

Regulatory Analysis Form

This space for use by IRRC

(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-4813

IRRC Number: **2604**

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INDEPENDENT REGULATORY
REVIEW COMMISSION

(3) Short Title

Forms review

(4) PA Code Cite

49 Pa. Code §§ 13.204, 13.224

(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.

Regulations of the Board require a funeral establishment to have its form statement of funeral goods and services and preneed contract reviewed and approved by the Board. The Board has only refused to approve forms where the form failed to comply with provisions of the Funeral Director Law or Board regulations concerning the forms. Because its authority was not clear, the Board did not refuse to approve forms where enforcement of a term of the form would lead to a violation of the Funeral Director Law or Board regulations. This amendment would authorize the Board to refuse to approve a form statement of funeral goods and services or preneed contract where enforcement of a term of the agreement would lead to a violation of the Funeral Director Law or Board regulations.

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

The regulatory amendment is adopted under section 16(a) of the Funeral Director Law (Act) (63 P.S. § 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.

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

Because its authority to do so was not clear, the Board has not refused to approve a form where enforcement of a term of that form would violate the Funeral Director Law or Board regulations, unless the Funeral Director Law or regulation specified that the form must include (or may not include) such term. As a result, a funeral director could have a contract, approved by the Board, which would obligate a customer to accept a term that would violate the Funeral Director Law or Board regulations. Arguably, the Board would not be able to take disciplinary action against a funeral who enforced such a term in a form agreement, despite the term violating the Funeral Director Law or Board regulations, because the Board approved the funeral director to use that form. This regulatory amendment is necessary to permit the Board to fully enforce the Funeral Director Law and Board regulations.

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

Without this regulatory amendment, a funeral director could have a contract, approved by the Board, which would obligate a customer to accept a term that would violate the Funeral Director Law or Board regulations. However, the Board could not refuse to approve a form, the enforcement of a term of which would not be a violation of the Funeral Director Law or Board regulations. *See, Bean v. State Bd. of Funeral Directors*, 855 A.2d 148 (Pa. Cmwlth. July 22, 2004) (Funeral Director Law and current Board regulations do not authorize customer to rescind otherwise irrevocable preneed contract at any time prior to death).

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

Funeral home customers will benefit from the regulation, because the funeral home will not be able to include in its forms any term that would violate the Funeral Director Law or Board regulations.

Regulatory Analysis Form

(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 Board has identified no 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 licensed funeral establishments will be required to comply with the proposed regulatory amendment. Approximately 1770 funeral entities are licensed, whether widow/widower, estate, restricted business corporation, professional corporation, pre-1935 corporation, branch place of practice funeral establishments, sole proprietorship or partnership establishments.

(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 March, 2003, the Board created an exposure draft that would have deleted from the Board's regulations the requirement that the Board review and approve forms. The Board solicited comments from the Pennsylvania Funeral Directors Association and all individuals who had attended any Board meeting during the preceding year. The Pennsylvania Pre-Need Association objected to the removal of the requirements that the Board review and approve forms. As an alternative to the original draft, the Board instead proposes a broader review of licensee contracts.

(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.

There are no costs to members of the regulated community associated with compliance with the proposed amendments.

Regulatory Analysis Form

(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 amendments.

(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.

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(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 04-05	FY+1 05-06	FY+2 06-07	FY+3 07-08	FY+4 08-09	FY+5 09-10
SAVINGS:	N/A	N/A	N/A	N/A	N/A	N/A
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:	N/A	N/A	N/A	N/A	N/A	N/A
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:	N/A	N/A	N/A	N/A	N/A	N/A
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(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 01-02)	FY-2 (FY 02-03)	FY-1 (FY 03-04)	Current FY (FY 04-05)
Pa. State Board of Funeral Dir.	\$506,000	\$550,000	\$609,000	\$627,000

Regulatory Analysis Form

(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. 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 requirement for form review is currently in the Board's regulations, 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.

(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.

Regulatory Analysis Form

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

The states of Delaware, Maryland, New Jersey, New York, Ohio and West Virginia do not require licensees to submit forms for review and approval. Although it does not delete the current requirement that a licensee must submit forms for Board review and approval, this proposed regulatory amendment will not put Pennsylvania at any more of 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 (<http://www.dos.state.pa/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.

Regulatory Analysis Form

(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.

(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 under Executive Order 1996-1.

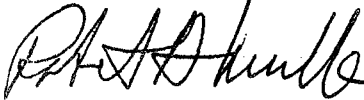
FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

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INDEPENDENT REGULATORY
REVIEW COMMISSION

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form and legality.
Executive or Independent
Agencies.

State Board of Funeral Directors

(AGENCY)

BY:

(DEPUTY ATTORNEY GENERAL)

MAR 22 2007

DATE OF APPROVAL

DOCUMENT/FISCAL NOTE NO. 16A-4813

DATE OF ADOPTION:

BY:


Janice H. Mannal, FD

TITLE: Chairperson

(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

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

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

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

PROPOSED RULEMAKING

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

49 Pa. Code §§ 13.204, 13.224
FORMS REVIEW

The State Board of Funeral Directors (Board) proposes to amend § 13.204 (relating to written agreements) and § 13.224 (relating to funding and reporting of prepaid burial contracts), to read as set forth in Annex A.

Effective date

The amendment will be effective upon publication of the final-form regulation in the *Pennsylvania Bulletin*.

Statutory Authority

The amendment is authorized under section 16(a) of the Funeral Director Law (63 P.S. § 479.16(a)).

