



Jonathan Mintz
Commissioner

February 13, 2012

Assistant Commissioner
Legal Division

42 Broadway
9th Floor
New York, NY 10004

nyc.gov/consumers

[Redacted]

RE: Questions Raised at Metropolitan Funeral Directors Association Training

Dear Mr. [Redacted]

Thank you for providing the Department of Consumer Affairs (DCA) with an opportunity to speak about DCA's laws and rules at the Metropolitan Funeral Directors Association training on January 12, 2012. We are following up and responding to questions raised by some of your members during that training.

How should providers of funeral services determine the "average cost" and the cost of a "customarily provided funeral?"

Section 5-164(a)(2) of the Rules of the City of New York (6 RCNY) requires a provider of funeral services responding to a telephone call inquiry regarding the cost of funerals to give the caller "a price range including . . . the average cost of a funeral or the cost of a customarily provided funeral." The "average cost" of a funeral is 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.

Can someone who answers the telephone for a provider take a message and tell the caller that the funeral director will return his or her call, rather than provide the caller with prices?

Yes. 6 RCNY Section 5-164 requires a provider to give price information to a caller who makes an inquiry regarding the cost of funerals. The price information given to the caller must be accurate and complete. If the person who answers the telephone for the provider cannot provide complete and accurate information, and cannot answer all of the caller's questions regarding prices, that person should not provide any price information, and should tell the caller that someone else who can provide price information will return the caller's call.

Does the General Price List have to be posted at the funeral home?

New York City Administrative Code (Administrative Code) Section 20-732 states: “Any provider of funeral services shall prominently display on the funeral services establishment premises and make readily available to any customer or prospective customer a [General Price List].” 6 RCNY Section 5-162(c) explains that “[c]opies of the General Price List shall be clearly visible and easily accessible in all areas of the funeral service establishment where sales or potential sales of funeral services are discussed and in the area within the funeral service establishment that is in the immediate vicinity of the main public entrance to such establishment.”

Providers do not have to post the General Price List as long as it is displayed in a way that is visible and easily accessible to customers without assistance from the provider. The provider may, for example, have a display rack containing the General Price List in the areas described in the Rule.

What is a director permitted to say with regard to the preservative value of embalming?

Administrative Code Section 20-733(f) prohibits any provider of funeral services from making “false preservative value claims, including claiming that decomposition or decay of a deceased human body can be prevented by the use or purchase of embalming” Therefore, for example, a provider may not claim that embalming will preserve the body of the deceased for an unlimited time or for a long time.

When does DCA remove from its records a complaint filed by a consumer against a funeral director?

There is no rule or law limiting the period of time DCA maintains complaint information. Consumers can call DCA to check on a business’s record of complaints made by other consumers.

Will DCA issue a violation to a provider for not displaying the model number of a casket if the manufacturer of the casket does not use model numbers and uses only model names to identify its caskets?

Providers who offer caskets for sale by means other than a selection room are required by Administrative Code Section 20-731(b) to present to a customer “a photograph or other pictorial representation of each model of casket or other interment receptacle so offered, with the price, composition and model number prominently displayed.” DCA will contact your Association in the near future to obtain additional information on the industry practice of casket manufacturers with respect to model numbers.

What can a provider do when a customer purchases a casket from a third party and the casket turns out to be too small?

Funeral service providers cannot require a customer to purchase the casket from the provider as a condition for providing other funeral goods or services. See 16 CFR §453.4. Therefore, the provider must allow a customer to purchase a casket from a third party. If there is a problem with a casket that a customer purchased from a third party, the provider may advise the customer to file a complaint with DCA against the company from whom the casket was purchased. A consumer can file a complaint by calling 311, or by visiting DCA's website at www.nyc.gov/dca.

How should a provider display the least expensive casket options when displaying caskets on a computer?

Administrative Code Section 20-734 prohibits a provider from failing to “display the three least expensive caskets offered for sale in the same general manner as other caskets are displayed” 6 RCNY section 5-163(a) provides that “standards for the same general manner of display include, but are not limited to, lighting, visibility, accessibility, and overall condition of caskets, as well as to any representation made about them.” Therefore, any visual display of caskets on a computer must display the three least expensive caskets in the same manner as other caskets are displayed, including with respect to the descriptions and representations about the caskets; the quality and clarity of the images; and the ease of accessibility to these options.

The full text of the laws and rules cited in this letter, as well as all of the other DCA laws and rules governing funeral service providers, can be accessed through DCA's web site. Please feel free to contact me if you have any additional questions.

Sincerely,

A black rectangular redaction box covers the signature of the Assistant Commissioner. There are some faint handwritten marks above the box.

Assistant Commissioner
Legal Division