

# 2627

RECEIVED

Gelnett, Wanda B.

**From:** Jewett, John H.  
**Sent:** Saturday, October 13, 2007 4:10 PM  
**To:** Gelnett, Wanda B.  
**Subject:** FW: Proposed Pre-Need Reg #16A-4815 Additional Comments

2007 OCT 15 AM 7:34

INDEPENDENT REGULATORY  
REVIEW COMMISSION

Please add this email and the attached letter with attachments to the proposed comments section of #2627.

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

**From:** Ernie Heffner [mailto:ernieheffner@hotmail.com]  
**Sent:** Saturday, October 13, 2007 12:10 PM  
**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; shelm@pahousegop.com; jkutz@postschell.com; bhcavanagh@comcast.net  
**Subject:** Proposed Pre-Need Reg #16A-4815 Additional Comments

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

Dear Chairman Coccodrilli,

Attached is my third letter of additional comments and supporting documentation in **opposition** to Proposed Pre-Need Regulations # 16A-4815 (Pre-Need Funeral Arrangements) published 8.25.07 which I and others perceive to be anti-consumer, anti-trust and protectionist.

The attached letter specifically addresses an example of the Funeral Board's effort to legislate via Proposed Pre-Need Regulations # 16A-4815 and their regulatory capture as the result of an incestuous relationship with a trade group.

Chairman Coccodrilli, I would appreciate your consideration to **not approve** Proposed Pre-Need Regulations # 16A-4815 .

Sincerely,  
Ernie Heffner  
Heffner Funeral Chapels & Crematory  
1551 Kenneth Road,  
York, PA 17408  
Ph. 717-767-1551  
[ernieheffner@hotmail.com](mailto:ernieheffner@hotmail.com)

# 2627



# HEFFNER

Funeral Chapel & Crematory, Inc.

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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

**RED LION**  
Olewiler & Heffner

**YORK**  
Everhart-Jackson-Heffner

**LEWISBERRY**  
Beaver Ulrich

**POTTSVILLE**  
Schlitzer-Allen-Pugh

**TROY**  
Vickery

**MILL HALL**  
Helt Chapel

**RENOVO**  
Maxwell

**WILLIAMSPORT**  
Allen & Redmond

**WILKES-BARRE**  
Kniffen O'Malley

**AVOCA**  
Kniffen O'Malley

**MILTON**  
Ranck

**ADVANCE PLANNING**  
Preneed Associates, Inc.

## NEW YORK STATE AFFILIATE

**WELLSBURG**  
Roberts

October 13, 2007

Arthur Coccodrilli, Chairman  
Independent Regulatory Review Commission  
333 Market Street, 14<sup>th</sup> Floor,  
Harrisburg, PA 17101  
Phone 717-783-5417

Submitted Via Email To: [irrc@irrc.state.pa.us](mailto:irrc@irrc.state.pa.us)

**RE:** Proposed Pre-Need Regulation # 16A-4815 (Pre-Need Funeral Arrangements) published 8.25.07  
Corruption of Funeral Board by Trade Group,  
Effort to Legislate and Vacillation of Position

Dear Chairman Coccodrilli,

In separate letters dated October 1<sup>st</sup> and October 2<sup>nd</sup>, I provided information regarding Proposed Pre-Need Regulation # 16A-4815 and, to a lesser extent, Proposed Regulation # 16A-4816 (Pre-Need activities of unlicensed employees) published 9.29.07 as put forth by the State Board of Funeral Directors.

With this letter, I am providing a document that exemplifies the Funeral Board's effort to "legislate" in order to accommodate their vacillating position which is determined at the whim of the trade association, Pennsylvania Funeral Directors Association (PFDA).

