

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS**

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UNITED STATES OF AMERICA,	)	
	)	
	Plaintiff,	)
	)	
v.	)	Civil Action No. 1:11-cv-04801
	)	
	)	
HARRY J. CARTER III	)	
individually and doing business as	)	
Carter Funeral Chapels, Ltd.	)	
	)	
	Defendant.	)
	)	

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**CONSENT DECREE**

**WHEREAS**, Plaintiff, the United States of America (“Plaintiff”), has commenced this action by filing the Complaint herein; Defendant Harry J. Carter III has waived service of the Summons and Complaint; the parties have been represented by the attorneys whose names appear hereafter; and the parties have agreed to settlement of this action upon the following terms and conditions, without adjudication of any issue of fact or law and without Defendant admitting or denying liability for any of the matters charged in the Complaint other than jurisdictional facts.

**ORDER**

**THEREFORE**, on the joint motion of the Plaintiff and Defendant, it is **ORDERED**, **ADJUDGED**, and **DECREED** as follows:

**FINDINGS**

1. This Court has jurisdiction of the subject matter and of the parties.
2. The Complaint states a claim upon which relief may be granted against the Defendant under Sections 5(a)(1), 5(m)(1)(A), 9, 13(b), and 16(a) of the Federal Trade

Commission Act, 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 49, 53(b), and 56(a).

3. Venue in this district is proper under 28 U.S.C. §§ 1391(b-c) and 1395(a) and 15 U.S.C. § 53(b).

4. The activities of Defendant are in or affecting commerce as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

5. Entry of this Consent Decree is in the public interest.

6. Defendant stipulates to the entry of this Consent Decree freely and without coercion. Defendant further acknowledges that he has read the provisions of this Consent Decree and is prepared to abide by them.

7. All parties waive all rights to appeal or otherwise challenge or contest the validity of this Consent Decree.

8. The parties shall each bear their own costs and attorneys’ fees incurred in this action. Defendant waives any claim he may have under the Equal Access to Justice Act, 28 U.S.C. § 2412.

## **I. INJUNCTION**

**IT IS THEREFORE ORDERED** that Defendant and his officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them who receive actual notice of this Consent Decree by personal service or otherwise, are permanently enjoined from violating, directly or through any corporation, subsidiary, division, or other device, any provision of the Commission’s Trade Regulation Rule Concerning Funeral Industry Practices (“Funeral Rule”), 16 C.F.R. Part 453, now in effect and as it may be hereinafter amended. A copy of the Funeral Rule is attached hereto as “Exhibit A” and

incorporated in this Consent Decree as if fully set forth verbatim.

## **II. CIVIL PENALTY**

IT IS THEREFORE ORDERED that:

A. Judgment in the amount of \$64,000 is hereby entered against Defendant as a civil penalty, pursuant to Section 5(m)(1)(A) of the Federal Trade Commission Act, 15 U.S.C. § 45(m)(1)(A), provided, however, that payment of the foregoing civil penalty is suspended subject to the conditions set forth in Subsection B of this Section.

B. Plaintiff's and the Commission's agreement to, and the Court's approval of, this Order is expressly premised upon the truthfulness, accuracy, and completeness of Defendant's representations regarding his financial condition, as set forth in his sworn Financial Statement of Individual Defendant dated January 10, 2012 (as amended February 14, 2012), his sworn Financial Statement of Corporate Defendant (i.e., the business identified in this document as Carter Funeral Chapels, Ltd.) dated January 10, 2012 (as amended February 14, 2012), supporting documents submitted to Plaintiff, and representations made by Defendant in his deposition dated May 25, 2012, which include material information upon which Plaintiff and the Commission relied in negotiating and agreeing to the terms of this Order. If, upon motion by Plaintiff or the Commission, this Court finds that Defendant's financial statements, deposition testimony, and related documents failed to disclose any material asset or materially misstated the value of any asset, or made any other material misstatement or omission, the Court shall lift the suspension of the judgment and require immediate payment of the civil penalty in the full amount of the judgment (\$64,000). Provided, however, that in all other respects this Order shall remain in full force and effect, unless otherwise ordered by the Court. Proceedings instituted

under this Paragraph are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings Plaintiff or the Commission may initiate to enforce this Order.

C. Defendant relinquishes all dominion, control, and title to the funds paid to the fullest extent permitted by law. Defendant shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise.

D. Defendant agrees that the facts as alleged in the Complaint filed in this action shall be taken as true, without further proof, in any subsequent civil litigation filed by or on behalf of Plaintiff or the Commission to enforce their rights to any payment or money judgment pursuant to this Order.

