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STATE OF WISCONSIN
FUNERAL DIRECTORS EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS AGAINST ROBERT E. SONNENBURG and, SONNENBURG FAMILY FUNERAL HOME, RESPONDENTS.	: : : : : :	FINAL DECISION AND ORDER

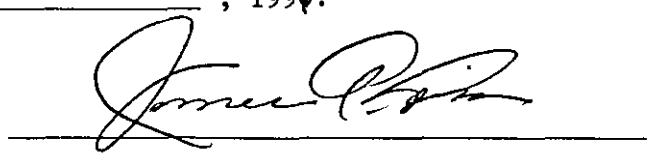
The State of Wisconsin, Funeral Directors Examining Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Funeral Directors Examining Board.

The rights of a party aggrieved by this Decision to petition the Board for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 20th day of MARCH, 1990.



STATE OF WISCONSIN
BEFORE THE FUNERAL DIRECTORS EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS AGAINST	:	
	:	**PROPOSED DECISION**
ROBERT E. SONNENBURG and, SONNENBURG FAMILY FUNERAL HOME, RESPONDENTS.	:	

The parties to this proceeding for purposes of Wis. Stats., sec. 227.53 are:

Robert E. Sonnenburg
801 East Monowau Street
Tomah, Wisconsin 54660

Sonnenburg Family Funeral Home
801 East Monowau Street
Tomah, Wisconsin 54660

Funeral Directors Examining Board
1400 East Washington Avenue
P.O. Box 8935
Madison, Wisconsin 53708

A disciplinary proceeding was commenced in the above-captioned matter by the filing of a formal Complaint on August 28, 1989. A hearing was held on October 11, 1989. Steven M. Gloe, Attorney at Law, appeared on behalf of the complainant, Department of Regulation and Licensing, Division of Enforcement. The respondent, Robert E. Sonnenburg, appeared in person and by his attorney, J. David Rice, Law Offices of Rice and Abbott, S.C. Attorney J. David Rice also appeared at the hearing on behalf of the respondent, Sonnenburg Family Funeral Home.

Based upon the record herein, the Administrative Law Judge recommends that the Funeral Directors Examining Board adopt as its final decision in this matter the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Robert E. Sonnenburg, 801 East Monowau Street, Tomah, Wisconsin 54660, holds a license to practice as a funeral director in the State of Wisconsin. The respondent's license, bearing #4564, was first granted on August 27, 1981.

2. Sonnenburg Family Funeral Home, 801 East Monowau Street, Tomah, Wisconsin 54660, holds a funeral establishment permit bearing #1792.

3. At least from July 26, 1988, to August 2, 1988, Robert E. Sonnenburg, respondent herein, worked as a funeral director at Sonnenburg Family Funeral Home, 801 East Monowau Street, Tomah, Wisconsin.

4. On July 26, 1988, at or around 7:00 p.m., the Monroe County coroner's office made a request to the respondent, Robert E. Sonnenburg, that he remove the body of Lyle D. Genz from the site of a motorcycle accident, and transport the body to Tomah Memorial Hospital, Tomah, Wisconsin. The respondent made the removal and transported the body to Tomah Memorial Hospital.

5. On July 26, 1988, at or around 8:00 p.m., the Monroe County Medical Examiner, Toni E. Eddy, made a request to the respondent, Robert E. Sonnenburg, that he transport the body of Lyle D. Genz to La Crosse, Wisconsin for an autopsy. The autopsy was scheduled to be performed on the morning of July 27, 1988.

6. On July 26, 1988, Monroe County Medical Examiner, Toni E. Eddy, gave the respondent, Robert E. Sonnenburg, oral permission to embalm the body of Lyle D. Genz, subject to the right of the Genz family to select a funeral director to do the embalming.

7. On the night of July 26, 1988, while at Tomah Memorial Hospital, the respondent, Robert E. Sonnenburg, told Mrs. Be Genz, the decedent's widow, that he was a funeral director in Tomah, and stated that if she needed any help "feel free to call" him.

8. On the night of July 26, 1988, while at Tomah Memorial Hospital, the respondent, Robert E. Sonnenburg told Gregory Hutchins that he had a "funeral home in town", and that "If I can be of assistance let me know".

9. On July 26, 1988, prior to transporting the body of Lyle D. Genz to La Crosse for the autopsy, the respondent, Robert E. Sonnenburg, transported the body to Sonnenburg Family Funeral Home, where he arterially embalmed the body.

10. The respondent, Robert E. Sonnenburg, embalmed the body of Lyle D. Genz prior to obtaining permission from Mrs. Be Genz, the decedent's widow, or from any other authorized person.

11. On July 26, 1988, Be Genz, the widow of Lyle D. Genz, selected Ninneman-Steele Funeral Home, Tomah, Wisconsin, to handle the funeral arrangements relating to Lyle D. Genz.

12. On July 27, 1988, the Monroe County Medical Examiner signed a written authorization giving the respondents permission to embalm the body of Lyle D. Genz.

13. On July 27, 1988, the respondents provided Be Genz, the decedent's widow, with an authorization form to sign giving the respondents permission to embalm the body of Lyle D. Genz. The respondent did not inform Mrs. Genz, at or prior to the time she signed the authorization form, that he had already embalmed the body of Lyle D. Genz.

14. The respondents did not inform Mrs. Genz that a fee would be charged for the embalming services relating to Lyle D. Genz.

15. The respondents did not give Be Genz, the decedent's widow, a printed or typewritten price list relating to the funeral goods and services offered by the respondents.

16. On or about August 2, 1988, the respondents submitted a statement of charges to Ninneman-Steele Funeral Home, 805 Superior Avenue, Tomah, Wisconsin, which contained a charge of $140.00 for embalming services relating to Lyle D. Genz.

17. The general price list for Sonnenburg Family Funeral Home which was in effect at least from July 26, 1988 to August 2, 1988, contained a price of $80.00 for services of the funeral director and staff for "embalming of deceased", a separate price of $95.00 for "facilities and equipment" relating to the "use of the preparation room" for embalming, dressing, cosmetic work and restoration, and an additional price of $65.00 for "cleansing and terminal disinfection".

CONCLUSIONS OF LAW

1. The Funeral Directors Examining Board has jurisdiction in this matter pursuant to ss. 445.105 (4) and 445.13 (1) Wis. Stats., and Wis. Adm. Code sec. FDE 3.02.

2. The conduct of the respondent, Robert E. Sonnenburg, in embalming the body of Lyle D. Genz prior to obtaining written permission from the Monroe County coroner's office, constitutes a violation of s. 979.01 (4) Wis. Stats., and s. FDE 3.02 (1) Wis. Adm. Code.

