

2627

RECEIVED

Gelnett, Wanda B.

From: Jewett, John H.
Sent: Saturday, October 13, 2007 4:19 PM
To: Gelnett, Wanda B.
Subject: FW: Additional Comments RE Proposed Reg 16A-4815

2007 OCT 15 AM 7:34

INDEPENDENT REGULATORY
REVIEW COMMISSION

Wanda:

Some of this is duplication. However, I think this email and the attachments should be combined into one packet in the green folder or public file.

I don't think you need to scan anything but this email as a cover page and the third attachment above labeled as "9.27.07 PFDA response to Reg 16A-4815."

Thanks!

-----Original Message-----

From: Ernie Heffner [mailto:ernieheffner@hotmail.com]
Sent: Friday, October 12, 2007 5:22 PM
To: Jewett, John H.
Cc: Morgan Plant; Kutz, James
Subject: RE: Additional Comments RE Proposed Reg 16A-4815

Dear Mr. Jewett,

I apologize for the confusion. I am re-attaching two different letters that I submitted to IRRC. One is dated October 1st and contains "The Reporter" you referenced along with tax returns and other docs the total pages of which are 48.

The other letter [14 pages] is dated October 2nd and had the relevant pieces of PFDA's letter pasted into it. I should have included the PFDA letter in its entirety and apparently I did not. You will find the PFDA letter attached to this email as a third doc containing 36 pages.

Now you can see why I'm an undertaker and not an attorney. Thank you for your patience and for allowing me to add to the record. Please let me know if this is what you were looking for and if there is anything else you would like me to provide.

Sincerely,

Ernie Heffner

Subject: RE: Additional Comments RE Proposed Reg 16A-4815
Date: Fri, 12 Oct 2007 16:40:22 -0400
From: jjewett@IRRC.STATE.PA.US
To: ernieheffner@hotmail.com
CC: Mrgnplant@aol.com; jkutz@postschell.com

Dear Mr. Heffner:

Your letter, attached to the email below, refers to, and quotes passages from, a PFDA document for the House Professional Licensure Committee which discussed concerns expressed by the Committee Members.

10/15/2007

I could not find a copy of this PFDA document attached. The only publication from the PFDA document in your email was a copy of the PFDA's "The Reporter" dated "October, 2001."

If you or any of your colleagues have copies of PFDA letters or other documentation discussing the proposed regulation, could you please share them with IRRC? I've asked PFDA for any information or positions that it may have to offer on this proposed regulation, and all I have received is one page of an Social Security Administration publication on irrevocable trusts. It was not very helpful. If you "google" "H. Policy—Burial Trusts," you'll probably find it. It is a "Program Operations Manual System" dated "February 2001."

Thank you, Mr. Kutz and all your colleagues for your help and information.

John Jewett

-----Original Message-----

From: Ernie Heffner [mailto:ernieheffner@hotmail.com]

Sent: Tuesday, October 02, 2007 11:55 AM

To: IRRC

Cc: Jewett, John H.; Wilmarth, Fiona E.; Emery, Heather; msturla@pahouse.net; mtremmel@pahouse.net; cline@pahousegop.com; dmorabito@state.pa.us; ssaylor@pahousegop.com; rvirag@ameriservfinancial.com; epetersen@ameriservfinancial.com; jkutz@postschell.com

Subject: Additional Comments RE Proposed Reg 16A-4815

Arthur Coccodrilli, Chairman
Independent Regulatory Review Commission
333 Market Street, 14th Floor,
Harrisburg, PA 17101

Dear Chairman Coccodrilli,

Yesterday I provided my comments on Proposed Pre-Need Regulation # 16A-4815 (Pre-Need Funeral Arrangements). The purpose of this letter is to offer a response to what I perceive to be tortured representations made by the Pennsylvania Funeral Directors Association (PFDA) in a letter to Representative Michael Sturla, Chairman, House Professional Licensure Committee dated 9.27.07, which was copied to IRRC. A copy of that letter is attached.

I continue to hope that IRRC will see fit to not approve either of the proposed pre-need regulations. Thank you for considering this additional perspective.

Sincerely,
Ernie Heffner
Heffner Funeral Chapels & Crematory
1551 Kenneth Road,
York, PA 17408
Ph. 717-767-1551

10/15/2007

2627

P. MICHAEL STURLA, MEMBER
MAJORITY DEPUTY WHIP
333 MAIN CAPITOL BUILDING
P.O. BOX 202096
HARRISBURG, PENNSYLVANIA 17120-2096
PHONE: (717) 787-3555
FAX: (717) 705-1923



House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

COMMITTEES

- PROFESSIONAL LICENSURE – MAJORITY CHAIRMAN
- FINANCE
- RULES
- MAJORITY POLICY
- CAPITOL PRESERVATION

THE GRIEST BUILDING
8 NORTH QUEEN STREET
SUITE 1100
LANCASTER, PENNSYLVANIA 17603
PHONE: (717) 295-3157
FAX: (717) 295-7816

MEMORANDUM

TO: House Professional Licensure Committee Members

FROM: Representative P. Michael Sturla
Chairman of House Professional Licensure Committee

DATE: September 27, 2007

SUBJECT: Correspondences for Regulation 16A-4815

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 2007 OCT 15 AM 7:35
 INDEPENDENT REGULATORY
 REVIEW COMMISSION

Enclosed are all the correspondences that my office has received related to Regulation 16A-4815 (proposed rulemaking of the State Board of Funeral Directors related to preneed funeral arrangements) for your review.

Due to the Independent Regulatory Review Commission's comment period for this regulation ending on October 15, 2007, it is imperative that the Committee submit comments at its next meeting on October 3, 2007.

If you have any comments for consideration, please contact Majority Executive Director Marlene Tremmel at 717-787-4032 or Minority Executive Director Wayne Crawford at 717-787-5646 prior to the meeting.

Thank you for your attention.

PENNSYLVANIA FUNERAL DIRECTORS



RECEIVED

ASSOCIATION OCT 15 AM 7:35

September 27, 2007

INDEPENDENT REGULATORY REVIEW COMMISSION

The Honorable P. Michael Sturla
Chairman, House Professional Licensure Committee
333 Main Capitol Building
Harrisburg, PA 17120

**Re: State Board of Funeral Directors Proposed Regulations
16A-4815 - Preneed Funeral Arrangements and
16A-4816 - Preneed Activities of Unlicensed Employees**

Dear Representative Sturla:

The Pennsylvania Funeral Directors Association (PFDA) is one of the largest funeral associations in the country representing approximately 1,100 firm members of the 1600 licensed funeral homes in this Commonwealth. As such, PFDA has consistently and wholeheartedly supported the above-referenced Proposed Regulation 16A-4815 dealing with Preneed Funeral Arrangements, as well as 16A-4816 dealing with activities of unlicensed individuals, both of which represent sound public policy. We encourage the Committee to support both of these proposed regulations.

In an attempt to address some of the concerns mentioned at the meeting of the House Professional Licensure Committee on September 26th, we wish to make the following points:

1) First and foremost, this proposed regulation is not anti-consumer. It is important to note that consumers who wish to transfer there pre-arrangement from the initial funeral director are the rare exception to the rule. Indeed, in the very hearing that preceded the Commonwealth Court opinion in Bean, Mr. Bean testified that in his 22 years of practicing as a funeral director, he had only been asked four times to move a pre-arrangement to another funeral director.¹ In a poll conducted by Polk-Lepson Research Group in 2005, 83% of the public polled favored portability of their pre-arranged contracts.² That is because, making arrangements for funeral services is frequently based upon the personal relationship between the funeral director and the consumer. Therefore, if a funeral director moves from one funeral home to another, or if the funeral home changes ownership, a consumer may indeed wish to follow the original funeral director. 83% of the polled populus certainly qualifies as a "compelling public interest" in terms of revising the regulations to be consistent with adequately serving the public.

¹ See Attached Exhibit A -- testimony of Kevin Bean dated April 8, 2003, p.112, lines 15-25 and p. 113, lines 1-3.

² See Attached Exhibit B - Polk-Lepson Research Group, September, 2005 Funeral Planning Study, p. 15.

