



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Division of Marketing Practices

Laurie Meehan
Attorney

Direct Dial
202-326-3755

October 31, 1997

Lisa Carlson
Executive Director
Funeral & Memorial Societies of America, Inc.
P.O. Box 10
Hinesburg, Vermont 05461

Dear Ms. Carlson:

Thank you for your letter of October 24, 1997. I apologize for the fact that you received no response to your July 14, 1997 correspondence; however, this correspondence was never received in this office. I regret any inconvenience that this may have caused. Staff of the FTC is concerned about funeral industry practices that may be unfair or deceptive, and we appreciate your efforts to bring such potentially unlawful practices to our attention.

The practices you describe surrounding the "required identification viewing" and the additional storage charges in the event a consumer elects not to identify a body are certainly disturbing. Staff is especially concerned that in the context of "required identification viewing," funeral providers may be misrepresenting that there are legal requirements that engender delay, the necessity to store remains for some period of time, and consequently, additional charges. Staff is unaware of any state law requirement that demands an identification, forms and other paperwork, or, where that identification is not performed, a waiting period of several days, prior to cremation. If there are no state law requirements regarding forms, paperwork or identification of the body for cremation, and a funeral provider is representing that these laws exist, in staff's view, such misrepresentations would likely affect the conduct of a consumer acting reasonably under the circumstances with respect to a funeral provider's offered goods and services. Therefore, such practices would likely be deceptive, in violation of § 5 of the FTC Act. Moreover, in staff's view, a provider that makes such misrepresentations would also be in violation of Section 453.3 (d)(1) of the Funeral Rule, which states that "it is a deceptive act or

practice for funeral providers to represent that federal, state, or local laws, or particular cemeteries or crematories, require the purchase of any funeral goods or funeral services when such is not the case.”

Further, apart from the scenarios described above, you alleged more generally that some consumers who opt for direct cremation are being charged a fee for a “required identification viewing.” Such a fee, if it is non-declinable, may also violate the Funeral Rule. The only permissible non-declinable charges are the basic services fee and, in some instances, funeral goods and services that are required to be purchased by law. Thus, if a funeral provider charges a consumer for “required identification viewing” of the deceased, and it is neither part of the basic services fee nor required by law, the unavoidable charge would likely be in violation of Section 453.4 (b)(1) of the Funeral Rule. I should note that staff at the FTC is unaware of any state law requiring that an “identification” be purchased as a service or good from a funeral home.

In your letter, you also request that the FTC endorse several statements which you state were prompted by recent consumer experiences that have been reported to your office. First, I interpret your request to be a solicitation for a staff opinion as to whether the several statements in your letter comport with the FTC’s Funeral Rule. Accordingly, for purposes of clarity, the following reflects a staff opinion regarding whether the statements you proposed in your July 14, 1997 letter comport with the Funeral Rule and accurately reflect the scope of the Rule.

The first statement is that “No consumer may be charged for identifying a deceased.” As discussed above, if a charge for identification of the deceased is non-declinable, and not within the permissible non-declinable charges, it is likely a violation of the Funeral Rule. Accordingly, under those circumstances, a consumer should not be charged for identifying a deceased. However, it is possible that funeral providers might offer consumers an opportunity to view a deceased as a service or good, perhaps akin to the use of facilities and staff for viewing or other services, prior to cremation. In that scenario, it is possible that a funeral provider may offer an optional use of facilities and staff for viewing a deceased with a charge.

Second, you propose that the FTC endorse the statement that

No consumer may be forced to view a deceased body for “routine” identification purposes. If there is any question as to the identity of the deceased, it is the responsibility of the funeral home to ascertain such before performing services of any kind for which there will be a charge, including removal.

In staff’s view, the issue of identification of a deceased prior to final disposition of the remains is probably appropriately addressed by state or local regulatory law enforcement authority. In the absence of material misrepresentations, the provisions of the Funeral Rule simply do not address the policies, practices and methods that a funeral provider uses to identify remains. The purpose of the Funeral Rule, in part, is to make price information readily available to consumers to enable them to do comparative shopping for funeral goods and services. In addition, disclosures required to appear on the general price list inform consumers that they have the right to purchase

only those goods and services that they specifically select. The Rule seeks to promote informed decision-making so that consumers are able to make funeral arrangements that are within their means. Further, the Funeral Rule addresses other unfair or deceptive practices in the context of purchasing funeral goods and services. It has not yet been established that the practices or policies of funeral homes, with respect to requiring an identification, are either unfair or deceptive. I should note, though, that additional facts and circumstances may prove that practices regarding identification are unfair or deceptive and, thus, in violation of the Funeral Rule and the FTC Act.

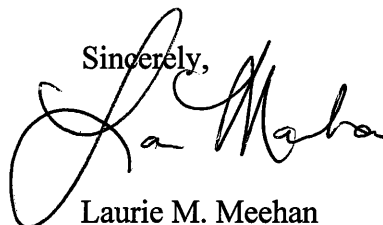
Third, you request that the FTC endorse the statement that

Next-of-kin or other designated person(s) must be permitted private time with the body of a deceased in order to say their “goodbyes” if they wish. A mortuary may not require embalming for this purpose. A mortuary may charge a per-hour or per-day fee for the use of a room in its facilities for this but may not limit the amount of time for private visitation.

As with the second statement, above, that you proposed, the issue of “private time” with the deceased is simply outside the scope of the Funeral Rule. Again, though, I should note that if the circumstances surrounding a funeral home’s practices with respect to allowing or not allowing “private time” with the deceased amounted to an unfair or deceptive practice, such practices would likely violate the Funeral Rule or the FTC Act. Without additional information, however, and within the confines of the Funeral Rule, staff at the FTC are unable to endorse the aforementioned statement.

Finally, please be advised that the views expressed in this letter are those of the FTC staff. They have not been reviewed, approved or adopted by the Commission, and they are not binding upon the Commission. However, they do reflect the opinions of those staff members charged with enforcement of the Funeral Rule.

I hope that you will find the above information helpful. We appreciate your interest in this matter. Please let us know whenever we can be of assistance.

Sincerely,

Laurie M. Meehan



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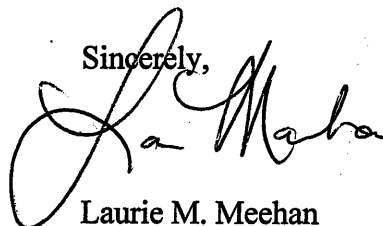
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A handwritten signature in cursive script, appearing to read "Laurie Meehan".

Laurie M. Meehan