3. The conduct of the respondent, Robert E. Sonnenburg, in embalming the body of Lyle D. Genz prior to obtaining permission from Mrs. Be Genz, the decedent's widow, or other authorized persons, and in charging a fee for the embalming services constitutes a violation of 47 C.F.R. s. 453.4, and ss. FDE 3.02 (1) and (8) Wis. Adm. Code.

4. The conduct of the respondent, Robert E. Sonnenburg, in failing to provide Be Genz, the decedent's widow, with a printed or typewritten price list constitutes a violation of 47 C.F.R. s. 453.2 (a) and (b) (4), and s. FDE 3.02 (1) Wis. Adm. Code.

5. The conduct of the respondent, Robert E. Sonnenburg, in providing Be Genz, the decedent's widow, with an authorization form to sign without informing Mrs. Genz that he had already embalmed the body of Lyle D. Genz, constitutes a violation of s. FDE 3.02 (9) Wis. Adm. Code.

6. The conduct of the respondents in charging $140.00 for the embalming services relating to Lyle D. Genz, did not constitute a violation of s. FDE 3.02 (9) Wis. Adm. Code.

7. The conduct of the respondent, Robert E. Sonnenburg, in initiating personal contact with Be Genz, the decedent's widow, for purposes of obtaining professional employment constitutes a violation of s. FDE 3.02 (12) Wis. Adm. Code.

8. The conduct of the respondent, Robert E. Sonnenburg in violating Ch. 445 Wis. Stats., and s. FDE 3.02 Wis. Adm. Code constitutes sufficient cause under 445.105 (4) Wis. Stats., for imposing discipline on the respondent, Sonnenburg Family Funeral Home.

ORDER

NOW, THEREFORE, IT IS ORDERED that the funeral directors license of Robert E. Sonnenburg, and the funeral establishment permit of Sonnenburg Family Funeral Home be, and hereby are, **SUSPENDED** for a period of 30 days.

IT IS FURTHER ORDERED that the respondents' motion to dismiss the charges contained in Count II of the Complaint relating to the respondents' charge of $140.00 for embalming the body of Lyle D. Genz, be and hereby is **GRANTED.**

This order is effective 30 days from the signing of this order by the Funeral Directors Examining Board, or its designee.

OPINION

I. GENERAL OVERVIEW

A hearing was held in the above-captioned matter on October 11, 1989. Steven M. Gloe, Attorney at Law appeared on behalf of the complainant, Department of Regulation and Licensing, Division of Enforcement. The respondent, Robert E. Sonnenburg appeared in person and by his attorney, J. David Rice, Law Offices of Rice and Abbott, S.C. Attorney J. David Rice also appeared on behalf of Sonnenburg Family Funeral Home, respondent herein.

The evidence in this case consists of the testimony provided by 15 witnesses, and the evidence contained in 14 documents. The parties stipulated to the admission of Exhibits #1 and #2. Exhibits #3, 4, 6, and 8-11 were introduced into evidence by the complainant, and Exhibits #5, 7 and 12-14 were introduced into evidence by the respondents.

II. LEGAL ANALYSIS

The Complaint filed in this matter contains three "counts", each of which will be discussed separately herein. Each of the three counts in the Complaint contain allegations which stem from the respondents' conduct in providing embalming services relating to the death of Lyle D. Genz in July, 1988. The complainant alleges in its Complaint that the respondent, Sonnenburg Family Funeral Home is subject to discipline pursuant to s. 445.105 (4) Wis. Stats., by virtue of violations committed by the respondent, Robert E. Sonnenburg. The Answer filed in this matter denies that the respondents violated any statutory or administrative code provision. (Note that all references herein to the term "respondent" relate to the conduct of both respondents, Robert E. Sonnenburg and Sonnenburg Family Funeral Home).

COUNT I

The complainant alleges in Count I of the Complaint that, the respondents violated ss. FDE 3.02 (1) and (8), Wis. Adm. Code, s. 979.01 (4) Wis. Stats., and 47 C.F.R. s. 453.5, by embalming the body of Lyle D. Genz prior to obtaining the written authorization from the Monroe County coroner's office, and prior to obtaining permission from the decedent's next of kin. Sections FDE 3.02 (1) and (8) Wis. Adm. Code read as follows:

> FDE 3.02 Unprofessional Conduct. Any occurrence of the following shall constitute unprofessional conduct by a licensed funeral director, registered apprentice funeral director or owner of a funeral establishment.
>
> (1) Violating or aiding and abetting a violation of any state or federal law substantially related to the practice of funeral directing.
>
> (8) Performing services or providing merchandise not authorized for which charges are made; unless authorization for such items as removal or preparation of remains was not obtained because next of kin or other person responsible for payment of charges could not be located within a reasonable time.

First, in reference to the respondents' failure to obtain written authorization from the coroner's office prior to embalming the body of Lyle D. Genz, the complainant alleges in Count I of the Complaint that the respondents violated s. FDE 3.02 (1) Wis. Adm. Code, by failing to comply with the requirements set forth in s. 979.01 (4) Wis. Stats., and 47 C.F.R. s. 453.5.

Section 979.01 (4) Wis. Stats., prohibits a person from embalming or performing an autopsy on the body of any person who has died under any of the circumstances listed in sec. 979.01, unless the person obtains the written authorization of the coroner of the county in which the injury or cause of death occurred. Sections 979.01 (1) and (1) (f) Wis. Stats., provides that all deaths following accidents, whether the injury is or is not the primary cause of death must be reported to the sheriff, police chief, medical examiner or coroner of the county wherein such death took place.

In this case, the evidence clearly establishes that the respondents did not obtain written authorization from the Monroe County coroner's office until after the respondents embalmed the body of Lyle D. Genz.

The evidence in this case establishes that the respondent, Robert E. Sonnenburg, arterially embalmed the body of Lyle Genz on July 26, 1988, at the Sonnenburg Family Funeral Home prior to transporting the body to La Crosse for an autopsy. The evidence also establishes that the respondents did not obtain written authorization from the Monroe County coroner's office to embalm the body of Lyle D. Genz until the morning of July 27, 1988.

The Monroe County Medical Examiner, Toni E. Eddy, testified at the request of the complainant. Ms. Eddy stated that she did not provide the respondents with written authorization to embalm the body of Lyle Genz until the morning of July 27, 1988, (refer to Exhibit #3). Ms. Eddy stated that she was present when Robert E. Sonnenburg typed the information on the "permission to embalm" form and that she signed it on July 27, 1988. Medical Examiner Eddy testified that she gave the respondents oral permission on July 26, 1988, to embalm the body of Lyle D. Genz, subject to the right of the Genz family to select another funeral director to do the embalming.

Section 979.01 (4) Wis. Stats., provides that a person must obtain written authorization from the appropriate official before embalming a body; the statute does not contain a reference to oral authorization.

