

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN  
BEFORE THE FUNERAL DIRECTORS EXAMINING BOARD

IN THE MATTER OF THE  
APPLICATION FOR A RENEWAL  
LICENSE TO PRACTICE AS A  
FUNERAL DIRECTOR OF

ANDREW J. GEIGER, JR.,  
APPLICANT.

FINAL DECISION  
AND ORDER  
LS9705232FDR

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

ORDER

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

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

Dated this 1<sup>ST</sup> day of October 1997.

D. Bruce Carlson / a.j.t.  
A Member of the Board

STATE OF WISCONSIN  
BEFORE THE FUNERAL DIRECTORS EXAMINING BOARD

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IN THE MATTER OF THE APPLICATION

FOR A RENEWAL LICENSE TO :

PRACTICE AS A FUNERAL DIRECTOR OF :

PROPOSED DECISION

ANDREW J. GEIGER, JR., :

APPLICANT. :

(Case No. LS 9705232 FDR)

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

Andrew J. Geiger, Jr.  
8152 S. Mission Drive  
Franklin, WI 53132

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

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

A hearing was conducted in this matter on June 18, 1997. The applicant, Andrew J. Geiger, Jr., appeared personally and by his attorney, Andrew R. Reneau, 9261 North 60th Street, Brown Deer, Wisconsin 53223-1501. The state appeared by attorney, Steven M. Gloe.

On the basis of the entire record, the administrative law judge recommends that the Funeral Directors Examining Board adopt as its final decision in this proceeding the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. The applicant, Andrew J. Geiger, Jr. (D.O.B. 08/08/34), 8152 S. Mission Drive, Franklin, Wisconsin 53132, was duly licensed in the state of Wisconsin as a funeral director, pursuant to license #2691 initially granted on August 10, 1962.

2. Mr. Geiger has never actively practiced as a funeral director, but he has maintained a current funeral director's certificate in good standing since 1964. Since 1963, Mr. Geiger has been employed by the Milwaukee County Department of Social Services.

3. On or about November 4, 1996, Mr. Geiger made an application for the renewal of his funeral director's license. The application indicated that Mr. Geiger has obtained at least 15 credits of continuing education since September 26, 1996

4. On December 3, 1996, the Funeral Directors Examining Board determined that Mr. Geiger should be required to pass the initial licensure examination prior to being permitted to renew his funeral director's license.

5. Correspondence between Mr. Geiger and staff assigned to the board establish Mr. Geiger's disagreement with the board's determination that his absence from the actual practice of funeral directing for over 20 years, justified it in requiring him to take and pass the initial licensing examination.

6. On April 4, 1997, a Notice of Denial of Mr. Geiger's application for renewal of his funeral director's license was issued.

#### CONCLUSIONS OF LAW

1. The Funeral Directors Examining Board has jurisdiction in this proceeding pursuant to ch. 445, Wis. Stats.

2. As the holder of a certificate of good standing, Mr. Geiger has the right to renew his funeral director's license under sec. 445.06, Stats., subject to the limitations upon that right set forth in sec. 440.08(3)(b), Stats., and sec. FD 1.10(3), Wis. Adm. Code.

3. The fact that Mr. Geiger has not actively practiced as a funeral director since the original granting of his license on August 10, 1962, constitutes a reasonable basis upon which the Funeral Directors Examining Board may deny his application for a renewal of his license.

4. The fact that Mr. Geiger has not actively practiced as a funeral director since the original granting of his license on August 10, 1962, constitutes a reasonable basis upon which the Funeral Directors Examining Board may require that he complete and successfully pass the initial licensure examination prior to granting the renewal of his license.

#### ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the denial by the Funeral Directors Examining Board of the application of Andrew J. Geiger, Jr., to renew his license to practice as a funeral director be, and hereby is, affirmed, and the application is therefore denied.

OPINION

The facts underlying Mr. Geiger's application for renewal of his funeral director's license are not in material dispute. Mr. Geiger was granted a license to practice as a funeral director in August, 1962. He decided not to actively practice as a funeral director. Accordingly, as required under, sec. 445.06, Stats., he was issued a "certificate of good standing" in 1964. The distinction between the two credentials being that a funeral director's license is reserved to those in actual active practice, while non-practicing funeral directors receive a certificate of good standing.

