

PENNSYLVANIA HOUSE OF REPRESENTATIVES
LICENSURE COMMITTEE HEARING

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IN RE: REGULATIONS 16A-4815, 16A-4816, 16A-4817
FUNERAL DIRECTORS

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FRIDAY, MARCH 6, 2009

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BEFORE: HON. MICHAEL MCGEEHAN, CHAIRMAN (D)
HON. WILLIAM ADOLPH, CHAIRMAN (R)
HON. JOHN EVANS, MEMBER
HON. MARK MUSTIO, MEMBER
HON. CHERELLE PARKER, MEMBER
HON. HARRY READSHAW, MEMBER
HON. RICHARD STEVENSON, MEMBER
HON. TIMOTHY J. SOLOBAY, MEMBER

Held at the Pennsylvania Convention
Center, Room 111, Philadelphia, Pennsylvania, commencing
at 10:00 a.m., on the above date, before Virginia Mack,
Professional Court Reporter and Notary Public.

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1 P R O C E E D I N G S

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3 CHAIRMAN MCGEEHAN: I would like to
4 start the Licensure Committee, the 10:00 hour having
5 arrived.

6 Good morning to the Members and to the
7 participants and to the audience this morning. I want
8 to convene this hearing on behalf of Professional
9 Licensure Committee. Today we are going to be hearing
10 from funeral directors.

11 Regulations for funeral directors are a
12 large part of the business in the House of Professional
13 Licensure Committee, and we are hoping to learn and be
14 educated by the professionals in that field about how
15 best the State can craft legislation regulations to help
16 the industry and to make it more responsive to the
17 public.

18 I want to begin by introducing myself.
19 My name is Mike McGeehan, I'm the Chairman of this
20 Committee, I represent the Legislative District of
21 Philadelphia County. I will turn to my Republican
22 colleague and ask the members to introduce themselves.

23 MEMBER ADOLPH: Thank you, Mr. Chairman.
24 My name is Bill Adolph. I'm the Republican Chair. My

1 Legislative District is Delaware County 165th.

2 MEMBER STEVENSON: My name is
3 Representative Dick Stevenson, I'm from the 8th
4 Legislative District representing Mercer and Butler
5 Counties.

6 MEMBER MUSTIO: Mark Mustio, Allegheny
7 County, 44th Legislative District.

8 MEMBER READSHAW: Harry Readshaw, 36th
9 Legislative District, Allegheny County.

10 MEMBER SOLOBAY: Tim Solobay, from the
11 48th District, in Washington County.

12 CHAIRMAN MCGEEHAN: Thank you members,
13 and there will be members that come and go throughout
14 the day. There are a number of competing committees in
15 Philadelphia today so we will have members who have
16 other engagements that will be coming and going.

17 We do have a busy agenda. I would ask
18 that those who testify do so expeditiously and then make
19 themselves available to questions from the members.

20 I want to first hear from someone who is
21 no stranger to this Committee or to the professionals
22 here, Basil Merenda, he is the Commissioner of Bureau of
23 Professional and Occupational Affairs.

24 Commissioner, good morning. You can

1 begin when you're comfortable.

2 MR. MERENDA: Chairman McGeehan and
3 Chairman Adolph and distinguished members of the House
4 of Professional License Committee, good morning and
5 thank you for inviting the Department of State to
6 provide testimony on the licensure requirements
7 regulations of the State Board of Funeral Directors and
8 the role of the BPOA, Bureau of Professional and
9 Occupational Affairs, in the Garzone case.

10 I just want to note, for the record,
11 that the former chair of the Funeral Board is also on
12 the list today.

13 For the record, my name is Basil
14 Merenda, I'm the Commissioner for the Department of
15 State's Bureau of Professional and Occupational Affairs,
16 known as BPOA. As Commissioner, I administer the
17 Commonwealth's 27 licensing boards and I sit as a voting
18 member on 25 of those boards. Soon, I will also
19 administer and sit on two additional boards, the State
20 Board of Crane Operators and the State Board of Massage
21 Therapy.

22 The mission of BPOA and all of our
23 Boards is two-fold: First, to maintain the integrity of
24 the professions we license and regulate; and second,

1 most importantly, to protect the health, safety and
2 welfare of every consumer.

3 The Funeral Board regulates the entire
4 funeral profession in the Commonwealth, and it is the
5 Board's mission to ensure that the burial of a family
6 member, loved one and friend is handled in a
7 professional, dignified and competent manner with no
8 financial improprieties.

9 In the case of the Funeral Board, and
10 all of our boards, the mission of maintaining the
11 integrity of the professions that we regulate and the
12 mission of providing consumer protection for all our
13 citizens begins with licensure because licensure
14 provides an individual and a business entity with the
15 privilege to practice that particular profession or
16 occupation in the Commonwealth. Also licensure provides
17 citizens a level of confidence that the person they are
18 dealing with is competent, professional and is reputable
19 enough to do business with.

20 Indeed, the Funeral Board's licensure
21 policy is a straightforward policy that a consumer can
22 best be protected if the funeral director is in charge
23 and the funeral director's license is on the line and
24 subject to accountability and discipline.

1 As of February 19, 2009, the Funeral
2 Board issued a total of 6,991 licenses that covered 15
3 various licensing categories. Only one board has
4 brought more licensing categories than BPOA, that is
5 cosmetology, 18 licensing categories. A total of 4,016
6 individuals possess one or more of these funeral board
7 licenses and 1,695 business entities also possess one or
8 more of these funeral establishment licensing
9 categories.

10 I'm sure, Mr. Chairman, that you would
11 permit me, at this time and in this forum, to present an
12 overview of the Funeral Board licensure requirements,
13 which cliff notes we can provide you and the members
14 with specific details on each license in your office at
15 a later date.

16 In summary, there are six licensure
17 categories that are issued by the Funeral Board to
18 individuals as opposed to the business or legal entity.
19 The first license an individual can receive from the
20 Funeral Board is the trainee license. It is issued
21 while a person is in mortuary school. The trainee can
22 work in a funeral establishment under the supervision of
23 a licensed funeral director, and the law prohibits a
24 trainee from directly participating in the embalming of

1 the remains.

2 Then there is the intern license, which
3 is issued to an individual who has graduated from
4 mortuary school and has completed 60 hours of college
5 credits. The applicant must serve an internship with a
6 licensed funeral director or preceptor for a 12-month
7 period at 12 hours per week. A preceptor must have a
8 funeral director's license in good standing and handle
9 at least 35 cases in a 12-month period.

10 There is also a funeral director's
11 license, FD, which is a full and unrestricted license
12 that is required to practice the funeral director
13 profession in the Commonwealth. To receive a FD
14 license, an individual must have completed his
15 education, an internship, passed the national Boards, as
16 well as a two-part State examination.

17 The fourth license the Funeral Board
18 issues is a limited funeral director license that
19 permits a licensed funeral director from only New
20 Jersey, Delaware and West Virginia to remove, transport
21 and bury remains in the Commonwealth. For the record,
22 the other border states do not have reciprocity, that's
23 why we cannot issue that limited license to those
24 funeral directors from those states. These individuals

1 must have an active funeral director's license in their
2 home state.

3 The remaining individual licenses are
4 the funeral director supervisory license and the
5 temporary supervisory license. These licenses are
6 required when a funeral home branch is part of an
7 enterprise. These licenses are also required in a
8 corporate funeral home entity, a widow's license and an
9 estate enterprises, which are all various business
10 entity licenses that the Funeral Board issues, they all
11 must have their supervisor's license.

12 The Board also issues various licensing
13 forms to business entities. This means that an
14 individual funeral director often will be required to
15 have at least two licenses. That is their individual
16 funeral director's license, the FDL, and also a license
17 for the particular business entity that they own and
18 that which they practice the profession. The business
19 entity licenses issued by the Funeral Board are as
20 follows: The widow's license, the sole proprietorship,
21 the partnership, the restricted business corporation, or
22 RBC, the Professional Corporation and the pre-1935
23 Corporation, along with the estates license, funeral
24 home branch and the continuing education provider

1 entity.

2 The widow's license is a license issued
3 to the spouse of a funeral director who was either a
4 sole proprietor or part of a partnership at death. The
5 spouse of a funeral director can maintain this licensure
6 permanently under certain legal conditions. The
7 surviving spouse must notify the Board of the death of
8 the licensed holder and must apply to the Board for a
9 widow's license within 30 days. The spouse can maintain
10 ownership as long as they remain unmarried.

11 Now, I would like to briefly outline for
12 you the requirements of the RBC and the Professional
13 Corporation and also explain to you what in the world is
14 a pre-1935 corporation. The RBC is a business entity
15 license issued by the Board that enables the funeral
16 director to pass to his family the business that he or
17 she has invested long hours and much effort to build
18 through the years. Shares in the RBC can be owned by
19 the funeral director's spouse, children and
20 grandchildren or held in trust for them. An funeral
21 director who owns a RBC cannot be a shareholder or owner
22 of any other type of funeral home.

23 The Funeral Board issues a license to a
24 professional corporation, PC, to provide funeral

1 services also. Hereto, the law prohibits any
2 non-licensed funeral director from owning any shares of
3 stock in the professional corporation. A funeral
4 director is limited to owning one single professional
5 corporation unless he is the owner of a professional
6 corporation established prior to February of 1977.

7 A pre-1935 corporation, as its name
8 implies, is a business entity established prior to the
9 1935 major revision of the funeral directors law that
10 addressed the delivery of funeral services in the
11 Commonwealth. There are no limitations on who could be
12 the owner of a pre-1935 corporation. However, a funeral
13 director supervisor must directly be involved in the
14 business. There are currently 56 active pre-1935
15 corporations that the Funeral Board licenses. There are
16 also 21 inactive pre-1935 corporation licenses that
17 could be sold by the current owners and/or reactivated.

18 Although our boards do address and
19 adjudicate license issues, our administrative staff, for
20 the most part, handles the issuance of licenses. I
21 would ask the Committee for its indulgence so I can
22 briefly put on the record all the good work done by our
23 administrators and staff.

24 Funeral Director Board Administrator,

1 Heidi Weinrich and the staff and our Business Division
2 Chief, Michelle Smey, are simply outstanding in the way
3 they navigate through all of the Funeral Board's
4 licensing rules and regulations. For example, it
5 typically takes the BPOA Funeral Board staff 5 to 10
6 business days to review and approve a funeral director's
7 license and 2 to 3 weeks to review and approve a funeral
8 facility license. This superb work needs to be
9 recognized and I thank the Committee for permitting me
10 to note, for the record, that the Funeral Board staff
11 does a very good job and carries out its duties with
12 intelligence, vigor and effectiveness -- and these two
13 young ladies are with us today.

14 Let me shift gears. As the Committee
15 knows, the Board is responsible for enacting regulations
16 that provide the details to the statutes passed by the
17 legislature. They put flesh on the bones so-to-speak.
18 These regulations established the rules by which a
19 profession conducts itself on a day-to-day basis. The
20 sole goal of our 27 boards under BPOA's purview is to
21 enact rules and regulations that make sense in the
22 day-to-day practice. The Funeral Board has tried to do
23 just that in drafting, reviewing and enacting
24 regulations.

1 The Funeral Board is currently working
2 on six regulation packages. The package that is the
3 furtherest along is a regulation that will clarify the
4 requirements for funeral directors who enter into
5 preneed funeral arrangements. The Board reviewed
6 comments on proposed rulemaking at its January, February
7 2009 meetings and directed counsel to draft a final
8 rulemaking package.

9 I can assure you that the Board had a
10 huge amount of components that were submitted and the
11 Board gave its approval to this final lawmaking package,
12 on Wednesday, at its March 4, 2009 monthly meeting. So
13 that is on track and it's right at the end of the
14 tunnel.

15 Now, the Funeral Board regulation
16 package that is getting a lot of attention clarifies
17 what an unlicensed individual may be permitted to do
18 regarding the solicitation and sale of preneed funeral
19 arrangements, as directed by the United States District
20 Court, in litigation brought against the Funeral Board
21 by the group of funeral directors in a case known as
22 Walker verses Flitton. Let me assure the Committee that
23 the Board wants to do the right thing with this
24 particular regulation package. As a result the Board

1 struggled to develop these regulations and it struggled
2 to develop these regulations for one main reason; Judge
3 Jones' Order directed the Funeral Board to permit, not
4 only employees, but also non-employee's agents to engage
5 in preneed sales activity. However, in a Commonwealth
6 Court decision, Ferguson versus Pennsylvania State Board
7 of Funeral Directors, held that only licensed funeral
8 directors can provide preneed funeral arrangements under
9 Pennsylvania law.

10 This creates one huge dilemma. How does
11 the Funeral Board permit a funeral director's unlicensed
12 employee and a non-employee agent of that funeral
13 director to engage in preneed sales activities when
14 Pennsylvania law prohibits unlicensed individuals from
15 engaging in preneed arrangements in the first place? I
16 would point out for the Committee that a second and
17 separate lawsuit brought against the Board, that is
18 currently pending in federal court, could have a
19 significant impact on this regulation package.

20 Nonetheless, the Board has presented
21 what has been called the Walker versus Flitton reg
22 package on proposed rulemaking. And needless to say,
23 and the Board has received a long list of comments about
24 this reg package. The Board has reviewed proposed

1 comments and the regulation package is currently with
2 regulatory counsel for action. The final lawmaking
3 package is scheduled to be addressed at the April
4 meeting of the Board in a few weeks.

5 The remaining packages that the Board is
6 working on include the following: One that would
7 increase Funeral Board renewal fees, another that would
8 update continuing education enforcement and supervision
9 at funeral services, and also a general revision of
10 regulations that relate to advertising, application
11 procedures, facility requirements and qualifications.
12 Except for the regulation package that would increase
13 the Board's biennial renewal fee, which is on final
14 rulemaking, the other noted regulations are all at early
15 stages of proposed drafting.