E. Defendant agrees that the judgment represents a civil penalty owed to the United States Government, is not compensation for actual pecuniary loss, and, therefore, as to Defendant, it is not subject to discharge under the Bankruptcy Code pursuant to 11 U.S.C. § 523(a)(7).

F. In accordance with 31 U.S.C. § 7701, as amended, Defendant is hereby required, unless he already has done so, to furnish to Plaintiff and the Commission his taxpayer identifying numbers (social security numbers or employer identification numbers), which shall be used for the purpose of collecting and reporting on any delinquent amount arising out of Defendant's relationship with the government.

### **III. COMPLIANCE MONITORING**

**IT IS FURTHER ORDERED** that, for the purpose of monitoring and investigating compliance with any provision of this Consent Decree:

A. Within ten (10) days of receipt of written notice from a representative of the Commission, Defendant shall submit additional written reports, which are true and accurate and sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and provide entry during normal business hours to any business location in Defendant's possession or direct or indirect control to inspect the business operation;

B. In addition, the Commission is authorized to use all other lawful means, including, but not limited to:

1. obtaining discovery from any person, without further leave of Court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, 45 and 69;
2. having its representatives pose as consumers and suppliers to Defendant, his employees, or any other entity managed or controlled in whole or in part by Defendant, without the necessity of identification or prior notice; and

C. Defendant shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Consent Decree. The person interviewed may have counsel present.

*Provided, however,* that nothing in this Consent Decree shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

#### **IV. COMPLIANCE REPORTING**

**IT IS FURTHER ORDERED** that, in order that compliance with the provisions of this Consent Decree may be monitored:

- A. For a period of five (5) years from the date of entry of this Consent Decree,
  1. Defendant shall notify the Commission of the following:
    - a. Any changes in Defendant's residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;
    - b. Any changes in Defendant's employment status (including self-employment), and any change in Defendant's ownership in any business entity, within ten (10) days of the date of such change. Such notice shall include the name and address of each business that Defendant is affiliated with, employed by, creates or forms, or performs services for; a detailed description of the nature of the business; and a detailed description of Defendant's duties and responsibilities in connection with the business or employment;
    - c. Any changes in Defendant's name or use of any aliases or fictitious names within ten (10) days of the date of such change; and
  2. Defendant shall notify the Commission of any business entity that Defendant directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Consent Decree,

including, but not limited to: incorporation or other organization; a dissolution, assignment, sale, merger, or other action; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Consent Decree; or a change in the business name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any such change in the business entity about which Defendant learns less than thirty (30) days prior to the date such action is to take place, Defendant shall notify the Commission as soon as is practicable after obtaining such knowledge.

B. One hundred eighty (180) days after the date of entry of this Consent Decree and annually thereafter for a period of five (5) years, Defendant shall provide a written report to the Commission, which is true and accurate and sworn to under penalty of perjury, setting forth in detail the manner and form in which he has complied and is complying with this Consent Decree. This report shall include, but not be limited to:

1. The Defendant's then-current residence address, mailing addresses, and telephone numbers;
2. The Defendant's then-current employment status (including self-employment), including the name, addresses and telephone numbers of each business that the Defendant is affiliated with, employed by, or performs services for; a detailed description of the nature of the business; and a detailed description of the Defendant's duties and responsibilities in connection with the business or employment;

3. Any other changes required to be reported under Subparagraph A of this Section; and
4. A copy of each acknowledgment of receipt of this Consent Decree and the Funeral Rule, obtained pursuant to the Section titled “Distribution of Order and Funeral Rule.”

C. Defendant shall notify the Commission of the filing of a bankruptcy petition by Defendant within fifteen (15) days of filing.

D. For the purposes of this Consent Decree, Defendant shall, unless otherwise directed by the Commission’s authorized representatives, send by overnight courier (not the U.S. Postal Service) all reports and notifications to the Commission that are required by this Order to:

Associate Director for Enforcement  
Bureau of Consumer Protection  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

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*Provided* that, in lieu of overnight courier, Defendant may send such reports or notifications by first-class mail, but only if Defendant contemporaneously sends an electronic version of such report or notification to the Commission at: [DEBrief@ftc.gov](mailto:DEBrief@ftc.gov).

E. For purposes of the compliance reporting and monitoring required by this Consent Decree, the Commission is authorized to communicate directly with Defendant.