Mr. Geiger has never practiced as a funeral director in the 35 years since receiving his original license. He has been employed by the Milwaukee County Department of Social Services since 1963. With this background, Mr. Geiger filed an application for renewal of his funeral director's license on or about November 4, 1996. In doing so, he relied upon that portion of the requirements for reinstatement within sec. 445.06, Stats., stating that a holder of a certificate in good standing,

". . . shall be entitled to a renewal license at any time during that license period, when located at a recognized funeral establishment, without payment of any additional renewal fee. The applicant must also furnish proof of completion of at least 15 hours of continuing education during the previous 2-year licensure period. . . ." (Emphasis, added).

On December 3, 1996, the Funeral Directors Examining Board ("board") reviewed Mr. Geiger's application. The board noted that Mr. Geiger had not actually practiced funeral directing for over 20 years and, due to this lengthy absence from practice, informed him that it would be necessary for him to take and pass the initial licensure examination before his funeral director's license would be renewed. In arriving at this determination, the board indicated it derived its authority to impose such a requirement from sec. 440.08(3)(b), Stats., and a rule the board had promulgated thereunder.

Sec. 440.08(3)(b), Stats., authorizes the board, as well as other credentialing authorities within the department to:

". . . promulgate rules requiring the holder of a credential who fails to renew the credential within 5 years after its renewal date to complete requirements in order to restore the credential, in addition to the applicable requirements for renewal established under chs. 440 to 480, that the . . . board . . . determines is necessary to protect the public health, safety or welfare." (Emphasis, added).

Pursuant to the authority granted under the statute, the board promulgated sec. FD 1.10(3), Wis. Adm. Code, effective October 1, 1993. In material part, the rule provides that in circumstances where application for renewal of a funeral director's license is made more than 5 years after its renewal date:

“ . . . the board may require demonstration of competence by various methods, including, but not limited to, written or oral examination, documentation of funeral directing work in other jurisdictions, or documentation of current education or experience in the field. . . .”<sup>1</sup>

Mr. Geiger contends that the explicit and sole requirements for reinstatement of a license as a funeral director for individuals holding current certificates of good standing are contained in sec. 445.06, Stats. The statutory language specifically states that a holder of a certificate in good standing “shall be entitled” to a license without paying any additional fee. The only requirement provided in the statute for transforming a certificate of good standing into a license to practice funeral directing, is the completion of 15 hours of continuing education during the prior biennial licensing period, a prerequisite met by Mr. Geiger.

On the other hand, the state contends that sec. 445.06, Stats., is not to be read in a vacuum, but must be considered in conjunction with the subsequently enacted statutes and rule that also specifically address the renewal of a funeral director’s license. The board’s rationale is expressed in the February 21, 1997 correspondence to Mr. Geiger (Exhibit 1, pp. 7-8), as follows:

“ . . . §445.06 of the Wisconsin statutes . . . provides that a funeral director who is not doing business at a recognized funeral establishment may nevertheless apply for a certificate in good standing. Persons holding such certificates are entitled to a renewal license at any time during that license period when they are located at a recognized funeral establishment. . . . This section gives an individual who holds a certificate in good standing the *right to renew* his funeral director license. However, that right is not absolute and must be considered together with secs. 440.08 (3) (b), Stats. and FD 1.10 (3), Wis. Admin. Code.

“Holding a certificate in good standing allows an individual the right to renew it, but does not guarantee the automatic reinstatement of a license.” (Emphasis, in original).

The board’s position is sound. That is, sec. 445.06, Stats., must not be read in isolation from other laws directed at the renewal of a funeral director’s license. They must be read together in order to extract the renewal requirements applicable in this case.

In addition to the rationale supplied by the board in the above-cited correspondence to Mr. Geiger, the express language utilized in sec. 440.08(3)(b), Stats., makes it clear that the board may impose additional requirements by rule to those set forth in sec. 445.06, Stats. Again, the

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<sup>1</sup> Both sec. 480.08(3)(b), Stats., and the administrative rule prohibit the board from imposing additional renewal requirements which are greater than those required to obtain an original funeral director’s license. The board’s authority to require passage of the initial examination for license renewal under these provisions in appropriate cases is not contested here.

applicable language in sec. 440.08(3)(b), Stats, specifically and unambiguously states that boards may adopt rules providing for the completion of requirements:

“ . . . in addition to the applicable requirements for renewal established under chs. 440 to 480. . . .

The board has enacted requirements in addition to those contained in sec. 445.06, Stats., for renewal of a funeral director's license. Sec. 440.08(3)(b), Stats., gives it the specific authority to do so. Accordingly, Mr. Geiger's claim that he is entitled to the automatic renewal of his funeral director's license at this time is not supported in law.

