

Regulatory Analysis Form

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INDEPENDENT REGULATORY
COMMISSION

(1) Agency

Department of State, Bureau of Professional and Occupational Affairs, State Board of Funeral Directors

(2) I.D. Number (Governor's Office Use)

16A-4814

IRRC Number: 2459

(3) Short Title

Unprofessional conduct

(4) PA Code Cite

49 Pa. Code §§ 13.1 and 13.202

(5) Agency Contacts & Telephone Numbers

Primary Contact: **Thomas A. Blackburn, Counsel,**
State Board of Funeral Directors (717) 783-7200
Secondary Contact: **Joyce McKeever, Deputy Chief**
Counsel, Department of State (717) 783-7200

(6) Type of Rulemaking (check one)

Proposed Rulemaking
 Final Order Adopting Regulation
 Policy Statement

(7) Is a 120-Day Emergency Certification Attached?

No
 Yes: By the Attorney General
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The amendment to the Board's unprofessional conduct regulation provides for additional grounds of misconduct in the profession. The regulation at 49 Pa. Code § 13.202 would be amended to define misconduct to include retaining funds without providing goods or services, performing funeral services on behalf of an entity not in compliance with the requirements for licensure, refusing to release remains until paid, and failing to comply with the Federal Trade Commission's Amended Funeral Rule.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

The regulatory amendments are adopted under sections 11(a)(5) and 16(a) of the Funeral Director Law (63 P.S. §§ 479.11(a)(5), 479.16(a)).

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

No. However, section 11(a)(5) of the Funeral Director Law authorizes the Board to discipline licensees for “misconduct in the carrying on of the profession” of funeral director. This amendment would provide additional grounds of misconduct for discipline.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

Section 11(a)(5) of the Funeral Director Law authorizes the Board to discipline licensees for “misconduct in the carrying on of the profession” of funeral director. Although this provisions tends to be very general, the Board has the authority under case law to apply it to the circumstances of a given case. The proposed amendment clarifies licensee prohibitions under section 11(a)(5).

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

Without regulation, licensees may be unaware that certain conduct constitutes misconduct, despite the Board’s holding in various licensure disciplinary matters.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Licensees and their customers will benefit from this regulation, because it more clearly defines what is prohibited of licensees. Currently, there are approximately 7640 licensed funeral directors, of whom approximately 3870 are active.

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

The proposed regulation will apply to all licensed funeral directors, as identified in the prior question. The Board has identified no other group of individuals or entities that will be adversely affected by the regulation.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

All persons holding licenses to practice the profession of funeral director will be required to comply with the regulation. Currently, there are approximately 3870 licensed funeral directors whose licenses are active.

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(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

In July, 2000, the Board solicited exposure draft comments from the Pennsylvania Funeral Directors Association and all individuals who had attended any Board meeting during the preceding year. The Board received pre-draft comments only from Pennsylvania Pre-Need Association (PPNA).

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

Based on the Board's enforcement experience, the vast majority of licensees currently adhere to the professional standards embodied in the proscriptions of the proposed amendments. Therefore, the cost to most members of the regulated community associated with compliance with the proposed amendments would be nominal. In addition, there may be a savings to the regulated community by being better able to avoid disciplinary action through a better understanding of what constitutes misconduct.

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

There are no costs or savings to local governments associated with compliance with the proposed regulation.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

There are no costs to state government associated with implementation of the proposed amendments.

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY 05-06	FY+1 06-07	FY+2 07-08	FY+3 08-09	FY+4 09-10	FY+5 10-11
SAVINGS:						
Regulated Community						
Local Government						
State Government						
Total Savings	N/A	N/A	N/A	N/A	N/A	N/A
COSTS:						

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Regulated Community						
Local Government						
State Government						
Total Costs	N/A	N/A	N/A	N/A	N/A	N/A
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	N/A	N/A	N/A	N/A	N/A	N/A

(20a) Explain how the cost estimates listed above were derived.

Not applicable.

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY-3 (FY 02-03)	FY-2 (FY 03-04)	FY-1 (FY 04-05)	Current FY (FY 05-06)
Pa. State Board of Funeral Dir.	\$550,000	\$609,000	\$627,000	\$700,000

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

No adverse effects or costs have been associated with compliance with the regulations, though there may be a small savings. Therefore, the above-identified benefits would outweigh any adverse effects and cost.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

Because the proposed amendments would effectuate the Funeral Director Law, the Board considered no non-regulatory alternatives.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

No alternative regulatory schemes were considered, because no other regulatory schemes would effectuate the Funeral Director Law.

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(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

The proposed regulatory amendments do not overlap or conflict with any federal requirements, but do incorporate by reference the FTC's Amended Funeral Rule.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

Funeral directors in the surrounding states are subject to disciplinary action for committing misconduct in the profession, as defined in each of those jurisdictions. This regulatory amendment will not put Pennsylvania at a competitive disadvantage.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

This regulation will have no effect on other regulations of the Board or other state agencies.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

The Board reviews its regulatory proposals at regularly scheduled public meetings, generally the first Wednesday of each month. More information can be found on the Board's web-site (www.dos.state.pa.us/funeral), or by calling the Board office at (717) 783-3397.

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

No.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

The Board has determined that there are no special needs of any subset of its applicants or licensees for whom special accommodations should be made.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulation will be effective upon publication in final form in the Pennsylvania Bulletin.

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(31) Provide the schedule for continual review of the regulation.

The Board continually reviews the efficacy of its regulations, as part of its annual review process pursuant to Executive Order 1996-1.

