agreement funded by the proceeds of a life insurance policy only between the hours of 8:00 a.m. to 6:00 p.m. central standard time.

(3) Agents who sell or solicit the sale of burial agreements funded by the proceeds of life insurance as provided in sub. (2) shall do all of the following:

(a) Immediately provide the called party with the name of the agent, the name of the person or entity upon whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted.

(b) Have a written policy, available upon demand, for maintaining a do-not-call list.

(c) Record the name and telephone number of persons who request placement on the do-not-call list at the time the request is made. No further calls may be made to a person who has requested placement on the do-not-call list.

(END OF TEXT OF RULE)

The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register pursuant to s. 227.22 (2) (intro.), Stats.

Dated _____

Agency _____

Chairperson
Funeral Directors Examining Board

FISCAL ESTIMATE

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.
2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.
3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

FINAL REGULATORY FLEXIBILITY ANALYSIS

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

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2/25/97

WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC
FORM 2

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 96-183

AN ORDER to create chapter FD 6, relating to the registration and regulation of agents authorized to represent funeral directors or funeral establishments in the sale or solicitation of burial agreements that are funded with the proceeds of a life insurance policy.

Submitted by **DEPARTMENT OF REGULATION AND LICENSING**

12-02-96 RECEIVED BY LEGISLATIVE COUNCIL.
01-03-97 REPORT SENT TO AGENCY.

RS:GAA;jt;kjf

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

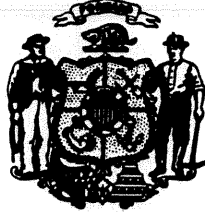
Comment Attached YES NO

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

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Assistant Director
(608) 266-2982



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Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE RULE 96-183

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

1. Statutory Authority

Under s. 445.125 (3m) (j) 2., Stats., the Funeral Directors Examining Board may promulgate rules establishing standards for marketing practices for a burial agreement funded with the proceeds of a life insurance policy, including standards for telephone solicitation of prospective purchasers. The rules promulgated under this subsection may "prohibit a method of telephone solicitation" if the Examining Board determines that the prohibition is "necessary to protect the public." Section FD 6.10 prohibits, by live voice or using an automatic telephone dialing system or an artificial pre-recorded voice, contacts for the purpose of selling or soliciting a burial agreement funded by the proceeds of a life insurance policy to any residential telephone line without the "prior express written consent" of the called party. Prohibitions are also included for business telephone lines and for telephone lines of any guest room or patient room of a hospital, health care facility, elderly home or similar establishment.

The board has the authority to prohibit this form of contact, under ss. 445.125 (3m) (j) 2. and 445.12 (3g) (a) and (b), Stats. However, the board should include in the analysis that it has made a determination that the prohibition is necessary to protect the public as is required by the statute.

2. Form, Style and Placement in Administrative Code

a. In s. FD 6.01, the notation "ch. FD 6" should be replaced by the phrase "this chapter."

- b. In s. FD 6.02, the introduction should be replaced by the phrase "In this chapter;"
- c. In s. FD 6.02 (1), the material beginning with the phrase "who may" is substantive and should not be contained in the definition of the term "agent." [See s. 1.01 (7) (b), Manual.]
- d. In s. FD 6.05 (4), reference is made to "an educational training." The reference should be "an educational training program."
- e. Section FD 6.06 (1) (c) states that the provider of the program must "agree to monitor continuous attendance of participants" and furnish each participant evidence of having attended and completed the program at the location of the program. The term "program provider" is defined in s. FD 6.02 (5) and reference should be made to that term; the term "evidence of attendance" is also defined by s. FD 6.02 (4). This provision could be rewritten to state: "The program provider agrees to monitor the continuous attendance of participants and to furnish each participant with evidence of attendance."
- f. In s. FD 6.07 (1) (k), "board" in the disclosure statement should be capitalized.
- g. Section FD 6.07 is divided into sub. (1) (which is further subdivided) but there is no sub. (2). This does not comply with s. 1.03 (intro.), Manual, which states that when any section or part of a section is divided into smaller subunits, at least two subunits shall be created. Consequently, the introduction should be unnumbered and pars. (a) to (k) should be renumbered as subs. (1) to (11).

5. Clarity, Grammar, Punctuation and Use of Plain Language

- a. In s. FD 6.02 (1), it appears that the phrase "operator of a" should precede the phrase "funeral establishment."
- b. In s. FD 6.03 (1) (b), "with" preceding "whom" should be deleted.
- c. Section FD 6.03 and the following sections are unclear in organization and logical progression.
 - (1) Under s. FD 6.03, the licensed funeral director is required to submit an application. (Subsequently, this is referred to as the agent's application for registration.) Under s. FD 6.08, the agent's contract is to be sent along to the board with the agent's application. However, the registration requirements in s. 6.03 (1) do not state that the application must include a copy of the contract.
 - (2) Under s. FD 6.03 (1) (c), the person must submit evidence satisfactory to the board that the agent has completed the training requirements as provided in s. FD 6.05. Section FD 6.05 (1) provides that before an agent may sell or solicit the sale of a burial agreement funded by life insurance proceeds, he or she must complete an approved educational training program. It would be clearer to require the application to include the evidence of course

completion and to provide that an agent may not sell or solicit unless he or she has been registered by the board.