The Honorable P. Michael Sturla
Chairman, House Professional Licensure Committee
September 26, 2007
Page Two

2) There is no risk to the consumer who has set aside funds in the process of spend-down for SSA or Medicaid benefits. That is because the irrevocability of the monies, i.e. the trust, remains irrevocable. The only thing that changes is the provider of the funeral. Thus, monies can be moved safely from one qualified trustee bank to another without jeopardizing the irrevocability of the funds, while at the same time assuring the consumer, the right to use the funeral director of their choice.

3) The concern that the proposed regulation would prohibit funeral directors from having ownership in other entities involved in the sale of funeral merchandise is not a new concept. Beginning with the case of PFDA vs. State Board of Funeral Directors,³ the Court made clear that funeral directors were held to a higher standard of trusting (100% under the Funeral Law), not 70% as required under the Merchandise Trust law. Since that case, numerous adjudications have occurred before the State Board that have sanctioned individuals for engaging in the practice of funeral directing through third party companies.⁴ Clearly, these parties, even though licensed funeral directors, set up these corporations for the sole purpose of avoiding the 100% trusting requirement. Thus, this proposed regulation is merely formalizing that which case law has held for years.

4) It is important to note that tens of millions of dollars are funded each year through preneed insurance. In each of those cases, the insurance company pays who provides the funeral, even if that is not who the funeral was prearranged with.

5) PFDA has no objection to addition of a definition for the term "rollover."

6) PFDA supports the suggestion that civil immunity be provided to a consumer who wishes to take advantage of the portability component of the regulation.

7) PFDA does not agree with the suggestion that a non-compete clause be incorporated into the regulation. This is because, as previously stated, individual consumers' relationship with their funeral director is a personal one that is not likely to be influenced by a competing funeral director. Secondly, consumers will be disinclined to move their pre-arrangement; for example, due to a lesser price offer by another, since to do so, can and will jeopardize the price guarantee supplied by the first funeral director.

³ 510 Pa. 602, 511 A.2d 763 ((S. Ct. 1986)

⁴ See *State Board of Funeral Directors v. Affordable Cremation Service, Inc.*, Adjudication and Order dated August 2, 2007; *State Board of Funeral Directors v. James A. McCafferty, Jr.*, Adjudication dated August 2, 2007; *State Board of Funeral Directors v. Christopher M. Palumbo*, Consent Agreement and Order dated November 15, 2004; *State Board of Funeral Directors v. Graham S. Hetrick*, Consent Agreement dated May 4, 2005; *State Board of Funeral Directors v. Stephen G. Hetrick*, Consent Agreement dated May 4, 2005 and *State Board of Funeral Directors v. Central Pennsylvania Cremation Society*, Consent Agreement dated May 10, 2005.

⁵ 364 F. Supp.2d 503 (M.D. Pa. 2005).

The Honorable P. Michael Sturla
Chairman, House Professional Licensure Committee
September 26, 2007
Page Three

Finally, it should be noted that should the consumer decide to move to another funeral director, it may well be because he/she is offered something better than they had with the first. This is something that is clearly to the consumers' benefit, not their detriment.

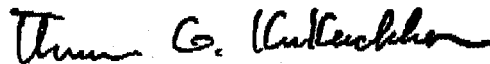
16A-4816 Preneed Activities of Unlicensed persons

It is also our understanding that the Committee will be addressing proposed regulation 16A-4816 dealing with preneed activities of unlicensed persons. The State Board of Funeral Directors held public meetings on two separate occasions and after months of review submitted this regulation as addressing the need in the profession to protect consumers while at the same time preserving the integrity of the funeral director's license. It was supported by the AARP (see attached Exhibit C) and after review of legal counsel to the Board was determined to address the issues raised in the Walker v. Flitton⁵ case. The regulation has the support of the Board, this Association and provides a solid safeguard to the public concerning their pre-need arrangements.

The State Board of Funeral Directors has every right to attempt to promulgate regulations for which it perceives a need, which would promulgate good public policy. The Board is charged statutorily with the duty so to do.⁶ Proposed Regulations 16A-4815 and 16A-4816 have run their course through review by the appropriate process. There is ample public support as well as the support of the overwhelming majority of licensed funeral homes in this Commonwealth for these regulations.

PFDA *urges* the Committee to recommend both regulations move forward in their current form.

Very truly yours,



Thomas G. Kukuchka, President
PFDA

Enclosures

c: Members of House Professional Licensure Committee
Independent Regulatory Review Commission

⁶ 63 P.S. §479.16 (a).

⁷ See Attached Exhibit C.

COPY

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
STATE BOARD OF FUNERAL DIRECTORS

IN RE: PETITION OF :
KEVIN M. BEAN, F.D., : DOCKET NO. 0406-48-2003
FOR A DECLARATORY ORDER : FILE NO. 2003-48-00391

BEFORE: JOYCE McKEEVER, HEARING EXAMINER
JAMES O. PINKERTON, CHAIRMAN
JOSEPH A. FLUEHR, III
JANICE H. MANNAL
MICHAEL D. MORRISON
ANDREW MAMARY

DATE: APRIL 8, 2003, 10:02 A.M.

PLACE: 116 PINE STREET
SECOND FLOOR, BOARD ROOM-A
HARRISBURG, PENNSYLVANIA

APPEARANCES:

DEPARTMENT OF STATE
BY: CLIFFORD SWIFT, ESQUIRE
FOR - COMMONWEALTH

PENNSYLVANIA FUNERAL DIRECTORS' ASSOCIATION
BY: KATHLEEN K. RYAN, ESQUIRE
FOR - PA FUNERAL DIRECTORS' ASSOCIATION

DEICHERT PRICE & RHOADS
BY: GORDON GERBER, ESQUIRE
FOR - PA FUNERAL DIRECTORS' ASSOCIATION

DUANE MORRIS, LLP
BY: JAMES J. KUTZ, ESQUIRE
BARBARA ZEMLOCK, ESQUIRE
FOR - PETITIONER

TERRY J. O'CONNOR, REPORTER
LORRAINE K. TROUTMAN, REPORTER
NOTARY PUBLICS



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2336 N. Second Street (717) 234-5922
Harrisburg, PA 17110 FAX (717) 234-6190

EX A

1 two things?

2 A I don't understand what you are getting
3 at.

4 Q Okay. If a consumer has a contract
5 with you for funeral goods and services --

6 A Um-hum.

7 Q -- and that consumer decides to cancel
8 a contract, do you see a difference between the
9 consumer asking you to cancel the contract,
10 versus saying, I would like to have those
11 funeral goods and services performed by someone
12 else, just move the money?

13 A No. No. That is cancelling.
14 Transferring is cancelling the contract.

15 Q All right. Have you ever had a request
16 in the course of your funeral directing career
17 to have someone move the moneys? Have you ever
18 had a consumer ask you to transfer the funds to
19 another funeral home?

20 A Yes.

21 Q Can you tell me approximately how many
22 people have asked to do that?

23 A Maybe four.

24 Q In the course of your career as a
25 funeral director?

1 A Yes.

2 Q And how long has that been?

3 A Twenty years.

4 Q Of those four that requested transfer
5 to another funeral provider, did you do it?

6 A Not directly.

7 Q Could you explain what you mean by
8 that?

9 A Well, as an example, in one case, a
10 person moved out of state, so their moneys were
11 refunded.

12 Q You refunded the moneys to the
13 consumer.

14 A Correct.

15 Q Okay. Well, that was not the question
16 I asked you. The question I asked you is: For
17 any consumer with whom you had a contract, did
18 any of those consumers ever ask for you to move
19 the moneys to some other funeral provider trust
20 so that they could obtain the funeral goods and
21 services from someone else?

22 A Not in that specific manner, no. Not
23 prior to death.

24 Q Not prior to death?

25 A Correct.

2005 Funeral Planning Study

FXR

Polk-Lepson Research Group
York, Pennsylvania

September 2007

Consequences Of Changing Funeral Homes After Prefinancing...

Almost half of the respondents (48.1%) do not know what happens if they have prefinanced a funeral and they move or simply decide to use another funeral home.

About a third (34.1%) said the money would be transferred to a new funeral home. A smaller percentage (9.9%) think the money would be lost.