Though the regulatory capture of the Funeral Board by PFDA is not a new phenomena, the level of corruption seems to have escalated in recent years. I recall years ago that the *Philadelphia Inquirer* exposed the then Chairman of the State Board of Funeral Directors, John Lutton, a Beaver Falls funeral director, for simultaneously serving as the President of the trade association PFDA. I recall this exposé resulted in Mr. Lutton's resignation as president of the trade association. This embarrassment was followed by a brief time when some licensees, such as Bart Cavanagh, Sr. [610-532-3120 Cavanagh Funeral Home, 301 Chester Pike, Norwood, PA 19074], who were independent of PFDA's influence, were able to attain appointment to serve on the Funeral Board. However, this period was not long lived.

Today the professional members on the State Board of Funeral Directors are all handpicked PFDA representatives. Even one of the two consumer member positions is held by Attorney Donald Murphy, former counsel of PFDA. Senator Tomlinson, Chairman of the Senate Professional Licensure Committee, a licensed funeral director and member of PFDA, serves as the gate keeper for appointments to the Funeral Board.

As an example of this Funeral Board's flip-flopping and their effort to legislate via Proposed Pre-Need Regulation # 16A-4815, I call your attention to the 1991 Investigation Request of a funeral board prosecutor in comparison to specific language in

**1551 Kenneth Rd., York, PA 17408**

the proposed regulation.

From the attached Commonwealth of Pennsylvania Investigation Request (copy attached):

**Investigation Request  
File No. 87-48-05511  
Page 2  
March 8, 1991**

- 6) The State Board of Funeral Directors has opined that there is no violation of funeral law or regulations when a corporation, operating separate and apart from a funeral home (even if owned by a funeral director) sells pre-paid, pre-need merchandise and deposits 70%.

Compare this to language in Proposed Pre-Need Regulation # 16A-4815 (copy attached):

§ 13.224. [Funding] Depositing and reporting [of prepaid burial contracts] preneed funeral funds.

(a) A funeral director or funeral entity 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] preneed funeral funds within 10 days of receipt. A funeral director or funeral entity may not avoid the requirements of this subsection by creating or controlling or otherwise utilizing a person or entity that is not a funeral entity.

(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.] Reports made under this section may be filed in paper form or on disk or electronically, as permitted by the Board. A funeral entity shall retain a copy of each report required to be filed under this section for 3 years after the report was due or filed, whichever is later.

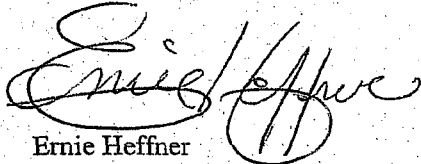
This current State Board of Funeral Directors seems totally unaccountable to anyone. They seem to serve as the alter ego of PFDA and flip-flop their position at the whim of their puppet master, PFDA. Between Proposed Pre-Need Regulation # 16A-4815 (Pre-Need Funeral Arrangements) published 8.25.07 and Proposed Regulation # 16A-4816 (Pre-Need activities of unlicensed employees) published 9.29.07, this Funeral Board demonstrates their conscious choice to ignore an En Blanc Commonwealth Court ruling against them, a Federal Court Ruling against them and, as you will discover in comments that will be forthcoming on # 16A-4816, instructions from the Office of the Governor also.

In my opinion, establishing credibility of the Funeral Board would require nothing short of a clean sweep of the current professional members and the former counsel to PFDA who allegedly serves as a consumer member. All should be replaced with individuals who are independent professional members and a real consumer member who does not have any trade cartel ties to any related trade association.

As more documentation is discovered, I will provide it to you. I continue to oppose both Proposed Pre-Need Regulation # 16A-4815 (Pre-Need Funeral Arrangements) published 8.25.07 and Proposed Regulation # 16A-4816 (Pre-Need activities of unlicensed employees) published 9.29.07.

I appreciate the opportunity to offer further information for the record and continue to hope that IRRC will see fit to not approve either of the proposed pre-need regulations.