Background, Need and Description of the Proposed Amendment

Currently, §§ 13.204 and 13.224 set forth requirements for contracts typically used by licensees in providing, or agreeing to provide funeral goods and services. Under § 13.204(a), a licensee must use a form agreement or statement of funeral goods and services that has been reviewed and approved by the Board. Likewise, § 13.224(f) requires a licensee to use a form prepaid burial contract or preneed contract form that has been reviewed and approved by the Board. However, the existing provisions do not state the basis upon which the Board may disapprove a form submitted to it.

In implementing the existing sections, the Board has refused to approve form contracts or agreements that include a term prohibited by the Funeral Director Law or Board regulations, or form contracts or agreements that do not include a term required by the Funeral Director Law or Board regulations. However, in the absence of express language in its regulations, the Board has not disapproved a form that includes a contractual provision the enforcement of which would lead to a violation of a provision of the Funeral Director Law or Board regulations.

By the proposed amendments to §§ 13.204 and 13.224, the Board would have authority to refuse to approve a form that does not comply with the Funeral Director Law or the regulations or if the enforcement of any of terms of the form would result in a violation of the Funeral Director Law or Board regulations.

Compliance with Executive Order 1996-1

The Board solicited input from and provided an exposure draft of this proposed amendment to funeral directors and organizations as required under the directives of Executive Order 1996-1 (February 6, 1996). In addition, the Board considered the impact the regulation 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 and otherwise complies with Executive Order 1996-1.

Fiscal Impact and Paperwork Requirements

The proposed amendments will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The amendments will impose no additional paperwork requirement 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 April 11, 2007, 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 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 comment period. The comments, recommendations or objections shall 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, recommendations or objections regarding this proposed rulemaking to Michelle T. 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*. Please reference No. 16A-4813 (Forms review), when submitting comments.

Janice H. Mannal, FD
Chairperson

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

* * *

§ 13.204. Written agreement.

* * *

(h) The Board will not approve a form statement of funeral goods and services that does not comply with the act or this chapter, or the enforcement of any term of which would result in the violation of the act or this chapter.

* * *

§ 13.224. Funding and reporting of prepaid burial contracts.

* * *


(f) [Prepaid] Form prepaid burial contracts or form preneed contracts to be used by a funeral director shall be reviewed and approved by the Board and should reflect whether or not an additional service fee or arrangement fee is charged. Prepaid burial contracts or preneed contracts used by a funeral director may not incorporate a contract for funeral merchandise entered into by a person or entity other than a funeral director. The Board will not approve a form prepaid burial contract or preneed contract that does not comply with the act or this chapter, or the enforcement of any term of which would result in the violation of the act or this chapter.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE

DATE: February 28, 2005

SUBJECT: Proposed Rulemaking:
State Board of Funeral Directors
Forms review (16A-4813)

TO: David J. DeVries, Executive Deputy General Counsel
Office of General Counsel

FROM: Thomas A. Blackburn, Counsel 
State Board of Funeral Directors

There are no significant legal and policy issues presented by this proposed amendment to the regulations of the State Board of Funeral Directors regarding forms review. The amendment would authorize the Board to refuse to approve a funeral home's form statement of funeral goods and services where enforcement of any term of the agreement would result in a violation of the Funeral Director Law or Board regulations, regardless of whether the regulations specifically prohibited such a term from being in the agreement.

I certify that I have reviewed this regulation for form and legality, that I have discussed any legal and policy issues with the administrative officers responsible for the program, and that all information contained in the Preamble and Annex is correct and accurate.

TAB

Briefs and Other Related Documents

Commonwealth Court of Pennsylvania.

Kevin M. BEAN, Petitioner

v.

DEPARTMENT OF STATE, STATE BOARD OF
FUNERAL DIRECTORS, Respondent.

Argued June 9, 2004.

Decided July 22, 2004.

Background: After customer who had a pre-need agreement with funeral director sought to transfer the funds to a different funeral director, funeral director petitioned for a declaration that the State Board of Funeral Directors, No. 0406-48-2003, could not interfere or direct that irrevocable pre-need agreements were subject to rescission at the request of a customer. The Commonwealth Court invoked the doctrine of primary jurisdiction and referred the issue to the Board. The Board determined that a customer could rescind an irrevocable pre-need agreement. Funeral director appealed.

Holdings: The Commonwealth Court, No. 1088 C.D.2003, Pellegrini, J., held that:

(1) the Commonwealth Court properly invoked the doctrine of "primary jurisdiction," and


(2) irrevocable pre-need agreement was not subject to rescission by customer.


Reversed.

Colins, President Judge, concurred in the result only.

Smith-Ribner, J., filed a dissenting opinion in which Leadbetter, J., joined.


West Headnotes

[1] Consumer Protection  14
92Hk14 Most Cited Cases


[1] Dead Bodies  6
116k6 Most Cited Cases


The Commonwealth Court's scope of review of the Board of Funeral Directors' decision is limited to determining whether constitutional rights have been violated, whether findings of fact are supported by substantial evidence and whether errors of law have

been committed.


[2] Dead Bodies  6
116k6 Most Cited Cases

The State Board of Funeral Directors waived its appellate argument that the Commonwealth Court erred when it transferred case to the Board to determine whether irrevocable pre-need agreements were subject to rescission since no actual controversy existed, where the Board agreed to an order of the Commonwealth Court to transfer the case to the Board, and the Board did not appeal the transfer order.


[3] Declaratory Judgment  82
118Ak82 Most Cited Cases

[3] Declaratory Judgment  91
118Ak91 Most Cited Cases

Declaratory relief may be granted for the purpose of affording relief from uncertainty and insecurity regarding legal rights, status, and other relations.

