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March 11, 2005

Ms. Michelle Smey, Administrator
State Board of Funeral Directors
P. O. Box 2649
Harrisburg, PA 17105-2649

RE: Proposed Regulations

Dear Ms. Smey:

In response to the invitation of Mr. Joseph A. Fluehr, III, Funeral Director and Chairperson of the State Board of Funeral Directors, (Board) I hereby write to submit objections and comments including factual background information, regarding proposed rulemaking published February 11, 2005 in the *Pennsylvania Bulletin*, Reference No. 16A-4814 (Unprofessional conduct).

Because I was the named petitioner in a precedent-setting lawsuit involving this Board and recent legal interpretations of this current Board, I feel compelled to comment separately and in detail to proposed subsection (13) of the proffered regulatory changes. As discussed more fully below, that precedent-setting lawsuit dealt with this Board's efforts to legislate out of existence irrevocable pre-need agreements whose forms had been reviewed and approved by this Board for many years.

This Board, through its counsel, agreed with me, through my counsel, that a process would be put in place to secure a resolution of the question whether irrevocable pre-need agreements can be declared irrevocable or rescindable at the whim of a consumer. This Board agreed on the record before Commonwealth Court that a hearing and adjudication process would be implemented such that all parties would be bound by the ultimate resolution of the issue on appeal to the appellate courts.

The above referenced process took place and Commonwealth Court, en banc, made very clear that the Board's efforts to eliminate irrevocable pre-need agreements was not authorized under statutory law.

Thus, inasmuch as proposed subsection (13) seeks to effectuate an end run on that Commonwealth Court decision and the Board's agreement to be bound by Commonwealth Court's decision, I am constrained to comment and to explain in detail my reasons why I am so adamant in my opposition to proposed subsection (13).

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INDEPENDENT REGULATORY
REVIEW COMMISSION

In addition to the fact that the Pennsylvania Commonwealth Court affirmed that proposed subsection (13) is not authorized under statutory law, proposed subsection (13) if implemented, would have the following consequences:

- Tens of thousands of pre need purchasers will never be assured that their wishes will be followed (IE: Their prepaid "contract" will be fulfilled, even though they may have prepaid years prior to their death.) as their prepaid "contract" could be "yanked" immediately upon their death.
- Medicaid requires an irrevocable prepaid contract to shelter pre need funeral monies from nursing home expenses. Conceivably, if the Board undoes these "contracts" via proposed subsection (13), the monies of thousands of people who have prepaid would be in jeopardy of no longer being exempt assets for Medicaid purposes. They could conceivably die indigent absent any assets for final expenses.
- There would be less competition in the pre need marketplace, thus reducing competition, artificially inflating funeral costs and placing consumers in a more likely position to have to make arrangements at the time that a death occurs when they are under great emotional duress.
- It would bring into question the taxation of "Irrevocable Qualified Funeral Trusts" under Federal Tax Law and create havoc with Trust Institutions.
- It would virtually eliminate the availability of price guaranteed prepaid funeral contracts, a consumer driven product that ten of thousands of Pennsylvania consumers have found very attractive for a variety of reasons.
- It would place investment and inflation risk on pre need consumers, many of whom are nursing home residents.
- It would benefit a select group of funeral directors, many of whom are members of the Pennsylvania Funeral Directors Association trade organization, who have neglected to make a market in the pre need arena.

In the *Proposed Rulemaking*, the State Board of Funeral Directors writes under "Background, Need and Description of the Proposed Amendment"; *Section 11(a)(5) of the act authorizes the Board to discipline licensees for "misconduct in the carrying on of the profession" of funeral director. **Recent disciplinary cases before the Board concerning professional misconduct have inspired the Board to expand that list.***"

With all due respect, I submit that the following proposed regulation has nothing to do with any disciplinary case before the Board.

In fact, in the words of the Board to Commonwealth Court as recently as March 18, 2004, the Board called circumstances directly relevant to the following proposed regulation "speculative and hypothetical" see [Board Brief, p. 10.] *Bean v. State Board of Funeral Directors*. In other words, as briefly as less than

one year ago, this Board's position was that there was no disciplinary action relevant to the proposed regulation; and that any circumstances pursuant to the same were hypothetical! In this Board's most recent words, "Recent disciplinary cases before the Board concerning professional misconduct have inspired the Board to expand that list."

I ask that this Commission require the Board to provide such list of all disciplinary cases that have come to being between the dates of March 18, 2005 and February 10, 2005.

Furthermore, I submit that the following proposed regulation is ill considered, is diametrically opposed to, and would have the net affect of dramatically changing the Pennsylvania Funeral Director Law (act) (63 P. S. §§ 479.13(c) as enacted by Pennsylvania's General Assembly.

Due to a recent Commonwealth Court Ruling (RE: *Kevin M. Bean, Licensed Funeral Director v. State Board of Funeral Directors*) the current Board is fully and intimately aware of the fact that the proposed regulation is diametrically opposed to Section 13 (c) of the funeral director law and has issued the following proposed regulation with full and comprehensive knowledge of this fact. In reality, the Board's actual intent and desire is to issue a regulation that diametrically alters Section 13 (c) of the Funeral Director Law and in addition overturns the recent Commonwealth Court ruling affirming that preneed contracts are legal and binding contracts under law.

Perhaps the most insidious element of the following proposed regulation is that the verbiage appears "consumer friendly" when taken at face value. However, it is clear to those knowledgeable on certain background issues of the Board that the regulation is contrary to law and is a wily attempt intentionally fashioned to quietly empower the Board and enable it to fulfill the self-serving wishes of the Pennsylvania Funeral Director's Association and of the Board itself.

Understanding the true intent of the proposed regulation necessitates a through understanding of background issues relevant to the intent and desire of the Board and of the Pennsylvania Funeral Director's Association with regard to pre funded funeral contracts. That is, funeral contracts which are funded and paid for prior to the death of the Beneficiary of the contract. Furthermore, a through understanding of the background issues will expose the Regulation for what it is; an insidious and saponaceous endeavor to outmaneuver the recent ruling of Commonwealth Court in *Bean v. State Board of Funeral Directors*, and to undermine the funeral director law as written by the Pennsylvania legislature.