In reference to the respondents' failure to obtain permission from the decedent's next of kin prior to embalming the body of Lyle D. Genz, 47 C.F.R. 453.5, provides that in selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for any provider to embalm a deceased human body for a fee unless: 1) state or local law or regulation requires embalming in the particular circumstances regardless of any funeral choice which the family might make; or 2) prior approval for embalming (expressly so described) has been obtained from a family member or other authorized person; or 3) the funeral provider is unable to contact a family member or other authorized person after exercising due diligence, has no reason to believe the family does not want embalming performed, and obtains subsequent approval for embalming already performed (expressly so described).

In seeking approval under 47 C.F.R. s. 453.5, a funeral provider must disclose that a fee will be charged if the family selects a funeral which requires embalming, such as a funeral with viewing, and that no fee will be charged if the family selects a service which does not require embalming, such as direct cremation or immediate burial.

The evidence presented establishes that the respondents did not obtain approval from Mrs. Genz or any other authorized person prior to embalming the body of Lyle D. Genz; that the respondents charged a fee for the embalming services, and that the respondents did not disclose to Mrs. Genz that a fee would be charged if the family selected a funeral which required embalming or that no fee would be charged if the family selected a service which did not require embalming.

In this case, there is no state statute, local law or regulation which required embalming in the particular circumstances surrounded the death of Lyle D. Genz. In addition, the evidence establishes that the respondent was aware of Mrs. Genz's identity prior to embalming the body of Lyle D. Genz; therefore, there is no issue regarding the exercise of due diligence in reference to efforts to contact the decedent's next of kin.

The evidence establishes that the respondents arterially embalmed the body of Lyle D. Genz on the evening of July 26, 1988, prior to transporting the body to La Crosse where an autopsy was scheduled to be performed on the morning of July 27, 1988.

Be Genz, the decedent's widow, testified at the request of the complainant. Mrs. Genz, who is Vietnamese, spoke English while testifying at the hearing. Mrs. Genz testified that she did not talk about embalming with the respondent on the night of July 26, 1988; that someone told her the body had to go to La Crosse by 11:00 p.m., on July 26, 1988, but that she did not know why; that she did not remember if the respondent mentioned obtaining permission to do embalming before taking the body to the pathologist; that she did not know "what a pathologist was", and that she did not know what "autopsy" or "embalming" meant at that time.

Mrs. Genz further testified that on the morning of July 27, 1988, the respondent telephoned her regarding papers she was suppose to sign; that the respondent came over to her house with some papers; that she signed a release form giving the respondent permission to embalm the body of Lyle Genz; that Greg Hutchins was present at the time she signed the release form; that she consulted with Greg Hutchins prior to signing the release form, and that the respondent did not mention payment (refer to Exhibit #4).

Mrs. Genz testified that she found out what embalming meant after she signed the release form on the morning of July 27, 1988. Mrs. Genz stated that after she signed the authorization form provided by the respondent and after the respondent left her home, she asked Greg Hutchins "what that mean ... what that paper for me to sign ". Mrs. Genz stated that Hutchins said "... has to do with the body". Mrs. Genz summarized Mr. Hutchins' explanation regarding embalming by stating "if you like to have an open casket you have to have that".

Toni Eddy, Monroe County Medical Examiner, testified that she contacted Dr. Abbas Rahimi in La Crosse on the night of July 27, 1988, regarding performing an autopsy on the body of Lyle D. Genz. Ms. Eddy testified that Dr. Rahimi gave her permission to allow a funeral director to embalm the body anytime after the coroner's office obtained the specimens needed for laboratory analysis.

Medical Examiner Eddy stated that she informed the respondent, Robert E. Sonnenburg, that arterial embalming could be done on the body prior to transporting the body to La Crosse, and that he was authorized to do so if the family did not specifically select a funeral director to do the embalming. Ms. Eddy further stated that she informed Mr. Sonnenburg that Dr. Rahimi would be performing the autopsy on the morning of July 27, 1988, and that the body could be transported at the convenience of the person transporting the body.

Medical Examiner Eddy further stated that on the morning of July 27, 1988, she communicated with the respondent, Robert E. Sonnenburg, regarding providing him with written authorization to embalm the body of Lyle D. Genz, during which time, the respondent told her that he was "having some trouble" making Mrs. Genz understand that he needed her permission to do arterial work.

Gregory Hutchins testified at the request of the complainant. Mr. Hutchins stated that on the morning of July 27, 1988, he was at Mrs. Genz's home when the respondent arrived with a form for Mrs. Genz to sign. Mr. Hutchins stated that he asked Mr. Sonnenburg "what the form was for"; that Mr. Sonnenburg explained that the pathologist had requested some arterial work prior to the autopsy; that Mr. Sonnenburg told him the work had been authorized by the medical examiner, and that "this was just a formality ... that Be had to sign to take care of that".

Mr. Hutchins further stated that Mr. Sonnenburg told him that he had embalmed the body of Lyle D. Genz prior to the autopsy at the request of the pathologist. Mr. Hutchins testified that Mr. Sonnenburg was at Mrs. Genz's home for 5-6 minutes, and that Mr. Sonnenburg obtained Mrs. Genz's signature and then left.

The respondent, Robert Sonnenburg testified that the Medical Examiner, Toni Eddy, introduced him to Mrs. Genz when Mrs. Genz arrived at the hospital on the night of July 26, 1988. Mr. Sonnenburg stated that Medical Examiner Eddy asked Mrs. Genz which funeral home would be handling the arrangements, and that Mrs. Genz stated she would talk to "Elsie". Mr. Sonnenburg stated that he asked Mrs. Genz if he was "to embalm as well as transport the body to La Crosse", and that Mrs. Genz nodded her head indicating yes. Mr. Sonnenburg stated that he did not have a "permission to embalm" form with him at the hospital, and that he did not intend to charge Mrs. Genz for the embalming. Mr. Sonnenburg stated that he did not remember seeing Mr. Hutchins at the hospital on the night of July 26, 1988.

Finally, Mr. Sonnenburg testified that prior to embalming the body of Lyle D. Genz, he made no effort to determine if Mrs. Genz understood what "embalming" meant, and that he did not attempt to contact Elsie Wolfgram.

The evidence also establishes that the respondents submitted a bill to and received payment from Ninneman-Steele Funeral Home for the embalming services provided relating to the death of Lyle D. Genz. (Refer to Exhibits #1 and #14).

<u>Second</u>, the complainant alleges that the respondents violated s. FDE 3.02 (8) Wis. Adm. Code by performing services not authorized for which charges were made.

The evidence clearly establishes that the respondent, Robert E. Sonnenburg, embalmed the body of Lyle Genz prior to obtaining authorization from the Genz family, and that the respondents submitted a bill to and received payment from Ninneman-Steele for the services. (Refer to Exs. 1,14).

