

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN
BEFORE THE FUNERAL DIRECTORS EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION AND ORDER
	:	Case No. LS9112117FDR
MICHAEL H. PFOTENHAUER,	:	
RESPONDENT.	:	

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

Michael H. Pfotenhauer
1145 Cardinal Lane
Green Bay, WI 54303

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

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

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

A disciplinary hearing in this matter was held before an Administrative Law Judge on February 3, 1992. The respondent, Michael H. Pfotenhauer, appeared personally without legal counsel. The complainant appeared by its attorney, Henry E. Sanders.

The administrative law judge issued a Proposed Decision on February 11, 1992. Complainant's attorney filed written objections to the Proposed Decision on February 17, 1992. Respondent also objected to the Proposed Decision by correspondence dated February 19, 1992. The Funeral Directors Examining Board reviewed the record in this case at its meeting on March 17, 1992.

Based upon the entire record in this case, the Funeral Directors Examining Board makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Respondent Michael H. Pfotenhauer is and was at all times relevant to the facts set forth herein a funeral director licensed in the state of Wisconsin, under license number 4354, originally granted on January 11, 1979.

2. In December of 1989 Mr. Pfotenhauer submitted an application to the Department of Regulation and Licensing to renew his Funeral Directors license. As part of the application he signed a statement reading: "I hereby certify that I have completed 15 hours of approved continuing education during the biennium immediately preceding this application for renewal as required by s. 445.06, Wis. Stats."

3. Mr. Pfotenhauer did not complete 15 hours of continuing education during the 1988-1989 biennium.

4. On August 8, 1990, Mr. Pfotenhauer was requested by the Board to complete and return a Mandatory Continuing Education Verification form within thirty days of receipt of the form. Mr. Pfotenhauer did not comply.

5. On January 18, 1991, Mr. Pfotenhauer was again requested to complete the Mandatory Continuing Education Verification form by January 25, 1991. Mr. Pfotenhauer did not comply.

6. Mr. Pfotenhauer did not return at least three telephone messages left at his place of employment which directed him to contact an employee of the Department of Regulation and Licensing regarding his continuing education hours.

CONCLUSIONS OF LAW

1. The Funeral Directors Examining Board has personal jurisdiction over the Respondent, based upon Finding of Fact #1 above and the service of the Complaint and Notice of Hearing.

2. The Funeral Directors Examining Board has jurisdiction over the subject matter of this complaint, under sec. 15.08(5)(c), Wis. Stats., and secs. 445.06 and 445.13, Wis. Stats.

3. The Respondent violated sec. FDE 4.03, Wis. Admin. Code and sec. 445.06, Wis. Stats., by falsely certifying that he had completed fifteen hours of continuing education during the 1988-1989 biennium.

4. The Respondent violated FDE 3.02(5), Wis. Admin. Code by refusing to comply with a duly authorized request of the board in a timely manner.

ORDER

IT IS HEREBY ORDERED that Respondent's license to practice as a funeral director in the State of Wisconsin is suspended for 150 days, under sec. 445.13(1), Wis. Stats., such suspension to commence ten (10) days after the date of this Final Decision and Order.

IT IS FURTHER ORDERED that Respondent pay the costs of this proceeding in the amount of \$492.90, under sec. 440.22, Wis. Stats.

IT IS FURTHER ORDERED that Respondent shall take and complete 15 hours of continuing education subsequent to the date of this decision, and submit proof of same in the form of verification from the provider delivered to the Department of Regulation and Licensing, P.O. Box 8935, Madison, WI 53708. None of the education completed pursuant to this requirement may be used to satisfy any other continuing education requirements that are or may be instituted by the board.

IT IS FURTHER ORDERED that, if the Respondent does not pay the assessed costs in full or provide proof of having obtained the continuing education required above by the end of the period of suspension, the suspension of Respondent's license shall then be extended until such time as the above requirements are fulfilled.

EXPLANATION OF VARIANCE

The board has accepted the Findings of Fact and Conclusions of Law recommended by the administrative law judge (ALJ) in his Proposed Decision. It has also accepted the Order suspending respondent's license for 150 days and imposing the costs of the proceeding. Regarding the latter, the actual amount involved has been set forth within the Order, as established through the two affidavits attached to this decision.

However, the board has modified the recommendation by further requiring that respondent take and submit verification of completing 15 credits of continuing education prior to the return of his license.

In rendering this decision the board reviewed the record in this case, including the transcript of the hearing, the Proposed Decision of the ALJ and the written objections to that decision submitted by the respondent and complainant's attorney.

Respondent primarily argues that the suspension of his license is unduly harsh in that his basic mistake was in assuming that he had obtained the necessary credits when he certified to that fact on the application for license renewal. However, the ALJ who presided over the hearing and was in a position to observe the demeanor and presentation of the respondent, does not believe that to be the case. In addressing this defense in the Proposed Decision, the ALJ stated:

"...(G)iven all the circumstances, which include accepting the stipulation as stated by Mr. Sanders, observing Mr. Pfotenhauer during the hearing, and taking judicial notice of facts alleged in the complaint showing that Mr. Pfotenhauer avoided requests from the Board for information, I find as a fact that he did not complete the necessary hours. The certification on his Renewal Application was therefore false, and instead of acknowledging freely that he made a mistake during a difficult time in his career, his statements in the hearing were evasive. This aggravates the offense, and is reflected in the recommended discipline."

