FILE COPY

STATE OF WISCONSIN
BEFORE THE FUNERAL DIRECTORS EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	
MARK R. LAEMMRICH, RICHARD G. LAEMMRICH, LAEMMRICH FUNERAL HOME, RESPONDENTS.	:	LS9509111FRD

FINAL DECISION AND ORDER

PARTIES

The parties in this matter under sec. 227.44, Stats., and sec. RL 2.037, Wis. Adm. Code, and for purposes of review under sec. 227.53, Stats., are:

Complainant:
Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

Respondents:
Mark R. Laemmrich
1856 Cricket Court
Neenah, WI 54956

Richard G. Laemmrich
312 Milwaukee Street
Menasha, WI 54952

Laemmrich Funeral Home
312 Milwaukee Street
Menasha, WI 54952

Disciplinary Authority:
Funeral Directors Examining Board
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

1. A Notice of Hearing and Complaint were filed and served in the above captioned matter on September 11, 1995, initially setting a hearing date for October 23, 1995. The Respondents, through their attorney filed an Answer to the Complaint on September 25, 1995 and requested rescheduling of the hearing to a later date because of a conflict on the part of Respondents' attorney, and the need for greater time to prepare for the hearing. In a prehearing conference the hearing was rescheduled for December 12, 1995, and deadlines set for the filing of witness lists and the completion of discovery.

2. The hearing was commenced as rescheduled on December 12, 1995. The Complainant appeared by attorney Henry E. Sanders, and the Respondents appeared personally and by attorney William A. Woodrow.

3. The hearing was not completed on December 12th, and was continued on January 9, 1996, on which date the hearing was completed. A transcript of the hearing was prepared.

4. In the course of the hearing, and at its conclusion, Respondents raised objection to admissibility of a number of exhibits offered by Complainant, namely Exhibit #s 4, 14, 16, 17 and 18. Ruling on the admissibility of these exhibits was reserved until conclusion of the hearing and after the parties arguments and review of briefs received on January 9, 1996. Based upon the arguments of the parties and written briefs, the ALJ rules each of the Exhibit #s 4, 14 and 16, are not admissible, as they constitute hearsay, and do not satisfactorily fall within an exception to the hearsay exclusionary rule, and rules Exhibit #s 17 and 18 admissible. Discussion of these evidentiary matters is set forth in the Opinion.

Based upon the entire record in this matter, and the testimony, arguments and briefs of the parties, the undersigned recommends that the Funeral Directors Examining Board adopt as its Final Decision and Order in the above captioned matter the following:

FINDINGS OF FACT

1. Respondent Laemmrich Funeral Home (establishment) of 312 Milwaukee Street, Menasha, WI 54952, at all times material to the complaint has held a permit to operate as a funeral establishment under the provisions of chapter 445, Wis. Stats.

2. Respondent Mark R. Laemmrich (Mark), of 1856 Cricket Court, Neenah, WI 54956, had been licensed as a funeral director under the provisions of chapter 445, Wis. Stats., since September 17, 1976. By Final Decision and Order of the Funeral Directors Examining Board (Board) dated March 17, 1994, Respondent's license was suspended for a minimum period of two (2) years, effective June 1, 1994.

3. Respondent Richard G. Laemmrich (Richard) of 312 Milwaukee Street, Menasha, WI 54952, is and was at all times material to the complaint, licensed as a funeral director, and has been so licensed under the provisions of chapter 445, Wis. Stats., since November 20, 1948.

4. Richard G. Laemmrich is the father of Mark R. Laemmrich, and the two together are partners in the ownership and operation of Respondent Laemmrich Funeral Home. Richard G. Laemmrich and Mark R. Laemmrich are "operator(s) of funeral establishment" as defined in sec. 445.01(7), Stats.

5. By Final Decision and Order of the Funeral Directors Examining Board dated May 25, 1985, Respondent Richard Laemmrich was disciplined by the Board and ordered suspended for a period of seven days for failing to timely file death certificates as required by secs. 445.15(2) and 69.45(1) and (2), Wis. Stats., for failing to timely obtain burial permits, and for providing false information to an agent of the Board.

6. By Final Decision and Order dated March 17, 1994, the Funeral Directors Examining Board (Board) took disciplinary action against each of Laemmrich Funeral Home, Richard G. Laemmrich and Mark R. Laemmrich.

7. The basis for the March 17, 1994 disciplinary action concerning Mark R. Laemmrich was that on about November 24, 1993, in case #CF 378 01 02, in the Winnebago County Circuit Court, Branch VI, the Honorable Judge Bruce K. Schmidt presiding, Respondent Mark R. Laemmrich pled no contest to, was found guilty and convicted of one (1) count of theft by bailee in violation of sec. 943.20(1)(b), Stats., and one (1) count of forgery with the intent to defraud, in violation of sec. 943.38(1), Stats. Although Mark Laemmrich was charged with and convicted of one count each of theft and forgery, fourteen uncharged counts against Mark Laemmrich involving theft of monies from prepaid funeral trust arrangements of Laemmrich Funeral Home patrons, over the course of October 1992 through November-December 1993, including sixteen (16) victims and a total dollar amount of $65,740.00, were read into the record at sentencing. On the basis of his conduct that was subject of the foregoing criminal investigation and conviction, Mark R. Laemmrich was found by the Board to have engaged in unprofessional conduct by violation of secs. 445.12(4), and 445.125 (1)and (2), Wis. Stats., and secs. FD 3.02 (1), (6) and (9), Wis. Adm. Code.

8. The basis for the March 17, 1994 disciplinary action concerning Richard Laemmrich was that he had failed to deposit in a trust account $1000 received by Laemmrich Funeral Home in payment under a funeral trust agreement and lying to the patron in regard to the disposition of such fund; provided false or misleading information to agents of the Funeral Directors Examining Board concerning matters under investigation involving Mark Laemmrich, and in substance as part owner and funeral director in charge of Laemmrich Funeral Home, aided or abetted continuing theft of funeral trust moneys by Mark Laemmrich by failing to notify the Board and law enforcement agencies of his knowledge of such a theft in October 1992, and failing to ensure the integrity of other burial trusts of Laemmrich Funeral Home, which were thereafter invaded or converted by Mark Laemmrich from October 1992 through November-December 1993. Under the March 17, 1994 Order of the Board, Respondent Richard

Laemmrich's license to practice as a funeral director was suspended for 30 days from April 1 through April 30, 1994.

9. In the March 17, 1994 Order, on the basis of the unprofessional conduct of Mark and Richard Laemmrich, a reprimand was issued against the establishment permit of Laemmrich Funeral Home.

10. In pertinent part, at page 4, paragraph 24., of the March 17, 1994 stipulated order adopted by the Board, the Board imposed the following disciplinary action against Mark R. Laemmrich:

> 24. Respondent Mark Laemmrich hereby consents, accepts and agrees to a minimum two (2) years suspension, commencing June 1, 1994. Following the minimum two years suspension, Respondent Mark may petition the Board for reinstatement/lifting of the suspension, and among other things that may be required by the Board, demonstrate rehabilitation and otherwise qualify for relicensing, with the understanding that any such decision to reinstate/lift the suspension is solely within the discretion of the Board. On or before the effective date of the suspension, Respondent Mark Laemmrich shall surrender to the Department all funeral director licenses and/or certificates previously issued to him. Additionally, Respondent Mark Laemmrich agrees:
>
> > a. No visitation rights for Mark Laemmrich to/on the premises of any establishment under the ownership of Laemmrich Funeral Home, and/or Richard Laemmrich; and not to participate in any way directly or indirectly in the operations of any funeral establishment during the period of suspension.

11. At all times material to this present matter, Respondent Richard G. Laemmrich was funeral director in charge of Laemmrich Funeral Home. On September 14, 1994, Richard Laemmrich had hip replacement surgery and was absent from the funeral home until January 10, 1995. Also, from about February 15, 1995 to approximately April 15, 1995, Richard Laemmrich was on vacation in Biloxi, Mississippi. During the time of these absences from Laemmrich Funeral Home, Richard Laemmrich still maintained authority as funeral director in charge. In his absence, two other funeral directors employed by Laemmrich Funeral Home, Michael Pfotenhauer and Patrick Fahrenkrug, carried on the daily operations of Laemmrich Funeral Home.

12. From June 1, 1994 through about April 21, 1995, on exact dates unknown, Respondent Mark R. Laemmrich was present on and in the premises of Laemmrich Funeral Home, on an approximate average frequency of at least three times a week, and as much as 4 times a week. Initially, Mark Laemmrich would usually enter the building of the premises to the extent of entering a side "flower door" of the building and ringing a buzzer, and usually to communicate with his father, Richard Laemmrich about personal tasks his father desired him to do such as the mowing of apartment building lawn adjacent to the Laemmrich Funeral Home establishment property, maintenance tasks at Richard Laemmrich's residence property, washing of vehicles at the funeral home premises, and other personal errands for his father and mother.

Occasionally, Mark Laemmrich would enter the building and go into the office area of the establishment to locate Richard Laemmrich and speak with him. Mark Laemmrich would be present on the premises of Laemmrich Funeral Home for varying amounts of time ranging from 10 minutes to up to one and one half hours.

13. Shortly after Mark's suspension went into effect in June 1994, Michael Pfotenhauer, being aware of the March 17, 1994 Order suspending Mark Laemmrich's license and prohibiting him from the premises of Laemmrich Funeral Home, told Richard Laemmrich that he did not want to see Mark on the premises. Mr. Pfotenhauer testified that Richard agreed with him. However, Mark continued to visit the premises of Laemmrich Funeral Home.

14. On one occasion Patrick Fahrenkrug spoke with Richard Laemmrich following his surgery, expressing concern to Richard that Mark should not be on the premises. In an investigative deposition, Fahrenkrug testified that it seemed that Richard "just didn't care," and that Richard's response was "who else is going to run the establishment." Also, in approximately February 1995, just prior to Richard leaving for vacation, Fahrenkrug reported to Richard that he had heard "through the grapevine" that people were watching the premises. According to Fahrenkrug, Richard's response was that "talk is cheap."

15. Up to the time of Richard's hip surgery on September 14, 1994, Mark Laemmrich would mostly limit his visits to the funeral home's premises to entering the flower door and pressing the buzzer for someone to respond to him outside. However, when Richard was absent for his surgery and thereafter, Mark would usually fully enter the premises, even though his father was not present.

16. While suspended and during his father's absences for surgery and vacation, Mark would enter the office of the premises and look through mail and funeral arrangement files to gather information, such as funeral arrangements made, service times and merchandise sold, to inform Richard of the operations of the funeral home.

17. During the period of his suspension, on at least 3 occasions, Mark helped Fahrenkrug place a body in a casket.

18 During the period of his suspension, on at least 2 occasions at Richard's direction, Mark delivered left over flower arrangements to nursing homes in the community.

19. During his period of suspension, on at least 3 occasions at Richard's direction, Mark delivered or picked up a death certificate for Laemmrich Funeral Home.

20. While suspended, on at least 2 occasions during his father's absence, Mark informed Fahrenkrug that he, Mark, was "in charge," and also informed Fahrenkrug on at least one occasion that if there are any problems he would be around.

21. During his period of suspension, on occasion while present at the funeral home premises, Mark gave instructions to Fahrenkrug relating to pre-need or at-need funeral arrangements.

22. In mid-September 1994 during his suspension, Mark Laemmrich, met alone and without any other funeral director present, with a friend, Judy Mead, at the Laemmrich Funeral Home, for the purpose of advising her on what arrangements would need to be made in the event her mother, Betty J. Klingensmith, who was terminally ill, would pass away. Mark Laemmrich advised and made preliminary arrangements with Ms. Mead for the eventual transport of her mother's remains to another funeral home in Michigan, recorded the charges of Laemmrich Funeral Home for the handling and transportation of remains to Michigan, assisted Ms. Mead in the viewing and selection of a coffin and recorded the price of the coffin selected by Ms. Mead, and advised on and recorded other information and arrangements concerning funeral services, memorial donations and obituary information concerning Ms. Mead's mother in the event of her death. When Ms. Mead's mother passed away in April 1995, elements of the pre-arrangement conducted and recorded by Mark Laemmrich, including charges for the transport of the deceased's remains and charges for the coffin selected by Ms. Mead were included in the final Statement of Goods and Services Selected issued by Laemmrich Funeral Home to Ms. Mead concerning the funeral services performed for her mother.

23. Based upon the activities described in Finding of Fact 22., Mark Laemmrich engaged in providing funeral arrangements to Judy Mead for the final disposition of her mother's remains in the event of her passing away.

24. On February 21, 1995, Investigator Willie Garrette of the Department of Regulation and Licensing, investigating reports that Mark Laemmrich had been seen on numerous occasions on the premises of Laemmrich Funeral Home in violation of the March 17, 1994 Board Order, made an investigative stop at Laemmrich Funeral Home. On that date, Investigator Garrette observed Mark Laemmrich leaving the premises in the funeral home's blue station wagon. Thereafter, while Garrette was interviewing funeral home employees, Mark returned to the funeral home and entered the office. Investigator Garrette confronted Mark Laemmrich about being present at the premises in violation of the March 17, 1994 Order.