## V. RECORD KEEPING

**IT IS FURTHER ORDERED** that, for a period of eight (8) years from the date of entry

of this Consent Decree, Defendant, for any business in which he engages in conduct related to the subject matter of this Consent Decree and where he is the majority owner, or directly or indirectly controls, is hereby restrained and enjoined from failing to create and retain the following records:

- A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;
- C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent the information is obtained in the ordinary course of business;
- D. Complaints and refund requests (whether received directly or indirectly, such as through a third party) and any responses to those complaints or requests;
- E. Copies of all sales scripts, training materials, advertisements, or other marketing materials; and
- F. All records and documents necessary to demonstrate full compliance with each provision of this Consent Decree, including, but not limited to, copies of acknowledgments of receipt of this Consent Decree and the Funeral Rule required by the Sections titled "Distribution of Order and Funeral Rule" and "Acknowledgment of Receipt of Consent Decree" and all reports submitted to the FTC pursuant to the Section titled "Compliance Reporting."

## **VI. DISTRIBUTION OF ORDER AND FUNERAL RULE**

**IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of this Consent Decree, Defendant shall deliver copies of this Consent Decree and the Funeral Rule as directed below:

A.     **Defendant as Control Person:** For any business that Defendant controls, directly or indirectly, or in which Defendant has a majority ownership interest, Defendant must deliver copies of this Consent Decree and the Funeral Rule to (1) all principals, officers, directors, and managers of that business; (2) all employees, agents, and representatives of that business who engage in conduct related to the subject matter of this Consent Decree; and (3) any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled “Compliance Reporting.” For current personnel, delivery shall be within five (5) days of service of this Consent Decree upon Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities. For any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled “Compliance Reporting,” delivery shall be at least ten (10) days prior to the change in structure.

B.     **Defendant as employee or non-control person:** For any business where Defendant is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Consent Decree, Defendant must deliver copies of this Consent Decree and the Funeral Rule to all principals and managers of such business before engaging in such conduct.

C.     Defendant must secure a signed and dated statement acknowledging receipt of this Consent Decree and the Funeral Rule, within thirty (30) days of delivery, from all persons

receiving copies of the Consent Decree and the Funeral Rule pursuant to this Section.

**VII. ACKNOWLEDGMENT OF RECEIPT  
OF CONSENT DECREE**

**IT IS FURTHER ORDERED** that Defendant, within five (5) business days of receipt of this Consent Decree as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Consent Decree.

**VIII. RETENTION OF JURISDICTION**

**IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Consent Decree.

**JUDGMENT IS THEREFORE ENTERED** in favor of Plaintiff and against Defendant, pursuant to all the terms and conditions recited above.

Entered this 11th day of September, 2012.

s/ Matthew F. Kennelly  
**Hon. Matthew F. Kennelly**  
**United States District Judge**

**FOR THE UNITED STATES  
OF AMERICA:**

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**FOR THE DEFENDANT:**  
**HARRY J. CARTER III**

/s/ Harry J. Carter III  
HARRY J. CARTER III  
Individually and doing business as Carter  
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## **Exhibit A**

#### § 444.4

agreement creating the cosigner's liability for future charges is executed:

##### NOTICE TO COSIGNER

You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount.

The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of your credit record.

This notice is not the contract that makes you liable for the debt.

#### § 444.4 Late charges.

(a) In connection with collecting a debt arising out of an extension of credit to a consumer in or affecting commerce, as commerce is defined in the Federal Trade Commission Act, it is an unfair act or practice within the meaning of section 5 of that Act for a creditor, directly or indirectly, to levy or collect any delinquency charge on a payment, which payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period, when the only delinquency is attributable to late fee(s) or delinquency charge(s) assessed on earlier installment(s).

(b) For purposes of this section, *collecting a debt* means any activity other than the use of judicial process that is intended to bring about or does bring about repayment of all or part of a consumer debt.

#### § 444.5 State exemptions.

(a) If, upon application to the Federal Trade Commission by an appropriate State agency, the Federal Trade Commission determines that:

(1) There is a State requirement or prohibition in effect that applies to any transaction to which a provision of this rule applies; and

(2) The State requirement or prohibition affords a level of protection to consumers that is substantially equiva-

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lent to, or greater than, the protection afforded by this rule;

Then that provision of the rule will not be in effect in that State to the extent specified by the Federal Trade Commission in its determination, for as long as the State administers and enforces the State requirement or prohibition effectively.

(b) [Reserved]

#### PART 453—FUNERAL INDUSTRY PRACTICES

Sec.