As contained in the Proposed Rulemaking and referenced above, the following is language as submitted by the Board:

A funeral director might come into possession of funds of a decedent or intended for a decedent, even if the funeral director does not provide funeral goods or services for that decedent. Proposed § 13.202(13) would prohibit a funeral director from retaining funds for goods or services that the funeral director has not provided or that exceed the value of funeral goods and services that the funeral director has provided.

In addition, contained in the Proposed Rulemaking, the Board's actually proposed regulation reads as follows:

- (13) *Retaining funds intended to pay for funeral goods and services when the funeral director and establishment have not provided any funeral goods and services or when the amount of funds retained is in excess of the value of funeral goods and services actually provided by the funeral director or establishment. A funeral director may preserve the funds for a reasonable amount of time for a person to demonstrate a legal entitlement to receive the funds or to receive payment of funds owed to the decedent.*

The language of the Board and the Proposed Regulation referenced above as submitted in the Proposed Rulemaking raises three questions:

Q: One, how might a funeral director “*come into possession of funds of a decedent or intended for a decedent, even if the funeral director does not provide funeral goods or services for that decedent*”?

The answer is that this might occur in a circumstance whereby a purchaser enters into a prepaid burial contract. The funeral director would “*come into possession of funds*” upon the consummation of a contractual agreement, and, at that point in time, and until the time of the actual performance of the funeral services and the delivery of the funeral merchandise, the funeral director would not have provided “*any funeral goods and services*”.

Q: Two, how could a funeral director come into a circumstance whereby he or she could retain “*funds for goods or services that the funeral director has not provided*”?

Again, the answer is that in a circumstance whereby a purchaser of a prepaid funeral contract, enters into a present day legal and binding contract and pays for funeral services and funeral merchandise prior to the death of the Beneficiary of the contract. Subsequently upon the inevitable death of the Beneficiary, the funeral director might, through no fault or action of his own, be restricted from

performing the services and providing the merchandise. In this hypothetical situation, (Which again, the Board itself called "*speculative and hypothetical*"), the funeral director might find himself inextricably bound to a circumstance whereby funds that are contractually available to him could be retained under present day law even though he or she did not provide the funeral services or funeral merchandise.

As an example: Under the proposed regulation, if an individual entered into a preneed funeral contract with a funeral director, and died say 20 years later, with the only surviving relative being an estranged niece or nephew, (or any next of kin for that matter) the niece or nephew would be empowered under this regulation to cancel the funeral, have the body disposed of in the cheapest way possible, and have the money forwarded to them to go on a cruise or for any other purpose that they wish.

Q. The third question raised is in what circumstance could a funeral director retain funds "*that exceed the value of funeral goods and services that the funeral director has provided*".

Typically many prepaid funeral contracts are price guaranteed. In this circumstance, the funeral director, upon execution of the preneed contract, guarantees that, when the Beneficiary of the contract dies at some future date, the funeral services and funeral merchandise will be delivered without additional charge or fees, regardless of the then current cost. The funeral director is able to enter into this type of a contract because upon completion of the contract he receives the funds plus earnings that are held in trust or in escrow under the funeral directors contract in compliance with current day law.

In certain instances, the funeral director may receive less than the current cost of the services and merchandise delivered. In certain instances the funeral director may receive more. Here, the Board is again attempting to interfere with the funeral director's present day legal and binding contractual relationships by creating an economically unviable environment in which the funeral director could conduct business.

In other words, under the Board's proposed regulation, the funeral director would have everything to lose and nothing to gain when entering into a then regulatory mandated "quasi-agreement" with a consumer, as no binding contractual agreement could exist.

To understand the ramifications of the proposed Board Regulation, it must be known that the concept of a pre need funeral contract is a concept that is consumer driven and is *very* much desired by consumers. In the recently released January 27, 2005 *Wirthlin Worldwide Report*, the latest installment of a uniquely

valuable 15-year consumer research study of the market for death-related products and services, the *Wirthlin Report* cites that, incredibly, greater than half of Americans say they are likely or somewhat likely to prearrange their own funeral, burial or cremation within the next five years!

Indeed, this proposed Regulation will have the effect of chilling the sales of preneed contracts and force consumers to purchase such services and merchandise at the time a death occurs, under urgent time constraints and under great emotional stress. Also, the Proposed Regulation will limit consumer options that are available to consumers today to “shop” for a funeral in advance at a time when they are not under time pressure and emotional stress and can make rational decisions. In addition, the Proposed Regulation surely would limit, and will certainly provide an enormous disincentive for funeral directors not to offer “price guaranteed” prepaid funeral contracts, as the funeral director would have nothing to gain and everything to lose.

Not coincidentally, this exact position, namely that no “guaranteed” preneed contracts be offered by funeral directors” has been advocated by the Pennsylvania Funeral Director’s Association (PDFA) in recent years, specifically since 2002. This “new” position was initiated in the midst of substantial prepaid funeral trust fund investment losses in the millions of dollars that occurred in the Pennsylvania Funeral Director Association’s *for profit* subsidiary SecurChoice prepaid funeral trust.

This new Proposed Regulation would have the net effect of putting investment and inflation risk on the consumer, many, if not the majority of whom are nursing home residents!

It must be emphasized that, pursuant to an irrevocable pre-need contract, the funeral director gives very valuable consideration to the consumer in the form of price guarantees and stated merchandise and service guarantees.

Furthermore, the Board’s new proposed regulation essentially does away with pre-need contracts and actually encourages the opportunity for competing funeral directors to prey upon those who become more prone to fall prey to marketing efforts to “change funeral directors.” For example, although an individual may have executed a pre-need agreement while healthy with a funeral director of his or her choice, the Board’s Decision encourages a competitor funeral director to solicit that individual at a point in time when that individual may become vulnerable, such as, while residing in a nursing home, as that person advances in age, or, perhaps, even after suffering from some type of illness.

This Proposed Regulation benefits the majority of PFDA member funeral directors who have experienced trust fund losses and/or who have failed to make a market in preneed contracts. This proposed regulation hurts consumers, the

majority of whom are elderly, and is shamelessly written to benefit certain funeral directors. It simply cannot be sanctioned.

