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RE: Follow-up to Meeting of the Department of Consumer Affairs and the Metropolitan Funeral Directors Association

Dear [Redacted] and [Redacted]:

Thank you for your letter summarizing the issues and questions raised during the Department of Consumer Affairs' ("the Department") meeting with the Metropolitan Funeral Directors Association ("MetFDA") on May 10, 2012. This letter is in response to those questions and issues.

I. Casket Manufacturer Model Numbers

The MetFDA again asks for clarification of the language in Section 20-731 of the Administrative Code of the City of New York ("the Code") which provides:

Any provider of funeral services who offers a casket for sale, or an outer interment receptacle for sale in a selection room, shall prominently display the actual retail price on each casket or outer interment receptacle, in at least one-half inch numbers, as well as composition *and model number* of such casket or outer interment receptacle (emphasis added).

Specifically, the MetFDA maintains that manufacturers do not provide model numbers but provide model names. The MetFDA asks whether labeling by name comports with the statute. As you know, the Department has asked the MetFDA to provide documentation of industry practice to enable us to assess an industry wide course of action consistent with both widespread practice and the statute's goal of arming consumers with information for comparison shopping. The single document provided to us is insufficient to demonstrate industry practice warranting the Department's waiving of the requirement for providers to disclose casket numbers or for issuance of an interpretative rule change at this juncture.



Nonetheless, we agree with the MetFDA’s position that the Department should only require the display of a casket manufacturer’s model number if such model number in fact exists.” Therefore, going forward, on a case by case basis, if a provider to whom a violation was issued provides us with sufficient documentation from a casket manufacturer that the manufacturer does not assign model numbers to its caskets, and the provider has proof that it is displaying the model *name* of the casket in order to provide consumers with a basis for comparison shopping, we will withdraw the violation. We believe this is a reasonable approach given the concerns raised and the absence of proof of industry wide practice.

II. Placement of Casket Display Price Card

You have asked where the price of the casket may be displayed when a funeral service provider displays only a portion of the casket (a “partial cut” display). Although §20-731(a) of the Code requires that the price of the casket be displayed “on each casket,” the Department agrees with the MetFDA’s position that the funeral service provider can comply with Section 20-731(a) by displaying the price of the casket on the wall directly adjacent to the partial cut display, rather than on the partial cut display itself. The price must be displayed “prominently,” there must be separate posted prices for each separately displayed partial cut display, and the numbers must still comply with the statute’s size requirement (one-half inch).

You have also asked whether Section 20-731(a) of the Code prohibits the display of the price card inside an open casket. The answer is yes. As noted above, Section 20-731(a) requires that the price be displayed “*on each casket*” (emphasis added). Moreover, §5-161 of Title 6 of the Rules of the City of New York (“the Rules”) states that “[t]he retail price...must be clearly visible regardless of whether such casket or receptacle is open or closed.” The Department’s position is that price cards placed on the inside of an open casket do not comply with the requirements of Section 20-731(a) of the Code and Section 5-161 of the Rules because they would not be visible if the casket were closed.

III. Issuance of Violations to Multiple Entities

You state in your letter that “[i]t is the position of the MetFDA that the [Department’s] practice of issuing duplicate violations to a single owner for every entity registered by him or her without any regard to whether the entity actually provides funeral services is inconsistent with the regulations.”

As a general rule, the Department will issue separate violations to each entity that appears to be doing business at a single location, regardless of whether the entities share common ownership. Indicia that an entity is doing business at a particular location might include a sign at the premises with the entity’s name; brochures or other materials, including the General Price List, that contain the entity’s name; and/or a statement by an employee that the entity does business at that location.

The Department’s practice is based on the definitions set forth in the law entitled “Information With Respect to Funeral Costs” (§20-730, et. seq. of the Code). §20-730(m) of the Code defines a “provider of funeral services” as any “person, partnership or corporation, or any employee or agent



thereof, engaged in the business of selling or *offering for sale*, directly to the public, funeral services or funeral merchandise; of preparing deceased human bodies for burial, cremation or other final disposition, or of conducting or arranging funerals” (emphasis added). §20-730(k) defines “[o]ffered for sale” to mean “making available for purchase or suggesting availability of merchandise or services for purchase by use of any advertising or promotional materials, including brochures, handbills, or calendars, or by the displaying of merchandise, or verbal or written expressions, direct or indirect, of a willingness to furnish services or merchandise to the public for a retail price.” These definitions make clear that any entity that is in any way holding itself out as providing services is a “provider of funeral services” and must comply with all of the applicable laws and rules.

IV. Telephone Disclosure Requirements

You have requested additional clarification on the meaning of the words “average” and “customary” in Section 5-164(a)(2) of the Rules. As stated in the Department’s letter of February 13, 2012, to the MetFDA, the “average cost” of a funeral should be the average total price based on the provider’s *current* General Price List. The cost of a “customarily provided funeral” is the total price a typical customer paid the provider for a funeral during the last one-year period. The cost of a “customarily provided funeral” must be supported by documentation.

You have also asked whether Section 5-164(a) of the Rules requires the funeral services provider to provide a caller with the most expensive item of service offered at the funeral home “irrespective of what service the caller is interested in purchasing.” The answer is no. Section 5-164(b) of the Rules states: “When a telephone caller makes a specific inquiry regarding a category of item or service which is contained in the General Price List, the caller shall, during the course of the telephone conversation, be given the price and description of the most expensive and the least expensive item or service in that category” In the example you provided in your letter, if the caller specifies that he or she is interested in direct cremation, the funeral service provider would be required by Section 5-164(b) to provide the caller with the price and description of the most expensive and least expensive cremation services offered by the funeral home. The provider would not be required to provide the caller with the most expensive item or service offered at the funeral home.

Thank you for your continued cooperation with the Department. Please feel free to call me if you have any questions.

Sincerely,

[REDACTED]

[REDACTED]

Assistant Commissioner
Legal Division