d. In s. FD 6.03 (3), the use of the word "may" is unclear. If an applicant has filed a complete application and has paid fees, should the word "may" be replaced by the word "shall" in order to require the board to issue a registration card?

e. In s. FD 6.04, it appears that the word "owner" should be replaced by the word "operator" in order to be consistent with the statutes and the remainder of the rule.

f. Section FD 6.05 (4) states that credit will be given to an agent if the program has been approved by the board and if the agent provides evidence of attendance satisfactory to the board. However, sub. (5) states that after completing any required training program, the agent "shall take and successfully pass a comprehensive examination administered by the program provider." What is the effect of failure to successfully pass a comprehensive examination? Is it intended that credit will be given if the person both submits proof of attendance and successful completion of a required training program? Or is it intended that in order to obtain approval as an educational training program that the program must provide for a comprehensive examination on the training program that is administered by the program provider and that credit for attendance will be given to an agent only after the person has completed both the attendance and the examination requirement? Also, in sub. (4), the phrase "under s. FD 6.06" should be inserted after the first occurrence of the word "board."

g. Section FD 6.07 is confusing. Under s. 445.125 (3m) (d), (e) and (f), Stats., the contents of burial agreements are specified. In addition, under s. 445.125 (3m) (g), Stats., the agent is required to disclose in a writing that is "clear and conspicuous" certain information to the applicant. The provisions in s. FD 6.07 combine in one document (the burial agreement) both the contents of the written burial agreement specified in s. 445.125 (3m) (d) to (f), Stats., and the disclosures that are required to be made in the separate writing by s. 445.125 (3m) (g), Stats.



State of Wisconsin \ DEPARTMENT OF REGULATION & LICENSING

Tommy G. Thompson
Governor

Marlene A. Cummings
Secretary

1400 E. WASHINGTON AVENUE
P.O. BOX 8935
MADISON, WISCONSIN 53708-8935
(608) 266-2112

April 23, 1997

Senator Gwendolynne S. Moore
Chair, Senate Committee on Economic Development,
Housing and Government Operations
State Capitol, Room 321 Northeast
Madison, WI 53702

Representative Clifford Otte
Chair, Assembly Committee on Consumer Affairs
State Capitol, Room 109 West
Madison, WI 53702

Dear Senator Moore and Representative Otte:

This letter is a request to make modifications to Clearinghouse Rule 96-183, a proposed rule-making order of the Funeral Directors Examining Board to create s. FD 6.10 relating to solicitation of burial agreements funded with the proceeds of a life insurance policy.

This request is made under s. 227.19 (4) (b) 2., Stats., in response to recommendations made by the Senate Committee on Economic Development, Housing and Government Operations, following a Senate hearing held on April 16, 1997.

The specific modifications to s. FD 6.10 are as follows:

FD 6.10 SOLICITATION OF BURIAL AGREEMENTS FUNDED WITH THE PROCEEDS OF A LIFE INSURANCE POLICY. (1) No funeral director, owner of a funeral establishment, or agent may initiate any telephone call using an automatic telephone dialing system or an artificial prerecorded voice for the purpose of selling or soliciting a burial agreement funded by the proceeds of a life insurance policy to any of the following.

- (a) The telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment.
- (b) Any residential or business telephone line without the prior express written consent of the party.

Regulatory Boards

Accounting; Architects, Landscape Architects, Professional Geologists, Professional Engineers, Designers and Land Surveyors; Auctioneer, Barbering and Cosmetology; Chiropractic; Dentistry; Dietitians; Funeral Directors; Hearing and Speech; Medical; Nursing; Nursing Home Administrator; Optometry; Pharmacy; Physical Therapists; Psychology; Real Estate; Real Estate Appraisers; Social Workers, Marriage and Family Therapists and Professional Counselors; and Veterinary.

April 23, 1997

Page 2

~~(c) The residential or business telephone line of a person or relative of a person whose death is imminent or appears to be imminent. The residential or business telephone of a person or relative of a person whose death is imminent or appears to be imminent.~~

(2) ~~An~~ A funeral director, owner of a funeral establishment, or an agent may initiate a telephone call by live voice for the purpose of selling or soliciting a burial agreement funded by with the proceeds of a life insurance policy only ~~between the hours of 8:00 a.m. to 6:00 p.m. central standard time~~ if all of the following apply:

(a) Written notice is sent by a funeral director, owner of a funeral establishment, or agent to the prospective customer at least 72 hours in advance of the call.

(b) Written notice shall advise the customer of all of the following:

1. The name of the funeral director, owner of a funeral establishment, or agent who will be calling, the name of the person or entity upon whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted.

2. That the call will only be made between the hours of 8:00 a.m. to 6:00 p.m. central standard time.

3. The specific reason for the call in no less than 12-point type.

4. That a prospective purchaser may call the person or entity upon whose behalf the call is being made to request that no call be made. This statement shall be in no less than 14-point, bold-faced type.

