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INDEPENDENT REGULATORY
REVIEW COMMISSION

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May 17, 2007

Hand Delivered

Michelle T. Smey
Board Administrator
Department of State
2601 North Third Street
Harrisburg, PA 17101

**RE: Comment in Opposition to Proposed Regulation of the
State Board of Funeral Directors, Seeking to Amend
Section 13.204 and Section 13.224**

Dear Ms. Smey:

Kindly allow this letter to serve as a "Comment" in opposition to recently proposed amendments to the current Regulations of the State Board of Funeral Directors. Specifically, on April 21, 2007, the Pennsylvania Bulletin contained Proposed Rulemaking of the State Board, wherein the Board was proposing to amend § 13.204 and § 13.224 of the current Regulations. I am submitting the following comment in opposition on behalf of AMERISERV Trust and Financial Services Company and on behalf of myself as an attorney who represents a number of entities and individuals within the death-care industry and who, by reason thereof, are guided and/or affected by rules and regulations of the State Board of Funeral Directors.

AMERISERV, with its principal place of business located in Johnstown, Pennsylvania, has significant fiduciary responsibilities because it serves as Trustee for a large number of pre-need accounts. In this regard, AMERISERV functions as a fiduciary to both the licensed funeral director, as well as his customer, whose funds are being held in trust as required by statute. Given the host of state and federal requirements which AMERISERV must adhere to, it follows closely the rulings and proposals of the State Board of Funeral Directors because compliance is an essential component of any fiduciary's duties.

In addition, the undersigned, who represents a significant number of those involved in the death-care industry, has concerns with any proposed resolution, regulation or interpretation which has the affect of impacting the manner in which pre-need sales and/or trust agreements are effectuated.

It is our conclusion that the proposed revisions to §§ 13.204 and 13.224 should be withdrawn for several reasons. First, there simply is no necessity for the proposed amendments. To be more

specific, we can see no reason, let alone a compelling reason, why a regulation must be promulgated which informs the licensee that the Board will not approve any prepaid burial contract or statement of funeral goods and services that violates the Funeral Director Law of 1952, as amended, or regulations promulgated under authority of the Funeral Director Law. Indeed, it should go without saying that the Board is not in the business of approving illegal agreements which raises the rhetorical question why it would be necessary to propose a regulation indicating precisely that.

Your "commenters" are now aware that the State Board recently voted to secure the necessary approvals on a more comprehensive set of Regulations dealing with pre-need. First and foremost, we respectfully submit that those recently-approved draft Regulations violate federal law and interfere with reasonable, free competition. With respect, it appears that the proposed Regulations, which appeared in the Pennsylvania Bulletin on April 21, 2007, and which are the subject of this "Comment", are simply the forerunner for anticipated prosecution by the Board in the event it is successful in securing approval of its more comprehensive Regulations which, if promulgated, are intended to effectively blunt the affect of the federal court decision in Walker v. Flitton, and return to the funeral director a monopoly for meaningful discussions with the Pennsylvania consumer concerning pre-need opportunities.

In the "background" section of the proposal which appeared in the Bulletin on April 21, the Board suggests that, without these two proposed amendments to its Regulations, the Board would remain empowered to approve agreements and forms that violate law. With all due respect, this admission is both shocking and concerning. Is the Board suggesting that it has had a policy of approving agreements that violate law and if so, what is the explanation for that troublesome fact?

Moreover, the proposed Regulations are simply going to create more confusion than clarity. Indeed, to suggest that the Board will not approve agreements which result in a violation of "the Act or this chapter", the next question becomes - who will be making the "determination" whether proposed agreements do or do not violate funeral-related statutes and Regulations? Furthermore, what is the impact of this proposed Regulation on pre-need agreements which have already been approved by the Board?

We respectfully submit that the public and the industry would be better served with a single, comprehensive proposal, both statutory and regulatory, which would modernize several outdated requirements in the law. We fully support a law which requires adherence to a reasonable set of standards and we are most supportive of laws and Regulations which protect the consumer. Our fear here, however, is that this currently proposed Regulation dealing with approval of pre-need agreements, and the more recently approved set of Regulations dealing more fully with pre-need, are both designed in an effort to restrict competition; restrict the flow of honest communication; and restrict the opportunity for anyone other than a licensed funeral director to discuss pre-need sales, the benefits of pre-need sales, the safety with which pre-need funds will be protected by fiduciaries such as AMERISERV, and pre-need options available to the Pennsylvania consumer.

Michelle T. Smey

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In conclusion, we urge this Board to withdraw these two proposed amendments to the current Regulations. They are unnecessary; they create more confusion than clarity; and, finally, they appear to be a forerunner to a plan which will have the effect of making pre-need sales more difficult for the Pennsylvania consumer.

I thank you for allowing me to submit these comments and I urge the Board to give strong consideration to our request for withdrawal.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Jim Kutz", written over a horizontal line.

James J. Kutz

JJK:dlh

cc: Ronald W. Virag, President & CEO
Ernest L. Petersen, III, Vice President/Manager, Pre-Need Division
AMERISERV Trust and Financial Services Company