25. Following Mr. Garrette's investigative visit to Laemmrich Funeral Home, Mark continued to visit the Laemmrich Funeral Home premises on at least a weekly basis until April 21, 1995, at which time investigative subpoenas were served on employees of Laemmrich Funeral Home concerning the investigation of Mark's alleged violation of the terms of the March 17, 1994 Board Order.

26. Mark Laemmrich was involved, directly and indirectly, in the operations of Laemmrich Funeral Home during the period of his two year suspension imposed by the March 17, 1994 Board Order.

27. With the exception of Mark having met with Judy Mead to make pre-arrangements for her mother's funeral as described in Findings of Fact #22. and #23., Richard Laemmrich in

most instances was aware of, condoned, approved and authorized that Mark Laemmrich may be present in the premises of Laemmrich Funeral Home during the period of Mark's two year suspension of his license in violation of paragraph 24.a. of the March 17, 1994 Order of the Funeral Directors Examining Board.

28. With the exception of Mark having met with Judy Mead to make initial pre-arrangements for her mothers funeral as described in Findings of Fact #22. and #23., Richard Laemmrich in most instances was aware of, condoned, approved and authorized that Mark Laemmrich be involved, directly and indirectly, in the operations of Laemmrich Funeral Home, during the period of Mark's two year suspension of license in violation of paragraph 24.a. of the March 17, 1994 Board Order.

CONCLUSIONS OF LAW

1. The Funeral Directors Examining Board has jurisdiction over this matter pursuant to sec. 445.03 Stats., jurisdiction over the licenses to practice as funeral directors and the establishment permit of the Respondents pursuant to sec. 445.04 and 445.105, Stats., and jurisdiction and authority over this disciplinary proceeding pursuant to sec. 445.13, Stats.

2. Mark R. Laemmrich violated sec. FD 2.03(1), Wis. Adm. Code, and sec. 445.04, Stats., by having conducted and made funeral arrangements for Judy Mead's mother while his license was suspended by Order of the Funeral Directors Examining Board dated March 17, 1994, as described in Finding of Fact #22., engaged in unprofessional conduct under sec. FD 3.02(1), Wis. Adm. Code, and is therefore subject to disciplinary action in this matter pursuant to sec. 445.13(1), Stats.

3. Mark R. Laemmrich violated the terms, provisions and conditions of paragraph 24. a. of the Order of the Funeral Directors Examining Board dated March 17, 1994, by having been present on the premises of Laemmrich Funeral Home on a continuing basis during the period of the suspension of his license to practice as a funeral director, as described in Findings of Fact #'s 12, 15, 16, 17, 21, 22, 23 and 24, engaged in unprofessional conduct in violation of sec. FD 3.02(17), Wis. Adm. Code and is therefore subject to disciplinary action in this matter pursuant to sec. 445.13, Stats.

4. Mark R. Laemmrich violated the terms, provisions and conditions of paragraph 24. a. of the Order of the Funeral Directors Examining Board dated March 17, 1994, by having participated directly and indirectly in the operations of Laemmrich Funeral Home, all as described in Findings of Fact #'s 16, 17, 18, 19, 20, 21, 22 and 26, engaged in unprofessional conduct in violation of sec. FD 3.02(17), Wis. Adm. Code, and is therefore subject to disciplinary action in this matter pursuant to sec. 445.13, Stats.

5. Richard G. Laemmrich, as one of the owners and operators of the establishment Laemmrich Funeral Home and its funeral director in charge, having been aware of, condoned,

approved and authorized Mark Laemmrich's presence in the premises of Laemmrich Funeral Home during the period of Mark's two year suspension of his license in violation of paragraph 2.a. of the March 17, 1994 Order of the Funeral Directors Examining Board as described in Finding of Fact # 26., knowingly permitted a person associated with him and under his supervision to violate the provisions of Chapter 445, Stats., as set forth in conclusions of law 3., in violation of sec. 445.12(5), Stats., and is therefore subject to disciplinary action under sec. 445.13, Stats.

6. Richard G. Laemmrich, as one of the owners and operators of the establishment Laemmrich Funeral Home and its funeral director in charge, having been aware of, condoned, approved and authorized Mark Laemmrich's participation, directly and indirectly, in the operations of Laemmrich Funeral during the period of Mark's two year suspension of his license in violation of paragraph 2.a. of the March 17, 1994 Order of the Funeral Directors Examining Board, knowingly permitted a person associated with him and under his supervision to violate the provisions of Chapter 445, Stats., as set forth in conclusions of law 4., in violation of sec. 445.12(5), Stats., and is therefore subject to disciplinary action under sec. 445.13, Stats.

7. Pursuant to sec. 445.105(4), Stats., the funeral establishment permit of Laemmrich Funeral Home is subject to disciplinary action on the grounds that Richard G. Laemmrich and Mark R. Laemmrich, as operators of Laemmrich Funeral Home, have committed violations of Ch. 445, Stats., and rules of the Funeral Directors Examining Board as set forth in Conclusions of Law #'s 2., 3., 4., 5., and 6.

ORDER

NOW THEREFORE, IT IS HEREBY ORDERED:

(1) That the funeral director license of Mark R. Laemmrich is hereby **REVOKED** for a period of three years effective upon the signing of this Order. It is further ordered that Mark R. Laemmrich shall immediately cease and desist from any and all conduct, activity, and services as a funeral director as defined in sec. 445.01 (5), Stats. While his license remains revoked, Mark R. Laemmrich shall not participate either directly or indirectly in the ownership, operation, or management of any Wisconsin licensed funeral establishment. After three years, Mark R. Laemmrich may petition the Board for the reinstatement of his license and may be required to demonstrate his rehabilitation, among other things. It is further ordered that Mark R. Laemmrich shall immediately surrender all certificates of licensure and renewal registration by sending them to the Department of Regulation and Licensing.

(2) That the funeral director license of Richard G. Laemmrich is hereby **SUSPENDED** for a period of three years effective ninety (90) days from the date of the signing of this Order. While his license is under suspension, Richard G. Laemmrich shall not participate either directly or indirectly in the ownership, operation, or management of any Wisconsin licensed funeral establishment. After three years, Richard G. Laemmrich may petition the Board to lift the suspension and may be required to demonstrate his rehabilitation, among other things. It is

further ordered that ninety (90) days from the date of the signing of this Order that Richard G. Laemmrich shall cease and desist from any and all conduct, activity, and services as a funeral director as defined in sec. 445.01 (5), Stats., and shall surrender all certificates of licensure and renewal registration by sending them to the Department of Regulation and Licensing.

(3) The permit to operate as a funeral establishment for Laemmrich Funeral Home is hereby **REVOKED** effective ninety (90) days following the signing of this Order. On or before that date, Richard G. Laemmrich and Mark R. Laemmrich shall immediately surrender any and all certificates of the permit to operate a funeral establishment for Laemmrich Funeral Home, and any and all renewal registration certificates, by sending them to the Department of Regulation and Licensing. Upon the effective date of the revocation of the establishment license of Laemmrich Funeral Home, Richard G. Laemmrich and Laemmrich Funeral Home shall cease and desist from any and all conduct, activity and services as a funeral establishment as defined in sec. 445.01(6), Stats. It is further ordered that, effective immediately, Laemmrich Funeral Home, and its owner(s), operator(s) and funeral director(s) in charge, shall not permit Mark R. Laemmrich to be present on or in the premises of Laemmrich Funeral Home, defined as the entire building within which the establishment operates including all exterior doors, and further, shall not permit Mark R. Laemmrich to be involved, directly or indirectly, in the management or operations of Laemmrich Funeral Home.

(4) Pursuant to sec. 440.22, Stats., the full costs of this proceeding shall be assessed against Mark R. Laemmrich, Richard G. Laemmrich, and Laemmrich Funeral Home, jointly and severally, and shall be paid to the Department of Regulation and Licensing not later than thirty (30) days following the date of the signing of this Order.

EXPLANATION OF VARIANCE

The Board has accepted the ALJ's proposed Findings of Fact and Conclusions of Law in their entirety, but has modified the ALJ's recommendation with respect to discipline.

In March of 1994, the Board took disciplinary action against Mark R. Laemmrich, Richard G. Laemmrich, and the Laemmrich Funeral Home. The Board issued its Final Decision and Order after concluding that Mark Laemmrich's conviction for theft and forgery constituted unprofessional conduct. As part of the Board's Order, Mark Laemmrich was suspended from the practice of funeral directing for two years. During his period of suspension, Mark Laemmrich was prohibited from visiting the premises of *any* establishment under the ownership of Laemmrich Funeral Home or Richard Laemmrich. The Board Order further prohibited Mark Laemmrich from participating either directly or indirectly in the operations of *any* funeral home during his suspension.

On several different occasions since his license has been suspended, Mark Laemmrich has participated indirectly in the operations of the Laemmrich Funeral Home. He has done so by picking up death certificates from the funeral home, by helping to place bodies into caskets, by picking up flower arrangements, and by periodic visits to see his father, Richard Laemmrich, at the funeral home. While under suspension, Mark Laemmrich has also participated directly in the

operations of the Laemmrich Funeral Home by informing one of the employees at the funeral home on at least two separate occasions that he, Mark, was "in charge" and also by meeting with Judy Mead at the Laemmrich Funeral Home to discuss funeral arrangement regarding Ms. Mead's mother.

The Board also took disciplinary action against Richard G. Laemmrich in March of 1994, in part, because he failed to deposit $1000.00 into a trust account, provided false or misleading information to agents of the Funeral Directors Examining Board, and failed to notify the Board and law enforcement agencies of his knowledge of Mark Laemmrich's theft of funeral trust monies. As a result, his license was suspended for thirty (30) days. On the basis of the unprofessional conduct of Mark and Richard Laemmrich, a reprimand was issued against the establishment permit of the Laemmrich Funeral Home.

Richard Laemmrich was aware, in most instances, of his son Mark's direct and indirect participation in the operations of the Laemmrich Funeral Home. He was also aware, for the most part, of Mark's presence on the premises of the Laemmrich Funeral Home. There is no evidence that Richard Laemmrich ever attempted to prohibit his son from visiting the funeral home or from engaging either directly or indirectly in its operations. Indeed, it appears as if Richard Laemmrich condoned and approved of his son's activities.

By continuing to appear on the premises of the Laemmrich Funeral Home and by continuing to engage in the operations of the funeral home, Mark Laemmrich has demonstrated his blatant disregard and defiance of the March 17, 1994, Board Order. Equally disconcerting is Richard Laemmrich's cavalier attitude and acceptance of Mark's wrongful conduct. As the funeral director in charge, Richard Laemmrich condoned, authorized, and participated in Mark's violations. Consequently, he is also culpable for them.

Both Mark and Richard Laemmrich have previously been disciplined by the Board. Each was given an opportunity to rehabilitate himself, but chose instead to flaunt the Board's authority and its Order. The purpose of disciplinary action is to ensure the protection of the public, to deter similar conduct by these and other licensees, and to aid in the rehabilitation of the licensee.

Towards that end, the Board believes that the revocation of Mark Laemmrich's funeral director license for a minimum of three years is the only appropriate disciplinary action. Mark Laemmrich has repeatedly chosen to defy the Board's Order and has thus failed to demonstrate his rehabilitation. By revoking Mark Laemmrich's license, the public will not be at risk for any further misconduct of his, and other licensees will likewise be dissuaded from committing similar offenses.

Richard Laemmrich's culpability is also very serious. A three year suspension of his license is an appropriate and sufficient means to deter repeated and ongoing misconduct. The Board is mindful of the many years of service that Richard Laemmrich and the Laemmrich Funeral Home have provided to the local community. Nevertheless, the Board believes that for public protection purposes it cannot allow the Laemmrich Funeral Home or any other funeral home to be owned, operated, or managed by individuals who have been repeatedly disciplined and whose

funeral director licenses have been revoked or suspended. Consequently, the Board believes it is also necessary to revoke the funeral establishment permit of the Laemmrich Funeral Home. The revocation of the establishment permit of the Laemmrich Funeral Home is effective ninety (90) days following the date of the signing of the Board's Order That will allow a reasonable period of time for closure of its operations or for the Laemmrichs to sell the establishment to a new owner or operator.

Based on the foregoing, it cannot be concluded that the respondents are the prevailing party in this matter. Accordingly, under sec. 445.22 (2), Stats., the Board may exercise its discretion to assess the costs of the proceeding against them. The Board concludes that it is appropriate to do so.

Dated this 11th day of October, 1996.

STATE OF WISCONSIN
FUNERAL DIRECTORS EXAMINING BOARD

by _____
D. Bruce Carlson
Board Chairman

BEFORE THE STATE OF WISCONSIN
FUNERAL DIRECTORS EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS AGAINST MARK R. LAEMMRICH, RICHARD G. LAEMMRICH, LAEMMRICH FUNERAL HOME, RESPONDENTS.	: : : : : : :	AFFIDAVIT OF SERVICE

Katie Rotenberg, being first duly sworn on oath deposes and states that she is in the employ of the Department of Regulation and Licensing, and that on October 16, 1996, she served the following upon the respondents' attorney:

Final Decision and Order dated October 11, 1996, LS9509111FRD

by mailing a true and accurate copy of the above-described document, which is attached hereto, by certified mail with a return receipt requested in an envelope properly addressed to the above-named respondents' attorney at:

William A. Woodrow, Attorney
Adams & Woodrow, S.C.
301 Nicolet Boulevard
Neenah, WI 54956-2788
Certified P 213 148 655

NOTARY PUBLIC
RUBY JEFFERSON-MOORE
STATE OF WISCONSIN

Katie Rotenberg
Katie Rotenberg
Department of Regulation and Licensing

Subscribed and sworn to before me

this 16th day of October, 1996.