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INDEPENDENT REGULATORY
REVIEW COMMISSION

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FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

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Copy below is hereby approved as to form and legality. Attorney General

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

Copy below is approved as to form and legality. Executive or Independent Agencies

State Board of Funeral Directors
(AGENCY)

BY: _____
(DEPUTY ATTORNEY GENERAL)

DOCUMENT/FISCAL NOTE NO. 16A-4814

BY: Andrew C. Clark
FEB 28 2007
DATE OF APPROVAL

DATE OF APPROVAL

DATE OF ADOPTION: _____

BY: Anthony Scarantino
Anthony Scarantino

(Deputy General Counsel
(~~Chief Counsel,~~
Independent Agency
(~~Strike inapplicable title~~))

TITLE: Chairperson
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

[] Check if applicable
Copy not approved.
Objections attached.

[] Check if applicable.
No Attorney General approval
or objection within 30 day
after submission.

FINAL RULEMAKING

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF FUNERAL DIRECTORS

49 Pa. Code §§ 13.1, 13.202
Unprofessional conduct

The State Board of Funeral Directors (Board) amends §§ 13.1 and 13.202 (relating to definitions; and unprofessional conduct) to read as set forth in Annex A.

Description and Need for the Rulemaking

Section 11(a)(5) of the Funeral Director Law (act) (63 P.S. § 479.11(a)(5)) authorizes the Board to discipline licensees for “misconduct in the carrying on of the profession” of funeral director. Although the act does not define the term misconduct, the Board in its disciplinary actions has applied prior court interpretation of the term. See, for example, *Toms v. State Board of Funeral Directors*, 800 A.2d 342, 349 (Pa. Cmwlth. 2002) (misconduct is a breach of the generally accepted canons of ethics and propriety governing the reverential and respectful burial of the dead). Acting under its statutory authority, the Board has listed in § 13.202 various acts that the Board considers to be misconduct. Recent disciplinary cases before the Board concerning professional misconduct have inspired the Board to expand that list. Including acts of misconduct in the regulation serves to put licensees on notice of what the Board considers to be misconduct.

Summary of Comments and Responses to Proposed Rulemaking

The Board published notice of proposed rulemaking at 35 Pa.B. 1208 (February 12, 2005) with a 30-day public comment period. The Board received written comments from the following members of the public: Kevin M. Bean, FD; Patrick J. Connell, FD; Robert M. Fells of the International Cemetery and Funeral Association; John R. Flynn, FD; Drew Gauntley of Alderwoods Group; Ernie Heffner, FD; David A. Heisterkamp of Pre-Need; Paul L. Henney, Jr., FD; James J. Kutz, Esquire, on behalf of the Pennsylvania Cemetery and Funeral Association; Harry C. Neel, FD; Michele Pirro; Kathleen K. Ryan, Esquire, on behalf of the Pennsylvania Funeral Directors Association (PFDA); State Representative Stephen H. Stetler; Ronald W. Virag of AmeriServe Trust and Financial Services Co.; and Sam Cummings, Jr., FD, of PFDA.

The Board also received comments from the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC) as part of their review of proposed rulemaking under the Regulatory Review Act (71 P.S. §§ 745.1-745.12). The Board did not receive comments from the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) as part of its review of proposed rulemaking under the Regulatory Review Act.

In response to questions from various commentators, the Board has provided a definition of the term “funeral entity” used in §§ 13.202(13) and 13.202(14). This term is intended to encompass any of the various organizational forms that, under sections 8(a), 8(b), 8(d) and 9(a) of the act, may be licensed by the Board to operate a funeral establishment. The term is defined to include a restricted business corporation, professional corporation, pre-1935 corporation, partnership, sole proprietorship, widow, widower or estate authorized by the Board to practice the profession of funeral directing.

The Board previously proposed amending § 13.202(11) (unprofessional conduct includes providing embalming or other services or merchandise without receiving written permission from the

family) to provide an exception where no person authorized to give that permission is available and there is a need to provide that service or merchandise in a timely manner. Various commentators pointed out that the Federal Trade Commission's (FTC's) Amended Funeral Rule addresses such situations. Accordingly, the Board has removed this proposed amendment. In its place, the Board has added § 13.202(16) to provide that unprofessional conduct includes failing to comply with the regulations of the FTC at 16 CFR Part 453 (relating to Funeral Industry Practices).

As proposed, new § 13.202(13) would have prohibited a funeral director from retaining funds for goods or services that the funeral director has not provided, or that exceeded the value of funeral goods and services that the funeral director has provided. Various commentators, including the HPLC and IRRC, were concerned about how this proposed rulemaking would impact preneed funeral arrangements. Where the funeral director has received those funds under a preneed agreement, the Board concludes that any issues concerning entitlement to payment should be addressed through comprehensive rulemaking specific to preneed funeral arrangements. Accordingly, in final rulemaking the Board has specifically excluded preneed funeral arrangements from this rulemaking. Also as proposed, subsection (13) would have permitted a funeral director to preserve the funds for a reasonable time to permit a person to demonstrate his right to receive the funds. In response to comments expressing confusion as to this provision, the Board has deleted this additional provision.

Because section 8 of the act sets forth various forms of organization that may engage in the practice of funeral directing, including a sole proprietor or partnership and certain corporations, and imposes certain restrictions on these entities, the Board proposed adding § 13.202(14) to prohibit a funeral director from performing funeral director services on behalf of an entity that the funeral director knew or should have known was not in compliance with section 8. The HPLC commented that, because the statutory grounds for disciplinary action includes no required mental state, the Board should not inject such a requirement by regulation. Proposed § 13.202(14) extends beyond existing § 13.202(1) (unprofessional conduct includes aiding or assisting an unlicensed person to engage in the practice of funeral directing) to address the specific requirements for these funeral entities in section 8 of the Act, such as employing a supervisor and having appropriately qualified shareholders and officers. Because the Board concludes that the licensee's knowledge of those facts beyond the mere fact of licensure is critical to determining the propriety of the licensee's conduct, the Board will retain the required mental state standard.