- 453.1 Definitions.
- 453.2 Price disclosures.
- 453.3 Misrepresentations.
- 453.4 Required purchase of funeral goods or funeral services.
- 453.5 Services provided without prior approval.
- 453.6 Retention of documents.
- 453.7 Comprehension of disclosures.
- 453.8 Declaration of intent.
- 453.9 State exemptions.

AUTHORITY: 15 U.S.C. 57a(a); 15 U.S.C. 46(g); 5 U.S.C. 552.

SOURCE: 59 FR 1611, Jan. 11, 1994, unless otherwise noted.

##### § 453.1 Definitions.

(a) *Alternative container*. An “alternative container” is an unfinished wood box or other non-metal receptacle or enclosure, without ornamentation or a fixed interior lining, which is designed for the encasement of human remains and which is made of fiberboard, pressed-wood, composition materials (with or without an outside covering) or like materials.

(b) *Cash advance item*. A “cash advance item” is any item of service or merchandise described to a purchaser as a “cash advance,” “accommodation,” “cash disbursement,” or similar term. A cash advance item is also any item obtained from a third party and paid for by the funeral provider on the purchaser’s behalf. Cash advance items may include, but are not limited to: cemetery or crematory services; pall-bearers; public transportation; clergy honoraria; flowers; musicians or singers; nurses; obituary notices; gratuities and death certificates.

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(c) *Casket*. A “casket” is a rigid container which is designed for the encasement of human remains and which is usually constructed of wood, metal, fiberglass, plastic, or like material, and ornamented and lined with fabric.

(d) *Commission*. “Commission” refers to the Federal Trade Commission.

(e) *Cremation*. “Cremation” is a heating process which incinerates human remains.

(f) *Crematory*. A “crematory” is any person, partnership or corporation that performs cremation and sells funeral goods.

(g) *Direct cremation*. A “direct cremation” is a disposition of human remains by cremation, without formal viewing, visitation, or ceremony with the body present.

(h) *Funeral goods*. “Funeral goods” are the goods which are sold or offered for sale directly to the public for use in connection with funeral services.

(i) *Funeral provider*. A “funeral provider” is any person, partnership or corporation that sells or offers to sell funeral goods and funeral services to the public.

(j) *Funeral services*. “Funeral services” are any services which may be used to:

(1) Care for and prepare deceased human bodies for burial, cremation or other final disposition; and

(2) arrange, supervise or conduct the funeral ceremony or the final disposition of deceased human bodies.

(k) *Immediate burial*. An “immediate burial” is a disposition of human remains by burial, without formal viewing, visitation, or ceremony with the body present, except for a graveside service.

(l) *Memorial service*. A “memorial service” is a ceremony commemorating the deceased without the body present.

(m) *Funeral ceremony*. A “funeral ceremony” is a service commemorating the deceased with the body present.

(n) *Outer burial container*. An “outer burial container” is any container which is designed for placement in the grave around the casket including, but not limited to, containers commonly known as burial vaults, grave boxes, and grave liners.

(o) *Person*. A “person” is any individual, partnership, corporation, association, government or governmental subdivision or agency, or other entity.

(p) *Services of funeral director and staff*. The “services of funeral director and staff” are the basic services, not to be included in prices of other categories in § 453.2(b)(4), that are furnished by a funeral provider in arranging any funeral, such as conducting the arrangements conference, planning the funeral, obtaining necessary permits, and placing obituary notices.

**§ 453.2 Price disclosures.**

(a) *Unfair or deceptive acts or practices*. In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for a funeral provider to fail to furnish accurate price information disclosing the cost to the purchaser for each of the specific funeral goods and funeral services used in connection with the disposition of deceased human bodies, including at least the price of embalming, transportation of remains, use of facilities, caskets, outer burial containers, immediate burials, or direct cremations, to persons inquiring about the purchase of funerals. Any funeral provider who complies with the preventive requirements in paragraph (b) of this section is not engaged in the unfair or deceptive acts or practices defined here.

(b) *Preventive requirements*. To prevent these unfair or deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in § 453.4(b)(1), funeral providers must:

(1) *Telephone price disclosure*. Tell persons who ask by telephone about the funeral provider’s offerings or prices any accurate information from the price lists described in paragraphs (b)(2) through (4) of this section and any other readily available information that reasonably answers the question.