Reaction To Fact That Funds Are Not Required To Be Transferred...

Respondents were informed that Pennsylvania law does not require that prepaid funeral funds be transferred to another funeral home. This means that the original money is at risk and that more money might have to be contributed to pay for the funeral.

When asked their reaction to this, a variety of answers was given. The largest percentage (42.1%) stated they do not like it. The next most common answer, given by 10.2%, is they do not know how they feel. Another 9.5% of the respondents see this as a reason to not prefinance a funeral.

Importance Of Being Able To Transfer Funds To Another Location...

Using the five point importance scale, respondents rated the importance of being able to transfer prepaid funeral funds from one funeral home to another.

A total of 83.1% consider this option to be important as indicated by ratings of 5 (76.0%) or 4 (7.1%).

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INDEPENDENT REGULATORY
REVIEW COMMISSION

December 28, 2006

The Honorable Edward Rendell
Governor
Commonwealth of Pennsylvania
225 Capitol
Harrisburg, PA 17120

Dear Governor Rendell,

It is the understanding of AARP Pennsylvania that two changes to the regulations governing pre-need funeral arrangements are pending before the Commonwealth.

AARP has a long-standing interest in the sale of pre-need funeral contracts. Changes in the deathcare industry have created confusion in many consumers' minds, and the need for consumer protections in this area are great.

An AARP national policy has been adopted by our Board of Directors that states should require that pre-need contracts be portable. One of the proposed regulations now before the Commonwealth, 16A-4815, would allow for this. AARP also has a strong concern about deceptive activities in the pre-need industry by unlicensed persons. A draft regulation currently being reviewed by your policy office would address this concern.

AARP Pennsylvania supports these regulatory proposals, and encourages you and your Administration to move these regulations through the system in order that they can be implemented.

We appreciate your consideration of this matter.

Sincerely,

Ray Landis
Associate State Director
AARP Pennsylvania

Cc: Mr. Basil L. Merenda, Commissioner, Bureau of Professional & Occupational Affairs Mr. Tony Scarantino, Chair, State Board of Funeral Directors

EX C

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INDEPENDENT REGULATORY
REVIEW COMMISSION

Tremmel, Marlene

From: Harry C. Neel [hjneel@verizon.net]
Sent: Tuesday, September 25, 2007 1:58 PM
To: Tremmel, Marlene
Subject: Comments on Preneed Funeral Arrangements #16A-4815
Attachments: 9-20-07 Funeral Regulations-Neel opposition.pdf; 9.24.07 Kutz ltr to Board RE PreNeed Reg 16A 4815.PDF; 9-24-07 HCN Comment to House licensure com.doc

Dear Chairman Sturla,
As Chairman of the Professional Licensure Committee these regulations will be coming before your committee. Enclosed please find my comments on the above referenced regulations. I would appreciate an acknowledgement you have received my comments.

Harry C. Neel
Jefferson Memorial
Cemetery & Funeral Home
Tel: 412-655-4500 Fax: 412-655-7758
Email: hjneel@verizon.net

9/25/2007



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2007 OCT 15 AM 7:35

INDEPENDENT REGULATORY
REVIEW COMMISSION

September 11, 2007

The Honorable P. Michael Sturla,
 Chair, Professional Licensure Committee
 Pennsylvania House of Representatives
 P. O. Box 202096
 Main Capitol
 Harrisburg, PA 17120-3006

Re: Proposed Regulation 16A-4815
Preneed Funeral Arrangements

Dear Representative Sturla:

The Pennsylvania Funeral Directors Association supports the Preneed Funeral Arrangements, Proposed Regulation 16A-4815, as published in the *Pennsylvania Bulletin*, on August 25, 2007, in its entirety. Specifically, we support the portability aspect of pre-need agreements as it preserves the irrevocability of the funds while at the same time serving the public interest by allowing them to use the funeral director of their choice.

Enclosed is a copy of the letter we sent to the State Board of Funeral Directors and IRRC in support of Proposed Regulation 16A-4815.

Very truly yours,

Thomas G. Kukuchka
 PFDA President

Enclosure

PENNSYLVANIA FUNERAL DIRECTORS



ASSOCIATION

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INDEPENDENT REGULATORY
COPY

September 6, 2007

Michelle T. Smey, Administrative Officer
State Board of Funeral Directors
P.O. Box 2649
Harrisburg, PA 17105-2649

Re: Preneed Funeral Arrangements, Proposed Regulation 16A-4815

Dear Ms. Smey:

The Pennsylvania Funeral Directors supports the above proposed regulation in its entirety. Specifically, we support the portability aspect of pre-need agreements as it preserves the irrevocability of the funds while at the same time serving the public interest by allowing them to use the funeral director of their choice.

Very truly yours,

Thomas G. Kukuchka, President
PFDA

cc: Arthur Coccodrilli, Chairman
IRRC
333 Market Street, 14th Floor
Harrisburg, PA 17101

COPY



HEFFNER

Funeral Chapel & Crematory, Inc.

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2007 OCT 15 AM 7:36

INDEPENDENT REGULATORY
REVIEW COMMISSION

PHONE 717-767-1551
Fax 717-764-9919
Toll Free 888-767-1551
C. Frederick Koller, Supervisor
Ernie Heffner, President
John Katora, Vice-President
Scott Mahkovec, CPA, Controller

PENNSYLVANIA AFFILIATES

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Vickery

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Allen & Redmond

WILKES-BARRE
Kniffen O'Malley

AVOCA
Kniffen O'Malley

MILTON
Ranck

ADVANCE PLANNING
Praneed Associates, Inc.

NEW YORK STATE AFFILIATE

WELLSBURG
Roberts

September 24th, 2007

Michelle T. Smey, Administrative Officer
State Board of Funeral Directors
P.O. Box 2649
Harrisburg, PA 17105-2649

Submitted Via Email To: st-funeral@state.pa.us, msmey@state.pa.us, hweirich@state.pa.us

RE: Proposed Pre-Need Regulation # 16A-4815 (Pre-Need Funeral Arrangements)

Dear Ms: Smey,

My name is Ernie Heffner. I am submitting this letter to go on record as being adamantly opposed to the Proposed Pre-Need Regulation #16A-4815 for a number of reasons. By reference, I request that the comments of Attorney James J. Kutz attached hereto and dated September 24th, 2007, written on behalf of the Pennsylvania Cemetery, Cremation & Funeral Association (PCCFA) be incorporated as part of this notice. I agree with his detailed comments in opposition to this ill conceived and ill advised proposed regulation.

It is disappointing to witness the Funeral Board continue to act as the alter ego of the Pennsylvania Funeral Directors Association (PFDA) in what seems to be a conspired ongoing effort to maintain an anti-trust, time of need stronghold for PFDA and its members.

Specifically regarding Proposed Pre-Need Regulation # 16A-4815;

1. This is the third attempt by this Board to "legislate" and circumvent a Commonwealth Court *en banc* decision authored by Judge Dan Pellegrini.
2. This is an effort to provide opportunity and incentive for PFDA to proselytize consumers to its for-profit, wholly owned subsidiary and away from those providers not in lock-step with PFDA.
3. This ignores the Social Security Administration's SSI qualification requirement that exempts a consumer's funds if they had been paid money subsequent to an irrevocable pre-need contract.
4. This is an anti-trust, protectionist, anti-consumer effort masquerading as a solution to a consumer problem when reality is completely opposite.
5. This violates my rights under the U. S. Constitution by proposing that I may not have an ownership interest in any other entity involved in the sale of funeral merchandise or goods, even though nowhere in the law is this prohibited.

This fifth item is particularly offensive and astounding. It is as if Proposed Pre-Need Regulation # 16A-4815 is an official notice to me and others like me to return to Federal Court. I am one of the plaintiffs who previously sought relief in Federal Court from this Board's willing violation of the U.S. Constitution when it adopted the now infamous

1551 Kenneth Rd., York, PA 17408

Resolution, which was penned by and provided by PFDA. Having prevailed in that matter, for which the Commonwealth paid \$55,000 in restitution of legal fees, it is now difficult to fathom this Board's willingness to knowingly and zealously again disregard the U.S. Constitution after previously being found to have been in violation thereof.