[4] Dead Bodies  6
116k6 Most Cited Cases

The Commonwealth Court properly invoked the doctrine of "primary jurisdiction" when it transferred case to determine whether irrevocable pre-need agreements were subject to rescission to the State Board of Funeral Directors; issue was within an area of the Board's expertise.

[5] Administrative Law and Procedure  228.1
15Ak228.1 Most Cited Cases

When primary jurisdiction is conferred on an administrative agency, usually the following elements are present: (1) the industry is a heavily regulated industry; (2) to resolve the matter at issue requires a special expertise that resides within the agency; (3) the issue is fact specific and ordinarily requires voluminous and conflicting testimony to resolve it; (4) the administrative agency was created to address and focus on problems similar to the one for which its primary jurisdiction is being advanced; (5) it has jurisdiction to issue the relief requested; (6) overriding all other factors, the regulatory system will work better if the administrative agency hears the matter rather than the courts.

[6] Dead Bodies  6

116k6 Most Cited Cases

Irrevocable pre-need agreement, which allowed a customer to purchase merchandise and services that were to be rendered at the time of death, was not subject to rescission by customer; pre-need agreements were defined as contracts in the Pennsylvania Code and contract provisions applied, customer designated contract be to irrevocable, and the State Board of Funeral Directors regulations required the funeral director to put funds paid under a pre-need agreement into a bank or other financial institution, so no trust relationship was created between customer and funeral director. 63 P.S. § 479.13(c); 49 Pa.Code § 13.1.

*149 James J. Kutz, Camp Hill, for petitioner.

Gerald S. Smith, Harrisburg, for respondent.

Kathleen K. Ryan, Harrisburg, for intervenor, PA Funeral Directors Association.

BEFORE: COLINS, President Judge, McGINLEY, Judge, SMITH-RIBNER, Judge, PELLEGRINI, Judge, FRIEDMAN, Judge, LEADBETTER, Judge, and COHN, Judge.

OPINION BY Judge PELLEGRINI.

Kevin M. Bean (Bean), a licensed funeral director, appeals from a decision and order of the Department of State, State Board of Funeral Directors (Board) that irrevocable pre-need agreements are subject to rescission at the request of a customer who has previously agreed to the terms of that agreement and are transferable to another funeral director.

At issue in this case are two pre-paid burial contracts or "pre-need agreement" forms as they are referred to herein which are used by Bean in his business. They allow a customer to purchase merchandise, services or other benefits that are rendered at the time of death. Both forms have been approved by the Board as required by the Board's regulations at 34 Pa.Code § 13.224 which provide that "prepaid burial contracts or preneed contracts to be used by a funeral director shall be reviewed and approved by the Board ..." One form clearly states that it is irrevocable and only allows the customer of Bean's services to cancel the transaction within three business days of signing the agreement. The other form, which was endorsed by SecurChoice, an affiliate of the Pennsylvania Funeral Directors Association, not only allows for the three-business day cancellation, but also gives the customer of Bean's services the option to revoke the agreement by checking a specified box marked "revocable."

[FN1] If that box is checked, then the agreement may be terminated by either the buyer or the funeral home at any time prior to the customer's death. This does not mean that the customer can revoke the nature of the contract, i.e., the funeral or burial services, but he or she may transfer the services for another funeral director to carry out upon his or her death. If the "irrevocable" box is checked, the agreement cannot be terminated*150 unless done so within the first three days after signing.

FN1. The revocable form further provides that the agreement could be terminated by either the customer or the funeral home at any time prior to the beneficiary's death if any of the following conditions are met: "(1) You checked the "Revocable box" on the front of this agreement and; (2) You or the beneficiary move and reside outside the Commonwealth of Pennsylvania."

In 2002, Bean received a demand from a customer who wanted money returned that had been paid pursuant to an irrevocable agreement. Bean was aware of communications between the Board and a state representative regarding the licensing of another funeral director, the gist of the communications being that the Board believed that all pre-need funds belonged to the customer and not to the funeral director. [FN2] As a result of his dispute with the customer and the communications between the Board and the state representative, on January 10, 2003, Bean filed a petition for review in the nature of a declaratory judgment [FN3] action in this Court's original jurisdiction seeking a declaration that the Board could not interfere and direct that irrevocable pre-need agreements were subject to rescission at the request of the customer who had agreed to the terms of the agreement. In response, the Board filed preliminary objections alleging that this Court did not have original jurisdiction and that the case was not ripe for review as there was no case or controversy.

FN2. More specifically, Thomas Blackburn (Blackburn), counsel to the Board, received an e-mail from the Honorable Michael K. Hanna, State Representative (Representative Hanna), who stated that a constituent funeral director had been approached by a potential client who had previously entered into a pre-need contract with another funeral director but now wanted to transfer the funds to the constituent funeral director and the originating funeral director refused to transfer the funds. Representative Hanna

requested the Board's opinion regarding the refusal. Blackburn advised him that "the Board believes that all pre-need funds belong to the customer, and not to the funeral director, until the time of death and services are provided. Also, despite any contrary language ... [in] the contract, while the contract may be irrevocable as to the use of the funds, it is revocable as to which funeral director or funeral home is to provide services. Accordingly, a pre-need customer may rescind a pre-need contract and demand the funeral director to forward the entire principal and all earnings to date to a subsequent funeral home for a pre-need contract with that subsequent funeral director. With the exception of any reasonable arrangement fees which may not be finally collected until after the customer's death, a funeral director may not retain pre-need funds after the customer has rescinded the pre-need contract ..." Blackburn stated the Board's conclusions were based on Section 13(c) of the Funeral Director Law, Act of January 14, 1952, P.L. (1951), 1898, *as amended*, 63 P.S. § 479.13(c), and the Board's regulations at 49 Pa.Code § 13.224(a) and 13.226.