As stated earlier, the respondent, Robert E. Sonnenburg, embalmed the body of Lyle Genz on the night of July 26, 1988. Mrs. Genz testified that she did not talk about embalming with the respondent on the night of July 26, 1988, and that she did find out what "embalming meant" until the morning of July 27, 1988.

In reference to the bill submitted to Ninneman-Steele for the embalming services, the evidence establishes that the respondents submitted a bill, dated August 2, 1988, for embalming services and received payment for the services in the amount of $140.00. (Refer to Exhibits #1 and #14).

In this case, there is no issue relating to the exercise of due diligence in locating the next of kin prior to embalming the body of Lyle D. Genz, because the evidence establishes that the respondent, Robert E. Sonnenburg, was aware of Mrs. Genz's identity before he embalmed the body of Lyle D. Genz.

COUNT II

The complainant alleges in Count II of the Complaint that the respondents violated ss. FDE 3.02 (1) and (9) Wis. Adm. Code, and 47 C.F.R. s. 453.2 (4).

Sections FDE 3.02 (1) and (9) Wis. Adm. Code read as follow:

> FDE 3.02 Unprofessional Conduct. Any occurrence of the following shall constitute unprofessional conduct by a licensed funeral director, registered apprentice funeral director or owner of a funeral establishment.
>
> (1) Violating or aiding and abetting a violation of any state or federal law substantially related to the practice of funeral directing.
>
> (9) Engaging in misleading or deceptive conduct in the conduct of business or profession.

1. Failure To Provide Price List

First, the complainant alleges in Count II of the Complaint that the respondents violated s. FDE 3.02 (1), Wis. Adm. Code, by failing to comply with 47 C.F.R. s. 453.2 (4). The federal regulation, 47 C.F.R. ss. 453.2 (a) and (b) (4), provides that in selling or offering to sell funeral goods or funeral services to the public, a funeral provider must give a printed or typewritten price list, for retention, to persons who inquire (in person) about funeral arrangements or the prices of funeral goods or services. The regulation provides that the price list must contain certain information, including but not limited to, the retail price for embalming, and that failure to provide such information is an unfair or deceptive act or practice.

The evidence in this case establishes that the respondents did not provide Mrs. Genz with a price list relating to the funeral goods and services offered by the respondents.

Mrs. Genz testified that on July 27, 1988, she signed an authorization form giving the respondents permission to embalm the body of Lyle D. Genz, and that the respondents did not tell her anything about paying for the embalming.

Greg Hutchins testified that on July 27, 1988, he was present when Mr. Sonnenburg provided Mrs. Genz with an authorization form for her to sign relating to embalming the body of Lyle D. Genz. Mr. Hutchins testified that he did not hear the respondent mention anything about payment.

The respondent, Robert Sonnenburg, testified that on the night of July 26, 1988, he did not give Mrs. Genz a price list, because he "had no intentions of charging her for that".

The respondents' general price list, which was in effect at the time the respondent embalmed the body of Lyle D. Genz, states that the price for services of the funeral director and staff for "embalming of deceased" is $80.00. (Refer to Exhibits #7).

2. Misleading or Deceptive Conduct

a) Disclosure Regarding Embalming Services

Second, the complainant alleges in Count II of the Complaint, that the respondents engaged in misleading or deceptive conduct, in violation of s. FDE 3.02 (9) Wis. Adm. Code, by providing Mrs. Genz with a form for authorization for embalming without informing her that the body had already been embalmed, and by submitting a bill for embalming services in the amount of $140.00, when the amount charged by the respondent for complete embalming, as set forth in respondents' general price list, was $80.00.

In reference to the complainant's allegation that the respondents provided Mrs. Genz with a form for authorization for embalming the body of Lyle D. Genz, without informing Mrs. Genz that the body had already been embalmed, the evidence establishes that respondents engaged in misleading and deceptive conduct.

The evidence establishes that the respondents embalmed the body of Lyle Genz on July 26, 1988; that on the morning of July 27, 1988, the respondent obtained Mrs. Genz's written authorization to embalm the body of Lyle D. Genz, and that the respondent did not inform Mrs. Genz at or prior to the time she signed the authorization form that the body had already been embalmed.

Mrs. Genz testified that the respondent came by her home with some papers for her to sign; that she consulted with Greg Hutchins, who was present at her home at that time; that she did not remember any other conversation; that she did not read the papers, and that she signed the papers.

Mrs. Genz stated that she did not know what embalming meant until after she signed the papers and after Mr. Sonnenburg left her home, at which time, she asked Greg Hutchins "what that mean ... what that paper for me to sign". Mrs. Genz stated that Greg Hutchins said "... has to do with the body". Mrs. Genz summarized Mr. Hutchins' explanation regarding embalming by stating "if you like to have an open casket you have to have that".

The respondent, Robert E. Sonnenburg, testified that Mrs. Genz signed the authorization form on the morning of July 27, 1988, giving him permission to embalm the body of Lyle Genz; that Mrs. Genz signed the form in "blank", and that he completed the form in May, 1989, after he was contacted by Tom Redman, an investigator employed at that time with the Wisconsin Dept. of Regulation and Licensing.

Mr. Sonnenburg stated that he did not discuss the authorization to embalm form with Mrs. Genz; that she did not ask any questions about the form; that he assumed Mrs. Genz read the form (before signing it), and that he did not remember seeing Greg Hutchins at Mrs. Genz's home on the morning of July 27, 1988. As noted earlier, Mr. Sonnenburg testified that prior to embalming the body of Lyle D. Genz, he made no effort to determine if Mrs. Genz understood what "embalming" meant, and that he did not attempt to contact Elsie Wolfgram.

b) Price Charged For Embalming Services

In reference to the complainant's allegation that the respondents submitted a bill in the amount of $140.00 for embalming the body of the deceased when the amount charged by the respondent funeral home for complete embalming was $80.00 as set forth in the respondents' general price list, the evidence does not establish that the respondents engaged in misleading or deceptive conduct.

The evidence presented establishes that the respondents' general price list in effect at the time the body of Lyle D. Genz was embalmed contained a price of $80.00 for "services" relating to embalming a deceased person. The evidence also establishes that the respondents submitted a bill in the amount of $140.00 to Ninneman-Steele Funeral Home for embalming services relating to Lyle D. Genz, and that the respondents received payment from Ninneman-Steele for such services (refer to Exhibits #1, 7 and 14).

1. Purpose of Price List

As discussed previously, 47 C.F.R. s. 453.2 requires a funeral provider to give a printed or typewritten price list to persons who inquire (in person) about funeral arrangements. This requirement is in essence a consumer protection measure, which is designed to insure that consumers are fully informed, prior to entering into contractual obligations, of all costs and expenses associated with the purchase of funeral goods and services.