Ruby Jefferson-Moore
Notary Public
Dane County, Wisconsin
My Commission is Permanent

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.

Serve Petition for Rehearing or Judicial Review on:

STATE OF WISCONSIN FUNERAL DIRECTORS EXAMINING BOARD
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708.

The Date of Mailing this Decision is:

October 16, 1996

1. REHEARING

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

A petition for rehearing should name as respondent and be filed with the party identified in the box above.

A petition for rehearing is not a prerequisite for appeal or review.

2. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING
BEFORE THE FUNERAL DIRECTORS EXAMINING BOARD

In the Matter of the Disciplinary Proceedings Against

Mark R. Laemmrich,
Richard G. Laemmrich,
Laemmrich Funeral Home,

Respondents.

AFFIDAVIT OF MAILING

STATE OF WISCONSIN)
)
COUNTY OF DANE)

I, Kate Rotenberg, having been duly sworn on oath, state the following to be true and correct based on my personal knowledge:

1. I am employed by the Wisconsin Department of Regulation and Licensing.

2. On December 5, 1996, I served the Order Fixing Costs dated December 3, 1996, LS9509111FDR, upon the attorney of Respondents Mark R. Laemmrich, Richard G. Laemmrich, and Laemmrich Funeral Home by enclosing a true and accurate copy of the above-described document in an envelope properly stamped and addressed to the above-named Respondents's attorney and placing the envelope in the State of Wisconsin mail system to be mailed by the United States Post Office by certified mail. The certified mail receipt number on the envelope is P 213 340 276.

William A. Woodrow, Attorney
Adams & Woodrow, S.C.
301 Nicolet Boulevard
Neenah WI 54956-2788

Kate Rotenberg
Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

Subscribed and sworn to before me

this 5th day of December, 1996.

Donald R. Rittel
Notary Public, State of Wisconsin
My commission is permanent.

STATE OF WISCONSIN
BEFORE THE FUNERAL DIRECTORS EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	ORDER FIXING COSTS
	:	Case #LS9509111FDR
MARK R. LAEMMRICH, RICHARD G. LAEMMRICH, LAEMMRICH FUNERAL HOME	:	
RESPONDENTS.	:	

On October 11, 1996, the Funeral Directors Examining Board filed its Final Decision and Order in the above-captioned matter by which the board ordered that pursuant to sec. 440.22, Wis. Stats., 100% of the costs of this proceeding be assessed against respondents. Pursuant to sec. RL 2.18 (4), Wis. Adm. Code, on or about September 6, 1996, the board received the *Affidavit of Costs* in the amount of $5,324.05, filed by Attorney Henry E. Sanders and Investigator Willie E. Garrette. On or about October 28, 1996, the board received the *Affidavit of Costs of Office of Board Legal Services* in the amount of $3,862.30, filed by Administrative Law Judge Robert T. Ganch. The board considered the affidavits on December 3, 1996, and orders as follows:

ORDER

NOW, THEREFORE, IT IS ORDERED that pursuant to sec. 440.22, Wis. Stats., the costs of this proceeding in the amount of $9,186.35, which is 100% of the costs set forth in the affidavits of costs of Robert T. Ganch, Henry E. Sanders and Willie E. Garrette, which are attached hereto and made a part hereof, are hereby assessed against Mark R. Laemmrich, Richard G. Laemmrich and Laemmrich Funeral Home, and shall be payable by him/her to the Department of Regulation and Licensing. **Failure of respondent to make payment on or before January 2, 1997, which is the deadline for payment established by the board, shall constitute a violation of the Order unless respondent petitions for and the board grants a different deadline.** Under sec. 440.22 (3), Wis. Stats., the department or board may not restore, renew or otherwise issue any credential to the respondent until respondent has made payment to the department in the full amount assessed.

To ensure that payments for assessed costs are correctly receipted, the attached *"Guidelines for Payment of Costs and/or Forfeitures"* should be enclosed with the payment.

Dated this 3rd day of December, 1996 _____

g:\bdls\costs1

Department of Regulation & Licensing

State of Wisconsin

P O Box 8935, Madison, WI 53708-8935
(608)
TTY# (608) 267-2416] hearing or speech
TRS# 1-800-947-3529] impaired only

GUIDELINES FOR PAYMENT OF COSTS AND/OR FORFEITURES

On October 11, 1996, the Funeral Directors Examining Board took disciplinary action against your license. Part of the discipline was an assessment of costs and/or a forfeiture.

The amount of the costs assessed is: $9,186.35 Case #: LS9509111FDR

The amount of the forfeiture is: _____ Case # _____

Please submit a check or a money order in the amount of $ 9,186.35

The costs and/or forfeitures are due: January 2, 1997

NAME: Richard G. Laemmrich LICENSE NUMBER: _____

STREET ADDRESS: 312 Milwaukee Street

CITY: Menasha STATE: WI ZIP CODE: 54952

Check whether the payment is for costs or for a forfeiture or both:

X COSTS _____ FORFEITURE

Check whether the payment is for an individual license or an establishment license:

X INDIVIDUAL _____ ESTABLISHMENT

If a payment plan has been established, the amount due monthly is:

_____

For Receipting Use Only

Make checks payable to:

DEPARTMENT OF REGULATION AND LICENSING
1400 E. WASHINGTON AVE., ROOM 141
P.O. BOX 8935
MADISON, WI 53708-8935

#2145 (Rev. 9/96)
Ch. 440.22, Stats.
G:\BDLS\FM2145.DOC

Committed to Equal Opportunity in Employment and Licensing+

STATE OF WISCONSIN
BEFORE THE FUNERAL DIRECTORS EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST:	:	
MARK R. LAEMMRICH, RICHARD G. LAEMMRICH, LAEMMRICH FUNERAL HOME, RESPONDENTS.	:	Case No. LS9509111FDR

AFFIDAVIT OF COSTS
OFFICE OF BOARD LEGAL SERVICES
(SEC. 440.22, STATS.)

STATE OF WISCONSIN)
)ss.
COUNTY OF DANE)

Robert T. Ganch, being first duly sworn on oath, deposes and states as follows:

1. Your affiant is an attorney licensed to practice law in the State of Wisconsin, and is employed by the Wisconsin Department of Regulation & Licensing, Office of Board Legal Services.

2. In the course of his employment, your affiant was assigned as administrative law judge in the above-captioned matter.

3. Set out below are the time and actual costs of the proceeding for the Office of Board Legal Services in this matter.

ADMINISTRATIVE LAW JUDGE EXPENSE
Robert T. Ganch

DATE & TIME SPENT	ACTIVITY
9/12/95 2 hours, 10 minutes	Read Notice of Hearing, Complaint and Exhibits
9/25/95 10 minutes	Read Letter, Answer to Complaint

12/11/95 1 hour 15 minutes	Review Complaint and Answer in preparation for hearing
12/12/96 7 hours 25 minutes	Conduct hearing
1/9/96 5 hours, 30 minutes	Continue hearing
7/24/96 4 hours	Read record for proposed decision
7/25/96 2 hours	Read record for proposed decision
7/26/96 1 hour, 40 minutes	Read record for proposed decision
7/29/96 1 hour, 50 minutes	Read record for proposed decision
7/30/96 4 hours, 25 minutes	Read record, research evidence issues
7/31/96 4 hours, 10 minutes	Start drafting decision
8/1/96 4 hours, 30 minutes	Draft decision
8/2/96 4 hours, 45 minutes	Draft decision
8/5/96 4 hours, 20 minutes	Draft decision
8/6/96 6 hours, 20 minutes	Draft decision
8/7/96 1 hour, 10 minutes	Draft decision
8/8/96 1 hour	Draft decision

8/9/96 2 hours, 10 minutes	Draft decision
8/12/96 4 hours, 20 minutes	Finish drafting decision
8/20/96 40 minutes	Issue proposed decision

Total Time Spent.....57 hours 30 minutes

Total administrative law judge expense for Robert T. Ganch:
5 hours, 20 minutes @ $36.44, salary and benefits:.....$2095.30

REPORTER EXPENSE

12/12/95	$979.70
1/9/96	$788.30
	Total $1767.00

TOTAL ASSESSABLE COSTS FOR OFFICE OF BOARD LEGAL SERVICES: $3862.30

Robert T. Ganch

Robert T. Ganch
Administrative Law Judge

Sworn to and subscribed before me this 28th day of October, 1996.

Donald R. Rittel

Notary Public, State of Wisconsin
My commission is permanent

rtg:

STATE OF WISCONSIN
BEFORE THE FUNERAL DIRECTORS EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS AGAINST	:	
MARK R. LAEMMRICH, RICHARD G. LAEMMRICH, LAEMMRICH FUNERAL HOME, RESPONDENTS.	:	AFFIDAVIT OF COSTS 95 FDR 001

State of Wisconsin)
) ss
County of Dane)

Complainant's attorney, Henry E. Sanders, Division of Enforcement, being duly sworn, deposes and states as follows:

1. That I am an attorney licensed in the State of Wisconsin and is employed by the Wisconsin Department of Regulation and Licensing, Division of Enforcement.

2. That in the course of those duties I was assigned as a prosecutor in the above-captioned matter, and

3. That set out below are the costs of the Proceedings accrued to the Division of Enforcement in this matter, based upon Division of Enforcement's records compiled in the regular course of agency business in the above-captioned matter.

PROSECUTING ATTORNEY EXPENSES

DATE	ACTIVITY	TIME SPENT
	RE: (95 FDR 001)	
01/25/95	Directed opening new complaint	10 min.
02/06/95	Screened new informal complaint	15 min.
02/21/95	Teleconference with Board Chairperson	
	re: Initiating investigation; met with and directed investigator	
	to visit Respondents; reviewed subpoena drafted by investigator	1 hr.

02/22/95	Briefed by investigator of visit to Respondent; called Board Chairperson, and briefed attorney supervisor re: Status	1 hr.
02/28/95	Record check of Respondents' employees	15 min.
04/21/95	Reviewed/approved 5 subpoena drafts to Respondents' attorney, by investigator	45 min.
04/24/95	Returned call and teleconference with Respondents' attorney	5 min.
04/25/95	Teleconference with Respondents' attorney	45 min.
04/26/96	Teleconference with Board Chairperson; teleconference with Respondents' attorney, and faxed copy of previous Board order to Respondents' attorney	1 hr.
05/04/95	Teleconference with Respondents' attorney, and scheduled deposition witnesses appearances	30 min.
05/12/95	Returned call to Respondents' new attorney Woodrow	10 min.
05/15/95	Arranged scheduling of court reporter and room, and providing confirmation to Department clerical	45 min.
05/18/95	Deposition preparations for 4 witnesses	5 hrs.
05/19/95	Five witnesses depositions	2 hrs. 3 min.
05/19/95	Pursued other investigative leads Re: Respondent signing/filing death certificates	15 min.
05/30/95	Received/reviewed letter from Respondents' attorney	5 min.
06/01/95	Called Respondents' attorney re: letter received and settlement discussion	15 min.
06/08/95	Okayed payment of court reporter's videotapes invoice	5 min.

06/19/95	Returned call to news media person; prepared news media contact form and disseminated	15 min.
06/21/95	Received written follow-up letter from news media person; telephoned Respondents' attorney	15 min.
08/03/95	Attempted to call Respondents' attorney	5 min.
08/04, 06/95	Received and attempted to return calls to Respondents' attorney	5 min.
08/08/95	Teleconference with Respondents' attorney Re: requested documentation	5 min.
08/10/95	Received/reviewed documentation from Respondents' attorney	20 min.
08/22, 29 & 09/06/95	Drafted/dictated notice of hearing and complaint, revised & finalized; scheduled hearing with ALJ	5 hrs.
08/23/95	Assisted/reviewed drafts of subpoenas duces tecum to Respondent	1 hr.
08/30/95	Received/reviewed investigative materials	10 min.
09/07/95	Teleconference with Respondents' attorney re: subpoenaed materials	1 hr.
09/08/95	Received/reviewed documentation from Respondents' attorney	1 hr.
09/11/95	Complaint filed	
09/13/95	Written directives to investigator	5 min.
09/18/95	Received/reviewed investigators memo Re: service of subpoenas on 08/24/95	5 min.
09/19/95	Teleconference with Board Advisor	5 min.
09/25/95	Received/reviewed Respondents' attorney's notice of retainer, answer to complaint, and request for extension	10 min.
10/03/95	Teleconference with Respondents' attorney Re: re-scheduled	

	hearing date, and related procedural matters; prehearing conference with ALJ	30 min.
10/16/95	Received/reviewed memorandum of prehearing conference	5 min.
10/18/95	Prepared/dictated preliminary witness list to ALJ & Respondents' attorney (faxed and mailed)	30 min.
11/03/95	Written directions and meeting with investigator	15 min.
11/20/95	Received/reviewed investigator's file memo Re: witnesses contacts of 11/20/96 (2 contacts and memos)	5 min.
11/20/95	Assisted in drafting subpoena duces tecum for hearing witnesses; received/reviewed investigators memo of witness contact; written directions to investigators	1 hr.
11/22/95	Prepared, faxed and mailed copy of final witness list to Respondents' attorney, and delivered copy to ALJ; Received/reviewed 2 investigative documents	1 hr.
11/24/95	Received/reviewed receipts for certified mail from witnesses/parties	5 min.
11/28/95	Assisted in drafting of subpoena to witness Mead; and received/reviewed investigative memo of 11/22 witness contact; received/reviewed memo Re: second witness contact of 11/28	45 min.
12/06/95	Prepared for and visited Dept. of Revenue to review Respondents' tax records for corporate/partnership status's, with investigator	4 hrs.
12/08/95	Teleconference with Respondents' attorney, Re: witnesses appearances, and stipulated procedures	15 min.
12/11/95	Hearing preparation	5.5 hours

12/12/95	Hearing (continued to 1/9/96)	8 hrs.
12/27/95	Received/reviewed ALJ's notice of continued hearing; reviewed hearing transcript	3.5 hrs.
01/06-07/96	Hearing preparation	5 hrs.
01/08/96	Legal research, drafted/finalized memorandum of law Re: admissibility of evidence; hearing preparation	4 hrs.
01/09/96	Hearing	5.5 hrs.
08/22/96	Received/reviewed ALJ's proposed decision	1 hr.
09/05-06/96	Prepared affidavit of costs, to WPC, finalized affidavit, copied and delivered	6 hrs.
	TOTAL HOURS	97 hrs. 5 min.