FN3. See the Declaratory Judgments Act, 42 Pa.C.S. § § 7531-7541.

[1] Because we had jurisdiction over the declaratory judgment action but believed that this was an area within the Board's expertise, with the agreement of the parties, we invoked the doctrine of primary jurisdiction and referred the primary legal question involved to the Board. As part of that order, we directed the Board to hold an administrative hearing for the purpose of addressing whether a customer could rescind an irrevocable pre-need agreement and to issue an adjudication within 30 days. More specifically, the order required the Board to address:

Whether, under the current law, a pre-need customer may, for any reason, rescind an irrevocable pre-need agreement and demand the funeral director to forward the entire principal and the earnings to date to a subsequent funeral director for a pre-need contract with the subsequent director, even if the initial pre-need contract expressly provides that it shall be irrevocable and non-cancelable except for the three-day right-of-rescission provided for under the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-7?

*151 The Board held a timely hearing on the matter. Then, relying on Section 13(c) of the Funeral Director Law, 63 P.S. § 479.13(c), and its regulations found at 49 Pa.Code § § 13.224(a) and 13.226, the Board concluded that a customer could rescind an irrevocable pre-need agreement reasoning that because a funeral director who entered into a pre-need contract with a customer and received funds in advance acted as a fiduciary or a trustee of the funds received, the funds remained the property of the consumer until the services were provided. It also reasoned that neither the Funeral Director Law nor the Board's regulations prohibited the transfer of those funds to another funeral director by the customer to provide those services. Bean then filed a petition for review with this Court appealing that determination and arguing that the Board erred in holding that a customer could rescind an irrevocable pre-need agreement. The Board, reneging on the agreement and representation it made to the Court, maintained that there was no controversy and this Court lacked subject matter jurisdiction to hear the matter. This appeal by Bean followed. [FN4]

FN4. Our scope of review of the Board's decision is limited to determining whether constitutional rights have been violated, whether findings of fact are supported by substantial evidence and whether errors of law have been committed. Firman v. Department of State, State Board of Medicine, 697 A.2d 291 (Pa.Cmwlth.1997), *petition for allowance of appeal denied*, 550 Pa. 722, 706 A.2d 1215 (1998).

I.

[2] Initially, we must address the Board's position that our order referring the matter to the Board was in error because no actual controversy existed, and the doctrine of primary jurisdiction remanding the matter to the Board for consideration was improperly invoked.

[3] This matter originally came before the Court as a request for declaratory action [FN5] in which Bean alleged that there was a controversy because the Board had indicated to a state representative that the pre-need agreements were rescindable, and because Bean had been contacted by a client to rescind an irrevocable pre-need agreement which he believed was irrevocable under the contract which the Board had previously approved. Preliminary objections were filed and the Board agreed to an order by this Court that the matter be referred to the Board, which, by doing so, essentially conceded that there was a

controversy to be resolved. By acquiescing to this Court's order to hold a hearing on the issue of the revocability of the pre-need agreement rather than appealing that order, the Board agreed that there was a controversy and waived the argument it now makes. Not only did the Board waive that argument, but by its letter to the state representative indicating that the irrevocable pre-need agreements were rescindable, it created doubt in an area that it was charged to administer, and neither funeral directors nor customers know how to conduct their affairs. All of this is confirmed by the adjudication it issued under the consent order. [FN6]

[FN5. Declaratory relief may be granted for the purpose of affording relief from uncertainty and insecurity regarding legal rights, status and other relations. *Faldowski v. Eighty Four Mining Co.*, 725 A.2d 843 (Pa.Cmwlt.1998).

[FN6. If Bean had not returned the money, he could have been subject to discipline under Sections 11 and 17 of the Funeral Director Law, 63 P.S. § § 479.11 and 479.17 (pertaining to suspension/revocation of license and penalties, respectively.) Although Bean has yet to be disciplined, the record is clear that Bean has already received at least one demand from a customer that money paid pursuant to an irrevocable pre-need agreement be returned and the same demand has been made of another funeral director as evidenced by the inquiry of Representative Hanna. This Court has previously determined that: If differences between the parties concerned, as to their legal rights, have reached the state of antagonistic claims, which are being actively pressed on one side and opposed on the other, an actual controversy appears; where, however, the claims of the several parties in interest, while not having reached the active stage, are nevertheless present, and indicative of threatened litigation in the immediate future, which seems unavoidable, the ripening seeds of a controversy appear. *Mid-Centre County Authority v. Boggs*, 34 Pa.Cmwlt. 494, 384 A.2d 1008, 1011 (1978). Because litigation for the return of the pre-paid funds is a distinct possibility as the next logical step for dissatisfied customers, a controversy does, in fact, exist.

improperly invoked the doctrine of "primary jurisdiction," "primary jurisdiction" is a judicially created doctrine that allows courts to make a workable allocation of business between themselves and agencies responsible for the regulation of certain industries, and arises where the original jurisdiction of the court is being invoked to decide the merits of the controversy. Rather than exercising its own jurisdiction, the Court declines jurisdiction because it is proper to defer to the administrative agency's jurisdiction. Primary jurisdiction is exclusive jurisdiction because the agency has jurisdiction over the cause of action to which a decision of the court is relevant, and the jurisdiction of the court will extend to the remaining issues and the relief to be granted. Jaffe, *Primary Jurisdiction*, 77 Harv. L.Rev. 1037 (1964).