(2) *Casket price list*. (i) Give a printed or typewritten price list to people who inquire in person about the offerings or prices of caskets or alternative containers. The funeral provider must offer the list upon beginning discussion of, but in any event before showing caskets. The list must contain at least the

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retail prices of all caskets and alternative containers offered which do not require special ordering, enough information to identify each, and the effective date for the price list. In lieu of a written list, other formats, such as notebooks, brochures, or charts may be used if they contain the same information as would the printed or typewritten list, and display it in a clear and conspicuous manner. Provided, however, that funeral providers do not have to make a casket price list available if the funeral providers place on the general price list, specified in paragraph (b)(4) of this section, the information required by this paragraph.

(ii) Place on the list, however produced, the name of the funeral provider's place of business and a caption describing the list as a "casket price list."

(3) *Outer burial container price list.* (i) Give a printed or typewritten price list to persons who inquire in person about outer burial container offerings or prices. The funeral provider must offer the list upon beginning discussion of, but in any event before showing the containers. The list must contain at least the retail prices of all outer burial containers offered which do not require special ordering, enough information to identify each container, and the effective date for the prices listed. In lieu of a written list, the funeral provider may use other formats, such as notebooks, brochures, or charts, if they contain the same information as the printed or typewritten list, and display it in a clear and conspicuous manner. Provided, however, that funeral providers do not have to make an outer burial container price list available if the funeral providers place on the general price list, specified in paragraph (b)(4) of this section, the information required by this paragraph.

(ii) Place on the list, however produced, the name of the funeral provider's place of business and a caption describing the list as an "outer burial container price list."

(4) *General price list.* (i)(A) Give a printed or typewritten price list for retention to persons who inquire in person about the funeral goods, funeral services or prices of funeral goods or services offered by the funeral pro-

vider. The funeral provider must give the list upon beginning discussion of any of the following:

(1) The prices of funeral goods or funeral services;

(2) The overall type of funeral service or disposition; or

(3) Specific funeral goods or funeral services offered by the funeral provider.

(B) The requirement in paragraph (b)(4)(i)(A) of this section applies whether the discussion takes place in the funeral home or elsewhere. Provided, however, that when the deceased is removed for transportation to the funeral home, an in-person request at that time for authorization to embalm, required by § 453.5(a)(2), does not, by itself, trigger the requirement to offer the general price list if the provider in seeking prior embalming approval discloses that embalming is not required by law except in certain special cases, if any. Any other discussion during that time about prices or the selection of funeral goods or services triggers the requirement under paragraph (b)(4)(i)(A) of this section to give consumers a general price list.

(C) The list required in paragraph (b)(4)(i)(A) of this section must contain at least the following information:

(1) The name, address, and telephone number of the funeral provider's place of business;

(2) A caption describing the list as a "general price list"; and

(3) The effective date for the price list;

(ii) Include on the price list, in any order, the retail prices (expressed either as the flat fee, or as the price per hour, mile or other unit of computation) and the other information specified below for at least each of the following items, if offered for sale:

(A) Forwarding of remains to another funeral home, together with a list of the services provided for any quoted price;

(B) Receiving remains from another funeral home, together with a list of the services provided for any quoted price;

(C) The price range for the direct cremations offered by the funeral provider, together with:

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- (1) A separate price for a direct cremation where the purchaser provides the container;
- (2) Separate prices for each direct cremation offered including an alternative container; and
- (3) A description of the services and container (where applicable), included in each price;
- (D) The price range for the immediate burials offered by the funeral provider, together with:
- (1) A separate price for an immediate burial where the purchaser provides the casket;
- (2) Separate prices for each immediate burial offered including a casket or alternative container; and
- (3) A description of the services and container (where applicable) included in that price;
- (E) Transfer of remains to funeral home;
- (F) Embalming;
- (G) Other preparation of the body;
- (H) Use of facilities and staff for viewing;
- (I) Use of facilities and staff for funeral ceremony;
- (J) Use of facilities and staff for memorial service;
- (K) Use of equipment and staff for graveside service;
- (L) Hearse; and
- (M) Limousine.
- (iii) Include on the price list, in any order, the following information:
- (A) Either of the following:
- (1) The price range for the caskets offered by the funeral provider, together with the statement: "A complete price list will be provided at the funeral home."; or
- (2) The prices of individual caskets, disclosed in the manner specified by paragraph (b)(2)(i) of this section; and
- (B) Either of the following:
- (1) The price range for the outer burial containers offered by the funeral provider, together with the statement: "A complete price list will be provided at the funeral home."; or
- (2) The prices of individual outer burial containers, disclosed in the manner specified by paragraph (b)(3)(i) of this section; and
- (C) Either of the following:
- (1) The price for the basic services of funeral director and staff, together

with a list of the principal basic services provided for any quoted price and, if the charge cannot be declined by the purchaser, the statement: "This fee for our basic services will be added to the total cost of the funeral arrangements you select. (This fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving remains)". If the charge cannot be declined by the purchaser, the quoted price shall include all charges for the recovery of unallocated funeral provider overhead, and funeral providers may include in the required disclosure the phrase "and overhead" after the word "services"; or