Total Attorney Expenses for 97 hours and 5 minutes at $41.00 per hour (based upon average salary and benefits for Division of Enforcement attorneys) equals $3979.05

Henry E. Sanders

Henry E. Sanders, Attorney

Subscribed and sworn to before me this 6th day of September, 1996.

Notary Public
My Commission is Permanent.

HES:dab
G.\DOEATTY\HLG3253 DOC

STATE OF WISCONSIN
BEFORE THE FUNERAL DIRECTORS EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY MARK R. LAEMMRICH RICHARD G.LAEMMRICH LAEMMRICH FUNERAL HOME RESPONDENTS.	:	AFFIDAVIT OF COSTS 95 FDR 001

State of Wisconsin)
)ss
County of Dane)

Complainant's attorney, Henry E. Sanders, Division of Enforcement, being duly sworn, deposes and states as follows:

1. That Willie E. Garrette is an Investigator and is employed in that capacity by the State of Wisconsin, Department of Regulation and Licensing in the Division of Enforcement.

2. That in the course of those duties, Mr. Garrette was assigned as the investigator in the above-captioned matters, and

3. That set out below are the costs of the Proceedings accrued to the Division of Enforcement in this matter(s), based upon Division of Enforcement's records complied in the regular course of agency business in the above-captioned matter(s).

INVESTIGATOR EXPENSES

DATE	ACTIVITY	TIME SPENT
	RE: 95 FDR 001	
02/20/95	Review file	1 hr.
02/21/95	Confer with atty./draft subpoena & investigation	7 hrs. 30 min.
02/22/95	Drafted memo & meeting with attorney	1 hr. 20 min.
02/28/95	Check licensure files	15 min.
03/01/95	Preparation of investigative memorandum	2 hrs.
04/20/95	File review re: subpoenas to draft	20 min.
04/21/95	Drafted five (5) subpoenas & served them	4 hr. 30 min.
05/10/95	Follow up on investigative lead w/support staff	15 min.
05/18/95	Prep. for depositions	3 hrs. 45 min.
05/19/95	Depositions	2 hrs.
08/08/95	Prep. & Phone call with witness	15 min.
08/24/95	Service of Subpoenas/interview	5 hrs. 30 min.

09/08/95	Received & Reviewed documents	45 min.
09/13/95	Follow-up on atty.'s instructions	3 hrs.
09/18/95	Preparation of investigative memo re. subpoena	15 min.
11/13/95	Follow-up on atty.'s instructions	45 min.
11/20/95	Prep./calls w/Register of Deeds/witnesses/DOT	3 hrs. 15 min.
11/22/95	Received/reviewed docs./prep & call with witness	20 min.
11/27/95	Received & reviewed documents	10 min.
11/28/95	Prep. & phone call with witness/draft subpoena	30 min.
12/6/95	Prep./Fax documents to Dept. of Revenue/visit	4 hrs.
12/11/95	Preparation for hearing	2 hrs. 45 min.
12/12/95	Hearing	8 hrs.
12/26/95	Draft letter to Respondents' atty./w/encl.	10 min.
01/08/96	Preparation for hearing	1 hrs. 20 min.
01/09/96	Hearing	5 hrs. 50 min.
05/23/96	Unannounced investigative stop @ Laemmrich Fun. Home	2 hrs. 45 min.
05/29/96	same as on 05/23/96 for observation	3 hrs.
08/22/96	Received/reviewed ALJ's proposed decision	25 min.
09/06/96	Start preparation of affidavit costs	1 hour
09/09/96	Complete affidavit of costs/copy & deliver	1 hr. 30 min.

TOTAL HOURS

Total Investigator expenses for 67 hours and 25 minutes @ $20.00 per hour (based on average salary and benefits for Division of Enforcement Investigators) equals $1,345.00

Willie E. Garrette, Investigator

Subscribed and sworn before me this 9th day of September, 1996.

Notary Public
My Commission is Permanent.

WEG:weg
WPPID.93

STATE OF WISCONSIN
BEFORE THE FUNERAL DIRECTORS EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	NOTICE OF FILING PROPOSED DECISION LS9509111FDR
MARK R. LAEMMRICH, RICHARD G. LAEMMRICH, LAEMMRICH FUNERAL HOME, RESPONDENTS.	:	

TO: William A. Woodrow, Attorney
Adams & Woodrow, S.C.
301 Nicolet Boulevard
Neenah, WI 54956-2788
Certified P 213 148 272

Henry E. Sanders, Attorney
Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708

PLEASE TAKE NOTICE that a Proposed Decision in the above-captioned matter has been filed with the Funeral Directors Examining Board by the Administrative Law Judge Robert T. Ganch. A copy of the Proposed Decision is attached hereto.

If you have objections to the Proposed Decision, you may file your objections in writing, briefly stating the reasons, authorities, and supporting arguments for each objection. If your objections or argument relate to evidence in the record, please cite the specific exhibit and page number in the record. Your objections and argument must be received at the office of the Funeral Directors Examining Board, Room 290, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, on or before September 9, 1996. You must also provide a copy of your objections and argument to all other parties by the same date.

You may also file a written response to any objections to the Proposed Decision. Your response must be received at the office of the Funeral Directors Examining Board no later than seven (7) days after receipt of the objections. You must also provide a copy of your response to all other parties by the same date.

The attached Proposed Decision is the Administrative Law Judge's recommendation in this case and the Order included in the Proposed Decision is not binding upon you. After reviewing the Proposed Decision, the Funeral Directors Examining Board will issue a binding Final Decision and Order.

Dated at Madison, Wisconsin this 22nd day of August, 1996.

Robert T. Ganch
Administrative Law Judge

STATE OF WISCONSIN
BEFORE THE FUNERAL DIRECTORS EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	
	:	PROPOSED DECISION
MARK R. LAEMMRICH,	:	95 FDR 001
RICHARD G. LAEMMRICH,	:	
LAEMMRICH FUNERAL HOME,	:	
RESPONDENTS.	:	

PARTIES

The parties in this matter under sec. 227.44, Stats., and sec. RL 2.037, Wis. Adm. Code, and for purposes of review under sec. 227.53, Stats., are:

Complainant:
Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

Respondents:
Mark R. Laemmrich
1856 Cricket Court
Neenah, WI 54956

Richard G. Laemmrich
312 Milwaukee Street
Menasha, WI 54952

Laemmrich Funeral Home
312 Milwaukee Street
Menasha, WI 54952

Disciplinary Authority:
Funeral Directors Examining Board
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

1. A Notice of Hearing and Complaint were filed and served in the above captioned matter on September 11, 1995, initially setting a hearing date for October 23, 1995. The Respondents,

through their attorney filed an Answer to the Complaint on September 25, 1995 and requested rescheduling of the hearing to a later date because of a conflict on the part of Respondents' attorney, and the need for greater time to prepare for the hearing. In a prehearing conference the hearing was rescheduled for December 12, 1995, and deadlines set for the filing of witness lists and the completion of discovery.

2. The hearing was commenced as rescheduled on December 12, 1995. The Complainant appeared by attorney Henry E. Sanders, and the Respondents appeared personally and by attorney William A. Woodrow.

3. The hearing was not completed on December 12th, and was continued on January 9, 1996, on which date the hearing was completed. A transcript of the hearing was prepared.

4. In the course of the hearing, and at its conclusion, Respondents raised objection to admissibility of a number of exhibits offered by Complainant, namely Exhibit #s 4, 14, 16, 17 and 18. Ruling on the admissibility of these exhibits was reserved until conclusion of the hearing and after the parties arguments and review of briefs received on January 9, 1996. Based upon the arguments of the parties and written briefs, the ALJ rules each of the Exhibit #s 4, 14 and 16, are not admissible, as they constitute hearsay, and do not satisfactorily fall within an exception to the hearsay exclusionary rule, and rules Exhibit #s 17 and 18 admissible. Discussion of these evidentiary matters is set forth in the Opinion.

Based upon the entire record in this matter, and the testimony, arguments and briefs of the parties, the undersigned recommends that the Funeral Directors Examining Board adopt as its Final Decision and Order in the above captioned matter the following:

FINDINGS OF FACT

1. Respondent Laemmrich Funeral Home (establishment) of 312 Milwaukee Street, Menasha, WI 54952, at all times material to the complaint has held a permit to operate as a funeral establishment under the provisions of chapter 445, Wis. Stats.

2. Respondent Mark R. Laemmrich (Mark), of 1856 Cricket Court, Neenah, WI 54956, had been licensed as a funeral director under the provisions of chapter 445, Wis. Stats., since September 17, 1976. By Final Decision and Order of the Funeral Directors Examining Board (Board) dated March 17, 1994, Respondent's license was suspended for a minimum period of two (2) years, effective June 1, 1994.

3. Respondent Richard G. Laemmrich (Richard) of 312 Milwaukee Street, Menasha, WI 54952, is and was at all times material to the complaint, licensed as a funeral director, and has been so licensed under the provisions of chapter 445, Wis. Stats., since November 20, 1948.

4. Richard G. Laemmrich is the father of Mark R. Laemmrich, and the two together are partners in the ownership and operation of Respondent Laemmrich Funeral Home. Richard G. Laemmrich and Mark R. Laemmrich are "operator(s) of funeral establishment" as defined in sec. 445.01(7), Stats.

5. By Final Decision and Order of the Funeral Directors Examining Board dated May 25, 1985, Respondent Richard Laemmrich was disciplined by the Board and ordered suspended for a period of seven days for failing to timely file death certificates as required by secs. 445.15(2) and 69.45(1) and (2), Wis. Stats., for failing to timely obtain burial permits, and for providing false information to an agent of the Board.

6. By Final Decision and Order dated March 17, 1994, the Funeral Directors Examining Board (Board) took disciplinary action against each of Laemmrich Funeral Home, Richard G. Laemmrich and Mark R. Laemmrich.

7. The basis for the March 17, 1994 disciplinary action concerning Mark R. Laemmrich was that on about November 24, 1993, in case #CF 378 01 02, in the Winnebago County Circuit Court, Branch VI, the Honorable Judge Bruce K. Schmidt presiding, Respondent Mark R. Laemmrich pled no contest to, was found guilty and convicted of one (1) count of theft by bailee in violation of sec. 943.20(1)(b), Stats., and one (1) count of forgery with the intent to defraud, in violation of sec. 943.38(1), Stats. Although Mark Laemmrich was charged with and convicted of one count each of theft and forgery, fourteen uncharged counts against Mark Laemmrich involving theft of monies from prepaid funeral trust arrangements of Laemmrich Funeral Home patrons, over the course of October 1992 through November-December 1993, including sixteen (16) victims and a total dollar amount of $65,740.00, were read into the record at sentencing. On the basis of his conduct that was subject of the foregoing criminal investigation and conviction, Mark R. Laemmrich was found by the Board to have engaged in unprofessional conduct by violation of secs. 445.12(4), and 445.125 (1)and (2), Wis. Stats., and secs. FD 3.02 (1), (6) and (9), Wis. Adm. Code.

8. The basis for the March 17, 1994 disciplinary action concerning Richard Laemmrich was that he had failed to deposit in a trust account $1000 received by Laemmrich Funeral Home in payment under a funeral trust agreement and lying to the patron in regard to the disposition of such fund; provided false or misleading information to agents of the Funeral Directors Examining Board concerning matters under investigation involving Mark Laemmrich, and in substance as part owner and funeral director in charge of Laemmrich Funeral Home, aided or abetted continuing theft of funeral trust moneys by Mark Laemmrich by failing to notify the Board and law enforcement agencies of his knowledge of such a theft in October 1992, and failing to ensure the integrity of other burial trusts of Laemmrich Funeral Home, which were thereafter invaded or converted by Mark Laemmrich from October 1992 through November-December 1993. Under the March 17, 1994 Order of the Board, Respondent Richard Laemmrich's license to practice as a funeral director was suspended for 30 days from April 1 through April 30, 1994.

9. In the March 17, 1994 Order, on the basis of the unprofessional conduct of Mark and Richard Laemmrich, a reprimand was issued against the establishment permit of Laemmrich Funeral Home.