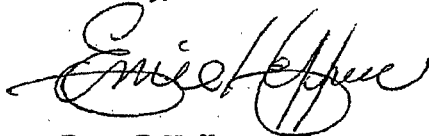
This board's demonstrated disregard for higher authority has a track record whether that authority is a Commonwealth Court *en banc* decision, a Federal Court order or directives from the Governor's Office. In fact, the disregard is so blatant as to be documented in official minutes of the funeral board itself! In response to a Federal Court Order, members of the funeral board not only commented outside of official public meetings but also in public meetings making revealing statements that include, "Who cares what the Judge said? Who cares what the Judge wants?" These statements came from an attorney on the board!

I am sad to see a proposed regulation that is anti-competitive and anti-consumer and nothing more than a ploy to line the coffers of a trade cartel and its members. In a time when we have soldiers being maimed and dying every day in an attempt to provide freedoms to people in a foreign land, I find it to be unconscionably offensive that this board continues to succumb to the pressures of PFDA acting as its alter ego and ignoring Commonwealth Court, Federal Court and specific directives from the Governor's Office all for the less than noble, anti-consumer purposes.

On numerous sad occasions, my associates and I have respectfully received the remains of fallen heroes, soldiers who have made the ultimate sacrifice. These fallen heroes willingly and unquestioning followed orders and put themselves in harm's way to protect our interests, which include our American freedoms and the protections guaranteed by the U.S. Constitution. All Americans, particularly we civilians, have a responsibility to defend the U.S. Constitution from those who would administratively seek and conspire to undermine it.

I can only hope that this board will do the right thing and withdraw Proposed Pre-Need Regulation # 16A-4815 in an effort to put itself on a consumer friendly course that encourages an open market place, fair competition and does not violate the U.S. Constitution.

Sincerely,



Ernest F. Heffner
Licensed Funeral Director

C: Jim Kutz

John Jewett, IRRC

Representative Mike Sturla, Chairman, House Professional Licensure Committee

Representative Stan Saylor, Member House Professional Licensure Committee

Lowell Thomas, Office of the Governor

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INDEPENDENT REGULATORY
REVIEW BOARD



Jan B. Jefferson
Supervisor

307 Curry Hollow Road • Pittsburgh, Pennsylvania 15236 • 412/655-4501

September 20, 2007

Michelle T. Smey, Administrative Officer
State Board of Funeral Directors
P.O. Box 2649
Harrisburg, Pa. 17105-2649

RE: Proposed Rule Making Regulation ID #16A-4815 (#2627).
State Board of Funeral Directors [49 PA. Code Ch. 13] Preneed Funeral Arrangements

Via Email: msmey@state.pa.us and st-funeral@state.pa.us

Dear Mrs. Smey,

I am a third generation death care provider. My family owns and operates one of the largest funeral homes in Pittsburgh. I have, for more than two years, provided input to this Board regarding these preneed regulations. I attended the public work session regarding these regulations, participated in the Board committee meeting, written comment letters and have been a frequent attendee at the monthly board meetings. I have watched this Board press ahead with its "agenda" without any documented or compelling need to issue these regulations. Further these proposed regulations exceed the statutory authority granted by the legislature in the Funeral Director Law. And these proposed regulations clearly violate the Federal Court Walker decision¹ as well as the Commonwealth Court Bean decision². Over the many years I have observed this Board I have concluded that they are dead set on drafting regulations that restrict competition, restrict free communication of honest information, and establish a monopoly in the death care industry for licensed funeral directors. The end result will do nothing but hurt Pennsylvania consumers by driving up prices as alternate vendors are driven from the market by this Boards actions and regulations. In my opinion this Board is perhaps the most reactionary funeral licensing board in the United States and the expensive renegade among all the boards BPOA oversees. It takes little effort to see the partisanship of this Board when one of the "independent consumer members" was previously the legal council for the trade association The Pennsylvania Funeral Directors Association

¹ United States District Court for the Middle District of Pennsylvania in the matter captioned Michael Walker, et al. v. Jodi Flitton, et al., No. 4: CV-01-02252

² Commonwealth court of Pennsylvania in the matter captioned Kevin M. Bean v. Department of State, state Board of Funeral Directors No. 1088C.D.2003

(PFDA). It was this member who spoke the loudest and the longest pressing for approval of these regulations.

In the section titled "Input from the Regulated Community the Board states" that it has solicited the opinions from funeral directors and organizations. However the input they have received has fallen on deaf ears. During a public work session the over whelming majority of participants, both in writing and/or in testimony, urged rejection or substantive and significant revision to the proposed regulations. Later I and others were invited to participate in a two component board meeting reviewing the proposed regulations. After those two meetings some amendments were made in the second draft of the regulations. Yet in the May 2007 meeting the Board has jettisoned all the work and input by the participants by voting a third draft and current draft of the regulations. This third draft is essentially fraught with the same series of problems as the initial draft they started with two years ago. The end result is that the regulated community has been ignored.

In the "Background and Need for the Amendment" the board summarizes that it has ***"determined that the regulations need to be updated to conform to existing practices in the funeral industry"***. I cannot imagine what the board is referring too. These proposed regulations do not "conform" to any existing practices and in reality force the industry to reverse 50 years of progress. The end result of these proposed regulations will force the industry to offer fewer consumer choices because of the unnecessary restrictions they impose on the funeral provider.

- For example: the proposed definition of a Preneed Funeral Contract makes a "contract" out of a non-binding wish list. As you may know many consumers make their future wishes known to a funeral provider without paying for their funeral. The industry commonly refers to this as a "wish list". There is no offer or consideration so a wish list is not a contract. It is not binding on the consumer or the funeral establishment. Regardless of contract law this proposed regulation defines this as a contract ***"whether or not the funeral entity receives preneed funeral funds."*** This exceeds the statutory authority granted in 13 (c) which clearly requires money to change hands for a contract to be executed.
- The proposed Preneed Funeral Funds definition is confusing if not treacherous to a funeral provider. In (i) it states that preneed funds are funds provided to the funeral provider ***"whether or not a contract to provide specified funeral services or merchandise exists."*** Yet the proposed 13.227 (a) requires all contracts to be in writing.
- The proposed definitions in (iii) include assignment of an insurance policy. However (iv) excludes any premium paid to an insurance company. This proposal does not discuss whether the assignment is revocable or irrevocable.

Obviously a revocable assignment can be rescinded at any time. Even with an irrevocable assignment of an insurance policy the funeral provider does not have the money, has no control of the money and will not receive the money until the death occurs (assuming and providing the policy is in enforce at the time of death).

- This proposal, contrary to industry practice and current regulations, wants this insurance assignment of a pre-existing policy reported as a contract ***“whether or not a contract to provide specified funeral services or merchandise exists”*** and the ***“premiums (are) paid directly to an insurance company”***. There is no possible reason for such convoluted regulatory logic. And such a regulation exposes the funeral provider to the extreme risk of prosecutorial misconduct.

The single issue the Board got right in their “Background and Need for the Amendment” is the fact that ***“reports under 13.224 are time-consuming to prepare and to review. However, the reports provide little value to the board, the regulated community or the public.”*** The basis of adherence with all laws in our country is VOLUNTARY COMPLIANCE. Honest individuals and businesses comply with laws; the dishonest do not. No amount of government paperwork sent to a regulatory agency will stop someone who wishes to intentionally defraud the consumer. Business keeps records so that they can honor their contracts and serve their customers. Regulatory agencies often specify record retention periods for enforcement reasons. These reports, even if the board has time and manpower to really review them (by their own admission they do not), will not prevent one potential problem. Therefore they are nothing but an unnecessary and expensive burden on Pennsylvania funeral businesses that has no effect other than to raise the cost to Commonwealth consumers.