~~(3) Agents who sell or solicit the sale of burial agreements funded by the proceeds of life insurance as provided in sub. (2) shall do all of the following:~~

~~(a) Immediately provide the called party with the name of the agent, the name of the person or entity upon whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted.~~

~~(b) Have a written policy, available upon demand, for maintaining a do-not call list.~~

~~(c) Record the name and telephone number of persons who request placement on the do-not call list at the time the request is made. No further calls may be made to a person who has requested placement on the do-not call list.~~

April 23, 1997

Page 3

(3) A funeral director, owner of a funeral establishment, or agent who sells or solicits the sale of burial agreements funded by the proceeds of life insurance as in sub. (2) shall do all of the following:

(a) Immediately provide the called party with the name of the funeral director, owner of a funeral establishment or agent, the name of the person or entity upon whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted.

(b) Have a written policy, available upon demand, for maintaining a do-not-call list.

(c) Record the name and telephone number of persons who request placement on the do-not-call list at the time the request is made. No further calls may be made to a person who has requested placement on the do-not-call list.

(4) A funeral director, owner of a funeral establishment, or agent may by live voice contact:

(a) A prospective purchaser of a burial agreement funded by the proceeds of a life insurance policy or the prospective purchaser's authorized representative, in a hospital, health care facility, elderly home or similar establishment, only if the prospective purchaser or the prospective purchaser's authorized representative requests the contact.

(b) A prospective purchaser of a burial agreement funded by the proceeds of a life insurance policy whose death is imminent or appears to be imminent only if the prospective purchaser or the prospective purchaser's authorized representative requests the contact.

(5) Unless the board substantially modifies this section, no funeral director, owner of a funeral establishment, or agent may initiate on or after January 1, 1999, any telephone call by live-voice or by using an automatic telephone dialing system or an artificial prerecorded voice for the purpose of selling or soliciting a burial agreement funded by the proceeds of a life insurance policy to any of the following:

(a) The telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment.

(b) Any residential or business telephone line without the prior express written consent of the party.

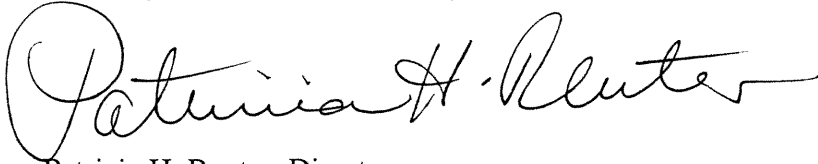
(c) The residential or business telephone line of a person or relative of a person whose death is imminent or appears to be imminent.

April 23, 1997

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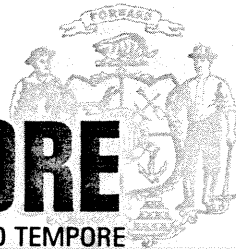
I have been authorized by the chair of the Funeral Directors Examining Board to request these modifications.

Sincerely,

A handwritten signature in cursive script that reads "Patricia H. Reuter". The signature is written in black ink and is positioned above the typed name.

Patricia H. Reuter, Director
Bureau of Business and Design Professions

State Senator
GWENDOLYNNE MOORE
PRESIDENT PRO TEMPORE



District Office:
210 W. Capitol Drive, Milwaukee, WI 53212
(414) 229-0100
Capitol Office:
P. O. Box 7882, Madison, WI 53707-7882
Phone: (608) 266-5810 Fax: (608) 267-2353
Toll-free Legislative Hotline: 1-800-362-9472
E-Mail:
sen.moore@legis.state.wi.us

April 25, 1997

Funeral Directors Examining Board
Wisconsin Dept of Regulation & Licensing
1400 E Washington Avenue
Inter-departmental

ATTENTION: Patricia H. Reuter

Dear Members of the Board:

By polling members of the Senate Committee on Economic Development, Housing and Government Operations on April 24, 1997, the committee passed the following motion:

THAT THE Funeral Directors Examining Board agree to a modification of proposed s. FD 6.10 of Clearinghouse Rule 96-183 as follows:

FD 6.10 SOLICITATION OF BURIAL AGREEMENTS FUNDED WITH THE PROCEEDS OF A LIFE INSURANCE POLICY. (1) No funeral director, owner of a funeral establishment, or agent may initiate any telephone call by live voice or by using an automatic telephone dialing system or an artificial or prerecorded voice for the purpose of selling or soliciting a burial agreement funded by the proceeds of a life insurance policy to any of the following:

- (a) The telephone line of any guest room or patient room of a hospital, health care facility, elderly home or similar establishment;
- (b) Any residential or business telephone line without the prior express written consent of the called party; or
- (c) The telephone line of a relative of a person whose death is imminent or appears to be imminent.

(2) This section does not apply after December 31, 1998.

