



Funeral Consumers Alliance, Inc.

33 Patchen Rd., South Burlington, VT 05403
802-865-8300 • www.funerals.org • fca@funerals.org

BY CERTIFIED MAIL AND EMAIL

May 21, 2007

Paul Harris
Executive Director, North Carolina Board of Funeral Service
1033 Wade Avenue, Suite 108
Raleigh, North Carolina 27605

Re NCBFS' March 19, 2007 cease and desist letter to Mary Brack, President of the Funeral Consumers Alliance of the Central Carolinas(FCACC)

Dear Mr. Harris,

As I promised during our telephone conversation on April 24, I'm writing to state Funeral Consumers Alliance's position on the Board's letter to Mary Brack. A copy of that letter is enclosed. In summary, Board counsel Stephen Dirksen alleged Mrs. Brack violated North Carolina law by practicing funeral service without a license. The Board's action was apparently motivated by an obituary in the December 3, 2006 edition of the Charlotte Observer, in which the family of Melissa Anne Weaver acknowledged FCACC thus, "Funeral Consumers Alliance of the Central Carolinas assisted the family."

For the benefit of your Board members who may not be familiar with Funeral Consumers Alliance, we are a national federation of approximately 100 nonprofit funeral education societies. FCACC is one of four such societies in North Carolina. Collectively, we number about 400,000 members. Our history stretches back to 1939 when our first chapter was formed. The national organization I represent has been incorporated since 1963, and is recognized by the IRS as a 501(c)(3) nonprofit.

Our goal is to help the public avoid burdensome funeral costs and to ensure they are able to exercise their legal rights to free choice in funerals and end-of-life arrangements. We do this by publishing educational materials, newsletters, Web sites, and by direct service to the public. Mrs. Brack exemplifies this service, volunteering in her retirement to help grieving families understand their options and control their costs. Our groups exist solely on donations from the public, which are usually quite nominal (\$25 is typical). We do not sell funeral goods or services. Ordinarily, we consider ourselves allies of state regulatory boards, as they presumably have similar aims.

For the benefit of other readers of this letter, I will summarize the telephone conversations I had

Officers: Joyce Homan - President, Norma Beerweiler - Vice President, Marie Lorz - Secretary, Ken Stoner - Treasurer
Directors: Harriett Bartnick, Jim Bates, Marjorie Bridges, David Morrison, Laurie Powsner
Staff: Joshua Slocum - Executive Director, Sherry Swett - Administrator, Leda Nutting - Administrative Assistant

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with Mr. Dirksen on April 23, and with you on April 24. I called Mr. Dirksen requesting details of his allegations against FCACC. He tartly suggested the letter in question was "self-explanatory." He then told me the issue was "resolved" after you [Paul Harris] had a telephone conversation with Mary Brack. He then asked me if I intended to publicize the contents of our conversation "in the media or on your Web site," and then referred me to you, as Executive Director for the Board.

I telephoned you April 24 seeking the same information. You confirmed it was the above-mentioned obituary that sparked Mr. Dirksen's letter. You told me you had spoken to Mrs. Brack, and her response was "reasonable," in that she made it clear she had not "made funeral arrangements" nor accepted money for her assistance. I then asked you whether the Board believed it had regulatory jurisdiction over the volunteer activities of a nonprofit consumer protection organization. You told me it was "the Board's position" that "obtaining obituary information and publishing obituaries to the media" constituted the practice of funeral service.

I reminded you how many times you and I, and you and volunteer members the Funeral Consumers Alliance of the Triangle, had corresponded and spoken with each other on issues of mutual concern. I told you that given your knowledge of our normal consumer education activities, I was shocked that the Board took such an intimidating and drastic action without first inquiring with Mrs. Brack or with me. You then offered to participate in a conference call with me and Mrs. Brack to let her know Mr. Dirksen's letter was "perhaps a bit strong." While I appreciate that kind offer, your courtesy and circumspection would have been put to better use before you decided to accuse FCA's local chapter of illegal behavior and threaten our volunteers with criminal prosecution.

Mr. Dirksen's Letter

Your attorney's letter to Mrs. Brack begins, "I am writing in regards to a recent obituary that was published in the Charlotte Observer that suggests your organization, Funeral Consumers Alliance of the Central Carolinas ("FCACC") may have violated North Carolina law." Lawyerly equivocation aside, it's quite clear Mr. Dirksen intended to accuse Mrs. Brack of breaking the law. The final paragraph states, "Any further instance of this conduct could be referred to the local district attorney for criminal prosecution and may result in the Board seeking an injunction against the offending parties."

Mr. Dirksen then states FCACC "cannot disregard North Carolina law by allowing or encouraging its membership to practice funeral service without a license." He lists the statutory definition of the practice of funeral service:

engaging in the care or disposition of dead human bodies or in the practice of disinfecting and preparing by embalming or otherwise dead human bodies for the funeral service, transportation, burial or cremation, or in the practice of funeral directing or embalming as presently known, whether under these titles or designations or otherwise. "Practice of funeral service" also means engaging in making arrangements for funeral service, selling funeral supplies to the public or making financial arrangements for the rendering of such services or the sale of such supplies.

Mr. Dirksen then states, "The Board interprets the practice of funeral directing to include **without limitation**: making arrangements with family members, obtaining obituary and death certificate information, and publishing obituaries to the media [emphasis added]." This is puzzling, considering that none of these activities appear in the North Carolina statutes defining the practice of funeral service. On what authority does the Board claim to define any of these activities as the "practice of funeral service?"