- The current regulations allow 90 days to report each preneed. Though this is a burdensome requirement the proposed requirement is even more so. The proposed regulation would require a report every 90 days that has been expanded to ***“include all accounts held by the funeral entity at any time during the reporting period, including those first created during the reporting period and those closed during the period.”*** In addition the report shall include ***“The account balance at the beginning of the period, the total principal amounts added, interest or other earnings, disbursements or other transfers out and balance at the end of the period.”*** For any long established firm with hundreds or thousands of preneeds on file this is a massive report. The cost of updating this report for submission 4 times a year will be enormous. The cost of this unnecessarily burdensome report will be passed along to the consumer in the form of higher funeral costs.
- To require the deposit into escrow or transfer within 10 days is a requirement that is out of touch with the way business accounting is done in our computerized world. Firms small and large run monthly closeouts of the firm (not daily each time an individual contract is consummated). When the monthly closeout is complete, which usually takes a week, the amount due the escrow is calculated.

Then the escrow is paid. To update the regulations to conform to existing practices, as the Board stated it desired to do, this regulation should allow 45-60 days to deposit into the escrow account not 10 days. To comply with this regulation firms would be required to perform a closeout each time a contract is written or revert to manual accounting requiring repeated computer journal entries for each contract. From a practical point of view this is archaic.

The reasonable and necessary current regulation 13.226 (c) requires that upon sale or transfer of a business the new licensee-transferee notify the board of his/her willingness to accept responsibility for completion of the preneeds on account. This reasonable requirement is to be replaced with the unreasonable 13.229 requiring the new owner to notify each customer of the change of ownership and to give that customer up to 90 days to transfer their preneed to another funeral home. This is just another example of this board exceeding its statutory authority and heaping onerous and expensive requirements on licensee's whose cost ultimately gets passed on to Commonwealth consumers.

- This proposed regulation violates established contract law by invalidating the established contracts so that they can be transferred.
- The reality is that, unless it is an irrevocable contract (in which case this regulation violates the Bean decision) a consumer can move their preneed funds at the time of delivery to any funeral provider they wish. Transfers happen infrequently but they do occur. A reputable firm will not force a family to use them if the family does not want too. The Board has documented no case where this has been an issue requiring additional regulation.
- In addition this regulation would do great and unnecessary harm to the licensee it regulates. When a funeral director wishes to retire and potential purchasers value his business the number of preneed contracts on file is a tremendous plus in raising the value of the business. This proposed regulation invalidates those contracts and lowers the value of the business.

The "limitations on preneed funeral contracts" created in 13.227 clearly exceed the statutory authority granted by the law and unreasonably restrict the licensees constitutional right to operate legally under other existing laws. Yet this onerous proposal does nothing to protect the consumer. These regulations would, however, remove alternative vendors from the market, thereby reducing consumer choice and increasing consumer funeral costs.

- There are a number of legally established 3rd party companies selling death care merchandise (caskets, burial vaults, grave markers, cremation urns etc.). These 3rd party sellers are regulated by the Future Interment Act (63 P.S. 480). A few of

these firms have been established by funeral directors. There is nothing illegal or immoral about this as long as the respective laws are followed by the entity making the sale.

- This board has not shown even one instance of harm to a consumer who purchased their merchandise from a 3rd party seller rather than a traditional funeral provider.

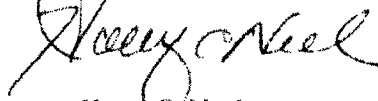
The transferability of a funeral contract proposed in 13.228 means that any contract written is a binding contract on the funeral provider but not upon the consumer. This proposal will restrict the consumer's choices because few funeral firms will wish to offer guarantee preneed contracts when they cannot be assured their contract is enforceable on the purchaser. This proposed regulation certainly exceeds the statutory authority and attempt to circumnavigate contract law and the Bean decision with regulation.

- This board somehow overlooks the issue that preneed contracts are price guaranteed by the selling funeral firm. If the consumer transfers his/her preneed to another firm, the new firm will not guarantee to perform the funeral for the same price as the original contract- generally written years ago. If transferability is to be truly beneficial to the consumer the regulation MUST require the receiving funeral establishment assume the entire contract as it was originally written (at the original price) and perform the funeral at no additional cost other than what has been trusted (As costs and prices have no doubt increased since the contract was originally written, it is doubtful any funeral home, not even mine, would do that).
- This board also overlooks the fact that the funds and markets these preneed funds are invested in go up and down. For example: If a \$5000 preneed funeral was trusted and the market contracted 10% there would only \$4,500 in the trust account. Yet if the death should occur the selling funeral home is obligated to deliver the funeral at the contracted price. Under the proposed regulations if the family chooses to move their money then the receiving funeral director would receive \$4500.
- These proposed regulations seem to indicate that using a master trust would no longer be approved since everything must be trusted individually. The end result of this is consumers choices will become limited as funeral firms choose not to offer preneed because of the risks created by this regulation.

In summary these regulations should not be passed. The Board has shown no documented consumer harm caused by current industry conduct requiring it to promulgate such draconian regulations. The proposed regulations exceed the statutory authority granted under the funeral director law. And these regulations violate many of the tenants set forth in the recent court rulings of Walker and Bean.

I urge you to disapprove these proposed regulations by the State Board of Funeral Directors.

Respectfully submitted,

A handwritten signature in cursive script that reads "Harry E. Neel". The signature is written in black ink and is positioned above the printed name.

Harry E. Neel
President



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INDEPENDENT REGULATORY
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September 24, 2007

Via Hand Delivery

Michelle T. Smey, Board Administrator
State Board of Funeral Directors
Department of State
2601 North Third Street
Harrisburg, PA 17110

RE: Comments of Pennsylvania Cemetery Cremation & Funeral Association to Proposed Regulations of State Board of Funeral Directors Published August 25, 2007 Re: Pre-Need Funeral Contracts

Dear Ms. Smey:

On Saturday, August 25, 2007, the State Board of Funeral Directors published Notice of Proposed Rulemaking, inviting public comment within 30 days of that publication. Allow this letter to serve as notice that the undersigned represents the Pennsylvania Cemetery Cremation & Funeral Association ("PCCFA"), and the comments that follow have been authorized by that entity and its members, who comprise every aspect of the death-care industry.

As an initial point, PCCFA wishes to go on record as being strongly opposed to the subject Regulations for a host of reasons. Specifically, these proposed Regulations constitute what is now a third attempt by the State Board and the Pennsylvania Funeral Directors Association ("PFDA") to legislate in an area which should be left for the General Assembly and to render nugatory a comprehensive and well-reasoned Commonwealth Court *en banc* decision authored by Judge Dan Pellegrini, wherein he reversed an Adjudication of the State Board of Funeral Directors, with direction that the Board could not declare irrevocable, pre-need agreements revocable at the whim of the customer and/or urging of another funeral director who is simply trying to harass an existing pre-need customer and pirate the business therefrom. See *Bean v. Department of State, State Board of Funeral Directors*, 855 A.2d 148 (Pa. Cmwlth. 2004), appeal denied, 584 Pa. 696, 882 A.2d 479 (2005) (holding that the Board's proffered "rationale" for requiring revocability or transferability is not supportable). Indeed, there is simply no need to detrimentally overhaul an existing pre-need contract scheme which has worked quite well over the last several decades. In other words, there is nothing "broke" whatsoever; there is little or no genuine consumer benefit to be derived by these proposed changes; and if promulgated, the end result will simply be to benefit the funeral director financially and expose pre-need customers, who have made final arrangements, to constant telemarketing and other harassment by those who

currently do not have pre-need business but are willing to attempt to lure existing customers from funeral directors who have lawfully and fairly secured pre-need business.

These Regulations will also effectively gut the good will and value of any funeral business which holds pre-need contracts because the Regulations, as drafted, create a wholly illusory contract to which one of the parties is bound to no obligation and for which no funeral director could ever convey his funeral business with the pre-need asset. Adding insult to injury, these proposed Regulations would wreak havoc with the currently in-place banking institutions who have agreed to serve as the recipient and trustee of these pre-need monies. With respect, no banking institution would likely continue to serve if the entire pre-need trust account could be drained at any point in time, except, of course, as that arrangement exists with PFDA's for-profit affiliate.