10. In pertinent part, at page 4, paragraph 24., of the March 17, 1994 stipulated order adopted by the Board, the Board imposed the following disciplinary action against Mark R. Laemmrich:

24. Respondent Mark Laemmrich hereby consents, accepts and agrees to a minimum two (2) years suspension, commencing June 1, 1994. Following the minimum two years suspension, Respondent Mark may petition the Board for reinstatement/lifting of the suspension, and among other things that may be required by the Board, demonstrate rehabilitation and otherwise qualify for relicensing, with the understanding that any such decision to reinstate/lift the suspension is solely within the discretion of the Board. On or before the effective date of the suspension, Respondent Mark Laemmrich shall surrender to the Department all funeral director licenses and/or certificates previously issued to him. Additionally, Respondent Mark Laemmrich agrees:

a. No visitation rights for Mark Laemmrich to/on the premises of any establishment under the ownership of Laemmrich Funeral Home, and/or Richard Laemmrich; and not to participate in any way directly or indirectly in the operations of any funeral establishment during the period of suspension.

11. At all times material to this present matter, Respondent Richard G. Laemmrich was funeral director in charge of Laemmrich Funeral Home. On September 14, 1994, Richard Laemmrich had hip replacement surgery and was absent from the funeral home until January 10, 1995. Also, from about February 15, 1995 to approximately April 15, 1995, Richard Laemmrich was on vacation in Biloxi, Mississippi. During the time of these absences from Laemmrich Funeral Home, Richard Laemmrich still maintained authority as funeral director in charge. In his absence, two other funeral directors employed by Laemmrich Funeral Home, Michael Pfotenhauer and Patrick Fahrenkrug, carried on the daily operations of Laemmrich Funeral Home.

12. From June 1, 1994 through about April 21, 1995, on exact dates unknown, Respondent Mark R. Laemmrich was present on and in the premises of Laemmrich Funeral Home, on an approximate average frequency of at least three times a week, and as much as 4 times a week. Initially, Mark Laemmrich would usually enter the building of the premises to the extent of entering a side "flower door" of the building and ringing a buzzer, and usually to communicate with his father, Richard Laemmrich about personal tasks his father desired him to do such as the mowing of apartment building lawn adjacent to the Laemmrich Funeral Home establishment property, maintenance tasks at Richard Laemmrich's residence property, washing of vehicles at the funeral home premises, and other personal errands for his father and mother. Occasionally, Mark Laemmrich would enter the building and go into the office area of the establishment to locate Richard Laemmrich and speak with him. Mark Laemmrich would be present on the premises of Laemmrich Funeral Home for varying amounts of time ranging from 10 minutes to up to one and one half hours.

13. Shortly after Mark's suspension went into effect in June 1994, Michael Pfotenhauer, being aware of the March 17, 1994 Order suspending Mark Laemmrich's license and prohibiting him from the premises of Laemmrich Funeral Home, told Richard Laemmrich that he did not want to see Mark on the premises. Mr. Pfotenhauer testified that Richard agreed with him. However, Mark continued to visit the premises of Laemmrich Funeral Home.

14. On one occasion Patrick Fahrenkrug spoke with Richard Laemmrich following his surgery, expressing concern to Richard that Mark should not be on the premises. In an investigative deposition, Fahrenkrug testified that it seemed that Richard "just didn't care," and

that Richard's response was "who else is going to run the establishment." Also, in approximately February 1995, just prior to Richard leaving for vacation, Fahrenkrug reported to Richard that he had heard "through the grapevine" that people were watching the premises. According to Fahrenkrug, Richard's response was that "talk is cheap."

15. Up to the time of Richard's hip surgery on September 14, 1994, Mark Laemmrich would mostly limit his visits to the funeral home's premises to entering the flower door and pressing the buzzer for someone to respond to him outside. However, when Richard was absent for his surgery and thereafter, Mark would usually fully enter the premises, even though his father was not present.

16. While suspended and during his father's absences for surgery and vacation, Mark would enter the office of the premises and look through mail and funeral arrangement files to gather information, such as funeral arrangements made, service times and merchandise sold, to inform Richard of the operations of the funeral home.

17. During the period of his suspension, on at least 3 occasions, Mark helped Fahrenkrug place a body in a casket.

18 During the period of his suspension, on at least 2 occasions at Richard's direction, Mark delivered left over flower arrangements to nursing homes in the community.

19. During his period of suspension, on at least 3 occasions at Richard's direction, Mark delivered or picked up a death certificate for Laemmrich Funeral Home.

20. While suspended, on at least 2 occasions during his father's absence, Mark informed Fahrenkrug that he, Mark, was "in charge," and also informed Fahrenkrug on at least one occasion that if there are any problems he would be around.

21. During his period of suspension, on occasion while present at the funeral home premises, Mark gave instructions to Fahrenkrug relating to pre-need or at-need funeral arrangements.

22. In mid-September 1994 during his suspension, Mark Laemmrich, met alone and without any other funeral director present, with a friend, Judy Mead, at the Laemmrich Funeral Home, for the purpose of advising her on what arrangements would need to be made in the event her mother, Betty J. Klingensmith, who was terminally ill, would pass away. Mark Laemmrich advised and made preliminary arrangements with Ms. Mead for the eventual transport of her mother's remains to another funeral home in Michigan, recorded the charges of Laemmrich Funeral Home for the handling and transportation of remains to Michigan, assisted Ms. Mead in the viewing and selection of a coffin and recorded the price of the coffin selected by Ms. Mead, and advised on and recorded other information and arrangements concerning funeral services, memorial donations and obituary information concerning Ms. Mead's mother in the event of her death. When Ms. Mead's mother passed away in April 1995, elements of the pre-arrangement conducted and recorded by Mark Laemmrich, including charges for the transport of the deceased's remains and charges for the coffin selected by Ms. Mead were included in the final *Statement of Goods and Services Selected* issued by Laemmrich Funeral Home to Ms. Mead concerning the funeral services performed for her mother.

23. Based upon the activities described in Finding of Fact 22., Mark Laemmrich engaged in providing funeral arrangements to Judy Mead for the final disposition of her mother's remains in the event of her passing away.

24. On February 21, 1995, Investigator Willie Garrette of the Department of Regulation and Licensing, investigating reports that Mark Laemmrich had been seen on numerous occasions on the premises of Laemmrich Funeral Home in violation of the March 17, 1994 Board Order, made an investigative stop at Laemmrich Funeral Home. On that date, Investigator Garrette observed Mark Laemmrich leaving the premises in the funeral home's blue station wagon. Thereafter, while Garrette was interviewing funeral home employees, Mark returned to the funeral home and entered the office. Investigator Garrette confronted Mark Laemmrich about being present at the premises in violation of the March 17, 1994 Order.

25. Following Mr. Garrette's investigative visit to Laemmrich Funeral Home, Mark continued to visit the Laemmrich Funeral Home premises on at least a weekly basis until April 21, 1995, at which time investigative subpoenas were served on employees of Laemmrich Funeral Home concerning the investigation of Mark's alleged violation of the terms of the March 17, 1994 Board Order.

26. Mark Laemmrich was involved, directly and indirectly, in the operations of Laemmrich Funeral Home during the period of his two year suspension imposed by the March 17, 1994 Board Order.

27. With the exception of Mark having met with Judy Mead to make pre-arrangements for her mother's funeral as described in Findings of Fact #22. and #23., Richard Laemmrich in most instances was aware of, condoned, approved and authorized that Mark Laemmrich may be present in the premises of Laemmrich Funeral Home during the period of Mark's two year suspension of his license in violation of paragraph 24.a. of the March 17, 1994 Order of the Funeral Directors Examining Board.

28. With the exception of Mark having met with Judy Mead to make initial pre-arrangements for her mothers funeral as described in Findings of Fact #22. and #23., Richard Laemmrich in most instances was aware of, condoned, approved and authorized that Mark Laemmrich be involved, directly and indirectly, in the operations of Laemmrich Funeral Home, during the period of Mark's two year suspension of license in violation of paragraph 24.a. of the March 17, 1994 Board Order.

CONCLUSIONS OF LAW

1. The Funeral Directors Examining Board has jurisdiction over this matter pursuant to sec. 445.03 Stats., jurisdiction over the licenses to practice as funeral directors and the establishment permit of the Respondents pursuant to sec. 445.04 and 445.105, Stats., and jurisdiction and authority over this disciplinary proceeding pursuant to sec. 445.13, Stats.

2. Mark R. Laemmrich violated sec. FD 2.03(1), Wis. Adm. Code, and sec. 445.04, Stats., by having conducted and made funeral arrangements for Judy Mead's mother while his license was suspended by Order of the Funeral Directors Examining Board dated March 17, 1994, as described in Finding of Fact #22., engaged in unprofessional conduct under sec. FD 3.02(1), Wis. Adm. Code, and is therefore subject to disciplinary action in this matter pursuant to sec. 445.13(1), Stats.

3. Mark R. Laemmrich violated the terms, provisions and conditions of paragraph 24. a. of the Order of the Funeral Directors Examining Board dated March 17, 1994, by having been present on the premises of Laemmrich Funeral Home on a continuing basis during the period of the suspension of his license to practice as a funeral director, as described in Findings of Fact #'s 12, 15, 16, 17, 21, 22, 23 and 24, engaged in unprofessional conduct in violation of sec. FD 3.02(17), Wis. Adm. Code and is therefore subject to disciplinary action in this matter pursuant to sec. 445.13, Stats.

4. Mark R. Laemmrich violated the terms, provisions and conditions of paragraph 24. a. of the Order of the Funeral Directors Examining Board dated March 17, 1994, by having participated directly and indirectly in the operations of Laemmrich Funeral Home, all as described in Findings of Fact #'s 16, 17, 18, 19, 20, 21, 22 and 26, engaged in unprofessional conduct in violation of sec. FD 3.02(17), Wis. Adm. Code, and is therefore subject to disciplinary action in this matter pursuant to sec. 445.13, Stats.

5. Richard G. Laemmrich, as one of the owners and operators of the establishment Laemmrich Funeral Home and its funeral director in charge, having been aware of, condoned, approved and authorized Mark Laemmrich's presence in the premises of Laemmrich Funeral Home during the period of Mark's two year suspension of his license in violation of paragraph 2.a. of the March 17, 1994 Order of the Funeral Directors Examining Board as described in Finding of Fact # 26., knowingly permitted a person associated with him and under his supervision to violate the provisions of Chapter 445, Stats., as set forth in conclusions of law 3., in violation of sec. 445.12(5), Stats., and is therefore subject to disciplinary action under sec. 445.13, Stats.

6. Richard G. Laemmrich, as one of the owners and operators of the establishment Laemmrich Funeral Home and its funeral director in charge, having been aware of, condoned, approved and authorized Mark Laemmrich's participation, directly and indirectly, in the operations of Laemmrich Funeral during the period of Mark's two year suspension of his license in violation of paragraph 2.a. of the March 17, 1994 Order of the Funeral Directors Examining Board, knowingly permitted a person associated with him and under his supervision to violate the provisions of Chapter 445, Stats., as set forth in conclusions of law 4., in violation of sec. 445.12(5), Stats., and is therefore subject to disciplinary action under sec. 445.13, Stats.

7. Pursuant to sec. 445.105(4), Stats., the funeral establishment permit of Laemmrich Funeral Home is subject to disciplinary action on the grounds that Richard G. Laemmrich and Mark R. Laemmrich, as operators of Laemmrich Funeral Home, have committed violations of Ch. 445, Stats., and rules of the Funeral Directors Examining Board as set forth in Conclusions of Law #'s 2., 3., 4., 5., and 6.

ORDER

NOW THEREFORE, IT IS HEREBY ORDERED:

1. The funeral director license of Mark R. Laemmrich is hereby **REVOKED** effective immediately upon issuance of this Order. Mark R. Laemmrich shall immediately surrender all certificates of licensure and renewal registration by sending the same to the Department of Regulation and Licensing. Mark R. Laemmrich shall immediately cease and desist from any and all conduct, activity and services as a funeral director as defined in sec. 445.01(5), Stats.

2. The funeral director license of Richard G. Laemmrich is hereby **REVOKED** effective 90 days following the date of this Order. On the effective date of the revocation of his funeral director license, Richard G. Laemmrich shall immediately surrender all certificates of licensure and renewal registration by sending the same to the Department of Regulation and Licensing. Upon the effective date of the revocation of his funeral directors license, Richard G. Laemmrich shall cease and desist from any and all conduct, activity and services as a funeral director as defined in sec. 445.01(5), Stats. It is further ordered that effective immediately, Richard Laemmrich, as owner and operator of Laemmrich Funeral Home, and as funeral director in charge of Laemmrich Funeral Home, shall not permit Mark R. Laemmrich to be present on or in the premises of Laemmrich Funeral Home, defined as the entire building within which the establishment operates including all exterior doors, and further, shall not permit Mark R. Laemmrich to be involved, directly or indirectly, in the management or operations of Laemmrich Funeral Home.

