

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN

BEFORE THE FUNERAL DIRECTORS EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY

PROCEEDINGS AGAINST:

CHARLES A. O'BRIEN, F/D/B/A

FINAL DECISION AND ORDER

FINDEISEN GREISER

FUNERAL HOME

RESPONDENT

LS0109192FDR

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

Charles A. O'Brien

340 S. Monroe St.

Green Bay, WI 54301

Division of Business Licensure and Regulation

Funeral Directors Examining Board

P.O. Box 8935

Madison, WI 53708-8935

Department of Regulation and Licensing

Division of Enforcement

P.O. Box 8935

Madison, WI 53708-8935

The Funeral Directors Examining Board, having considered the Stipulation Agreement annexed-here to of the parties, in resolution of the captioned-matter makes the following:

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED pursuant to jurisdiction and authority granted to the Board, that the Stipulation Agreement annexed-here to, filed by Complainant's Attorney, shall be and hereby is incorporated made and ordered the Final Decision and Order of the state of Wisconsin, Funeral Directors Examining Board.

Let a copy of this Order be served on Respondent by certified mail.

Dated this 19th day of September, 2001.

W. Robert Cress

A Member of the Board

STATE OF WISCONSIN
BEFORE THE FUNERAL DIRECTORS EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST:

CHARLES A. O'BRIEN,	STIPULATION
F/D/B/A FINDEISEN GREISER	
FUNERAL HOME	
RESPONDENT	99 FDR 016

Respondent Charles A. O'Brien (O'Brien), F/d/b/A Findeisen Greiser Funeral Home, his attorney James W. Gardner, and Complainant's Attorney, Henry E. Sanders, Division of Enforcement, having reached agreement for disposition of the captioned-matter, stipulate and agree as follows:

1. Respondent O'Brien (License #3431-77), formerly doing business as Findeisen Greiser Funeral Home, 617 South Roosevelt, Green Bay, WI 54301, but now with an address of record of 340 South Monroe Street, Green Bay, WI 54301 is and was at all time material to the complaint, licensed as a funeral director and has been so licensed under the provisions of ch. 445, Wis. Stats., since January 17, 1956.
- a. This Stipulation is dispositive of Investigative Complaint #99 FDR 016.
2. This Stipulation shall be submitted to the Funeral Directors Examining Board (Board) for approval and disposition of the matters. If the terms of the Stipulation are not acceptable to the Board, then the parties shall not be bound by any of the provisions of the Stipulation.
3. Respondent has been advised of his right to a public hearing on each and every allegation of the complaint, but hereby freely and voluntarily waive his right to a hearing in this matter on the condition that all provision of this Stipulation be acceptable to and approved by the Board.
 - a. Respondent further agrees to waive any appeal of the Board's Final Decision and Order adopting the Stipulation Agreement.
4. The Department received a copy of a letter from the Estate Recovery Program Section of the state of Wisconsin, Bureau of Health Care Systems and Operations, a letter from a consumer, a "court appointed guardian" of his mother (L.R.).
5. L.R. died and Respondent – who had a funeral, vault, and casket trust regarding funeral arrangements was contacted. Per the complaint, Respondent quoted the consumer a minimal price for a direct cremation funeral service, but, that the final billing was in excess of the amount quoted; that prior to the scheduled funeral the consumer asked Respondent on three (3) separate occasions for a written itemized bill, and was told that the final costs were not known, and that it would take two (2) weeks to get all final costs together; that Complainant requested that the final bill be submitted directly to him, but that Respondent submitted the bill directly to the bank where related funeral related trusts were held for payment without Complainant knowledge and or authorization, and that finally; the final billing for Cash Advanced items contained add on charges in excess of what Respondent actually paid for those Cash Advanced Items, not inclusive.
6. Complainant alleged and maintained that through verification the actual costs for the items provided and were charged are as follows:

	<u>Cost</u>	<u>Charged</u>
a. Flowers	\$ 35.00	\$ 50.00
b. Urn	\$ 85.00 - \$90.00 (Quoted)	\$185.00
c. Obituary	\$ 63.00	\$ 94.62
d. Stone	\$ 55.00	\$ 65.00
e. Cremation/Internment	\$100.00	\$185.00

7. In response to the specific allegations, Respondent admitted that he exceeded the actual amounts charged to the consumer as follows:

	<u>Actual Costs</u>	<u>Charged by Respondent</u>
Flowers	\$ 35.00	\$ 50.00
Stone Marking	\$ 55.00	\$ 65.00

8. Documentation submitted along with Respondent's responses appears to indicate that:

	<u>Actual Costs</u>	<u>Charged by Respondent</u>
Tribute Urn	\$ 70.00	\$185.00
Internment-Cremation	\$100.00	\$185.00

9. Respondent was requested to and did provide to the Department, original documents for twenty (20) of the more recent cases in which he had provided funeral related services, including for each case, the general price list, the statements of goods and services selected and provided, all trust related documents, and receipts and billing invoices for all Cash Advanced Items.

a. Respondent responded that he "have never kept funeral trust papers after the funeral trusts were cashed in."