16 The final area of focus in my testimony
17 will be on the Garzone case. The Board has a phenomenal
18 story to tell about how it addressed this matter. This
19 case involved, first and foremost, Funeral Board
20 disciplinary action and thereafter criminal prosecution
21 of Louis A. Garzone and Gerald Garzone, two Pennsylvania
22 licensed funeral directors who were eventually convicted
23 and sentenced to prison for their role in a hideous body
24 part trafficking conspiracy. This conduct occurred in

1 their funeral homes in the Kensington and Juniata
2 sections of Philadelphia.

3 Simply put, BPOA acted swiftly and
4 effectively to terminate the licenses and the funeral
5 home operations of Louis Garzone and Gerald Garzone.
6 Equally important, BPOA cooperated fully and provided
7 investigative expertise to the Philadelphia District
8 Attorney's Office that immensely aided in the
9 prosecution of the criminal case against the Garzones.

10 Most significantly, I'm pleased and
11 proud to point out to the Committee that BEI, Bureau
12 Enforcement Investigator Bill Bailey, who is a retired
13 Philadelphia Police officer and narcotics detective,
14 shared with the District Attorney's Office all of the
15 evidence and information gathered in BPOA's licensure
16 discipline investigation of the Garzones. The evidence
17 gathered by BEI Investigator Bailey was in turn used as
18 probable cause evidence by the District Attorney's
19 Office and was included in the affidavit that has to be
20 submitted in order to convince a Judge to issue a search
21 warrant for the Garzone facilities.

22 In fact, BEI Investigator Bailey was
23 also able to obtain admissions, confessions so-to-speak,
24 from the Garzones regarding their conduct which was also

1 shared with the District Attorney's Office.
2 Investigator Bailey then testified in late summer of '06
3 before the Grand Jury investigating the Garzones about
4 the evidence he gathered and the admissions. For his
5 efforts, Investigator Bailey was not only recognized by
6 BPOA, but also received the National Investigator of the
7 Year Award in September 2008 from CLEAR, the Council on
8 Licensure Enforcement And Regulation, a national
9 well-respected consumer group that promotes regulatory
10 excellence.

11 Also in the Garzone case, I can report
12 that, as it turns out, BPOA and the Funeral Board was
13 able to take strong, effective, unequivocal and
14 conclusive disciplinary action against the Garzone's
15 licenses in just 12 weeks, 12 weeks. To put this
16 expedited fast-track effort in perspective, it took the
17 District Attorney's Office 16 months to bring criminal
18 charges against the Garzones for their despicable
19 conduct.

20 For example, BPOA opened the Garzone
21 case on March 16, 2006, based on media reports. At the
22 time the Garzone case was given priority status.
23 Investigator Bailey began conducting interviews, in the
24 Garzone case, the very next day on March 17th. Now, I'm

1 a firm believer that even in a serious case as this, we
2 have to take time to keep things in a proper
3 perspective.

4 I want to point out to the Committee
5 that a huge pat on the back must be given to a guy by
6 the name of Bailey, who was out there doing his duty,
7 carrying out his obligations on March 17th. I'm told
8 that the Irish have a great affinity to March 17th,
9 which is of course Saint Patrick's Day. On March 23rd,
10 Investigator Bailey provided the DA's office with the
11 Garzone probable cause evidence. In May of '06,
12 Investigator Bailey obtained the Garzone admissions.

13 Ultimately, on June 7, 2006, the Funeral
14 Board took definitive licensure disciplinary action in
15 the Garzone case when Louis Garzone, Gerald Garzone and
16 the Garzone Funeral Home permanently surrendered all
17 constitutional rights to their funeral licenses in the
18 Commonwealth of Pennsylvania.

19 It is worth noting, from a licensure
20 discipline perspective, that the permanent surrender of
21 the Garzone licenses was an extremely significant
22 penalty that seemed to be lost and not fully understood
23 and appreciated in the hubbub of the criminal charges
24 and Grand Jury proceedings.

1 Make no mistake about it, the Funeral
2 Board's acceptance of the voluntary surrender of the
3 Garzone licenses was the ultimate penalty a licensure
4 board could impose, it is the licensure version of the
5 death penalty. The surrender of all four of their
6 licenses required the Garzones to permanently, that is
7 "forever and a day," to give up all constitutional
8 rights to those licenses with no chance of return. This
9 was a superb legal outcome that was actually recognized
10 and commended by the Philadelphia Assistant District
11 Attorney who was in charge of the Garzone criminal
12 investigation.

13 All things considered, BPOA did work
14 fairly well with the Philadelphia District Attorney's
15 Office on the Garzone matter. I would submit that the
16 BPOA, through the efforts of Investigator Bailey, was in
17 fact indispensable to the District Attorney's criminal
18 investigation and conviction of the Garzones.

19 However, there was one area in which
20 some disagreement arose with the District Attorney's
21 Office. In fact, we here, at BPOA, were very puzzled at
22 the time when the District Attorney's Office seemed to
23 suggest that BPOA should not have issued a license to
24 James Garzone when he sought to reactivate his

1 Pennsylvania funeral director's license and that we
2 should not have issued a license for the reincorporation
3 of the Garzone Funeral Home. James was one of the
4 Garzone brothers who were not involved in the crime.

5 Simply put, BPOA did everything in its
6 power to conduct a thorough review of both applications
7 submitted by James Garzone. Indeed, because of the
8 ghoulish past of the funeral home, the Department was
9 exceedingly cautious. It investigated James Garzone and
10 the facility for several months while his reactivation
11 application was pending. In fact, the attorneys for
12 James Garzone complained that BEI was engaging in a
13 "course of harassment."

14 Moreover, BEI immediately notified the
15 Philadelphia District Attorney's Office about both the
16 James Garzone application and the reincorporation
17 applications and asked for aid in evaluating them. The
18 District Attorney's Office was unable to supply any
19 evidence that would warrant the denial of either
20 application. Therefore, operating under the parameters
21 of the Funeral Director Law, the Department had no
22 choice but to issue both licenses. The license for the
23 new Garzone funeral facility was issued on November 8,
24 2006, four months after the application was filed.

1 To put this action into perspective, I
2 would point out for the Committee that, typically, it
3 takes the BPOA Funeral Board staff 5 to 10 business days
4 to review and approve a funeral director's license and 2
5 to 3 weeks to review and approve a funeral facility
6 license.

7 In the end, James Garzone's funeral
8 director license was revoked by the Board, pursuant to a
9 permanent voluntary surrender, and the Garzone Funeral
10 Home facilities license was also revoked at the same
11 time, effective January 7, 2008. All of the Garzones
12 are out of the funeral director profession in
13 Pennsylvania, as I pointed out, "forever and a day."

14 As the Committee now knows, BPOA, BEI
15 and the Funeral Board did some very admirable and
16 expeditious work to take appropriate disciplinary action
17 against the Garzones once these hideous allegations were
18 known. The one lesson that we, at BPOA, were able to
19 draw from the Garzone case is the need to improve what
20 information the District Attorney can share with BPOA.

21 As you see, BPOA can share with the
22 District Attorney and law enforcement everything it
23 gathers against a licensee in disciplinary
24 investigations. However, because of Criminal History

1 Records Information Act, CHRIA in short, the District
2 Attorney in the Garzone case, and other law enforcement
3 agencies in other BPOA licensure cases, cannot share
4 criminal investigative materials and evidence with BPOA,
5 it's a one-way street.

6 Accordingly, I would submit that an
7 amendment of CHRIA, which would permit the District
8 Attorney, Attorney General and other law enforcement
9 agencies to share information with BPOA is very much
10 needed.

11 I hope this overview of Funeral Board
12 licensure, regulations and the role of BPOA in the
13 Garzone case has been helpful. I welcome any questions
14 at this time, but before I take questions, I will ask if
15 I can put a personal note on the record about
16 Investigator Bill Bailey, Mr. Chairman?

17 CHAIRMAN MCGEEHAN: Yes, sure.

18 MR. MERENDA: As the Committee now
19 knows, Bill Bailey is an outstanding investigator. He
20 is what has been referred to as cop's cop and
21 prosecutor's investigator. In addition to being an
22 outstanding investigator, he has a great personality and
23 is very personable and straightforward. He's the type
24 of investigator, police officer that a criminal suspect

1 will gladly confess to the crime.

2 Bill is now dealing with some very
3 serious health challenges, so I was glad that he was
4 able to get that national recognition from CLEAR, and he
5 received that award in Alaska, in September, with his
6 wife. So I would ask the Committee to keep Mr. Bailey
7 and his family in your thoughts and prayers, and I hope
8 we can get a copy of today's transcript to provide to
9 Bill as recognition of his service.

10 CHAIRMAN MCGEEHAN: Thank you,
11 Commissioner. It speaks volumes about your character,
12 that you recognize the employees that are here today for
13 their outstanding work and Inspector Bailey, and I know
14 the Committee joins you in wishing him good health and
15 we hope that the outcome is satisfactory to everybody.

16 Thank you for your testimony. I'll
17 direct the Executive Director to make a copy of your
18 testimony and your comments, Commissioner, available so
19 you can present them to Mr. Bailey and his family.

20 MR. MERENDA: Mr. Bailey's supervisor is
21 here also.

22 CHAIRMAN MCGEEHAN: Thank you,
23 Commissioner.

24 For the members of the public and

1 professionals that are here along with the Committee
2 members, there is a detailed flow chart and some
3 pictures and a time line of the Garzone case in the
4 packet. It's located in the rear of the information
5 packet that each of the members has been provided.

6 Commissioner, thank you again for your
7 testimony.

8 I begin questions, if I might, talking
9 about the Garzone case and I know that it's certainly an
10 anomaly and a horrific anomaly when we're talking about
11 the funeral directors and funeral homes profession.
12 Where did the investigation begin?

13 I have spoken to the Philadelphia
14 District Attorney and I'm aware of the difference of
15 opinion between BPOA and the Philadelphia District
16 Attorney's Office and I'm concerned, as you are, about
17 information sharing, whether complaints are given to the
18 District Attorney or to local law enforcement, anywhere
19 in the Commonwealth, find their way to BPOA so that you
20 can begin the process within your own department. Where
21 did the complaint about the Garzones begin?

22 MR. MERENDA: Well, the BPOA portion of
23 the Garzone investigation began with a report in the
24 media that we used to open the case against the

1 Garzones. As I pointed out in testimony, because of
2 CHRIA, whatever investigative materials the DA's office
3 had at the time could not be shared with us. So I don't
4 know what they had. I don't know when they received it.
5 I just know that they were not permitted, under that
6 law, to share anything that they had about the Garzone
7 case.

8 CHAIRMAN MCGEEHAN: What have you done
9 since that time, Commissioner, or has there anything
10 been done to open the line of communication with law
11 enforcement, both with localities and of course with the
12 State agency?

13 MR. MERENDA: Mr. Chairman, that's an
14 excellent question. What we have done and we have been
15 doing this since I arrived at BPOA, is to try to work
16 out an informal arrangement with the District Attorneys
17 throughout the Commonwealth and also with the Attorney
18 General's Office.

19 The thing that made that it a little
20 easier to do is the fact that the fellow that's in
21 charge with DEI, our investigative arm, is Cal Shields
22 who, as you know, was the fourth term District Attorney
23 at Schuylkill County, so he has a lot of personal
24 contacts and knows on a first name basis many of the

1 District Attorneys throughout the Commonwealth and he
2 has excellent contacts in law enforcement. So Cal has
3 his role at DEI, has served to initiate a more informal
4 approach with the DA's office and law enforcement across
5 the Commonwealth, but again, when we come to that,
6 clearly, that is an obstacle for us.

7 That problem prohibits the District
8 Attorney and the Attorney General from sharing any
9 information that they may have on a licensee with BPOA.
10 And Again, as I pointed out, we can share information
11 with them, they can't share information with us.

12 CHAIRMAN MCGEEHAN: And it goes directly
13 to the investigative ability of the BPOA. When it
14 directly affects funeral homes, funeral directors in
15 that, you know in the regulations, you must be a funeral
16 director in order to be an investigator for that
17 particular field.

18 MR. MERENDA: Correct.

19 CHAIRMAN MCGEEHAN: It has been bandied
20 about, among the Committee members and outside
21 interests, that somehow your ability to investigate both
22 the funeral home and the funeral director will be
23 enhanced by doing away with that requirement. I'm
24 wondering if you have any thoughts. I know you're

1 having a tough time finding adequate personnel.

2 MR. MERENDA: Another good question, Mr.
3 Chairman. Under the law we, at BPOA, can only hire a
4 funeral board inspector who has a funeral board license
5 as well as 10 years of experience in the funeral
6 profession. That, in turn, has basically kept us at an
7 unfair uncompetitive situation in hiring folks to work
8 at BPOA as funeral inspectors.

9 That impacted the Garzone case
10 indirectly so-to-speak because, at that point in time,
11 we were not at full strength with our Funeral Board
12 inspectors because of the difficulty in having to hire
13 funeral inspectors at that level. We just could not
14 compete salary-wise with a person who has a license, who
15 has been practicing for 10 years.

16 I would like to see the law changed so
17 that, at the minimum, I wouldn't mind requiring an
18 investigative inspector to have a Funeral Board license,
19 but that 10-year experience requirement, it certainly
20 puts us out of the market for attracting good,
21 hard-working folks that we can pay at the stated salary.

22 CHAIRMAN MCGEEHAN: Well, I know there
23 are many questions. I have one last question, but
24 before I do that, I would be remissed in not recognizing

1 the entrance of Representative Cherelle Parker, from
2 Philadelphia and Representative John Evans from Erie. I
3 want to welcome those members here and I'm thankful for
4 their attendance.

5 My last question before I turn it over
6 to my colleagues for questions, and it's a question
7 about the Walker versus Flitton case, how can we help in
8 determining the inherent conflict there with this ruling
9 as far as our current regulations? Are there
10 suggestions in that that we may implement, as a body, or
11 we will certainly welcome your comments on that.

