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**INDEPENDENT REGULATORY REVIEW COMMISSION**  
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

April 13, 2005

Janice H. Mannel, FD, Chairperson  
State Board of Funeral Directors  
2601 North 3rd Street  
Harrisburg, PA 17110

Re: Regulation #16A-4814 (IRRC #2459)  
State Board of Funeral Directors  
Unprofessional Conduct

Dear Chairperson Mannel:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at [www.irrc.state.pa.us](http://www.irrc.state.pa.us). If you would like to discuss them, please contact me at 783-5506.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary S. Wyatt", is written over a circular stamp.

Mary S. Wyatt  
Acting Executive Director/Chief Counsel

evp

Enclosure

cc: Honorable Thomas P. Gannon, Majority Chairman, House Professional Licensure Committee  
Honorable William W. Rieger, Democratic Chairman, House Professional Licensure Committee  
Honorable Robert M. Tomlinson, Chairman, Senate Consumer Protection and Professional Licensure Committee  
Honorable Lisa M. Boscola, Minority Chairman, Senate Consumer Protection and Professional Licensure Committee  
Honorable Pedro A. Cortes, Secretary, Department of State

## **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regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.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.

FROM

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FAX NO. P. 01/04

### Facsimile Cover Sheet

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Administrative Officer



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**INDEPENDENT REGULATORY REVIEW COMMISSION**  
333 MARKET STREET, 14<sup>TH</sup> FLOOR, HARRISBURG, PA 17101

2005 APR 13 AM 8:59  
INDEPENDENT REGULATORY REVIEW COMMISSION

**To:** Suzanne Hoy  
**Agency:** Department of State  
Licensing Boards and Commissions  
**Phone:** 7-2628  
**Fax:** 7-0251  
**Date:** April 13, 2005  
**Pages:** 4

**Comments:** We are submitting the Independent Regulatory Review Commission's comments on the State Board of Funeral Directors regulation #16A-4814 (IRRC #2459). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: *Suzanne Hoy* Date: 4/13/05