The Board proposed adding § 13.202(16) to prohibit a funeral director from refusing a reasonable request of a member of the decedent's immediate family to pay final respects. In response to various comments, the Board has decided not to promulgate this provision.

The Board previously proposed adding § 13.202(17) to prohibit a funeral director from aiding any person or entity that the funeral director has reason to believe is attempting through unlicensed persons or entities to engage in preneed sales. Subsequent to the publication of this rulemaking as proposed, the Federal District Court for the Middle District of Pennsylvania noted in *Walker v. Flitton*, 364 F.Supp.2d 503 (M.D. Pa. 2005) that the Board has not set forth by regulation what those unlicensed employees and agents may lawfully do in the realm of preneed sales. Accordingly, the

Board decided not to promulgate this provision as part of its misconduct regulation, and instead will address this issue through separate rulemaking.

Fiscal Impact and Paperwork Requirements

The final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions and will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

Effective date

The final-form rulemaking will become effective upon publication in the *Pennsylvania Bulletin*.

Statutory Authority

The final rulemaking is authorized under sections 11(a)(5) and 16(a) of the Funeral Director Law (63 P.S. §§ 479.11(a)(5) and 479.16(a)).

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on February 12, 2005, the Board submitted a copy of the notice of proposed rulemaking, published at 35 Pa.B. 1208, to IRRC and the chairpersons of the HPLC and the SCP/PLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments received from IRRC, the HPLC, the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on _____, 200__, the final-form rulemaking was approved by the HPLC. On _____, 200__, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on _____, 200__, and approved the final-form rulemaking.

Additional Information

Persons who require additional information about the final-form rulemaking should submit inquiries to Michelle T. Smey, Administrator, State Board of Funeral Directors, by mail to P. O. Box 2649, Harrisburg, PA 17105-2649, by telephone at (717) 783-3397, or by e-mail at stfuneral@state.pa.us.

Findings

The Board finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) and regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law and all comments were considered.
- (3) The amendments to this final-form rulemaking do not enlarge the scope of proposed rulemaking published at 35 Pa.B. 1208.
- (4) The final-form rulemaking adopted by this order is necessary and appropriate for the administration of the Funeral Director Law.

Order

The Board, acting under its authorizing statute, orders that:

- (a) The regulations of the Board at 49 Pa. Code Chapter 13 are amended, by amending §§ 13.1 and 13.202, to read as set forth in Annex A.
- (b) The Board shall submit this order and Annex A to the Office of Attorney General and the Office of General Counsel for approval as required by law.
- (c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.
- (d) The final-form rulemaking shall take effect upon publication in the *Pennsylvania Bulletin*.

Anthony Scarantino, Chairperson
State Board of Funeral Directors

ANNEX A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 13. STATE BOARD OF FUNERAL DIRECTORS

GENERAL PROVISIONS

§ 13.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

* * *

FUNERAL ENTITY – A RESTRICTED BUSINESS CORPORATION, PROFESSIONAL CORPORATION, PRE-1935 CORPORATION, PARTNERSHIP, SOLE PROPRIETORSHIP, WIDOW, WIDOWER OR ESTATE AUTHORIZED BY THE BOARD TO PRACTICE THE PROFESSION OF FUNERAL DIRECTOR.

* * *

STANDARDS OF PRACTICE AND CONDUCT

* * *

§ 13.202. Unprofessional conduct.

Unprofessional conduct includes the following:

* * *

- (11) Furnishing embalming, other services or merchandise without having obtained written permission from a family member or other person authorized by law to make funeral arrangements

for the deceased. Oral permission to embalm, followed by a confirmatory e-mail, fax, telex, telegram, mailgram or other written confirmation will be acceptable.

~~(i) A funeral director who has made reasonable attempts, without success, to locate family members or other persons authorized by law to make funeral arrangements for a deceased may provide embalming or other services without having obtained permission where there is a legitimate need to provide that service at that time and no facts known to the funeral director suggest that any authorized person, if requested, would refuse to give permission.~~

~~(ii) A funeral director who has provided funeral service without obtaining prior permission may not charge for the service unless:~~

~~(A) The provision of services without prior permission is authorized by this paragraph.~~

~~(B) The person paying for funeral goods and services agrees to pay for the previously unauthorized service.~~

~~(iii) A funeral director who has embalmed without obtaining prior permission may not charge or accept payment for the embalming unless:~~

~~(A) The embalming without prior permission is authorized by this paragraph.~~

~~(B) Embalming is necessary and appropriate for other services, such as a public viewing, subsequently selected by the person paying for funeral goods and services.~~

* * *

(13) Retaining funds intended to pay for funeral goods and services when the funeral director and establishment FUNERAL ENTITY have not provided any funeral goods and services or when the amount of funds retained is in excess of the value of funeral goods and services actually provided by the funeral director or establishment FUNERAL ENTITY, AS SET FORTH ON THE GENERAL PRICE LIST IN EFFECT AT THE TIME THE FUNERAL GOODS AND SERVICES

ARE ACTUALLY PROVIDED. ~~A funeral director may preserve the funds for a reasonable amount of time for a person to demonstrate a legal entitlement to receive the funds or to receive payment of funds owed to the decedent.~~ THIS PARAGRAPH DOES NOT APPLY TO FUNDS RECEIVED UNDER AN AGREEMENT ENTERED INTO BY THE FUNERAL DIRECTOR, OR THE FUNERAL ENTITY EMPLOYING THAT FUNERAL DIRECTOR, WHILE THE DECEDENT WAS STILL LIVING TO PROVIDE FUNERAL GOODS OR SERVICES ON BEHALF OF THE DECEDENT WHEN NEEDED.