12 MR. MERENDA: Sure. Mr. Chairman, the
13 Board, as I said, is struggling with that regulation.
14 However, we -- the Board considered a long list of
15 comments on proposal and now we are scheduled to finally
16 address that at the April meeting. I think we will be
17 able to have on file, ready to be delivered for final
18 soon after that. The larger issue about what laws and
19 provisions can be changed in the Funeral Directors
20 Practice Act. The Board has considered a list of
21 legislative priorities, and with some particular
22 provisions -- and we can certainly at some point in the
23 future share that with the staff and perhaps, at some
24 point down the line, legislation can actually be

1 introduced based on the recommendation of the Board.

2 CHAIRMAN MCGEEHAN: Thank you,
3 Commissioner.

4 Chairman Adolph with a question.

5 MEMBER ADOLPH: Thank you, Mr. Chairman.
6 Good morning, Commissioner.

7 MR. MERENDA: Good morning.

8 MEMBER ADOLPH: First of all, thanks for
9 your outstanding testimony this morning.

10 MR. MERENDA: My pleasure.

11 MEMBER ADOLPH: I want to follow-up on
12 Chairman McGeehan's question regarding Walker versus
13 Flitton, could you tell the Committee who Walker is and
14 who Flitton is.

15 MR. MERENDA: Walker is, I believe, is
16 the Plaintiff in the lawsuit, if I'm not mistaken, I
17 think he may be a funeral director with a license issued
18 by the Board. Flitton is a name of a young lady who
19 served on the Funeral Board, she was the representative
20 of the Attorney General's Office and she is the lead
21 defendant in the lawsuit. Each individual member of the
22 Funeral Board was named in the lawsuit.

23 MR. ADOLPH: And I'm assuming that Mr.
24 Walker is a Pennsylvania Funeral Director?

1 MR. MERENDA: I believe so, yes.

2 MR. ADOLPH: Because it was in the
3 United States District Court, I didn't really know
4 exactly whether that would be from some other state. It
5 clarifies now why we certainly have two different
6 opinions now.

7 MR. MERENDA: Yes, that's a good point,
8 Mr. Chairman. I could just clarify. Yes, there was not
9 diversity of citizenship which brings you into the
10 Federal Court. What brought the case into Federal Court
11 was a Federal question, and I believe it was
12 constitutional challenges as a part of the provisions in
13 the Funeral Director's Act were unconstitutional based
14 and some of the conduct of the Funeral Directors' Board,
15 based on the case -- on the allegations in the complaint
16 were unconstitutional. That's what put the case in
17 federal court.

18 MEMBER ADOLPH: What year was this?

19 MR. MERENDA: I don't know off the top
20 of my head -- it was 2005 and the specific federal
21 question that was before the Court was First Amendment
22 commercial speech.

23 MEMBER ADOLPH: The Ferguson versus the
24 Pennsylvania State Board of Funeral Directors, what year

1 was that?

2 MR. MERENDA: We can get that exact date
3 for you.

4 MEMBER ADOLPH: That was before Walker
5 versus Flitton?

6 MR. MERENDA: Yes. Absolutely, yes. I
7 believe that was in 2001 or so. We can get the exact
8 date for you.

9 MEMBER ADOLPH: On a final note, an
10 outstanding job done by your entire staff. I enjoy
11 hearing from you and you seem much more comfortable here
12 in your home setting. Your arms are going much faster.

13 MR. MERENDA: Well, that, and we also
14 have a great story to tell about how the Board handled
15 itself with the Garzone case, how our administrative
16 staff is handling funeral board licensing and how the
17 Funeral Board has tried to grapple with these big
18 important issues and tried to do it in a
19 straight-forward, competent, vigorous manner. I have a
20 good story to tell.

21 MEMBER ADOLPH: Thank you for your
22 testimony.

23 Thank you, Mr. Chairman.

24 CHAIRMAN MCGEEHAN: Representative

1 Stevenson.

2 MEMBER STEVENSON: Thank you, Mr.
3 Chairman and thank you Commissioner.

4 I would like to return to the issue of
5 CHRIA and the difficulties that that presents for you.
6 I understand why the Funeral Board would like to have
7 that changed, but I'm wondering what is the position of
8 the Attorney General and the District Attorney's
9 Association on that change, and the reason I ask that is
10 if it were changed, it would affect, not only the
11 Funeral Board, but it would affect many other groups and
12 organizations as well. Are they in favor of having that
13 change made or not?

14 MR. MERENDA: At this point and time,
15 Representative, I really don't know what their position
16 is. You're correct that we would seek an amendment
17 decree and a specific amendment would designate BPOA as
18 a law enforcement agency. Right now under the CHRIA
19 Act, the only entity which the DA and the Attorney
20 General can share investigative materials is with an
21 "Law Enforcement Agency." So the amendment would
22 specify that BPOA is considered a law enforcement
23 entity.

24 As far as the DA and the Attorney

1 General's position, I don't know at this point. We
2 haven't put a formal legislative initiative together so
3 I guess at that point and time they can probably weigh
4 in on their point of view.

5 MEMBER STEVENSON: If BPOA were so
6 designated then that would transfer into all the other
7 licensees across the Commonwealth as well.

8 MR. MERENDA: Well, yes, it would apply
9 to all 27 licensing boards, and that would permit our
10 investigators, who are out there investigating a
11 licensee, that would permit them to get information
12 about that licensee if that licensee is subject to
13 criminal action. For example, a physician who is out
14 there who, perhaps, is writing prescriptions for
15 controlled substances as part of a drug dealing ring,
16 right now if the DA is gathering a lot of good evidence
17 about that physician, they can't share that information
18 with BPOA so that BPOA can then take action against that
19 physician's license and put that physician out of the
20 practice of medicine as quickly and as soon as possible
21 because of CHRIA prohibitions, and that applies to
22 pharmacists also and a long list of other licensees that
23 BPOA has to deal with.

24 MEMBER STEVENSON: It seems to me that

1 it would be helpful to us, before legislation would be
2 introduced on that, if we knew the Attorney General's
3 position on that issue. Would it be possible for the
4 BPOA to reach out to the Attorney General's Office to
5 get an opinion from them on that change?

6 MR. MERENDA: Sure. I would certainly
7 be willing to do that. You know how I, kind of, carry
8 out my duties at BPOA open, accessible, responsive and
9 we can certainly reach out. Many of -- the Attorney
10 General, of course, has representatives who sit on many
11 of our boards, so we have a pretty good working
12 relationship, and we have a good line of communication
13 with the Attorney General's Office and we can certainly
14 do that.

15 In addition, I would -- now, just
16 speaking off the top of my head, I will go back to
17 Harrisburg on Monday and ask Cal Shields to reach out
18 with the District Attorney's Association and get them
19 into the mix and see if we can come up with something.

20 MEMBER STEVENSON: Thank you very much.

21 Mr. Chairman, I would suggest that the
22 Committee get a copy of those requests and follow-up on
23 them.

24 CHAIRMAN MCGEEHAN: Thank you very much.

1 MR. MERENDA: We could also share with
2 the Committee and share with the DA's Office and share
3 with the Attorney General's Office, a long list of cases
4 that CHRIA has caused problems for us, that kind of
5 impeded what we could do against the licensees licensed
6 to practice the profession in the Commonwealth. We can
7 share that list of cases with the Committee as well as
8 the Attorney General's Office as well as the District
9 Attorneys to dramatize the difficulties that we face
10 because of CHRIA.

11 MEMBER STEVENSON: Thank you.

12 CHAIRMAN MCGEEHAN: Thank you for your
13 testimony today.

14 MR. MERENDA: Thank you, Mr. Chairman.

15 CHAIRMAN MCGEEHAN: Thank very much
16 Representative Stevenson for that excellent suggestion.

17 Again, when that answer is received, I
18 hope you share it with, not only Representative
19 Stevenson, but the members of the Committee, and rest
20 assured, Commissioner, that we want to work with you to
21 make your Department much more efficient and be able to
22 respond much more effectively to any public concerns
23 that you receive.

24 I want to thank you again, and if there

1 are no other questions from the Committee, thank you
2 again, Commissioner, for your testimony and have a good
3 Saint Patrick's Day.

4 MR. MERENDA: I want to put on the
5 record, Representative, the Ferguson case was in 2002.
6 Thank you.

7 CHAIRMAN MCGEEHAN: We are going to,
8 because of the time constraints here and the number of
9 activities going on in the Convention Center today, we
10 are going to ask that the next three testifiers assume
11 the panel collectively, they represent the Pennsylvania
12 Funeral Directors' Association: Don Deaner is the
13 President of the Pennsylvania Funeral Directors
14 Association; he'll be joined with Kathleen Ryan, she is
15 the Chief Operating Officer and General Counsel to that
16 association, and thirdly, Ms. Janice Mannal, she is the
17 owner of Robert L. Mannal Funeral Home.

18 Mr. Deaner, Ms. Mannal you can begin
19 your testimony in whatever order you like and you can
20 make yourself available for questions afterwards.

21 MR. DEANER: Good morning, Chairman
22 McGeehan, Chairman Adolph, ladies and gentlemen of the
23 Committee. My name is Donald Deaner and I'm a licensed
24 funeral director and current President of the

1 Pennsylvania Funeral Directors Association.

2 With me today is our Association's
3 General Counsel, Kathleen Ryan. Ms. Ryan has been with
4 the Association since 2001, and prior to that time spent
5 nine years as a Prosecuting Attorney with the Bureau of
6 Professional and Occupational Affairs, prosecuting for
7 the State Board of Funeral Directors and the State Board
8 of Medicine. Ms. Ryan is one of the few attorneys in
9 the Commonwealth that has developed a broad expertise in
10 funeral law.

11 Also accompanying me is Ms. Janice
12 Mannal. Ms. Mannal is a licensed funeral director and
13 owner of the Robert L. Mannal Funeral Home on Frankford
14 Avenue in Philadelphia. Ms. Mannal currently serves on
15 the Board of Directors and in June will become a member
16 of our Executive Board. Ms. Mannal is a member of
17 Frankford Northeast Rotary Club, a long time volunteer
18 of community organizations and past-president of
19 Frankfort Day Nursery. Prior to her serving on the
20 Board of PFDA, Ms. Mannal served ten years on the State
21 Board of Funeral Directors, including two years as
22 Chairwoman.

23 As we proceed through our presentation,
24 if the Chairman or any members of the Committee have any

1 questions, feel free to address them to any one of us.

2 I am a sixth generation funeral director
3 and my wife and I own three funeral homes in Somerset
4 County, Pennsylvania. I am very active in my community,
5 having served on many boards, organizations and
6 committees for years. I am the Emergency Management
7 Coordinator for the Stoystown Borough and Quemahoning
8 Township and Assistant Fire Chief of the volunteer fire
9 department.

10 My fire department was one of the first
11 responders to the Flight 93 air disaster on September
12 11, 2001, and I spent many days and weeks as a volunteer
13 in the recovery effort. My personal involvement in my
14 community was the inspiration for the motto for my year
15 as President of PFDA, which is "Serving our Profession
16 as We Serve Our Community."

17 PFDA, as an organization, is also
18 actively involved in community affairs as evidenced by:
19 A) In 1994, Flight 427 crashed in Allegheny County.
20 Roughly 160 funeral directors volunteered over 25,000
21 hours of time to help retrieve 5,400 components of human
22 remains. This resulted in identification of 125 of the
23 132 persons on board without the assistance of DNA.

24 B) In 2001, over 100 licensed funeral

1 directors volunteered for several weeks, representing
2 approximately 8,000 hours, in the recovery effort for
3 Flight 93 in Somerset County. Identification of all 40
4 crew and passengers was made as well as for the four
5 terrorists.

6 C) Also, subsequent to the Flight 93 air
7 crash, there was a fundraising effort, led by Senator
8 Jane Orie, from Allegheny County called "Hearts of
9 Steel." Senator Orie wanted to honor the heroes of
10 Flight 93 by selling commemorative steel bracelets as a
11 fundraising effort to build a monument to the lost lives
12 from September 11. Over \$1 million was raised and PFDA
13 raised over \$100,000.

14 D) PFDA has a close working relationship
15 with the Highmark Caring Place, a non-profit community
16 based bereavement service for children and their
17 families who have lost a loved one. PFDA has raised
18 over \$125,000 for this very worthy program that provides
19 free services to children and their families.

20 The Pennsylvania Funeral Directors
21 Association is the largest state association of
22 professional funeral directors in the country. It
23 represents 1,079 of the approximated 1600 licensed
24 funeral homes in this Commonwealth. Our average member

1 is an independent, one-to-two person operation that does
2 approximately 113 funerals per year.

3 The Association was founded in 1881 and
4 continues today as a non-profit 501(c)(6) trade
5 organization with a mission to protect and promote the
6 independent, family-owned funeral home and the
7 traditional funeral. Toward that mission of advancement
8 of the funeral profession, the Association has a
9 Political Action Fund which accumulates monies that are
10 spent advocating for and attempting to pass legislation
11 and regulations favorable to the public and profession.
12 As such, it employs two registered lobbyist who work
13 with legislators and committee members to achieve
14 favorable results.

15 In 2006 to 2008, licensed funeral
16 directors were required to obtain six continuing
17 education credits per license renewal period. PFDA has
18 become the primary provider of Continuing Education for
19 licensees offering six credits to its members free of
20 charge as part of their dues.

21 In addition, PFDA has, for over
22 twenty-five years, acted as an administrator for a
23 preneed funeral trust operated for the benefit of its
24 members through a for-profit Cooperative called

1 Unichoice Cooperative, Inc. Unichoice is a successor to
2 the Pennsylvania Funeral Trust. This company
3 administers the day-to-day operations of a trust,
4 currently holding over 12,000 consumer contracts,
5 representing in excess of \$70 million.

6 This trust is comprised of monies given
7 by consumers to approximately 350 funeral home
8 participants to fund their funerals on a preneed basis.

9 Unichoice maintains the paperwork,
10 provides reporting to the State Board, and processes the
11 set up of the accounts and the death claims, as well as
12 providing the tax work for these trusts. For this, the
13 company is paid an administrative fee by the trustee who
14 holds the money, PNC Bank.