10. The Case Advisor assigned to the complaint, a professional Board member, analyzed and reviewed the twenty (20) cases documentation regarding the actual costs of services provided, and the amounts charged by Respondent by comparisons to invoices, and concluded in pertinent part that:

a. There were discrepancies found with some of the charges Respondent made to various clients, with the majority of those discrepancies involving obituary notices.

b. Respondents General Price List indicated a \$990.00 charge was made to a family, but Respondent charged them \$1,090.00.

c. Respondent charged a family for a Cremation-Cash Advanced Item, \$185.00, but the receipt from the crematorium showed that the actual cost was \$165.00; and billed the same family \$75.00 for the Medical Examiner's officer services, but the invoice from the Medical Examiner's office indicated an actual charge to Respondent of \$50.00.

d. The charges and billing invoice from a Medical Examiner's office indicates that Respondent was billed \$20.00 for services, but Respondent billed a family \$25.00.

e. Charges and billing invoice from a florist indicated that Respondent was charged \$65.00, but Respondent charged a family \$75.00.

11. It was noted and concluded that Respondent provided various obituaries to the Department, but failed to provide corroborating documentation; and various billing invoices from the Green Bay Press Gazette indicated that Respondent charged families more for the costs of obituaries, than what they actually cost.

12. It was also noted and concluded that regarding some of Respondent's Statements of Goods and Services selected, that Respondent included the exact costs for luncheons served, which were substantiated, which indicates that apparently Respondent was not giving families a copy on the same day as the arrangement

conference, contrary to the way funeral directors are taught, all not inclusive.

13. Respondent neither admits or denies the allegations, and maintains that per a review of some of Respondent's documentation, discrepancies were noted in which both underage and overage occurred, and that any mistakes made were unintentional; but in resolution of the captioned matters, Respondent consents to the following Conclusions of Law and Order.

14. Respondent O'Brien has, based upon the above-enumerated facts, violated secs. FD 3.02(1), (3), (9), Wis. Adm. Code, Unprofessional Conduct. (1) Violating ...A violation of any state or federal law substantially related to the practice of funeral directing, (3) Giving misleading or deceptive information to family or persons involved in the arranging of a funeral of final disposition including, but not limited to, information on: funeral costs, burial agreements, legal requirements, (6) Providing and performing the services of funeral directing ... in a manner which falls below minimal standards established by statute, rule or practice in the profession, and (9) engaging in misleading or deceptive conduct in the conduct of business or of the profession; and:

Violated sec. FD 3.02(6), Wis. Adm. Code, for failure to retain trust records for a reasonable period of time which falls below minimal standards ... or practice in the profession; violated sec. FTC 453.2(a)-(b)(4), Price disclosures. (a) Unfair or deceptive acts or practices, (b)(4), General Price List; violated sec. FTC 453.3(f)(i); (f) Cash Advance Provisions-(I) Deceptive acts or practice. In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that the price charged for a Cash Advance Item is the same as funeral goods or services required to be purchased, as explained on the itemized statement in accordance with 453.3(d)(2).

15. Based upon the above and in settlement of these matter, Respondent O'Brien agrees to be suspended for a minimum period of three (3) months, commencing thirty (30) calendar days after the effective date of the Board's Order adopting the Stipulation Agreement; and to pay the amount of \$1500.00 Assessment of Costs, to be paid within (30) calendar days of the effective date of the Board's Order adopting the Stipulation Agreement.

a. The effective date of the Board's Order is the date of signing by the Board's Chairperson or his designee.

16. The \$1500.00 Assessment of Costs shall be payable by cashier's check or money order made payable to the Department of Regulation and Licensing (designated as costs); and on or before the effective date of the Board's Order, Respondent shall submit all funeral directors licenses/permits previously issued to him to the Department's Monitor:

Marlene Meyers

Monitor

Division of Enforcement

P.O. Box 8935

Madison, WI 53704-8935

17. Thereafter and during the time of the ordered suspension, Respondent shall not participate/engage directly or indirectly in the business of funeral directing as defined in sec. 445.01(5), Wis. Stats., and funeral arrangements and services as defined in secs. FD 2.02(1)(2), Wis. Adm. Code.

18. If Respondent shall fail to submit to the Department his licenses/permits and or his Assessment of Costs as ordered, or fail to get a written extension from the Board to extend same, then he shall be considered to be in violation of the Board's Order, and may be subjected to further discipline.

19. Respondent agree that this Stipulation Agreement may be incorporated into the Board's Final Decision and Order adopting the Stipulation Agreement.

20. Respondent further agrees that Complainant's Attorney Sanders, and the case advisor assigned to the complaint, may appear at any closed deliberative meeting of the Board with respect to the Stipulation, but those appearances will be limited solely to clarification, justification, and to statements in support of the Stipulation and for no other purpose.

Charles A. O'Brien

8-22-01

Respondent

Date

James W. Gardner

8-27-01

Respondent's Attorney

Date

Henry E. Sanders

8-28-01

Complainant's Attorney

Date