Sincerely,



Ernie Heffner  
Licensed Funeral Director

**Copies via Email To:**

John H. Jewett, Regulatory Analyst, IRRC  
Fiona E. Wilmarth, Director of Regulatory Review, IRRC  
Heather Wimbush Emery, Assistant Counsel, IRRC  
Representative P. Michael Sturla, Chairman, House Professional Licensure Committee  
Marlene Tremmel, Executive Director, House Professional Licensure Committee  
Christine Line, Counsel, House Professional Licensure Committee  
Donald F. Morabito, D. Ed, Office of Public Liaison  
Representative Stanley Saylor, House Professional Licensure Committee  
Representative Susan Helm, House Professional Licensure Committee  
Bart Cavanagh, licensee and former Chairman, State Board of Funeral Directors  
James J. Kutz, Esquire  
PCCFA

DATE: March 8, 1991

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SUBJECT: Investigation Request

Ernest Heffner - 1701 W. MARKET ST., YORK, PA.  
File No. 87-48-05511

MAR 14 3 35 PM '91  
LAW... HARRISBURG

TO: Law Enforcement Division

FROM: Kathleen Wallace Grossman *KG*  
Prosecuting Attorney

This file was opened pursuant to a complaint alleging "solicitation of business by other than legitimate advertising" in violation of the Rules and Regulations of Funeral Directors, Section 13.221.

A statement of facts is as follows:

*Dinner & meet  
1st talk  
Burt*

- 1) A group of funeral directors (namely, the Olwiler and Heffner Funeral Home in Red Lion, The Heffner Funeral Home of Jacobus, Inc., and the Morgan E. Frey Funeral Home, Inc.) created business corporations for the purpose of selling pre-paid, pre-need funeral merchandise.
- 2) The names of these corporations are:
  - (a) York County Funeral Associates, Inc.  
1223 North George Street  
York, PA 17407
  - (b) Heffner Family Services, Inc.  
1223 North George Street  
York, PA 17407
  - (c) American Funeral Corporation  
(address unknown, perhaps York, PA)
- 3) Funeral director laws require licensees to deposit 100% of money received for pre-paid, pre-need merchandise and services in a banking institution in the Commonwealth.
- 4) Future interment laws allow other persons (excepting funeral directors) to deposit 70% of pre-need monies and to retain 30% for the seller's service charge.
- 5) It is believed that Heffner Family Services, American Funeral Corporation and York County Funeral Associates are depositing 70%.

Investigation Request

File No. 87-48-05511

Page 2

March 8, 1991

- 6) The State Board of Funeral Directors has opined that there is no violation of funeral law or regulations when a corporation, operating separate and apart from a funeral home (even if owned by a funeral director) sells pre-paid, pre-need merchandise and deposits 70%.
- 7) However, the key is: are the pre-need sales merchandising corporations located at 1223 North George Street, York, PA 17404 operated separate and apart from the funeral business located at the same location? Are there two sets of bookkeeping records kept? Separate advertising signs? Do the corporations display signs for public view at all? Which businesses display signs? Are there separate entrances? How is the building set up, i.e., a common vestibule leading to separate suites?

If you have any questions, I have reviewed this file with Bill Pinn who may be able to assist. Otherwise, please feel free to contact me directly.

Thank you in advance for your cooperation.

KWG/smd

hours and cover the following subjects; the accompanying breakdown of hours by subjects is recommended:

**[ MANICURING ] NAIL TECHNOLOGY COURSE OUTLINE**

\* \* \* \* \*

(f) A school's natural hair braiding curriculum, excluding electives, must comprise 300 hours and cover the following subjects; the accompanying breakdown of hours by subjects is recommended:

**NATURAL HAIR BRAIDING COURSE OUTLINE**

**Recommended Hours**

Professional practices, including sanitation	50
Sciences, including scalp care and anatomy	125
Cognitive and manipulative skills related to natural hair braiding	125
<b>Total</b>	<b>300</b>

**PREPARATION BY APPRENTICESHIP METHOD**

**§ 7.131. Introduction.**

An individual who chooses to seek eligibility for the [ cosmetologist's ] cosmetologist examination by apprenticeship shall comply with section 10 of the act (63 P. S. § 516) and the applicable requirements of this subchapter.

