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Application for Health Insurance Agent's License

Your memorandum of November 14, 1975, asked whether the Bureau of Insurance can legally accept the application of a funeral director for licensing as a health insurance agent. The memorandum referred to 24-A M.R.S.A. § 2175, which prohibits an insurer from owning or managing a funeral establishment and 24-A M.R.S.A. § 2422,2, concerning the status of an insurance agent. Nevertheless, it is our opinion that the answer to your question is affirmative.

24-A M.R.S.A. § 2175 provides:

> "No insurer shall own or manage or supervise or operate or maintain a mortuary establishment or funeral establishment." (emphasis provided)

The term "insurer" is defined, for purposes of the Insurance Code, in 24-A M.R.S.A. § 4 as:

> "'Insurer' includes every person engaged as principal and as indemnitor, surety or contractor in the business of entering into contracts of insurance." (emphasis provided)

Section 2175 prohibits only "insurers" from owning or managing a funeral establishment. The statutory definition of "insurer" specifically limits that term to principals, and does not include their agents. This distinction between an "insurer" and its "agent" is maintained throughout the Insurance Code. Therefore, the prohibition of section 2175 would not apply to an insurance agent unless it appears that the agent is acting on behalf of the insurer in owning or managing a funeral business. In other words, an individual is not prohibited from simultaneously owning or operating a funeral establishment and being an insurance agent, so long as his two capacities and businesses are kept distinctly separate.

Title 24-A M.R.S.A. § 2422,2, referenced in your memorandum, states in part: "The authorized agent of an insurer shall be regarded as in the place of the insurer in all respects regarding any insurance effected by him." Although an isolated reading of this sentence would imply that an agent may be treated as the insurer, the complete section clearly relates only to the question of the implied notice and knowledge acquired by an insurer through its agent. Therefore, this section would not operate to classify an agent as an "insurer" for purposes of 24-A M.R.S.A. § 2175.

There is very little legislative history for section 2175, or for section 2176 which prohibits certain contracts between insurers and funeral establishments. However, the apparent intent of the Legislature was to prevent some of the abuses which could result if an insurer which is paying benefits to survivors is also in the position of advising them on potentially costly funeral arrangements. See generally: Daniel v. Family Ins. Co., 336 U.S. 220 (1949). These possible abuses will not occur if the agent/funeral director carefully divorces the two businesses, as previously stated. Furthermore, the potential for such abuses is greatly reduced where the insurance involved is health insurance, as opposed to life insurance. Therefore, the Bureau of Insurance under present law can accept the application of a funeral director for licensing as a health insurance agent.

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