2. Respondents' General Price List

The respondents' general price list which was in effect at the time the respondents provided the embalming services relating to Lyle D. Genz contains several references to prices relating to embalming (refer to Exhibit #7). In addition to the prices relating to "complete funeral service accommodation groupings", which include embalming services, the price list contains two specific references to "embalming" which are itemized as follows:

Services of the Funeral Director and Staff:

3a. Embalming of deceased **$80.00**

Facilities and Equipment:

2b. Preparation room for embalming, dressing, cosmetic work and restoration **$95.00**

In addition to specific prices relating to embalming, the price list contains a price of $65.00 for "cleansing and terminal disinfection".

3. Analysis of Arguments

The complainant argues that the respondents' general price list reflects a price of $80.00 for embalming a deceased person, and that the conduct of the respondents in submitting a bill for $140.00 to Ninneman-Steele Funeral Home for the embalming was misleading or deceptive.

The respondents argue that the $140.00 charge for the embalming of Lyle D. Genz was less than the "usual charge" for such service, as reflected on the general price list. The respondents contend that the combined prices on the general price list for embalming services, cleansing and terminal disinfection, and for the use of the preparation room for embalming was greater than the $140.00 price charged in this case.

First, the evidence establishes that the respondents' general price list contains three separate prices which relate to embalming a deceased person; namely, a price for "embalming services", a price for "cleansing and terminal disinfection", and a price for the "use of the preparation room" for embalming.

At first glance, it appears that the general price list reflects a total price of $80.00 for embalming a deceased person; however, upon closer review, one must conclude that the $80.00 price relates to "services provided", and that the price list contains additional prices which relate to "cleansing and terminal disinfection" and to the "use of the preparation room" for embalming.

Second, the evidence establishes that in this case the respondents provided each of the three items identified on the price list which relate to embalming a deceased person. The respondents provided "embalming services", services relating to "cleansing and terminal disinfection", and used the funeral home facilities to do the embalming (the evidence does not indicate that the respondents dressed, cosmeticized or restored the body).

Third, the evidence does not establish that the $140.00 price charged by the respondents for embalming the body of Lyle D. Genz was greater than the price of such services, as reflected on the general price list. As noted earlier, the price list reflects a price of $80.00 for "embalming services", a price of $65.00 for "cleansing and terminal disinfection", and a price of $95.00 relating to use of the preparation room for embalming, dressing, cosmetic work and restoration. The evidence does not establish that the $140.00 price charged in this case did not include a charge for cleansing and terminal disinfection, or a charge for the use of the preparation room for embalming. (Note: The evidence does not establish what percentage of the $95.00 price relates to the "use of the preparation room for embalming" or what percentage relates to dressing, cosmetic work and restoration. Also, the reasonableness of a particular price on the price list is not at issue).

Although it is clear from the evidence that consumers would benefit if the respondents' general price list contained a single price for services relating to "embalming" a person, it cannot be concluded that by listing the three items separately, the respondents' conduct was misleading or deceptive. The respondents' itemization on the price list of three separate charges which relate to embalming, is probably more "confusing" than deceptive to consumers who are not knowledgeable about embalming services. For example, the listing of "cleansing and terminal disinfection" on the price list as a separate item may not provide useful information to consumers in determining the total price for embalming, if the consumers do not know that the service is provided in conjunction with embalming services. (Note: Sections HSS 136.04 (3) and (4) Wis. Adm. Code, provide that prior to embalming a body, an embalmer must wash the entire body thoroughly with a germicidal soap or detergent, clean the body orifices, and treat the body with a topical disinfectant).

Usual and Customary Charges

The complainant further argues that the respondents' usual and customary charge for embalming, as established by "actual practice", was $80.00 during the relevant time period. Six funeral directors testified at the request of the complainant regarding the charges the respondents billed them for embalming and related services (refer to Exhibits #6, 8, 9, 10 and 11).

The respondents contend that the charges submitted by the respondents to "other" funeral directors/establishments do not constitute their usual and customary price to the public, and that it is very common for funeral directors/establishments to charge "other" funeral directors/establishments less than the price which the public is charged for the same service.

The evidence in this case does not establish that the respondents' usual and customary charge for embalming was $80.00 during the relevant time period, or that the respondents' conduct in submitting a bill to Ninneman-Steele for $140.00 for such services was misleading or deceptive.

First, the evidence does not establish a usual and customary price which the respondents charged the public/consumers for embalming services. The evidence presented relates primarily to prices which the respondents charged other funeral directors/establishments for embalming services.

Second, the evidence does not establish that the usual and customary price which the respondents charged to "other" funeral directors and/or establishments for embalming was $80.00.

The evidence establishes that the respondents embalmed the body of Lyle D. Genz on July 26, 1988, and that the respondents submitted a bill for $140.00 for such service to Ninneman-Steele on or about August 2, 1988. Four of the six funeral directors who testified at the request of the complainant testified regarding bill submitted to them by the respondents after the relevant time period (refer to Exs. 8-10. There were no exhibits introduced which relate to the testimony provided by Thomas Goddard. Mr. Goddard did not state when the respondents submitted a bill nor identify the amount of the bill which related to embalming). In addition, two witnesses, Robert Blasche and James Scheurell, testified that they received a bill from the respondents for $125.00 for embalming and related services, but they did not identify what percentage of the $125.00 price was charged for embalming. Also it is questionable whether testimony involving six transactions is sufficient to constitute a basis for determining the respondents usual and customary charge.

Third, the evidence indicates that in cases where decedents are involved in traffic accidents, cleansing and disinfecting the bodies require more work and attention than in cases involving hospital deaths.

Robert Sonnenburg testified that he charged more for cleaning and terminal disinfection in Lyle Genz's case, because Lyle Genz was involved in a traffic accident. Mr. Sonnenburg stated that cleansing and disinfecting the body of a person who dies in a traffic accident requires more work and attention than it would in a case where a person dies in a hospital.

Mr. Sonnenburg testified that in a least one instance in July, 1988, he charged another funeral director the same amount for embalming and cleansing and terminal disinfection as he did in the case of Lyle D. Genz. Mr. Sonnenburg testified that the decedent in that case was also involved in a traffic accident (refer to Exhibit #12).

In addition, all of the funeral directors who testified at the request of the complainant, stated that cleansing and disinfecting required more work and attention in cases involving traffic accident victims, and that the bill which they received from the respondents related to embalming services provided for deceased persons who were not traffic accident victims (refer to Ex. #6, 8-11).