**§ 7.132. Apprentice curriculum.**

The cosmetology teacher responsible for offering instruction to an apprentice in a cosmetology [ shop ] salon shall teach the same cosmetology curriculum that the Board prescribes for schools of cosmetology in § 7.129 (relating to curriculum requirements)[. ], with additional hours included so that the total number of hours adds up to 2,000, as follows:

**BASIC COSMETOLOGY APPRENTICE CURRICULUM**

Professional Practices	50
Bacteriology, Disinfection, Sanitation	
Professional Attitude	
Business Practices	
PA Cosmetology Law	
Sciences	200
Histology	
Trichology	
Chemistry	
Physiology	
Cosmetic Dermatology	
Electricity	
Cosmetology Skills-Cognitive and Manipulative	1,750
Shampooing	
Hair Shaping	
Hair Styling/Fingerwaving	
Permanent Waving	
Hair Coloring	
Hair Straightening	
Skin Care	
Nail Technology	
Temporary Hair Removal	
Scalp Treatment	
Care of all Hair Types and Textures	
<b>Total</b>	<b>2,000</b>

**§ 7.133. Application for apprentice permit.**

To qualify for apprenticeship training in a cosmetology [ shop ] salon, an individual shall apply to the Board for an apprentice permit.

**§ 7.134. Apprentice reports.**

The owner of a cosmetology [ shop ] salon that employs apprentices shall submit to the Board, on a form provided by the Board, a quarterly report of the hours earned by each apprentice. The reports shall be submitted by the following dates: April 15, July 15, October 15 and January 15.

[Pa.B. Doc. No. 07-1548. Filed for public inspection August 24, 2007, 9:00 a.m.]

**STATE BOARD OF FUNERAL DIRECTORS**

[49 PA. CODE CH. 13]

**Preneed Funeral Arrangements**

The State Board of Funeral Directors (Board) proposes to amend §§ 13.1, 13.224, 13.225 and 13.226 and to add §§ 13.227, 13.228 and 13.229 (relating to limitations on preneed funeral contracts; transfer of a preneed funeral contract by customer; and sale or transfer of preneed funeral contracts or preneed funeral funds by funeral director) to read as set forth in Annex A.

*Effective Date*

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

*Statutory Authority*

The proposed rulemaking is authorized under sections 13(c) and 16(a) of the Funeral Director Law (act) (63 P. S. §§ 479.13(c) and 479.16(a)).

*Background and Need for the Amendment*

Section 13(c) of the act requires that a funeral director who accepts money under a contract with a living person to render funeral services to that person when needed to forthwith deposit the money in an escrow account or transfer it in trust to a banking institution in this Commonwealth. The money may be withdrawn or disbursed only for the purposes for which it was deposited.

The Board's current regulations regarding preneed funeral arrangements were originally promulgated in 1977 and last amended in 1991. Current § 13.224 (relating to funding and reporting of prepaid burial contracts) requires a funeral director to place the funds received for preneed funeral arrangements into trust or escrow accounts kept separate from the funeral director's personal or business accounts and to make reports to the Board. Under § 13.226 (relating to nature and description of escrow or trust account for prepaid burial contracts), interest or other earnings from preneed funds must be kept together with the principal to assure delivery of the same quality of services and merchandise for which the preneed contract was entered.

The Board determined that the regulations need to be updated to conform to existing practices in the funeral industry and to provide adequate protection to the consumer of preneed services in the instance of changed

circumstances. For example, 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. Existing regulations do not address the transferability of funds when a funeral director other than the contracting funeral director provides funeral services and merchandise or the ability of a customer to change funeral directors or transfer funds in the event of a change of funeral directors. The regulations do not adequately address the cessation or acquisition of a preneed business.

