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INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

August 13, 2010

Michael J. Yeosock, Chair
State Board of Funeral Directors
2601 North 3rd Street
Harrisburg, PA 17110

Re: Regulation #16A-4818 (IRRC #2760)
State Board of Funeral Directors
Continuing Education Enforcement

Dear Mr. Yeosock:

The Independent Regulatory Review Commission disapproved your regulation on August 5, 2010. Our order is enclosed and will be available on our website at www.irrc.state.pa.us.

Within 40 days of receipt of our order, Section 7(a) of the Regulatory Review Act requires you to select one of the following options: (1) proceed with promulgation under Section 7(b); (2) proceed with promulgation under Section 7(c); or (3) withdraw the regulation. If you do not take any action within this period, the regulation is deemed withdrawn.

If you or your staff have any questions, please contact me at 783-5506.

Sincerely,

Kim Kaufman
Executive Director
wbg
Enclosure

cc: Honorable Robert M. Tomlinson, Majority Chairman, Senate Consumer Protection and Professional Licensure Committee
Honorable Lisa M. Boscola, Minority Chairman, Senate Consumer Protection and Professional Licensure Committee
Honorable Michael P. McGeehan, Majority Chairman, House Professional Licensure Committee
Honorable Julie Harhart, Minority Chairman, House Professional Licensure Committee
Honorable Basil L. Merenda, Acting Secretary, Department of State

**INDEPENDENT REGULATORY REVIEW COMMISSION
DISAPPROVAL ORDER**

Commissioners Voting:

Public Meeting Held August 5, 2010

Arthur Coccodrilli, Chairman
George D. Bedwick, Vice Chairman
S. David Fineman, Esq.
Silvan B. Lutkewitte, III
John F. Mizner, Esq. by Phone

Regulation No. 16A-4818 (#2760)
State Board of Funeral Directors
Continuing Education Enforcement

On April 22, 2009, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the State Board of Funeral Directors (Board). This rulemaking amends 49 Pa. Code Chapter 13. The proposed regulation was published in the May 2, 2009 *Pennsylvania Bulletin* with a 30-day public comment period. The final-form regulation was submitted to the Commission on June 25, 2010.

This rulemaking is intended to clarify the consequences of failing to comply with the continuing education provisions in the Funeral Director Law (63 P.S. § 479.10(b)) and the Board's regulations (49 Pa. Code §§ 13.401 – 13.406). Both require a licensee to complete six hours of continuing education credits each biennium in order to qualify for license renewal. Under the amendments in this rulemaking, a licensee who has not completed the amount of continuing education credits may renew, subject to being issued a citation, paying a fine and making up the continuing education credits within six months.

We find that the Board does not have the statutory authority to renew a license for an applicant who has not completed the statutorily mandated six hours of continuing education during the prior two-year license period. As explained below, this regulation does not meet the Regulatory Review Act criterion of statutory authority to promulgate the regulation. 71 P.S. § 745.5b.

In our comments issued July 1, 2009, on the proposed regulation, we stated:

...the Board should explain the status of a license between the end of a biennial period when a license would expire and the point in time a licensee provides satisfactory proof of attendance at continuing education courses.

The Board responded in the final regulation's Preamble:

Upon renewal of the license, the licensure status is the same as if the licensee had completed the entire continuing education requirement in a timely fashion. Only if the Board later takes disciplinary action, such as if the Board then suspends a license where the licensee still has not completed the required continuing education, would the licensure status change.

The Board's response indicated that the intent of the amended regulatory language, which would be 49 Pa. Code §§ 13.231(a) and 13.401(d), is to allow a renewal of a license when a licensee failed to attend the required six hours of mandatory continuing education during the license period.

Continuing education relating to license renewal is addressed in 63 P.S. § 479.10(b)(1) which states:

The Board shall adopt, promulgate and enforce rules and regulations consistent with provisions of this act establishing requirements of continuing education to be met by individuals licensed under this act **as a condition for renewal of their licenses....** (Emphasis added.)

The only exceptions to the continuing education mandate in the statute are for initial licensure and waivers for "serious illness, military service or other demonstrated hardship" on a case by case basis. When a licensee does not meet either of these conditions, the applicant, "as a condition of renewal of their license," is required to have attended "six (6) hours of mandatory continuing education during each two-year license period." 63 P.S. §§ 479.10(b)(1) to (4).

We have determined this regulation is not consistent with the statutory authority of the State Board of Funeral Directors (63 P.S. § 479.10(b)) and the intention of the General Assembly. Therefore, we find promulgation of this regulation is not in the public interest.

BY ORDER OF THE COMMISSION:

The regulation # 16A-4818 (IRRC # 2760) from the State Board of Funeral

Directors: Continuing Education Enforcement

was disapproved on August 5, 2010 .


Arthur Coccodrilli, Chairman