(14) ~~Performing funeral services on behalf of a funeral entity that the funeral director knew, or should have known, was not in compliance with section 8 of the act (63 P.S. § 479.8), regarding conduct of business.~~

(15) ~~Refusing to release remains until consideration, whether earned or not, has been paid.~~

(16) ~~Refusing the reasonable request of any known member of a decedent's immediate family the opportunity to pay final respects, regardless of who is paying for funeral services or merchandise. For purposes of this paragraph, the immediate family includes spouse, sibling, parent, grandparent, child and grandchild.~~ FAILING TO COMPLY WITH THE REGULATIONS OF THE FEDERAL TRADE COMMISSION AT 16 CFR PART 453 (RELATING TO FUNERAL INDUSTRY PRACTICES).

(17) ~~Aiding any person or entity that the funeral director has reason to believe is attempting through unlicensed persons or entities to engage in the sale of funeral services for a person then living.~~

**Commentator Listing
Final Rulemaking
State Board of Funeral Directors
Unprofessional Conduct (16A-4814)**

1. Sam Cummings, Jr., FD
PFDA
7441 Allentown Blvd.
Harrisburg, PA 17112
2. Stephen H. Stetler
State Representative
Main Capitol Bldg.
House Box 202020
Harrisburg, PA 17120
3. Kathleen K. Ryan, Esq.
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7441 Allentown Blvd.
Harrisburg, PA 17112
4. Patrick J. Connell, FD
Connell Funeral Home, Inc.
245 East Broad Street
Bethlehem, PA 18018
5. Michele Pirro
408 S. 24th Street
Altoona, PA 16602
6. Harry C. Neel, FD
Jefferson Memorial Funeral Home, Inc.
301 Curry Hollow Road
Pittsburgh, PA 15236
7. Paul L. Henney, Jr., FD
Henney Family Services, Inc.
5570 Library Road
Bethel Park, PA 15102
8. John R. Flynn, FD
John Flynn Funeral Home &
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Hermitage, PA 16148
9. Ronald W. Virag
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Vice President, Trust and Regulatory Compliance
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12. David A. Heisterkamp
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13. James J. Kutz, Esq.
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Post & Schell
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14. Ernest Heffner, FD
Heffner Funeral Chapel & Crematory, Inc.
1551 Kenneth Road
York, PA 17404
15. Kevin M. Bean, FD
Bean Funeral Homes & Cremation Services, Inc.
North 16th & Rockland Sts.
Hapden Heights
Reading, PA 19064

PROPOSED RULEMAKING

STATE BOARD OF FUNERAL DIRECTORS

[49 PA. CODE CH. 13]

Unprofessional Conduct

The State Board of Funeral Directors (Board) proposes to amend § 13.202 (relating to unprofessional conduct) to read as set forth in Annex A.

Effective Date

The proposed rulemaking will be effective upon final-publication in the *Pennsylvania Bulletin*.

Statutory Authority

The proposed rulemaking is authorized under sections 11(a)(5) and 16(a) of the Funeral Director Law (act) (63 P. S. §§ 479.11(a)(5) and 479.16(a)).

Background, Need and Description of the Proposed Amendment

Section 11(a)(5) of the act authorizes the Board to discipline licensees for "misconduct in the carrying on of the profession" of funeral director. Although the act does not define the term "misconduct," the Board in its disciplinary actions has applied prior court interpretation of the term. See, for example, *Toms v. State Board of Funeral Directors*, 800 A.2d 342, 349 (Pa. Cmwlth. 2002) (misconduct is a breach of the generally accepted canons of ethics and propriety governing the reverential and respectful burial of the dead). Acting under its statutory authority, the Board has listed in § 13.202 various acts that the Board considers to be misconduct. Recent disciplinary cases before the Board concerning professional misconduct have inspired the Board to expand that list. Including acts of misconduct in the regulation serves to put licensees on notice of what the Board considers to be misconduct.

A funeral director might come into possession of funds of a decedent or intended for a decedent, even if the funeral director does not provide funeral goods or services for that decedent. Proposed § 13.202(13) would prohibit a funeral director from retaining funds for goods or services that the funeral director has not provided or that exceed the value of funeral goods and services that the funeral director has provided. This provision would permit the funeral director a reasonable amount of time to ascertain that any person to whom the funeral director would transfer the funds is entitled to receive them.

Section 8 of the act (63 P. S. § 479.8) sets forth various forms of organization that may engage in the practice of funeral directing, including as sole proprietor or partnership and certain corporations. Anyone practicing funeral directing in any of these forms must be licensed by the Board. Proposed § 13.202(14) would prohibit a funeral director from performing funeral director services on behalf of an establishment that the funeral director knows, or should know, is not properly licensed to engage in funeral directing.

A funeral director shall release a decedent's remains upon request of the family. Section 13.201(5) (relating to professional responsibilities) provides that the professional responsibility of a funeral director includes releasing remains to the funeral director chosen by the family if

the remains were removed prior to contacting the family. A funeral director may not refuse to release a decedent's remains as a means to enforce payment for services or merchandise. See *Toms* at 349. Proposed § 13.202(15) would codify this prohibition. Enforcement of a payment obligation must be through other means, such as subsequent billing or legal process.