Although the primary jurisdiction doctrine was originally a federal doctrine that was established by the United States Supreme Court in *Texas & Pac. Ry. v. Abilene Cotton Oil Co.*, 204 U.S. 426, 27 S.Ct. 350, 51 L.Ed. 553, (1907), our Supreme Court adopted it in *Weston v. Reading Co.*, 445 Pa. 182, 282 A.2d 714 (1971), and further explained it in *Elkin v. Bell Telephone of Pa.*, 491 Pa. 123, 132-133, 420 A.2d 371-376 (1980), as follows:

The principles of the doctrine of primary jurisdiction are well settled. The United States Supreme Court "... recognized early in the development of administrative agencies that coordination between traditional judicial machinery and these agencies was necessary if consistent and coherent policy were to emerge. The doctrine of primary jurisdiction has become one of the key judicial switches through which this current has passed." The doctrine "... requires judicial abstention in cases where protection of the integrity of a regulatory scheme dictates preliminary resort to the agency which administers the scheme." (Citations omitted.)

[5] Our Supreme Court went on to explain its effect, stating:

It is equally important to realize what the doctrine is not--it is not simply a polite gesture of deference to the agency seeking an advisory opinion wherein the court is free to ignore the agency's determination. Rather, once the court properly refers a matter or a specific issue to the agency, that agency's determination is binding upon the court and the parties (subject, of course, to appellate review through normal channels), and is not subject to collateral attack in the pending court proceeding. "The common law doctrine of res

*152 [4] As to the Board's argument that we

judicata, including the subsidiary doctrine of collateral estoppel, is designed to prevent the relitigation by the same parties of the same claim or issues." K.C. Davis, *Administrative Law*, § 181.10 (1972). Once the administrative tribunal has determined the issues within its jurisdiction, *153 then the temporarily suspended civil litigation may continue, guided in scope and direction by the nature and outcome of the agency determination. Feingold v. Bell of Pennsylvania, *supra* [477 Pa. 1] at 22, 383 A.2d [791] at 801 (1977) (Pomeroy, J., dissenting).

In Poorbaugh v. Pennsylvania Public Utility Commission, 666 A.2d 744 (Pa.Cmwlth.1995), *petition for allowance of appeal denied*, 544 Pa. 678, 678 A.2d 367 (1996), we further explained the doctrine as follows:

Essentially, the doctrine creates a workable relationship between the courts and administrative agencies wherein, in appropriate circumstances, the courts can have the benefit of the agency's view on issues within the agency's competence. (Citations omitted.)

The doctrine of primary jurisdiction requires judicial abstention in cases where protection of the integrity of a regulatory scheme dictates preliminary resort to the agency which administers the scheme. (Citations omitted.) Our Supreme Court stated in *Elkin* that the doctrine serves several purposes, chief of which are the benefits to be derived by making use of the agency's special experience and expertise in complex areas with which judges and juries have little familiarity. *Id.* Another important consideration is the need to promote consistency and uniformity in certain areas of administrative policy. *Id.* at 133, 420 A.2d at 376. Once the administrative tribunal has determined the issues within its jurisdiction, then the temporarily suspended civil litigation may continue, guided in scope and direction by the nature and outcome of the agency determination. *Elkin*, 491 Pa. at 133-34, 420 A.2d at 377.

Id., 666 A.2d at 749. Therefore, when primary jurisdiction is conferred on an administrative agency, usually the following elements are present:

1. The industry is a heavily regulated industry;
2. To resolve the matter at issue requires a special expertise that resides within the agency;
3. The issue is fact specific and ordinarily requires voluminous and conflicting testimony to resolve it;
4. The administrative agency was created to address and focus on problems similar to the one for which its primary jurisdiction is being advanced;
5. It has jurisdiction to issue the relief requested;

6. Overriding all other factors, the regulatory system will work better if the administrative agency hears the matter rather than the courts.

Because the issue of the pre-need contracts was given to the Board to regulate and would better balance the interests involved, the doctrine of primary jurisdiction permitted this Court to send the matter to the Board for a determination on that specific issue. This Court's order requiring an administrative hearing *and* an adjudication gave the Board jurisdiction to hear the matter and now gives this Court jurisdiction to review the final adjudication of the Board. See Pa. R.A.P. 1551 (review of quasi-judicial orders shall be heard by the court on the record).

II.

[6] As to the merits, whether the Board erred in finding that irrevocable pre-need agreements may be revoked by a customer at any time prior to death, Bean argues that determination is not supported by the Funeral Director Law or the Board's regulations. The Board argues that both the Funeral Director Law and its regulations create a trustee relationship *154 between the customer and the funeral director, thereby allowing the customer to terminate its relationship with the funeral director at any time regardless of whether the contract is "irrevocable."

The only section in the Funeral Director Law pertaining to pre-need agreements [FN7] is Section 13(c) which does not address whether irrevocable pre-need agreements may be rescinded. That section provides, in relevant part, the following:

FN7. There is also a section addressing pre-need agreements relative to future interment, but that also does not address whether an irrevocable pre-need agreement may be rescinded at any time. See Section of 1 of the Funeral Director Law, 63 P.S. § 480.1.

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. If any such licensed funeral director shall accept any money for such contracts, he shall, forthwith, either deposit the same in an escrow account in, or transfer the same in trust to a banking institution in this Commonwealth, conditioned upon its withdrawal or disbursement only for the purposes for which such money was accepted. (Emphasis added.)

63 P.S. § 479.13(c). Similarly, nothing in the

Board's regulations provide any direction or comment on pre-need agreements regarding rescission.

