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## INDEPENDENT REGULATORY REVIEW COMMISSION

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

October 27, 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:

On October 21, 2010, the Independent Regulatory Review Commission disapproved the board's report and revised regulation, filed pursuant to section 7(c) of the Regulatory Review Act. 71 P.S. § 745.7(c). A copy of our order is enclosed.

The Commission's disapproval bars final publication of the regulation for 14 days. If either the Senate Consumer Protection and Professional Licensure Committee and House Professional Licensure Committee reports out a concurrent resolution, the bar will continue until the General Assembly completes its review pursuant to Section 7(d) of the Act. 71 P.S. § 745.7(d).

If you have any questions on this regulation, please contact me at 783-5417.

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  
SECOND DISAPPROVAL ORDER**

Commissioners Voting:

Public Meeting Held October 21, 2010

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

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. At its August 5, 2010 public meeting, the Commission voted to disapprove the final-form regulation. On September 22, 2010, the Board resubmitted the final regulation without revision under Section 7(b) of the Regulatory Review Act (71 P.S. § 745.7(b)) along with its report to the Committees and the Commission.

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 found on August 5, 2010, 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 initial 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....** (Emphases 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).

In its report to the Committees and the Commission supporting its unrevised regulation, the Board cites two provisions of the Funeral Director Law. Specifically, the Board states the following:

The Board respectfully suggests that IRRC has misconstrued section 10(b) of the Funeral Director Law. While section 10(b)(2) requires licensees to complete mandatory continuing education during each two-year license period, section 10(b)(2) does not make completion of mandatory continuing education a condition of license renewal. Nor does section 10(b)(1) of the Funeral Director Law make completion of mandatory continuing education a condition of renewal. Instead, section 10(b)(1) makes compliance with the mandatory continuing education regulations promulgated by the Board a condition for renewal, and those regulations must be consistent with the provisions of the Funeral Director Law.

The Board's interpretation would broaden its authority to write regulations regarding continuing education as a condition of license renewal by disregarding the bounds of the statutory phrase "consistent with provisions of this act." We note that the immediately following statutory provision, 63 P.S. § 479.10(b)(2), states that "licensees shall be required to attend six (6) hours of mandatory continuing education during each two-year period." Similarly, the Board raises its general rulemaking authority at 63 P.S. § 479.16(a), but again disregards its duty to write regulations "not inconsistent with this act."

While the Funeral Director Law grants the Board authority to write regulations regarding continuing education, we do not believe the Board's interpretation is correct in light of its statutory limits stated twice in the Funeral Director Law to write regulations "consistent with

provisions in this act” and “not inconsistent with this act” found in 63 P.S. § 479.10(b)(1) and 63 P.S. § 479.16(a), respectively. Consequently, we have determined that the regulation remains inconsistent with the statutory authority of the Board (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 October 21, 2010.

  
Arthur Coccodrilli, Chairman