(2) The following statement: "Please note that a fee of (*specify dollar amount*) for the use of our basic services is included in the price of our caskets. This same fee shall be added to the total cost of your funeral arrangements if you provide the casket. Our services include (*specify*). The fee shall include all charges for the recovery of unallocated funeral provider overhead, and funeral providers may include in the required disclosure the phrase "and overhead" after the word "services." The statement must be placed on the general price list together with the casket price range, required by paragraph (b)(4)(iii)(A)(1) of this section, or together with the prices of individual caskets, required by (b)(4)(iii)(A)(2) of this section.

(iv) The services fee permitted by § 453.2(b)(4)(iii)(C)(1) or (C)(2) is the only funeral provider fee for services, facilities or unallocated overhead permitted by this part to be non-declinable, unless otherwise required by law.

(5) *Statement of funeral goods and services selected.* (i) Give an itemized written statement for retention to each person who arranges a funeral or other disposition of human remains, at the conclusion of the discussion of arrangements. The statement must list at least the following information:

(A) The funeral goods and funeral services selected by that person and the prices to be paid for each of them;

(B) Specifically itemized cash advance items. (These prices must be given to the extent then known or reasonably ascertainable. If the prices are not known or reasonably ascertainable,

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a good faith estimate shall be given and a written statement of the actual charges shall be provided before the final bill is paid.); and

(C) The total cost of the goods and services selected.

(ii) The information required by this paragraph (b)(5) may be included on any contract, statement, or other document which the funeral provider would otherwise provide at the conclusion of discussion of arrangements.

(6) *Other pricing methods.* Funeral providers may give persons any other price information, in any other format, in addition to that required by § 453.2(b)(2), (3), and (4) so long as the statement required by § 453.2(b)(5) is given when required by the rule.

**§ 453.3 Misrepresentations.**

(a) *Embalming provisions.* (1) *Deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that state or local law requires that a deceased person be embalmed when such is not the case;

(ii) Fail to disclose that embalming is not required by law except in certain special cases, if any.

(2) *Preventive requirements.* To prevent these deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in §§ 453.4(b)(1) and 453.5(2), funeral providers must:

(i) Not represent that a deceased person is required to be embalmed for:

(A) Direct cremation;

(B) Immediate burial; or

(C) A closed casket funeral without viewing or visitation when refrigeration is available and when state or local law does not require embalming; and

(ii) Place the following disclosure on the general price list, required by § 453.2(b)(4), in immediate conjunction with the price shown for embalming: "Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement that does not require you to pay for it, such as direct cremation or

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immediate burial." The phrase "except in certain special cases" need not be included in this disclosure if state or local law in the area(s) where the provider does business does not require embalming under any circumstances.

(b) *Casket for cremation provisions—(1) Deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that state or local law requires a casket for direct cremations;

(ii) Represent that a casket is required for direct cremations.

(2) *Preventive requirements.* To prevent these deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in § 453.4(a)(1), funeral providers must place the following disclosure in immediate conjunction with the price range shown for direct cremations: "If you want to arrange a direct cremation, you can use an alternative container. Alternative containers encase the body and can be made of materials like fiberboard or composition materials (with or without an outside covering). The containers we provide are (specify containers)." This disclosure only has to be placed on the general price list if the funeral provider arranges direct cremations.

(c) *Outer burial container provisions—(1) Deceptive acts or practices.* In selling or offering to sell funeral goods and funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that state or local laws or regulations, or particular cemeteries, require outer burial containers when such is not the case;

(ii) Fail to disclose to persons arranging funerals that state law does not require the purchase of an outer burial container.

(2) *Preventive requirement.* To prevent these deceptive acts or practices, funeral providers must place the following disclosure on the outer burial container price list, required by § 453.2(b)(3)(i), or, if the prices of outer burial containers are listed on the general price list, required by § 453.2(b)(4), in immediate conjunction with those prices: "In most areas of the country, state or local law does not require that

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you buy a container to surround the casket in the grave. However, many cemeteries require that you have such a container so that the grave will not sink in. Either a grave liner or a burial vault will satisfy these requirements." The phrase "in most areas of the country" need not be included in this disclosure if state or local law in the area(s) where the provider does business does not require a container to surround the casket in the grave.