While the Board acknowledges that nothing in the Act or implementing regulations makes irrevocable pre-need agreements revocable, the Board argues that a trustee relationship allows for the rescission of an irrevocable agreement. It relies on the following regulations which it has issued which govern the sale and safeguard of funds for pre-arranged burial needs. 49 Pa.Code § 13.224, titled "Funding and reporting of prepaid burial contracts," provides in relevant part:

(a) A funeral director shall deposit in escrow or transfer in trust to a banking institution in this Commonwealth, the entire amount of monies received by the funeral director under a prepaid contract for funeral services or merchandise, including additional service fees or arrangement fees.

(f) *Prepaid burial contracts or preneed contracts to be used by a funeral director shall be reviewed and approved by the Board and should reflect whether or not an additional service fee or arrangement fee is charged.* Prepaid burial contracts or preneed contracts used by a funeral director may not incorporate a contract for funeral merchandise entered into by a person or entity other than a funeral director. (Emphasis added.)

49 Pa.Code § 13.226, titled "Nature and description of escrow or trust accounts for prepaid burial contracts," provides the following:

(a) Funds received for prepaid burial contracts shall be placed in an escrow or trust fund account which shall be separate and distinct from the business and personal accounts of the funeral director.

(b) If funds received by a funeral director for preneed burial contracts are deposited in a banking account which bears interest, or are invested by the trustee bank and produce earnings, the interest or earnings shall be retained in the account with the principal and shall be held, accounted for and transferred in the same manner as the principal amount, to assure delivery of the same quality of service and merchandise for which the contract was made.

*155 (c) In the event of a sale or transfer of the business of a funeral director, pre-paid burial contracts and prepaid burial accounts shall immediately be transferred to the control of the licensee who will assume responsibility for completion of the prepaid burial contracts. The licensee-transferee shall notify the Board in writing of the licensee's willingness to accept responsibility

for completion of the prepaid burial contracts.

Contrary to the Board's argument, under the Board's regulations at 49 Pa.Code § 13.1, the pre-need agreements are defined as "a contract executed between a consumer and a licensed funeral director which provides that the funeral director will provide funeral merchandise and render services to the consumer upon the consumer's death." Because pre-need agreements are defined as contracts, contract principles apply. In Empire Sanitary Landfill, Inc. v. Riverside School District, 739 A.2d 651 (Pa.Cmwlth.1999), we stated that a contract had to be construed according to the meaning of its language, and:

"The fundamental rule in construing a contract is to ascertain and give effect to the intention of the parties." Sun Co., Inc. (R & M) v. Pennsylvania Turnpike Commission, 708 A.2d 875, 878 (Pa.Cmwlth.1998). "The intention of the parties must be ascertained from the document itself, if its terms are clear and unambiguous." *Id.* The Court's inquiry should focus on what the agreement itself expressed and not on what the parties may have silently intended. Delaware County v. Delaware County Prison Employees Independent Union, 552 Pa. 184, 713 A.2d 1135 (1998). "It is not proper, under the guise of construction, to alter the terms to which the parties, whether in wisdom or folly, expressly agreed." *Id.* at 190, 713 A.2d at 1138. The law assumes that the parties chose the language of their contract carefully. Liazis v. Kosta, Inc., 421 Pa.Super. 502, 618 A.2d 450 (1992).

Id., 739 A.2d at 654. While the Board contends that contract law [FN8] recognizes a distinction between a purely commercial contract and one for professional services, whereby the latter will not be specifically enforced, this argument ignores that the significant portion of the pre-need agreement is not for professional services but for the merchandise to be provided, i.e., a casket, urn, vault, etc. In this case, both the revocable and irrevocable pre-need agreements are unambiguous and, specifically, on the form endorsed by SecurChoice, the customer is able to choose whether he or she wishes to enter into a revocable or irrevocable agreement by signing the appropriate box.

FN8. The Board relies on Section 367 of the Restatement (Second) of Contracts which provides:

- (1) A promise to render personal service will not be specifically enforced.
- (2) A promise to render personal service

exclusively for one employer will not be enforced by an injunction against serving another if its probable result will be to compel a performance involving personal relations the enforced continuance of which is undesirable or will be to leave the employee without other reasonable means of making a living.

Even if we were to agree with the Board that trust laws apply, they would not apply in this case to create a trustee relationship between Bean and the customer. The regulations specify that the money given by the customer to Bean must be placed in escrow or trust in a *banking institution*, thereby making the banking institution the trustee, not Bean, and the trust is both for the benefit of Bean and the customer. Again, assuming that a trust existed, in *In re: Estate of Agostini*, 311 Pa.Super. 233, 457 A.2d 861 (1983), our Superior Court *156 held that where property of any kind is placed in the name of the donor or settler in trust for a named beneficiary, *unless a power of revocation is expressly or impliedly reserved*, the general principle of law is that such facts create a trust which is *prima facie irrevocable*. Therefore, a customer's funds for pre-need arrangements accepted in trust does not give the customer the right to rescind that agreement at any time. [FN9]

[FN9]. Because a customer may not rescind an irrevocable pre-need agreement even if a trust is created, the Board's argument comparing the funeral director/customer relationship to a attorney/client relationship where the client can discharge an attorney at any time is non-persuasive.

While we agree with the Board that by not allowing contracts to be revoked there would sometimes be serious problems created, i.e., if he or she dies in another location in Pennsylvania far away from where the first funeral director is located, not only is there is nothing in the Funeral Director Law or the implementing regulations that allows the Board to change irrevocable contracts to revocable ones when it has approved the contracts, but that is not a rationale for making all contracts revocable. [FN10] Consequently, the Board erred in determining that the Funeral Director Law and its regulations allow customers to rescind irrevocable pre-need agreements.