Because it is the last opportunity to do so, proposed § 13.202(16) would prohibit a funeral director from refusing a reasonable request of a member of the decedent's immediate family to pay final respects. The immediate family would include the decedent's spouse, parents, grandparents, siblings, children and grandchildren. The provision does not require the funeral director to permit any of these persons to participate in a funeral service. Instead, upon request, the funeral director shall make available a reasonable opportunity to pay final respects, regardless of any instructions from the funeral director's customer who is paying for the funeral director's services.

Section 13(c) of the act (63 P. S. § 479.13(c)) prohibits a person who is not licensed as a funeral director, either directly or through an agent, from entering into a contract with a person then living to provide funeral services at the time of the person's subsequent death. This provision prohibits any unlicensed person from engaging in preneed sales, even on behalf of a funeral director. See *Ferguson v. State Board of Funeral Directors*, 566 A.2d 670 (Pa. Cmwlth. 2001), appeal denied, 566 Pa. 670, 782 A.2d 549. Proposed § 13.202(17) would prohibit a funeral director from aiding any person or entity that the funeral director has reason to believe is attempting through unlicensed persons or entities to engage in preneed sales.

Additionally, the Board proposes to amend § 13.202(11) concerning the requirement that a funeral director obtain permission from the family prior to furnishing embalming or other services or merchandise. A funeral director might be unable to locate family members, despite making reasonable good-faith attempts to locate them. However, there may be very good reasons why certain services must be provided at that time. The proposed amendment would permit the funeral director to provide these necessary services, so long as the funeral director has no reason to think the family would refuse. This proposed amendment is consistent with the Federal Trade Commission's Amended Funeral Rule (15 CFR 453.5), which provides that it is an unfair or deceptive trade practice for a provider of funeral services to embalm a deceased human body for a fee unless the law requires embalming, the family has given prior approval or the provider is unable to contact an appropriate person to give approval for embalming after exercising due diligence, has no reason to believe the family does not want embalming and obtains subsequent approval for embalming already performed. In general, the proposed amendment to § 13.202(11) would permit a funeral director to charge for funeral services provided prior to obtaining permission by obtaining that permission after the fact. However, the proposed amendment to § 13.202(11) would not permit a funeral director to charge for embalming provided prior to obtaining permission, unless the embalming is necessary and appropriate for other services, such as public viewing, selected by the person paying for the overall funeral goods and services.

Impact of the Proposed Rulemaking

The Board solicited input from and provided an exposure draft of this proposed amendment to funeral directors and organizations. In addition, the Board considered the impact the amendment would have on the regulated community and on public health, safety and welfare. The Board finds that the proposed amendment addresses a compelling public interest as described in this preamble.

Fiscal Impact and Paperwork Requirements

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

Sunset Date

The Board continuously monitors the cost effectiveness of its regulations. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 2, 2005, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Michelle Smey, Administrator, State Board of Funeral Directors, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16A-4814 (Unprofessional conduct) when submitting comments.

JOSEPH A. FLUEHR, III, FD,
Chairperson

Fiscal Note: 16A-4814. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS
PART I. DEPARTMENT OF STATE
Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS
CHAPTER 13. STATE BOARD OF FUNERAL DIRECTORS
STANDARDS OF PRACTICE AND CONDUCT
§ 13.202. Unprofessional conduct.

Unprofessional conduct includes the following:

* * * * *

(11) Furnishing embalming, other services or merchandise without having obtained written permission from a family member or other person authorized by law to make funeral arrangements for the deceased. Oral permission to embalm, followed by a confirmatory e-mail, fax, telex, telegram, mailgram or other written confirmation will be acceptable.

(i) A funeral director who has made reasonable attempts, without success, to locate family members or other persons authorized by law to make funeral arrangements for a deceased may provide embalming or other services without having obtained permission when there is a legitimate need to provide that service at that time and no facts known to the funeral director suggest that any authorized person, if requested, would refuse to give permission.

(ii) A funeral director who has provided funeral service without obtaining prior permission may not charge for the service unless:

(A) The provision of services without prior permission is authorized by this paragraph.

(B) The person paying for funeral goods and services agrees to pay for the previously unauthorized service.

(iii) A funeral director who has embalmed without obtaining prior permission may not charge or accept payment for the embalming unless:

(A) The embalming without prior permission is authorized by this paragraph.

(B) Embalming is necessary and appropriate for other services, such as a public viewing, subsequently selected by the person paying for funeral goods and services.

* * * * *

(13) Retaining funds intended to pay for funeral goods and services when the funeral director and establishment have not provided any funeral goods and services or when the amount of funds retained is in excess of the value of funeral goods and services actually provided by the funeral director or establishment. A funeral director may preserve the funds for a reasonable amount of time for a person to demonstrate a legal entitlement to receive the funds or to receive payment of funds owed to the decedent.

(14) Performing funeral services on behalf of a funeral entity that the funeral director knew, or should have known, was not in compliance with section 8 of the act (63 P. S. § 479.8), regarding conduct of business.

(15) Refusing to release remains until consideration, whether earned or not, has been paid.

(16) Refusing the reasonable request of any known member of a decedent's immediate family the opportunity to pay final respects, regardless of who is paying for funeral services or merchandise. For purposes of this paragraph, the immediate family includes spouse, sibling, parent, grandparent, child and grandchild.

(17) Aiding any person or entity that the funeral director has reason to believe is attempting

through unlicensed persons or entities to engage in the sale of funeral services for a person then living.

[Pa.B. Doc. No. 05-278. Filed for public inspection February 11, 2005, 9:00 a.m.]