Furthermore, there are indeed limitations on the Board's authority. What Mr. Dirksen fails to mention is legislative intent. It is clear from the North Carolina statutes that the General Assembly intends the Board to regulate the commercial and professional practice of funeral service, not the volunteer activities of private citizens. That intent is demonstrated in **§ 90- 210.18A**:

(a) The General Assembly declares that the practice of funeral service affects the public health, safety, and welfare and is subject to regulation and control in the public interest. The public interest requires that only qualified persons be permitted to practice funeral service in North Carolina and that the profession merit the confidence of the public. This Article shall be liberally construed to accomplish these ends.

The Legislature clearly refers to the **profession** of funeral service. Any reasonable person would understand this means the activities of funeral directors as an ongoing occupation and for compensation.

Mr. Dirksen also fails to mention the General Assembly's clear limitations on the scope of the Board's authority. The statute delimits the Board's authority in **§ 90-210.23, Powers and duties of the Board:**

(e) The Board is empowered to regulate and inspect, according to law, **funeral service establishments and embalming facilities**, their operation, and the licenses under which they are operated, and to enforce as provided by law the rules, regulations, and requirements of the Division of Health Services and of the city, town, or county in which the funeral service establishment or embalming facility is maintained and operated [emphasis added].

While this subsection gives the Board other specific powers, none of these include the ability to prescribe or prohibit the legal activities of families, private citizens, or volunteers who help each other and their communities without pay. Under Mr. Dirksen's over-broad interpretation, the Board would be able to prosecute

- husbands, for filling in biographical information on their wives' death certificates
- families, for providing information to obituary writers at newspapers
- woodworkers, for building and selling coffins to the general public without a mortician's license
- ministers, for helping bereaved congregants decide on an appropriate funeral

This *reductio ad absurdum* is the logical end to Mr. Dirksen's reasoning. Insofar as the Board interprets its statutory powers to include regulating, prohibiting, or interfering with the private, non-commercial communications and funeral rites of North Carolina citizens, that interpretation is in direct conflict with Constitutionally guaranteed rights and is invalid on its face. North Carolina statute acknowledges this in **§ 90-210.23. Powers and duties of the Board:**

(a) The Board is authorized to adopt and promulgate such rules and regulations for transaction of its business and for the carrying out and enforcement of the provisions of this Article as may be necessary **and as are consistent with the laws of this State and of the United States** [emphasis added].

It's astonishing that one line from an obituary could spark such strong-arm tactics and accusations against Mrs. Brack. Again, the family of Melissa Anne Weaver thanked Mrs. Brack, and the Funeral Consumers Alliance of the Central Carolinas, with the following sentence, "Funeral Consumers Alliance of the Central Carolinas assisted the family." The obituary said **nothing** about FCACC "making funeral arrangements."

Without regard to whether Mrs. Brack had solicited or encouraged this acknowledgement, Mr. Dirksen accused FCACC of practicing funeral service without a license, and stated:

North Carolina law provides clear criminal liability for anyone who practices funeral directing without a license Any further instance of this conduct could be referred to the local district attorney for criminal prosecution and may result in the Board seeking an injunction against the offending parties.

Aside from the fact that citizens have a right to publish anything they want in an obituary they have paid for, Mr. Dirksen assumes Mrs. Brack solicited this acknowledgment (even if she had, that would not have been an illegal activity). He characterizes it as a “representation to the public that FCACC may practice funeral service in North Carolina.” This is absurd. While it's true that funeral directors often consider the last line of an obituary as a free advertisement to which they are entitled, it's ludicrous to posit that the line in question constituted a representation to the public that FCACC was allowed to practice funeral service.

Here are the facts: Mrs. Brack did not solicit, nor was she aware of the Weaver family's kind acknowledgment of her volunteer service until your attorney mailed her a clipping along with his threats. That NCBFS would attempt to twist a family's gracious thanks for a volunteer's kindness into an accusation of criminal activity is reprehensible. It strains credibility to believe that, given the well-documented consumer abuse perpetrated by funeral directors, NCBFS believed sending an intimidating letter to a volunteer retiree was the best use of taxpayer dollars.

It did not escape my attention that, during the same period in which you were “investigating” FCACC's activities, your Board offered a legislative proposal that would have allowed the North Carolina Board of Funeral Service to amend the definition of "practicing funeral service" "by rule," and without the future approval of the General Assembly. This would have allowed the Board to expand its own regulatory authority at will, without any check by the Legislature. Had consumer groups not protested this, it probably would have been included in what has become Senate Bill 1435.

Requested Resolution

If the North Carolina Board of Funeral Service agrees that the threat of potential criminal charges against Mrs. Brack was inappropriate, unsupported by law, and was calculated to intimidate Mrs. Brack and all similar volunteers who learn of it, the Board should acknowledge this position publicly and apologize for its attorney's over-zealousness. To do less would be to condone this misuse of public office against a kind and caring citizen.

Sincerely yours,

Joshua Slocum
Executive Director

cc: Funeral Consumers Alliance of the Central Carolinas
Funeral Consumers Alliance of the Triangle
Funeral Consumers Alliance of Western North Carolina
Memorial Society of Coastal Carolina
Funeral Consumers Alliance National Board
Clark Neily and Valerie Bayham, esqs., Institute for Justice