3. The permit to operate as a funeral establishment for Laemmrich Funeral Home is hereby **REVOKED** effective 90 days following the date of this Order. On the effective date of the revocation of the establishment license of Laemmrich Funeral Home, Richard G. Laemmrich and Mark R. Laemmrich shall immediately surrender any and all certificates of the permit to operate a funeral establishment for Laemmrich Funeral Home, and any and all renewal registration certificates, by sending the same to the Department of Regulation and Licensing. Upon the effective date of the revocation of the establishment license of Laemmrich Funeral Home, Richard G. Laemmrich, Mark R. Laemmrich and Laemmrich Funeral Home shall cease and desist from any and all conduct, activity and services as a funeral establishment as defined in sec. 445.01(6), Stats. It is further ordered that, effective immediately, Laemmrich Funeral Home, and its owner(s), operator(s) and funeral director(s) in charge, shall not permit Mark R. Laemmrich to be present on or in the premises of Laemmrich Funeral Home, defined as the entire building within which the establishment operates including all exterior doors, and further, shall not permit Mark R. Laemmrich to be involved, directly or indirectly, in the management or operations of Laemmrich Funeral Home.

4. Pursuant to sec. 440.22, Stats., the full costs of this proceeding shall be assessed against Mark R. Laemmrich, Richard G. Laemmrich, and Laemmrich Funeral Home, jointly and severally, and shall be paid to the Department of Regulation and Licensing not later than 30 days following the date of this Order.

OPINION

1. EVIDENTIARY MATTERS

A preliminary matter to be dealt with is the disposition of evidentiary matters. At the hearing Complainant had moved for admission into the record a number of exhibits to which Respondents objected. The exhibits remaining at issue as of the close of the hearing are numbered 4, 14, 16, 17 and 18. The parties presented oral argument at the hearing and also submitted briefs on the admissibility of the exhibits.

Exhibit 4 is a memorandum of Investigator Willie Garrette dated March 1, 1995, recording the substance of his observations, contacts and summaries of his interviews of witnesses occurring in his investigative visit to Laemmrich Funeral Home on February 21, 1995. Exhibits 14 and 16 are memoranda of Willie Garrette dated November 20 and 28, 1995, respectively, of telephone conversations with Judy Mead, a witness to the proceeding. Upon considering the arguments and briefs of the parties, the ALJ finds that these memoranda contain double hearsay, and Exhibits 4, 14 and 16 are ruled inadmissible as hearsay, and were not considered in this proposed decision.

Exhibit 17 is a transcribed statement under oath of Patrick Fahrenkrug, taken on May 19, 1995 pursuant to investigative subpoena. Fahrenkrug is a licensed funeral director who has been employed by Laemmrich Funeral Home continuously since June 1, 1994. William Woodrow, attorney for the Respondents, was present at the taking of the sworn statement and indicated on the record of another investigative deposition immediately preceding that of Fahrenkrug that he, Woodrow, was representing all witnesses appearing pursuant to the investigative subpoenas to give testimony on that date, including Fahrenkrug. Woodrow also on a few occasions interceded in the questioning to assist Fahrenkrug in answering or clarifying answers to questions.

Exhibit 18 is also a transcribed statement under oath of Michael Pfotenhauer, taken on May 19, 1995 pursuant to investigative subpoena. Pfotenhauer is a licensed funeral director who has been employed by Laemmrich Funeral Home continuously for at least three and one half years. William Woodrow, attorney for the Respondents, was present at the taking of the sworn statement and indicated on the record that investigative deposition that he was representing Pfotenhauer. Woodrow also on several occasions interceded in the questioning to assist Pfotenhauer in answering or clarifying answers to questions.

At the hearing, the Complainant called Patrick Fahrenkrug adversely, which the ALJ allowed, because of his employment by the Respondents, and because he may be testifying against his own interests (see sec. 445.12, Stats., which provides, "Any funeral director . . . who permits any person . . . associated with him or her to violate the provisions of this chapter, shall be guilty of violating the provisions of this chapter and subject to the penalties provided therein. . . .")

The Complainant offered and moved admission of Exhibit 17, the transcript of Fahrenkrug's investigative deposition, as evidence for the record. After objection and argument that the transcript amounted to inadmissible hearsay, and argument over procedure regarding use of the exhibit, complainant withdrew the offer. Ultimately, however, Complainant renewed the motion to admit Exhibit 17. Complainant cited various grounds for admissibility, including that it constituted or contained the witness's prior testimony under oath, recorded recollection, prior consistent statement, declaration against interest, and admission by an employee of the

Respondents. Respondents' arguments against the admissibility of Exhibit 17 are that it constitutes a prior hearsay statement of the witness and is inadmissible unless it meets one of the conditions under sec. 908.01(4)(a), Stats., that is, 1) the prior statements of the witness are inconsistent with the present testimony of the witness, or 2) consistent with the testimony but offered to rebut the charge against the witness of recent fabrication.

Upon a review of Exhibits 17 and 18, the testimony in the record of the hearing, and the applicable statutes and evidentiary rules, the ALJ rules that Fahrenkrug's investigative deposition testimony is admissible as evidence in the hearing upon several grounds.

Section 227.45, Stats., provides in pertinent part, "In contested cases: (1) Except as provided in ss. 19.52(3) and 901.05, an agency or hearing examiner shall not be bound by common law or statutory rules of evidence. The agency or hearing examiner shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant or unduly repetitious testimony or evidence that is inadmissible under s. 901.05. . . . " The investigative deposition testimony of Pat Fahrenkrug was directly relevant, material and probative on the factual issues of Mark Laemmrich's presence on the premises of the funeral home, his activities while there, and Richard Laemmrich's knowledge, approval, and authorization of the same.

Section 908.01(4)(b)4), Stats., provides that a statement is not hearsay if: (b) *Admission by party opponent.* The statement is offered against a party and is . . . 4) a statement by his agent or servant concerning a matter within the scope of his agency or employment, made during the existence of the relationship, . . ." The actions and statements, themselves, of Mark and Richard Laemmrich are admissions in the first instance. Testimony by any witness of those actions and statements is not hearsay, but admissible testimony of those admissions. It is noteworthy that Fahrenkrug in his testimony at hearing reviewed Exhibit 17 and acknowledged that it appeared to be a true and accurate transcript of his testimony given in the investigative deposition on May 19, 1995. Fahrenkrug's investigative deposition testimony of his first hand observations of the Laemmrichs' actions and declarations to him (i.e., Mark's presence on the premises, Mark's activities on the premises as to funeral home operations, Mark's directions to Fahrenkrug as to funeral home business, Mark declaring that he is in charge over Fahrenkrug, and Richard's response to Fahrenkrug's concerns about Mark's presence on the premises which would affect the interests of the funeral home and Fahrenkrug as an licensed funeral director), constitute statements by an employee of a party, concerning matters within the scope of his employment, made during the existence of the relationship, and therefore may be offered, and admitted, as evidence of admissions against the Laemmrichs as parties opponent. Accordingly, Exhibit 17 is admitted as evidence in the record.

In addition to admissibility of Exhibit 17 as admissions of an employee of a party, the ALJ finds that the investigative deposition transcript is possessed of sufficient indicia of trustworthiness that it may be admissible under sec. 908.03(24), Stats. As stated above, the testimony of Fahrenkrug recited first hand knowledge of actions and declarations of Mark and Richard Laemmrich which constitute admissions by Laemmrichs, who are parties to this proceeding. The facts and issues testified to in the investigative deposition were exactly the same as those examined in the hearing. The same attorney who represented the Respondents at the hearing was present at, and in fact represented Fahrenkrug, at the taking of the investigative deposition testimony. The testimony was given under oath, and transcribed by a reporter. If Fahrenkrug had given the same testimony at the hearing, his statements as to Mark's presence

and activities on the premises, Mark's directions and declarations of authority over Fahrenkrug, and Richard's responses to him regarding Mark's presence on the premises, all would be admissible testimony. And as noted above, at the hearing Fahrenkrug acknowledged that Exhibit 17 was a true and accurate copy of his testimony given under oath on May 19, 1995, at the investigative deposition. Fahrenkrug was available and present for cross examination at the hearing by counsel for Respondents on any issues testified to in the investigative deposition, as well as in hearing testimony. (It should also be noted that while Exhibit 17 had been offered for the record, then withdrawn following argument on objections during Fahrenkrug's testimony, at the close of the first day of hearing on December 12, 1995, the ALJ informed the parties that arguments on the admissibility of Exhibit 17 would be entertained in briefs to be filed by the parties upon commencement of the second day of hearing on January 9, 1996. Accordingly, Respondents did have the opportunity to examine or cross examine Fahrenkrug on any matters in his investigative deposition testimony at the time of his hearing testimony, and also had the opportunity to call Fahrenkrug on the second day of the hearing in anticipation that Exhibit 17 may be admitted.)

Patrick Fahrenkrug acknowledged, in both his investigative deposition testimony and at the hearing, that he was placed in a very difficult situation by having to testify against his employers. Also, the ALJ observed from his demeanor at the hearing that Fahrenkrug was very uncomfortable by the fact of his giving testimony adverse to his employers. Moreover, the substance of his testimony at hearing appeared more reserved, less candid, and with a lesser degree of recollection than a reading of his investigative deposition testimony indicates, a notable difference between the two occasions, aside from the passage of 7 months, being the presence of both Richard and Mark Laemmrich sitting right in front of him at the hearing. This is not to say that Fahrenkrug appeared to testify untruthfully at the hearing, but it is readily inferable that he was intimidated by the presence of his employers at the hearing. And although Fahrenkrug acknowledged on cross examination by Attorney Woodrow that he was told by his employers to just tell the truth in his testimony, and that his employers had handled the fact of his testifying in the best possible way, the ALJ observed and noted on the hearing record an apparent attempt by Respondents to signal and influence the testimony of another witness/employee, Mike Pfotenhauer, on a critical point relating to whether Mark Laemmrich in fact had conducted a prearrangement while suspended. See Transcript at page 278. Upon these circumstances and in view of this incident in the record, the ALJ concludes that the circumstances of Fahrenkrug's employment by Respondents, operated to exert an intimidating influence on the witnesses' hearing testimony.

Based upon all these circumstances, the deposition testimony is likely at least as trustworthy, if not more, than the hearing testimony. Finally, it is hard to imagine any thing that could have happened between the taking of the deposition and the hearing that would undermine its trustworthiness as sworn, transcribed testimony relating direct observations of actions and admissions of the Respondents. Accordingly, the ALJ is of the opinion that Exhibit 17 should be admitted under sec. 908.03(24), Stats.[1]

[1] In *Ball v. McPhee*, 6 Wis. 2d 190, at 205-206, (1959), the Supreme Court held that in a formal hearing before the Wisconsin Board of Regents on the dismissal of a faculty member, the blanketing in of a transcript of a prior informal investigative hearing, in which the faculty member nor his counsel were invited to attend, and which contained unsworn testimony replete with hearsay and opinion evidence, violated concepts of a fair trial. The investigative depositions here do not contain prejudicial hearsay or opinion evidence, and are clearly distinguishable from that in issue in *Ball v. McPhee*, as discussed herein.

The foregoing analysis is equally applicable to Exhibit 18, the transcript of the investigative deposition of Michael Pfotenhauer, and accordingly the ALJ rules that it should likewise be admitted under secs. 908.01(4)(b)4) and 908.03(24), Stats.

2. VIOLATIONS

The Complaint in this matter alleges that Respondents Mark Laemmrich, Richard Laemmrich and Laemmrich Funeral Home violated the terms of the March 17, 1994 Final Decision and Order of the Funeral Directors Examining Board. That Order, in pertinent part, suspended the funeral directors license of Mark Laemmrich for a minimum period of two years commencing June 1, 1994, prohibited Mark from being present on the premises of any funeral establishment owned by Laemmrich Funeral Home, and prohibited Mark from participating in any way, directly or indirectly, in the operations of any funeral establishment, during the period of suspension. The complaint alleges that Mark was present on the premises of Laemmrich Funeral Home during the period of his suspension from June 1, 1994 and continuing through May 1995, and that he engaged in performing funeral arrangements and conducting funeral services. The complaint further alleges that Richard Laemmrich aided and abetted Mark's violations of the Board Order, and that all three respondents should be disciplined. In argument at the close of the hearing the Complainant, citing the prior disciplinary record of the Respondents, argued for revocation of the licenses of Mark and Richard Laemmrich and the Laemmrich Funeral Home.

By their Answer, the Respondents denied the material allegations of the complaint. However, at the hearing, in the presentation of Respondent's case and in closing argument, the Respondents conceded violations of the Board Order to the extent that Mark was present on the premises, with the knowledge of Richard, that he did engage in performing a funeral "prearrangement" for a friend on the premises of the funeral home, and that he did perform deliveries of used flower arrangements and death certificates at Richard's direction. The Respondents argue, however, that these were technical violations, and were motivated solely out of Mark's love and concern for his ailing father, his care and concern for the friend for whom he performed the prearrangement, and care and sympathy for the elderly residents of the community. The Respondents argued that with the exception of the prearrangement, none of the activities Mark engaged in required a funeral director license. The Respondents further argued that, notwithstanding the fact that technical violations occurred, the Respondents nevertheless complied with or attempted to comply with the spirit of the Board Order, and at most, these technical violations warrant only a reprimand.

Thus, the issues in this case are not so much whether alleged violations occurred, but how serious the violations were, and what discipline should be imposed.