Both Governor Directives and existing statutory law make clear that Regulations are not to be proposed and implemented, unless a decision has been made that a "compelling public interest" needs to be advanced. Here, the Board suggests, without any true basis, that the current Regulations must be updated to "conform to existing practices and to provide adequate protection to the consumer of pre-need services in the instance of changed circumstances." First, the Board never identifies what "existing" practice within the industry has done away with legitimate, irrevocable, pre-need agreements under which the funeral director binds himself to certain significant commitments upon the death of the customer. Indeed, the State Board of Funeral Directors has, for the last many years, reviewed and approved for use pre-need agreements which, by their terms, were irrevocable. Query: If the Board was approving these types of agreements, what new fact or change in circumstance has come into play? The simple answer is - this Regulation is simply another one of PFDA's efforts (and I might add, successful efforts) to utilize the State Board to change the law whenever it suits and helps PFDA. Indeed, for years PFDA pre-need agreements contained irrevocability provisions and they were approved for years by the Board. What truly appears to be the catalyst for this "automatic transferability" requirement is to either (a) create the opportunity for PFDA and its members to pirate away customers who have entered into pre-need agreements with individuals not aligned with PFDA, or (b) make pre-need so unattractive that it ceases to exist, thereby enabling the funeral profession to make more money when the at-need arrangements are made during a time of extreme familial grief. PFDA has its own pre-need affiliate; its own for-profit marketing arm; and PFDA, through its use of this Board (comprised entirely of PFDA members as professional members) now weaves its desired end result. It is certainly legitimate for a trade organization to proffer issues and positions to a regulatory agency. However, in this instance, the proposed Regulations reflect another patent example of PFDA's use of the Board to manufacture any financial end result desired by PFDA. Indeed, in the proceeding involving Bean and the State Board (wherein this irrevocability issue was first and finally litigated), PFDA sought intervention from the Board and was granted intervention. Predictably, PFDA lobbied for an Adjudication which would *defacto* void irrevocable agreements and predictably, the Board concluded precisely what PFDA told it to conclude.

The General Assembly knows where and when to impose restrictions on the otherwise existing right of two private parties to contract. For example, in the Future Interment Law, 63 P.S. § 480.1 *et seq.*, which provides a vehicle for the sale of funeral merchandise pre-need, the statute expressly states that, if the purchaser of a pre-need contract for goods or merchandise moves out of state, the holder of the pre-need agreement is entitled to receive the principal amount of money on deposit to the credit of that particular contract. See 63 P.S. § 480.5. Notably, although the Funeral Director Law has been amended several times since the enactment of the Future Interment Law in 1963, the General Assembly has chosen not to enact a statutory provision dealing with irrevocability for funeral director pre-need contracts. That silence by the Legislature strongly reflects that it has chosen not to intrude upon the right of two parties to contract. Yet, the State Board, by attempting to "legislate" these Regulations, seeks that end result. As the mission and authority of a state agency is to interpret law, and not make law, these Regulations must be rejected.

Beyond these concerns, this Regulation, if adopted, will create absurd and prejudicial effects on consumers. For example, the Social Security Administration currently permits a pre-need customer to exempt funds from estate taxes and other attachments if pre-need arrangements are irrevocable by their terms. Inasmuch as these draft Regulations will allow consumers to "undo" contracts they have entered into, they are, by definition, not irrevocable and will be the subject of the evils set forth above.

The following scenario illustrates another absurd result. Assume customer "x" pays \$6,000 for a pre-need contract which guarantees him/her funeral services and merchandise at the time of death. Assume funeral director Smith, aware of this agreement, lobbies the customer to undo that existing contract and, instead, contract with him at a lower price. Under the Board's proposed scenario, the funeral director must turn over the then-existing balance in the account of that customer which, in many instances, will be less than the principal amount paid by reason of investment activity. In other words, the consumer, believing that he or she will get \$6,000, is not necessarily guaranteed that amount. Beyond that, the consumer then needs to enter into a second, new contract with a funeral director who may be far less worthy and law abiding than the original contracting funeral director. Then, to add insult, if the second agreement costs the consumer less, the monies are returned to the consumer, thus exposing those funds to the previous in-place protections of SSI.

Simply stated, proposed Section 13.228 is unnecessary; it is anti-competitive; anti-consumer; it will create uncertainty and confusion for the customer; and it will expose the customer to acts of preying by both in-state and out-of-state hustlers. Importantly, if the contract was secured through unfair marketing practices, the Attorney General can intervene, and common law rescission (or fraud) options exist.

There are a number of ways in which the Board could take appropriate steps, if it had a concern that consumers were entering into irrevocable pre-need agreements while not understanding the commitment. For example, a Regulation could arguably be proffered which requires some

separate disclosure of "irrevocability" to the consumer and its implications. Similar to the Pennsylvania Unfair Trade Practices Act, there could be some three-day right of rescission where applicable. Indeed, even with the sale of hearing aids, the General Assembly builds in a 30-day refund "for any reason" clause. Even a geographical provision, similar to the Future Interment Law might make some sense. There appears to be no other instance where an agreement is wholly rescindable by one party in the area of free enterprise and free market. In fact, even federally regulated banking institutions have the right to penalize a customer who seeks to terminate a Certificate of Deposit contract prematurely. These Regulations give the funeral director every disincentive to meet with customers and allow them to plan the type and form of funeral or other service they choose to commit to. Such end result is not pro-consumer. Rather, the end result will either be the harassment of existing pre-need customers by those who do not have pre-need business, or the beginning of the end of pre-need opportunities for Pennsylvania consumers, given the huge disincentive for legitimate funeral homes to commit resources, services and merchandise, only to have the plug pulled at the whim of the consumer. Judge Pellegrini said it best when he indicated there could be circumstances justifying concern within the Board, but the wholesale opportunity to rescind for any reason is simply not justified.

Another area of significant concern is this Board's effort to render illegal that which has been legal for years. Specifically, the Board now proposes that a funeral director may not have any ownership in any other entity involved in the sale of funeral merchandise or goods, even though the law nowhere prohibits same. It is simply unconstitutional and shocking that this Board, in 2007, would seek to render illegal many, many arrangements which funeral directors and others have put in place, wherein the funeral director has an interest in a corporation or other entity which can lawfully sell funeral goods or merchandise. Indeed, as late as 1999, PFDA (the Board's alter ego and vice versa) was disseminating statewide information and recommendations urging funeral directors to create a separate entity, so that funeral merchandise could be sold and trusted at 70%, consistent with the Future Interment Law. Indeed, PFDA went so far as to create an "Incorporation Kit" for use by the funeral directors within the state. Apparently realizing that its project did not get off the ground, PFDA has now convinced "its" State Board to make illegal that which PFDA recommended just some seven or eight years ago. Law should not be interpreted depending upon the whims of a trade organization and a regulatory board which demonstrates a "captured" status to that trade organization by doing whatever the trade organization wants at that particular point in time!

In closing, PCCFA regrets the zeal with which it has discussed the proposed Regulations and its concerns for those proposals. However, given the total absence of consumer "need" for these draft Regulations, and given the flip-flop approach of the Board to interpreting the Funeral Director Law, PCCFA believes it appropriate to "shoot straight" and urge this Board to do the honorable thing; *to wit*, withdraw the Regulations as unnecessary, anti-consumer, and protectionist. If the Board wishes to do away with legitimate pre-need contracting, it should seek legislative revision. However, it is not the province of the State Funeral Board to make major policy and business decisions which affect significantly and detrimentally businesses which have been operating within the bounds of law for decades. PCCFA is also fully aware that, on the

Michelle T. Smey, Board Administrator
September 24, 2007
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heels of these proposed Regulations relating to revocability, the death industry will be met with additional anti-competitive Regulations prohibiting agents and employees of funeral homes from effectively communicating with prospective pre-need customers. The linkage between the current Regulations and those which are going to follow, cannot be ignored. The consumer is not benefitted when reasonable and legitimate pre-need is effectively abolished, in lieu of at-need decision-making where the next-of-kin are obviously emotional and frequently subject to decision-making processes which their deceased loved one would not have wanted, or, in the case of these Regulations, directed to be otherwise.

Very truly yours,



James J. Kutz

JJK:dlh

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INDEPENDENT REGULATORY
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Michelle T. Smey, Administrative Officer
State Board of Funeral Directors
Bureau of Professional and Occupational Affairs
Commonwealth of Pennsylvania
P.O. Box 2649
Harrisburg, PA 17105-2649

September 21, 2007

Dear Board Members:

Thank you for the opportunity to comment on the proposed rulemaking concerning preneed funeral arrangements (Reference No. 16A-4815).