This position that would inherently be implemented by the above stated Proposed Regulation, of discouraging people from shopping and from entering in prepaid contracts at a time when they can think clearly and are not under time and emotional duress, is manifestly unacceptable in an industry in which a five times markup on merchandise is not unheard of .

Clearly the Proposed Regulation only would serve the financial interests of certain funeral directors, is contrary to Pennsylvania and Federal Law, and will have devastating effects upon current Beneficiaries of preneed contracts as will be outlined further.

Current law in Pennsylvania states as follows:

Section 479.13(c) of the Funeral Director Law states that:

(c) No person other than a licensed funeral director shall, directly or indirectly, or through an agent, offer to or enter into a contract with a living person to render funeral services to such person when needed. If any such licensed funeral director shall accept any money for such **contracts**, he shall, forthwith, either deposit the same in an escrow account in, or transfer the same in trust to, a banking institution in this Commonwealth, **conditioned upon its withdrawal or disbursement only for the purposes for which such money was accepted.** This subsection does not apply to a contract by a bona fide institution that it will provide professional funeral services for persons who may die while inmates of the institution, if such contract is made as a part of its contract for housing, maintaining and caring for its inmates. ((c) added July 25, 1953, P.L.592, No.163)

Because a funeral director, under law, is required to deposit funds under a prepaid funeral contract into trust or escrow "only for the purposes for which such money was accepted", the Board cannot under law promulgate a saponaceous type of regulation in order to circumvent the Funeral Act for the whims and desires of the Board and of the Pennsylvania Funeral Director's Association.

The Board cannot, under the guise of clarifying statutory law, make statutory changes to existing law.

The fact that the Board must promulgate regulations consistent with the Act is clarified in Section 479.16(a) of the Act.

Section 479.16(a) *Duties of Board.*—(a) *The board shall be charged with the enforcement of this act. **It shall be empowered to formulate necessary rules and regulations not inconsistent with this act** for the proper conduct of the business or profession of funeral directing and as may be deemed necessary or proper to safeguard the interests of the public and the standards of the profession.*

To further clarify matters, Section 13.224 (a) of the existing Pennsylvania Code, Funeral Board Rules & Regulations state as follows:

*(a) A funeral director 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.*

It is further noted that Section 13.224 (f) clarifies that preneed contracts are indeed contractual agreements under law and, in fact, the actual contracts have been approved and reviewed by the Board for many years. Section 13.224 (f) reads as follows:

Section 13.224 (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.*

In addition it is noted that Section 13.226 refers to preneed agreements as “contracts”. To follow is Section 13.226:

§ 13.226. Nature and description of escrow or trust accounts for prepaid burial contracts.

*(a) Funds received for prepaid burial **contracts** 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.*

*(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 interest or earnings 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.*

- (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.*

To again reiterate for the purpose of emphasis, the Board cannot, under the guise of clarifying statutory law, make statutory changes to existing law.

History and Background:

Prior to August 2002, the Pennsylvania Funeral Director's Association began disseminating information that *all* preneed contracts are cancelable by the purchaser, beneficiary, next of kin, etc., prior to or following the death of the beneficiary of a preneed contract!

Later however, in August of 2002, a communication transpired between Board counsel Thomas Blackburn and State Representative/Attorney Michael Hanna, whereby Mr. Michael Hanna made inquiry on behalf of his brother, Mr. John V. Hanna, a licensed funeral director, concerning the transfer of pre-need funds.

In pertinent part, Board counsel in his e-mail communication to legislator/attorney Hanna opined:

. . . the Board believes that all pre-need funds belong to the customer, and not to the funeral director, until the time of death and services are provided. Also, despite any contrary language drafted into the contract by the funeral director, while the contract may be irrevocable as to the use of the funds, it is revocable as to which funeral director or funeral home is to provide services. Accordingly, a pre-need customer may rescind a pre-need contract and demand the funeral director to forward the entire principal and all earnings to date to a subsequent funeral home for a pre-need contract with that subsequent funeral director. With the exception of any reasonable arrangement fees which may not be finally collected until the customer's death, a funeral director may not retain pre-need funds after the customer has rescinded the pre-need contract.

Despite this disclosure of the Board's "belief", Board counsel conceded, in that very same e-mail, that neither the Funeral Director Law nor the current regulations support the "belief" set forth in Board counsel's e-mail. Specifically,

after being advised of the Board's "belief" by Board counsel Blackburn, legislator/attorney Hanna sent the following e-mail to Board counsel:

Tom, I've now had an opportunity to review the statue [sic] and the code. I don't see anything that expressly says that the trust must be transferable to another funeral home, other than in the case of the buyer moving out of state. Am I missing something? Mike

In response, Board counsel replied:

No, you are not missing anything. That conclusion is what the Board draws from the statute and the Board's regs.

Unfortunately, this absence of legal authority continued to be ignored by this Board, and by Kathleen Ryan, Counsel for the Pennsylvania Funeral Director's Association, hence necessitating an action seeking declaratory relief filed January 10, 2003; RE: KEVIN M. BEAN, A Licensed Funeral Director, Petitioner v. COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF STATE, STATE BOARD OF FUNERAL DIRECTORS, Respondent, in light of: (1) a dispute that arose between myself (Petitioner) and a consumer who demanded the return of his pre-need monies; (2) the fact that our funeral homes have a multitude of pre-need contracts outstanding and continue to offer pre-need services; (3) the statement of Board counsel opining as to the Board's "belief" on the revocability of pre-need agreements despite the explicit terms in the agreement to the contrary; and (4) the absence of any law precluding a funeral director from entering into an irrevocable pre-need contract.

The matter was docketed at 26 M.D. 2003. [R. 636a - 661a.] In response, counsel for the Board filed preliminary objections, asserting that the Commonwealth Court did not have jurisdiction and that the case was not ripe for review. A response thereto was filed, briefs were submitted and the matter was ultimately argued in front of the Honorable Dan Pellegrini. Ultimately, via Order dated March 21, 2003, Judge Pellegrini issued an Order remanding this matter to the Board for a hearing to address the following legal question:

Whether, under the current law, a pre-need customer may, for any reason, rescind an irrevocable pre-need agreement and demand the funeral director to forward the entire principal and the earnings to date to a subsequent funeral director for a pre-need contract with the subsequent director, even if the initial pre-need contract expressly provides that it shall be irrevocable and noncancelable except for the three-day right of rescission provided for under the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-7?