#### *Description of the Proposed Amendments*

In § 13.1 (relating to definitions), definitions of "prepaid burial contract" and "prepaid burial account" would be deleted and replaced with definitions of new terms "preneed funeral contract" and "preneed funds." The proposed definition of "preneed funds" would exclude premiums paid directly to an insurance company to purchase a life insurance policy. However, preneed funds would include amounts to be paid for arrangement fees or additional allowance for other services or merchandise. Preneed funds would also include the assignment of a life insurance policy or other asset received by a funeral director to fund a preneed contract.

Section 13.224 requires a funeral director to deposit in escrow or transfer in trust money received under a prepaid contract. The Board proposes to amend subsection (a) to require the deposit or transfer be made within 10 days of receipt. In addition, the Board proposes to add a provision to prohibit a funeral director or entity from using another person or entity to avoid this requirement. Currently, a funeral director must submit to the Board a written report every time the funeral director enters into a prepaid burial contract or performs under a prepaid contract. Under proposed subsection (b), a funeral director would be required to report to the Board all preneed accounts on a quarterly basis, including activity during that quarter. A funeral director could submit these reports on paper or disk or electronically and must maintain copies of the report for 3 years. A funeral director closing a business would be required to submit a report showing how all funds were distributed. These reports are not public records and will not be available for public review.

The limitations proposed for contract provisions are added in § 13.227. Under the proposed rulemaking, every preneed contract must be in writing. Also, a funeral director performing under a preneed contract would be prohibited from charging or collecting any fee that exceeds the fees set forth in the funeral director's current price list at the time the service or merchandise is provided. In addition, a preneed contract may not incorporate a contract with an unlicensed person or entity.

Proposed § 13.228 would govern customer transfers of preneed funds to another funeral director or funeral entity. Every preneed funeral contract entered into after the effective date of the final-form rulemaking must expressly permit the customer to transfer the preneed funeral account and funds to another funeral director or funeral entity of the customer's choosing that will provide funeral goods and services. The funeral director would be required to forward to the other funeral director the entire amount of preneed funds, including both principal and interest or other earnings, within 30 days of notice from the customer. The proposed rulemaking would prohibit a funeral director from collecting a fee for funeral goods or services that have not been provided or liquidated damages for the cancellation.

Proposed § 13.229 would govern funeral director transfers of preneed contracts or funds. It would require a funeral director or entity that acquires a portion of the preneed business of another to notify each customer and provide each customer with the opportunity to transfer the contract and funds to another funeral director of the customer's choosing. A funeral director ceasing preneed business must notify each customer and provide each customer with the opportunity to transfer the preneed funds to another funeral director of the customer's choosing.

#### *Input from the Regulated Community*

The Board solicited input from and provided an exposure draft of this proposed rulemaking to funeral directors and organizations. In addition, the Board considered the impact the rulemaking would have on the regulated community and on public health, safety and welfare.

#### *Fiscal Impact and Paperwork Requirements*

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will not impose additional paperwork requirements upon the Commonwealth, its 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 August 15, 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 House Professional Licensure Committee and the Senate Consumer Protection and 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 public comment period. The comments, recommendations or objections must 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, suggestions or objections regarding this proposed rulemaking to Michelle T. Smey, Administrative Officer, State Board of Funeral Directors, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16A-4815 (Preneed funeral arrangements) when submitting comments.

ANTHONY SCARANTINO,  
*Chairperson*

**Fiscal Note:** 16A-4815. No fiscal impact; (8) recommends adoption.



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**  
**GENERAL PROVISIONS**

**§ 13.1. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

\* \* \* \* \*

**[ Prepaid burial account—**An account in which moneys are deposited by the funeral director during the lifetime of an individual in accordance with a contract executed between the parties for funeral merchandise and services to be performed and delivered at a future time.

