

the FDL highlighted herein in developing an appropriate approach to regulation of the funeral industry in Pennsylvania.

In reaching this point, we find Board member Murphy's statement regarding the contradictory provisions of the FDL governing food service, and the Board's attempt to reconcile the same, to serve as an apt characterization for what has apparently been the Board's position since the inception of this litigation, namely, that "trying to reconcile those two confusing or competing views proved to be an impossible task in this as well as the other parts of the regulation. So we're on hold until we get through with the present litigation to see if this gets in and clarification and" (Pl. R. at 1557:20- 1558:3). Accordingly, at this juncture we admonish the Board to apply appropriate focus and craft, or clarify, regulations that appropriately govern the funeral industry in this, the twenty-first century.²⁹ The time for relying on antiquated and ever-changing interpretations of the FDL, which constitute nothing more than thinly-veiled attempts to maintain the status

²⁹ Our experience with the Board through this case and *Walker*, spans almost the ten year length of our judicial service. While we are certain that its members are upstanding and well-intentioned, we can only describe the Board as a whole as moribund. Time and again, in the face of the extreme scrutiny these lawsuits have generated, a clearly ossified Board has refused to revisit regulations that appear both obsolete and ultimately unconstitutional. We have endeavored to give the Board the widest possible berth to cure at least some of these defects, but to no avail. Astonishingly, as was the case with *Walker*, we conclude that the Board is virtually daring us to act in lieu of making these difficult decisions itself. If our surmise is correct, we have today filled the vacuum created by the Board's recalcitrance.