Recognizing the need to resolve this issue as quickly as possible given the demands placed on Petitioner, Judge Pellegrini ordered the Board to hold a hearing within thirty (30) days of the date of its Order, after which hearing the Board had thirty (30) days to render a decision. [R. 1a - 2a.] Moreover, the Order

expressly recognized Petitioner's right to file a Petition for Review to this Court in the event that Petitioner was not satisfied with the decision and even set the briefing and argument schedules in that Order, presumably to ensure the expeditious review of the above issue. [R. 2a.]

On April 8, 2003, the Board held a hearing to address the question presented by the Commonwealth Court. [R. 184a - 796a.] Inexplicably, although the Board is a nine (9) member Board, comprised of: (1) the Commissioner of the Bureau of Professional and Occupational Affairs; (2) the Director of the Bureau of Consumer Protection, or his designee; (3) two consumer members; and (4) five licensed funeral directors who shall have been actively engaged in the practice of funeral directing for at least ten (10) years [63 P.S. §479.19], only the five professional members of the Board were present for the hearing. Additionally, PFDA, the entity whose contract Petitioner had been utilizing for years, intervened in the proceeding and advocated against the plain language of that contract it had previously submitted to the Board for approval which by its terms provided for irrevocability! Moreover, and quite curiously, the prosecuting arm of the Bureau also intervened in the matter despite the fact that no one was being "prosecuted," but, instead, the Board was simply deciding a question of law. Not surprisingly, the "prosecutor" sided with the position articulated by Board counsel as being the position of the Board and with the Board members' organization, PFDA.

Although counsel for Petitioner implored the Board to try to set aside its preconceived position and any bias that it may have [R. 196a-199a; 553a-560a.], it soon became apparent that the outcome was, in fact, pre-ordained. The Board allowed the Commonwealth and PFDA to present testimony and argument on completely irrelevant issues, with most substantive rulings being rendered in favor of the Commonwealth and PFDA. Indeed, at least one or two critical and substantive legal issues were ruled on by the specially appointed hearing examiner, who is a learned counsel of many years with the Bureau, in favor of Petitioner, only to have the five funeral directors of the Board, none of whom are attorneys, overrule her!

After nine hours of testimony consisting of, collectively, eight witnesses, sixteen exhibits and a host of arguments, very little of which was relevant to the actual issue to be decided by the Board, the hearing was concluded. [R. 1560.a] Briefs were filed and on May 7, 2003, the Adjudication and Order (the "Decision") was issued [R. 118a-139a.] Not surprisingly, consistent with the representations made by Board counsel in his August 22, 2002 e-mail to the legislator/attorney as to the Board's "belief" on this issue, the Board concluded that, under current law, a pre-need customer may, for any reason, rescind an irrevocable pre-need agreement and demand the funeral director to forward the entire principal and the earnings to date to a subsequent funeral director, even if the initial pre-need contract provides that it shall be irrevocable and non-cancelable except for the three-day right of rescission provided for under the Unfair Trade Practices and Consumer Protection

Law, 73 P.S. § 201-67 (and implicitly even though the Board had previously approved the contract which provided for irrevocability).

As more fully set forth below, the Board's Decision later was reviewed by Commonwealth Court and reversed.

AND NOW, this 7th day of May, 2003, the State Board of Funeral Directors, having duly convened and considered the entire record of the proceedings, and based upon the foregoing findings of fact, conclusions of law and discussion, hereby responds to the Commonwealth Court's legal question as follows:

Whether, under current law, a pre-need customer may, for any reason, rescind an irrevocable pre-need agreement and demand a funeral director to forward the entire principal and the earnings to date to a subsequent funeral director, even if the initial pre-need contract provides that it shall be irrevocable and noncancelable except for the three-day right of rescission provided for under the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-67?

Answer: Yes.

On May 16, 2003, a Petition for Review was filed to Commonwealth Court through which Petitioner sought a review of the Board's Decision.

Notably, on May 28, 2003, the Board granted, in part, Petitioner's supersedeas request pending appeal. Inexplicably, however, it refused to stay the effect of the Order to the extent a pre-need customer has died and another funeral director, despite the existence of the pre-need contract, went ahead and performed the funeral services at the request of the customer's next-of-kin or executor!

The State Board of Funeral Directors has been in existence for more than 50 years during which time it has never issued an Adjudication, statement of policy or other ruling implying, let alone declaring, that pre-need contracts, despite their irrevocability, are nevertheless "rescindable" at the unilateral whim of the customer, or upon the death of the consumer.

Despite its "conclusion" that customers, under current law, can rescind pre-need agreements and direct that monies be transferred to another funeral director, there is not one iota of Pennsylvania statutory, regulatory or case law which supports this desired position of the current "professional" members of the subject Board. Indeed, if such were the case, this Board, as a governmental instrumentality, would not have approved, over the last many years and decades, pre-need

agreements which are irrevocable in their nature and which irrevocability makes sense in that it permits both the funeral director and the customer to live up to their respective parts of the contractual bargain. (IE: Price and performance guarantees, paid for in advance)

The simple fact is, a consumer should have the right to decide whether he or she wants to execute a revocable or irrevocable pre-need agreement.

Both have their benefits and their detriments. Critically, through irrevocable pre-need agreements, goods and services for a fixed price in today's dollars can be guaranteed at some unknown date in the future. Such consideration is significant. If a consumer wants this guarantee, he or she should have the right to bargain for the same. If a consumer does choose that option, then that agreement is irrevocable and should be enforced. Conversely, the consumer should also have the right to select a revocable agreement if he or she so desires. Frankly, given the fact that a pre-need agreement is a contract, the Board's, and PFDA's position is an insult to consumers. It is not disputed that if a pre-need agreement is induced by fraud, then the same can be rescinded; it is not disputed that if an individual executing a pre-need agreement does not have the mental capacity to execute the same, then that pre-need agreement may be rescinded; it is not disputed that if a pre-need agreement is executed under duress, then that pre-need agreement can be rescinded. However, if a consumer, without any incapacity, fully and freely executes an irrevocable pre-need agreement, then both the consumer and the funeral director are entitled to have that agreement enforced, save for the three-day right of rescission under the UTPCPL. Other than that law, nothing in neither the Funeral Director Law nor any principles of contract construction support the Board's conclusion that a pre-need agreement can be rescinded at the whim of a consumer or at the whim of a family member after the consumer's death. The Board has failed to provide any legal authority for their arguments to the contrary. Frankly, such authority simply does not exist.