15 Both companies are overseen by two
16 Boards of Directors and audited annually by an outside
17 accounting firm. The concept of preneed is an issue
18 that provides a recognized benefit to the consuming
19 public, driven primarily by the spend-down process in
20 order to qualify for State/Federal aid in nursing homes.
21 In order for a consumer to qualify for such benefit,
22 they must spend-down their assets to \$2,400. In
23 addition, the overwhelming majority of nursing homes
24 mandate that individuals entering their facilities have

1 funeral arrangements, preferably prepaid. One way to
2 meet the requirements for State subsidizations is to
3 make a prearranged funeral.

4 In Pennsylvania, funeral directors are
5 required to place 100 percent of the monies given to
6 them in a banking institution, in Pennsylvania, in trust
7 or escrow. We believe this trusting requirement is
8 critical in ensuring consumers' monies are intact and
9 available for the purpose for which it was trusted.

10 In 2005, PFDA commissioned a
11 professional polling agency to survey the public on
12 certain funeral related matters. Almost two-thirds of
13 those polled indicated that prearranging is an important
14 benefit. Over three quarters of the respondents
15 surveyed indicated a preference for prearranging with a
16 licensed funeral director. In addition, 90 percent of
17 those surveyed indicated a preference for using a
18 funeral director who is required to trust 100 percent of
19 the monies given to them.

20 Not all states have all 100 percent
21 trusting requirement and, unfortunately, preneed monies
22 have been the source of many criminal acts and scams.
23 Nationally, criminal acts and abuse have resulted in \$70
24 million missing in Michigan and Tennessee; Texas based

1 insurance companies and National Prearranged Services
2 from Missouri who sold more than 200,000 prepaid burial
3 plans nationwide and have liabilities of more than \$1
4 billion and a negative net worth of \$949 million.

5 Pennsylvania has had its share of
6 problems in the past. First, in the early 1990s a
7 company called Mechem Financial scammed over 120 funeral
8 homes into investing their preneed monies, offering a 10
9 percent return on monies, when the traditional markets
10 were paying 6 percent. Mechem's principals were
11 criminally convicted and the funeral homes' losses
12 neared \$5 million.

13 Second, in the mid-1990s a company
14 called Commonwealth Partnership Trust defrauded \$7.3
15 million from Pennsylvania funeral homes resulting in a
16 \$5.8 million loss. Principals in this company were also
17 criminally convicted.

18 Third, Principals from Celestial Burial
19 Company, from Allegheny and Westmoreland Counties,
20 pleaded to criminal fraud in 2007 for collecting just
21 shy of \$2.5 million for prepaid burial merchandise and
22 only trusting \$54,000. This company had formed a
23 partnership with the national Fraternal Order of Police
24 and the American Legion. PFDA was instrumental in

1 bringing all three of these issues to the attention of
2 proper authorities, including working with the Federal
3 Bureau of Investigations, the Attorney General, the
4 State Board of Funeral Directors and the Pennsylvania
5 Securities Commission.

6 In summary, PFDA supports the 100
7 percent trusting requirement and strongly advocates for
8 the enforcement, regulation and oversight of preneed
9 funds because a scandal, whether national or
10 intra-state, puts a black mark on the professional and
11 is harmful to consumers. The Association has
12 consistently advocated for strong, timely enforcement of
13 the law with penalties commensurate to the wrongdoing.

14 As far as pending regulations, Beginning
15 in late 2005, to the present, the State Board of Funeral
16 Directors has been working on and attempting to pass two
17 regulations; one dealing primarily with portability of
18 prearrangements and the other concerning what unlicensed
19 agents and employees of funeral homes are permitted to
20 do.

21 The current regulation, 16A-4815,
22 contains provisions which: 1) Expressly prohibits a
23 funeral director or funeral entity from avoiding the
24 requirements of this subchapter, 100 percent trusting by

1 creating or controlling or otherwise utilizing a person
2 or entity that is not a funeral entity; 2) it changes
3 the reporting requirements from a per arrangement/death
4 report to an annual report that is only to be kept for
5 three years; 3) it mandates that funeral homes ceasing
6 to do business notify each consumer of their right to
7 choose a funeral home of their preference and to
8 transfer all funds from the previous funeral home to the
9 new funeral home; 4) it provides for portability of
10 prearranged contracts by consumers and mandates that the
11 funeral director move all funds for that contract to the
12 funeral director the consumer chooses.

13 It is important for the Committee to
14 know that portability of preneed contracts is what
15 consumers want. Again, referring to the survey
16 conducted in 2005, by the Polk Group, 84 percent of
17 consumers surveyed considered it important to be able to
18 move prearrangements from one funeral home to another.
19 The National Funeral Directors Association has been a
20 strong advocate of portability for a number of years as
21 has AARP. Other states such as Ohio and Missouri and
22 other surrounding states have recently amended their
23 laws to allow for portability in an effort to provide a
24 pro-consumer service. These laws were changed due to

1 missing preneed funds.

2 16A-4816 deals primarily with activities
3 of what unlicensed agents and employees of funeral homes
4 can do. This regulation was drafted subsequent to the
5 Federal Court decision of Walker v Flitton, and revised
6 as recently as last Friday. Its new key provisions
7 provide that an unlicensed employee may: 1) Distribute
8 general price lists of the employing funeral entity
9 only; 2) provide information and answer questions
10 concerning funeral services and merchandise available
11 from the funeral entity and the cost thereof; 3) provide
12 information and answer questions concerning the
13 financial arrangements for rendering funeral services;
14 4) make tentative arrangements; 5) prepare documents for
15 licensed funeral directors to present to customers.

16 Such unlicensed employees may not: 1)
17 Act on behalf of more than one funeral entity at a given
18 time; 2) prepare with a customer a worksheet or proposal
19 for funeral services; 3) engage in discussions or other
20 communications with customers regarding the actual
21 selection of funeral services and merchandise incidental
22 to such services; 4) make financial arrangements for the
23 rendering of funeral services and merchandise incidental
24 to such services; 5) offer to or enter into a preneed

1 funeral contract with any consumer on behalf of the
2 funeral director or funeral entity; 6) engage in any
3 activity that would cause a customer to believe that the
4 unlicensed employee is skilled in the knowledge, science
5 or practice of funeral directing; 7) engage in any
6 activity that constitutes the practice of funeral
7 directing under the Act.

8 PFDA believes the revisions of both
9 16-4815 and 16-4816 contain some serious flaws. We
10 believe that the current version of 16-4816 is in direct
11 violation of current Pennsylvania Law, regarding the use
12 of unlicensed individuals, and that the regulation, in
13 its current form, does not meet the requirements of the
14 Walker Court. PFDA has submitted lengthy comments to
15 the State Board, requesting that it not act on these
16 regulations until such time as the stakeholders have an
17 opportunity to comment and raise their concerns.

18 As noted earlier, PFDA has historically
19 lobbied for strong, rapid enforcement of the law with
20 fines and sanctions concurrent to the offense. With
21 respect to 16-4817, the Fees Increase Regulation, PFDA
22 does not object to a reasonable increase so long as
23 inspections, investigations and adjudications are done
24 properly and timely. However, in today's economy it is

1 important to keep such increases to a minimum so as not
2 to drive licensees out of the profession.

3 We appreciate the opportunity to make
4 this presentation to this Committee today and offer our
5 assistance in any way to help achieve appropriate
6 regulations that are in keeping with the current law and
7 which serve the general public in the best way. Thank
8 you.

9 CHAIRMAN MCGEEHAN: Ms. Ryan, Ms.
10 Mannal, do you have anything to add to Mr. Deaner's
11 testimony?

12 MS. MANNAL: No.

13 CHAIRMAN MCGEEHAN: Well, I'll begin, if
14 I may, and thank you Mr. Deaner, Ms. Ryan and Ms. Mannal
15 for agreeing to appear before this Committee.

16 I want to first tell you, Mr. Deaner,
17 how impressed I was with, not just your personal
18 background and your commitment to the residents in
19 Somerset County, but also your efforts on behalf of
20 those grieving families with the plane crash there that
21 happened in Allegheny County.

22 I certainly wasn't aware of the number
23 of funeral directors involved, but the enormous amount
24 of man hours is something you just don't think of and I

1 think this Committee is impressed with the service you
2 provided to those families in providing some peace of
3 mind to the families, if there were any to be found, out
4 of that tragedy. So thank you for your advocacy, on
5 behalf of the Commonwealth.

6 I have some questions. And you tell me
7 because you're the professionals. Where is the preneed
8 industry, if I may call it that, going? Obviously, it's
9 something that more and more people are taking advantage
10 of. What are you finding in your association?

11 MR. DEANER: Well, I think in my area
12 preneed is, of course, mostly -- and I think most of the
13 State -- to some extent is due mostly to spend-up when
14 families have to go into nursing homes -- like you
15 said -- have to get their money in order. And one of
16 the things they're allowed to do is set up a burial
17 account or trust to cover those expenses at the time of
18 death. That's when, probably, 75 percent of our
19 arrangements happen because of that.

20 There are individuals who, certainly,
21 want to have their choices known and made and done, so
22 we do have people all the time who come in and make
23 their pre-arrangements, some prepay and some do not,
24 whatever their liking would be. So we are usually there

1 for that.

2 Some areas of the state it is much more
3 competitive than others. Probably in the cities more
4 than in the countries where there is competition, there
5 may be advertising and more preneed done to try to
6 increase market share and things like that.

7 MS. MANNAL: I would agree. As you
8 know, Mr. Chairman, I am in a community that is aging.
9 The people are living longer, more and more people are
10 driven into long-term nursing care and this spend-down
11 is what generates, I would say, 90 percent of the
12 preneed arrangements I make.

13 CHAIRMAN MCGEEHAN: My concern and,
14 obviously, the concern of consumers out there is the
15 safety of those funds and what happens to them once
16 they're in that process and what safeguards are out
17 there? I know you have touched on a few, Mr. Deaner, but
18 as a layman and not someone directly related to the
19 industry, explain to me how consumers, if we can allay
20 their fears about that. What can we do, as a community,
21 to maybe tighten that up?

22 My concern is that unlicensed
23 individuals will be selling preneed and instead of
24 someone who has a direct stake in the community, as you

1 do, owning three funeral homes in Somerset County,
2 obviously, you're not going anywhere. You have a long
3 history in your community, you are a respected business
4 man in that community. Someone who is unlicensed,
5 selling preneed raises some concern with me, and I think
6 consumers in general. So explain to me some of the
7 safeguards that are out there and then something maybe
8 the Committee can consider when looking at these
9 regulations.

10 MR. DEANER: I think unlicensed sales
11 are important, mainly because again culpability. Just
12 an experience that I had recently was at a cemetery and
13 I had a lady whose husband died and I did the cremation
14 for her and I took the cremation urn to the mausoleum to
15 be placed in the mausoleum and she had bought her niches
16 -- that's the place where you put the cremation urn in a
17 mausoleum -- and she thought she bought one with a glass
18 covering where you could see the urn. When we got to
19 the mausoleum she had bought, it was one that was
20 closed in and covered with marble and you couldn't see
21 the urn and she said that that's not what she was told
22 when she purchased the niche.

23 Of course, going back, the person who
24 sold her the niche was just an employee of the cemetery,

1 who was no longer there, no longer worked there and
2 hadn't worked there for several years. The person was
3 probably on a commission, how many they sold, he may
4 have told -- and I don't know exactly, so I'm just
5 giving possibilities -- she made have been told or
6 pointed to the nicer niche and told her the lowest
7 price, put down a number, she didn't know what number it
8 was, what number the niche was, it didn't have a number
9 on it, and she was told apparently she got exactly what
10 she wanted.

11 That's my concern with funeral directing
12 is you have somebody out there selling, who is on
13 commission, and their job, they want to make a sale and
14 all of a sudden they're gone and who is responsible for
15 that sale later? Maybe the funeral director is who they
16 sold for, but maybe not. I mean, he can say I didn't
17 tell them to do that. That's not what is in the
18 writing. That's my concern.

19 We have a license to practice, and you
20 can take our license if we do something wrong, but you
21 can't take someone's who doesn't have a license. What's
22 your recourse to them?

23 CHAIRMAN MCGEEHAN: Does the Association
24 have a position on 100 percent escrow?

1 MR. DEANER: We feel that's the correct
2 way, always have. Because the money is the consumers,
3 it isn't ours. So keeping that money -- you can read
4 all the things I talked about that's happening all over
5 the country; loss of preneed funds -- before Bernie
6 Madoff did his Ponzi scheme, the national three-ringed
7 circus was already performing one.

8 So we are caught in a bind here where we
9 have to -- I mean, the people I serve, I know and
10 they're looking to me to make sure everything is taken
11 care of and I would certainly want my funds to be there
12 when it's over.

13 CHAIRMAN MCGEEHAN: Thank you. I want
14 to not forget that Ms. Mannal, obviously is a funeral
15 director, as well, in a local institution in
16 Philadelphia, it's my neighbor.

17 MS. MANNAL: Yes.

18 CHAIRMAN MCGEEHAN: I know the
19 reputation and the good words that I said about Mr.
20 Deaner's funeral home and his reputation with the
21 Committee, obviously applies to you as well.

22 MS. MANNAL: Thank you.

23 I have just had a similar experience as
24 Mr. Deaner with preneed sales, and it happens on a

1 regular basis. There is a tremendous turnover of
2 personnel. I'm worrying about commission schedules. I
3 worry about the cost of a preneed sale that's is
4 generated that will generate the commission schedules,
5 I worry about that. I'm not going anywhere.

6 CHAIRMAN MCGEEHAN: Thank you.
7 Chairman Adolph.

8 MEMBER ADOLPH: Thank you, Mr. Chairman.
9 Mr. Deaner, ladies, thank you for your testimony.

10 Do all funeral directors receive preneed
11 access?

12 MS. MANNAL: I don't understand your
13 question.

14 MEMBER ADOLPH: If there is a small
15 hometown funeral director and someone wants to make
16 preneed arrangements, do all of them accept the preneed
17 adopts?