As background, for three generations and nearly eighty years, my family has owned and operated funeral businesses in the Commonwealth of Pennsylvania. I have been a licensed funeral director for nearly thirty years and my four brothers have all been licensed funeral directors for most of their adult lives. Our family business has actively marketed preneed since 1978. Therefore, I feel that I am qualified to comment on the proposed rulemaking.

The ability to prearrange their funeral is a valuable benefit to consumers. Leading consumer organizations have hailed pre-arrangement as an important tool for estate planning by seniors. Pre-arranging a funeral has three major benefits. First, it allows families to obtain the peace of mind that comes with knowing that your wishes will be met. Second, it allows consumers avoid the "emotional overspending" that often occurs at the time of a loved ones passing. Third, a properly established prearrangement may assist an individual in qualifying for Medicaid.

The Board has determined that the regulations regarding preneed funeral arrangements need to be updated to "conform to existing practices in the funeral industry and to provide adequate protection to the consumer..." In proposing new regulations, it is important that the Board give consideration to, and be consistent with: (1) The Federal Trade Commission; (2) The Future Interment Law; (3) Pennsylvania Funeral Directors Law, (4) Federal and state court decisions; and (5) The Boards purpose of *enforcing the law and formulating regulations that are not inconsistent with the law and are necessary to provide safeguards to the public.*

In reviewing the proposed rulemaking, it is apparent that the "updating" of the regulations would have the following effect: First, funeral directors would be required to completed additional, unnecessary paperwork. Second, the reporting requirements would

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restrict the privacy rights of funeral directors and consumers alike. Third, the restrictions on partnering or owning a merchandise company would interfere with the right to contract currently enjoyed by consumers and funeral directors. Fourth, the proposals, in total, serve to diminish the value of existing preneed contracts held by funeral directors and virtually eliminate the availability of preneed funerals to the public. I fail to see how these regulations serve the purposes stated by the Board.

Specifically, I offer the following:

Depositing Prepaid Funds

Proposed § 13.224(a) would require a funeral entity to deposit the entire amount of the funds received for prepaid services *and* merchandise in trust within 10 days. Additionally, § 13.224(a) proposes to limit the ability of funeral directors to create, control or otherwise use a merchandise company, for the purposes of depositing less than 100% of the funds in trust.

The greatest protection the Board can provide to consumers is to propose regulations that promote the availability of pre-arranged funerals. Prearranging provides consumers the opportunity to eliminate the emotional overspending that often occurs at the time of loss, while ensuring that ones wishes will be met at their time of need. In keeping with that understanding, The Future Interment Law allows for the retention of 30% of the funds deposited by consumers for merchandise purchases. In doing so, this provides merchandise companies the ability to not only offer prearranged merchandise, but to promote prearranging to their clients.

The current regulations do not restrict a funeral entity from using a merchandise company for the sale of preneed merchandise. Proposed §13.224(a) would restrict the creation, control or otherwise use of a merchandise company by a funeral director for the purpose of retaining 30% money. If adopted, the proposed rules will provide a competitive advantage to third party merchandise sellers in the sale of preneed merchandise, reducing the number of funeral directors offering prearrangements, thereby limiting the options available to consumers. Proposed § 13.224(a) is inconsistent with both the Future Interment Law and current practice within the industry and I fail to see how it will provide added protection for consumers. In fact, as proposed, the regulations will eliminate the leverage currently held by consumers.

Reporting Requirements

Under proposed §§ 13.224(b) through 13.224(d)(3), a funeral director would be required to report to the Board all preneed accounts on a quarterly basis. The report would need to include (1) a list of all accounts of preneed funeral funds held at any time during the quarter by the funeral entity; (2) the date the funds were received; (3) the name and address of the person for whose benefit the funds are received; (4) the name and address of the banking institution in which the account is held; (5) the account balance at the beginning of the period, (6) principal added, (7) interest or other earnings (8) disbursements or other transfers; and (9) the balance at the end of the period.

Currently, a funeral director must submit to the Board a written report every time the funeral director enters into a prepaid contract or performs under a prepaid contract. The Board states that the current reports are "time-consuming to prepare and review", and "the reports provide little value to the Board, the regulated community or the public". While this may be true, it is clear that the proposed regulations will create additional issues for consumers and funeral directors alike. First, the proposed rules would require funeral directors to provide personal and financial information about their customers to the Board, an entity comprised in part of competing funeral directors. Second, the rules would infringe on the right to privacy currently enjoyed by preneed consumers. Third, it is difficult for me to understand how the Board can properly review this additional information if, by their own admission, the current reports are time-consuming to review.

While I do not agree that the current structure provides inadequate safeguards to the public, the information requested could be made available without jeopardizing the expectation of privacy held by consumers and without undue burden on funeral directors. In New Jersey, for example, much of the information required by the proposed rule is required to be maintained by the funeral home and to be made available for inspection.

Section 13.224(d)(4) would require a funeral entity that has sold or otherwise ceased all or part of its preneed business to report to the Board how the preneed funds were distributed. Each distribution should identify the recipients and the amounts of the funds.

Currently, if a funeral entity ceases or sells their preneed business, the funeral home taking over the business is required to certify that they will honor the preneed contracts of the predecessor.

This proposal would require funeral directors to provide personal and financial information regarding their customer lists to the Board. For the reasons stated above, I urge the Board to reconsider their approach to this matter.

Preneed Contract Limitations

Under the proposed rulemaking in §13.227, (1) all preneed contracts must be in writing; (2) a funeral director could not collect fees that exceed the fees for the goods and services on the funeral entity's general price list at the time of the service; and (3) a preneed contract could not incorporate a contract for funeral merchandise entered into by someone other than a funeral director.

We agree that all funeral contracts should be in writing. Not allowing a funeral director to collect fees that are not currently on their GPL at the time of service is also a reasonable proposition. However, not allowing a funeral home to incorporate a contract for funeral merchandise entered into by a non funeral director serves no legitimate purpose.

Currently, there are no licensure restrictions on the sale of funeral merchandise. In fact, retailers such as Costco and online merchandisers have recently entered this arena. On an at-need basis, the National Funeral Directors Association guides that "a funeral home

should never refuse to service a family because they indicate that they will be using a third-party casket. The funeral home may not discriminate in any manner against the family..." While not allowing a funeral director to incorporate a contract for third party merchandise on a pre-need basis, but requiring him to accept third party merchandise on an at-need basis, the proposed regulation not only fails to conform to existing practice in the industry, it is contrary to the existing practices.

Transfer of Preneed Funds to Another Funeral Entity

Proposed § 13.228 would require a funeral director to allow a consumer to transfer their preneed funeral account and funds to another funeral director or funeral entity of the customer's choosing. The funeral director would be required to forward the entire amount of the preneed funds within 30 days of notice from the consumer.

While we currently allow consumers to cancel their contract within thirty days of signing, and we routinely transfer preneed funds to competing funeral homes, it is neither proper nor necessary for the Board to mandate that we do so. This is a matter of contract between the parties and should not be dictated by the Board. The proposed regulations would expand current protections provided by state and federal law, at the cost of eliminating the competitive advantage enjoyed by those firms that allow for the transfer and/or cancellation of the contract.

As proposed, the rules provide an additional quandary for funeral directors, one on which the Board must provide guidance. The regulations in no way address how a funeral director should handle the transfer of a contract of an individual receiving assistance, or an otherwise irrevocable contract. Additionally, the regulations do not limit the transferability of the contracts in any way. In not addressing these issues, the Board is an area ripe for fraudulent and deceptive activity by consumers and funeral directors alike. At a minimum, the Board should provide additional guidance with respect to these areas.

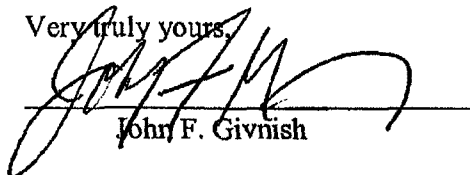
Acquiring or Ceasing a Preneed Business

Proposed § 13.229 would require (1) a funeral entity that acquires the preneed contracts or funds from another preneed business to notify each customer and provide them with the opportunity to transfer the contract and the funds to another funeral entity; and (2) require a funeral director ceasing preneed business to notify each consumer and provide them with the opportunity to transfer the funds to a funeral director of their choosing.