The Board has yet to explain how a contract, fully rescindable by one party for any reason, is not void for an absence of mutuality; i.e., it is illusory! This new interpretation of "law" by this current set of Board members has been reversed by Commonwealth Court. Now however the Board has proposed a saponaceous Regulation in a thinly veiled effort to "overturn" the Commonwealth Court decision. This conduct is outrageous and offensive.

If our General Assembly intended to prohibit pre-need contracts from being irrevocable, our General Assembly would have said so but it did not. Obviously, there are a host of common law reasons why any contract can be changed, modified or rescinded if certain facts and circumstances are present. However, for this Board to "legislate" by declaring that existing, irrevocable pre-need contracts are nevertheless rescindable at the whim of the customer, is indeed an abuse of discretion and, as set forth more fully below, geared more to protect the funeral director and PFDA rather than the consumer. Indeed, at the same time

this Board was declaring that customers could rescind pre-need agreements, it was approving a new PFDA pre-need contract which by its express terms, allowed the funeral director to terminate the agreement at any time and, in conjunction with that, to refund to the customer only the then-current market value in the customer's account (which by reason of investment experience) could be far less than the tendered principal amount). This new PFDA pre-need contract Board approval circumstance must be viewed particularly in light of the before mentioned preneed investment losses experienced by the PFDA affiliate *SecurChoice*.

In short, this the Proposed Regulation is self-serving to a certain segment of funeral directors; it has no support under law; the Board itself has acknowledged that there is no support for the Regulation under law; (the Board called circumstances pertaining to the same "speculative and hypothetical") and the Proposed Regulation must be denied because it is indeed contrary to law.

Prior to the issuance of the May 2003 Decision, the Funeral Board never issued an adjudication concluding that a pre-need consumer has a right to demand that a pre-need contract be rescinded for any reason and that the funds be moved to another funeral home. [R. 336a (T.H., p. 153).] Indeed, as noted above, both Petitioner's form agreement and PFDA's SecurChoice form agreement were approved by the Board. Although the form agreements clearly and unequivocally reflected that the terms are irrevocable and that the monies paid pursuant thereto will be placed into an irrevocable trust, no concern whatsoever was expressed by the Board that such provisions were, somehow, contrary to law, and the agreements were approved. [R. 625a-626a.] Certainly, if these agreements were contrary to law, and more specifically, the Funeral Director Law, the same would not have been approved by the Board.

However, in the Spring of 2002, following substantial market losses in the PFDA-affiliate's SecurChoice Funeral Trust, the Board (some of whose members are believed to be a part of SecurChoice) and, in conjunction with input from PFDA's counsel, began drafting new regulations which would declare that pre-need agreements are always rescindable. [R. 341a - 343a (p.158-160).] Thereafter, and not so coincidentally, SecurChoice, PFDA's affiliate, submitted a new form pre-need agreement to the Board for approval, which agreement expressly states that either the consumer or the funeral home may terminate the pre-need agreement at any time. [R. 408a - 414a.] Curiously, the new PFDA SecurChoice contract was circulated to PFDA members via another affiliate, UniChoice on or about July 15, 2002, prior to receipt of Board approval. [R. 664a.] Even more curious is the cover letter enclosing that agreement, which states that changes have been made to the documents "...to come into compliance with recent rulings by the State Board of Funeral Directors..." [R. 664a.] Critically, as of July 15, 2002 no "recent ruling" had been made by the Board concerning the rescindability of pre-need agreements. Moreover, the cover letter also reflects that "[t]he major change is that the purchaser of a pre-need contract can cancel the agreement for

any reason and receive all of their money back including interest less fees," conspicuously failing to disclose that the funeral director can also cancel at any time. [R. 664a (most emphasis omitted.)]

It is noteworthy that in testimony Board counsel first claimed that he does not review the form contracts submitted to the Board for approval for these critical provisions. Specifically, Board counsel stated that he does not review the form contract to determine if it identifies a consumer's three-day right of rescission [R. 349a, lines 14-15]; he admitted that he has not reviewed the form contract to determine whether the agreement is irrevocable after the three-day right to rescind has expired [R. 349a, lines 16-20]; he admitted that he has never looked to determine whether the agreement allows for an election of whether or not it is irrevocable or revocable [R. 349a, lines 21-25]; he admitted that he does not review the documents to determine whether the agreement allows for an election of whether the services or the goods are guaranteed or not guaranteed [R. 350a, lines 1-6]; he also admitted that he has not ever looked at an agreement to determine whether, in the form terms and conditions, the agreement reflects that it is subject to termination at the whim of the customer or the funeral director. [R. 350a, lines 7-13.] Critically, Board counsel admitted that he has never issued to anyone a letter refusing to approve his or her forms where the form agreement reflected that the agreement was irrevocable after three days. [R. 348a, lines 15-23.] Certainly, if issues pertaining to a consumer's absolute right to transfer pre-need monies from one funeral home to another are covered by the Funeral Director Law and its regulations, then the form agreements which a funeral director is obligated via regulation to submit to the Board for approval should be reviewed to assess the form agreement's consistency with those rights. Board counsel, however, never reviewed an agreement to assess the revocability or irrevocability of the same. [R. 349a, lines 16-20.] The reason for such is patent--neither the Funeral Director Law nor its regulations address or govern the irrevocability of a pre-need agreement, and Board counsel forthrightly acknowledged this. [R. 379a - 380a.]

At or around this time, demands were suddenly placed upon Petitioner to transfer monies paid to Petitioner pursuant to an irrevocable pre-need contract to another funeral home. [R. 246a, lines 6-13.] When Petitioner, along with at least one other colleague who was suddenly faced with similar demands and who also believed that a Board-approved irrevocable pre-need agreement was enforceable, advised their consumers of the same, Board counsel's August 22, 2002 e-mail surfaced as the "authority" behind these demands.