18 MS. MANNAL: There are a variety of ways
19 that the consumer can prearrange with the funeral
20 director. The Funeral Director Law and prior statute
21 states any monies received by a funeral director be
22 deposited in a banking institution, in Pennsylvania, in
23 an escrow or trust. However, there are other ways to
24 fund prearrangements. One of those might be with a life

1 insurance policy. So if, for example, the funeral
2 director also happens to be a life insurance agent, they
3 may write the policy to fund prearrangements.

4 Alternatively, they may do neither one
5 of those things and take the consumer down to the local
6 bank and open up, what is known as a burial reserve
7 account or an irrevocable burial account. Frequently,
8 those are savings accounts or are funded by a
9 certificate of deposit or finally the consumer may do
10 that on their own, where the funeral director says, I'll
11 be happy to make the funeral fund arrangement. You go
12 down to the bank and fund it in any way you want.

13 MEMBER ADOLPH: I guess that's where I'm
14 heading with this question. I'm wondering how many
15 funeral directors actually administer the funds.

16 MS. MANNAL: We don't have that answer.
17 More than half.

18 MEMBER ADOLPH: More than half, okay.
19 But there are funeral directors who go through the
20 arrangements set forth and they direct the consumer to a
21 bank.

22 MR. DEANER: Right. Many of my
23 prearrangements are at local banks where the families
24 have already gone to the bank and talked to them about

1 making an irrevocable plan and they come to me
2 afterwards or in the middle of it or the bank sends them
3 to me, if I'm their funeral director. So a lot of
4 money, I would assume, are funeral homes more like that,
5 where they know the people at the bank personally so
6 they go there personally.

7 MEMBER ADOLPH: Ms. Mannel, do you want
8 to add anything to that?

9 MS. MANNAL: No. I have actually had
10 cases where the family will just take x-number of
11 dollars, go to a bank, open an irrevocable burial
12 reserve account and I don't even know that my name is on
13 it. I have had no contact with them at all.

14 MEMBER ADOLPH: We move from there to
15 the portability issue, and the surviving spouse is
16 living in the Frankfort neighborhood, in Philadelphia,
17 and their children have all moved out of the City and
18 they're now living in Upper Bucks County somewhere and
19 the family then says that they would like to have the
20 funeral in Bucks county, 50 miles away from where their
21 mom lived and had made arrangements with you. How does
22 that work?

23 MS. MANNAL: I'm a huge advocate of
24 portability. For one thing, you've got the geography

1 situation that you just mentioned, let alone a funeral
2 home that might be six blocks away from me, those funds,
3 I feel, should go to the funeral home that the family
4 wants to use at the time for whatever reason.

5 There are some, I'm sure, that don't
6 agree with that, but as I said to someone once, do you
7 really want a family in your funeral home that doesn't
8 want to be there? And that's not the funeral home's
9 money, that's not Manna Funeral Home's money. That's
10 money that has been earmarked for the burial of the
11 deceased.

12 MEMBER ADOLPH: Thank you very much.
13 Thank you, Mr. Chairman.

14 CHAIRMAN MCGEEHAN: Representative
15 Parker.

16 MEMBER PARKER: Thank you, Mr. Chair and
17 good morning to each of you.

18 Mr. Deane, I guess my question would be
19 directed to you, as it relates to preneed. I want to
20 talk a little bit about the marketing.

21 I'm sure you know that here, in the
22 Commonwealth, we have seen in the Administration a very
23 strong move to move away from strong promotion of
24 institutional care more to home base and community care

1 for our seniors. I believe you mentioned about 90
2 percent of the premiums are usually arranged once
3 consumers get down to the spend-down, as it relates to
4 their assets.

5 If we're really focusing now on
6 community and home-based care, how will the preneed
7 product be marketed to people when they are now going to
8 be living more in their homes -- or at least the
9 Commonwealth hopes, in an effort to save money -- versus
10 being in those traditional institutions?

11 I'm particularly thinking about our
12 Triple-As, like for example here, the Philadelphia
13 Corporation For The Aging, the senior is interested in
14 staying home versus going to a nursing home. They
15 usually have to go through some sort of qualifications
16 process and then a social worker will let you know all
17 the products that you're eligible for.

18 Has your Association had any
19 conversations with the long-term living and working
20 establishment, with the agent and/or DPW about possibly,
21 in some ways, trying to work with the area agencies?

22 MR. DEANER: I don't know that we have
23 had any contact with them. In my personal area, a lot
24 of those representatives will suggest to those people

1 possibly doing this anyway in case they would still have
2 to go to a nursing home at some point. So people, it
3 seems like that is maybe more of a local because each
4 county has their area agency on aging or cities, I
5 assume, but in my area a lot of those will say, you can
6 keep them at home, you're going to spend money to keep
7 them at home, but you might want to put some money aside
8 in case you wouldn't be able to keep them, then they
9 would have to go to a nursing home and they would have
10 money that they can set aside.

11 I think that is brought up a lot by the
12 case workers. I don't know, like I said, if there has
13 been any work by PFDA that made it statewide or anything
14 like that.

15 MEMBER PARKER: I would be really
16 interested in just seeing, in a much more formal way, if
17 we could maybe find a way to have the Association write
18 to a department to see if that is something that could
19 be included, I guess, because I'm a strong supporter of
20 the whole concept of preneed, having been in a position
21 to care for my grandfather and that was not something
22 that was discussed with me, but I already knew that was
23 something that I needed to employ, but I think about so
24 many others who may interact with a case worker who may

1 forget or may not be interested in knowing that preneed
2 is available, particularly for those funeral homes that
3 are licensed. So if you could find a way to maybe send
4 some correspondence and cc the Chair of the Committee to
5 see what kind of response we get.

6 MR. DEANER: I will certainly take that
7 back.

8 CHAIRMAN MCGEEHAN: Thank you,
9 Representative Parker, for your excellent question.

10 Representative Solobay.

11 MEMBER SOLOBAY: Thank you, Mr. Chairman
12 and thank you Panel for the information. Some of my
13 question-line has already been answered through some of
14 the other questions and your answers, but as
15 representatives we always seem to be on the bottom of
16 the line whenever people have concerns and complaints
17 when you can't get an answer anywhere else.

18 One of the issues -- and recently it's
19 kind of ironic because this all comes together -- there
20 has been issues of people having problems with preneed
21 and even those folks who are in that business as
22 unlicensed individuals, getting into situations with
23 their employers that if they don't meet their quotas
24 they're being released and kind of some of the issues

1 you brought up already.

2 I guess my question is, is it a major
3 portion of your day-to-day with either yourselves or
4 with individual licensed individuals at your facilities
5 to do preneed solicitation or is that something that
6 just comes by way of families coming to you asking for
7 that type of care?

8 MR. DEANER: That's another thing that
9 pretty much, depending on the area you're in, and
10 competition in my area, I do not do a lot of
11 advertising, I do programs word of mouth, most of mine
12 are done that way, so it's people that are coming to me
13 on their own talking about it. I do talk about it at
14 different events, you know, different community events
15 when I do programs and things, maybe making people aware
16 of it. It's not a real pushy thing in my area. In some
17 areas I'm sure it's more.

18 MEMBER SOLOBAY: I thought that would be
19 the case. And again, just going back to the issue that
20 I have had with constituents that have called with
21 problems or with issues. It always seems to be it ends
22 up coming from these agencies that are out doing the
23 work.

24 Mr. Chairman, I have had several

1 situations where folks have called. It ties into the
2 portability issue where the preneed service facilities
3 have gone through the licensed funeral director, was
4 fighting them on the opportunity to make the movement as
5 well as -- not so much as the mausoleum issue -- but a
6 similar thing, where they tried to set up opportunities
7 to get certain services and then promise things then it
8 never transpires. The same thing when a person's gone,
9 we never did try to follow it up.

10 And most recently, a situation where a
11 gentleman called complaining he was let go from his
12 position, a non-licensed individual, but was given a
13 list of 500 names per week that he had to call on -- and
14 you know how salespeople get when their livelihoods
15 depends on the amount of people they write up.

16 You know, the difference between, I
17 think, the licensed individuals, that we have oversight
18 on at the Department of State, as opposed to the
19 individuals who basically are, and forgive me if I
20 insult anyone, but basically a used car salesman in
21 trying to get things done, it's kind of tough.

22 Plus, when it comes to these things, the
23 sensitivity, especially in that time of need, right then
24 they have to take the arrangements or something they're

1 planning for. It kind of goes to the scenario, if
2 you're having a serious health issue, do you want to go
3 in and talk to the physician's secretary or do you want
4 to go in and talk to the physician?

5 MS. MANNAL: May I relate a story? A
6 few a years ago, a woman came to me, came in to make
7 prearrangements for herself. She was a single parent,
8 she had two teenagers and she had a terminal illness and
9 she wanted to make payments on this funeral and I said
10 to her -- I closed the file, put down my pen and I said,
11 I have a real problem: If your girlfriends call you and
12 want to go out to dinner or if your storm door needs to
13 be replaced, are you going to say, I can't do that, I
14 have to pay for my funeral?

15 CHAIRMAN MCGEEHAN: Thank you. Any
16 questions?

17 MS. MANNAL: Mr. Chairman, if I may add
18 one other point, in reference to Representative
19 Solobay's question. One of the thing that happened at
20 our Association is that we, from time to time, on a
21 fairly regular basis, get calls from consumers who have
22 entered into some sort of a prearrangement for
23 something, whether it be merchandise or services or
24 whatever. They later find out that it really isn't what

1 they wanted and they really wanted to deal with their
2 funeral director, because they thought they made funeral
3 arrangements, but they didn't make funeral arrangements
4 and now they try to undo it. And then they find out
5 that they can't do it because the decision they made in
6 the past.

7 And one of two things happens, they
8 either don't have the wherewithal, because of their age,
9 to fight to get the money back or worse if they try to
10 get the money back, it's going to cost them more to pay
11 lawyers to try to get the money back. So they end up
12 losing the money, they end up having to go a funeral
13 director after all and those are just unfortunate
14 situations that there doesn't seem to be a remedy for.

15 CHAIRMAN MCGEEHAN: Well, I'm going to
16 thank you three for your testimony, obviously, the
17 funeral industry is changing and changing rapidly and
18 the number of services that you're offering is
19 increasing expediently. So it's something certainly
20 that the Committee is -- this won't be the last time the
21 Committee visits the rules and regulations of funeral
22 directors and the industry itself.

23 So I want to thank you for taking the
24 time, particularly those who have come far and long to

1 be here to testify. Thank you very much.

2 MS. MANNAL: Thank you.

3 CHAIRMAN MCGEEHAN: Our next Panel, I'm
4 going to ask them, as the previous Panel, to join
5 together in their testimony. I'm going to ask the Panel
6 from Morgan Plant and Associates. That's representing
7 the Pennsylvania Crematory, Cemeteries, Funeral
8 Directors and Mortuary Association to join us, beginning
9 with Morgan Plant, who is a lobbyist for that
10 Association and Jim Kutz, he's the attorney and he is
11 with the firm of Post & Schell and Ernie Heffner, the
12 President of that same Association. If all three of
13 you --

14 MS. PLANT: I actually wasn't planning
15 to testify, Jim and Ernie are going to do it.

16 CHAIRMAN MCGEEHAN: Okay. That's fine.
17 Then I'll ask Jim Kutz -- I hope I'm
18 pronouncing that right -- and Ernie Heffner to join us
19 and present your testimony.

20 Good morning. You may be seated and
21 begin when you're comfortable.

22 MR. HEFFNER: Thank you.

23 Mr. Chairman, members of the Committee,
24 my name is Ernie Heffner and I'm going to try to offer

1 some perspective of the regulations, background and
2 statutes and where we are today.

3 I'm going to address what funeral
4 directors do, why they're a regulated community, the
5 differences in issues and what areas of legislative
6 activity might be proved to consider.

7 My father was a funeral director from
8 1951 until his passing, in 2007. Like many of
9 Pennsylvania's post World War II Veterans, he took
10 advantage of the GI Bill and he pursued a career in
11 death care service. Like most funeral directors of that
12 time, he served families in a Pennsylvania small town
13 community. I recall his description of this career in
14 1950, '51 and '52. He would tell me the only
15 difference between funerals provided from one family to
16 the next was what casket was being used.

17 Casket purchase decisions were made by
18 almost 100 percent of the time by consumers on a time of
19 need basis, under inherent time pressures and emotional
20 stress. Effectively, all families had a visitation or
21 viewing the evening before the service. Cremation was
22 not permitted by the Catholic Church and open casket
23 visitation was not permitted in a Catholic Church. That
24 had been in place since 1886 with Pope Leo XIII, who

1 forbid Catholics to consider cremation or to be a member
2 of the cremation society. That lasted until 1963.

3 Cremation as a percentage of selection
4 by consumers was in low single digits 1 to 2 percent.
5 Pennsylvania, in the early '50s, usually opted for by
6 eccentric wealthy clients or for indigent circumstances.
7 Anatomical gifts were effectively non-existent, it
8 didn't happen.

9 Protestant families chose to have
10 services in the afternoon, lest they be perceived to be
11 a Catholic family, who always had their services in the
12 morning because that's when funeral Masses were held.

13 Every deceased person was embalmed
14 excepting religious reasons. There was no oversight by
15 the Federal Government either by OSHA or the Federal
16 Trade Commission. Funeral homes were all privately
17 owned enterprises and most everyone who went to mortuary
18 school had "family in the business." Few, if any,
19 mortuary school students were women. Customer base was
20 a reflection of the limited community diversity and
21 minimal divorce rate in 1950. It was under this
22 backdrop that the current funeral director statute was
23 adopted in 1952.

24 Fast Forward to today and unlike the

1 increase in licensees after World War II, today the
2 number of licensees are actually declining. Today,
3 mortuary schools are struggling with enrollment, though
4 that's not the situation with their online education.
5 There are a lot of people in mid-life crisis changing
6 careers and doing online education.

7 The first issue of all funerals being
8 the same except for what casket, today cookie cutter
9 funerals have become a thing of the past. Few services
10 rendered in any given week look the same.
11 Personalization and a plethora of options are being
12 selected by contemporary consumers. In fact, we have
13 witnessed an increase and outright rejection of
14 religious services by some consumers. Due to the
15 current statutes, prohibition against food being served
16 in a funeral home, we have also found ourselves having
17 to deny consumer requests to this hospitality which is
18 permitted in 45 other states.

