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2639

February 10, 2010

Mr. Arthur Coccodrilli
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, Pennsylvania 17101

Re: Regulation #16A-4816 (IRRC #2639)
State Board of Funeral Directors
Pre-Need Activities of Unlicensed Employees

Chairman Coccodrilli:

On November 16, 2009 I respectfully requested that the Commission disapprove the final-form regulations submitted by the State Board of Funeral Directors (the "Board") regarding Pre-Need Activities of Unlicensed Employees. After reviewing the Board's revised submission which will be before you on February 25, 2010, I again request these regulations be disapproved.

The Board has submitted these regulations in response to Judge Jones' order in *Walker v. Flitton*, 364 F.Supp.2d 503 (M.D. Pa. 2005). In suggesting statutory or regulatory changes, the *Walker* court cautioned that any restrictions on free speech should be "narrowly tailored" to meet the asserted governmental interest. The regulations, as submitted, fail miserably in meeting this test.

While I recognize that the Board had before it a difficult task, it is apparent the Board did not meaningfully address Judge Jones' concerns. While the most recent version expands the rights of insurance agents, it continues to unreasonably restrict the rights of funeral directors and their unlicensed agents.

In my November comments, I suggested the following alternative regulatory approach. The most prudent response to Judge Jones would be to provide for allowing unlicensed agents of the funeral home (whether they are licensed insurance agents or not) to freely exercise commercial speech by distributing accurate information to consumers and assisting them in making financial or other arrangements for funeral services. In recognition of the consumers'

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interests, regulation requiring that consumers sign a disclosure acknowledging that the individual presenting to them is not a licensed funeral director, and further requiring the review and signature of all service contracts by a licensed funeral director would provide the necessary protection.

Clearly, the citizens of the Commonwealth are benefiting from the availability of pre-need funerals. I am in support of regulation that not only protects the free speech rights of funeral directors and their agents, but increases the availability of pre-need options for our consumers. I do not believe that the resubmission by the Board accomplishes those goals. Therefore, I respectfully request that the Commission disapprove the resubmission of Regulation 16A-4816.

Sincerely,

A handwritten signature in black ink, appearing to read "Tony Payton, Jr.", with a stylized flourish at the end.

Tony Payton, Jr.
State Representative
179th Legislative District