To be direct, the overwhelming evidence leads to the inescapable conclusion that PFDA and the Board concocted this new interpretation after 52 years of existence and years of approving irrevocable pre-need contracts to "hide" the big change in PFDA's (SecurChoice's) new contract; i.e., now, if the funeral director wants to terminate his obligations under the pre-need contract, he too can do so. [See e.g., R. 356a-357a; 361a-363a.]

No portion of Section 479.13(c) precludes a pre-need agreement from being irrevocable and nothing set forth therein requires a funeral director to transfer monies received pursuant to a pre-need agreement and placed into an irrevocable trust to another funeral home at the direction of the consumer. In other words, nothing in the Funeral Director Law sanctions a consumer's breach of an irrevocable agreement by requiring a funeral director, who has placed pre-need funds pursuant to an irrevocable agreement into an irrevocable trust, to remit those monies to the consumer or another funeral home or another trust at the demand of the consumer.

The new proposed regulation now seeks to overturn the Commonwealth Court Decision in *Bean v. State Board of Funeral Director's*, utilizing language that cloaks the maligned objective of the Proposed Regulation however accomplishes the same ends.

Consistent with Executive Order 1996-1, if the law already provides that a pre-need customer may cancel an irrevocable pre-need contract for any reason and demand that the monies be either returned to the consumer or transferred to another funeral director or funeral entity, as the Board so concluded in the Decision, then the proposed new regulation would not be needed. The fact is, however, that as the law currently exists, nothing in the Funeral Director Law nor in the regulations precludes a pre-need contract from being irrevocable; nothing therein allows a consumer to cancel that irrevocable agreement for any reason; and nothing therein requires the funeral director to transfer the pre-need funds paid pursuant to an irrevocable pre-need agreement to another funeral home at the direction of the consumer.

Thus, neither the Funeral Director Law nor its regulations in any way either preclude a pre-need contract from being irrevocable or require that monies paid pursuant to a pre-need agreement be tendered to the consumer and/or transferred to another funeral director on demand. Further support for this conclusion is found in a related statute, the Future Interment Law of August 14, 1963, P.L. 1059, 63 P.S. §§ 480.1 et seq. (the "Future Interment Law").

The Future Interment Law deals with the sale of cemetery and funeral merchandise and services. The Future Interment Law also includes provisions pertaining to pre-need contracts and the deposit of pre-need funds into trust accounts. See e.g., 63 P.S. § 480.2, § 480.4-§ 480.7. Like the Funeral Director Law, nothing in the Future Interment Law precludes a pre-need contract from being irrevocable. Indeed, the Future Interment Law permits a pre-need purchaser to cancel a pre-need contract under one specific, enumerated circumstance. Specifically, Section 5 of the Future Interment Law provides:

After final payment, if the purchaser moves out of the State and upon written notice to the seller and to the trustee, the purchaser may cancel any such contract

for the furnishing of personal property or services prior to performance by seller and to the death of the person for whose benefit such contract was made, in which event the purchaser shall be entitled to receive from the trustee the principal amount of money on deposit to the credit of that particular contract less the interest which shall be returned to the seller.

63 P.S. § 480.5

Thus, the Future Interment Law acknowledges the right of a consumer to cancel a pre-need contract if the purchaser moves out of state and upon written notice to the seller and to the trustee; under such circumstance the purchaser is entitled to receive the principal amount of money on deposit, less interest. *Id.* No similar provision is contained in the Funeral Director Law or its regulations. The inclusion of this specific, albeit limited, right of a consumer to terminate a pre-need agreement in the Future Interment Law compels the conclusion that the absence of a similar provision in the Funeral Director Law evidences an intent by the Legislature not to extend such authority to consumers who enter into pre-need agreements under the Funeral Director Law.

With respect to this point, one cannot dispute in good faith that the Funeral Director Law and the Future Interment Law relate to the “. . . same persons or things or to the same class of persons or things.” Indeed, both statutes govern persons and conduct associated with the death industry. Hence, pursuant to rules of statutory construction, the Funeral Director Law and the Future Interment Law are in *pari materia*.

Discussing this basic rule of statutory construction, the Pennsylvania Supreme Court has observed:

“Statutes in *pari materia* shall be construed together, if possible, as one statute.” 1 Pa. C.S.A. § 1932(b). Moreover, wherever possible effect shall be given to both the general and specific provisions. It is only where the conflict between the provisions is irreconcilable that the specific provision prevails over the general. 1 Pa. C.S.A. § 1933. Thus, it is clear that statutes are to be construed together whenever possible and, unless an irreconcilable conflict exists, effect is to be given to all provisions.

Hamilton v. Unionville-Chadds Ford School District, 552 Pa. 245, 249, 714 A.2d 1012, 1014 (1998).

Clearly, the General Assembly has chosen to create one, and only one, exculpatory, statutory avenue for individuals who enter into pre-need agreements relating to the provision of funeral or cemetery merchandise and/or services and that, as expressly provided for under Section 5 of the Future Interment Law, relates to the situation where the consumer moves out of state. If our General Assembly had intended to allow consumers to alter, beyond the three-day right of rescission allowed by the Consumer Protection Law, pre-need agreements which are irrevocable by their terms for any other reason, our General Assembly could have and would have so stated. Significantly, the Funeral Director Law has been

in existence as early as 1952, some eleven (11) years prior to the enactment of the Future Interment Law. Moreover, long after the enactment of the Future Interment Law, our General Assembly enacted comprehensive additions, changes, and deletions to that 1952 funeral legislation. See e.g., Act of 1968, July 31, P.L. 1008, No. 295; Act of December 22, 1983, P.L. 354, No. 88. Under the well-founded maxim of *expressio unius est exclusio alterius*, we must assume that, because our General Assembly set forth in one statute, which must be read in *pari materia* with another, the circumstances under which a customer can unilaterally rescind a pre-need agreement, the failure of our Legislature to identify any other bases for unilateral action in either the Funeral Director Law or the Future Interment Law should be understood as our General Assembly intending that there are to be no other bases for unilateral revision, modification or termination of the existing terms of pre-need agreements which are defined as irrevocable. See e.g., Commonwealth v. Charles, 270 Pa. Super. 280, 411 A.2d 527 (1979).

