Edwin Frese, Jr., Disciplinary Counsel-in-Charge District 3 Office 100 Pine St., Ste. 400 Harrisburg, PA 17101

Dear Mr. Frese:

I am filing a complaint of unprofessional conduct against Shawn Smith, a lawyer in the Department of State, for threatening me with a \$10,000 fine after our family had a home funeral for my mother. The statutes he cited appear in the occupations and professions section of the Pennsylvania Code, PS 63 (see attached). However, I have no intention of ever going into the funeral business and have done nothing that could possibly be construed so that anyone would think so. I was following the intimate, meaningful, and caring practice of our ancestors at a time of death, much like those who practice home birth and home schooling and not unlike the religious groups that prepare their own dead.

Under the Pennsylvania Rules of Professional Conduct, Rule 1.1 re competence states:

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Surely the Department of State expects its lawyers to know enough not to apply trade law to the noncommercial activities of private citizens.

Furthermore, Rule 8.4 re misconduct states:

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law. . . .

It is likely that the complaint against me was generated by a funeral director who feared his funeral dollars would be dwindling if the home funeral movement catches on. But it is not the business of the Department of State to guarantee an income for funeral directors, which must surely be the reason I was threatened with a \$10,000 fine if there were to be any "future complaints of this nature." His behavior is even more

troubling when one considers that the Department of Health will assist families wanting information on home funerals.

In remedy, I am requesting that Mr. Smith be ordered to send an apology to me, with copies to those listed in the cc's below.

Sincerely,

Phyllis Ingold

- cc: Lisa Carlson, Funeral Ethics Organization, Hinesburg, VT
- cc: Joshua Slocum, Funeral Consumers Alliance, South Burlington, VT
- cc: Shawn Smith, Dept. of State
- cc: Lucy Basler, sister
- cc: John Eirkson, President, PFDA
- cc: Clark Neily, Institute for Justice, Arlington, VA
- cc: David Morrison, Elder Law, Lancaster, PA