[FN10]. See Section 5 of the Funeral Director Law, 63 P.S. § 480.5, which allows for the

revocation of a pre-need agreement if the customer moves out of state prior to his or her death.

Accordingly, the decision of the Board is reversed.

ORDER

AND NOW, this 22nd day of July, 2004, the order of the Department of State, State Board of Funeral Directors, dated May 7, 2003, is reversed.

DISSENTING OPINION BY Judge SMITH-RIBNER.

I dissent from the decision of the majority to reverse the May 7, 2003 order issued by the State Board of Funeral Directors (Board), which declared that irrevocable pre-need agreements for the purchase of services required at the time of death were subject to rescission at the customer's request. The Board lacked subject matter jurisdiction to decide the question presented and to enter the order inasmuch as no case or controversy was presented that required a ruling. For this reason, the Board's order should be vacated and declared a nullity and the appeal filed by Kevin M. Bean, licensed funeral director, should be dismissed.

The record shows that in 2002 Bean received a demand from a customer that funds paid to him pursuant to an irrevocable pre-need agreement be returned to the customer. In addition, Bean became aware of a communication between the Board's Counsel and a Pennsylvania State Representative who made an inquiry to the Board on behalf of his brother, another licensed funeral director, concerning the transfer of pre-need funds. Counsel for the Board stated:

The Board believes that all pre-need funds belong to the customer, and not to the funeral director, until the time of death and services are provided. Also, despite any contrary language drafted in the contract by the funeral director, while the contract may be irrevocable as to the use of funds, it is revocable as to which funeral director or funeral home is to provide services. Accordingly, a pre-need customer may rescind a pre-need contract and demand the funeral director to forward the entire principal *157 and all earnings to date to a subsequent funeral director. With the exception of any reasonable arrangement fees which may not be finally collected until the customer's death, a funeral director may not retain pre-need funds after the customer has rescinded the pre-need contract.

(R.R. 632a.) In response to the above, the State

Representative responded:

Tom, I've now had an opportunity to review the statute and the code. I don't see anything that expressly says that the trust must be transferable to another funeral home, other than in the case of the buyer moving out of state. Am I missing something?

In response Board counsel replied:

No, you are not missing anything. That conclusion is what the Board draws from the statute and the Board's regs.
(R.R. 631a.)

Bean thereafter filed his petition for review with this Court seeking declaratory relief, and the Board filed its preliminary objections asserting that (a) the Court did not have original jurisdiction to consider the petition because the Board has exclusive jurisdiction and because an adequate statutory remedy existed before the Board subject to appellate review; (b) the Court lacks jurisdiction since Counsel's letter was not an adjudication; and (c) under the Declaratory Judgments Act, 42 Pa.C.S. § § 7531-7541, no actual case or controversy existed as Counsel's letter represented an advisory opinion. Following a hearing before a judge of the Court and an order directing the Board to determine whether a pre-need agreement may be rescinded, the Board issued its order stating that a customer may rescind an irrevocable pre-need agreement and direct the funeral director to forward all funds paid by the customer to another funeral director.

In ruling on the merits rather than dismissing this appeal, the majority overlooks well-settled law that declaratory relief may be granted only for purposes of affording relief from uncertainty and insecurity regarding legal rights, status and other relations. Faldowski v. Eighty Four Mining Co., 725 A.2d 843 (Pa.Cmwlth.1998). Also a request for declaratory relief will be denied when the proceeding is within the exclusive jurisdiction of a tribunal other than a court. *Id.* Moreover, relief is unavailable under the Declaratory Judgments Act with respect to determining rights in anticipation of events that may never occur, Silo v. Ridge, 728 A.2d 394 (Pa.Cmwlth.1999), and a court may not prematurely entertain an administrative appeal when an adequate statutory remedy exists. Jordan v. Fayette County Board of Assessment Appeals, 782 A.2d 642 (Pa.Cmwlth.2001).

Bean seeks a declaration that the Funeral Director Law [FN1] (Law) and current regulations do not authorize the Board to discipline a funeral director

who refuses to transfer consumer funds held in escrow for the benefit of a customer to another funeral director. As the Board points out, currently there are no pending disciplinary proceedings against Bean nor may such proceedings ever be filed. At oral argument, Board Counsel assured the Court that no disciplinary action would be instituted against Bean. Thus no basis existed for directing the Board to issue the order, and even if the Board did initiate disciplinary action it would be within the Board's exclusive jurisdiction to resolve, subject to appellate review.

FN1. Act of January 14, 1952, P.L. (1951) 1898, as amended, 63 P.S. § § 479.1-479.20.

Bean seeks declaratory relief because he has entered into irrevocable pre-need agreements with various customers, and the communication between Board Counsel and the State Representative indicated that Counsel viewed irrevocable agreements *158 to be revocable to the extent that a customer could demand that funds held by one funeral director be forwarded to a different funeral director. Such circumstances, however, are not appropriate grounds for declaratory relief. See Pennsylvania Turnpike Commission v. Hafer, 142 Pa.Cmwlth. 502, 597 A.2d 754 (1991) (declaratory relief is appropriate only when there is imminent and inevitable litigation). Bean has entered into pre-need agreements for years without any disciplinary action having been filed against him, and litigation is not imminent or inevitable merely because Board Counsel responded to an inquiry and expressed his views regarding the revocability of pre-need agreements. Therefore, no case or controversy exists. Should a dispute arise as to the revocability of such agreements warranting disciplinary action, the matter would be within the Board's exclusive jurisdiction in accordance with Section 11(a) of the Law, 63 P.S. § 479.11(a). [FN2]

FN2. Section 11(a) of the Law provides that:
(a) The board, by a majority vote thereof, may refuse to grant, refuse to renew, suspend or revoke a license of any applicant or licensee, whether originally granted under this act or under any prior act, for the following reasons:

....
(6) Violation of or non-compliance with the provisions of this act or the rules and regulations of the board.