STATE BOARD OF MEDICINE

[49 PA. CODE CHS. 16 AND 18]

Registration and Practice of Acupuncturists

The State Board of Medicine (Board) proposes to amend §§ 16.11, 16.13, 18.11—18.17 and 18.19 regarding the registration and practice of acupuncturists to read as set forth in Annex A.

A. Effective Date

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

B. Statutory Authority

The statutory authority for this proposal is the act of May 16, 2002 (P. L. 326, No. 49) (Act 49) which amended the Acupuncture Registration Act (act) (63 P. S. §§ 1801—1806). Section 3 of the act (63 P. S. § 1803) authorizes the Board to promulgate regulations as necessary to regulate the practice of acupuncture.

C. Background and Purpose

The proposed rulemaking would amend the Board's existing regulations so that they comport with the Act 49 amendments to the act.

D. Description of Amendments

Sections 16.11 and 16.13 (relating to licenses, certificates and registrations; and licensure, certification, examination and registration fees) would be amended to delete references to acupuncture supervisor and fees for acupuncture supervisor registration. Section 18.11 (relating to definitions) would be amended to include the statutorily expanded definition of "acupuncture" to include the use of supplemental techniques, the statutorily established definition of an "acupuncture educational program" and the statutorily established definition of "supplemental techniques." Section 18.11 would also be amended to delete definitions rendered unnecessary by Act 49. Specifically, the definition of "acupuncture program" would be deleted as superseded by the term "acupuncture educational program." Definitions regarding supervision of acupuncturists would also be deleted because Act 49 eliminated the supervisory requirement in regard to the practice of acupuncture. Section 18.11 would also be amended to reflect the name change of the National Commission for the Certification of Acupuncturists and Oriental Medicine.

Sections 18.12—18.15 would be amended and §§ 18.16 and 18.17 (relating to responsibilities of acupuncturist supervisor; and notice responsibilities) would be deleted

to delete references to acupuncturist supervisor and provisions pertaining to the supervision of the practice of acupuncture.

Section 18.15 (relating to practice responsibilities of acupuncturist who is not a medical doctor) would be amended to incorporate statutorily established requirements that the acupuncturist ensure that prior to the application of acupuncture treatments the patient obtain a written referral from a licensed physician, that the patient has undergone a medical diagnostic examination, and that the results of the examination and the referral are maintained in the patient's record. Existing provisions pertaining to the acupuncturist's obligation to consult with the referring physician as necessary would be retained.

Lastly, § 18.19 (relating to registration during transitional period) pertains to outdated registration requirements under the original act and, therefore, would be deleted.

E. Fiscal Impact and Paperwork Requirements

The proposed rulemaking would have no adverse fiscal impact or additional paperwork requirements imposed on the Commonwealth, its political subdivisions or the private sector.

F. Sunset Date

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

G. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 2, 2005, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

H. Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding the proposed rulemaking to Joanne Troutman, Health Licensing Division, Bureau of Professional and Occupational Affairs, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Refer to Acupuncture Registration when submitting comments.

CHARLES D. HUMMER, Jr., M.D.,
Chairperson

Fiscal Note: 16A-4919. No fiscal impact; (8) recommends adoption.

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House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

CHAIRMAN
PROFESSIONAL LICENSURE COMMITTEE

March 31, 2005

John R. McGinley, Jr., Chairman
Independent Regulatory Review Commission
14th Floor, Harrisstown 2
333 Market Street
Harrisburg, PA 17101

Dear Chairman McGinley:

The House Professional Licensure Committee held a meeting on March 30, 2005, to consider the following:

Regulation 16A-4615 – Final rulemaking of the State Board of Dentistry relating to biennial renewal fees – dentists and restricted anesthesia permit II. The committee voted to approve the regulation.

Regulation 16A-4614 – Final rulemaking of the State Board of Dentistry relating to the administration of general anesthesia, deep sedation, conscious sedation and nitrous oxide/oxygen analgesia. The committee voted to approve the regulation.

Regulation 16A-675 – Final rulemaking (proposed omitted) of the State Board of Occupational Therapy relating to oral orders. The committee voted to approve the regulation.

Regulation 16A-5313 – Final rulemaking of the State Board of Osteopathic Medicine relating to continuing medical education. The committee voted to approve the regulation.

Regulation 16A-489 – Final rulemaking of the State Board of Funeral Directors relating to continuing education. The board withdrew the regulation on March 21, 2005. Hence, the committee did not vote on this regulation.

Regulation 16A-4814 – Proposed rulemaking of the State Board of Funeral Directors relating to unprofessional conduct. The committee voted to take no formal action until final regulations are promulgated. The committee submits the following comments:

1. With respect to the amendment the board proposes to add to Section 13.202(11), the committee notes that the Federal Trade Commission has promulgated regulations on

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HARRISBURG

CHAIRMAN
PROFESSIONAL LICENSURE COMMITTEE

the topic of embalming a human body without prior authorization and then charging a fee. Specifically, 16 C.F.R. 453.5, entitled Services Provided Without Prior Approval, states that it is an unfair or deceptive practice for any provider to embalm a deceased human body for a fee unless: (1) the provider is unable to contact a family member after exercising due diligence; (2) the provider has no reason to believe the family does not want the embalming performed, and (3) the provider obtains subsequent approval for embalming already performed.

The committee notes that the board's proposal speaks to embalming and other services, while the federal regulation deals solely with embalming. Further, the committee notes the board's proposal adds another condition, that of a legitimate need to provide the embalming, that a funeral director must fulfill in order to charge for embalming.