19 Rather than 100 percent, only about 24
20 percent of today's consumers are making a casket
21 purchase decision at the time of need. The reason for
22 that is pre-planning anatomical gifts, cremation or
23 financial constraints, it's changed how we do business.

24 Even visitations the day before the

1 service is no longer the norm. Instead the consumers
2 tell us, for convenience, they are opting for visitation
3 immediately prior to the service. We also witnessed an
4 significant increase in evening services, which we
5 believe this is also a consumer convenience driven
6 preference.

7 Since the early 1960's the Catholic
8 Church has permitted cremation as an option and, most
9 recently, some churches have been permitting the
10 cremated remains to be brought to church for a Funeral
11 Mass, that's a practice that was also previously denied.
12 Many Catholic Churches also now permit open casket
13 visitation in church.

14 In fact, in the past decade, the
15 Catholic Church has actually gotten into the funeral
16 business by the ownership and operation of funeral
17 homes, though not in Pennsylvania, they have in
18 California and Colorado. And they have gotten into some
19 degree of the funeral business, in unlicensed sales, as
20 some would refer to it, in selling a program called
21 Catholic Funeral Plan, it's designed to ensure the
22 parishioners are provided a Catholic service.

23 Cremation has become a mainstay with
24 Pennsylvania consumers. The following statistics were

1 presented by the Cremation Association of North America.
2 I won't read through them, but suffice it to say, if
3 we're cremating 100 people a day, which is about what we
4 do in Pennsylvania everyday, seven days a week, I would
5 say it's regular business.

6 Anatomical gifts have become
7 sufficiently popular. Now keep in mind, they didn't
8 exist in 1950, but they have become sufficiently popular
9 today that a donation is subject to selective acceptance
10 due to the size of the deceased, if you're too fat they
11 don't want you; condition of remains, amputations,
12 autopsy of remains, death caused by certain diseases or
13 maybe there is simply no need at the time of donation.

14 There is no longer a pattern for types
15 or times of services being rendered, as contemporary
16 consumers are in their thinking and no longer seem
17 concerned with the expectation of others. Rather than
18 effectively 100 percent of deceased consumers being
19 embalmed in the past, today about 50 percent of deceased
20 consumers are embalmed as a result of the increase in
21 cremation rate and influence of the Federal Trade
22 Commission because now consumers are aware that they do
23 not have to have embalming if they do not wish, so
24 that's an expense that they can decline.

1 In spite of the fact that neither the
2 CDC, or any other medical authority, will claim that
3 un-embalmed remains are a health threat, sadly, the
4 Pennsylvania statute provides licensees a loop-hole by
5 which they can continue to require embalming. That is
6 that in the absence of refrigeration or the use of a
7 sealed container, the purchase of embalming is needed if
8 the remains are to be held more than 24 hours. They
9 cannot cremate someone unless they are deceased for 24
10 hours. Ironically, the current statute requires the
11 presence of an embalming room at every single funeral
12 home, but it's not part of the refrigeration facilities,
13 consequently, denying consumers an option to decline
14 embalming. Most Pennsylvania funeral homes do not have
15 onsite refrigeration.

16 Significant Federal Government
17 compliance issues exist from both the Federal Trade
18 Commission, regarding consumer protection, and from OSHA
19 for the protection of consumers and protection of our
20 staff.

21 Instead of all privately owned funeral
22 homes of the past, today competition is broader than
23 ever and has included cremation societies, recently have
24 been the target of anti-consumer efforts that have

1 effectively put them out of business in Pennsylvania.
2 We have publically traded companies, at least three of
3 which serve Pennsylvania consumers and regional private
4 firms. Even a church has elected to become involved in
5 the funding of final expenses.

6 Today, the majority of mortuary school
7 students do not have family in the business, very
8 different from even 20 years ago. And in fact, there
9 are a lot of the classes where more than 50 percent of
10 the classes are women -- very different demographics.

11 Customer base continues to reflect our
12 communities but is now more diverse than ever,
13 accommodating not only Christian and Jewish customs but
14 also Buddhist, Muslim and Hindu families. The rate of
15 divorce, separation and estrangement has also impacted
16 how we do business, particularly with documenting
17 cremation services, as we find ourselves perpetually
18 dealing more often with allegations of contrary intent.

19 These profound differences are not bad
20 differences. However, they accentuate the funeral
21 statute, adopted in 1952, as really being woefully out
22 of touch in relevance to today's consumers.

23 So why are funeral directors a regulated
24 community? I have to share with you that three decades

1 ago Colorado eliminated their licensing board for all
2 funeral homes and funeral directors. There is no
3 licensing in Colorado and it has not been replaced. The
4 point is, that the answer to the question really is
5 whatever respondent would like to champion.

6 The proposed regulations, specifically,
7 in addition to being more of the traditional band aid,
8 attempts to tweak an outdated statute. The specifically
9 proposed regulations are problematic and should not be
10 enacted. None should be passed as drafted. 16A-4815
11 and 16 are bad for consumers. They're anti-competitive
12 and will likely result in more Federal litigation.
13 16A-4817 is simply bad for the Commonwealth taxpayer
14 because it fails to provide sufficient revenue to fund
15 the Funeral Board, a requirement that's mandated by
16 existing statute. In a time of reduced income for the
17 Commonwealth, passing this dramatically insufficient fee
18 increase is not prudent. My specific comments for each
19 proposed regulation have been posted on the IRRC
20 website.

21 Areas of legislative activity that could
22 be considered. The legislative Budget & Finance
23 Committee Report, of January 1994, outline a detailed
24 series of changes that should be made to the current

1 statute. However, recommendations of that report have
2 not been acted upon, even though they were endorsed by
3 the Funeral Board at that time. A complete rewrite of
4 the existing funeral director statute is really what's
5 in order.

6 Here are some additional points to
7 consider. For the protection of consumers, establish a
8 Recovery Fund for pre-arrangements. Regulating preneed
9 alone is going to do nothing for consumers. The fact is
10 murder is illegal, but it still happens. How do we
11 protect consumers? We need a Recovery Fund established.

12 Require that all Statements of Goods &
13 Services contain the contact information for the Funeral
14 Board. There are other states that do that, but if the
15 consumers don't know where to complain to then how can
16 we help them?

17 And require that all funeral homes have
18 onsite refrigeration so consumers are not forced to
19 purchase embalming when the service being requested do
20 not necessitate the purchase.

21 I thank you for the privilege of
22 testifying before you today. I would like to comment
23 that, although you have been told that 90 percent of
24 pre-planning is done by people looking to spend-down, I

1 would suggest it is far more the complete opposite of
2 that. Thank you.

3 CHAIRMAN MCGEEHAN: Thank you very much,
4 Mr. Heffner. Do you have anything to add?

5 MR. KUTZ: I do, if I may. Does the
6 Committee have a copy of my testimony that was brought
7 here today? If not, I can certainly present it.

8 I think it's probably prudent at this
9 time for me to speak extemporaneously.

10 CHAIRMAN MCGEEHAN: We are grateful to
11 you.

12 MR. KUTZ: To the Chairman, members of
13 this Committee, my name is Jim Kutz, and today I appear
14 in the capacity as a representative of PCCFA, which is
15 indicated in these papers. Similar to the concern of
16 the PFDA representatives, we do have problems with the
17 regulations that are circulating and that is before this
18 honorable Committee. They may come at it a little
19 differently, but I think the bottom line is there is a
20 consensus that more work is needed before we're in a
21 position to consider an extension of the law to the
22 proper promulgated regulations.

23 I very much appreciate the opportunity
24 to be here. There are two regulations, one being,

1 prepaid burial accounts, and of course that regulation
2 contains a very new important change. In addition, it
3 deals with this outright portability and I would like to
4 speak to that because I view it a little differently
5 than others view it and I think there are some
6 considerations involved.

7 As well as that, it appears that there
8 is still involving, at the Funeral Board level, just
9 what the Funeral Board would like to propose, in terms
10 of how trained employees and insurance agencies
11 affiliate with funeral homes and interact with
12 prospective customers to talk about preneed.

13 It always seems to me that having heard
14 that changes were made as recently as a couple of days
15 ago that payment was still owed and it may be premature.
16 It's a problem because, in deed, the last that I looked
17 at it, it was more of a restrictive set than where the
18 Board now is, but I think I hear it is not yet at a
19 point of being proffered to this honorable Committee.

20 We have heard a lot of talk about Walker
21 v Flitton, and I need to tell the members of this
22 Committee that I have involvement and awareness of that.
23 I was the attorney representing that matter. I was also
24 the attorney that was involved in the en banc

1 Commonwealth Court decision, of 2004, entitled Bean
2 versus State Board of Funeral Directors, wherein the
3 Commonwealth Court advised the Board and declared that
4 it could not simply declare that in all instances every
5 preneed agreement ipso facto rescindability at the whim
6 of the customer.

7 In part, it's against that back drop
8 that the portability to present preneed proper
9 regulations in tender to this committee. I'm not here
10 to tell this committee that there cannot or should not
11 be circumstances where portability will be considered
12 inappropriate. It is different than rescindability, but
13 they both carry a couple of pitfalls. One is that you
14 have a funeral director that enters into this agreement,
15 frequently underwrites that preneed agreement under
16 circumstances that he or she believes that he or she
17 will be able to render the services in futura without
18 losing his or her shirt.

19 In this day, in this economy, one of the
20 most dangerous things out there is what will be the
21 value of that asset once it's deposited into that master
22 trust account. Whether it's the PFDA account that's
23 worth 70 million or it's your account worth \$700,000 or
24 1.5 million or 5 million which you choose to hold

1 individually. Understanding your attempt to invest that
2 amount money, but sometimes that investment does not
3 turn the profit, nevertheless, my clients are permitted
4 to honor the preneed agreement at the time of death.

5 In the Future Interment Law, in the
6 General Assembly's wisdom, way back in the early 1960s,
7 they took that portability or transferability into
8 account, and what they said is if the customer moves out
9 of state, in that case they are entitled to a majority
10 of the money returned to them because of that
11 circumstance. The reason I raise that is, I don't think
12 my client would be, per se, offended by direction that
13 indicates where and under what circumstances a preneed
14 agreement should be honored for transferability or
15 perhaps even rescindability.

16 Importantly, Commonwealth Court said,
17 there is just nothing here that said under law or
18 otherwise, that for any reason you can just get your
19 money back anymore than you can get your money back
20 after you buy a car or buy a home or anything else. You
21 may hire someone to play in the band and gave them
22 \$10,000. If you change your mind, you might be able to
23 get some of it back, but when someone commits, they're
24 entitled to some benefit. A rescindability or

1 transferability or portability at the whim of one side,
2 ladies and gentlemen, is a contract that is illusory.
3 It's unenforceable, it's no contract. You're
4 essentially putting preneed contracts out of business
5 because there will be no incentive.

6 In the real world, the funeral director
7 has that money and he invests that money or she invests
8 that money. It is an asset. It is part of the
9 business. The bank that holds those funds tries to
10 invest them, along with the funeral director,
11 appropriately. There needs to be some minimal
12 protection on where and when and how those funds can be
13 pulled from the master investment strategy.

14 No monies can be pulled until the time
15 of death for the individual consumer. But the situation
16 is far more complicated than to accept by Regulatory
17 Fiat something that, I respectfully submit on behalf of
18 my client, should be the measured reasoned judgments of
19 the legislature of you people -- much as you did with
20 the Future Interment Law.

21 And it may be that there will be
22 criteria other than moving out of state, it could be a
23 50 mile radius, but it shouldn't be because the funeral
24 director, three blocks down the road, learned that I had

1 a preneed agreement and is trying to undercut the City
2 to do the same thing for less.

3 If you allow the regulation to be
4 adopted as proposed, that's the evil that occurs.
5 That's why Kevin Bean, 7 years ago, brought a lawsuit
6 against the Commonwealth Court because he had preneed
7 agreements and had committed himself and when the Board
8 advised, you can always take the money out, he got
9 whacked with phone call, after phone call saying send
10 the money down to me. That shouldn't happen. There is
11 a marriage and there is somewhere in the middle, and I
12 think with this General Assembly, that portability
13 rescindability could be worked out, but it shouldn't be
14 all one-sided and without justification and without some
15 concern.

16 With regard to the unlicensed activity,
17 I'm not embarrassed that I was counsel of record of
18 Walker versus Flitton. In deed, what the Federal Court
19 said is there is no consumer issue that is apparent
20 anywhere as long as the insurance agency train their
21 employees to understand a couple of things, they don't
22 enter into a contract and no one comes to this Committee
23 saying they should be able to enter into the contract,
24 but given the busy day of the funeral director -- and

1 you'll hear Ms. Mannal and you'll hear others, they are
2 busy doing lots of things. There is nothing illegal or
3 untoward about asking a consumer have you thought about
4 preneed or do you want your son or daughter to fight
5 about what happens to you at the time of death. That's
6 not something I'm afraid to come before you and say,
7 it's permitted. When those people who aren't licensed
8 funeral directors shouldn't be allowed to do this, make
9 funeral arrangements, come in and contract, I think
10 that's where the rubber hits the road, but to share with
11 them honest information where the Federal Court said the
12 trade-offs aren't even close.

13 There is no reason why, if I am selling
14 health insurance, I can talk about the costs and the
15 possibilities that may flow to you and your family in
16 the health care arena, I'm not practicing medicine. For
17 the same reason, the insurance agent should be able to
18 discuss costs, options. One of the proposals in this
19 regulation is the employee of the funeral home may hand
20 a price list of the funeral home that they work with but
21 none other.

22 As a consumer, wouldn't you want to know
23 how those costs measure up against that funeral home and
24 that funeral home. Why would you preclude, in these

1 regulations, that opportunity? Why would you preclude
2 an insurance agency from saying here is some costs, if
3 you want insurance to cover this, because that is a
4 primary way of funding these preneed agreements, by an
5 insurance policy.