There is nothing in the Funeral Director Law, however, which prohibits the execution of a pre-need agreement which irrevocably commits both the customer and the funeral director to carrying out their respective obligations under the terms and conditions of the pre-need agreement. There is nothing in the Funeral Director Law which declares that a customer's pre-need monies are always transferable or portable. There is nothing in the Funeral Director Law which prohibits retaining funds intended to pay for funeral goods and services when the funeral director and establishment have not provided any funeral goods and services. There is nothing in the Funeral Director Law which prohibits the delivery of funeral merchandise to another funeral home. There is nothing in the Funeral Director Law that prohibits retaining funds in excess of the value of funeral goods and services actually provided by the funeral director or establishment. There is nothing in the Funeral Director Law that requires a funeral director, as part of a pre-need agreement, to do anything other than deposit the pre-need monies in either an escrow account in, or transfer the same in trust to, a banking institution in this Commonwealth, conditioned upon its withdrawal or disbursement only for the purposes for which such money was accepted. See, 63 P.S. § 479.13(c). If anything, § 13(c) of the Funeral Director Law makes clear that the monies paid pursuant to a pre-need agreement can only be withdrawn or disbursed "for the purposes for which such money was accepted," meaning for funeral director "A" to provide customer "B" the services which customer "B" paid for and which funeral director "A" committed to provide! In this regard, § 1921 of the Pennsylvania Statutory Construction Act comes into play in that, "[w]hen the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." 1 Pa. C.S.A. § 1921(b).

In an effort to re-write the Funeral Director Law and reach the conclusion that it so desperately wants to reach, the Board completely ignores the explicit language of the Funeral Director Law, the explicit language of the Future Interment Law and now the explicit language of Commonwealth Court. Additionally, the Board

also ignores the fact that it does not have the authority to rewrite legislation. Indeed, it is axiomatic that “[a]dministrative agencies are creatures of statute and cannot exercise powers not explicitly given them by the legislature....”) Plumstead Township Civic Association v. Commonwealth of Pennsylvania, Department of Environmental Protection, 684 A.2d 667, 670 (Pa. Commw. 1996). See also, Northern Associates, Inc. v. State Board of Vehicle Manufacturers, Dealers and Salespersons, 725 A.2d 857, 859 (Pa. Commw. 1999) (“We have already stated that the power and authority to be exercised by administrative commissions must be conferred clearly and unmistakably by the Legislature.”) The Legislature has not conferred on the Board the authority to rewrite the Funeral Director Law, to promulgate regulations inconsistent with the same or to declare what it believes the law should be on any particular day, as it did in this case and is still trying to do in this case.

Noteworthy is the fact that the Supreme Court of Arkansas addressed an issue substantially similar to that before this Court. In Arkansas Securities Department v. Roller Funeral Home, 263 Ark. 123, 562 S.W.2d 611 (1978), the Supreme Court of Arkansas reviewed the validity of an order issued by the Arkansas Securities Commissioner which provided that the funeral home at issue had to revise its pre-need contracts to provide that a buyer had the right to cancel the contract at any time, with or without cause, and to withdraw all funds, less interest paid, into the trust account. Although the Supreme Court acknowledged the Securities Commissioner’s rulemaking authority, the Court observed that “. . . rule-making authority does not give the commissioner authority to make a rule or regulation that is not authorized or is contrary to Arkansas law.” Arkansas Securities Department, 263 Ark. at 124, 562 S.W.2d at 611. Examining the statute at issue, the Supreme Court stated that “. . . We can find nothing in the statutes to authorize a rule which would permit a buyer of prepaid funeral benefits to withdraw all the money paid into the trust fund without cause or reason at any time.” Id. at p. 612. The lower court’s decision reversing the order of the Commissioner was affirmed.

Although this decision by the Arkansas Supreme Court is not binding precedent, it is certainly persuasive, factually it is nearly identical; and its analysis is consistent with Pennsylvania law. In all candor, the Board’s conduct in this case is more egregious than that in the Arkansas case. It is the “belief” of the Board, as initially expressed in an e-mail, which was one of the factors that triggered this controversy and which was relied upon by certain consumers in support of their demand for pre-need monies. Like the Arkansas case, nothing in the Funeral Director Law permits a buyer of prepaid funeral benefits to withdraw all the money paid into the trust without cause or reason at any time.

The Funeral Director Law is not the only law implicated by the Board’s Proposed Regulation. Indeed, other fields of Pennsylvania jurisprudence are also implicated and infringed by the Proposed Regulation. Specifically, the Board’s proposed regulation is not supported by basic principles of the Funeral Director

Law, contract law or trust law. Addressing the former, the current Regulations acknowledge that a pre-need agreement is a contract. Indeed, the Regulations expressly define a "prepaid burial contract" as being "[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." [49 Pa. Code § 13.1 (emphasis added).] Expressly acknowledging the fact that pre-need agreements are contracts, contract principles must be applied to these agreements

It is axiomatic that "[a] contract must be construed according to the meaning of its language." Empire Sanitary Landfill, Inc. v. Riverside School District, 739 A.2d 651, 654 (Pa. Commw. 1999). According to Pennsylvania Commonwealth Court:

"The intention of the parties must be ascertained from the document itself, if its terms are clear and unambiguous." . . . The Court's inquiry should focus on what the agreement itself expressed and not on what the parties may have silently intended . . . "It is not proper, under the guise of construction, to alter the terms to which the parties, whether in wisdom or folly, expressly agreed." . . . The law assumes that the parties chose the language of their contract carefully. [Id.] (citations omitted.)

Fundamental principles of contract law, absent a proven claim of fraud, duress or illegality, it is not proper, "under the guise of construction," to alter the terms of an irrevocable pre-need agreement simply because a consumer, for any reason whatsoever, no longer wants that specific agreement. Indeed, any conclusion to the contrary would cause the contract to be illusory and, hence, unenforceable, as a whole. See Geisinger Clinic v. Di Cuccio, 414 Pa. Super. 85, 91, 606 A.2d 509, 512 (1992) ("A contract is evidenced by a mutuality of obligation. A mutuality of obligation exists when both parties to the contract are required to perform their respective promises. . . . A promise to perform or to forebear from performing must be supported by consideration. . . . If the promise is entirely optional with the promisor, it is said to be illusory and, therefore, lacking consideration and unenforceable.") Basic principles of Pennsylvania contract jurisprudence preclude such result.