**Prepaid burial contract—**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 or the death of another designated individual and for which the consumer pays to the funeral director moneys at the time of the contract or at a time prior to the rendition of these services. ]

**Preneed funeral contract—**An agreement under which a funeral entity promises or agrees to provide funeral merchandise and render services upon the death of a person living at the time the contract is made, whether or not the funeral entity receives preneed funeral funds.

**Preneed funeral funds—**

(i) Funds provided to a funeral director or funeral entity for the purpose of providing funeral services or merchandise on behalf of a person living at the time of provision of funds, whether or not a contract to provide specified funeral services or merchandise exists.

(ii) The term includes any funds paid, or to be paid, for arrangement fees, or additional allowance for other fees for service or merchandise.

(iii) The term includes the assignment of an insurance policy and any other asset received by a funeral director or funeral entity to fund a preneed funeral contract.

(iv) The term does not include any premiums paid directly to an insurance company.

\* \* \* \* \*

**[ PREPAID BURIAL CONTRACTS ]  
 PRENEED FUNERAL ARRANGEMENTS**

**§ 13.224. [ Funding ]** Depositing and reporting [ of prepaid burial contracts ] preneed funeral funds.

(a) A funeral director or funeral entity 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 ] preneed funeral funds within 10 days of receipt. A funeral director or funeral entity may not avoid the requirements of this subsection by creating or controlling or otherwise utilizing a person or entity that is not a funeral entity.

(b) [ In regard to prepaid contracts entered into by funeral directors after November 4, 1989, a funeral director shall file a report with the Board within 90 days containing the information specified in subsection (c) with respect to each prepaid contract for funeral services and merchandise. Forms for the reports, including the report required under subsection (d), will be provided by the Board. ] Within 30 days of the end of each calendar quarter, every funeral entity shall file with the Board a report containing the information required in subsection (c) of all accounts of preneed funeral funds of the funeral entity during that quarter. The report must include all accounts held by the funeral entity at any time during the reporting period, including those first created during the period and those closed during the period. The rollover of an account shall be treated as the closing of one account and the opening of another account.

(c) [ A funeral director shall file a report ] Each report required by subsection (b) shall be filed with the Board on a form provided by the Board, certifying as true and correct, the following information with respect to each [ prepaid contract for funeral services and merchandise entered into ] account containing preneed funeral funds:

(1) The date [ of the prepaid contract ] preneed funeral funds were first received by the funeral entity and the name and address of the [ purchasers under the contract ] person for whose benefit the funds were received.

(2) The name and address of the banking institution in which [ 100% of the money received by the funeral director on account of the contract had been deposited ] the account is held.

\* \* \* \* \*

(4) [ In installment contracts, if the entire amount of the contract has not been paid, the report shall expressly indicate the fact that an installment contract is involved, and the total amount of installments received by the funeral director and deposited in escrow or in trust. ] 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.

(d) [ A funeral director shall report within 30 days all fulfilled prepaid contracts, following:

- (1) The name of the deceased.
- (2) The date of death.
- (3) The account number.

(4) The name of the banking institution. ] Within 30 days of the sale or other cessation of all or part of its preneed business, a funeral entity shall file

with the Board a report, including all accounts as specified in subsection (b) and all information as specified in subsection (c), to demonstrate how all preneed funeral funds were distributed. Each distribution must identify the recipients and amount of funds, including transfers to other funeral entities and payments to the funeral entity for provision of funeral goods and services.

(e) [ The report required in subsection (c) is not a public record ] The reports required under subsections (b) and (d) are not public records under the act of June 21, 1957 (P. L. 390, No. 212) (65 P. S. §§ 66.1— [ 66.4 ] 66.9), known as the Right-to-Know Law. The [ report ] information contained in the reports will be available to the following:

(1) Parties privy to the preneed funeral contract.