The committee notes that the federal regulation provides a procedure for obtaining a state exemption from 16 C.F.R. 453.5 when the state rule is more protective. Consequently, the committee asks the board whether it is appropriate to seek an exemption or whether the board has or intends to apply for an exemption.

With respect to the drafting of paragraph (11) of Section 13.202, the committee recommends that paragraph (11) be re-written, perhaps in two or three paragraphs, with paragraph (11) stating that, except as provided in another paragraph, written permission is necessary before a funeral director may furnish embalming or other services. A subsequent paragraph or paragraphs can list the exception and the conditions under which a funeral director may obtain payment for embalming or other services not previously authorized.

The committee also asks the board to consider whether the two concepts embodied in paragraph (11), that of embalming without prior authorization and providing funeral services other than embalming without prior authorization, should be dealt with separately for reasons of clarity. Similarly, the committee asks the board to consider whether, with respect to embalming, the regulations should provide a citation to 16 C.F.R. 453.5, if the board intends to treat embalming without prior approval in the same manner in which the Code of Federal Regulations treats that practice.

2. With respect to paragraph (13) of Section 13.202, the committee notes that the first and second sentences in that paragraph seem to conflict with one another. The first sentence states that a funeral director may not retain funds from a customer where no services have been provided. The second sentence states that, "A funeral director

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may preserve the funds for a reasonable time for a person to demonstrate a legal entitlement to receive funds or to receive payment of funds owed to the decedent.”

In looking at the paragraph generally, the committee seeks clarification from the board regarding its policy about payment and retention of consumer funds. The committee also recommends that the rule be re-written so that the prohibition is stated clearly. Generally, the committee is concerned that, as written, the provision does not clearly provide guidance to members of the public and funeral directors as to the conduct that is prohibited.

To look at the paragraph specifically, the committee seeks clarification from the board regarding whether the language “the amount of funds retained is in excess of the value of funeral goods and services actually provided” can, in any circumstance, apply to a pre-need contract. Additionally, the committee asks the board to consider whether the language in this paragraph conflicts with existing regulations regarding pre-need contracts.

Further, the committee is concerned that the term “reasonable amount of time” with respect to retention of funds does not give specific guidance to funeral directors or the public regarding how long funds may be retained. The committee asks the board to review the public policy embodied in the term “reasonable time.”

Additionally, in terms of drafting, it is not clear to whom the word “person” refers. If the rule applies to a “funeral director” holding onto money, then the rule should substitute the term “funeral director” for “person.” If the board intends something else, then the policy should be clearly articulated. Further, if the term “person” refers only to a natural person and not a corporation or other entity, then the term “individual” should be substituted.

Finally, the committee seeks an explanation of the circumstances, other than the one of retaining funds pursuant to a pre-need contract, under which a funeral director would receive and retain funds.

3. With respect to paragraph (14) of Section 13.202, (Unprofessional conduct includes performing “funeral services on behalf of a funeral entity that the funeral director knew, or should have known, was not in compliance with Section 8 of the Act...”), the committee questions whether this provision should include a mental state on the part of the funeral director in order to find culpability. The committee notes that including a mental state creates a defense for a funeral director, which is arguably in

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contravention with many of the statutory provisions which state that licensure is required in order to engage in the profession of a funeral director. In other words, the statute does not inquire into the mental state of the actor, but imposes strict liability. Given the statutory language, the committee asks the board to consider whether including a mental state is consistent with the statute and appropriate in terms of public policy.

4. With respect to paragraph (17) of Section 13.202, (Unprofessional conduct includes aiding "any person or entity that the funeral director has reason to believe is attempting through unlicensed persons or entities to engage in the sale of funeral services for a person then living"), the committee questions whether the mental state "has reason to believe" is consistent with the language of Section 13(c) of the Funeral Director Law or appropriate in terms of public policy.

Section 13(c) states, "No person other than a licensed funeral director shall, directly or indirectly, or through an agent, offer to or enter into a contract with a living person to render funeral services to such person when needed." Since the statutory language does not include a mental state but imposes strict liability, the committee asks the board to consider whether the board's proposal is consistent with the statute and appropriate in terms of public policy: As with paragraph (14), the mental state of "has reason to believe" creates a defense for a funeral director when no such defense exists in the statute.

Further, the committee questions whether paragraph (17) conflicts with existing regulatory language, specifically Section 13.202(1). The committee notes that Section 13.202(1) does not include a mental state.

5. With respect to paragraph (16), the committee asks the board to consider the circumstances in which a decedent's will conflicts with the provisions of this paragraph and, consequently, asks the board to consider whether an exception should be included. Further, the committee recommends a definition of "final respects" be included. Finally, the term "reasonable request" does not give a licensee guidance as to what conduct is prohibited.
6. The committee notes the body of law which applies to funeral directors contained in 16 CFR 453.1 et seq., the rules promulgated by the Federal Trade Commission. The committee asks the board to consider including a provision which states that violating such a rule is unprofessional conduct and will subject the licensee to disciplinary action.

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HARRISBURG

CHAIRMAN
PROFESSIONAL LICENSURE COMMITTEE

Please feel free to contact my office if any questions should arise.

Sincerely,

A handwritten signature in cursive script that reads "Thomas P. Gannon".

