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November 25, 2008

Via Email and U.S. Mail

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 2008 DEC - 1 AM 10:06
 INDEPENDENT REGULATORY
 REVIEW COMMISSION

RE: Comments on Final Regulation 16A-4817 [Funeral Director Board]

Dear Attorneys Jewett and Emery,

The proposed Regulation 16A-4817 [Funeral Director Board] intended to increase the license fees seems to fail to comply with Section 18.1 of the Funeral Director Law for failure to "fix the fees for renewal of licenses sufficient to match expenditures over a 2-year period."

Section 18.1 of the Funeral Director Law (act) (63 P.S. § 479.18.1) requires the Board to fix the fees for renewal of licenses by regulation and if the revenue generated by fees, fines and civil penalties is not sufficient to match expenditures over a 2-year period, the Board is required to increase those fees by regulation. Section 18.1(b) of the act requires the Board to increase fees when revenue raised by fees, fines and civil penalties is not sufficient to meet expenditures. In June, 2006, the Department of State's division of fiscal management projected that, without an increase in the biennial renewal fee, Board fiscal deficits will grow as follows:

The week of October 27th, I read that Governor Rendell proposed \$311 million in budget cuts which made the funeral board red ink proposal seem like a total disconnect from reality in addition to being in violation of statute. On November 4th, I sent the following candid written comments to the Representative Chairs of the House Professional Licensure Committee, Majority Chair Mike Sturla and Republican Chair William Adolph.

I may be the only licensee to candidly point out that the proposed fees are insufficient and recommend that either:

1. Fees be increased and established in compliance with statute and projected expenses; or
2. Sunset the funeral board; or
3. Change out the board members with individuals not beholdng to a trade association that seems to manage board policy and position as their alter ego.

If none of the above remedies are implemented, there is simply no reason to expect anything other than red ink to continue to flow from this licensing board given its history. Since the 1994 Legislative Budget and Finance Committee Report, the funeral board has essentially ignored the recommendations therein too substantially

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revise statute and regulations. Instead, the board has found itself in numerous litigations over the past several years caused by their own actions and misinterpretations of statute and regulations.

- ✓ For example, this board paid \$55,000 in restitution of legal fees after a Federal Court found that they violated the U.S. Constitution.
- ✓ This board also paid \$150,000 to have one of their members excused from a civil matter in Common Pleas Court that involved charges of defamation and contractual interference.
- ✓ After spending over \$70,000 in legal fees with an outside law firm, the result was an adverse impact to all boards under the B.P.O.A.. The final ruling was upheld by PA Supreme Court allowing for the depositions of investigators and prosecutors in civil matters.

The list of examples of this funeral board's vacillating positions, missteps, re-interpretations and misinterpretations of statute and regulation over the past 12 years goes on. Suffice to say that short of any of the three suggestions above, nothing will change the hemorrhaging of red ink.

As a licensee and business person, I do not understand how a board could propose a red ink budget knowing full well that it is neither compliant with statute nor fiscally prudent.

Thank you for considering my comments.

Sincerely,



Ernie Heffner