COUNT III

The complainant alleges in Count III of the Complaint that by initiating contact with Mrs. Be Genz for purposes of offering his services as a funeral director, the respondent, Robert E. Sonnenburg, violated s. FDE 3.02 (12) Wis. Adm. Code, which reads as follows:

> FDE 3.02 Unprofessional conduct. Any occurrence of the following shall constitute unprofessional conduct by a licensed funeral director, registered apprentice funeral director or owner of a funeral establishment.
>
> (12) Engaging in solicitation. A funeral director may not initiate written communication, personal or telephone contact for the purpose of obtaining professional employment with persons known to be in need of such services, or where the need for funeral services is imminent.

The evidence presented establishes that on the night of July 26, 1988, the respondent initiated personal contact with Mrs. Be Genz for purposes of obtaining professional employment. The evidence does not establish that the respondent engaged in solicitation during telephone and personal contacts with Mrs. Genz on the morning of July 27, 1988.

1. Initial Contact

The evidence establishes that the respondent, Robert E. Sonnenburg initiated personal contact with Be Genz, the decedent's widow, on the night of July 26, 1988, for purposes of obtaining professional employment, and that the respondent knew Mrs. Genz was in need of such services.

According to the evidence presented, the respondent's initial contact with Mrs. Genz was on the night of July 26, 1988, at Tomah Memorial Hospital.

Medical Examiner Eddy testified that she met Mrs. Genz and Greg Hutchins at the emergency room at the hospital for identification of the body of Lyle Genz. Medical Examiner Eddy stated that Mr. Sonnenburg was present in the emergency room at Tomah Memorial Hospital; that she introduced the respondent to Mrs. Genz and that she explained to Mrs. Genz that the respondent was working for the county, but that it did not mean he had been chosen to handle the funeral arrangements.

Medical Examiner Eddy further testified that she informed Mrs. Genz that it was necessary to do an autopsy; that Mrs. Genz did not respond when she informed Mrs. Genz about the autopsy; that she was not sure if Mrs. Genz knew what an autopsy was, and that she informed Mr. Hutchins that the embalming would be done before the body would be taken to the pathologist. Medical Examiner Eddy testified that she did not hear the respondent say that he wanted to do the funeral, and that she would have remembered if the respondent had made the statement. The evidence indicates that Ms. Eddy did not remain in Mr. Sonnenburg's presence during the entire time he was at the hospital on the night of July 26, 1988.

Mrs. Genz testified that while she was at the hospital on the night of July 26, 1988, she saw Mr. Sonnenburg in the emergency room area outside of the room where her husband's body had been placed. Mrs. Genz stated that Mr. Sonnenburg gave her a hug and said that he was sorry for her loss. Mrs. Genz testified that Mr. Sonnenburg told her that he was a "funeral director in Tomah", and that "if I need any help feel free to call him". Mrs. Genz stated that she did not remember the medical examiner introducing her to Mr. Sonnenburg and that she did not remember if Ms. Eddy told her that the respondent owned a funeral home.

Mrs. Genz testified that she did not remember if the respondent mentioned obtaining permission to embalm the body before taking it to the pathologist. Mrs. Genz stated that someone told her that the body had to be transported to La Crosse by 11:00 p.m., but that she did not know why the body had to be transported. Mrs. Genz stated that she did not know Mr. Sonnenburg was going to transport the body to La Crosse.

Gregory Hutchins testified that on the night of July 26, 1988, he took Mrs. Genz to the emergency room of Tomah Memorial hospital; that when he went into the emergency room, he saw Mr. Sonnenburg "standing to the right side"; that he and Mrs. Genz met with the medical examiner and a police officer, and that the medical examiner informed them the body was going to be taken for an autopsy.

Mr. Hutchins stated that when they "started to leave the emergency and at that point ... had to go by Mr. Sonnenburg in order to leave", the respondent stepped forward and introduced himself and stated: "I am Bob Sonnenburg, I'll be taking Lyle's body to La Crosse for the autopsy. I have a funeral home in town and, if I can be of any assistance let me know". Mr. Hutchins testified that his response to Mr. Sonnenburg was "We haven't even had time to think of anything like that". Mr. Hutchins stated that he did not remember the medical examiner introducing him to Mr. Sonnenburg.

The respondent, Robert E. Sonnenburg, testified that while he was at the hospital on July 26, 1988, the Medical Examiner, Toni Eddy, introduced him to Mrs. Genz; that the medical examiner stated "This is Robert Sonnenburg, he is the Director of the Sonnenburg Family Funeral Home here in Tomah"; that the medical examiner asked Mrs. Genz if she knew which funeral home would be handling the arrangements; that Mrs. Genz told the medical examiner she would talk to someone named Elsie in Kendall; that the medical examiner told Mrs. Genz he was there to assist her, and that he would be transporting the body to La Crosse.

Mr. Sonnenburg further stated that he asked Mrs. Genz "Am I to embalm as well as transport your husband to La Crosse", and that Mrs. Genz "nodded her head yes". Mr. Sonnenburg stated that he did not recall talking to or seeing Greg Hutchins at the hospital.

Mr. Sonnenburg testified that he did not ask Mrs. Genz if he could handle the funeral arrangements. Mr. Sonnenburg stated that when Mrs. Genz said she was going to be talking to "Elsie in Kendall", he assumed that Floyd Nelson, a funeral director, from Kendall would probably be handling the services.

Mr. Sonnenburg further stated that prior to embalming the body of Lyle D. Genz, he called Nelson and inquired if he had heard from the family and that Mr. Nelson said that he had not heard from the family; that he told Mr. Nelson that he would be doing the embalming and he inquired as to whether he (Nelson) had any interest or preference to being present or would he like to do the embalming. Mr. Sonnenburg stated that Mr. Nelson said "no that was fine", that he had "done some work for him in the past", and that "he was sure everything would be fine".

Peter Nelson, a funeral director from Wilton, Wisconsin, testified at the request of the respondents. Mr. Nelson testified that on the evening that Lyle Genz was killed, Mr. Sonnenburg called him and told him that Lyle had been killed in a motorcycle accident, and that there had been some conversation at the hospital that "the family was undecided as to where they were going to take Lyle's body, whether it was going to be left there or whether they were going to bring it back to Kendall".

Mr. Nelson further stated that Mr. Sonnenburg told him during the telephone conversation, that he had permission to embalm the body and that "seeing that it was perhaps coming back to Kendall, he wondered if I had any objections to him embalming the body ... and I said that would be fine with me if he would do this". Mr. Nelson testified that he "had the funeral services" for both of Lyle Genz's parents.

Finally, Mr. Nelson testified that he was a friend of Mr. Sonnenburg; that he had met with Mrs. Genz at his home prior to the hearing (of this case); that Elsie Wolfgram had invited Mrs. Genz to his home, and that Elsie Wolfgram told Mrs. Genz at the meeting, in reference to this proceeding, "that Mr. Sonnenburg's children might be put on welfare and it would be, to a certain extent, her responsibility".