(d) *General provisions on legal and cemetery requirements*—(1) *Deceptive acts or practices*. In selling or offering to sell funeral goods or funeral services to the public, 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.

(2) *Preventive requirements*. To prevent these deceptive acts or practices, as well as the deceptive acts or practices identified in §§ 453.3(a)(1), 453.3(b)(1), and 453.3(c)(1), funeral providers must identify and briefly describe in writing on the statement of funeral goods and services selected (required by § 453.2(b)(5)) any legal, cemetery, or crematory requirement which the funeral provider represents to persons as compelling the purchase of funeral goods or funeral services for the funeral which that person is arranging.

(e) *Provisions on preservative and protective value claims*. In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(1) Represent that funeral goods or funeral services will delay the natural decomposition of human remains for a long-term or indefinite time;

(2) Represent that funeral goods have protective features or will protect the body from gravesite substances, when such is not the case.

(f) *Cash advance provisions*—(1) *Deceptive acts or practices*. In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that the price charged for a cash advance item is the same as

the cost to the funeral provider for the item when such is not the case;

(ii) Fail to disclose to persons arranging funerals that the price being charged for a cash advance item is not the same as the cost to the funeral provider for the item when such is the case.

(2) *Preventive requirements*. To prevent these deceptive acts or practices, funeral providers must place the following sentence in the itemized statement of funeral goods and services selected, in immediate conjunction with the list of itemized cash advance items required by § 453.2(b)(5)(i)(B): "We charge you for our services in obtaining: (specify cash advance items)," if the funeral provider makes a charge upon, or receives and retains a rebate, commission or trade or volume discount upon a cash advance item.

**§ 453.4 Required purchase of funeral goods or funeral services.**

(a) *Casket for cremation provisions*—(1) *Unfair or deceptive acts or practices*. In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for a funeral provider, or a crematory, to require that a casket be purchased for direct cremation.

(2) *Preventive requirement*. To prevent this unfair or deceptive act or practice, funeral providers must make an alternative container available for direct cremations, if they arrange direct cremations.

(b) *Other required purchases of funeral goods or funeral services*—(1) *Unfair or deceptive acts or practices*. In selling or offering to sell funeral goods or funeral services, it is an unfair or deceptive act or practice for a funeral provider to:

(i) Condition the furnishing of any funeral good or funeral service to a person arranging a funeral upon the purchase of any other funeral good or funeral service, except as required by law or as otherwise permitted by this part;

(ii) Charge any fee as a condition to furnishing any funeral goods or funeral services to a person arranging a funeral, other than the fees for: (1) Services of funeral director and staff, permitted by § 453.2(b)(4)(iii)(C); (2) other funeral services and funeral goods selected by the purchaser; and (3) other

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funeral goods or services required to be purchased, as explained on the itemized statement in accordance with § 453.3(d)(2).

(2) *Preventive requirements.* (i) To prevent these unfair or deceptive acts or practices, funeral providers must:

(A) Place the following disclosure in the general price list, immediately above the prices required by § 453.2(b)(4) (ii) and (iii): "The goods and services shown below are those we can provide to our customers. You may choose only the items you desire. If legal or other requirements mean you must buy any items you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the funeral goods and services you selected." Provided, however, that if the charge for "services of funeral director and staff" cannot be declined by the purchaser, the statement shall include the sentence: "However, any funeral arrangements you select will include a charge for our basic services" between the second and third sentences of the statement specified above herein. The statement may include the phrase "and overhead" after the word "services" if the fee includes a charge for the recovery of unallocated funeral provider overhead;

(B) Place the following disclosure in the statement of funeral goods and services selected, required by § 453.2(b)(5)(i): "Charges are only for those items that you selected or that are required. If we are required by law or by a cemetery or crematory to use any items, we will explain the reasons in writing below."

(ii) A funeral provider shall not violate this section by failing to comply with a request for a combination of goods or services which would be impossible, impractical, or excessively burdensome to provide.

**§ 453.5 Services provided without prior approval.**

(a) *Unfair or deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for any provider to embalm a deceased human body for a fee unless:

(1) State or local law or regulation requires embalming in the particular

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circumstances regardless of any funeral choice which the family might make; or

(2) Prior approval for embalming (expressly so described) has been obtained from a family member or other authorized person; or

(3) The funeral provider is unable to contact a family member or other authorized person after exercising due diligence, has no reason to believe the family does not want embalming performed, and obtains subsequent approval for embalming already performed (expressly so described). In seeking approval, the funeral provider must disclose that a fee will be charged if the family selects a funeral which requires embalming, such as a funeral with viewing, and that no fee will be charged if the family selects a service which does not require embalming, such as direct cremation or immediate burial.