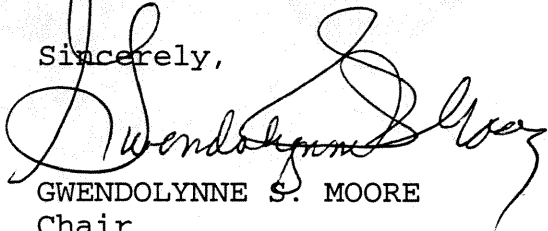
Page 2

If the Board does not notify the Senate Committee on Economic Development, Housing and Government Operations of its agreement to make the above or substantially identical modification by 4:00 pm on Tuesday, April 29, 1997, the Committee objects to Clearinghouse Rule 96-183 in its entirety for the reasons specified in s.227.19 (4) (d)6., Stats.

The motion was approved on a vote of Ayes 3, Noes 2.

If you have any questions regarding this motion, please feel free to contact me at my office.

Sincerely,



GWENDOLYNNE S. MOORE
Chair

Senate Committee on Economic Development, Housing
and Government Operations

cc: Secretary Marlene Cummings
Members, Senate Committee on Economic Development
Housing and Government Operations
✓ Representative Clifford Otte, Chair, Assembly
Committee on Consumer Affairs



State of Wisconsin \ DEPARTMENT OF REGULATION & LICENSING

Tommy G. Thompson
Governor

Marlene A. Cummings
Secretary

1400 E. WASHINGTON AVENUE
P.O. BOX 8935
MADISON, WISCONSIN 53708-8935
(608) 266-2112

April 29, 1997

The Honorable Clifford Otte, Chair
Assembly Committee on Consumer Affairs
Room 109 West, State Capitol
Madison, WI 53702

Dear Representative Otte:

This letter is in response to the Committee's request of April 24, 1997, asking the Funeral Directors Examining Board to agree to consider modification of proposed Clearinghouse Rule 96-183, pertaining to solicitation of burial agreements funded with the proceeds of a life insurance policy.

The Funeral Directors Examining Board met, by teleconference, on Monday, April 28, 1997, and passed the following motion:

The Funeral Directors Examining Board thanks the Assembly committee for their work and agrees to consider further modification of Clearinghouse Rule 96-183. The motion carried, 5-ayes; 1-nay.

If you have any questions regarding this motion, you may reach me directly at 266-3423.

Sincerely,

PATRICIA H. REUTER, Director
Bureau of Business and Design Professions
Funeral Directors Examining Board

cc: Members, Assembly Committee on Consumer Affairs
Senator Gwendolynne Moore, Chair, Senate Committee on Economic Development
Housing and Government Operations
Members, Funeral Directors Examining Board
Secretary Marlene Cummings, Department of Regulation and
Licensing

Regulatory Boards

Accounting; Architects, Landscape Architects, Professional Geologists, Professional Engineers, Designers and Land Surveyors; Auctioneer; Barbering and Cosmetology; Chiropractic; Dentistry; Dietitians; Funeral Directors; Hearing and Speech; Medical; Nursing; Nursing Home Administrator; Optometry; Pharmacy; Physical Therapists; Psychology; Real Estate; Real Estate Appraisers; Social Workers, Marriage and Family Therapists and Professional Counselors; and Veterinary.

Committed to Equal Opportunity in Employment and Licensing



State of Wisconsin \ DEPARTMENT OF REGULATION & LICENSING

Tommy G. Thompson
Governor

Marlene A. Cummings
Secretary

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April 29, 1997

The Honorable Gwendolynne S. Moore, Chair
Senate Committee on Economic Development, Housing
and Government Operations
Room 321 Northeast, State Capitol
Madison, WI 53702

Dear Senator Moore:

This letter is in response to the Committee's request of April 25, 1997, asking the Funeral Directors Examining Board to agree to a modification of proposed s. FD 6.10 of Clearinghouse Rule 96-183, pertaining to solicitation of burial agreements funded with the proceeds of a life insurance policy.

The Funeral Directors Examining Board met, by teleconference, on Monday, April 28, 1997, and passed the following motion:

The Funeral Directors Examining Board does not agree to the modification of proposed s. FD 6.10 of Clearinghouse Rule 96-183 as found in the letter dated April 25, 1997, from State Senator Gwendolynne Moore. The motion carried, 4-ayes; 2-nays.

If you have any questions regarding this motion, you may reach me directly at 266-3423.

Sincerely,

PATRICIA H. REUTER, Director
Bureau of Business and Design Professions
Funeral Directors Examining Board

cc: Members, Senate Committee on Economic Development
Housing and Government Operations
Representative Clifford Otte, Chair, Assembly Committee on
Consumer Affairs
Members, Funeral Directors Examining Board
Secretary Marlene Cummings, Department of Regulation and
Licensing

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State of Wisconsin \ DEPARTMENT OF REGULATION & LICENSING

Tommy G. Thompson
Governor

Marlene A. Cummings
Secretary

1400 E. WASHINGTON AVENUE
P.O. BOX 8935
MADISON, WISCONSIN 53708-8935
(608) 266-2112

April 29, 1997

MR BRUCE CARLSON
CARLSON FUNERAL SERVICE INC
134 N STEVENS ST
RHINELANDER WI 54501

Dear Bruce:

This letter is to provide the position of the department on Clearinghouse Rule 96-183, a proposed rule of the Funeral Directors Examining Board.