2. <u>Telephone Contacts</u>

The evidence indicates that the respondent, Robert E. Sonnenburg, initiated telephone contacts with Mrs. Genz on two separate occasions on the morning of July 27, 1988, for purposes of obtaining authorization to embalm the body of Lyle D. Genz. The evidence does not establish that Mr. Sonnenburg initiated the telephone contacts with Mrs. Genz for purposes of obtaining professional employment.

Mrs. Genz testified that on the morning of July 27, 1988, before 8:00 a.m., Mr. Sonnenburg called her home, and that Elsie Wolfgram answered the telephone. Mrs. Genz stated that she spoke with Mr. Sonnenburg on the telephone; that he told her she was suppose to sign some papers; that she informed him that she would not sign any papers until Hutchins "gets there", and that she told him to call back. Mrs. Genz further stated that she does not remember whether the respondent mentioned anything about funeral services during the telephone conversation.

Mrs. Genz further stated that Mr. Sonnenburg called back again after "Ray came over" and that she did not remember if she talked with him during the second telephone call. During cross-examination, Mrs. Genz testified that she did not remember if she "came to the phone the first time" when Mr. Sonnenburg called and that she did not remember if she talked with him when he called the second time.

Greg Hutchins testified that on the morning of July 27, 1988, between 7:30 a.m., and 8:00 a.m., Mrs. Genz called him and said that Mr. Sonnenburg had called her about "some papers that she had to sign". Mr. Hutchins stated that around 8:00 a.m., he was at Mrs. Genz's home when Mr. Sonnenburg called to speak with Mrs. Genz; that he spoke to the respondent on the telephone; that the respondent asked him if arrangements had been made for the funeral; that he informed Mr. Sonnenburg that Ninneman-Steele would be handling the arrangements; that the respondent said that he had papers for Mrs. Genz to sign, and that he told the respondent "it was okay to come over".

The respondent, Robert E. Sonnenburg, testified that on the morning of July 27, 1988, he call the Genz home and spoke with a lady; that he asked the lady if it was possible for him to speak with Mrs. Genz, and that the lady told him Mrs. Genz was not available. Mr. Sonnenburg further stated that he called back to the Genz home 10-15 minutes later; that the same lady answered the phone; that he asked the lady "if it was possible for me to come down"; that he told the lady that he needed Mrs. Genz's signature on an embalming authorization form; that the lady told him he "could come down", and that he believes the lady he spoke with on the telephone was Elsie Wolfgram.

Mr. Sonnenburg testified that he did not talk to Mrs. Genz nor Mr. Hutchins on the telephone on the morning of July 27, 1988, and that he did not offer to provide funeral services. Mr. Sonnenburg stated that he still assumed on the morning of July 27, 1988, that Mr. Nelson would be providing the funeral services.

Elsie Wolfgram testified at the request of the respondent. Ms. Wolfgram testified that she stayed overnight at the Genz home on the night of July 26, 1988, at Mrs. Genz's request. Ms. Wolfgram stated that on the morning of July 27, 1988, she answered the telephone at the Genz Home "until Greg got there", because Mrs. Genz "would not come to the phone". Ms. Wolfgram stated that she believes that she talked with Mr. Sonnenburg the first time that he called; that she told Mr. Sonnenburg that Mrs. Genz was not available, and that Mr. Sonnenburg said that he would call back later.

Ms. Wolfgram further stated that she "thinks" she spoke with Robert Sonnenburg the second time that he called the Genz home; that Mr. Sonnenburg said "will Mrs. Genz talk to me"; that Mrs. Genz was "standing there"; that she told Mrs. Genz that "this is Mr. Sonnenburg, he wants ... to know if he can come and see you", and that Mrs. Genz "shook her head" indicating yes "he could come". Ms. Wolfgram stated that Mrs. Genz did not talk to Robert Sonnenburg on the telephone; that Mrs. Genz "would not talk on the phone" that day; and that she "did all the talking" on the telephone that day "until Greg got back there".

Tom Redman, formerly an investigator with the Wisconsin Department of Regulation & Licensing, Division of Enforcement, testified that on March 29, 1989, he telephone Elsie Wolfgram, and that Ms. Wolfgram told him when she talked to Mr. Sonnenburg by telephone on July 27, 1988, Mr. Sonnenburg stated that he wanted to "come over and make funeral arrangements". Mr. Redman stated that Mrs. Wolfgram did not talk about a second telephone conversation with Mr. Sonnenburg.

Ms. Wolfgram testified during cross-examination that she did recall telling Mr. Redman she had talked to Mr. Sonnenburg on the telephone, but that she did not recall telling Mr. Redman that Mr. Sonnenburg asked "to come over to make arrangements for the funeral".

3. Second Personal Contact

The evidence does not establish that the respondent initiated personal contact with Mrs. Genz at her home on the morning of July 27, 1988, for purposes of obtaining professional employment.

Mrs. Genz testified that the respondent came over to her home with papers for her to sign; that she consulted with Mr. Hutchins, who was present at her home at the time, and that she signed the paper giving the respondent permission to embalm the body of Lyle Genz. Mrs. Genz further stated that she did not remember any "other" conversation while the respondent was at her home on the morning of July 27, 1988.

Mr. Hutchins testified that he was present when the respondent arrived at Mrs. Genz's home on the morning of July 27, 1988; that he asked the respondent what the authorization form was for; that the respondent told him it was for pathology; that the respondent was at Mrs. Genz's home for 5-6 minutes, and that the respondent left after Mrs. Genz signed the papers.

The respondent, Robert Sonnenburg testified that on the morning of July 27, 1988, he went to Mrs. Genz's home to obtain her signature on the authorization to embalm form; that Mrs. Genz and Elsie were at the Genz home; that Mrs. Genz did not say anything, and that she signed the form. Mr. Sonnenburg stated that he did not see Greg Hutchins at the time he was at the Genz home.

Elsie Wolfgram testified that on the morning of July 27, 1988, Mr. Sonnenburg came over to Mrs. Genz's home sometime shortly after his second telephone call; that when he came into the Genz home, he shook Mrs. Genz's hand and sympathized with her; that he wanted her to sign some papers; that Mrs. Genz signed the papers, and that Mr. Sonnenburg left shortly thereafter. Ms. Wolfgram stated that she did not hear the respondent say anything about handling the funeral. Ms. Wolfgram stated that she did not think Greg Hutchins was at Mrs. Genz home when Mr. Sonnenburg came by, or that he talked with Mr. Sonnenburg at that time.