\* \* \* \* \*

(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. ] Reports made under this section may be filed in paper form or on disk or electronically, as permitted by the Board. A funeral entity shall retain a copy of each report required to be filed under this section for 3 years after the report was due or filed, whichever is later.

§ 13.225. Affidavit for [ prepaid burial accounts ] preneed funeral funds.

\* \* \* \* \*

§ 13.226. Nature and description of escrow or trust accounts for [ prepaid burial contracts ] preneed funeral funds.

(a) [ Funds received for prepaid burial contracts ] Preneed funeral funds 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 and funeral entity.

(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 ] The interest or earnings of all preneed funeral funds 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 or the funds were provided.

[ (c) In the event of a sale or transfer of the business of a funeral director, prepaid 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. ]

§ 13.227. Limitations on preneed funeral contracts.

(a) A preneed funeral contract must be in writing.

(b) A funeral director or funeral entity may not charge or collect any fees under a preneed funeral contract for funeral goods and services that exceed the fees for the goods and services as set forth on the funeral entity's general price list at the time the goods or services are provided.

(c) A preneed funeral contract may not incorporate a contract for funeral merchandise entered into by a person or entity other than a funeral director.

§ 13.228. Transfer of a preneed funeral contract by customer.

(a) Every preneed funeral contract entered into after \_\_\_\_\_ (*Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.*), must expressly permit the customer to transfer the preneed funeral account and funds to another funeral director or funeral entity of the customer's choosing that will provide funeral goods and services.

(b) Within 30 days after written notification of the election to transfer a preneed funeral account and funds as authorized by subsection (a), the funeral director or funeral entity shall forward to the other funeral entity as requested by the customer the entire amount of funds in the prepaid funeral account, including accumulated interest and earnings.

(c) A funeral director or funeral entity may not retain any amount of fees for services that have not been provided or merchandise that has not been delivered to the customer under a preneed funeral contract for which the preneed funeral account or funds have been transferred as authorized by subsection (a).

(d) A funeral director or funeral entity may not collect liquidated damages for the transfer of a preneed funeral account or funds under a preneed funeral contract as authorized by subsection (a).

§ 13.229. Sale or transfer of preneed funeral contracts or preneed funeral funds by funeral director.

(a) In the event of a sale or transfer of any portion of the preneed funeral business of a funeral entity, a funeral entity that assumes an obligation to perform under an existing preneed funeral contract or receives a preneed funeral account or funds shall, within 30 days of the transfer, notify each customer under those contracts or provider of those funds of the transfer and permit each customer who chooses to do so to notify the funeral director within 90 days that the funeral entity is to transfer the preneed funeral account and funds, including all accumulated interest and earnings, to another funeral entity of the customer's choosing as authorized by § 13.228(a) (relating to transfer of a preneed funeral contract by customer).

(b) A funeral entity that is ceasing business or otherwise will not perform under a preneed funeral contract, except as provided in subsection (a), shall notify each preneed customer at least 60 days in advance of the planned cessation and notify each

customer of the customer's right to choose to transfer the preneed funeral account and funds, including all accumulated interest and earnings, to another funeral entity of the customer's choosing as authorized by § 13.228(a).

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## STATE BOARD OF MEDICINE

[49 PA. CODE CH. 16]

### Expert Witness

The State Board of Medicine (Board) proposes to amend § 16.52 (relating to creation of lists of medical consultants) to read as set forth in Annex A.

#### A. Effective Date

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

#### B. Statutory Authority

Sections 8 and 9 of the Medical Practice Act of 1985 (act) (63 P. S. §§ 422.8 and 422.9) authorize the Board to promulgate regulations addressing procedures to be followed in proceedings before it consistent with section 9 of the act.