The department has considered the various opinions and positions that have been expressed on the issues addressed in the proposal. After evaluating the alternative approaches discussed, the department supports the rule in the form originally submitted to the legislative standing committees, and as recently supported through the action taken by the Assembly Committee on Consumer Affairs.

In supporting the proposed rule, the department is keenly aware of the substantial time and effort expended by the members of the Funeral Directors Examining Board in diligently and conscientiously struggling to balance the public interest with the potential impact upon business and the profession. Their dedication and hard work in attempting to fashion a rule reflecting the best interests of all the citizens of this state is symbolic of the highest tradition of this state's citizen board regulatory system. In my opinion, that effort has resulted in a proposed rule that strikes the appropriate balance.

The department believes, however, that three changes to the board's original submission should be considered which we believe, if adopted, would improve its effectiveness. These suggestions are as follows:

1. The solicitation of a relative of a person whose death is imminent or appears to be imminent should be prohibited, as recommended by the Senate Committee on Economic Development, Housing and Government Operations.
2. The title of the rule should be amended to read:

**SOLICITATION OF PROSPECTIVE PURCHASERS OF BURIAL
AGREEMENTS FUNDED WITH THE PROCEEDS OF A LIFE INSURANCE
POLICY.**

Regulatory Boards

Accounting; Architects, Landscape Architects, Professional Geologists, Professional Engineers, Designers and Land Surveyors; Auctioneer; Barbering and Cosmetology; Chiropractic; Dentistry; Dietitians; Funeral Directors; Hearing and Speech; Medical; Nursing; Nursing Home Administrator; Optometry; Pharmacy; Physical Therapists; Psychology; Real Estate; Real Estate Appraisers; Social Workers, Marriage and Family Therapists and Professional Counselors; and Veterinary.

This title would be consistent with the manner in which the board's rule-making authority is expressed in its statute, and makes it clear that it relates to the solicitation of purchasers of the plans, rather than to the plans themselves.

3. The limitation of hours to between "8:00 a.m. to 6:00 p.m. central standard time" should be altered to provide for contact during that period currently permitted under federal law. This will promote uniformity of approach to the solicitation issue on both the federal and state level, as well as lessen the likelihood for inadvertent violation or confusion respecting the hours during which such contact is permitted.

In closing, I again want to strongly commend the members of the Funeral Directors Examining Board for their efforts during the rule-making process. I believe that the challenge presented in the difficulty of balancing the many important interests involved in this issue, has been more than successfully met to the benefit of the citizens of this state by the conscientious efforts of the members of the Funeral Directors Examining Board.

Thank you for your consideration of this correspondence.

With respect,



Marlene A. Cummings
Secretary

cc: Senate Committee on Economic Development, Housing and Government Operations
Assembly Committee on Consumer Affairs

r:\fdeb

OTHER LOCATIONS:

MILWAUKEE

5050 W. Vliet Street

MEMONONEE FALLS

Menomonee & Town Hall Road

SUSSEX

Highways J & VV (Main Street)

WHITEFISH BAY

106 W. Silver Spring Drive

OCONOMOWOC

121 S. Cross Street

MEQUON

10280 N. Port Washington Road

MUKWONAGO

315 Main Street

Schmidt & Bartelt

A. A. SCHMIDT & SONS • GUARDLALABENE & AMATO • GERBER • VAN VALIN
HEIDEN & LANGE • EUGENE WEIAND • NOTBOHM-KREUTZMANN ASSOCIATES

10121 West North Avenue • Wauwatosa, Wisconsin 53226-2468



Funeral Service

Phone 774-5010

April 8, 1997

Assembly Committee on Consumer Affairs
PO Box 8952
Madison, WI 53707

Testimony on Funeral Directors Examining Board Clearinghouse Rule 96-183
(For hearing April 24, 1997)

Honorable Chair Person, Vice Chair Person and Committee Members:

By way of introduction; I am Charles J. Peters, president of Schmidt & Bartelt, Inc., a Funeral Service Company with funeral homes in; *Milwaukee, Wauwatosa, Menomonee Falls, Sussex, Oconomowoc, Mukwonago, Whitefish Bay and Mequon.*

Our family and employee owned business has been providing quality funeral services to the consumer for 110 years. The Schmidt family established their first funeral home in Menomonee Falls back in 1887. Today we are proud to be distinguished as the oldest continuously owned and operated business (of any kind) in Menomonee Falls. Over the years our company has partnered with other fine family owned funeral homes to become the largest provider of funeral services in Wisconsin.

We have a history of taking a pro-active role in consumer protection as it relates to funeral service in this State. The late Wilmer G. Schmidt served as a member of the Examining Board for many years. The results of his efforts, as well as, the efforts of many other concerned funeral professionals of his time, are largely responsible for the regulations we adhere to today. The succession of our family and employee ownership has continued to provide funeral service professionals dedicated to maintaining high levels of integrity and industry standards in our dealings with the consumer.

We are currently active members of the National Funeral Directors Assoc., the Wisconsin Funeral Directors Assoc., the Funeral Service Alliance of WI and the National Selected Morticians. I presently serve on an ad hoc Ethics Committee of the Wisconsin Funeral Directors Association.