6 It may run you somewhere between 6 to
7 \$8,000 at the time of death. There is no way you can
8 get to that point until you talk about there is a pine
9 casket, there is a mahogany, there is cremation, these
10 are issues. Understanding that that suit was brought to
11 allow funeral homes to be able to bring information to
12 the consumers so that they could consider saying and
13 ultimately decide, do they want to enter into a contract
14 which, at that point, the funeral director must be
15 involved.

16 Couple of other provisions; you must be
17 face to face, under these proposed regs, before a
18 preneed agreement could be entered into. It's never
19 been the law. I could live in the State of California,
20 call Ernie Heffner and say, I want to take care of my
21 affairs. There is nothing wrong with that. As a next
22 of kin, I can live in Alaska and I say I want to take
23 care of my mom, fax me over the preneed contract. It's
24 done over the phone, over the wires. There's not a

1 problem.

2 If there was truly a consumer problem,
3 ladies and gentlemen -- this is my last point and I'm
4 going to shut up. If there were truly a consumer
5 problem, you need to look at Section 13D of the current
6 Funeral Director Law. 13D says that if the funeral
7 director himself or herself, licensed, is not around,
8 the tentative arrangements can be made by any member of
9 the funeral staff subject to ratification 48 hours
10 later. In reality, the way funerals work, they're not
11 tentative arrangements, they're pretty solidified
12 arrangements in confirmation and ratification.

13 Embalming decisions, those decisions are
14 made -- I don't bring that to this Committee to say pull
15 that statute because it's crazy. To the contrary, I'm
16 aware of no evidence indicating problems when the
17 funeral home's staff make those arrangements, and
18 they're being made at the time of grief when they have
19 to be made.

20 For sure, if you are talking about
21 preneed, when there is not death, there is nothing wrong
22 with perspective uncertain unsolidified, uncontracted
23 terms being discussed. So what I suggest is if in the
24 General Assembly's wisdom, 20 years ago, they saw that

1 there wasn't a problem with the tentative arrangement
2 clause, the way to react isn't to over-react, because
3 the Federal Court has said there is nothing wrong or
4 harmful about trained employee talking to individuals
5 and discussing and sharing information.

6 Somewhere, I think, I heard earlier
7 today that there are contracts being entered into with
8 unlicensed people. As the funeral director, that's not
9 happening and that's not what the Federal Court said. I
10 think as the Legislative Budget & Finance Committee
11 said, in 1994, and as the Funeral Board, in 1994, said
12 in response to the Committee, the problem lies with an
13 outdated and antiquated statutory enactment. And in
14 fairness to this regulatory board, I think I heard Ms.
15 Morgan, more than anyone, talk about the difficulty of
16 trying to promulgate regulations in the face of a
17 Federal Court decision that talks about the Federal law
18 requirements, a State Court decision that talks about
19 what the State statute says, and here's all that up
20 against a statute that's now 58 years old, a statute
21 that will allow Mr. Heffner to own one funeral home and
22 one branch only, but it will allow his wife or his grand
23 kids to own 20, that's what your statute states.

24 It allows some corporations, who have no

1 funeral directors affiliation, to own a funeral home,
2 but it won't allow other corporations to own a funeral
3 home. These are the types of things that cause the
4 Legislative Budget & Finance Committee and Judge Jones
5 to say the fix here -- although I think we need
6 regulations -- is to take a step back and
7 comprehensively overhaul this.

8 Too many people (inaudible) and yet they
9 regulate either directly or indirectly performance of
10 crematories, cemeterians, sellers of monuments, sellers
11 of merchandise. What I'm suggesting is, we're not
12 fighting against regulation, but what we are suggesting
13 is that what we need is an overhaul in legislation, a
14 comprehensive approach to the problem and a, if you
15 will, a look before you leap.

16 I think Judge Jones -- in front of him I
17 tried the federal case -- would be very happy to hear
18 that before regulations are being pushed out in a
19 mandated approach that deals with the problem, a General
20 Assembly -- this honorable general assembly, is taking
21 steps to place that 1952 legislation into the 2009
22 realm. Thank you.

23 CHAIRMAN MCGEEHAN: Thank you very much,
24 Mr. Kutz, for really a simplified version of what is

1 really a complicated version of the regulation. Thank
2 you for helping me to better understand it.

3 Thank you, Mr. Heffner, for putting a
4 historical perspective on the real changes that are
5 happening in your industry almost on a daily basis.
6 Your dad would not know the industry today, I'm sure.

7 I'll turn over to questions. Chairman
8 Adolph.

9 MEMBER ADOLPH: I don't have any
10 questions. I just want to thank you for your testimony.
11 I have been on this Committee now for three years and
12 every time we bring this issue before this Committee, it
13 gets more complicated. I think that's probably the
14 reason why it goes to regulation.

15 I understand your concerns and we will
16 take that into consideration. Thank you.

17 MR. KUTZ: Thank you, Mr. Chairman.

18 CHAIRMAN MCGEEHAN: Representative
19 Readshaw.

20 MEMBER READSHAW: Thank you, Mr.
21 Chairman. First of all, I think it's important for
22 Committee Members, and probably everyone in the room, to
23 realize these things, that when we start talking about
24 funeral arrangements, they are, in fact, governed by

1 local customs and norms of what might take place in
2 Eastern Pennsylvania and certainly not in the traditions
3 of Western Pennsylvania and that's a simple
4 generalization, but it's a fact.

5 I am an advocate of portability, and Mr.
6 Heffner's testimony, he made reference to the proposed
7 regulation 16A-4815, which includes portability and he
8 says, in fact, for consumers and Mr. Kutz's testimony he
9 outlined the investment difficulties with preneed
10 funding and it should be under the control of the
11 funeral director and a return on investment, so on and
12 so forth. So we have a somewhat of a contradiction here
13 and I would just like, for the record, to state and
14 propose the preface to the Committee members that I
15 think I would rather err on the side of the consumer,
16 particularly nowadays since we have such a society that
17 children, grandchildren, direct family members are not
18 located geographically within the same area. People,
19 particularly children are going to different parts of
20 the country out of necessity of employment.

21 And I personally have had situations
22 where someone comes who had funded a preneed funeral --
23 for those who don't know, I'm Harry Readshaw, Readshaw
24 Funeral Home, Pittsburgh, Pennsylvania, third generation

1 funeral director. I only cite this example as why I
2 think it's good for the consumer. Someone comes and
3 says -- this actually has happened and most of the time
4 the neighborhood funeral business, you know on a first
5 name basis -- says Harry, we're going to move to North
6 Carolina, our children are down there, we know we paid
7 both of our funerals preneed with you, we would like for
8 you to return our funds, we're going to North Carolina.
9 We intend on getting buried in North Carolina and having
10 funeral services conducted there because our children
11 reside there.

12 I, obviously, refunded their money, 100
13 percent. And I don't want to belabor that point of what
14 I did, but the point is I think we must be effectively
15 trying to protect the consumer as opposed to the funeral
16 director and his investment process. I think it's
17 better for the public, it's better for the consumer. I
18 just wanted my remarks put on the record because I am
19 for portability.

20 Thank you, Mr. Chairman.

21 CHAIRMAN MCGEEHAN: Thank you,
22 Representative Readshaw.

23 Representative Solobay.

24 MEMBER SOLOBAY: No questions.

1 CHAIRMAN MCGEEHAN: Representative
2 Mustio.

3 MEMBER MUSTIO: Thank you, Mr. Chairman.
4 Quick question, I think, not necessarily
5 a comment. The preneed is an asset of the funeral home
6 -- not funeral home -- is that right? Is it considered
7 an asset? In other words, you had a lot of preneed
8 clients --

9 MR. HEFFNER: It's a lot of preneed.

10 MEMBER MUSTIO: It's a lot? I'm talking
11 about from a standpoint, if you want to sell your
12 business and you had 3,000 preneed in funeral billed,
13 it's a lot, so if I were thinking of buying I can look
14 at that as an opportunity then.

15 MR. HEFFNER: You would look at those
16 contracts and you would want to extrapolate what was
17 paid, what was the deposit with earnings and what the
18 current value is, and then you would determine how much
19 of a liability it is or is not. There is an effort in
20 our industry now to stop guaranteeing prices. In states
21 where preneed is very restricted, it's like some rural
22 communities in Pennsylvania, they don't talk about it.

23 When somebody says that they have 90
24 percent of their customers are due to spend-down, that's

1 because they're probably either in a rural area or they
2 are not heavily advertising and marketing the concept of
3 preplanning, because in our experience it is the
4 complete opposite. Literally, if you told us you can
5 not have any preneed businesses anymore with spend-down
6 customers, it would not adversely impact what we do in
7 preplanning.

8 MEMBER MUSTIO: So they're not selling
9 at the time of the actual death, it has taken place,
10 this is all agreed to, this is all we are doing.

11 MR. HEFFNER: In our case, we guarantee
12 price, yes. What you pay for, that specific
13 description, the merchandise, et cetera that's what
14 we're following.

15 MEMBER MUSTIO: You don't attempt to
16 then up-sell something?

17 MR. HEFFNER: No, we do not.

18 MEMBER MUSTIO: And then one other
19 question, I guess, that would relate to the situation
20 where a funeral home sells and there are some clients
21 that utilize the services and they're not happy with
22 those services, based on who the new director is, the
23 new company owning it, can that word spread through the
24 community? How do we handle that situation that then

1 ties into what Representative Readshaw was saying, the
2 need to be able to then perhaps move to another local
3 funeral home?

4 MR. HEFFNER: I can only talk about how
5 we have our account set up. We set up your local
6 contract, they cannot be moved until there is a death,
7 the reason for why the money was placed there in the
8 first place. However, the bank trustee can pay those
9 proceeds to any provider of services. It's not an issue
10 with our firm. That's all under existing statute. If
11 trusting is done through Future Interment Statute,
12 although it only requires a 70 percent future trust, the
13 money stays there unless somebody moves out of state,
14 which is the example Representative Readshaw gave, the
15 money is irrefundable.

16 It's not a consumer issue. The fact is
17 we are all -- whether we are in one community or a dozen
18 communities, we are all dealing locally with people.

19 MEMBER MUSTIO: Just two more
20 follow-ups. It seems to me then we do have a couple of
21 issues particularly with the preneed. There needs to be
22 that trust, but also in your situations that you have
23 indicated, not with your firm, the money would be -- at
24 time of death -- be allocated to another funeral

1 service, if needed.

2 MR. HEFFNER: Yes.

3 MEMBER MUSTIO: But that's with your
4 firm, but I think what we're trying to do here is to get
5 something that's standardize that meets not only your
6 issue, but also the consumer's issue; is that correct?

7 MR. HEFFNER: Understand the
8 disappearance of money, the first part of the issue that
9 you brought up, while there were some examples of larger
10 organizations that money disappeared, funeral directors
11 are thieves too, and I am thinking of four that I was
12 specifically involved with. It's funeral directors who
13 never put the money in trust to begin with and that's
14 why I suggested a Recovery Fund, because for consumers
15 who have been wronged and it is irrelevant whether there
16 is 100 percent trusting requirement or 10 percent
17 trusting requirement. Somebody who's going to steal the
18 money and fail to put the money, any monies in trust,
19 they will take the whole thing anyway. So a Recovery
20 Fund is absolutely critical, if you really want to
21 protect consumers.

22 To your other question, it was really
23 about portability, I don't know how you can regulate --
24 see part of the issue now is that there are some

1 organizations who want to have funds transferred because
2 they have arrangements worked out with trustee where
3 they are getting kickbacks on the annual trust
4 administration fee. If you want to know how much money
5 is that, put \$50 million in a trust and charge 150 basis
6 points on it, by comparison, we're paying about 74 basis
7 points to our bank trustee, put 75 basis points on \$50
8 million; it's like real money. That's why there is a
9 push to have these funds released from our irrevocable
10 trust and put into somebody else's trust so they can
11 start drawing down those fees every year, and that comes
12 off of consumer's earnings.

13 MEMBER MUSTIO: That point I understand
14 and agree with you on that perspective.

15 That's all I have.

16 MR. HEFFNER: Thank you very much.

17 CHAIRMAN MCGEEHAN: Thank you,
18 Representative Mustio.

19 Thank you for coming and educating the
20 Committee and giving us your perspective.

21 CHAIRMAN MCGEEHAN: Our final Panel of
22 testifiers is a distinguished one, Representative of the
23 Philadelphia District Attorney's Office. We have
24 Evangelia Manos, she's a Prosecutor with the Special

1 Investigations Unit and Mariana Sorenson, who is an ADA
2 with the Special Investigations Unit, and I know that
3 Kathleen McDonnell, was originally scheduled to join us,
4 who is not available today.

5 You may obviously situate yourselves at
6 the table and begin when you're comfortable.

7 MS. MANOS: Good morning, Chairman
8 McGeehan, Chairman Adolph and Members of the Committee,
9 my name is Evangelia Manos, I'm Assistant District
10 Attorney with the Philadelphia District Attorneys'
11 Office, assigned to Special Investigations Unit and too
12 I was the lead trial prosecutor of Commonwealth versus
13 Louis and Gerald Garzone, James McCafferty, Michael
14 Mastromarino and Lee Cruceta.

15 To my left is Assistant District
16 Attorney Mariana Sorensen, the primary architect of the
17 body parts Grand Jury report, and I've asked her, if I
18 inadvertently leave something out to just jump in and
19 add it in or correct me.

20 We have provided each of you with a copy
21 of excerpts from our Grand Jury report and
22 recommendations that were made by the Grand Jury, as
23 well as a full copy of our Grand Jury report, which can
24 also be found on the Philadelphia District Attorneys'

1 website.

2 We would like to thank you for inviting
3 us to speak here before you, and while legislation is
4 not our area of expertise, we did encounter certain
5 issues with respect to this area and we just wanted the
6 opportunity to thank you for allowing us to share those
7 with you.

8 And I would like to deviate a little bit
9 from the excerpts that we provided for you and just
10 explain to you how we became involved in the case and a
11 little bit about the background of the case.