#### C. Background and Purpose

To enhance the quality of testimony given in disciplinary proceedings before the Board and the hearing examiners who hear matters on behalf of the Board, the Board is proposing to adopt the criteria for qualification as an expert witness established by section 512 of the Medical Care Availability and Reduction of Error (Mcare) Act (Mcare Act) (40 P. S. § 1303.512). The Board has found that expert testimony offered by witnesses who do not possess the same specialty qualifications as the respondent whose conduct is under review has led to the assertion of expert opinions that lack the thoroughness and accuracy that the nature of the proceedings before the Board demands. The Board is of the opinion that a physician is not competent to offer an expert medical opinion in a disciplinary action before the Board alleging medical professional negligence, incompetence or violation of the standard of care unless that physician possesses sufficient education, training, knowledge and experience to provide credible, competent testimony and fulfills the qualifications as set forth in this proposed rulemaking.

#### D. Description of Amendments

Existing § 16.52 is amended to delete references to the maintenance of lists of expert medical consultants who might serve as expert witnesses and would instead establish qualifications consistent with section 512 of the Mcare Act for experts testifying in proceedings before the Board.

Section 16.52(a) would establish the general rule that a person will not be competent to offer an expert medical opinion in a disciplinary action before the Board unless that person possesses sufficient education, training, knowledge and experience to provide credible, competent testimony and fulfills the additional qualifications set forth in this section, as applicable.

Section 16.52(b) would establish qualifications for an expert to testify on a medical matter, including the standard of care, risks and alternatives, causation and the nature and extent of the injury. Those qualifications would include: (1) possessing an unrestricted physician's license to practice medicine in any state or the District of Columbia; and (2) being engaged in, or having retired within the previous 5 years from, the active clinical practice or teaching of medicine. The Board may waive these requirements for an expert on a matter other than the standard of care if the Board determines that the expert is otherwise competent to testify about medical or scientific issues by virtue of education, training or experience.

Section 16.52(c) would establish additional requirements for experts regarding standard of care issues. The expert would need to: (1) be substantially familiar with the applicable standard of care for the specific care at issue as of the time of the alleged breach of the standard of care; (2) practice in the same specialty and subspecialty as the respondent physician or in a subspecialty that has a substantially similar standard of care for the specific care at issue; and (3) in the event a Board-recognized certifying board certifies the respondent physician, the expert shall also be board certified by the same or a similar approved board.

Under § 16.52(d), the Board may waive the same subspecialty requirement for an expert testifying on the standard of care for the diagnosis or treatment of a condition if the Board determines that: (1) the expert is trained in the diagnosis or treatment of the condition, as applicable; and (2) the respondent physician provided care for that condition and that care was not within the Respondent physician's specialty.

Under § 16.52(e), the Board may waive the same specialty, subspecialty and board certification requirements for an expert testifying as to a standard of care if the Board determines that the expert possesses sufficient training, experience and knowledge to provide the testimony as a result of active involvement in or full-time teaching of medicine in the applicable subspecialty or a related field of medicine within the previous 5-year time period.

Finally, under § 16.52(f), the Board reserves its authority to apply its own expertise in determining the applicable standard of care in disciplinary matters before the Board.

#### E. Input from the Regulated Community

In drafting and promulgating this proposed rulemaking, the Board solicited input and suggestions from the regulated community and other parties who have identified themselves as interested in the Board's regulatory agenda. The Board received comments from the Hospital and Healthsystem Association of Pennsylvania (HAP), the Pennsylvania Medical Society (PMS) and the Pennsylvania Academy of Family Physicians (PAFP). Comments from HAP and PMS were supportive of this proposed rulemaking. PAFP suggested the standards should only apply to experts testifying against the respondent physician and not those testifying on behalf of the respondent physician. The Board disagrees. Improvement in the quality of expert testimony on all sides can only serve to benefit the quality of the entire proceeding. PAFP also believes only licensed physicians from this Commonwealth should be qualified to testify. The Board believes that PAFP's position is not supported by the act, Mcare Act or the Pennsylvania Rules of Evidence (see 225 Pa. Code).