KNOWN FOR SERVICE SINCE 1887



I bore you with all of this, to hopefully lend some degree of credibility to my following remarks:

I am speaking to you today in favor of the Examining Boards Rule #96-183.

In doing so, I as a member of WFDA would first like to apologize to the private members of the Examining Board.

The Wisconsin Funeral Directors Association has unfortunately seen necessary to openly impugn the character of the private members of the Examining Board by inferring that they *sold out to their own business interests at the expense of the consumer.*

I commend the private member of the Board for their insight in their decision to include a provision for controlled telephone solicitation. It took a lot of courage on their part to see that the consumer will ultimately be better served by a none restricted competitive climate, which will allow the consumer to make totally informed choices in selecting funeral goods and services from the pre-need marketplace.

By the phrase; none restrictive competitive climate, I mean to say is that, without the ability of funeral homes to use the telephone to solicit their pre-need programs, other providers of funeral merchandise, such as cemeteries and providers of final expense policies would be, as they are at the present time, at a distinct competitive advantage.

Allowing for controlled telephone solicitation will not necessarily result in wholesale abuses to the consumer. Good and honorable funeral directors will not automatically become unscrupulous in their business practices. I firmly believe that the vast majority of funeral professionals in this State can be trusted to continue to conduct their business ethically and responsibly.

Respectfully Submitted,



Charles J. Peters,

President



Tommy G. Thompson
Governor

Marlene A. Cummings
Secretary

1400 E. WASHINGTON AVENUE
P.O. BOX 8935
MADISON, WISCONSIN 53708-8935
(608) 266-2112

TESTIMONY ON ASSEMBLY CLEARINGHOUSE RULE 96-183

before the

Assembly Committee on Consumer Affairs

Thursday, April 24, 1997

9:00 A.M.

424 NE State Capitol

Good morning Chairperson Otte and members of the Committee. My name is Dianne Pratt and I am one of the two public members of the Funeral Directors Examining Board. I have been on the Board for a little over five years. During this whole period the Board has been preoccupied with the pre-need issues and the control of this aspect of funeral services.

It is my understanding that the primary role of the Board is to protect consumers. On the issue of preneed I cannot see how we have offered any form of protection if we throw the public to the wolves by way of the telephone. From the beginning, we the public members felt telephone solicitation of burial agreements funded with the proceeds of a life insurance policy should not be allowed. This is an issue that has somewhat divided the Board. The public hearings were all centered on the telephone solicitation question. The professional members wanted what they called a level playing field which would allow them to compete with the cemeteries who also offer funeral related goods and services. While the no solicitation clause might hold the funeral directors to a higher standard it could also serve as a guide post for other boards who are visiting the solicitation issue. On any issue it takes someone to lead and in the interest of the public I hope the Funeral Directors Examining Board can rise to the occasion.

Regulatory Boards

Accounting; Architects, Landscape Architects, Professional Geologists, Professional Engineers, Designers and Land Surveyors; Auctioneer; Barbering and Cosmetology; Chiropractic; Dentistry; Dietitians; Funeral Directors; Hearing and Speech; Medical; Nursing; Nursing Home Administrator; Optometry; Pharmacy; Physical Therapists; Psychology; Real Estate; Real Estate Appraisers; Social Workers, Marriage and Family Therapists and Professional Counselors; and Veterinary.

When the professional members passed the rule as currently worded they suggested the Board revisit the solicitation issue in two years. Maybe the professional members have more confidence in their peers than I do.

Long distance telephone service is a perfect example of how susceptible the public is to solicitation over the telephone. For a while at my house I never knew when I picked up the telephone to make a long distance call who my long distance carrier would be. Between my husband and my children it seemed as if we were switching biweekly. Studies have shown the elderly particularly are at risk to purchase goods and services solicited over the telephone.

There is a saying, there is nothing certain in life but death and taxes. And if you live you must die. Currently death is something you can only try once so you have to get it right the first time. It is not like long distance service where you just switch to a different carrier.

In the interest of the consumer this administrative rule should be as strong as possible. Everyone knows it is easier to open a gate than close one.

Thank you for allowing me to present written testimony.



Tommy G. Thompson
Governor

Marlene A. Cummings
Secretary

1400 E. WASHINGTON AVENUE
P.O. BOX 8935
MADISON, WISCONSIN 53708-8935
(608) 266-2112

**TESTIMONY ON ASSEMBLY CLEARINGHOUSE RULE 96-183
before
Assembly Committee on Consumer Affairs
Thursday, April 24, 1997
9:00 A.M.
424 NE State Capitol**

Good morning Chairperson Otte and members of the Committee. My name is Bruce Carlson and I am the Chairman of the Funeral Directors Examining Board.

Last year Wisconsin passed legislation allowing the solicitation and sale of insurance products to fund funeral services and merchandise. This legislation not only allowed the sale of these products but allowed for third party sellers of intermediaries to not only solicit the sale of these products but also allowed these individuals to essentially make funeral arrangements.