12 We first became aware of this case, in
13 March of 2006, when an article in the newspaper detailed
14 Brooklyn, New York's investigation of a body harvesting
15 scheme which involved at least two Philadelphia funeral
16 homes. The District Attorney, Lynne Abraham --
17 realizing the potentially devastating affect that this
18 would have on bereaved family members in our area, who
19 were using the services of these funeral homes, and also
20 the affect on those who were implanted with possibly
21 tainted tissue -- authorized us to initiate a grand jury
22 in order to investigate this scheme.

23 Ladies and gentlemen, what the Grand
24 Jury found was nothing short of the makings of a horror

1 story happening right here in Philadelphia. The case
2 began with Michael Mastromarino, who was operating the
3 scheme first in New York and then in New Jersey. He met
4 Louis and Gerald Garzone in January, earlier February of
5 2004, and started his tissue harvesting business,
6 originally, in 2002 when he lost his dentist license
7 because of criminal charges against him.

8 In his early years of the company that
9 he formed, Biomedical Tissue Services, Mastromarino
10 partnered with a few funeral homes in New Jersey and New
11 York and he sought to expand into Philadelphia. He was
12 steered to the Garzones in Philadelphia.

13 The Garzones' Funeral Homes and Liberty
14 Crematory quickly became the primary source of bodies
15 for his company, Biomedical Tissue Services and his
16 business more than doubled after he partnered with the
17 Garzones. It became a preferred source of business for
18 him because they all were partners. The Garzones and
19 Mr. McCafferty were partners in the crematory and they
20 were finding that in New York and New Jersey they were
21 involved in funerals and they had to use PCV pipe to
22 fill in the bone and tissue that they were taking, and
23 the Garzones were pretty much a cremation based business
24 and this would increase the volume of tissue that they

1 could take from people.

2 These were bodies that the funeral
3 directors had agreed had been paid to cremate and
4 prepare for burial by clients and family members, who
5 believed that they were dealing with legitimate
6 businesses. The funeral directors did so without the
7 permission or knowledge of the family members or those
8 who contracted with their funeral homes or their
9 crematory.

10 Mastromarino paid the funeral home
11 directors \$1000 for each body that they allowed him and
12 his team of -- what they referred to as cutters -- to
13 plunder. What would happen is he would send people,
14 that he referred to as cutters, almost always led by Lee
15 Cruceta, to the funeral home in Philadelphia to strip
16 the tissue from bodies.

17 Grand Jury testimony revealed that what
18 was going on behind the closed doors of the embalming
19 room of the Louis Garzone Funeral Home, at 1830 Somerset
20 Street, and later in the embalming room of the Garzone
21 Funeral Home, located at 4149-51 L. Street was an
22 evisceration of bodies awaiting cremation.

23 The Garzones would get a body, which the
24 family wanted cremated, they would call their

1 co-conspirators, in New York, Mr. Mastromarino and
2 Cruceta, and tell them that they had a body waiting for
3 them.

4 They would then let the body sit in an
5 alleyway or garage, unrefrigerated, for sometimes hours
6 until the New York cutters come down to take the tissue.
7 There was evidence of one corpse sitting for 113 hours
8 after death and another for 100 hours. When they
9 arrived, the cutters would take the body or bodies into
10 the embalming room, which was described by one of the
11 witnesses as looking like the back of a butcher shop,
12 where they proceeded to hacksaw and dismember bodies,
13 taking whatever they wanted, without regards to disease
14 and environmental conditions. In many cases they left
15 only a head and a torso.

16 Many of the deceased, the grand jury
17 came to learn, had passed away due to sepsis, HIV,
18 hepatitis and other communicable diseases. These parts
19 were then, in essence, sold to legitimate tissue
20 processing companies, along with doctored reports and
21 medical and biographical information so that no one
22 would know where the parts came from. The human tissue
23 was then transplanted into thousands of unknowing,
24 unsuspected innocent people worldwide, who thought that

1 they were receiving a life enhancing measure.

2 Whatever was then left from the bodies,
3 after the cutters would dismember it, they would put
4 back into a bloody body bag and leave it in the alleyway
5 where the funeral directors would retrieve it and then
6 send it to their crematory delivery cremation where the
7 evidence of the theft was incinerated.

8 The Grand Jury found out that, along
9 with the diseased tissue and fraudulent paperwork, these
10 men were deliberately mislabeling blood samples from the
11 bodies that were infected with HIV and hepatitis C in
12 order to evade tests designed to screen for these
13 diseases.

14 Death certificates were also being
15 doctored by the funeral director to hide the fact that
16 many of the bodies were sitting around for days before
17 being cremated.

18 During the course of the investigation,
19 we learned that the Garzones and McCafferty also used
20 their funeral business for other money-making ventures.
21 They defrauded their customers and the Department of
22 Public Welfare and the Veterans Administration by double
23 charging for their services and forging and falsifying
24 public records. In several instances, one dating back

1 to 1975, when Louis Garzone first opened his funeral
2 home, he charged a bereaved family one fee, presented
3 them with an invoice and then presented another to a
4 nursing home, a bank, to take the remainder of the money
5 that the decedent had in their account. In these
6 instances the families, many of whom did not live in the
7 area, did not know of these accounts and therefore did
8 not know that they had a claim to them.

9 Other schemes included taking out life
10 insurance policies in which Mr. Garzone would list
11 himself as a primary beneficiary. And last, but not
12 least, continued to operate as funeral directors out of
13 their funeral home, despite entering into an agreement
14 with the State Board of Funeral Directors to voluntarily
15 surrender their license and their funeral home business.

16 This scheme had a worldwide impact. As
17 you can imagine, there were several thousands of victims
18 involved in this case, they actually fall into two
19 tiers. It's obviously bereaved family members who, in
20 the time of extreme grief and sadness look to these
21 funeral directors to comfort them and help them through
22 the process of making arrangements for their loved ones.

23 Also thousands of people, worldwide, who
24 were implanted with this diseased tissue, have to

1 periodically get tested for various diseases.

2 And in our grand jury report we
3 encountered some issues and made some recommendations.
4 The Grand Jury made some recommendations, which I would
5 like to go over at this point: Number one, was to
6 prosecute to the fullest extent possible Louis Garzone,
7 Gerald Garzone, James McCafferty, Michael Mastromarino
8 and Lee Cruceta. That has been done. We prosecuted the
9 Garzones and Mastromarino, who each received a sentence
10 of 8 to 20 years incarceration, in excess of \$100,000 in
11 restitution and prosecution cost. Mr. Mastromarino
12 received 25 to 58 years as well as \$100,000 in
13 restitution.

14 Mr. McCafferty received 3 to 6 years.
15 His sentence was mitigated largely due to the
16 cooperation that he provided to the District Attorney,
17 and Mr. Cruceta has not yet been sentenced, but was also
18 a cooperator, has an agreement to 6 to 12 years.

19 Our second recommendation -- or the
20 second recommendation of the Grand Jury was to prohibit
21 funeral homes from performing tissue recovery, and the
22 Pennsylvania Legislature should amend the Anatomical
23 Gift Act and the Funeral Director Law to prohibit
24 recovery of tissue in funeral homes. The New Jersey

1 State Board of Mortuary Science has proposed such a ban.
2 Funeral homes are inappropriate settings because of
3 their inherent conflict of interest for their owners,
4 and because they are not appropriately sterile and
5 equipped medical facilities.

6 Since it's not easy for most people to
7 gain access to cadavers, this reform would go a long way
8 toward ending the theft of body parts in Pennsylvania.

9 Number Three, make theft of body parts a
10 distinct felony crime. The Pennsylvania legislature
11 should amend the Crimes Code to send an unmistakable
12 message to society that stealing body parts from the
13 dead is an extremely serious offense, and not one that
14 can be graded according to a dollar figure. A section
15 should be added to theft offenses, in State law, making
16 it a felony to steal any part of a human corpse.

17 Require all tissue agencies to be
18 licensed by the state and accredited by the American
19 Association of Tissue Banks. Pennsylvania should
20 require that all tissue procurement and processing
21 agencies, operating in the state, be licensed by the
22 State. Requirements for a license should include a
23 background check on the principals, including for
24 arrests, professional misconduct, character, and

1 technical competence. All facilities should be
2 inspected before approval.

3 Strengthening auditing practices of the
4 AATB, the FDA, and tissue agencies.

5 Consider requiring that all tissue
6 recovery be coordinated through a designated organ
7 Procurement Organization, such as Gift of Life, who have
8 non-hospital deaths as well as for hospital deaths.

9 Define reasonable costs that tissue
10 banks are permitted to charge without violating
11 prohibitions against buying and selling human tissue.

12 Review policies of the Bureau of
13 Professional and Occupational Affairs that permit Louis
14 and Gerald Garzone to continue operating their funeral
15 homes. The Grand Jury, as it was concluding its
16 investigation, found out that the Garzones were still
17 operating their funeral homes, based on an obvious sham.
18 They voluntarily surrendered their funeral director
19 licenses; however, they were able to reincorporate and
20 remain in business. We estimated that they
21 approximately conducted 50 funerals after voluntarily
22 surrendering their licenses.

23 Improve oversight of funeral homes to
24 serve the public's welfare. The emphasis of

1 Pennsylvania's Funeral Directors Law, related
2 regulations and the State Board's enforcement of them
3 should be to promote public welfare and safety. The
4 point of licensing should be to assure the public the
5 funeral homes, in the State, are operated in an ethical,
6 competent, and sanitary manner. Both the content of the
7 law and the manner of its enforcement should better
8 reflect these goals, even though the vast majority of
9 funeral directors are doubtless ethical and law-abiding.

10 The Funeral Directors Law itself is
11 filled with arcane rules about names of facilities,
12 widows inheriting licenses, and registration of interns,
13 but little about serving the public. The regulations
14 devote only a few sentences to sanitation.

15 Begin regulating crematories.
16 Pennsylvania should join the vast majority of states
17 that regulate crematories. The wrongdoing of Liberty
18 Crematory and its owners, James McCafferty and Louis and
19 Gerald Garzone, demonstrated the potential for unethical
20 and unsafe practices in the crematory business. The
21 appropriateness of a crematory business in a residential
22 neighborhood should also be reconsidered.

23 Some misdeeds, such as Liberty's, are
24 criminal and can be sanctioned by law enforcement, but

1 others, like lack of care in identifying bodies, sloppy
2 practices that expose workers to dangerous body fluids,
3 and poor record keeping, are not expressly prohibited by
4 State law or currently subject to regulatory oversight.
5 That needs to change.

6 Amend procedures for requesting burial
7 payments for welfare recipients.

8 Enforce the state regulation forbidding
9 funeral directors from charging families or welfare
10 recipients for the cost of basic funeral services.

11 Require funeral directors to renew
12 registration as welfare providers every five years.

13 And take steps to ensure that funeral
14 home clients are informed about the welfare department's
15 burial payment benefits.

16 Again, while this isn't our particular
17 area of expertise. We thank the Committee for allowing
18 us to appear and testify before you. We are open to any
19 sort of assistance that we can provide to the Committee
20 in the future as well as any questions that the
21 Committee may have.

22 CHAIRMAN MCGEEHAN: Well, first of all
23 thank you for your patience and thank you for your
24 testimony and for the great public service you did in

1 prosecuting these rogue funeral directors in
2 Pennsylvania.

3 For the record, for the members'
4 edification and for the professionals, and the public,
5 just an internal note, we received these recommendations
6 just last week and I know that you, obviously, your
7 first job was to prosecute these individuals, and we
8 thank you for forwarding the recommendations to the
9 Committee. I can tell you that already one of the
10 recommendations, the regulation of crematories is
11 already in the process, it's already in bill form and
12 it's working its way to the Committee. So I thank you
13 for that.

14 I have no questions beyond just the
15 observation that I know the District Attorneys' Office
16 is -- obviously, Kathleen McDonnell is not here today,
17 she is attending the funeral of a District Attorneys'
18 husband, Frank Ford, so on behalf of the Committee,
19 please extend our condolences to the District Attorney
20 as well.

21 And thank you for the job you have done
22 in prosecuting a horrific act whose consequences will go
23 on for decades probably because of the people who are
24 affected with these diseased tissues. Thank you on

1 behalf of the Committee.

2 Chairman Adolph.

3 MEMBER ADOLPH: Thank you, Mr. Chairman.

4 I just want to echo the Chairman's
5 comments regarding a job well done. Some of those
6 recommendations that obviously any legislator can
7 introduce legislation. Those that have been expressed
8 to this Committee, we certainly will take action on.

9 Most of those recommendations, however,
10 will probably be handled by the Judiciary Committee.
11 The ones relating to the crime code and so forth, but we
12 thank you for those recommendations. Again, thank you
13 for a job well down.

14 CHAIRMAN MCGEEHAN: Any other -- seeing
15 none, I want to thank you again for your patience and
16 for your advocacy, excellence and experience. Thank you
17 very much for being here. I know you have a busy
18 schedule.

19 MS. MANOS: Thank you.

20 CHAIRMAN MCGEEHAN: Seeing no other
21 business before the Committee, I want to end by thanking
22 the members who have spent their time and great effort
23 to be here today.

24 I want to thank those who have testified

1 today and for the professionals who are here to make
2 sure that their industry is presented.

3 I want to thank my executive staff for
4 arranging both the staff of the Majority, and certainly
5 Chairman Adolph's staff for facilitating this meeting,
6 and I think, obviously, the funeral directors
7 regulations are something that are complicated and,
8 Chairman Adolph, I think this will not be the last time
9 that this Committee meets on regulations affecting the
10 funeral industry.

11 Having said that, I'll adjourn this
12 hearing of the House Professional Licensure Committee.
13 Thank you for your attendance.

14 (Whereupon, the above-entitled matter
15 was adjourned at 12:25 p.m., this date.)

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C E R T I F I C A T E

I hereby certify that the
proceedings and evidence are contained
fully and accurately in the
stenographic notes taken by me on the
hearing of the within cause and that
this is a correct transcript of the
same.

VIRGINIA MACK
PROFESSIONAL COURT REPORTER