Based upon the testimony and evidence in the record, the ALJ finds and concludes that Mark Laemmrich violated the March 17, 1994 Order of the Funeral Directors Examining Board in three separate respects, and that Richard Laemmrich in substance aided and abetted Mark's violations in two respects. First, virtually from the date of his suspension, Mark Laemmrich was present on and in the premises of Laemmrich Funeral Home, with the knowledge and authorization of Richard Laemmrich. Secondly, Mark Laemmrich was involved, directly and indirectly, in the operations of Laemmrich Funeral Home, again with the knowledge, authorization and direction of Richard Laemmrich. Thirdly, Mark Laemmrich engaged in

conducting pre-need funeral arrangements in the Fall of 1994 for the mother of Judy Mead, while unlicensed and in violation of the suspension order.

The first issue is the frequency of Mark Laemmrich's presence on the premises of Laemmrich Funeral Home. There was some debate in the testimony and among the parties of whether the "premises" of the funeral home under the terms of the March 17, 1994 Order meant broadly all of the building, garages, grounds and parking areas of the establishment, or on the other hand, the building itself. No explicit interpretation, guidance or authority was offered by either party for defining "premises," although Complainant's attorney implied by his line of questioning in the hearing and his arguments that "premises" included the entire grounds of the establishment as well as the building itself. Both Mark and Richard Laemmrich claimed that prior to June 1, 1994, they each attempted to find out from the department what "premises" was intended to mean, but in each case their inquiries to the department went unanswered. Richard claimed his attorney that represented him in the negotiation of the stipulated order could not answer the question, and apparently no attempt was made to contact attorney Sanders who negotiated and drafted the stipulated order. The ALJ finds this testimony doubtful that bona fide attempts were made to clarify what "premises" included. Neither Mark nor Richard offered a name or telephone number of the person he talked to. However, both Mark and Richard acknowledged in testimony that they did understand "premises" to mean at least the building, from the doors in, in which Laemmrich Funeral Home operates.

In the absence of explicit guidance or authority for interpretation, this issue may be resolved by reference to the definition of "funeral establishment" in sec. 445.01(6), Stats. That section reads in part, " A "funeral establishment" is any building or part of a building used and held out to the public as being used in the care or preparation for burial or transportation of dead human bodies or for holding or conducting funeral services." This definition makes reference only to a building or part of a building as comprising a funeral establishment. Accordingly, in the absence of evidence of a different intent from the text of the Order itself, or other authority defining "premises," on the basis of the definition of funeral establishment in sec. 445.01(6), the ALJ interprets the term "premises" as used in the March 17, 1994 Order to mean the building within which Laemmrich Funeral Home operated as a funeral establishment.

Mark Laemmrich testified that from June 1, 1994 until September 1994 when his father had surgery, he did go to the funeral home about twice per week but usually limited his presence to just entering the side flower door to ring the bell for someone to respond to him. As stated above, Mark clearly understood that the term "premises" in the Order meant at the least the building itself of the funeral home, however, he testified that he did not consider entering the flower door and standing between the exterior and interior doors to be a violation of the Order. Both Mark and Richard acknowledged that Mark's contacts with his father at the funeral home could have been done by telephone. Mark also admitted having delivered left over flower arrangements once and delivering or picking up a death certificate about three times.

Mark testified that from September 14, 1994, the time of his father's hip surgery, through February 21, 1995, the date of Mr. Garrette's investigative visit to the funeral home, he continued to regularly visit and fully enter the premises of the funeral home, into the office. Mark also testified that during his father's absence, about twice per week he picked up personal mail for his father that Mary Ellen Knecht had ready, or else went through the mail himself. Mark also admitted that on occasion, while his father was absent for his surgery in September and October

1994 and on vacation in early 1995, he had reviewed death record sheets to inform his father of what business the funeral home had, and who had died so his father could call the family. Again, Mark acknowledged that Mary Ellen Knecht could have performed these functions. Mark testified that he undertook these activities because his father in essence requested him to, and in effect to try to be useful to a limited extent to make up for the trouble and disgrace he had put people through as a result of the prior criminal and disciplinary proceedings.

In his testimony, Richard Laemmrich acknowledged that Mark was on the premises, however usually once a week, twice a week at most. Richard further acknowledged that Mark did enter the office to talk to him because of Richard's arthritis difficulties, and that he also once directed Mark to deliver a death certificate to a doctor and once directed him to deliver left over flower arrangements to a community nursing home. Richard admitted responsibility in part as to Mark's presence on the funeral home premises, responding that if it were not for his health, Mark would not have gotten in the back door. Finally Richard testified that following his return from surgery in mid-October 1994, Mark was on the premises not more than about five times. These variances from Mark's testimony are not explained in the record, other than by the inference that Richard was attempting to limit the extent of Mark's conduct that would be found a violation of the March 17, 1994 Order.

While the testimony of Richard and Mark Laemmrich was candid to the extent of admitting, after all other witnesses had testified, that Mark was present in the funeral home with Richard's knowledge and authorization, and that Mark delivered flowers and death certificates, and even that Mark had met with a patron to discuss pre-need funeral arrangements, their testimony was marked by efforts to rationalize Mark's presence in the premises by his father's medical condition, contention that the activities Mark engaged in did not require a funeral director license, and that Mark tried to comply, if not with the letter, at least with the spirit of the March 17, 1994 Order. The testimony of Richard and Mark Laemmrich was obviously self serving, and appeared to minimize the quality and extent of the violations alleged. It is noteworthy that Mark Laemmrich has been convicted of two felony counts for theft and forgery, which convictions were part of the grounds for disciplinary action in the March 17, 1994 Order. Also, Richard Laemmrich has been disciplined twice for conduct involving providing false information to an agent of the Board, in 1985 and in the March 17, 1994 Order. On the basis of this evaluation of their testimony and record of convictions and unprofessional conduct, the credibility of Richard and Mark Laemmrich is put in question and little weight is given to their testimony with the exception of their statements that constitute admissions.

In contrast to Mark's and Richard's testimony, other witnesses, notably that of Mary Ellen Knecht and Patrick Fahrenkrug, testified that Mark was present on the premises on a weekly basis since the June 1, 1994 effective date of Mark's suspension, through mid- March 1995 when investigative subpoenas were served in the investigation of allegations of Mark's violation of the March 17, 1994 Order. The only variation in testimony among the witnesses on this point is the average frequency per week that Mark was present in the premises. The frequency testified to by the witnesses ranged from once a week (as testified to by Norbert Swiecichowski and Michael Pfotenhauer) to as much as 3 to 4 times per week as testified to by Patrick Fahrenkrug. The record is unclear to what degree the frequency of Mark's visits to the funeral home premises as testified to by the various witnesses may be additive because of differing work schedules of the witnesses. Accordingly, the ALJ relies on the testimony of the most credible witnesses reporting

the highest frequency, although, it may very well be that Mark's visits in the premises exceeded that.

The testimony that the ALJ finds most credible on this as well as other issues in this matter, that of Mary Ellen Knecht and Patrick Fahrenkrug, indicate that Mark Laemmrich was present on the premises of the funeral home at least as often as 3 to 4 times per week, while Richard Laemmrich was present, as well as while he was absent for his surgery in the Fall of 1994 and absent on vacation in early 1995.

Mary Ellen Knecht, employed as a secretary by Laemmrich Funeral Home since October 1986, testified that Mark was present on the premises initially one to two times a week from June 1, 1994 to September 1994, when Richard had hip surgery. During this initial time period, Ms. Knecht testified, Mark was careful to limit his entry in the premises to just inside a side flower door. Thereafter, while Richard was gone for surgery and recuperation, Mark would enter and be present in the whole building. Then, following October 1994 to at least February 21, 1995, Mark would appear on and in the premises at least two times a week.

Patrick Fahrenkrug, employed as a funeral director by Laemmrich Funeral Home since June 1, 1994, testified at hearing that Mark Laemmrich was present on and in the premises of the funeral home at least 3 times a week. In his sworn statement taken on May 19, 1995, Fahrenkrug testified that Mark was present 3 to 4 times a week. Fahrenkrug also testified that during the periods that Richard was absent from the funeral home because of surgery and vacation, Mark nevertheless continued to be present in the funeral home premises.

The testimony also shows that Mark Laemmrich was involved in the operations of the funeral home during his suspension. Both Mary Ellen Knecht and Patrick Fahrenkrug testified that Mark Laemmrich, following Richard's surgery in the Fall of 1994, would come into the funeral home and visit with other employees and look through mail. Ms. Knecht testified that Mark would go through mail that was on Richard's desk and her own desk. Also, Ms. Knecht testified that over the course of February, March and April 1995 Mark had left a note in Ms. Knecht's desk drawer, in the funeral home check book, and then appeared personally in the office requesting a series of checks for payment of taxes.

In addition, Patrick Fahrenkrug testified that Mark helped him place a body in a casket on at least 3 occasions, and that he was aware of Mark delivering used flower arrangements at least twice. Fahrenkrug also testified that Mark would look through mail in the office, occasionally review files or records relating to funeral arrangements for service times or merchandise sold in order to report the information to Richard, and occasionally gave routine directions to Fahrenkrug relating to funeral arrangements. Moreover, Fahrenkrug testified that during Richard's absence for hip surgery, Mark acted as if he was in charge, and on at least two occasions stated to Fahrenkrug that he, Mark, was still in charge. This testimony was unrefuted by Mark Laemmrich.

There was also credible, unrefuted testimony that Richard Laemmrich did not seem to care that Mark should not have been present in the funeral home premises. Both Fahrenkrug and Michael Pfotenhauer testified that on separate occasions, each of them expressed concern to Richard about Mark's presence on the premises because of the prohibition of the March 17, 1994 Order. Fahrenkrug had even alerted Richard that he had heard "through the grapevine" that people were watching the premises, to which Richard responded "talk is cheap." Despite the concern expressed to Richard by two other licensed funeral directors about Mark's presence in the funeral

home in violation of the March 17, 1994 Order, and notwithstanding the warning by Patrick Fahrenkrug that people were watching, Mark continued to regularly enter the premises of the establishment with Richard's knowledge, consent and authorization. The testimony further shows that Richard Laemmrich not only was knowledgeable of and authorized Mark's presence in the premises, and that he directed Mark to undertake activities that necessarily involved him in the operations of the funeral home, but also that Richard Laemmrich essentially authorized Mark to be in charge. In his investigative deposition testimony, Fahrenkrug acknowledged an earlier statement to Investigator Garrette that when he expressed concern to Richard about Mark's presence in the funeral home, Richard responded, "who else is going to run the establishment?" Significantly, none of this testimony by Fahrenkrug and Pfotenhauer was refuted by Richard Laemmrich.

Finally, the record shows that Mark Laemmrich engaged in unlicensed practice of the business of a funeral director in violation of sec. 445.04(2), Stats., while suspended, also in violation of the March 17, 1994 Order. The testimony of Mary Ellen Knecht, Patrick Fahrenkrug, Judy Mead, Michael Pfotenhauer and Mark Laemmrich establish that in mid-September 1994 during his suspension, Mark Laemmrich met alone and without any other funeral director present, with a friend, Judy Mead, at the Laemmrich Funeral Home, for the purpose of advising her on what arrangements would need to be made in the event her mother, Betty J. Klingensmith, who was terminally ill, would pass away. Mark Laemmrich advised and made preliminary arrangements with Ms. Mead for the eventual transport of her mother's remains to another funeral home in Michigan, assisted Ms. Mead in the viewing and selection of a coffin and recorded the price of the coffin selected by Ms. Mead, recorded the charges of Laemmrich Funeral Home for the handling and transportation of the body to Michigan, and advised on and recorded other information and arrangements concerning funeral services, memorial donations and obituary information concerning Ms. Mead's mother in the event of her death. When Ms. Mead's mother passed away in April 1995, elements of the pre-arrangement conducted and recorded by Mark Laemmrich, including charges for the transport of the deceased's remains and charges for the coffin selected by Ms. Mead were included in the final Statement of Goods and Services Selected issued by Laemmrich Funeral Home to Ms. Mead concerning the funeral services performed for her mother.

Initially, in Respondents' cross examination of Fahrenkrug and Pfotenhauer, and in the testimony of Mark Laemmrich, Respondents attempted to portray Mark's meeting with Judy Mead as merely a meeting between friends in which Mark provided information on matters that would need to be done in the event of Ms. Mead's mother passing away. Also, Respondents sought to characterize the matters Mark addressed with Ms. Mead and the information provided and obtained from her as activities that did not require a funeral director's license. However, such attempts to minimize Mark's meeting with Ms. Mead were unavailing. It is clear that Mark's meeting with Ms. Mead constituted making funeral arrangements as defined in sec. FD 2.02(1), Wis. Adm. Code. That section provides:

> FD 2.02(1) Definitions. As used in this chapter:

(1) "Funeral arrangements" means the *provision of information or advice on selection or cost of merchandise,* facilities, equipment or *personal services* provided for *final deposition of a dead human body in the course of formulating a contractual agreement* between a funeral director or *funeral home and client.* (emphasis added)

Section FD 2.03 provides in pertinent part:

FD 2.03 Operation of a funeral establishment. Even though persons other than licensed funeral directors may own a funeral establishment:

(1) Funeral arrangements may be made only by licensed funeral directors, ...

Section 445.04(2), Stats., provides in part:

445.04(2) No person may engage in the business of a funeral director, or make a representation as engaged in such business, in whole or in part, unless first licensed as a funeral director by the examining board. . . .