A great majority of the members of the Examining Board felt this was not in the best interest of the consumers in the State of Wisconsin. We expressed these feelings during a public forum and public hearing and also declined in signing on when the bill was passed. However, the bill passed with some instructions to the Examining Board. This included allowing the Board to promulgate rules governing the specifics of the bill, such as training requirements, minimum standards and disclosures. We were given a very short period of time to accomplish that and yet still did.

In regard to these rules, the legislation went on to say and I quote, "the examining board may promulgate rules establishing standards for marketing practices for burial agreements, including standards for telephone solicitation to prospective purchasers. The rules promulgated under this subdivision may prohibit a method of telephone solicitation if the examining board determines the prohibition is necessary to protect the public."

Regulatory Boards

Accounting; Architects, Landscape Architects, Professional Geologists, Professional Engineers, Designers and Land Surveyors; Auctioneer; Barbering and Cosmetology; Chiropractic; Dentistry; Dietitians; Funeral Directors; Hearing and Speech; Medical; Nursing; Nursing Home Administrator; Optometry; Pharmacy; Physical Therapists; Psychology; Real Estate; Real Estate Appraisers; Social Workers, Marriage and Family Therapists and Professional Counselors; and Veterinary.

We on the Board realize that our sole purpose is the protection of the consumers within the State of Wisconsin, plain and simple. The issue of telephone solicitation was an issue that was very difficult to come to a clear cut decision on. There was no clear right or wrong answer in regard to this.

The issue has two basic and legitimate arguments to be considered and was heavily debated by the Board on many different occasions. This discussion also had a public forum and public hearing as a part of that. The two public members of the Board felt that it was necessary to totally ban telephone solicitation in order to protect the public from unsolicited and unwanted phone calls. They had a very strong argument and voted their convictions.

The second argument was to protect the public from making an unwise purchase due to the public's lack of comparative information. It was brought to the Board's attention that some non-funeral home entities, which can now legally solicit by telephone are currently selling funeral merchandise and services. Might I add, at a considerably higher cost than they would be charged by a funeral home licensed by the State of Wisconsin. Furthermore, these other entities are not governed by the same regulations, either state or federal, that our present funeral service licensees are. It is even unclear if they are bound by the Federal Trade Commission funeral rule, the single most important protection the consumer has within the funeral industry.

Official opinions of the Federal Trade Commission to state agencies and legislators requesting guidance on the issue of pre-need carry a common thread among all of the FTC letters. I quote, "effective communication of truthful commercial information by professions to potential clients is critical to the functioning of competitive markets. Restrictions of solicitation may drastically reduce the information that is available to consumers in making purchasing decisions. Such restrictions on the flow of information may make it more difficult for consumers to learn about the various prices, levels, and types of services that are available, as well as which firms are stressing the price factor. When consumers are unable to compare prices and other options, competitors are isolated from competition and their incentive to keep prices down and to offer alternatives desired by consumers is reduced.

The four funeral director members of the Examining Board voted for telephone solicitation to allow funeral homes to supply the public with competitive information and possibly save the public from unwise and costly decisions. It was the position of the Board of funeral directors, after all the information was disseminated, that this argument far outweighed the argument of inconvenient phone calls.

Upon notification of the Senate hearing regarding this issue, our Board Director, Pat Reuter, was asked by Senator Moore to poll the members to see if they still stood by their convictions. They do. However, there is consensus by the entire Board that there is a bigger picture involved here. Even though we voted to allow this form of solicitation we feel as a group that it is only a stop gap protection until the big picture can be dealt with.

We feel that ideally there should be no telephone solicitation allowed by any party, licensed or not, for the purpose of selling funeral services, merchandise or funding mechanisms for these items are disgusting and should be halted. Therefore, the Board is willing to change our vote in regard to telephone solicitation if this Committee will propose legislation to completely ban telephone solicitation by anyone for the purpose of selling funeral services, merchandise and funding mechanisms for the eventual purchase of these items.

The Federal Trade Commission letters also state and may I quote, "Regardless of the consumer protective approach taken, we recommend that cemeteries and funeral homes be subject to the same regulatory standards with respect to sales of pre-need merchandise, including caskets and vaults.

Applying differing regulatory standards to competing sellers of the same goods or services can, in some circumstances, have anti-competitive consequences. When different regulatory standards impose different costs on separate categories of competing sellers, one group may suffer a competitive disadvantage. Depending upon the disparity in regulatory costs, the ultimate effect of such deferential treatment may be to deny consumers the benefits of otherwise active competition between the affected groups, such as lower process and more purchasing options".

This form of parity legislation would further protect the consumer and our Examining Board would like to go on record to suggest to this Committee that you consider such legislation for the best interest of the consumers of the State of Wisconsin. To say that the sale of pre-need whether it be services and merchandise or simply funding mechanisms for those items by whomever, is not directly related is preposterous. They are one in the same and should be treated that way.

This whole process has been very difficult for the Board, both personally and professionally. We have been accused of sacrificing the interests of the insurance companies. That has never and will never be the case with the Funeral Directors Examining Board. We all respect the difficulty of your position and assure you that we will always make decisions for the best interest of the consumers of the State of Wisconsin based on the merits of information proceeded to us. Thank you for your time and if there are any questions I would be happy to discuss them at any of your conveniences.