The board accepts the foregoing statement, and other reasoning advanced in the Proposed Decision, as an appropriate basis upon which to impose the length of suspension ordered in this case. This case transcends a situation in which a license has simply failed to obtain the required credits. It additionally involves the false certification of the matter on the renewal application, the avoidance of requests from agents of the board for additional information and the lack of candor at the hearing. Under such additional circumstances, the period of suspension recommended in this case is appropriate in order to both advance the rehabilitation of the respondent and deter of licensees from engaging in such conduct in the future. See, State v. Aldrich, 71 Wis.2d 206, 209 (1976).

The board has also ordered that the respondent obtain the 15 hours of continuing education he failed to acquire during 1988-89. The continuing education is to be taken subsequent to the effective date of the order and completed prior to the return of respondent's license. This requirement is necessary to assure that the educational deficiency is satisfied before respondent is again permitted to practice.

Dated: March 30, 1992.

STATE OF WISCONSIN
FUNERAL DIRECTORS EXAMINING BOARD

By: Peter Eggert
Peter Eggert, Director
Bureau of Business and Design Professions

BDLS2-1555

STATE OF WISCONSIN
BEFORE THE FUNERAL DIRECTORS EXAMINING BOARD

IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	AFFIDAVIT OF COSTS OF
	:	OFFICE OF BOARD LEGAL SERVICES
MICHAEL H. PFOTENHAUER,	:	Case No. LS-9112117-FDR
RESPONDENT.	:	

John N. Schweitzer affirms the following before a notary public for use in this action, subject to the penalties for perjury in sec. 946.31, Wis. Stats.:

1. He is an attorney licensed to practice law in the State of Wisconsin, and is employed by the Wisconsin Department of Regulation and Licensing, Office of Board Legal Services.
2. In the course of his employment, he was assigned as the administrative law judge in the above-captioned matter.
3. Set out below are the actual costs of the proceeding for the Office of Board Legal Services in this matter:

a. Administrative Law Judge Expense - John N. Schweitzer


2-3-92	Conduct hearing	1/2 hour
2-3-92	Prepare decision	1 hour
2-4-92	Prepare decision	2 1/2 hours
2-11-92	Prepare decision	1/2 hours
		4 1/2 hours

Total administrative law judge expense:
4 1/2 hours @ \$23/hour (salary + 30% benefits) = \$103.50

b. Reporter Expense - Magne-Script, 112 Lathrop Street, Madison, WI 53705
Transcribing 2-3-92 hearing (18 pages) \$59.40

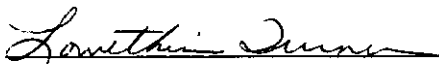
Total reporter expense = \$59.40

Total assessable costs for Office of Board Legal Services = \$162.90



John N. Schweitzer
Administrative Law Judge

Sworn to and signed before me
this 12th day of February, 1992.



Notary Public, State of Wisconsin
My commission 2-12-94
11-6-94

STATE OF WISCONSIN
BEFORE THE FUNERAL DIRECTORS EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

MICHAEL F. PFOTENHAUER,
RESPONDENT.

:
:
:
:
:
:

AFFIDAVIT OF COSTS
DIVISION OF ENFORCEMENT
91 FDR 021
(WIS. STATS. SEC. 440.22)

STATE OF WISCONSIN)
) ss
COUNTY OF DANE)

Henry E. Sanders, 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, Department of Regulation and Licensing, Division of Enforcement.

2. In the course of his employment, your affiant was assigned to prosecute the above-captioned matter and in that regard, did render the services described below.

3. The costs set forth below are the reasonable costs of these proceedings.

PROSECUTING ATTORNEYS' COSTS

<u>DATES</u>	<u>ACTIVITY</u>	<u>TIME SPENT</u>
9/10/91	Received/reviewed case referral from Bureau of Business & Design Professions	10 min.
	Did law research; consulted with complainant Beasley; reviewed related records	1 hr.
9/20/91	Screened informal complaint; to DOE clerk for opening complaint file	10 min.
11/8/91	Drafted Notice of Hearing & Complaint; made exhibit copies (to WPC)	2 hr.
11/13/91	Proofed/corrected Notice & Complaint draft from WPC	30 min.
11/20/91 & 11/26/91	Received back & proofed final draft of Notice & Complaint; make copies; execution by complainant, and to clerk for filing	2½ hr.

12/23/91	Received/reviewed respondent's letter; checked with ALJ re. his receipt of same	5 min.
1/6/92	Telephoned respondent's business; reached his father Harold	2 min.
1/17/92	Telephone conversation with respondent	8 min.
2/2/92	Hearing preparation	1 hr.
2/3/92	Met with respondent & brother prior to hearing	20 min.
	Hearing held	20 min.
2/10/92	Received/reviewed hearing transcript	15 min.
2/12/92	Received/reviewed ALJ's Notice of Filing Proposed Decision	15 min.
2/13/92	Received/ <u>CUASARY</u> review of Amended Notice of Filing Proposed Decision	
2/13/92	Drafted Objection to Proposed Decision	10 min.
2/25/92	Received/reviewed respondent's objections to proposed decision	5 min.
3/9-10/92	Reviewed files; prepared Affidavit of Costs; to WPC	2 hr.

Prosecuting attorney's costs for Henry E. Sanders, based upon current salary and benefits at 11 hours and _____ minutes at \$30.00 per hour.

Total Hours: 11 hours
Total Costs: \$330.00

Subscribed and sworn before me this
11 day of March, 1992.

Henry E. Sanders

[Signature]

Notary Public
State of Wisconsin
My Commission is Permanent

HES:pp
ATTY-1994

NOTICE OF APPEAL INFORMATION

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

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

1. Rehearing.

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

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

2. Judicial Review.

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

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

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

The date of mailing of this decision is March 30, 1992.