Based upon the testimony and record here, Mark Laemmrich, on behalf of Laemmrich Funeral Home, met with Judy Mead and provided information and advice on selection and cost of a casket, services for transportation of Ms. Mead's mother's remains to Michigan, prayer cards, memorial services and publication of death notices. (See Exhibit 13, blue highlighted writing) The costs and charges for the casket selected by Ms. Mead and the funeral home charges for transportation of remains to Michigan recorded by Mark on Exhibit 13 were ultimately entered on the Statement of Funeral Goods and Services Selected issued by Laemmrich Funeral Home for Ms. Mead's mother's funeral services after she passed away in April 1995. Mark Laemmrich testified that he met with Judy Mead because he was concerned that if he did not, Ms. Mead would have taken her business elsewhere.

Mark Laemmrich had arranged to have Patrick Fahrenkrug be present at the funeral home at the time that Mark was to meet with Ms. Mead. Fahrenkrug initially agreed to be present, but on reflection and concern about his own professional liability, decided not to participate in the meeting and returned to the funeral home after Mark was already engaged in his meeting with Ms. Mead. Respondents seek to make much of this fact as showing that Mark attempted to honor the suspension order by having a licensed funeral director present if the meeting with Judy Mead went beyond friendly provision of information and advice. But this argument completely misses the point. First, Mark was prohibited from being present on the premises in the first place. Secondly, Mark was prohibited from being involved in the operations of the establishment. And thirdly, as admitted by Respondents in closing argument, although his license was suspended, Mark did not inform Ms. Mead of this fact and met with Ms. Mead under circumstances which probably led her to believe that he was acting in a funeral director capacity. Finally, it should be noted that Respondents, while attempting to minimize its seriousness, ultimately conceded that Mark's meeting with Ms. Mead constituted engaging in funeral directing and represents a violation.

3. DISCIPLINE

The purposes for imposing discipline are a) to promote the rehabilitation of the licensee; b) to protect the public; and c) to deter other licensees from engaging in similar misconduct. *State v. Aldrich*, 71 Wis. 2d 206, 209 (1976). Punishment is not an appropriate consideration or purpose for discipline. *State v. MacIntyre*, 41 Wis. 2d 481, 485 (1969).

Based upon the record in this case, and the prior disciplinary record of the Respondents, it is recommended that the licenses of each of Mark Laemmrich and Richard Laemmrich, and the permit to operate Laemmrich Funeral Home, be revoked. This is not a case of technical violations as argued by Respondents, nor are the violations justified or mitigated by Richard's medical condition or Mark's love and concern for his father or his purported care for the members of the community. Mark was under a disciplinary order of the Board suspending his license and prohibiting him from the premises and operations of the funeral home, and he and Richard largely disregarded and defied it, even in the face of expressed concerns and warnings from their employees. As acknowledged by the Respondents, Mark and Richard could have used a telephone to communicate on personal tasks Richard desired Mark to perform. Richard could have had Ms. Knecht, Mr. Fahrenkrug or Mr. Pfotenhauer keep him apprised of business matters during his absences. Richard could have delegated to one of his other employees licensed as a funeral director the responsibility to be a funeral director in charge during his absences. But they chose not to undertake these relatively simple measures to maintain compliance with the Board's Order. To the contrary it appears from this record, that both Mark and Richard at best had an attitude of cavalier indifference toward the prohibitions of the March 17, 1994 Order, and the authority of the Funeral Directors Examining Board.

Mark Laemmrich has a brief, recent, but very serious history of disciplinary action concerning his funeral directors license in Wisconsin. On November 24, 1993, Mark R. Laemmrich was convicted of felony theft and forgery, in connection with a series of thefts of funeral trust moneys deposited with Laemmrich Funeral Home from 16 patrons of Laemmrich Funeral Home, totaling $65,740.00. It was on the basis of these convictions and conduct that the Funeral Directors Examining Board pursued disciplinary action against Mark Laemmrich which resulted in the March 17, 1994 stipulated Final Decision and Order, imposing the minimum two year suspension of his license and prohibiting him from the premises of Laemmrich Funeral Home and further prohibiting him from participating in any way, directly or indirectly, in the operations of any funeral establishment. Importantly, as argued by Complainant, these latter prohibitions were to protect the integrity of funeral trust funds from the potential of further access and abuse by Mark Laemmrich.

As set forth in this proposed decision, Mark Laemmrich, almost from the inception of the disciplinary order, violated the terms and conditions of that suspension order. While the record shows that Mark may have initially attempted to honor at least the spirit of the Order by limiting the extent of his entry into the premises up to September 14, 1994, following that date and up to the date that investigative subpoenas were served upon the employees of Laemmrich Funeral Home on April 21, 1995, Mark routinely was on the premises, even following February 21, 1995 when he was caught on the premises by an investigator for the Board. Mark also participated in the operations of the funeral home, acted as though he was in charge of the establishment in his father's absences, and on one occasion engaged in unlicensed funeral directing. And, he continued to flout the authority of the Board and its Order even though Patrick Fahrenkrug, his

employee and licensed funeral director, wisely refused to participate in, aid and abet Mark's meeting with Judy Mead in September 1994 in violation of the Board's Order. One would think that confronted with another licensed funeral director, in effect warning Mark of the impropriety of the meeting, and his presence on the premises in the first place, Mark would have taken heed of the terms of the Board's Order. But to the contrary, Mark continued to flagrantly and callously disregard and defy the terms of the Order.

In considering the purposes of discipline of rehabilitation of the licensee, protection of the public and deterrence of similar conduct by this and other licensees, upon this record of conduct by Mark Laemmrich, it is the opinion of the ALJ that revocation of license is the only appropriate discipline. First, Mark Laemmrich was previously disciplined for his theft of tens of thousands of dollars from his patrons. By the two year suspension of license, with the chance to obtain reinstatement following the suspension, Mark was afforded an opportunity to demonstrate rehabilitation by compliance with the Order. However, as revealed by this record, almost immediately, Mark disregarded and defied the Board's order and demonstrated an inability or unwillingness to comply with its requirements and show rehabilitation. In regard to the disciplinary purpose of protection of the public, Mark has demonstrated a continuing disregard of the law, and the authority of the Board and its lawful Order by his violations in this case. The Board should not expose the public to the risk of further misconduct by one who has previously severely abused the trust of his patrons and the money they placed in his care, and who now has demonstrated a lack of rehabilitation and defiance of the authority of the law and the Board. Finally, the disciplinary purpose of deterrence, perhaps the paramount consideration in this case, can be served only by revocation of license. Mark Laemmrich was suspended, prohibited from the premises of the funeral home and prohibited from participating in any operations of any funeral home. Mark Laemmrich disregarded and defied that suspension order and its prohibitions. Revocation of license, in this case, is the only effective discipline left available to the Board to deter further misconduct by Mark Laemmrich. And revocation is the only appropriate and effective means to alert other licensees that repeated misconduct, especially in defiance of a Board order, will not be tolerated and will be appropriately met with the sternest discipline.

Richard Laemmrich also has a record of prior disciplinary action. As noted in the findings of fact, in 1985, Richard Laemmrich's license was suspended for seven days and limited for a period of one year for failure to timely file death certificates, timely obtain burial permits, and for providing false information to agents of the Board.

More recently, Richard Laemmrich was disciplined along with his son under the March 17, 1994 Order. In that case, Richard Laemmrich's license was suspended for 30 days for failing to deposit in a trust account $1000 received by Laemmrich Funeral Home in payment under a funeral trust agreement and lying to the patron in regard to the disposition of such fund; for providing false or misleading information to agents of the Funeral Directors Examining Board concerning matters under investigation involving Mark Laemmrich, and in substance as part owner, operator and funeral director in charge of Laemmrich Funeral Home, aiding and abetting continuing theft of funeral trust moneys by Mark Laemmrich by failing to notify the Board and law enforcement agencies of his knowledge of such a theft in October 1992, and failing to ensure the integrity of other burial trusts of Laemmrich Funeral Home which were thereafter invaded or converted by Mark Laemmrich from October 1992 through November-December 1993. Now, Richard Laemmrich is before the Board on charges of unprofessional conduct for his third time.

Based upon the record in this case and the law, revocation of the funeral director license of Richard Laemmrich is fully justified and warranted. Under sec. 445.12(5), Stats., "Any funeral director . . . who permits any person . . . associated with him or her to violate the provisions of this chapter, shall be guilty of violating the provisions of this chapter and subject to the penalties provided therein. . . ." By operation of sec. 445.12(5), Richard Laemmrich is guilty of the same violations of which he, as an operator and funeral director in charge, permitted Mark to commit, and is subject to the penalties authorized under ch. 445. Richard Laemmrich, as co-owner and operator of Laemmrich Funeral Home and funeral director in charge during the period of Mark Laemmrich's suspension of license, was aware of, authorized and/or directed, and permitted the continuation of, most of Mark Laemmrich's violations of the March 17, 1994 Order.

The record in this case shows that Richard Laemmrich was also possessed of an attitude of disregard and defiance of the March 17, 1994 Order insofar as it prohibited Mark's presence on the establishment premises and his participation in the operations of the funeral home. In response to concerns expressed by his employees and fellow licensed funeral directors that Mark should not be present on the premises and that they did not want to see him there, Richard did not seem to care and continued to allow his presence and even continued to direct Mark to perform tasks related to funeral home operations and management, all in direct contravention of the March 17, 1994 Order. Moreover, testimony further revealed that Richard in substance authorized Mark to be in charge during his absences. Upon this record, Richard must be held at least as equally culpable as Mark for the violations of the March 17, 1994 Order, inasmuch as Richard, as funeral director in charge, condoned, authorized, directed and participated in Mark's violations. Indeed, what is most disturbing is that it appears that Richard's own cavalier attitude certainly operated to foster Mark's violations of the Order.

In considering the purposes of discipline of rehabilitation of the licensee, protection of the public and deterrence of similar conduct by this and other licensees, it is the opinion of the ALJ that revocation of license is also the only appropriate discipline for Richard Laemmrich. As with Mark, Richard has demonstrated an unwillingness or inability to demonstrate rehabilitation. As to protection of the public, Richard has, like Mark, demonstrated a disregard of the law, and the authority of the Board and its lawful Order. Again, the Board should not expose the public to the risk of further misconduct by one who has demonstrated a lack of rehabilitation and defiance of the authority of the law and the Board. Finally, the disciplinary purpose of deterrence can only be served by revocation of Richard's license. Richard is before the Board for the third time, having been suspended for seven days, and again for 30 days. And in this case, as noted above, Richard's culpability, in fact and under the law, must be regarded just as serious as that of Mark. Revocation of Richard's license is the only appropriate and sufficient means to deter repeated and continuing misconduct.

Finally, as to the appropriate discipline in regard to the funeral establishment permit of Laemmrich Funeral Home, revocation is recommended. Section 445.105(4), Stats., provides:

> 445.105(4) Violations of this chapter or any rules or regulations of the examining board committed by any person, or an officer, agent or employee with the knowledge or consent of any person operating such funeral establishments shall be considered sufficient cause for reprimand or for limitation, suspension or revocation of such funeral establishment permit.

Richard and Mark Laemmrich are partners in ownership and operation of Laemmrich Funeral Home. Both Richard and Mark have been disciplined repeatedly for serious misconduct in the operation of that establishment, and now are recommended for revocation of their funeral director licenses for their misconduct in this case. For public protection purposes the Board should not allow Laemmrich Funeral Home, nor any funeral establishment, to be owned and operated by individuals who have been repeatedly disciplined and whose funeral director licenses should be revoked. In making this recommendation, the ALJ is cognizant of the potential adverse impact revocation of the establishment permit may have on the other employees of Laemmrich Funeral Home. Innocent employees should not be indirectly punished for the misconduct of Mark and Richard Laemmrich. However, in considering this matter, the ALJ can not see how the public interest can tolerate the continued operation of Laemmrich Funeral Home under the ownership of Mark and Richard Laemmrich, even if another competent, licensed funeral director is placed in charge of its operation. Mark and Richard Laemmrich would still be involved in its management and operation, any other funeral director in charge would still be under their influence and control, and Mark and Richard Laemmrich would still have access to the building and files of the establishment. Accordingly, the ALJ sees no alternative measure to protect the public welfare and interest, but to revoke the funeral establishment permit of Laemmrich Funeral Home. However, the ALJ has recommended that revocation of the establishment permit of Laemmrich Funeral Home become effective 90 days following the date of this order, in order to allow a reasonable period of time for closure of its operations and transition of its employees to alternative employment, or for the Laemmrichs to sell the establishment to a new owner/operator.

4. COSTS

Finally, the complainant requests that costs of this proceeding be assessed against the Respondents pursuant to sec. 440.22, Wis. Stats. Under the terms of sec. 440.22, the Board may assess costs in any disciplinary proceeding in which discipline is imposed. The decision is discretionary with the Board whether to impose all or part of the costs of this proceeding. Based upon the record in this matter, assessment of the entire costs of this proceeding against the Respondents is clearly appropriate. The costs of this disciplinary action should be borne by Respondents as the offending licensees, rather than by the profession as a whole through license fees.

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 proposed Findings of Fact, Conclusions of Law and Order as set forth herein.

Dated at Madison, Wisconsin, this 20th day of August, 1996.

Robert T. Ganch

Robert T. Ganch
Administrative Law Judge