CLIFFORD OTTE

WISCONSIN STATE REPRESENTATIVE
27TH ASSEMBLY DISTRICT

April 4, 1997

Secretary Marlene Cummings
Department of Regulation & Licensing
1400 East Washington Avenue
Madison, WI 53703


Dear Secretary Cummings:

I am writing to inform you that pursuant to s. 227.19 of the *Wisconsin Statutes*, I am, today, publishing notice of a public hearing on **Clearinghouse Rule 96-183**, relating to the registration and regulation of agents authorized to represent funeral directors or funeral establishments in the sale or solicitation of burial agreements that are funded with proceeds of a life insurance policy. This meeting of the Committee on Consumer Affairs will convene at 9:00 a.m. on Thursday, April 24, 1997. I would appreciate having a representative of your department at the hearing to describe the rule and respond to possible questions.

Pursuant to s. 227.19(4)(b) of the *Wisconsin Statutes*, this notification extends the committee's review period for CR 96-183 for 30 days from the date of this letter.

A copy of the hearing notice is enclosed. If you have any questions regarding this matter, please feel free to contact my office.

Sincerely yours,


CLIFFORD OTTE
Chairman
Assembly Committee on Consumer Affairs

CO:day

Enclosure



CLIFFORD OTTE

WISCONSIN STATE REPRESENTATIVE
27TH ASSEMBLY DISTRICT

April 22, 1997

Mr. Novak:

As a follow up to our conversation this morning, here is a copy of the proposed change to FD 6.10 that the Examining Board is considering this afternoon.

If you have any comments or questions, please let me know.

DAN YOUNG

They now support because they thought the original rule prohibited all similar solicitation.

South Chapel
1535 South 12th Street
Sheboygan, WI 53081
414-452-7711
414-451-2021 Fax

RAMM-ZIEGLER
NOVAK-RETTKE



North Chapel
726 Michigan Avenue
Sheboygan, WI 53081
414-457-3883
414-451-2026 Fax

February 24, 1997

TO: Rep. Cliff Otte

RE: Consumer Protection issue in Chapter FD 6

Dear Rep. Otte,

Since I was not able to make personal contact with you on Saturday, I felt compelled to share with you the situation at hand regarding the recent position that the Funeral Directors Examining Board took at their recent meeting on February 12, 1997. I represent the Lakeshore Funeral Directors Association on the Board of Directors of Wisconsin Funeral Directors Association.

The Funeral Directors Examining Board is given explicit authority to adopt rules banning certain forms of telephone solicitation of insurance-funded burial agreements that the board feels is contrary to the public interest. In its original rule proposal in Chapter FD6, the board proposed to ban telephone solicitation as an initial form of contact with the public. After obtaining written permission from consumers, funeral directors or their authorized agents would then be able to solicit the sale of insurance-funded burial agreements over the telephone.

At its meeting on February 12, the Funeral Directors Examining Board reversed its position on this important consumer protection issue. The four funeral director members on the board voted to allow telephone solicitation as an initial form of contact with consumers. The two public members continued to support the restriction.

Our association supports banning all telephone solicitation as an initial form of contact with the public. Many consumers in the general senior citizen population make their own funeral arrangements in advance. This group is the most vulnerable with the general population of senior citizens. AARP has found them to be the most trusting, the least knowledgeable and the least likely to complain. This group is the primary target of telemarketers of burial insurance. In addition to their vulnerability, the loss of privacy, the inevitable intrusion and interruptions in their lives from numerous unsolicited calls weighs the balance of public interest in favor of the greater good that is served by restricting telephone solicitation as the initial form of contact. The purpose of initial cold calls to consumers is not to provide detailed product information but to generate leads for the sales force.

Product and service information on burial insurance plans may be provided freely and more thoroughly through other means of communication. Detailed information may always be mailed to consumers, for instance. At a recent meeting of WFDA Board of Directors, it was unanimously agreed upon that the utmost goal of these rules were to protect the consumer. I ask that you and your committee consider holding a hearing on the Funeral Directors Examining Board proposed rule change for the simple reason of consumer protection.

Thank you for your consideration regarding this matter.

Sincerely,

G. Charles Rettke

REQUEST FOR MODIFICATIONS

TO REQUEST a modification of proposed s. FD 6.10 as follows:

FD 6.10 SOLICITATION OF BURIAL AGREEMENTS FUNDED WITH THE PROCEEDS OF A LIFE INSURANCE POLICY.

No funeral director, owner of a funeral establishment, or agent may initiate any telephone call by live voice or by using an automatic telephone dialing system or an artificial or prerecorded voice for the purpose of selling or soliciting a burial agreement funded by the proceeds of a life insurance policy to any of the following:

- (1) The telephone line of any guest room or patient room of a hospital, health care facility, elderly home or similar establishment;
- (2) Any residential or business telephone line without the prior express written consent of the called party;
- (3) The telephone line of a relative of a person whose death is imminent or appears to be imminent.

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To	DAN Young	From	PAT LEWIS
Co.		Co.	
Dept.		Phone #	
Fax #	262-3627	Fax #	