Thomas P. Gannon
Chairman
Professional Licensure Committee

cc: The Honorable Pedro A Cortes, Secretary of the Commonwealth
Department of State
The Honorable Kenneth A. Rapp, Deputy Secretary
Regulatory Programs, Department of State
The Honorable Basil L. Merenda, Commissioner
Bureau of Professional and Occupational Affairs
The Honorable Peter V. Marks, Sr., Deputy Commissioner
Bureau of Professional and Occupational Affairs
Albert H. Masland, Chief Counsel
Department of State
Cynthia K. Montgomery, Regulatory Counsel
Department of State
Eric Battisti, Director of Legislative Affairs
Department of State
Thomas R. Czarnecki, D.O.
Chairman, State Board of Osteopathic Medicine
Veasey B. Cullen, Jr., D.M.D., M.S.
Chairman, State Board of Dentistry
Melanie Wennick, OTR/L, CHT, Chairperson
State Board of Occupational Therapy
Joseph A. Fluehr, III, Chairperson ✓
State Board of Funeral Directors

Comments of the Independent Regulatory Review Commission

on

State Board of Funeral Directors Regulation #16A-4814 (IRRC #2459)

Unprofessional Conduct

April 13, 2005

We submit for your consideration the following comments that include references to the criteria in the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The State Board of Funeral Directors (Board) must respond to these comments when it submits the final-form regulation. The public comment period for this regulation closed on March 14, 2005. If the final-form regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

Section 13.202. Unprofessional Conduct. – Consistency with existing federal regulations; Reasonableness; Clarity.

Subparagraph (11)(i)

We have two concerns with this subparagraph.

First, it contains language that is not found in the Federal Trade Commission's (FTC) Funeral Rule (16 CFR § 453.5(a)). The language in this subparagraph expands the scope of this provision beyond the Funeral Rule by including "other services." The Board should use language that is consistent with the Funeral Rule, add a citation to the appropriate section of the Funeral Rule or explain why it has included "other services."

If the final-form regulation retains this phrase, it should clearly state what "other services" a funeral director may provide without permission if there is a "legitimate need" to provide those services.

Also, the Board needs to clarify what it considers to be a "legitimate need" to provide services without obtaining prior permission.

Second, it does not appear that the Board sought an exemption from the FTC, as required by the provisions of 16 CFR § 453.9 (relating to State exemptions). This federal regulation provides a procedure for states to apply to the FTC for an exemption when the state's requirements, relating to the Funeral Rule, would be more stringent than the FTC regulations. The House Professional Licensure Committee (House Committee) questioned whether the Board should seek an exemption from the FTC on these provisions. We share this concern. Has the Board applied for an exemption or considered doing so?

Paragraph (13)

Commentators have indicated that this paragraph, if applied to pre-need contracts, is contrary to contract law and would negate a substantial portion of their business. Also, the House Committee questioned if this provision will be applied to pre-need contracts.

The Board's counsel has indicated that the Board did not intend to apply this provision to pre-need contracts. For reasonableness and clarity, the Board should insert language into this section that excludes pre-need contracts and clearly delineates the circumstances under which this provision will be applied.

Paragraph (14)

This paragraph contains the phrase "funeral entity." The Board's counsel has indicated that this is not the same as the presently defined term "funeral establishment." For clarity, the Board should add a definition for "funeral entity" to the appropriate section.

Paragraph (16)

We have two concerns with this paragraph.

First, it would require a funeral director to permit an immediate family member of a decedent to have the opportunity to pay last respects when the wishes of the decedent, or the person with the right of final disposition of the remains, state otherwise.

The House Committee asked the Board to "consider the circumstances in which a decedent's will conflicts with the provision of this paragraph" and suggests that an exception be included. We agree. We also note that 20 Pa.C.S.A. § 305 (relating to right to dispose of a decedent's remains) provides for the legal right to control the final disposition of a deceased person's remains.

The Board should insert language that will give clear guidance to funeral directors in the situation where a legally executed will, or the request of the person with the right of final disposition, conflicts with the proposed language in this paragraph.

Second, this paragraph contains a vague reference to "funeral services or merchandise." Other portions of this regulation use the phrase "funeral goods and services." Neither of these phrases is defined. Therefore, for clarity, one phrase should be used consistently throughout the regulation and it should be defined in Section 13.1 (relating to definitions).

Paragraph (17)

The provisions in this paragraph are similar to an existing requirement in Section 13.202(1) (relating to unprofessional conduct). Therefore, this paragraph is duplicative and should be deleted from the final-form regulation.



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF FUNERAL DIRECTORS

Post Office Box 2649
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March 5, 2007

The Honorable Arthur Coccodrilli, Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harristown 2, 333 Market Street
Harrisburg, Pennsylvania 17101


Re: Final Regulation
State Board of Funeral Directors
16A-4814: Unprofessional Conduct

Dear Chairman Coccodrilli:

Enclosed is a copy of a final rulemaking package of the State Board of Funeral Directors pertaining to unprofessional conduct.

The Board will be pleased to provide whatever information the Commission may require during the course of its review of the rulemaking.

Sincerely,


Anthony Scarantino, Chairperson
State Board of Funeral Directors

AS/FJB:kmh

Enclosure

cc: Basil L. Merenda, Commissioner
Bureau of Professional and Occupational Affairs
Albert H. Masland, Chief Counsel
Department of State
Joyce McKeever, Deputy Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel
Department of State
Herbert Abramson, Senior Counsel in Charge
Department of State
Frank J. Bolock, Jr., Counsel
State Board of Funeral Directors
State Board of Funeral Directors

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 16A-4814
 SUBJECT: UNPROFESSIONAL CONDUCT
 AGENCY: DEPARTMENT OF STATE
 STATE BOARD OF FUNERAL DIRECTORS

TYPE OF REGULATION

- Proposed Regulation
- X Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

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 2007 MAR -5 PM 2: 34
 INDEPENDENT REGULATORY
 REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
3/5/07	<i>Alison...</i>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
3/5/07	<i>Mary Walmer</i>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
3/5/07	<i>Kathy Cooper</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)