Turning to the law of trusts, similar to contract law, to ascertain the nature of a trust, ". . . the writing itself must be considered the best and controlling evidence of that question." Appeal of Gannon, 428 Pa. Super. 349, 369, 631 A.2d 176, 186 (1993) (citation omitted). Moreover, the Pennsylvania Supreme Court, almost four decades ago, opined that "[w]here property of any kind (with exceptions hereinafter discussed) is placed in the name of the donor or settlor *in trust for a named beneficiary*, unless a power of revocation is expressly or impliedly reserved, the *general principle* of law is well settled that such facts create a trust which is prima facie *irrevocable*." In re: Estate of Brose, 416 Pa. 386, 394, 206

A.2d 301, 306 (1965) (italics in original) (citations omitted). See also Rebidas v. Murasko, 450 Pa. Super. 546, 550, 677 A.2d 331, 333 (1996) (questioned on other grounds) (“Generally, a trust executed without reservation of power by a settlor to revoke or reform the trust is irrevocable.”)

Clearly, the irrevocable pre-need agreements used by multitudes of funeral directors create an irrevocable trust if nothing in the documents reserves to the pre-need consumer the right to revoke or reform that trust. Given the fact that no provision of either the Funeral Director Law or the Regulations pertain to the revocability of a pre-need agreement or the right (or lack thereof) of a consumer to demand, at the consumer’s whim, that the funeral director transfer the pre-need monies placed in an irrevocable trust to another funeral director, the foregoing basic principles of law cannot be ignored.

Finally, the impact of the Board’s Proposed Regulation on certain rights of Funeral Directors as guaranteed by the Constitution of the Commonwealth of Pennsylvania, as well as the United States cannot be ignored. Specifically, the Board’s Proposed Regulation infringes on rights as guaranteed by Article I, Sections 1, 10, 17 and 26 of the Constitution of the Commonwealth of Pennsylvania and Article I, Section 10 and the Fifth and Fourteenth Amendments to the Constitution of the United States.

It is axiomatic that “[t]he Contract Clauses of the United States and Pennsylvania Constitutions protect contracts freely arrived at by the parties from subsequent legislative impairment or abridgement.” Lynn v. Prudential Property & Casualty Ins. Co., 422 Pa. Super. 479, 484, 619 A.2d 779, 781 (1993). According to the Courts:

A later law cannot abridge rights under a prior contract. Only the substantive laws that are in effect when the parties enter into a contract are implicitly incorporated into it.

Second Federal Savings and Loan Association v. Brennan, 409 Pa. Super. 581, 588, 598 A.2d 997, 1000 (1991).

The United States Supreme Court has noted:

“[The Contract Clause] was made part of the Constitution to remedy a particular social evil – the state legislative practice of enacting laws to relieve individuals of their obligations under certain contracts – and thus was intended to prohibit States from adopting ‘as [their] policy the repudiation of debts or the destruction of contracts or the denial of means to enforce them . . .’”

Keystone Bituminous Coal Assn. v. DeBenedictis, 480 U.S. 470, 503, fn. 30, 107 S. Ct. 1232, 1251, fn. 30, 94 L. Ed. 2d 472, 500, fn. 30, (1987) (citation omitted).

Here, the Board's Proposed Regulation constitutes the precise "social evil" against which the Contract Clause is to guard. The Proposed Regulation impinges upon the ten of thousands of existing pre-need agreements that funeral directors statewide have with a multitude of customers by effectively relieving their obligations there under and denying funeral directors a means to enforce those agreements. Indeed, the Proposed Regulation effectively rewrites the terms of pre-need agreements by obliterating the obligation of the consumer as to the irrevocability of the agreement and allowing the consumer to rescind the agreement, for any reason whatsoever, simply by choosing another funeral home. Frankly, one cannot dispute in good faith that the retroactive application of the Board's proposed regulation impairs existing contractual obligations.

In addition to the foregoing, the Board's proposed regulation violates rights to due process of law. It is well-established that "retroactive application of a law is not *per se* prohibited. It is prohibited only if it offends due process." Sanders v. Loomis Armored, 418 Pa. Super. 375, 379, 614 A.2d 320, 322 (1992) (citations omitted). According to the Superior Court:

Laws which are applied retroactively offend the due process clause if, "balancing the interests of both parties, such application would be unreasonable."

...Retroactive laws which have been deemed reasonable are those which "impair no contract and disturb no vested right, but only [vary] remedies, cure defects in proceedings otherwise fair, and do not vary existing obligations contrary to their situation when entered into and prosecuted"... If no vested right or contractual right is involved, an act is not retroactively construed if applied to a condition existing on its effective date, even though the condition results from events that occurred prior to that date....

Sanders, 418 Pa. Super. at 380, 614 A.2d at 322. (citations omitted). See also, Cook v. Covey, 415 Pa. Super. 353, 609 A.2d 560 (1992).

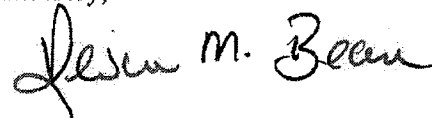
In the case sub judice, the pre-need contracts involve definitive obligations and constitute a definitive property interest. It is abundantly clear that there is no support in law for the Board's Proposed Regulation and that the Board's Proposed Regulation, if enacted, constitutes "new" law. If this Proposed Regulation is applied retroactively, it is abundantly clear that contractual and vested rights will be impaired and disturbed. This infringement is wholly improper. The proposed regulation must be denied.

As a licensed funeral director practicing for more than 20 years in Pennsylvania, I thank you for allowing me the opportunity to share my thoughts, insights, experiences and legal trials and tribulations with the State Board of Funeral Directors and with the Pennsylvania Funeral Director's Association.

Any additional documentation will readily be provided at your request.

I urge you to unequivocally deny this saponaceous proposed regulation. In the absence of such, I request that formal hearings be held.

Sincerely,

A handwritten signature in black ink that reads "Kevin M. Bean". The signature is written in a cursive style with a large initial 'K'.

Kevin M. Bean, President
Bean Funeral Homes & Cremation Services, Inc.

CC Independent Regulatory Review Commission
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