Currently, if a funeral entity ceases or sells their preneed business, the funeral home taking over the business is required to certify that they will honor the contracts of the predecessor. If the new entity is willing to honor the contracts that they have acquired, and must certify that they will, the public is protected. In requiring the acquiring owner to notify each consumer, the proposed regulations serves to devalue the business of those individuals who have been proactive in preneed. By doing so, the regulations will undoubtedly reduce the number of funeral directors offering preneed, thereby reducing competition, the greatest form of protection the public can enjoy.

Again, I would like to thank the Board for allowing me to comment on the proposed rulemaking. I welcome the opportunity to discuss these matters in an open forum and encourage the Board to review the preceding comments with the eye on proposing rules that are consistent with existing practice within the industry, are necessary to protect the rights of consumers, promote competition within, and provide clarity to, the funeral industry.

Very truly yours,

A handwritten signature in black ink, appearing to read "John F. Givnish", is written over a horizontal line. The signature is stylized and cursive.

John F. Givnish

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ROBERT P. GASPARRO

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Attorney At Law
Telephone (215) 387-1100 / (484) 451-6612
FAX (888) 829-2529
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INDEPENDENT REGULATORY
REVIEW COMMISSION

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Philadelphia PA. 19104

Suburban Address:
Providence and State Road
Media, PA 19063

Michelle T. Smey
Administrative Officer, State Board of Funeral Directors
P. O. Box 2649
Harrisburg, PA 17105-2649

August 28, 2007

Reference No. 16A-4815 (Preneed funeral arrangements)

Dear Ms. Smey,

I am an Elder Law attorney and President of the board of the Funeral Consumers Alliance of Greater Philadelphia, I want to state my support of Proposed § 13.228 which would govern customer transfers of preneed funds to another funeral director or funeral entity. **However, I presume that by "funeral entity" you mean an irrevocable burial account at a bank.** Some banks such as Bryn Mawr Trust Co. and United Bank offer those accounts, and many would be more willing to do so pending the change in this legislation.

I too would like to see the language modified to include all currently existing preneed / prepaid funeral arrangements, so that current Pennsylvania residents who have purchased preneed funerals will be free to move their contracts to another funeral director or to an irrevocable burial account at a bank.

I would not like to see a Pennsylvania resident be able to obtain a full refund of the pre-need contract because then they might be obligated to liquidate the account to

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qualify for Medicaid if they maintain control of the funds. However, they should be permitted to transfer the funds to any other irrevocable burial account or another pre-need account, even after the death of the consumer who purchased the contract and before their funeral. Funeral directors should not mind this because most executors or family representatives will not do so unless there has been an unfair or major price increase by the funeral director between the time the funeral was arranged and the time of the funeral.

Residents may move within the state and desire a funeral director closer to their homes. They may change their minds about what sort of funeral they want, and decide they would like a cremation rather than burial. In either situation, the language of this bill should enable Pennsylvania residents to easily transfer their funds to any other funeral director or to an irrevocable burial account.

I consider contract provisions which are added in §13.227 to be contrary to the purpose and spirit of a prepaid / preneed contract. If a funeral is prepaid, and if it is indeed a contract, no additional charges should be allowed for those contracted services, regardless of what the funeral home's current rates have become since the contract.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Robert P. Gasparro". The signature is written in a cursive style with a large, sweeping flourish at the end.

Robert P. Gasparro

RPG/rg

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REVIEW COMMISSION

September 3, 2007

Michelle T. Smey
Administrative Officer, State Board of Funeral Directors
P.O. 2649
Harrisburg, Pa. 17105-2649

Reference No. 16A-4812 (Pre-need Funeral Arrangements)

Dear Ms. Smey:

As a member of the Board of the Funeral Consumers Alliance of Greater Philadelphia, I want to state my support of Proposed 13.228 which would govern customer transfers of pre-need funds to another funeral director or funeral entity.

I would like to see the language modified to include all currently existing pre-need/pre-paid funeral arrangements. In that way all current Pennsylvania residents who have purchased pre-need funerals will be free to move their contracts to another funeral director if necessary.

I would also like to see a Pennsylvania resident be able to obtain a full refund of the pre-need contract, in the event they would have to liquidate the account for whatever reason.

Contract provisions which are added in 13.227, seem contrary to the purpose of a pre-paid/pre-need contract. Additional charges should not be allowed at the time of need, regardless of what the funeral homes's current rates have become since the contract.

Thank you for your consideration.

Sincerely,



Iris G. Cutler
Member - Board of Directors,
Funeral Consumers Alliance of Philadelphia

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Jan B. Jefferson
RECEIVED Supervisor

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301 Curry Hollow Road • Pittsburgh, Pennsylvania 15236 • 412/655-4501

INDEPENDENT REGULATORY
REVIEW COMMISSION

September 24, 2007

Representative Mike Sturla
Chairman, house Professional Licensure Committee
Room 333, Main Capitol
Harrisburg, Pa. 17120

Via email: mtremmel@pahouse.net

Reference # 16A-4815 (preneed funeral arrangements) to come before your committee

Dear Chairman Sturla,

I submit to you a copy of the letter I sent to the State Board of Funeral Directors adamantly opposing the Proposed Pre-Need Regulation #16A-4815. Though the proposed regulations are untenable in their entirety I have detailed specific objections in my attached letter. I have also enclosed the comments of Attorney James J. Kutz dated September 21, 2007 written on behalf of the Pennsylvania Cemetery, Cremation and Funeral Association to be incorporated as part of this comment.

Here is a simple summary of the reasons these regulations should not be approved:

- There is no documented need for these regulations,
- The regulations exceed the statutory authority granted by the funeral law,
- This is an attempt to "legislate" by regulation,
- This is an attempt to circumvent a Commonwealth Court decision by Judge Dan Pellegrini,
- This ignores Social Security SSI qualifications that exempt consumer funds paid on pre-need contracts and will invalidate the consumer protections therein,
- These regulations violate my Constitutional rights by regulating that I may not have ownership interest in another firm involved in the sale of death care products. This is NOT prohibited in the underlying law.
- The only plausible reason for these regulations to be promulgated is create economic protectionism for funeral directors who do not have the energy, desire or ability to compete openly in the pre-need market place.

For all of these reasons IRRC should not approve these regulations!

Sincerely,

Harry C. Neel
President

Enclosures

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INDEPENDENT REGULATORY
REVIEW COMMISSION

Lois Wickstrom
787 N 24th Street
Philadelphia PA 19130-2540
(215) 765-9362
reluctantspy@gmail.com

August 28, 2007



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Michelle T. Smey
Administrative Officer, State Board of Funeral Directors
P. O. Box 2649
Harrisburg, PA 17105-2649

Reference No. 16A-4815 (Preneed funeral arrangements)

Dear Ms. Smey,

As a member of the board of the Funeral Consumers Alliance of Greater Philadelphia, I want to state my support of Proposed § 13.228 which would govern customer transfers of preneed funds to another funeral director or funeral entity.

I would like to see the language modified to include all currently existing preneed / prepaid funeral arrangements, so that current Pennsylvania residents who have purchased preneed funerals will be free to move their contracts to another funeral director.

I would also like to see the language modified to allow Pennsylvania residents to request refunds of preneed/prepaid funeral arrangements, including any interest accrued.

Residents may move within the state and desire a funeral director closer to their homes. They may change their minds about what sort of funeral they want. In either situation, the language of this bill should enable Pennsylvania residents to either transfer their funds or receive their funds including interest.

I consider contract provisions which are added in §13.227 to be totally contrary to the purpose and spirit of a prepaid / preneed contract. If a funeral is prepaid, no additional charges should be allowed for those contracted services, regardless of what the funeral home's current rates have become since the contract.

I would like the language modified to state that a preneed / prepaid contract shall be considered a contract for specified services at a specified price which cannot be altered at the time of need.

Thank you for your consideration.

Sincerely,

Lois Wickstrom
Member, Board of Directors, Funeral Consumers Alliance of Greater Philadelphia