Mr. Geiger also contends that the board was required to provide individual and personal notice to every holder of a certificate in good standing that it had promulgated, or intended to promulgate, sec. FD 1.10(3), Wis. Adm. Code, which became effective on October 1, 1993. However, no legal requirement exists mandating the board to provide personal notice to every individual who might be affected by a new administrative rule. The legal “public notice” requirements and other specified promulgation procedures are set forth in Ch. 227, Stats. There is no claim or evidence suggesting the board violated any of those provisions in adopting sec. FD 1.10(3). Accordingly, the board is entitled to the presumption that the rule was validly promulgated.

Mr. Geiger also questions the value of a certificate of good standing, which is biennially renewed for a fee, if it confers no greater rights than those possessed by individuals who allow their license to expire and do not bother to obtain a certificate in good standing. He contends that there must be some right, authority or privilege granted by a certificate of good standing, not possessed by those who do not hold the credential. Otherwise, Mr. Geiger suggests, the statute essentially perpetrates a fraud to collect revenue.

The state did not respond directly to this question. On its face, the statute does not appear to confer any obvious benefit upon a person possessing, and paying for, a certificate of good standing. However, a holder of a certificate in good standing, unlike a licensee, is not required to complete the biennial continuing education requirements in order to obtain renewal of the certificate. See, FDE 4.05, Wis. Adm. Code. When the certificate holder desires to regain his or her license, only proof of having taken 15 credits of continuing education in the previous biennium is necessary to meet that particular requirement; whereas a licensee would be required to meet the continuing education requirement in each and every biennium. Clearly, however, this “benefit” for non-active funeral director certificate-holders is no longer as great as in the past, given the current “5 year” renewal rule.

However, it is reasonable to assume that Mr. Geiger's having held a certificate of good standing at the time he applied for renewal of his funeral director's license may well have impacted upon the board's decision to require only passage of an examination to obtain renewal after almost 35 years of non-practice. One can easily envision situations in which it would not only be reasonable, but necessary for the board to require additional education in mortuary science and the completion of an apprenticeship prior to renewing a license that had expired for that period of

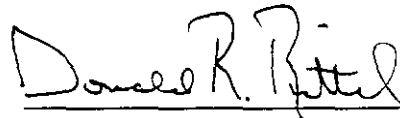
time.<sup>2</sup> It did not impose those conditions in this case. Mr. Geiger's having possessed a certificate of good standing may have supplied the reason for not doing so.

The board's determination that Mr. Geiger take and pass the original examination leading to a funeral director's license is a reasonable one and within the board's discretion to require. He has not practiced funeral directing for 35 years. Under such circumstances, the board's determination that he pass the licensing examination is not unreasonable.

The board's denial of the renewal of the license of Mr. Geiger to practice as a funeral director until such time as he takes and passes the initial licensure examination is affirmed.

Dated this 22<sup>nd</sup> day of August, 1997.

Respectfully submitted,



Donald R. Rittel

Administrative Law Judge

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<sup>2</sup> Education and apprenticeship experience are requirements for original licensure set forth in sec. 445.045(1), Stats., which the board has the authority under sec. 440.08(3), Stats., and sec. FD 1.10(3), Wis. Adm. Code., to impose as additional requirements for renewal in appropriate cases.



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

In the Matter of the Application for a Renewal License to Practice as a Funeral Director of

Andrew J. Geiger, Jr.,

AFFIDAVIT OF MAILING

Applicant.


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.

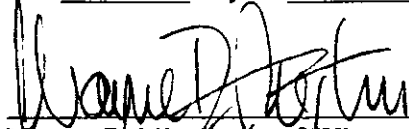
2. On October 2, 1997, I served the Final Decision and Order dated October 1, 1997, LS9705232FDR, upon the Applicant Andrew J. Geiger's attorney by enclosing a true and accurate copy of the above-described document in an envelope properly stamped and addressed to the above-named Applicant's attorney 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 221 159 578.

Andrew R. Reneau, Attorney  
9261 N. 60th Street  
Brown Deer WI 53223-1501

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

Subscribed and sworn to before me

this 2nd day of October, 1997.

  
\_\_\_\_\_  
Notary Public, State of Wisconsin  
My commission is permanent.

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## NOTICE OF APPEAL INFORMATION

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**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 2, 1997

### **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.)