III. RECOMMENDATIONS REGARDING DISCIPLINE

1. Exercise of Discretion

Section 445.13 Wis. Stats., grants discretionary authority to the Funeral Directors Examining Board to discipline a person if the person engages in certain conduct. Section 445.13 (1) Wis. Stats., states, in part, that the examining board may limit, suspend or revoke licenses of funeral directors, certificates of registration of apprentices and permits of operators of funeral establishments and reprimand funeral directors, apprentices and funeral establishments for violations of 15 USC 45 and 57, of this chapter or of any rule of the department of health and social services or the examining board or for unprofessional conduct.

Discretion may be defined, when applied to public functionaries, as the power or right conferred upon them by law of acting officially under certain circumstances, according to the dictates of their own judgment and conscience, and not controlled by the judgment or conscience of others. The very essence of discretionary power is that the person or persons exercising it may choose which of several courses will be followed. 2 Am.Jur. 2d. Administrative Law, sec. 83.

Discretion is not synonymous with decision-making. Rather, the term contemplates a process of reasoning which depends on facts that are of record or reasonably derived by inference from the record, and a conclusion based on a logical rationale founded on proper legal standards. The record must show that discretion was in fact exercised. Madison Gas & Electric co. v. Public Service Commission, 109 Wis. 2d 127, 137, 325 N.W. 2d 339 (1982); Reidinger v. Optometry Examining Board, 81 Wis. 2d 292, 297, 260 N.W. 2d 270 (1971).

2. Purposes of Discipline

The purposes of discipline by occupational licensing boards are to protect the public, deter other licensees from engaging in similar misconduct, and to promote the rehabilitation of the licensee. State v. Aldrich, 71 Wis. 2d. 206 (1976). Punishment of the licensee is not a proper consideration. State v. MacIntyre, 41 Wis. 2d 481 (1969).

3. Recommendations of the Parties

The complainant recommends that the Funeral Directors Examining Board suspend the license of Robert E. Sonnenburg and the funeral establishment permit of Sonnenburg Family Funeral Home. The respondents recommend that the Board not impose discipline.

4. Appropriate Discipline

Based upon the evidence presented and the discussions set forth previously herein, the Administrative Law Judge recommends that the funeral directors license of Robert E. Sonnenburg, and the funeral establishment permit of Sonnenburg Family Funeral Home be suspended for a period of 30 days.

The evidence in this case clearly establishes that the respondents violated numerous statutory and administrative code provisions relating to the practice of funeral directing. Although the evidence indicates that the respondents' conduct in this case involved a "single" incident, in the sense that the evidence does not indicate that the respondents engaged in the same or similar conduct on other occasions, there is no question that such conduct resulted in violations which were serious in nature.

The Administrative Law Judge recommends that discipline be imposed in this case in order to insure protection of the public, and to deter other licensees from engaging in the same or similar misconduct. Discipline in this case would provide some assurance to the public that the respondents' conduct in the future, in dealing with family members of a deceased person at a time when they are experiencing intense emotional pain and vulnerability, will be consistent with standards of conduct established by the Funeral Directors Examining Board.

Based upon the evidence presented and the discussions set forth previously herein, the Administrative Law Judge recommends that the Funeral Directors Examining Board adopt as its final decision in this matter, the proposed Findings of Fact, Conclusions of Law and Order as set forth herein.

Dated at Madison, Wisconsin, this 12th day of December, 1990.

Respectfully submitted,

Ruby Jefferson-Moore

Ruby Jefferson-Moore
Administrative Law Judge

NOTICE OF APPEAL INFORMATION

(Notice of Rights for Rehearing or Judicial Review, the times allowed for each and the identification of the party to be named as respondent)

The following notice is served on you as part of the final decision:

1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of Wisconsin Funeral Directors Examining Board.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon the State of Wisconsin Funeral Directors Examining Board.

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: the State of Wisconsin Funeral Directors Examining Board.

The date of mailing of this decision is March 21, 1991.

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227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be a prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3) (e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(2) The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) Rehearing will be granted only on the basis of:

(a) Some material error of law.

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all parties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the agency does not enter an order disposing of the petition within the 30-day period, the petition shall be deemed to have been denied as of the expiration of the 30-day period.

(6) Upon granting a rehearing, the agency shall set the matter for further proceedings as soon as practicable. Proceedings upon rehearing shall conform as nearly may be to the proceedings in an original hearing except as the agency may otherwise direct. If in the agency's judgment, after such rehearing it appears that the original decision, order or determination is in any respect unlawful or unreasonable, the agency may reverse, change, modify or suspend the same accordingly. Any decision, order or determination made after such rehearing reversing, changing, modifying or suspending the original determination shall have the same force and effect as an original decision, order or determination.

227.52 Judicial review; decisions reviewable. Administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to review as provided in this chapter, except for the decisions of the department of revenue other than decisions relating to alcohol beverage permits issued under ch. 125, decisions of the department of employe trust funds, the commissioner of banking, the commissioner of credit unions, the commissioner of savings and loan, the board of state canvassers and those decisions of the department of industry, labor and human relations which are subject to review, prior to any judicial review, by the labor and industry review commission, and except as otherwise provided by law.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59 (6) (b), 182.70 (6) and 182.71 (5) (g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified. The petition may be amended, by leave of court, though the time for serving the same has expired. The petition shall be entitled in the name of the person serving it as petitioner and the name of the agency whose decision is sought to be reviewed as respondent, except that in petitions for review of decisions of the following agencies, the latter agency specified shall be the named respondent:

1. The tax appeals commission, the department of revenue.

2. The banking review board or the consumer credit review board, the commissioner of banking.

3. The credit union review board, the commissioner of credit unions.

4. The savings and loan review board, the commissioner of savings and loan, except if the petitioner is the commissioner of savings and loan, the prevailing parties before the savings and loan review board shall be the named respondents.

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

(d) The agency (except in the case of the tax appeals commission and the banking review board, the consumer credit review board, the credit union review board, and the savings and loan review board) and all parties to the proceeding before it, shall have the right to participate in the proceedings for review. The court may permit other interested persons to intervene. Any person petitioning the court to intervene shall serve a copy of the petition on each party who appeared before the agency and any additional parties to the judicial review at least 5 days prior to the date set for hearing on the petition.

(2) Every person served with the petition for review as provided in this section and who desires to participate in the proceedings for review thereby instituted shall serve upon the petitioner, within 20 days after service of the petition upon such person, a notice of appearance clearly stating the person's position with reference to each material allegation in the petition and to the affirmance, vacation or modification of the order or decision under review. Such notice, other than by the named respondent, shall also be served on the named respondent and the attorney general, and shall be filed, together with proof of required service thereof, with the clerk of the reviewing court within 10 days after such service. Service of all subsequent papers or notices in such proceeding need be made only upon the petitioner and such other persons as have served and filed the notice as provided in this subsection or have been permitted to intervene in said proceeding, as parties thereto, by order of the reviewing court.