Based on well-established legal principles, I

conclude that the Board's order should be vacated and declared a nullity and that Bean's appeal should be dismissed. The Board lacked subject matter jurisdiction to determine the question presented to it, and the Court lacked authority to direct the Board to issue the declaratory order. [FN3] Additionally, neither the Law nor the Declaratory Judgments Act authorizes the Board to issue advisory opinions. Because the Board lacked jurisdiction in the underlying claim, the majority erred in disposing of the merits of this appeal and in granting the requested declaratory relief. Therefore, I dissent.

FN3. I disagree with the majority's assertion that the doctrine of primary jurisdiction allowed the Court to remand this matter for the Board to determine the question presented, but more fundamentally I disagree that the Court's order requiring the Board to hold a hearing and to issue an adjudication "gave the Board jurisdiction to hear the matter and now gives this Court jurisdiction to review the final adjudication of the Board." Op. at 153. If the order requiring the Board to hold a hearing and to issue an adjudication is all that is needed to confer jurisdiction on a tribunal, then the majority essentially has determined that the doctrine has no meaning. In Ostrov v. I.F.T. Inc., 402 Pa.Super. 87, 95, 586 A.2d 409, 413 (1991), the court explained that primary jurisdiction applies "where the administrative agency cannot provide a means of complete redress to the complaining party and yet the dispute involves issues that are clearly better resolved in the first instance by the administrative agency charged with regulating the subject matter of the dispute." However, for primary jurisdiction to apply, the agency must have subject matter jurisdiction in the first instance. *Id.* The Board here did not have subject matter jurisdiction to determine whether pre-need customers may rescind an irrevocable contract.

In his order requiring a hearing, the judge noted that "the parties hereby agree and the Court, therefore, orders, the following...." (R.R. at 1a.). The Board was then ordered to and did hold an administrative hearing to address the legal question involved. Bean contends that the Board cannot now complain about the procedure. However, to the extent that Bean claims the Board

consented to its subject matter jurisdiction, I note that subject matter jurisdiction can never be waived. City of Philadelphia v. White, 727 A.2d 627 (Pa.Cmwlth.1999).

Judge LEADBETTER joins in this dissenting opinion.

855 A.2d 148

Briefs and Other Related Documents (Back to top)

. 2004 WL 3140705 (Appellate Brief) Brief of Pennsylvania Funeral Directors Association (Mar. 18, 2004)Original Image of this Document (PDF)

. 2004 WL 3140706 (Appellate Brief) Brief on Reargument of Petitioner, Kevin M. Bean, F.D. (Mar. 02, 2004)Original Image of this Document (PDF)

. 2003 WL 23997089 (Appellate Brief) Reply Brief of Petitioner, Kevin M. Bean, F.D. Pursuant to Pa.R.App.P. 2113(a) (Jul. 31, 2003)Original Image of this Document (PDF)

. 2003 WL 23997088 (Appellate Brief) Brief of Amicus Curiae National Funeral Directors Association (Jul. 16, 2003)Original Image of this Document with Appendix (PDF)

. 2003 WL 23997085 (Appellate Brief) Brief of Amicus Curiae Pennsylvania Cemetery Funeral Association in Support of Petitioner, Kevin M. Bean. F.D. (Jun. 23, 2003)Original Image of this Document (PDF)

. 2003 WL 23997086 (Appellate Brief) Brief of Amicus Curiae Existing Pre-Need Contract Customers in Support of Petitioner, Kevin M. Bean, F.D. (Jun. 16, 2003)Original Image of this Document (PDF)

. 2003 WL 23997087 (Appellate Brief) Brief of Amicus Curiae Ameriserv Trust and Financial Services Company (2003)Original Image of this Document (PDF)

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

Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
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April 11, 2007

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

Re: Proposed Regulation
State Board of Funeral Directors
16A-4813: Forms Review

Dear Chairman Coccodrilli:

Enclosed is a copy of a proposed rulemaking package of the State Board of Funeral Directors pertaining to forms review.

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

Sincerely,

A handwritten signature in black ink, reading "Anthony Scarantino".

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-4813

SUBJECT: FORMS REVIEW

AGENCY: DEPARTMENT OF STATE
STATE BOARD OF FUNERAL DIRECTORS

TYPE OF REGULATION

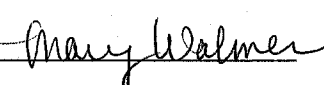
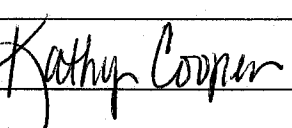
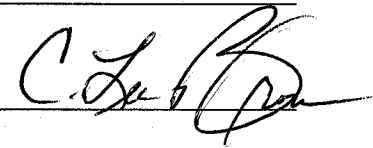
- X Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
- a. With Revisions b. Without Revisions

INDEPENDENT REGULATORY
REVIEW COMMISSION

2007 APR 11 AM 11:48

RECEIVED

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
4/11/07		HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
4/11/07		SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
4/11/07		INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
4/11/07		LEGISLATIVE REFERENCE BUREAU (for Proposed only)

March 26, 2007