(b) *Preventive requirement.* To prevent these unfair or deceptive acts or practices, funeral providers must include on the itemized statement of funeral goods and services selected, required by § 453.2(b)(5), the statement: "If you selected a funeral that may require embalming, such as a funeral with viewing, you may have to pay for embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial. If we charged for embalming, we will explain why below."

**§ 453.6 Retention of documents.**

To prevent the unfair or deceptive acts or practices specified in §§ 453.2 and 453.3 of this rule, funeral providers must retain and make available for inspection by Commission officials true and accurate copies of the price lists specified in §§ 453.2(b) (2) through (4), as applicable, for at least one year after the date of their last distribution to customers, and a copy of each statement of funeral goods and services selected, as required by § 453.2(b)(5), for at least one year from the date of the arrangements conference.

**§ 453.7 Comprehension of disclosures.**

To prevent the unfair or deceptive acts or practices specified in §§ 453.2

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through 453.5, funeral providers must make all disclosures required by those sections in a clear and conspicuous manner. Providers shall not include in the casket, outer burial container, and general price lists, required by §§ 453.2(b)(2)-(4), any statement or information that alters or contradicts the information required by this part to be included in those lists.

### § 453.8 Declaration of intent.

(a) Except as otherwise provided in § 453.2(a), it is a violation of this rule to engage in any unfair or deceptive acts or practices specified in this rule, or to fail to comply with any of the preventive requirements specified in this rule;

(b) The provisions of this rule are separate and severable from one another. If any provision is determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

(c) This rule shall not apply to the business of insurance or to acts in the conduct thereof.

### § 453.9 State exemptions.

If, upon application to the Commission by an appropriate state agency, the Commission determines that:

(a) There is a state requirement in effect which applies to any transaction to which this rule applies; and

(b) That state requirement affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by this rule; then the Commission's rule will not be in effect in that state to the extent specified by the Commission in its determination, for as long as the State administers and enforces effectively the state requirement.

## PART 455—USED MOTOR VEHICLE TRADE REGULATION RULE

Sec.

- 455.1 General duties of a used vehicle dealer; definitions.
- 455.2 Consumer sales—window form.
- 455.3 Window form.
- 455.4 Contrary statements.
- 455.5 Spanish language sales.
- 455.6 State exemptions.
- 455.7 Severability.

AUTHORITY: 88 Stat. 2189, 15 U.S.C. 2309; 38 Stat. 717, as amended 15 U.S.C. 41 et seq.

SOURCE: 49 FR 45725, Nov. 19, 1984, unless otherwise noted.

### § 455.1 General duties of a used vehicle dealer; definitions.

(a) It is a deceptive act or practice for any used vehicle dealer, when that dealer sells or offers for sale a used vehicle in or affecting commerce as *commerce* is defined in the Federal Trade Commission Act:

(1) To misrepresent the mechanical condition of a used vehicle;

(2) To misrepresent the terms of any warranty offered in connection with the sale of a used vehicle; and

(3) To represent that a used vehicle is sold with a warranty when the vehicle is sold without any warranty.

(b) It is an unfair act or practice for any used vehicle dealer, when that dealer sells or offers for sale a used vehicle in or affecting commerce as *commerce* is defined in the Federal Trade Commission Act:

(1) To fail to disclose, prior to sale, that a used vehicle is sold without any warranty; and

(2) To fail to make available, prior to sale, the terms of any written warranty offered in connection with the sale of a used vehicle.

(c) The Commission has adopted this Rule in order to prevent the unfair and deceptive acts or practices defined in paragraphs (a) and (b). It is a violation of this Rule for any used vehicle dealer to fail to comply with the requirements set forth in §§ 455.2 through 455.5 of this part. If a used vehicle dealer complies with the requirements of §§ 455.2 through 455.5 of this part, the dealer does not violate this Rule.

(d) The following definitions shall apply for purposes of this part:

(1) *Vehicle* means any motorized vehicle, other than a motorcycle, with a gross vehicle weight rating (GVWR) of less than 8500 lbs., a curb weight of less than 6,000 lbs., and a frontal area of less than 46 sq. ft.

(2) *Used vehicle* means any vehicle driven more than the limited use necessary in moving or road testing a new vehicle prior to delivery to a consumer, but does not include any vehicle sold only for scrap or parts (title documents